

February 26, 2004

Ordered to be printed as passed

108TH CONGRESS
2D SESSION

S. 1072

AN ACT

To authorize funds for Federal-aid highways, highway safety programs, and transit programs, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) **SHORT TITLE.**—This Act may be cited as the
5 “Safe, Accountable, Flexible, and Efficient Transportation
6 Equity Act of 2004”.

1 (b) TABLE OF CONTENTS.—The table of contents of
 2 this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. General definitions.
- Sec. 3. Definitions for title 23.

TITLE I—FEDERAL-AID HIGHWAYS

Subtitle A—Funding

- Sec. 1101. Authorization of appropriations.
- Sec. 1102. Obligation ceiling.
- Sec. 1103. Apportionments.
- Sec. 1104. Equity bonus programs.
- Sec. 1105. Revenue aligned budget authority.

Subtitle B—New Programs

- Sec. 1201. Infrastructure performance and maintenance program.
- Sec. 1202. Future of surface transportation system.
- Sec. 1203. Freight transportation gateways; freight intermodal connections.
- Sec. 1204. Construction of ferry boats and ferry terminal and maintenance facilities; coordination of ferry construction and maintenance.
- Sec. 1205. Designation of Daniel Patrick Moynihan Interstate Highway.
- Sec. 1206. State-by-State comparison of highway construction costs.

Subtitle C—Finance

- Sec. 1301. Federal share.
- Sec. 1302. Transfer of highway and transit funds.
- Sec. 1303. Transportation Infrastructure Finance and Innovation Act Amendments.
- Sec. 1304. Facilitation of international registration plans and international fuel tax agreements.
- Sec. 1305. National Commission on Future Revenue Sources to Support the Highway Trust Fund and Finance the Needs of the Surface Transportation System.
- Sec. 1306. State infrastructure banks.
- Sec. 1307. Public-private partnerships pilot program.
- Sec. 1308. Wagering.

Subtitle D—Safety

- Sec. 1401. Highway safety improvement program.
- Sec. 1402. Operation lifesaver.
- Sec. 1403. License suspension.
- Sec. 1404. Bus axle weight exemption.
- Sec. 1405. Safe routes to schools program.
- Sec. 1406. Purchases of equipment.
- Sec. 1407. Workzone safety.
- Sec. 1408. Worker injury prevention and free flow of vehicular traffic.
- Sec. 1409. Identity authentication standards.
- Sec. 1410. Open container requirements.

Subtitle E—Environmental Planning and Review

CHAPTER 1—TRANSPORTATION PLANNING

- Sec. 1501. Integration of natural resource concerns into State and metropolitan transportation planning.
- Sec. 1502. Consultation between transportation agencies and resource agencies in transportation planning.
- Sec. 1503. Integration of natural resource concerns into transportation project planning.
- Sec. 1504. Public involvement in transportation planning and projects.
- Sec. 1505. Project mitigation.

CHAPTER 2—TRANSPORTATION PROJECT DEVELOPMENT PROCESS

- Sec. 1511. Transportation project development process.
- Sec. 1512. Assumption of responsibility for categorical exclusions.
- Sec. 1513. Surface transportation project delivery pilot program.
- Sec. 1514. Parks, recreation areas, wildlife and waterfowl refuges, and historic sites.
- Sec. 1515. Regulations.

CHAPTER 3—MISCELLANEOUS

- Sec. 1521. Critical real property acquisition.
- Sec. 1522. Planning capacity building initiative.

Subtitle F—Environment

- Sec. 1601. Environmental restoration and pollution abatement; control of invasive plant species and establishment of native species.
- Sec. 1602. National scenic byways program.
- Sec. 1603. Recreational trails program.
- Sec. 1604. Exemption of Interstate System.
- Sec. 1605. Standards.
- Sec. 1606. Use of high occupancy vehicle lanes.
- Sec. 1607. Bicycle transportation and pedestrian walkways.
- Sec. 1608. Idling reduction facilities in Interstate rights-of-way.
- Sec. 1609. Toll programs.
- Sec. 1610. Federal reference method.
- Sec. 1611. Addition of particulate matter areas to CMAQ.
- Sec. 1612. Addition to CMAQ-eligible projects.
- Sec. 1613. Improved interagency consultation.
- Sec. 1614. Evaluation and assessment of CMAQ projects.
- Sec. 1615. Synchronized planning and conformity timelines, requirements, and horizon.
- Sec. 1616. Transition to new air quality standards.
- Sec. 1617. Reduced barriers to air quality improvements.
- Sec. 1618. Air quality monitoring data influenced by exceptional events.
- Sec. 1619. Conforming amendments.
- Sec. 1620. Highway stormwater discharge mitigation program.
- Sec. 1621. Exemption from certain hazardous materials transportation requirements.
- Sec. 1622. Funds for rebuilding fish stocks.

Subtitle G—Operations

- Sec. 1701. Transportation systems management and operations.
- Sec. 1702. Real-time system management information program.

- Sec. 1703. Contracting for engineering and design services.
- Sec. 1704. Off-duty time for drivers of commercial vehicles.
- Sec. 1705. Designation of transportation management areas.

Subtitle H—Federal-Aid Stewardship

- Sec. 1801. Future Interstate System routes.
- Sec. 1802. Stewardship and oversight.
- Sec. 1803. Design-build contracting.
- Sec. 1804. Program efficiencies—finance.
- Sec. 1805. Set-asides for interstate discretionary projects.
- Sec. 1806. Federal lands highways program.
- Sec. 1807. Highway bridge program.
- Sec. 1808. Appalachian development highway system.
- Sec. 1809. Multistate corridor program.
- Sec. 1810. Border planning, operations, technology, and capacity program.
- Sec. 1811. Puerto Rico highway program.
- Sec. 1812. National historic covered bridge preservation.
- Sec. 1813. Transportation and community and system preservation program.
- Sec. 1814. Parking pilot programs.
- Sec. 1815. Interstate oasis program.
- Sec. 1816. Tribal-State road maintenance agreements.
- Sec. 1817. National forest system roads.
- Sec. 1818. Territorial highway program.
- Sec. 1819. Magnetic levitation transportation technology deployment program.
- Sec. 1820. Donations and credits.
- Sec. 1821. Disadvantaged business enterprises.
- Sec. 1822. Emergency relief.
- Sec. 1823. Priority for pedestrian and bicycle facility enhancement projects.
- Sec. 1824. The Delta Regional Authority.
- Sec. 1825. Multistate international corridor development program.
- Sec. 1826. Authorization of contract authority for States with Indian Reservations.

Subtitle I—Technical Corrections

- Sec. 1901. Repeal or update of obsolete text.
- Sec. 1902. Clarification of date.
- Sec. 1903. Inclusion of requirements for signs identifying funding sources in title 23.
- Sec. 1904. Inclusion of Buy America requirements in title 23.
- Sec. 1905. Technical amendments to nondiscrimination section.

TITLE II—TRANSPORTATION RESEARCH

Subtitle A—Funding

- Sec. 2001. Authorization of appropriations.
- Sec. 2002. Obligation ceiling.
- Sec. 2003. Notice.

Subtitle B—Research and Technology

- Sec. 2101. Research and technology program.
- Sec. 2102. Study of data collection and statistical analysis efforts.
- Sec. 2103. Centers for surface transportation excellence.
- Sec. 2104. Motoreycle crash causation study grants.

Sec. 2105. Transportation technology innovation and demonstration program

Subtitle C—Intelligent Transportation System Research

Sec. 2201. Intelligent transportation system research and technical assistance program.

TITLE III—PUBLIC TRANSPORTATION

Sec. 3001. Short title.

Sec. 3002. Amendments to title 49, United States Code; updated terminology.

Sec. 3003. Policies, findings, and purposes.

Sec. 3004. Definitions.

Sec. 3005. Metropolitan transportation planning.

Sec. 3006. Statewide transportation planning.

Sec. 3007. Transportation management areas.

Sec. 3008. Private enterprise participation.

Sec. 3009. Urbanized area formula grants.

Sec. 3010. Planning programs.

Sec. 3011. Capital investment program.

Sec. 3012. New freedom for elderly persons and persons with disabilities.

Sec. 3013. Formula grants for other than urbanized areas.

Sec. 3014. Research, development, demonstration, and deployment projects.

Sec. 3015. Transit cooperative research program.

Sec. 3016. National research programs.

Sec. 3017. National transit institute.

Sec. 3018. Bus testing facility.

Sec. 3019. Bicycle facilities.

Sec. 3020. Suspended light rail technology pilot project.

Sec. 3021. Crime prevention and security.

Sec. 3022. General provisions on assistance.

Sec. 3023. Special provisions for capital projects.

Sec. 3024. Contract requirements.

Sec. 3025. Project management oversight and review.

Sec. 3026. Project review.

Sec. 3027. Investigations of safety and security risk.

Sec. 3028. State safety oversight.

Sec. 3029. Sensitive security information.

Sec. 3030. Terrorist attacks and other acts of violence against public transportation systems.

Sec. 3031. Controlled substances and alcohol misuse testing.

Sec. 3032. Employee protective arrangements.

Sec. 3033. Administrative procedures.

Sec. 3034. Reports and audits.

Sec. 3035. Apportionments of appropriations for formula grants.

Sec. 3036. Apportionments for fixed guideway modernization.

Sec. 3037. Authorizations.

Sec. 3038. Apportionments based on growing States formula factors.

Sec. 3039. Job access and reverse commute grants.

Sec. 3040. Over-the-road bus accessibility program.

Sec. 3041. Alternative transportation in parks and public lands.

Sec. 3042. Obligation ceiling.

Sec. 3043. Adjustments for the Surface Transportation Extension Act of 2003.

Sec. 3044. Disadvantaged business enterprise.

Sec. 3045. Intermodal passenger facilities.

TITLE IV—SURFACE TRANSPORTATION SAFETY

Sec. 4001. Short title.

Subtitle A—Highway Safety

PART I—HIGHWAY SAFETY GRANT PROGRAM

- Sec. 4101. Short title; amendment of title 23, United States Code.
- Sec. 4102. Authorization of appropriations.
- Sec. 4103. Highway safety programs.
- Sec. 4104. Highway safety research and outreach programs.
- Sec. 4105. National Highway Safety Advisory Committee technical correction.
- Sec. 4106. Occupant protection grants.
- Sec. 4107. School bus driver training.
- Sec. 4108. Emergency medical services.
- Sec. 4109. Repeal of authority for alcohol traffic safety programs.
- Sec. 4110. Impaired driving program.
- Sec. 4111. State traffic safety information system improvements.
- Sec. 4112. NHTSA accountability.

PART II—SPECIFIC VEHICLE SAFETY-RELATED RULINGS

- Sec. 4151. Amendment of title 49, United States Code.
- Sec. 4152. Vehicle crash ejection prevention.
- Sec. 4153. Vehicle backover avoidance technology study.
- Sec. 4154. Vehicle backover data collection.
- Sec. 4155. Aggressivity and incompatibility reduction standard.
- Sec. 4156. Improved crashworthiness.
- Sec. 4157. 15-passenger vans.
- Sec. 4158. Additional safety performance criteria for tires.
- Sec. 4159. Safety belt use reminders.
- Sec. 4160. Missed deadlines reports.
- Sec. 4161. Grants for improving child passenger safety programs.
- Sec. 4162. Authorization of appropriations.

PART III—MISCELLANEOUS PROVISIONS

- Sec. 4171. Driver licensing and education.
- Sec. 4172. Amendment of Automobile Information Disclosure Act.
- Sec. 4173. Child safety.
- Sec. 4174. Safe intersections.
- Sec. 4175. Study on increased speed limits.

Subtitle B—Motor Carrier Safety and Unified Carrier Registration

PART I—ADMINISTRATIVE MATTERS

- Sec. 4201. Short title; amendment of title 49, United States Code.
- Sec. 4202. Required completion of overdue reports, studies, and rulemakings.
- Sec. 4203. Contract authority.

PART II—MOTOR CARRIER SAFETY

- Sec. 4221. Minimum guarantee.
- Sec. 4222. Authorization of appropriations.
- Sec. 4223. Motor carrier safety grants.
- Sec. 4224. CDL working group.

- Sec. 4225. CDL learner's permit program.
- Sec. 4226. Hobbs Act.
- Sec. 4227. Penalty for denial of access to records.
- Sec. 4228. Medical program.
- Sec. 4229. Operation of commercial motor vehicles by individuals who use insulin to treat diabetes mellitus.
- Sec. 4230. Financial responsibility for private motor carriers.
- Sec. 4231. Increased penalties for out-of-service violations and false records.
- Sec. 4232. Elimination of commodity and service exemptions.
- Sec. 4233. Intrastate operations of interstate motor carriers.
- Sec. 4234. Authority to stop commercial motor vehicles.
- Sec. 4235. Revocation of operating authority.
- Sec. 4236. Pattern of safety violations by motor carrier management.
- Sec. 4237. Motor carrier research and technology program.
- Sec. 4238. Review of commercial zone exemption provision.
- Sec. 4239. International cooperation.
- Sec. 4240. Performance and registration information system management.
- Sec. 4241. Commercial vehicle information systems and networks deployment.
- Sec. 4242. Outreach and education.
- Sec. 4243. Operation of restricted property-carrying units on national highway system.
- Sec. 4244. Operation of longer combination vehicles on national highway system.
- Sec. 4245. Application of safety standards to certain foreign motor carriers.
- Sec. 4246. Background checks for Mexican and Canadian drivers hauling hazardous materials.
- Sec. 4247. Exemption of drivers of utility service vehicles.
- Sec. 4248. Operation of commercial motor vehicles transporting agricultural commodities and farm supplies.
- Sec. 4249. Safety performance history screening.
- Sec. 4250. Compliance review audit.

PART III—UNIFIED CARRIER REGISTRATION

- Sec. 4261. Short title.
- Sec. 4262. Relationship to other laws.
- Sec. 4263. Inclusion of motor private and exempt carriers.
- Sec. 4264. Unified carrier registration system.
- Sec. 4265. Registration of motor carriers by States.
- Sec. 4266. Identification of vehicles.
- Sec. 4267. Use of UCR agreement revenues as matching funds.
- Sec. 4268. Clerical amendments.

Subtitle C—Household Goods Movers

- Sec. 4301. Short title; amendment of title 49, United States Code.
- Sec. 4302. Findings; sense of Congress.
- Sec. 4303. Definitions.
- Sec. 4304. Payment of rates.
- Sec. 4305. Household goods carrier operations.
- Sec. 4306. Liability of carriers under receipts and bills of lading.
- Sec. 4307. Dispute settlement for shipments of household goods.
- Sec. 4308. Enforcement of regulations related to transportation of household goods.
- Sec. 4309. Working group for development of practices and procedures to enhance Federal-State relations.

- Sec. 4310. Consumer handbook on DOT website.
- Sec. 4311. Information about household goods transportation on carriers' websites.
- Sec. 4312. Consumer complaints.
- Sec. 4313. Review of liability of carriers.
- Sec. 4314. Civil penalties relating to household goods brokers.
- Sec. 4315. Civil and criminal penalty for failing to give up possession of household goods.
- Sec. 4316. Progress report.
- Sec. 4317. Additional registration requirements for motor carriers of household goods.

Subtitle D—Hazardous Materials Transportation Safety and Security

- Sec. 4401. Short title.
- Sec. 4402. Amendment of title 49, United States Code.

PART I—GENERAL AUTHORITIES ON TRANSPORTATION OF HAZARDOUS MATERIALS

- Sec. 4421. Purpose.
- Sec. 4422. Definitions.
- Sec. 4423. General regulatory authority.
- Sec. 4424. Limitation on issuance of hazmat licenses.
- Sec. 4425. Representation and tampering.
- Sec. 4426. Transporting certain highly radioactive material.
- Sec. 4427. Hazmat employee training requirements and grants.
- Sec. 4428. Registration.
- Sec. 4429. Shipping papers and disclosure.
- Sec. 4430. Rail tank cars.
- Sec. 4431. Highway routing of hazardous material.
- Sec. 4432. Unsatisfactory safety ratings.
- Sec. 4433. Air transportation of ionizing radiation material.
- Sec. 4434. Training curriculum for the public sector.
- Sec. 4435. Planning and training grants; emergency preparedness fund.
- Sec. 4436. Special permits and exclusions.
- Sec. 4437. Uniform forms and procedures.
- Sec. 4438. International uniformity of standards and requirements.
- Sec. 4439. Hazardous materials transportation safety and security.
- Sec. 4440. Enforcement.
- Sec. 4441. Civil penalties.
- Sec. 4442. Criminal penalties.
- Sec. 4443. Preemption.
- Sec. 4444. Relationship to other laws.
- Sec. 4445. Judicial review.
- Sec. 4446. Authorization of appropriations.
- Sec. 4447. Additional civil and criminal penalties.

PART II—OTHER MATTERS

- Sec. 4461. Administrative authority for research and special programs administration.
- Sec. 4462. Mailability of hazardous materials.
- Sec. 4463. Criminal matters.
- Sec. 4464. Cargo inspection program.
- Sec. 4465. Information on hazmat registrations.

- Sec. 4466. Report on applying hazardous materials regulations to persons who reject hazardous materials.

PART III—SANITARY FOOD TRANSPORTATION

- Sec. 4481. Short title.
 Sec. 4482. Responsibilities of the Secretary of Health and Human Services.
 Sec. 4483. Department of Transportation requirements.
 Sec. 4484. Effective date.

Subtitle E—Recreational Boating Safety Programs

- Sec. 4501. Short title.

PART I—FEDERAL AID IN SPORT FISH RESTORATION ACT AMENDMENTS

- Sec. 4521. Amendment of Federal aid in Fish Restoration Act.
 Sec. 4522. Authorization of appropriations.
 Sec. 4523. Division of annual appropriations.
 Sec. 4524. Maintenance of projects.
 Sec. 4525. Boating infrastructure.
 Sec. 4526. Requirements and restrictions concerning use of amounts for expenses for administration.
 Sec. 4527. Payments of funds to and cooperation with Puerto Rico, the District of Columbia, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Virgin Islands.
 Sec. 4528. Multistate conservation grant program.

PART II—CLEAN VESSEL ACT AMENDMENTS

- Sec. 4541. Grant program.

PART III—RECREATIONAL BOATING SAFETY PROGRAM AMENDMENTS

- Sec. 4561. State matching funds requirement.
 Sec. 4562. Availability of allocations.
 Sec. 4563. Authorization of appropriations for State recreational boating safety programs.
 Sec. 4564. Maintenance of effort for State recreational boating safety programs.

PART IV—MISCELLANEOUS

- Sec. 4581. Technical correction to Homeland Security Act.

Subtitle F—Rail Transportation

PART I—AMTRAK

- Sec. 4601. Authorization of appropriations.
 Sec. 4602. Establishment of Build America Corporation.
 Sec. 4603. Federal bonds for transportation infrastructure.

PART II—RAILROAD TRACK MODERNIZATION

- Sec. 4631. Short title.
 Sec. 4632. Capital grants for railroad track.
 Sec. 4633. Regulations.
 Sec. 4634. Study of grant-funded projects.

Sec. 4635. Authorization of appropriations.

PART III—OTHER RAIL TRANSPORTATION-RELATED PROVISIONS

Sec. 4661. Capital grants for rail line relocation projects.

Sec. 4662. Use of congestion mitigation and air quality improvement funds for Boston to Portland passenger rail service.

TITLE V—HIGHWAY REAUTHORIZATION AND EXCISE TAX SIMPLIFICATION

Sec. 5000. Short title; amendment of 1986 code.

Subtitle A—Trust Fund Reauthorization

Sec. 5001. Extension of Highway Trust Fund and Aquatic Resources Trust Fund expenditure authority and related taxes.

Sec. 5002. Full accounting of funds received by the Highway Trust Fund.

Sec. 5003. Modification of adjustments of apportionments.

Subtitle B—Volumetric Ethanol Excise Tax Credit

Sec. 5101. Short title.

Sec. 5102. Alcohol and biodiesel excise tax credit and extension of alcohol fuels income tax credit.

Sec. 5103. Biodiesel income tax credit.

Subtitle C—Fuel Fraud Prevention

Sec. 5200. Short title.

PART I—AVIATION JET FUEL

Sec. 5211. Taxation of aviation-grade kerosene.

Sec. 5212. Transfer of certain amounts from the Airport and Airway Trust Fund to the Highway Trust Fund to reflect highway use of jet fuel.

PART II—DYED FUEL

Sec. 5221. Dye injection equipment.

Sec. 5222. Elimination of administrative review for taxable use of dyed fuel.

Sec. 5223. Penalty on untaxed chemically altered dyed fuel mixtures.

Sec. 5224. Termination of dyed diesel use by intercity buses.

PART III—MODIFICATION OF INSPECTION OF RECORDS PROVISIONS

Sec. 5231. Authority to inspect on-site records.

Sec. 5232. Assessable penalty for refusal of entry.

PART IV—REGISTRATION AND REPORTING REQUIREMENTS

Sec. 5241. Registration of pipeline or vessel operators required for exemption of bulk transfers to registered terminals or refineries.

Sec. 5242. Display of registration.

Sec. 5243. Registration of persons within foreign trade zones, etc.

Sec. 5244. Penalties for failure to register and failure to report.

Sec. 5245. Information reporting for persons claiming certain tax benefits.

Sec. 5246. Electronic reporting.

PART V—IMPORTS

- Sec. 5251. Tax at point of entry where importer not registered.
- Sec. 5252. Reconciliation of on-loaded cargo to entered cargo.

PART VI—MISCELLANEOUS PROVISIONS

- Sec. 5261. Tax on sale of diesel fuel whether suitable for use or not in a diesel-powered vehicle or train.
- Sec. 5262. Modification of ultimate vendor refund claims with respect to farming.
- Sec. 5263. Taxable fuel refunds for certain ultimate vendors.
- Sec. 5264. Two-party exchanges.
- Sec. 5265. Modifications of tax on use of certain vehicles.
- Sec. 5266. Dedication of revenues from certain penalties to the Highway Trust Fund.
- Sec. 5267. Nonapplication of export exemption to delivery of fuel to motor vehicles removed from United States.

PART VII—TOTAL ACCOUNTABILITY

- Sec. 5271. Total accountability.
- Sec. 5272. Excise tax reporting.
- Sec. 5273. Information reporting.

Subtitle D—Definition of Highway Vehicle

- Sec. 5301. Exemption from certain excise taxes for mobile machinery.
- Sec. 5302. Modification of definition of off-highway vehicle.

Subtitle E—Excise Tax Reform and Simplification

PART I—HIGHWAY EXCISE TAXES

- Sec. 5401. Dedication of gas guzzler tax to Highway Trust Fund.
- Sec. 5402. Repeal certain excise taxes on rail diesel fuel and inland waterway barge fuels.

PART II—AQUATIC EXCISE TAXES

- Sec. 5411. Elimination of Aquatic Resources Trust Fund and transformation of Sport Fish Restoration Account.
- Sec. 5412. Exemption of LED devices from sonar devices suitable for finding fish.
- Sec. 5413. Repeal of harbor maintenance tax on exports.
- Sec. 5414. Cap on excise tax on certain fishing equipment.
- Sec. 5415. Reduction in rate of tax on portable aerated bait containers.

PART III—AERIAL EXCISE TAXES

- Sec. 5421. Clarification of excise tax exemptions for agricultural aerial applicators and exemption for fixed-wing aircraft engaged in forestry operations.
- Sec. 5422. Modification of rural airport definition.
- Sec. 5423. Exemption from ticket taxes for transportation provided by seaplanes.
- Sec. 5424. Certain sightseeing flights exempt from taxes on air transportation.

PART IV—ALCOHOLIC BEVERAGE EXCISE TAXES

- Sec. 5431. Repeal of special occupational taxes on producers and marketers of alcoholic beverages.
- Sec. 5432. Suspension of limitation on rate of rum excise tax cover over to Puerto Rico and Virgin Islands.

PART V—SPORT EXCISE TAXES

- Sec. 5441. Custom gunsmiths.
- Sec. 5442. Modified taxation of imported archery products.
- Sec. 5443. Treatment of tribal governments for purposes of Federal wagering excise and occupational taxes.

PART VI—OTHER PROVISIONS

- Sec. 5451. Income tax credit for distilled spirits wholesalers and for distilled spirits in control State bailment warehouses for costs of carrying Federal excise taxes on bottled distilled spirits.
- Sec. 5452. Credit for taxpayers owning commercial power takeoff vehicles.
- Sec. 5453. Credit for auxiliary power units installed on diesel-powered trucks.

Subtitle F—Miscellaneous Provisions

- Sec. 5501. Motor Fuel Tax Enforcement Advisory Commission.
- Sec. 5502. National Surface Transportation Infrastructure Financing Commission.
- Sec. 5503. Treasury study of fuel tax compliance and interagency cooperation.
- Sec. 5504. Expansion of Highway Trust Fund expenditure purposes to include funding for studies of supplemental or alternative financing for the Highway Trust Fund.
- Sec. 5505. Treasury study of highway fuels used by trucks for non-transportation purposes.
- Sec. 5506. Delta regional transportation plan.
- Sec. 5507. Treatment of employer-provided transit and van pooling benefits.
- Sec. 5508. Study of incentives for production of biodiesel.

Subtitle G—Revenue Offsets

PART I—LIMITATION ON EXPENSING CERTAIN PASSENGER AUTOMOBILES

- Sec. 5601. Expansion of limitation on depreciation of certain passenger automobiles.

PART II—PROVISIONS DESIGNED TO CURTAIL TAX SHELTERS

- Sec. 5611. Clarification of economic substance doctrine.
- Sec. 5612. Penalty for failing to disclose reportable transaction.
- Sec. 5613. Accuracy-related penalty for listed transactions and other reportable transactions having a significant tax avoidance purpose.
- Sec. 5614. Penalty for understatements attributable to transactions lacking economic substance, etc.
- Sec. 5615. Modifications of substantial understatement penalty for nonreportable transactions.
- Sec. 5616. Tax shelter exception to confidentiality privileges relating to taxpayer communications.
- Sec. 5617. Disclosure of reportable transactions.
- Sec. 5618. Modifications to penalty for failure to register tax shelters.
- Sec. 5619. Modification of penalty for failure to maintain lists of investors.

- Sec. 5620. Modification of actions to enjoin certain conduct related to tax shelters and reportable transactions.
- Sec. 5621. Understatement of taxpayer's liability by income tax return preparer.
- Sec. 5622. Penalty on failure to report interests in foreign financial accounts.
- Sec. 5623. Frivolous tax submissions.
- Sec. 5624. Regulation of individuals practicing before the Department of Treasury.
- Sec. 5625. Penalty on promoters of tax shelters.
- Sec. 5626. Statute of limitations for taxable years for which required listed transactions not reported.
- Sec. 5627. Denial of deduction for interest on underpayments attributable to nondisclosed reportable and noneconomic substance transactions.
- Sec. 5628. Authorization of appropriations for tax law enforcement.

PART III—OTHER CORPORATE GOVERNANCE PROVISIONS

- Sec. 5631. Affirmation of consolidated return regulation authority.
- Sec. 5632. Declaration by chief executive officer relating to Federal annual corporate income tax return.
- Sec. 5633. Denial of deduction for certain fines, penalties, and other amounts.
- Sec. 5634. Disallowance of deduction for punitive damages.
- Sec. 5635. Increase in criminal monetary penalty limitation for the underpayment or overpayment of tax due to fraud.
- Sec. 5636. Doubling of certain penalties, fines, and interest on underpayments related to certain offshore financial arrangements.

PART IV—ENRON-RELATED TAX SHELTER PROVISIONS

- Sec. 5641. Limitation on transfer or importation of built-in losses.
- Sec. 5642. No reduction of basis under section 734 in stock held by partnership in corporate partner.
- Sec. 5643. Repeal of special rules for FASITs.
- Sec. 5644. Expanded disallowance of deduction for interest on convertible debt.
- Sec. 5645. Expanded authority to disallow tax benefits under section 269.
- Sec. 5646. Modification of interaction between subpart F and passive foreign investment company rules.

PART V—PROVISIONS TO DISCOURAGE EXPATRIATION

- Sec. 5651. Tax treatment of inverted corporate entities.
- Sec. 5652. Imposition of mark-to-market tax on individuals who expatriate.
- Sec. 5653. Excise tax on stock compensation of insiders in inverted corporations.
- Sec. 5654. Reinsurance of United States risks in foreign jurisdictions.

Subtitle H—Additional Revenue Provisions

PART I—ADMINISTRATIVE PROVISIONS

- Sec. 5671. Extension of IRS user fees.
- Sec. 5672. Clarification of rules for payment of estimated tax for certain deemed asset sales.
- Sec. 5673. Partial payment of tax liability in installment agreements.

PART II—FINANCIAL INSTRUMENTS

- Sec. 5675. Treatment of stripped interests in bond and preferred stock funds, etc.
- Sec. 5676. Application of earnings stripping rules to partnerships and S corporations.
- Sec. 5677. Recognition of cancellation of indebtedness income realized on satisfaction of debt with partnership interest.
- Sec. 5678. Modification of straddle rules.
- Sec. 5679. Denial of installment sale treatment for all readily tradeable debt.

PART III—CORPORATIONS AND PARTNERSHIPS

- Sec. 5680. Modification of treatment of transfers to creditors in divisive reorganizations.
- Sec. 5681. Clarification of definition of nonqualified preferred stock.
- Sec. 5682. Modification of definition of controlled group of corporations
- Sec. 5683. Mandatory basis adjustments in connection with partnership distributions and transfers of partnership interests.
- Sec. 5684. Class lives for utility grading costs.
- Sec. 5685. Consistent amortization of periods for intangibles.

Subtitle I—Tax-Exempt Financing of Highway Projects and Rail-Truck Transfer Facilities

- Sec. 5691. Tax-exempt financing of highway projects and rail-truck transfer facilities.
- Sec. 5692. Addition of vaccines against hepatitis A to list of taxable vaccines.
- Sec. 5693. Addition of vaccines against influenza to list of taxable vaccines.
- Sec. 5694. Extension of amortization of intangibles to sports franchises.

TITLE VI—TRANSPORTATION DISCRETIONARY SPENDING GUARANTEE AND BUDGET OFFSETS

- Sec. 6101. Sense of the Senate on overall Federal budget.
- Sec. 6102. Discretionary spending categories.
- Sec. 6103. Level of obligation limitations.

TITLE VII—MISCELLANEOUS PROVISIONS

- Sec. 7001. Reimbursement of certain transportation costs incurred by members of the United States Armed Forces on rest and recuperation leave.

TITLE VIII—SOLID WASTE DISPOSAL

- Sec. 8001. Increased use of recovered mineral component in federally funded projects involving procurement of cement or concrete.
- Sec. 8002. Use of granular mine tailings.

1 **SEC. 2. GENERAL DEFINITIONS.**

2 In this Act:

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

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

3 **SEC. 3. DEFINITIONS FOR TITLE 23.**

4 Section 101 of title 23, United States Code, is
5 amended by striking subsection (a) and inserting the fol-
6 lowing:

7 “(a) DEFINITIONS.—In this title:

8 “(1) APPORTIONMENT.—The term ‘apportion-
9 ment’ includes an unexpended apportionment made
10 under a law enacted before the date of enactment of
11 the Safe, Accountable, Flexible, and Efficient Trans-
12 portation Equity Act of 2004.

13 “(2) CARPOOL PROJECT.—

14 “(A) IN GENERAL.—The term ‘carpool
15 project’ means any project to encourage the use
16 of carpools and vanpools.

17 “(B) INCLUSIONS.—The term ‘carpool
18 project’ includes a project—

19 “(i) to provide carpooling opportuni-
20 ties to the elderly and individuals with dis-
21 abilities;

22 “(ii) to develop and implement a sys-
23 tem for locating potential riders and in-
24 forming the riders of carpool opportunities;

1 “(iii) to acquire vehicles for carpool
2 use;

3 “(iv) to designate highway lanes as
4 preferential carpool highway lanes;

5 “(v) to provide carpool-related traffic
6 control devices; and

7 “(vi) to designate facilities for use for
8 preferential parking for carpools.

9 “(3) CONSTRUCTION.—

10 “(A) IN GENERAL.—The term ‘construc-
11 tion’ means the supervision, inspection, and ac-
12 tual building of, and incurring of all costs inci-
13 dental to the construction or reconstruction of
14 a highway, including bond costs and other costs
15 relating to the issuance in accordance with sec-
16 tion 122 of bonds or other debt financing in-
17 struments and costs incurred by the State in
18 performing Federal-aid project related audits
19 that directly benefit the Federal-aid highway
20 program.

21 “(B) INCLUSIONS.—The term ‘construc-
22 tion’ includes—

23 “(i) locating, surveying, and mapping
24 (including the establishment of temporary
25 and permanent geodetic markers in accord-

- 1 ance with specifications of the National
2 Oceanic and Atmospheric Administration);
3 “(ii) resurfacing, restoration, and re-
4 habilitation;
5 “(iii) acquisition of rights-of-way;
6 “(iv) relocation assistance, acquisition
7 of replacement housing sites, and acquisi-
8 tion and rehabilitation, relocation, and con-
9 struction of replacement housing;
10 “(v) elimination of hazards of railway
11 grade crossings;
12 “(vi) elimination of roadside obstacles;
13 “(vii) improvements that directly fa-
14 cilitate and control traffic flow, such as—
15 “(I) grade separation of intersec-
16 tions;
17 “(II) widening of lanes;
18 “(III) channelization of traffic;
19 “(IV) traffic control systems; and
20 “(V) passenger loading and un-
21 loading areas;
22 “(viii) capital improvements that di-
23 rectly facilitate an effective vehicle weight
24 enforcement program, such as—
25 “(I) scales (fixed and portable);

1 “(II) scale pits;

2 “(III) scale installation; and

3 “(IV) scale houses;

4 “(ix) improvements directly relating to
5 securing transportation infrastructures for
6 detection, preparedness, response, and re-
7 covery;

8 “(x) operating costs relating to traffic
9 monitoring, management, and control;

10 “(xi) operational improvements; and

11 “(xii) transportation system manage-
12 ment and operations.

13 “(4) COUNTY.—The term ‘county’ includes—

14 “(A) a corresponding unit of government
15 under any other name in a State that does not
16 have county organizations; and

17 “(B) in those States in which the county
18 government does not have jurisdiction over
19 highways, any local government unit vested
20 with jurisdiction over local highways.

21 “(5) FEDERAL-AID HIGHWAY.—

22 “(A) IN GENERAL.—The term ‘Federal-aid
23 highway’ means a highway eligible for assist-
24 ance under this chapter.

1 “(B) EXCLUSIONS.—The term ‘Federal-aid
2 highway’ does not include a highway classified
3 as a local road or rural minor collector.

4 “(6) FEDERAL-AID SYSTEM.—The term ‘Fed-
5 eral-aid system’ means any of the Federal-aid high-
6 way systems described in section 103.

7 “(7) FEDERAL LANDS HIGHWAY.—The term
8 ‘Federal lands highway’ means—

9 “(A) a forest highway;

10 “(B) a recreation road;

11 “(C) a public Forest Service road;

12 “(D) a park road;

13 “(E) a parkway;

14 “(F) a refuge road;

15 “(G) an Indian reservation road; and

16 “(H) a public lands highway.

17 “(8) FOREST HIGHWAY.—The term ‘forest
18 highway’ means a forest road that is—

19 “(A) under the jurisdiction of, and main-
20 tained by, a public authority; and

21 “(B) is open to public travel.

22 “(9) FOREST ROAD OR TRAIL.—

23 “(A) IN GENERAL.—The term ‘forest road
24 or trail’ means a road or trail wholly or partly
25 within, or adjacent to, and serving National

1 Forest System land that is necessary for the
 2 protection, administration, use, and develop-
 3 ment of the resources of that land.

4 “(B) INCLUSIONS.—The term ‘forest road
 5 or trail’ includes—

6 “(i) a classified forest road;

7 “(ii) an unclassified forest road;

8 “(iii) a temporary forest road; and

9 “(iv) a public forest service road.

10 “(10) FREIGHT TRANSPORTATION GATEWAY.—

11 “(A) IN GENERAL.—The term ‘freight
 12 transportation gateway’ means a nationally or
 13 regionally significant transportation port of
 14 entry or hub for domestic and global trade or
 15 military mobilization.

16 “(B) INCLUSIONS.—The term ‘freight
 17 transportation gateway’ includes freight inter-
 18 modal and Strategic Highway Network connec-
 19 tions that provide access to and from a port or
 20 hub described in subparagraph (A).

21 “(11) HIGHWAY.—The term ‘highway’
 22 includes—

23 “(A) a road, street, and parkway;

24 “(B) a right-of-way, bridge, railroad-high-
 25 way crossing, tunnel, drainage structure, sign,

1 guardrail, and protective structure, in connec-
2 tion with a highway; and

3 “(C) a portion of any interstate or inter-
4 national bridge or tunnel (including the ap-
5 proaches to the interstate or international
6 bridge or tunnel, and such transportation facili-
7 ties as may be required by the United States
8 Customs Service and the Bureau of Citizenship
9 and Immigration Services in connection with
10 the operation of an international bridge or tun-
11 nel), the cost of which is assumed by a State
12 transportation department.

13 “(12) HIGHWAY SAFETY IMPROVEMENT
14 PROJECT.—The term ‘highway safety improvement
15 project’ means a project that meets the requirements
16 of section 148.

17 “(13) INDIAN RESERVATION ROAD.—

18 “(A) IN GENERAL.—The term ‘Indian res-
19 ervation road’ means a public road that is lo-
20 cated within or provides access to an area de-
21 scribed in subparagraph (B) on which or in
22 which reside Indians or Alaskan Natives that,
23 as determined by the Secretary of the Interior,
24 are eligible for services generally available to

1 Indians under Federal laws specifically applica-
2 ble to Indians.

3 “(B) AREAS.—The areas referred to in
4 subparagraph (A) are—

5 “(i) an Indian reservation;

6 “(ii) Indian trust land or restricted
7 Indian land that is not subject to fee title
8 alienation without the approval of the Fed-
9 eral Government; and

10 “(iii) an Indian or Alaska Native vil-
11 lage, group, or community.

12 “(14) INTERSTATE SYSTEM.—The term ‘Inter-
13 state System’ means the Dwight D. Eisenhower Na-
14 tional System of Interstate and Defense Highways
15 described in section 103(c).

16 “(15) MAINTENANCE.—

17 “(A) IN GENERAL.—The term ‘mainte-
18 nance’ means the preservation of a highway.

19 “(B) INCLUSIONS.—The term ‘mainte-
20 nance’ includes the preservation of—

21 “(i) the surface, shoulders, roadsides,
22 and structures of a highway; and

23 “(ii) such traffic-control devices as are
24 necessary for safe, secure, and efficient use
25 of a highway.

1 “(16) MAINTENANCE AREA.—The term ‘main-
2 tenance area’ means an area that was designated as
3 a nonattainment area, but was later redesignated by
4 the Administrator of the Environmental Protection
5 Agency as an attainment area, under section 107(d)
6 of the Clean Air Act (42 U.S.C. 7407(d)).

7 “(17) NATIONAL FOREST SYSTEM ROAD OR
8 TRAIL.—The term ‘National Forest System road or
9 trail’ means a forest road or trail that is under the
10 jurisdiction of the Forest Service.

11 “(18) NATIONAL HIGHWAY SYSTEM.—The term
12 ‘National Highway System’ means the Federal-aid
13 highway system described in section 103(b).

14 “(19) OPERATING COSTS FOR TRAFFIC MONI-
15 TORING, MANAGEMENT, AND CONTROL.—The term
16 ‘operating costs for traffic monitoring, management,
17 and control’ includes—

18 “(A) labor costs;

19 “(B) administrative costs;

20 “(C) costs of utilities and rent;

21 “(D) costs incurred by transportation
22 agencies for technology to monitor critical
23 transportation infrastructure for security pur-
24 poses; and

1 “(E) other costs associated with transpor-
 2 tation systems management and operations and
 3 the continuous operation of traffic control, such
 4 as—

5 “(i) an integrated traffic control sys-
 6 tem;

7 “(ii) an incident management pro-
 8 gram; and

9 “(iii) a traffic control center.

10 “(20) OPERATIONAL IMPROVEMENT.—

11 “(A) IN GENERAL.—The term ‘operational
 12 improvement’ means—

13 “(i) a capital improvement for instal-
 14 lation or implementation of—

15 “(I) a transportation system
 16 management and operations program;

17 “(II) traffic and transportation
 18 security surveillance and control
 19 equipment;

20 “(III) a computerized signal sys-
 21 tem;

22 “(IV) a motorist information sys-
 23 tem;

24 “(V) an integrated traffic control
 25 system;

1 “(VI) an incident management
2 program;

3 “(VII) equipment and programs
4 for transportation response to man-
5 made and natural disasters; or

6 “(VIII) a transportation demand
7 management facility, strategy, or pro-
8 gram; and

9 “(ii) such other capital improvements
10 to a public road as the Secretary may des-
11 ignate by regulation.

12 “(B) EXCLUSIONS.—The term ‘operational
13 improvement’ does not include—

14 “(i) a resurfacing, restorative, or re-
15 habilitative improvement;

16 “(ii) construction of an additional
17 lane, interchange, or grade separation; or

18 “(iii) construction of a new facility on
19 a new location.

20 “(21) PARK ROAD.—The term ‘park road’
21 means a public road (including a bridge built pri-
22 marily for pedestrian use, but with capacity for use
23 by emergency vehicles) that is located within, or pro-
24 vides access to, an area in the National Park System

1 with title and maintenance responsibilities vested in
2 the United States.

3 “(22) PARKWAY.—The term ‘parkway’ means a
4 parkway authorized by an Act of Congress on land
5 to which title is vested in the United States.

6 “(23) PROJECT.—The term ‘project’ means—

7 “(A)(i) an undertaking to construct a par-
8 ticular portion of a highway; or

9 “(ii) if the context so implies, a particular
10 portion of a highway so constructed; and

11 “(B) any other undertaking eligible for as-
12 sistance under this title.

13 “(24) PROJECT AGREEMENT.—The term
14 ‘project agreement’ means the formal instrument to
15 be executed by the Secretary and recipient of funds
16 under this title.

17 “(25) PUBLIC AUTHORITY.—The term ‘public
18 authority’ means a Federal, State, county, town, or
19 township, Indian tribe, municipal or other local gov-
20 ernment or instrumentality with authority to fi-
21 nance, build, operate, or maintain toll or toll-free fa-
22 cilities.

23 “(26) PUBLIC FOREST SERVICE ROAD.—The
24 term ‘public Forest Service road’ means a classified
25 forest road—

1 “(A) that is open to public travel;

2 “(B) for which title and maintenance re-
3 sponsibility is vested in the Federal Govern-
4 ment; and

5 “(C) that has been designated a public
6 road by the Forest Service.

7 “(27) PUBLIC LANDS DEVELOPMENT ROADS
8 AND TRAILS.—The term ‘public lands development
9 roads and trails’ means roads and trails that the
10 Secretary of the Interior determines are of primary
11 importance for the development, protection, adminis-
12 tration, and use of public lands and resources under
13 the control of the Secretary of the Interior.

14 “(28) PUBLIC LANDS HIGHWAY.—The term
15 ‘public lands highway’ means—

16 “(A) a forest road that is—

17 “(i) under the jurisdiction of, and
18 maintained by, a public authority; and

19 “(ii) open to public travel; and

20 “(B) any highway through unappropriated
21 or unreserved public land, nontaxable Indian
22 land, or any other Federal reservation (includ-
23 ing a main highway through such land or res-
24 ervation that is on the Federal-aid system) that
25 is—

1 “(i) under the jurisdiction of, and
2 maintained by, a public authority; and

3 “(ii) open to public travel.

4 “(29) PUBLIC ROAD.—The term ‘public road’
5 means any road or street that is—

6 “(A) under the jurisdiction of, and main-
7 tained by, a public authority; and

8 “(B) open to public travel.

9 “(30) RECREATIONAL ROAD.—The term ‘rec-
10 reational road’ means a public road—

11 “(A) that provides access to a museum,
12 lake, reservoir, visitors center, gateway to a
13 major wilderness area, public use area, or rec-
14 reational or historic site; and

15 “(B) for which title is vested in the Fed-
16 eral Government.

17 “(31) REFUGE ROAD.—The term ‘refuge road’
18 means a public road—

19 “(A) that provides access to or within a
20 unit of the National Wildlife Refuge System or
21 a national fish hatchery; and

22 “(B) for which title and maintenance re-
23 sponsibility is vested in the United States Gov-
24 ernment.

1 “(32) RURAL AREA.—The term ‘rural area’
2 means an area of a State that is not included in an
3 urban area.

4 “(33) SECRETARY.—The term ‘Secretary’
5 means the Secretary of Transportation.

6 “(34) STATE.—The term ‘State’ means—

7 “(A) a State;

8 “(B) the District of Columbia; and

9 “(C) the Commonwealth of Puerto Rico.

10 “(35) STATE FUNDS.—The term ‘State funds’
11 includes funds that are—

12 “(A) raised under the authority of the
13 State (or any political or other subdivision of a
14 State); and

15 “(B) made available for expenditure under
16 the direct control of the State transportation
17 department.

18 “(36) STATE TRANSPORTATION DEPART-
19 MENT.—The term ‘State transportation department’
20 means the department, agency, commission, board,
21 or official of any State charged by the laws of the
22 State with the responsibility for highway construc-
23 tion.

24 “(37) TERRITORIAL HIGHWAY SYSTEM.—The
25 term ‘territorial highway system’ means the system

1 of arterial highways, collector roads, and necessary
2 interisland connectors in American Samoa, the Com-
3 monwealth of the Northern Mariana Islands, Guam,
4 and the United States Virgin Islands that have been
5 designated by the appropriate Governor or chief ex-
6 ecutive officer of a territory, and approved by the
7 Secretary, in accordance with section 215.

8 “(38) TRANSPORTATION ENHANCEMENT ACTIV-
9 ITY.—The term ‘transportation enhancement activ-
10 ity’ means, with respect to any project or the area
11 to be served by the project, any of the following ac-
12 tivities as the activities relate to surface transpor-
13 tation:

14 “(A) Provision of facilities for pedestrians
15 and bicycles.

16 “(B) Provision of safety and educational
17 activities for pedestrians and bicyclists.

18 “(C) Acquisition of scenic easements and
19 scenic or historic sites (including historic battle-
20 fields).

21 “(D) Scenic or historic highway programs
22 (including the provision of tourist and welcome
23 center facilities).

24 “(E) Landscaping and other scenic beau-
25 tification.

1 “(F) Historic preservation.

2 “(G) Rehabilitation and operation of his-
3 toric transportation buildings, structures, or fa-
4 cilities (including historic railroad facilities and
5 canals).

6 “(H) Preservation of abandoned railway
7 corridors (including the conversion and use of
8 the corridors for pedestrian or bicycle trails).

9 “(I) Control and removal of outdoor adver-
10 tising.

11 “(J) Archaeological planning and research.

12 “(K) Environmental mitigation—

13 “(i) to address water pollution due to
14 highway runoff; or

15 “(ii) reduce vehicle-caused wildlife
16 mortality while maintaining habitat
17 connectivity.

18 “(L) Establishment of transportation mu-
19 seums.

20 “(39) TRANSPORTATION SYSTEMS MANAGE-
21 MENT AND OPERATIONS.—

22 “(A) IN GENERAL.—The term ‘transporta-
23 tion systems management and operations’
24 means an integrated program to optimize the
25 performance of existing infrastructure through

1 the implementation of multimodal and inter-
2 modal, cross-jurisdictional systems, services,
3 and projects designed to preserve capacity and
4 improve security, safety, and reliability of the
5 transportation system.

6 “(B) INCLUSIONS.—The term ‘transportation systems management and operations’
7 includes—
8

9 “(i) regional operations collaboration
10 and coordination activities between transportation and public safety agencies; and
11

12 “(ii) improvements to the transportation system such as traffic detection and
13 surveillance, arterial management, freeway
14 management, demand management, work
15 zone management, emergency management, electronic toll collection, automated
16 enforcement, traffic incident management,
17 roadway weather management, traveler information services, commercial vehicle operations,
18 traffic control, freight management, and coordination of highway, rail,
19 transit, bicycle, and pedestrian operations.
20
21
22
23

24 “(40) URBAN AREA.—The term ‘urban area’
25 means—

1 “(A) an urbanized area (or, in the case of
2 an urbanized area encompassing more than 1
3 State, the portion of the urbanized area in each
4 State); and

5 “(B) an urban place designated by the Bu-
6 reau of the Census that—

7 “(i) has a population of 5,000 or
8 more;

9 “(ii) is not located within any urban-
10 ized area; and

11 “(iii) is located within boundaries
12 that—

13 “(I) are fixed cooperatively by re-
14 sponsible State and local officials,
15 subject to approval by the Secretary;
16 and

17 “(II) encompass, at a minimum,
18 the entire urban place designated by
19 the Bureau of the Census (except in
20 the case of cities in the State of
21 Maine and in the State of New
22 Hampshire).

23 “(41) URBANIZED AREA.—The term ‘urbanized
24 area’ means an area that—

25 “(A) has a population of 50,000 or more;

1 “(B) is designated by the Bureau of the
2 Census; and

3 “(C) is located within boundaries that—

4 “(i) are fixed cooperatively by respon-
5 sible State and local officials, subject to
6 approval by the Secretary; and

7 “(ii) encompass, at a minimum, the
8 entire urbanized area within a State as
9 designated by the Bureau of the Census.”.

10 **TITLE I—FEDERAL-AID**
11 **HIGHWAYS**
12 **Subtitle A—Funding**

13 **SEC. 1101. AUTHORIZATION OF APPROPRIATIONS.**

14 The following sums are authorized to be appropriated
15 out of the Highway Trust Fund (other than the Mass
16 Transit Account):

17 (1) INTERSTATE MAINTENANCE PROGRAM.—

18 For the Interstate maintenance program under sec-
19 tion 119 of title 23, United States Code—

20 (A) \$5,442,371,792 for fiscal year 2004;

21 (B) \$6,425,168,342 for fiscal year 2005;

22 (C) \$6,683,176,289 for fiscal year 2006;

23 (D) \$6,702,365,186 for fiscal year 2007;

24 (E) \$7,036,621,314 for fiscal year 2008;

25 and

1 (F) \$7,139,130,081 for fiscal year 2009.

2 (2) NATIONAL HIGHWAY SYSTEM.—For the Na-
3 tional Highway System under section 103 of that
4 title—

5 (A) \$6,593,922,257 for fiscal year 2004;

6 (B) \$7,815,590,130 for fiscal year 2005;

7 (C) \$8,125,241,450 for fiscal year 2006;

8 (D) \$8,148,531,791 for fiscal year 2007;

9 (E) \$8,554,231,977 for fiscal year 2008;

10 and

11 (F) \$8,678,591,297 for fiscal year 2009.

12 (3) BRIDGE PROGRAM.—For the bridge pro-
13 gram under section 144 of that title—

14 (A) \$4,650,754,076 for fiscal year 2004;

15 (B) \$5,507,287,150 for fiscal year 2005;

16 (C) \$5,713,860,644 for fiscal year 2006;

17 (D) \$5,730,266,418 for fiscal year 2007;

18 (E) \$6,016,042,650 for fiscal year 2008;

19 and

20 (F) \$6,103,714,622 for fiscal year 2009.

21 (4) SURFACE TRANSPORTATION PROGRAM.—
22 For the surface transportation program under sec-
23 tion 133 of that title—

24 (A) \$6,877,178,900 for fiscal year 2004;

25 (B) \$8,107,950,527 for fiscal year 2005;

- 1 (C) \$8,417,741,127 for fiscal year 2006;
2 (D) \$8,441,910,349 for fiscal year 2007;
3 (E) \$8,862,919,976 for fiscal year 2008;
4 and
5 (F) \$8,992,134,975 for fiscal year 2009.

6 (5) CONGESTION MITIGATION AND AIR QUALITY
7 IMPROVEMENT PROGRAM.—For the congestion miti-
8 gation and air quality improvement program under
9 section 149 of that title—

- 10 (A) \$1,880,092,073 for fiscal year 2004;
11 (B) \$2,192,716,180 for fiscal year 2005;
12 (C) \$2,270,239,273 for fiscal year 2006;
13 (D) \$2,276,757,639 for fiscal year 2007;
14 (E) \$2,390,302,660 for fiscal year 2008;
15 and
16 (F) \$2,425,236,569 for fiscal year 2009.

17 (6) HIGHWAY SAFETY IMPROVEMENT PRO-
18 GRAM.—For the highway safety improvement pro-
19 gram under section 148 of that title—

- 20 (A) \$1,187,426,572 for fiscal year 2004;
21 (B) \$1,325,828,388 for fiscal year 2005;
22 (C) \$1,377,448,548 for fiscal year 2006;
23 (D) \$1,381,403,511 for fiscal year 2007;
24 (E) \$1,450,295,996 for fiscal year 2008;
25 and

1 (F) \$1,471,607,029 for fiscal year 2009.

2 (7) APPALACHIAN DEVELOPMENT HIGHWAY
3 SYSTEM PROGRAM.—For the Appalachian develop-
4 ment highway system program under section 170 of
5 that title, \$590,000,000 for each of fiscal years
6 2004 through 2009.

7 (8) RECREATIONAL TRAILS PROGRAM.—For the
8 recreational trails program under section 206 of that
9 title, \$60,000,000 for each of fiscal years 2004
10 through 2009.

11 (9) FEDERAL LANDS HIGHWAYS PROGRAM.—

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

15 (i) \$300,000,000 for fiscal year 2004;

16 (ii) \$325,000,000 for fiscal year 2005;

17 (iii) \$350,000,000 for fiscal year
18 2006;

19 (iv) \$375,000,000 for fiscal year
20 2007;

21 (v) \$400,000,000 for fiscal year 2008;

22 and

23 (vi) \$425,000,000 for fiscal year
24 2009.

1 (B) RECREATION ROADS.—For recreation
2 roads under section 204 of that title,
3 \$50,000,000 for each of fiscal years 2004
4 through 2009.

5 (C) PARK ROADS AND PARKWAYS.—For
6 park roads and parkways under section 204 of
7 that title—

8 (i) \$300,000,000 for fiscal year 2004;

9 (ii) \$310,000,000 for fiscal year 2005;

10 and

11 (iii) \$320,000,000 for each of fiscal
12 years 2006 through 2009.

13 (D) REFUGE ROADS.—For refuge roads
14 under section 204 of that title, \$30,000,000 for
15 each of fiscal years 2004 through 2009.

16 (E) PUBLIC LANDS HIGHWAYS.—For Fed-
17 eral lands highways under section 204 of that
18 title, \$300,000,000 for each of fiscal years
19 2004 through 2009.

20 (F) SAFETY.—For safety under section
21 204 of that title, \$40,000,000 for each of fiscal
22 years 2004 through 2009.

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

- 1 (A) \$112,500,000 for fiscal year 2004;
2 (B) \$135,000,000 for fiscal year 2005;
3 (C) \$157,500,000 for fiscal year 2006;
4 (D) \$180,000,000 for fiscal year 2007;
5 (E) \$202,500,000 for fiscal year 2008; and
6 (F) \$225,000,000 for fiscal year 2009.

7 (11) BORDER PLANNING, OPERATIONS, AND
8 TECHNOLOGY PROGRAM.—For the border planning,
9 operations, and technology program under section
10 172 of that title—

- 11 (A) \$112,500,000 for fiscal year 2004;
12 (B) \$135,000,000 for fiscal year 2005;
13 (C) \$157,500,000 for fiscal year 2006;
14 (D) \$180,000,000 for fiscal year 2007;
15 (E) \$202,500,000 for fiscal year 2008; and
16 (F) \$225,000,000 for fiscal year 2009.

17 (12) NATIONAL SCENIC BYWAYS PROGRAM.—
18 For the national scenic byways program under sec-
19 tion 162 of that title—

- 20 (A) \$34,000,000 for fiscal year 2004;
21 (B) \$35,000,000 for fiscal year 2005;
22 (C) \$36,000,000 for fiscal year 2006;
23 (D) \$37,000,000 for fiscal year 2007; and
24 (E) \$39,000,000 for each of fiscal years
25 2008 and 2009.

1 (13) INFRASTRUCTURE PERFORMANCE AND
2 MAINTENANCE PROGRAM.—For carrying out the in-
3 frastructure performance and maintenance program
4 under section 139 of that title \$2,000,000,000 for
5 fiscal year 2004.

6 (14) CONSTRUCTION OF FERRY BOATS AND
7 FERRY TERMINAL FACILITIES.—For construction of
8 ferry boats and ferry terminal facilities under sec-
9 tion 147 of that title, \$50,000,000 for each of fiscal
10 years 2004 through 2009.

11 (15) COMMONWEALTH OF PUERTO RICO HIGH-
12 WAY PROGRAM.—For the Commonwealth of Puerto
13 Rico highway program under section 173 of that
14 title—

- 15 (A) \$140,000,000 for fiscal year 2004;
16 (B) \$145,000,000 for fiscal year 2005;
17 (C) \$149,000,000 for fiscal year 2006;
18 (D) \$154,000,000 for fiscal year 2007;
19 (E) \$160,000,000 for fiscal year 2008; and
20 (F) \$163,000,000 for fiscal year 2009.

21 (16) PUBLIC-PRIVATE PARTNERSHIPS PILOT
22 PROGRAM.—For the public-private partnerships pilot
23 program under section 109(c)(3) of that title,
24 \$10,000,000 for each of fiscal years 2004 through
25 2009.

1 (17) DENALI ACCESS SYSTEM.—For the Denali
2 Access System under section 309 of the Denali Com-
3 mission Act of 1998 (42 U.S.C. 3121 note; Public
4 Law 105–277), \$30,000,000 for each of fiscal years
5 2004 through 2009.

6 (18) DELTA REGION TRANSPORTATION DEVEL-
7 OPMENT PROGRAM.—For planning and construction
8 activities authorized under the Delta Regional Au-
9 thority, \$80,000,000 for each of fiscal years 2004
10 through 2009.

11 **SEC. 1102. OBLIGATION CEILING.**

12 (a) GENERAL LIMITATION.—Subject to subsections
13 (g) and (h), and notwithstanding any other provision of
14 law, the obligations for Federal-aid highway and highway
15 safety construction programs shall not exceed—

- 16 (1) \$33,643,326,300 for fiscal year 2004;
17 (2) \$37,900,000,000 for fiscal year 2005;
18 (3) \$39,100,000,000 for each of fiscal years
19 2006 and 2007;
20 (4) \$39,400,000,000 for fiscal year 2008; and
21 (5) \$44,400,000,000 for fiscal year 2009.

22 (b) EXCEPTIONS.—The limitations under subsection
23 (a) shall not apply to obligations under or for—

- 24 (1) section 125 of title 23, United States Code;

1 (2) section 147 of the Surface Transportation
2 Assistance Act of 1978 (23 U.S.C. 144 note; 92
3 Stat. 2714);

4 (3) section 9 of the Federal-Aid Highway Act
5 of 1981 (Public Law 97–134; 95 Stat. 1701);

6 (4) subsections (b) and (j) of section 131 of the
7 Surface Transportation Assistance Act of 1982
8 (Public Law 97–424; 96 Stat. 2119);

9 (5) subsections (b) and (c) of section 149 of the
10 Surface Transportation and Uniform Relocation As-
11 sistance Act of 1987 (Public Law 100–17; 101 Stat.
12 198);

13 (6) sections 1103 through 1108 of the Inter-
14 modal Surface Transportation Efficiency Act of
15 1991 (Public Law 102–240; 105 Stat. 2027);

16 (7) section 157 of title 23, United States Code
17 (as in effect on June 8, 1998);

18 (8) section 105 of title 23, United States Code
19 (as in effect for fiscal years 1998 through 2003, but
20 only in an amount equal to \$639,000,000 for each
21 of those fiscal years);

22 (9) Federal-aid highway programs for which ob-
23 ligation authority was made available under the
24 Transportation Equity Act for the 21st Century
25 (Public Law 105–178; 112 Stat. 107) or subsequent

1 public laws for multiple years or to remain available
2 until used, but only to the extent that the obligation
3 authority has not lapsed or been used; and

4 (10) section 105 of title 23, United States Code
5 (but, for each of fiscal years 2004 through 2009,
6 only in an amount equal to \$439,000,000 per fiscal
7 year).

8 (c) DISTRIBUTION OF OBLIGATION AUTHORITY.—

9 For each of fiscal years 2004 through 2009, the
10 Secretary—

11 (1) shall not distribute obligation authority pro-
12 vided by subsection (a) for the fiscal year for—

13 (A) amounts authorized for administrative
14 expenses and programs by section 104(a) of
15 title 23, United States Code;

16 (B) programs funded from the administra-
17 tive takedown authorized by section 104(a)(1)
18 of title 23, United States Code; and

19 (C) amounts authorized for the highway
20 use tax evasion program and the Bureau of
21 Transportation Statistics;

22 (2) shall not distribute an amount of obligation
23 authority provided by subsection (a) that is equal to
24 the unobligated balance of amounts made available
25 from the Highway Trust Fund (other than the Mass

1 Transit Account) for Federal-aid highway and high-
2 way safety programs for previous fiscal years the
3 funds for which are allocated by the Secretary;

4 (3) shall determine the ratio that—

5 (A) the obligation authority provided by
6 subsection (a) for the fiscal year, less the aggre-
7 gate of amounts not distributed under para-
8 graphs (1) and (2); bears to

9 (B) the total of the sums authorized to be
10 appropriated for the Federal-aid highway and
11 highway safety construction programs (other
12 than sums authorized to be appropriated for
13 provisions of law described in paragraphs (1)
14 through (9) of subsection (b) and sums author-
15 ized to be appropriated for section 105 of title
16 23, United States Code, equal to the amount
17 referred to in subsection (b)(10) for the fiscal
18 year), less the aggregate of the amounts not
19 distributed under paragraphs (1) and (2);

20 (4) shall distribute the obligation authority pro-
21 vided by subsection (a) less the aggregate amounts
22 not distributed under paragraphs (1) and (2), for
23 section 14501 of title 40, United States Code, so
24 that the amount of obligation authority available for

1 that section is equal to the amount determined by
2 multiplying—

3 (A) the ratio determined under paragraph
4 (3); by

5 (B) the sums authorized to be appro-
6 priated for that section for the fiscal year;

7 (5) shall distribute among the States the obliga-
8 tion authority provided by subsection (a), less the
9 aggregate amounts not distributed under paragraphs
10 (1) and (2), for each of the programs that are allo-
11 cated by the Secretary under this Act and title 23,
12 United States Code (other than to programs to
13 which paragraph (1) applies), by multiplying—

14 (A) the ratio determined under paragraph
15 (3); by

16 (B) the amounts authorized to be appro-
17 priated for each such program for the fiscal
18 year; and

19 (6) shall distribute the obligation authority pro-
20 vided by subsection (a), less the aggregate amounts
21 not distributed under paragraphs (1) and (2) and
22 the amounts distributed under paragraphs (4) and
23 (5), for Federal-aid highway and highway safety
24 construction programs (other than the amounts ap-
25 portioned for the equity bonus program, but only to

1 the extent that the amounts apportioned for the eq-
2 uity bonus program for the fiscal year are greater
3 than \$439,000,000, and the Appalachian develop-
4 ment highway system program) that are apportioned
5 by the Secretary under this Act and title 23, United
6 States Code, in the ratio that—

7 (A) amounts authorized to be appropriated
8 for the programs that are apportioned to each
9 State for the fiscal year; bear to

10 (B) the total of the amounts authorized to
11 be appropriated for the programs that are ap-
12 portioned to all States for the fiscal year.

13 (d) REDISTRIBUTION OF UNUSED OBLIGATION AU-
14 THORITY.—Notwithstanding subsection (c), the Secretary
15 shall, after August 1 of each of fiscal years 2004 through
16 2009—

17 (1) revise a distribution of the obligation au-
18 thority made available under subsection (c) if an
19 amount distributed cannot be obligated during that
20 fiscal year; and

21 (2) redistribute sufficient amounts to those
22 States able to obligate amounts in addition to those
23 previously distributed during that fiscal year, giving
24 priority to those States having large unobligated bal-

1 ances of funds apportioned under sections 104 and
2 144 of title 23, United States Code.

3 (e) APPLICABILITY OF OBLIGATION LIMITATIONS TO
4 TRANSPORTATION RESEARCH PROGRAMS.—

5 (1) IN GENERAL.—Except as provided in para-
6 graph (2), obligation limitations imposed by sub-
7 section (a) shall apply to contract authority for
8 transportation research programs carried out
9 under—

10 (A) chapter 5 of title 23, United States
11 Code; and

12 (B) title II of this Act.

13 (2) EXCEPTION.—Obligation authority made
14 available under paragraph (1) shall—

15 (A) remain available for a period of 3 fis-
16 cal years; and

17 (B) be in addition to the amount of any
18 limitation imposed on obligations for Federal-
19 aid highway and highway safety construction
20 programs for future fiscal years.

21 (f) REDISTRIBUTION OF CERTAIN AUTHORIZED
22 FUNDS.—

23 (1) IN GENERAL.—Not later than 30 days after
24 the date of distribution of obligation authority under
25 subsection (e) for each of fiscal years 2004 through

1 2009, the Secretary shall distribute to the States
2 any funds that—

3 (A) are authorized to be appropriated for
4 the fiscal year for Federal-aid highway pro-
5 grams; and

6 (B) the Secretary determines will not be
7 allocated to the States, and will not be available
8 for obligation, in the fiscal year due to the im-
9 position of any obligation limitation for the fis-
10 cal year.

11 (2) **RATIO.**—Funds shall be distributed under
12 paragraph (1) in the same ratio as the distribution
13 of obligation authority under subsection (c)(6).

14 (3) **AVAILABILITY.**—Funds distributed under
15 paragraph (1) shall be available for any purpose de-
16 scribed in section 133(b) of title 23, United States
17 Code.

18 (g) **SPECIAL RULE.**—Obligation authority distributed
19 for a fiscal year under subsection (c)(4) for the provision
20 specified in subsection (c)(4) shall—

21 (1) remain available until used for obligation of
22 funds for that provision; and

23 (2) be in addition to the amount of any limita-
24 tion imposed on obligations for Federal-aid highway

1 and highway safety construction programs for future
2 fiscal years.

3 (h) ADJUSTMENT IN OBLIGATION LIMIT.—

4 (1) IN GENERAL.—A limitation on obligations
5 imposed by subsection (a) for a fiscal year shall be
6 adjusted by an amount equal to the amount deter-
7 mined in accordance with section 251(b)(1)(B) of
8 the Balanced Budget and Emergency Deficit Control
9 Act of 1985 (2 U.S.C. 901(b)(1)(B)) for the fiscal
10 year.

11 (2) DISTRIBUTION.—An adjustment under
12 paragraph (1) shall be distributed in accordance
13 with this section.

14 (i) LIMITATIONS ON OBLIGATIONS FOR ADMINISTRA-
15 TIVE EXPENSES.—Notwithstanding any other provision of
16 law, the total amount of all obligations under section
17 104(a) of title 23, United States Code, shall not exceed—

18 (1) \$450,000,000 for fiscal year 2004;

19 (2) \$465,000,000 for fiscal year 2005;

20 (3) \$480,000,000 for fiscal year 2006;

21 (4) \$495,000,000 for fiscal year 2007;

22 (5) \$510,000,000 for fiscal year 2008; and

23 (6) \$525,000,000 for fiscal year 2009.

1 (j) NATIONAL HIGHWAY SYSTEM COMPONENT.—Sec-
 2 tion 104(b)(1) of title 23, United States Code, is amended
 3 by striking “\$36,400,000” and insert “\$50,000,000”.

4 **SEC. 1103. APPORTIONMENTS.**

5 (a) ADMINISTRATIVE EXPENSES.—

6 (1) IN GENERAL.—Section 104 of title 23,
 7 United States Code, is amended by striking sub-
 8 section (a) and inserting the following:

9 “(a) ADMINISTRATIVE EXPENSES.—

10 “(1) IN GENERAL.—There are authorized to be
 11 appropriated from the Highway Trust Fund (other
 12 than the Mass Transit Account) to be made avail-
 13 able to the Secretary of Transportation for adminis-
 14 trative expenses of the Federal Highway
 15 Administration—

16 “(A) \$450,000,000 for fiscal year 2004;

17 “(B) \$465,000,000 for fiscal year 2005;

18 “(C) \$480,000,000 for fiscal year 2006;

19 “(D) \$495,000,000 for fiscal year 2007;

20 “(E) \$510,000,000 for fiscal year 2008;

21 and

22 “(F) \$525,000,000 for fiscal year 2009.

23 “(2) PURPOSES.—The funds authorized by this
 24 subsection shall be used—

1 “(A) to administer the provisions of law to
2 be financed from appropriations for the Fed-
3 eral-aid highway program and programs au-
4 thorized under chapter 2; and

5 “(B) to make transfers of such sums as
6 the Secretary determines to be appropriate to
7 the Appalachian Regional Commission for ad-
8 ministrative activities associated with the Appa-
9 lachian development highway system.

10 “(3) AVAILABILITY.—The funds made available
11 under paragraph (1) shall remain available until ex-
12 pended.”.

13 (2) CONFORMING AMENDMENTS.—Section 104
14 of title 23, United States Code, is amended—

15 (A) in the matter preceding paragraph (1)
16 of subsection (b), by striking “the deduction au-
17 thorized by subsection (a) and”;

18 (B) in the first sentence of subsection
19 (e)(1), by striking “, and also” and all that fol-
20 lows through “this section”; and

21 (C) in subsection (i), by striking “de-
22 ducted” and inserting “made available”.

23 (b) METROPOLITAN PLANNING.—Section 104(f) of
24 title 23, United States Code, is amended—

1 (1) by striking paragraph (1) and inserting the
2 following:

3 “(1) SET-ASIDE.—On October 1 of each fiscal
4 year, the Secretary shall set aside 1.5 percent of the
5 funds authorized to be appropriated for the Inter-
6 state maintenance, national highway system, surface
7 transportation, congestion mitigation and air quality
8 improvement, highway safety improvement, and
9 highway bridge programs authorized under this title
10 to carry out the requirements of section 134.”;

11 (2) in paragraph (2), by striking “per centum”
12 and inserting “percent”;

13 (3) in paragraph (3)—

14 (A) by striking “The funds” and inserting
15 the following:

16 “(A) IN GENERAL.—The funds”; and

17 (B) by striking “These funds” and all that
18 follows and inserting the following:

19 “(B) UNUSED FUNDS.—Any funds that
20 are not used to carry out section 134 may be
21 made available by a metropolitan planning or-
22 ganization to the State to fund activities under
23 section 135.”; and

24 (4) by adding at the end the following:

1 “(6) FEDERAL SHARE.—Funds apportioned to
2 a State under this subsection shall be matched in ac-
3 cordance with section 120(b) unless the Secretary
4 determines that the interests of the Federal-aid
5 highway program would be best served without the
6 match.”.

7 (c) ALASKA HIGHWAY.—Section 104(b)(1)(A) of title
8 23, United States Code, is amended by striking “1998
9 through 2002” and inserting “2004 through 2009”.

10 **SEC. 1104. EQUITY BONUS PROGRAM.**

11 (a) IN GENERAL.—Section 105 of title 23, United
12 States Code, is amended to read as follows:

13 **“§ 105. Equity bonus program**

14 “(a) PROGRAM.—

15 “(1) IN GENERAL.—Subject to subsections (c)
16 and (d), for each of fiscal years 2004 through 2009,
17 the Secretary shall allocate among the States
18 amounts sufficient to ensure that no State receives
19 a percentage of the total apportionments for the fis-
20 cal year for the programs specified in paragraph (2)
21 that is less than the percentage calculated under
22 subsection (b).

23 “(2) SPECIFIC PROGRAMS.—The programs re-
24 ferred to in subsection (a) are—

1 “(A) the Interstate maintenance program
2 under section 119;

3 “(B) the national highway system program
4 under section 103;

5 “(C) the bridge program under section
6 144;

7 “(D) the surface transportation program
8 under section 133;

9 “(E) the highway safety improvement pro-
10 gram under section 148;

11 “(F) the congestion mitigation and air
12 quality improvement program under section
13 149;

14 “(G) metropolitan planning programs
15 under section 104(f) (other than planning pro-
16 grams funded by amounts provided under the
17 equity bonus program under this section);

18 “(H) the infrastructure performance and
19 maintenance program under section 139;

20 “(I) the equity bonus program under this
21 section;

22 “(J) the Appalachian development highway
23 system program under subtitle IV of title 40;

24 “(K) the recreational trails program under
25 section 206;

1 “(L) the safe routes to schools program
2 under section 150; and

3 “(M) the rail-highway grade crossing pro-
4 gram under section 130.

5 “(b) STATE PERCENTAGE.—

6 “(1) IN GENERAL.—The percentage referred to
7 in subsection (a) for each State shall be—

8 “(A) 95 percent of the quotient obtained
9 by dividing—

10 “(i) the estimated tax payments at-
11 tributable to highway users in the State
12 paid into the Highway Trust Fund (other
13 than the Mass Transit Account) in the
14 most recent fiscal year for which data are
15 available; by

16 “(ii) the estimated tax payments at-
17 tributable to highway users in all States
18 paid into the Highway Trust Fund (other
19 than the Mass Transit Account) for the
20 fiscal year; or

21 “(B) for a State with a total population
22 density of less than 20 persons per square mile,
23 as reported in the decennial census conducted
24 by the Federal Government in 2000, a total
25 population of less than 1,000,000, as reported

1 in that decennial census, or a median household
2 income of less than \$35,000, as reported in
3 that decennial census, the greater of—

4 “(i) the percentage under paragraph
5 (1); or

6 “(ii) the average percentage of the
7 State’s share of total apportionments for
8 the period of fiscal years 1998 through
9 2003 for the programs specified in para-
10 graph (2).

11 “(2) SPECIFIC PROGRAMS.—The programs re-
12 ferred to in paragraph (1)(B)(ii) are (as in effect on
13 the day before the date of enactment of the Safe,
14 Accountable, Flexible, and Efficient Transportation
15 Equity Act of 2004)—

16 “(A) the Interstate maintenance program
17 under section 119;

18 “(B) the national highway system program
19 under section 103;

20 “(C) the bridge program under section
21 144;

22 “(D) the surface transportation program
23 under section 133;

24 “(E) the recreational trails program under
25 section 206;

1 “(F) the high priority projects program
2 under section 117;

3 “(G) the minimum guarantee provided
4 under this section;

5 “(H) revenue aligned budget authority
6 amounts provided under section 110;

7 “(I) the congestion mitigation and air
8 quality improvement program under section
9 149;

10 “(J) the Appalachian development highway
11 system program under subtitle IV of title 40;
12 and

13 “(K) metropolitan planning programs
14 under section 104(f).

15 “(c) SPECIAL RULES.—

16 “(1) MINIMUM COMBINED ALLOCATION.—For
17 each fiscal year, before making the allocations under
18 subsection (a)(1), the Secretary shall allocate among
19 the States amounts sufficient to ensure that no
20 State receives a combined total of amounts allocated
21 under subsection (a)(1), apportionments for the pro-
22 grams specified in subsection (a)(2), and amounts
23 allocated under this subsection, that is less than 110
24 percent of the average for fiscal years 1998 through

1 2003 of the annual apportionments for the State for
2 all programs specified in subsection (b)(2).

3 “(2) NO NEGATIVE ADJUSTMENT.—Notwith-
4 standing subsection (d), no negative adjustment
5 shall be made under subsection (a)(1) to the appor-
6 tionment of any State.

7 “(3) MINIMUM SHARE OF TAX PAYMENTS.—
8 Notwithstanding subsection (d), for each fiscal year,
9 the Secretary shall allocate among the States
10 amounts sufficient to ensure that no State receives
11 a percentage of apportionments for the fiscal year
12 for the programs specified in subsection (a)(2) that
13 is less than 90.5 percent of the percentage share of
14 the State of estimated tax payments attributable to
15 highway users in the State paid into the Highway
16 Trust Fund (other than the Mass Transit Account)
17 in the most recent fiscal year for which data are
18 available.

19 “(d) LIMITATION ON ADJUSTMENTS.—

20 “(1) IN GENERAL.—Except as provided in para-
21 graphs (2) and (3) of subsection (c), no State shall
22 receive, for any fiscal year, additional amounts
23 under subsection (a)(1) if—

1 “(A) the total apportionments of the State
2 for the fiscal year for the programs specified in
3 subsection (a)(2); exceed

4 “(B) the percentage of the average, for the
5 period of fiscal years 1998 through 2003, of the
6 annual apportionments of the State for all pro-
7 grams specified in subsection (b)(2), as speci-
8 fied in paragraph (2).

9 “(2) PERCENTAGES.—The percentages referred
10 to in paragraph (1)(B) are—

11 “(A) for fiscal year 2004, 120 percent;

12 “(B) for fiscal year 2005, 130 percent;

13 “(C) for fiscal year 2006, 134 percent;

14 “(D) for fiscal year 2007, 137 percent;

15 “(E) for fiscal year 2008, 145 percent; and

16 “(F) for fiscal year 2009, 250 percent.

17 “(e) PROGRAMMATIC DISTRIBUTION OF FUNDS.—

18 The Secretary shall apportion the amounts made available
19 under this section so that the amount apportioned to each
20 State under this section for each program referred to in
21 subparagraphs (A) through (G) of subsection (a)(2) is
22 equal to the amount determined by multiplying the
23 amount to be apportioned under this section by the pro-
24 portion that—

1 “(1) the amount of funds apportioned to each
2 State for each program referred to in subparagraphs
3 (A) through (G) of subsection (a)(2) for a fiscal
4 year; bears to

5 “(2) the total amount of funds apportioned to
6 each State for all such programs for the fiscal year.

7 “(f) METRO PLANNING SET ASIDE.—Notwith-
8 standing section 104(f), no set aside provided for under
9 that section shall apply to funds allocated under this sec-
10 tion.

11 “(g) AUTHORIZATION OF APPROPRIATIONS.—There
12 are authorized to be appropriated from the Highway Trust
13 Fund (other than the Mass Transit Account) such sums
14 as are necessary to carry out this section for each of fiscal
15 years 2004 through 2009.”.

16 (b) CONFORMING AMENDMENTS.—

17 (1) The analysis for subchapter I of chapter 1
18 of title 23, United States Code, is amended by strik-
19 ing the item relating to section 105 and inserting
20 the following:

“105. Equity bonus program.”

21 (2) Section 104(a)(1) of title 23, United States
22 Code, is amended by striking “minimum guarantee”
23 and inserting “equity bonus”.

1 **SEC. 1105. REVENUE ALIGNED BUDGET AUTHORITY.**

2 Section 110 of title 23, United States Code, is
3 amended—

4 (1) in subsection (a)—

5 (A) in paragraphs (1) and (2), by striking
6 “2000” and inserting “2006”;

7 (B) in paragraph (1), by inserting “(as in
8 effect on September 30, 2002)” after “(2
9 U.S.C. 901(b)(2)(B)(ii)(I)(cc))”; and

10 (C) in paragraph (2)—

11 (i) by striking “If the amount” and
12 inserting the following:

13 “(A) IN GENERAL.—Except as provided in
14 subparagraph (B), if the amount”;

15 (ii) by inserting “(as in effect on Sep-
16 tember 30, 2002)” after “(2 U.S.C.
17 901(b)(1)(B)(ii)(I)(cc))”;

18 (iii) by striking “the succeeding” and
19 inserting “that”;

20 (iv) by striking “and the motor carrier
21 safety grant program”; and

22 (v) by adding at the end the following:

23 “(B) LIMITATION.—No reduction under
24 subparagraph (A) shall be made for a fiscal
25 year if, as of October 1 of the fiscal year, the
26 cash balance in the Highway Trust Fund (other

1 than the Mass Transit Account) exceeds
2 \$6,000,000,000.”;

3 (2) in subsection (b)(1), by striking subpara-
4 graph (A) and inserting the following:

5 “(A) the sums authorized to be appro-
6 priated from the Highway Trust Fund (other
7 than the Mass Transit Account) for each of the
8 Federal-aid highway and highway safety con-
9 struction programs (other than the equity
10 bonus program) and for which funds are allo-
11 cated from the Highway Trust Fund by the
12 Secretary under this title and the Safe, Ac-
13 countable, Flexible, and Efficient Transpor-
14 tation Equity Act of 2004; bears to”;

15 (3) in subsection (c), by inserting “the highway
16 safety improvement program,” after “the surface
17 transportation program,”; and

18 (4) by striking subsections (e), (f), and (g).

19 **Subtitle B—New Programs**

20 **SEC. 1201. INFRASTRUCTURE PERFORMANCE AND MAINTENANCE PROGRAM.**

22 (a) IN GENERAL.—Subchapter I of chapter 1 of title
23 23, United States Code, is amended by inserting after sec-
24 tion 138 the following:

1 **“§ 139. Infrastructure performance and maintenance**
2 **program**

3 “(a) ESTABLISHMENT.—The Secretary shall estab-
4 lish and implement an infrastructure performance and
5 maintenance program in accordance with this section.

6 “(b) ELIGIBLE PROJECTS.—A State may obligate
7 funds allocated to the State under this section only for
8 projects eligible under the Interstate maintenance pro-
9 gram under section 119, the National Highway System
10 program under section 103, the surface transportation
11 program under section 133, the highway safety improve-
12 ment program under section 148, the highway bridge pro-
13 gram under section 144, and the congestion mitigation
14 and air quality improvement program under section 149
15 that will—

16 “(1) preserve, maintain, or otherwise extend, in
17 a cost-effective manner, the useful life of existing
18 highway infrastructure elements; or

19 “(2) provide operational improvements (includ-
20 ing traffic management and intelligent transpor-
21 tation system strategies and limited capacity en-
22 hancements) at points of recurring highway conges-
23 tion.

24 “(c) PERIOD OF AVAILABILITY.—

25 “(1) OBLIGATION WITHIN 180 DAYS.—

1 “(A) IN GENERAL.—Funds allocated to a
2 State under this section shall be obligated by
3 the State not later than 180 days after the date
4 of apportionment.

5 “(B) UNOBLIGATED FUNDS.—Any
6 amounts that remain unobligated at the end of
7 that period shall be allocated in accordance with
8 subsection (d).

9 “(2) OBLIGATION BY END OF FISCAL YEAR.—

10 “(A) IN GENERAL.—All funds allocated or
11 reallocated under this section shall remain
12 available for obligation until the last day of the
13 fiscal year for which the funds are apportioned.

14 “(B) UNOBLIGATED FUNDS.—Any
15 amounts allocated that remain unobligated at
16 the end of the fiscal year shall lapse.

17 “(d) REDISTRIBUTION OF ALLOCATED FUNDS AND
18 OBLIGATION AUTHORITY.—

19 “(1) IN GENERAL.—On the date that is 180
20 days after the date of allocation, or as soon there-
21 after as practicable, for each fiscal year, the Sec-
22 retary shall—

23 “(A) withdraw—

1 “(i) any funds allocated to a State
2 under this section that remain unobligated;
3 and

4 “(ii) an equal amount of obligation
5 authority provided for the use of the funds
6 in accordance with section 1101(13) of the
7 Safe, Accountable, Flexible, and Efficient
8 Transportation Equity Act of 2004; and

9 “(B) reallocate the funds and redistribute
10 the obligation authority to those States that—

11 “(i) have fully obligated all amounts
12 allocated under this section for the fiscal
13 year; and

14 “(ii) demonstrate that the State is
15 able to obligate additional amounts for
16 projects eligible under this section before
17 the end of the fiscal year.

18 “(2) EQUITY BONUS.—The calculation and dis-
19 tribution of funds under section 105 shall be ad-
20 justed as a result of the allocation of funds under
21 this subsection.

22 “(e) FEDERAL SHARE PAYABLE.—The Federal share
23 payable for a project funded under this section shall be
24 determined in accordance with section 120.”.

1 (b) CONFORMING AMENDMENT.—The analysis for
 2 chapter 1 of title 23, United States Code, is amended by
 3 adding after the item relating to section 138 the following:

“139. Infrastructure performance and maintenance program.”.

4 **SEC. 1202. FUTURE OF SURFACE TRANSPORTATION SYS-**
 5 **TEM.**

6 (a) DECLARATION OF POLICY.—Section 101 of title
 7 23, United States Code, is amended—

8 (1) by striking “(b) It is hereby declared to be”
 9 and inserting the following:

10 “(b) DECLARATION OF POLICY.—

11 “(1) ACCELERATION OF CONSTRUCTION OF
 12 FEDERAL-AID HIGHWAY SYSTEMS.—Congress de-
 13 clares that it is”;

14 (2) in the second paragraph, by striking “It is
 15 hereby declared” and inserting the following:

16 “(2) COMPLETION OF INTERSTATE SYSTEM.—
 17 Congress declares”; and

18 (3) by striking the last paragraph and inserting
 19 the following:

20 “(3) TRANSPORTATION NEEDS OF 21ST CEN-
 21 TURY.—Congress declares that—

22 “(A) it is in the national interest to pre-
 23 serve and enhance the surface transportation
 24 system to meet the needs of the United States
 25 for the 21st Century;

1 “(B) the current urban and long distance
2 personal travel and freight movement demands
3 have surpassed the original forecasts and travel
4 demand patterns are expected to change;

5 “(C) continued planning for and invest-
6 ment in surface transportation is critical to en-
7 sure the surface transportation system ade-
8 quately meets the changing travel demands of
9 the future;

10 “(D) among the foremost needs that the
11 surface transportation system must meet to
12 provide for a strong and vigorous national econ-
13 omy are safe, efficient, and reliable—

14 “(i) national and interregional per-
15 sonal mobility (including personal mobility
16 in rural and urban areas) and reduced con-
17 gestion;

18 “(ii) flow of interstate and inter-
19 national commerce and freight transpor-
20 tation; and

21 “(iii) travel movements essential for
22 national security;

23 “(E) special emphasis should be devoted to
24 providing safe and efficient access for the type
25 and size of commercial and military vehicles

1 that access designated National Highway Sys-
2 tem intermodal freight terminals;

3 “(F) it is in the national interest to seek
4 ways to eliminate barriers to transportation in-
5 vestment created by the current modal struc-
6 ture of transportation financing;

7 “(G) the connection between land use and
8 infrastructure is significant;

9 “(H) transportation should play a signifi-
10 cant role in promoting economic growth, im-
11 proving the environment, and sustaining the
12 quality of life; and

13 “(I) the Secretary should take appropriate
14 actions to preserve and enhance the Interstate
15 System to meet the needs of the 21st Cen-
16 tury.”.

17 (b) NATIONAL SURFACE TRANSPORTATION SYSTEM
18 STUDY.—

19 (1) IN GENERAL.—The Secretary shall—

20 (A) conduct a complete investigation and
21 study of the current condition and future needs
22 of the surface transportation system of the
23 United States, including—

24 (i) the National Highway System;

25 (ii) the Interstate System;

- 1 (iii) the strategic highway network;
2 (iv) congressional high priority cor-
3 ridors;
4 (v) intermodal connectors;
5 (vi) freight facilities;
6 (vii) navigable waterways;
7 (viii) mass transportation;
8 (ix) freight and intercity passenger
9 rail infrastructure and facilities; and
10 (x) surface access to airports; and

11 (B) develop a conceptual plan, with alter-
12 native approaches, for the future to ensure that
13 the surface transportation system will continue
14 to serve the needs of the United States, includ-
15 ing specific recommendations regarding design
16 and operational standards, Federal policies, and
17 legislative changes.

18 (2) SPECIFIC ISSUES.—In conducting the inves-
19 tigation and study, the Secretary shall specifically
20 address—

21 (A) the current condition and performance
22 of the Interstate System (including the physical
23 condition of bridges and pavements and oper-
24 ational characteristics and performance), rely-
25 ing primarily on existing data sources;

1 (B) the future of the Interstate System,
2 based on a range of legislative and policy ap-
3 proaches for 15-, 30-, and 50-year time periods;

4 (C) the expected demographics and busi-
5 ness uses that impact the surface transpor-
6 tation system;

7 (D) the expected use of the surface trans-
8 portation system, including the effects of chang-
9 ing vehicle types, modes of transportation, fleet
10 size and weights, and traffic volumes;

11 (E) desirable design policies and standards
12 for future improvements of the surface trans-
13 portation system, including additional access
14 points;

15 (F) the identification of urban, rural, na-
16 tional, and interregional needs for the surface
17 transportation system;

18 (G) the potential for expansion, upgrades,
19 or other changes to the surface transportation
20 system, including—

21 (i) deployment of advanced materials
22 and intelligent technologies;

23 (ii) critical multistate, urban, and
24 rural corridors needing capacity, safety,
25 and operational enhancements;

- 1 (iii) improvements to intermodal link-
2 ages;
- 3 (iv) security and military deployment
4 enhancements;
- 5 (v) strategies to enhance asset preser-
6 vation; and
- 7 (vi) implementation strategies;
- 8 (H) the improvement of emergency pre-
9 paredness and evacuation using the surface
10 transportation system, including—
- 11 (i) examination of the potential use of
12 all modes of the surface transportation sys-
13 tem in the safe and efficient evacuation of
14 citizens during times of emergency;
- 15 (ii) identification of the location of
16 critical bottlenecks; and
- 17 (iii) development of strategies to im-
18 prove system redundaney, especially in
19 areas with a high potential for terrorist at-
20 tacks;
- 21 (I) alternatives for addressing environ-
22 mental concerns associated with the future de-
23 velopment of the surface transportation system;
- 24 (J) the evaluation and assessment of the
25 current and future capabilities for conducting

1 system-wide real-time performance data collec-
2 tion and analysis, traffic monitoring, and trans-
3 portation systems operations and management;
4 and

5 (K) a range of policy and legislative alter-
6 natives for addressing future needs for the sur-
7 face transportation system, including funding
8 needs and potential approaches to provide
9 funds.

10 (3) TECHNICAL ADVISORY COMMITTEE.—The
11 Secretary shall establish a technical advisory com-
12 mittee, in a manner consistent with the Federal Ad-
13 visory Committee Act (5 U.S.C. App.), to collect and
14 evaluate technical input from—

15 (A) the Department of Defense;

16 (B) appropriate Federal, State, and local
17 officials with responsibility for transportation;

18 (C) appropriate State and local elected of-
19 ficials;

20 (D) transportation and trade associations;

21 (E) emergency management officials;

22 (F) freight providers;

23 (G) the general public; and

1 (H) other entities and persons determined
 2 appropriate by the Secretary to ensure a diverse
 3 range of views.

4 (4) REPORT.—Not later than 4 years after the
 5 date of enactment of this Act, the Secretary shall
 6 submit to the Committee on Environment and Pub-
 7 lic Works of the Senate and the Committee on
 8 Transportation and Infrastructure of the House of
 9 Representatives, and make readily available to the
 10 public, a report on the results of the investigation
 11 and study conducted under this subsection.

12 **SEC. 1203. FREIGHT TRANSPORTATION GATEWAYS;**
 13 **FREIGHT INTERMODAL CONNECTIONS.**

14 (a) FREIGHT TRANSPORTATION GATEWAYS.—Chap-
 15 ter 3 of title 23, United States Code, is amended by add-
 16 ing at the end the following:

17 **“§ 325. Freight transportation gateways**

18 “(a) IN GENERAL.—

19 “(1) ESTABLISHMENT.—The Secretary shall es-
 20 tablish a freight transportation gateways program to
 21 improve productivity, security, and safety of freight
 22 transportation gateways, while mitigating congestion
 23 and community impacts in the area of the gateways.

24 “(2) PURPOSES.—The purposes of the freight
 25 transportation gateways program shall be—

1 “(A) to facilitate and support multimodal
2 freight transportation initiatives at the State
3 and local levels in order to improve freight
4 transportation gateways and mitigate the im-
5 pact of congestion on the environment in the
6 area of the gateways;

7 “(B) to provide capital funding to address
8 infrastructure and freight operational needs at
9 freight transportation gateways;

10 “(C) to encourage adoption of new financ-
11 ing strategies to leverage State, local, and pri-
12 vate investment in freight transportation gate-
13 ways;

14 “(D) to facilitate access to intermodal
15 freight transfer facilities; and

16 “(E) to increase economic efficiency by fa-
17 cilitating the movement of goods.

18 “(b) STATE RESPONSIBILITIES.—

19 “(1) PROJECT DEVELOPMENT PROCESS.—Each
20 State, in coordination with metropolitan planning or-
21 ganizations, shall ensure that intermodal freight
22 transportation, trade facilitation, and economic de-
23 velopment needs are adequately considered and fully
24 integrated into the project development process, in-
25 cluding transportation planning through final design

1 and construction of freight-related transportation
2 projects.

3 “(2) FREIGHT TRANSPORTATION COORDI-
4 NATOR.—

5 “(A) IN GENERAL.—Each State shall des-
6 ignate a freight transportation coordinator.

7 “(B) DUTIES.—The coordinator shall—

8 “(i) foster public and private sector
9 collaboration needed to implement complex
10 solutions to freight transportation and
11 freight transportation gateway problems,
12 including—

13 “(I) coordination of metropolitan
14 and statewide transportation activities
15 with trade and economic interests;

16 “(II) coordination with other
17 States, agencies, and organizations to
18 find regional solutions to freight
19 transportation problems; and

20 “(III) coordination with local of-
21 ficials of the Department of Defense
22 and the Department of Homeland Se-
23 curity, and with other organizations,
24 to develop regional solutions to mili-

1 tary and homeland security transpor-
2 tation needs; and

3 “(ii) promote programs that build
4 professional capacity to better plan, coordi-
5 nate, integrate, and understand freight
6 transportation needs for the State.

7 “(c) INNOVATIVE FINANCE STRATEGIES.—

8 “(1) IN GENERAL.—States and localities are
9 encouraged to adopt innovative financing strategies
10 for freight transportation gateway improvements,
11 including—

12 “(A) new user fees;

13 “(B) modifications to existing user fees, in-
14 cluding trade facilitation charges;

15 “(C) revenue options that incorporate pri-
16 vate sector investment; and

17 “(D) a blending of Federal-aid and innova-
18 tive finance programs.

19 “(2) TECHNICAL ASSISTANCE.—The Secretary
20 shall provide technical assistance to States and local-
21 ities with respect to the strategies.

22 “(d) INTERMODAL FREIGHT TRANSPORTATION
23 PROJECTS.—

24 “(1) USE OF SURFACE TRANSPORTATION PRO-
25 GRAM FUNDS.—A State may obligate funds appor-

1 tioned to the State under section 104(b)(3) for pub-
2 licly-owned intermodal freight transportation
3 projects that provide community and highway bene-
4 fits by addressing economic, congestion, system reli-
5 ability, security, safety, or environmental issues as-
6 sociated with freight transportation gateways.

7 “(2) ELIGIBLE PROJECTS.—A project eligible
8 for funding under this section—

9 “(A) may include publicly-owned inter-
10 modal freight transfer facilities, access to the
11 facilities, and operational improvements for the
12 facilities (including capital investment for intel-
13 ligent transportation systems), except that
14 projects located within the boundaries of port
15 terminals shall only include the surface trans-
16 portation infrastructure modifications necessary
17 to facilitate direct intermodal interchange,
18 transfer, and access into and out of the port;
19 and

20 “(B) may involve the combining of private
21 and public funds.”.

22 (b) ELIGIBILITY FOR SURFACE TRANSPORTATION
23 PROGRAM FUNDS.—Section 133(b) of title 23, United
24 States Code, is amended by inserting after paragraph (11)
25 the following:

1 “(12) Intermodal freight transportation projects
2 in accordance with section 325(d)(2).”.

3 (c) FREIGHT INTERMODAL CONNECTIONS TO
4 NHS.—Section 103(b) of title 23, United States Code, is
5 amended by adding at the end the following:

6 “(7) FREIGHT INTERMODAL CONNECTIONS TO
7 THE NHS.—

8 “(A) FUNDING SET-ASIDE.—Of the funds
9 apportioned to a State for each fiscal year
10 under section 104(b)(1), an amount determined
11 in accordance with subparagraph (B) shall only
12 be available to the State to be obligated for
13 projects on—

14 “(i) National Highway System routes
15 connecting to intermodal freight terminals
16 identified according to criteria specified in
17 the report to Congress entitled ‘Pulling To-
18 gether: The National Highway System and
19 its Connections to Major Intermodal Ter-
20 minals’ dated May 24, 1996, referred to in
21 paragraph (1), and any modifications to
22 the connections that are consistent with
23 paragraph (4);

1 “(ii) strategic highway network con-
2 nectors to strategic military deployment
3 ports; and

4 “(iii) projects to eliminate railroad
5 crossings or make railroad crossing im-
6 provements.

7 “(B) DETERMINATION OF AMOUNT.—The
8 amount of funds for each State for a fiscal year
9 that shall be set aside under subparagraph (A)
10 shall be equal to the greater of—

11 “(i) the product obtained by
12 multiplying—

13 “(I) the total amount of funds
14 apportioned to the State under section
15 104(b)(1); by

16 “(II) the percentage of miles that
17 routes specified in subparagraph (A)
18 constitute of the total miles on the
19 National Highway System in the
20 State; or

21 “(ii) 2 percent of the annual appor-
22 tionment to the State of funds under
23 104(b)(1).

24 “(C) EXEMPTION FROM SET-ASIDE.—For
25 any fiscal year, a State may obligate the funds

1 otherwise set aside by this paragraph for any
2 project that is eligible under paragraph (6) and
3 is located in the State on a segment of the Na-
4 tional Highway System specified in paragraph
5 (2), if the State certifies and the Secretary con-
6 curs that—

7 “(i) the designated National Highway
8 System intermodal connectors described in
9 subparagraph (A) are in good condition
10 and provide an adequate level of service for
11 military vehicle and civilian commercial ve-
12 hicle use; and

13 “(ii) significant needs on the des-
14 ignated National Highway System inter-
15 modal connectors are being met or do not
16 exist.”.

17 (d) FEDERAL SHARE PAYABLE.—Section 120 of title
18 23, United States Code, is amended by adding at the end
19 the following:

20 “(m) INCREASED FEDERAL SHARE FOR CONNEC-
21 TORS.—In the case of a project to support a National
22 Highway System intermodal freight connection or stra-
23 tegic highway network connector to a strategic military
24 deployment port described in section 103(b)(7), except as

1 otherwise provided in section 120, the Federal share of
2 the total cost of the project shall be 90 percent.”.

3 (e) LENGTH LIMITATIONS.—Section 31111(e) of title
4 49, United States Code, is amended—

5 (1) by striking “The” and inserting the fol-
6 lowing:

7 “(1) IN GENERAL.—The”; and

8 (2) by adding at the end the following:

9 “(2) LENGTH LIMITATIONS.—In the interests of
10 economic competitiveness, security, and intermodal
11 connectivity, not later than 3 years after the date of
12 enactment of this paragraph, States shall update the
13 list of those qualifying highways to include—

14 “(A) strategic highway network connectors
15 to strategic military deployment ports; and

16 “(B) National Highway System intermodal
17 freight connections serving military and com-
18 mercial truck traffic going to major intermodal
19 terminals as described in section
20 103(b)(7)(A)(i).”.

21 (f) CONFORMING AMENDMENT.—The analysis of
22 chapter 3 of title 23, United States Code, is amended by
23 adding at the end the following:

“325. Freight transportation gateways.”.

1 **SEC. 1204. CONSTRUCTION OF FERRY BOATS AND FERRY**
 2 **TERMINAL AND MAINTENANCE FACILITIES;**
 3 **COORDINATION OF FERRY CONSTRUCTION**
 4 **AND MAINTENANCE.**

5 (a) IN GENERAL.—Section 147 of title 23, United
 6 States Code, is amended to read as follows:

7 **“§ 147. Construction of ferry boats and ferry terminal**
 8 **and maintenance facilities; coordination**
 9 **of ferry construction and maintenance**

10 “(a) CONSTRUCTION OF FERRY BOATS AND FERRY
 11 TERMINAL FACILITIES.—

12 “(1) IN GENERAL.—The Secretary shall carry
 13 out a program for construction of ferry boats and
 14 ferry terminal facilities in accordance with section
 15 129(c).

16 “(2) FEDERAL SHARE.—The Federal share of
 17 the cost of construction of ferry boats and ferry ter-
 18 minals and maintenance facilities under this sub-
 19 section shall be 80 percent.

20 “(3) ALLOCATION OF FUNDS.—The Secretary
 21 shall give priority in the allocation of funds under
 22 this subsection to those ferry systems, and public en-
 23 tities responsible for developing ferries, that—

24 “(A) carry the greatest number of pas-
 25 sengers and vehicles;

1 “(B) carry the greatest number of pas-
2 sengers in passenger-only service; or

3 “(C) provide critical access to areas that
4 are not well-served by other modes of surface
5 transportation.

6 “(b) NON-CONTRACT AUTHORITY AUTHORIZATION
7 OF APPROPRIATIONS.—

8 “(1) IN GENERAL.—There are authorized to be
9 appropriated from the Highway Trust Fund (other
10 than the Mass Transit Account) \$50,000,000 for
11 each fiscal year to carry out this section.

12 “(2) AVAILABILITY.—Notwithstanding section
13 118(a), funds made available under paragraph (1)
14 shall be available in advance of an annual appropria-
15 tion.”.

16 (b) CONFORMING AMENDMENTS.—

17 (1) The analysis for subchapter I of chapter 1
18 of title 23, United States Code, is amended by strik-
19 ing the item relating to section 147 and inserting
20 the following:

“147. Construction of ferry boats and ferry terminal and maintenance facili-
ties.”.

21 (2) Section 1064 of the Intermodal Surface
22 Transportation Efficiency Act of 1991 (105 Stat.
23 2005) is repealed.

1 **SEC. 1205. DESIGNATION OF DANIEL PATRICK MOYNIHAN**
2 **INTERSTATE HIGHWAY.**

3 (a) DESIGNATION.—Interstate Highway 86 in the
4 State of New York, extending from the Pennsylvania bor-
5 der near Lake Erie through Orange County, New York,
6 shall be known and designated as the “Daniel Patrick
7 Moynihan Interstate Highway”.

8 (b) REFERENCES.—Any reference in a law, map, reg-
9 ulation, document, paper, or other record of the United
10 States to the highway referred to in subsection (a) shall
11 be deemed to be a reference to the Daniel Patrick Moy-
12 nihan Interstate Highway.

13 **SEC. 1206. STATE-BY-STATE COMPARISON OF HIGHWAY**
14 **CONSTRUCTION COSTS.**

15 (a) COLLECTION OF DATA.—

16 (1) IN GENERAL.—The Administrator of the
17 Federal Highway Administration (referred to in this
18 section as the “Administrator”) shall collect from
19 States any bid price data that is necessary to make
20 State-by-State comparisons of highway construction
21 costs.

22 (2) DATA REQUIRED.—In determining which
23 data to collect and the procedures for collecting
24 data, the Administrator shall take into account the
25 data collection deficiencies identified in the report

1 prepared by the General Accounting Office num-
2 bered GAO-04-113R.

3 (b) REPORT.—

4 (1) IN GENERAL.—The Administrator shall
5 submit to Congress an annual report on the bid
6 price data collected under subsection (a).

7 (2) INCLUSIONS.—The report shall include—

8 (A) State-by-State comparisons of highway
9 construction costs for the previous fiscal year
10 (including the cost to construct a 1-mile road
11 segment of a standard design, as determined by
12 the Administrator); and

13 (B) a description of the competitive bid-
14 ding procedures used in each State; and

15 (C) a determination by Administrator as to
16 whether the competitive bidding procedures de-
17 scribed under subparagraph (B) are effective.

18 **Subtitle C—Finance**

19 **SEC. 1301. FEDERAL SHARE.**

20 Section 120 of title 23, United States Code, is
21 amended—

22 (1) in subsection (a), by striking paragraph (1)
23 and inserting the following:

24 “(1) IN GENERAL.—Except as otherwise pro-
25 vided in this chapter, the Federal share payable on

1 account of any project on the Interstate System (in-
2 cluding a project to add high occupancy vehicle lanes
3 and a project to add auxiliary lanes but excluding a
4 project to add any other lanes) shall be 90 percent
5 of the total cost of the project.”;

6 (2) in subsection (b)—

7 (A) by striking “Except as otherwise” and
8 inserting the following:

9 “(1) IN GENERAL.—Except as otherwise”;

10 (B) by striking “shall be—” and all that
11 follows and inserting “shall be 80 percent of the
12 cost of the project.”; and

13 (C) by adding at the end the following:

14 “(2) STATE-DETERMINED LOWER FEDERAL
15 SHARE.—In the case of any project subject to this
16 subsection, a State may determine a lower Federal
17 share than the Federal share determined under
18 paragraph (1).”;

19 (3) by striking subsection (d) and inserting the
20 following:

21 “(d) INCREASED FEDERAL SHARE.—

22 “(1) IN GENERAL.—The Federal share payable
23 under subsection (a) or (b) may be increased for
24 projects and activities in each State in which is
25 located—

1 “(A) nontaxable Indian land;

2 “(B) public land (reserved or unreserved);

3 “(C) a national forest; or

4 “(D) a national park or monument.

5 “(2) AMOUNT.—

6 “(A) IN GENERAL.—The Federal share for
7 States described in paragraph (1) shall be in-
8 creased by a percentage of the remaining cost
9 that—

10 “(i) is equal to the percentage that—

11 “(I) the area of all land described
12 in paragraph (1) in a State; bears to

13 “(II) the total area of the State;

14 but

15 “(ii) does not exceed 95 percent of the
16 total cost of the project or activity for
17 which the Federal share is provided.

18 “(B) ADJUSTMENT.—The Secretary shall
19 adjust the Federal share for States under sub-
20 paragraph (A) as the Secretary determines nec-
21 essary, on the basis of data provided by the
22 Federal agencies that are responsible for main-
23 taining the data.”.

1 **SEC. 1302. TRANSFER OF HIGHWAY AND TRANSIT FUNDS.**

2 Section 104 of title 23, United States Code, is
3 amended by striking subsection (k) and inserting the fol-
4 lowing:

5 “(k) TRANSFER OF HIGHWAY AND TRANSIT
6 FUNDS.—

7 “(1) TRANSFER OF HIGHWAY FUNDS FOR
8 TRANSIT PROJECTS.—

9 “(A) IN GENERAL.—Subject to subpara-
10 graph (B), funds made available for transit
11 projects or transportation planning under this
12 title may be transferred to and administered by
13 the Secretary in accordance with chapter 53 of
14 title 49.

15 “(B) NON-FEDERAL SHARE.—The provi-
16 sions of this title relating to the non-Federal
17 share shall apply to the transferred funds.

18 “(2) TRANSFER OF TRANSIT FUNDS FOR HIGH-
19 WAY PROJECTS.—Funds made available for highway
20 projects or transportation planning under chapter 53
21 of title 49 may be transferred to and administered
22 by the Secretary in accordance with this title.

23 “(3) TRANSFER OF HIGHWAY FUNDS TO OTHER
24 FEDERAL AGENCIES.—

25 “(A) IN GENERAL.—Except as provided in
26 clauses (i) and (ii) and subparagraph (B),

1 funds made available under this title or any
2 other Act that are derived from Highway Trust
3 Fund (other than the Mass Transit account)
4 may be transferred to another Federal agency
5 if—

6 “(i)(I) an expenditure is specifically
7 authorized in Federal-aid highway legisla-
8 tion or as a line item in an appropriation
9 act; or

10 “(II) a State transportation depart-
11 ment consents to the transfer of funds;

12 “(ii) the Secretary determines, after
13 consultation with the State transportation
14 department (as appropriate), that the Fed-
15 eral agency should carry out a project with
16 the funds; and

17 “(iii) the other Federal agency agrees
18 to accept the transfer of funds and to ad-
19 minister the project.

20 “(B) ADMINISTRATION.—

21 “(i) PROCEDURES.—A project carried
22 out with funds transferred to a Federal
23 agency under subparagraph (A) shall be
24 administered by the Federal agency under
25 the procedures of the Federal agency.

1 “(ii) APPROPRIATIONS.—Funds trans-
2 ferred to a Federal agency under subpara-
3 graph (A) shall not be considered an aug-
4 mentation of the appropriations of the
5 Federal agency.

6 “(iii) NON-FEDERAL SHARE.—The
7 provisions of this title, or an Act described
8 in subparagraph (A), relating to the non-
9 Federal share shall apply to a project car-
10 ried out with the transferred funds, unless
11 the Secretary determines that it is in the
12 best interest of the United States that the
13 non-Federal share be waived.

14 “(4) TRANSFER OF FUNDS AMONG STATES OR
15 TO FEDERAL HIGHWAY ADMINISTRATION.—

16 “(A) IN GENERAL.—Subject to subpara-
17 graphs (B) through (D), the Secretary may, at
18 the request of a State, transfer funds appor-
19 tioned or allocated to the State to another
20 State, or to the Federal Highway Administra-
21 tion, for the purpose of funding 1 or more spe-
22 cific projects.

23 “(B) ADMINISTRATION.—The transferred
24 funds shall be used for the same purpose and

1 in the same manner for which the transferred
2 funds were authorized.

3 “(C) APPORTIONMENT.—The transfer
4 shall have no effect on any apportionment for-
5 mula used to distribute funds to States under
6 this section or section 105 or 144.

7 “(D) SURFACE TRANSPORTATION PRO-
8 GRAM.—Funds that are apportioned or allo-
9 cated to a State under subsection (b)(3) and at-
10 tributed to an urbanized area of a State with
11 a population of over 200,000 individuals under
12 section 133(d)(2) may be transferred under this
13 paragraph only if the metropolitan planning or-
14 ganization designated for the area concurs, in
15 writing, with the transfer request.

16 “(5) TRANSFER OF OBLIGATION AUTHORITY.—
17 Obligation authority for funds transferred under this
18 subsection shall be transferred in the same manner
19 and amount as the funds for the projects are trans-
20 ferred under this subsection.”.

21 **SEC. 1303. TRANSPORTATION INFRASTRUCTURE FINANCE**
22 **AND INNOVATION ACT AMENDMENTS.**

23 (a) DEFINITIONS.—Section 181 of title 23, United
24 States Code, is amended—

1 (1) in paragraph (3), by striking “category”
2 and “offered into the capital markets”;

3 (2) by striking paragraph (7) and redesignating
4 paragraphs (8) through (15) as paragraphs (7)
5 through (14) respectively;

6 (3) in paragraph (8) (as redesignated by para-
7 graph (2))—

8 (A) in subparagraph (B), by striking the
9 period at the end and inserting a semicolon;
10 and

11 (B) by striking subparagraph (D) and in-
12 serting the following:

13 “(D) a project that—

14 “(i)(I) is a project for—

15 “(aa) a public freight rail facility
16 or a private facility providing public
17 benefit;

18 “(bb) an intermodal freight
19 transfer facility;

20 “(cc) a means of access to a fa-
21 cility described in item (aa) or (bb);

22 “(dd) a service improvement for
23 a facility described in item (aa) or
24 (bb) (including a capital investment

1 for an intelligent transportation sys-
2 tem); or

3 “(II) comprises a series of projects
4 described in subclause (I) with the com-
5 mon objective of improving the flow of
6 goods;

7 “(ii) may involve the combining of pri-
8 vate and public sector funds, including in-
9 vestment of public funds in private sector
10 facility improvements; and

11 “(iii) if located within the boundaries
12 of a port terminal, includes only such sur-
13 face transportation infrastructure modi-
14 fications as are necessary to facilitate di-
15 rect intermodal interchange, transfer, and
16 access into and out of the port.”; and

17 (4) in paragraph (10) (as redesignated by para-
18 graph (2)) by striking “bond” and inserting “cred-
19 it”.

20 (b) DETERMINATION OF ELIGIBILITY AND PROJECT
21 SELECTION.—Section 182 of title 23, United States Code,
22 is amended—

23 (1) in subsection (a)—

24 (A) by striking paragraphs (1) and (2) and
25 inserting the following:

1 “(1) INCLUSION IN TRANSPORTATION PLANS
2 AND PROGRAMS.—The project shall satisfy the appli-
3 cable planning and programming requirements of
4 sections 134 and 135 at such time as an agreement
5 to make available a Federal credit instrument is en-
6 tered into under this subchapter.

7 “(2) APPLICATION.—A State, local government,
8 public authority, public-private partnership, or any
9 other legal entity undertaking the project and au-
10 thorized by the Secretary shall submit a project ap-
11 plication to the Secretary.”;

12 (B) in paragraph (3)(A)—

13 (i) in clause (i), by striking
14 “\$100,000,000” and inserting
15 “\$50,000,000”; and

16 (ii) in clause (ii), by striking “50”
17 and inserting “20”; and

18 (C) in paragraph (4)—

19 (i) by striking “Project financing”
20 and inserting “The Federal credit instru-
21 ment”; and

22 (ii) by inserting before the period at
23 the end the following: “that also secure the
24 project obligations”; and

25 (2) in subsection (b)—

1 (A) in paragraph (1), by striking “criteria”
2 the second place it appears and inserting “re-
3 quirements”; and

4 (B) in paragraph (2)(B), by inserting
5 “(which may be the Federal credit instrument)”
6 after “obligations”.

7 (c) SECURED LOANS.—Section 183 of title 23,
8 United States Code, is amended—

9 (1) in subsection (a)—

10 (A) in paragraph (1)—

11 (i) by striking “of any project selected
12 under section 182.” at the end;

13 (ii) in subparagraphs (A) and (B), by
14 inserting “of any project selected under
15 section 182” after “costs” ; and

16 (iii) in subparagraph (B), by striking
17 the semicolon at the end and inserting a
18 period; and

19 (B) in paragraph (4)—

20 (i) by striking “funding” and insert-
21 ing “execution”; and

22 (ii) by striking “rating,” and all that
23 follows and inserting a period;

24 (2) in subsection (b)—

1 (A) by striking paragraph (2) and insert-
2 ing the following:

3 “(2) MAXIMUM AMOUNT.—The amount of the
4 secured loan shall not exceed the lesser of—

5 “(A) 33 percent of the reasonably antici-
6 pated eligible project costs; or

7 “(B) the amount of the senior project obli-
8 gations.”;

9 (B) in paragraph (3)(A)(i), by inserting
10 “that also secure the senior project obligations”
11 after “sources”; and

12 (C) in paragraph (4), by striking “market-
13 able”; and

14 (3) in subsection (c)—

15 (A) by striking paragraph (3);

16 (B) by redesignating paragraphs (4) and
17 (5) as paragraphs (3) and (4), respectively; and

18 (C) in paragraph (3) (as redesignated by
19 subparagraph (B))—

20 (i) in subparagraph (A), by striking
21 “during the 10 years”; and

22 (ii) in subparagraph (B)(ii), by strik-
23 ing “loan” and all that follows and insert-
24 ing “loan.”.

1 (d) LINES OF CREDIT.—Section 184 of title 23,
2 United States Code, is amended—

3 (1) in subsection (b)—

4 (A) in paragraph (3), by striking “interest,
5 any debt service reserve fund, and any other
6 available reserve” and inserting “interest (but
7 not including reasonably required financing re-
8 serves)”;

9 (B) in paragraph (4), by striking “market-
10 able United States Treasury securities as of the
11 date on which the line of credit is obligated”
12 and inserting “ United States Treasury securi-
13 ties as of the date of execution of the line of
14 credit agreement”; and

15 (C) in paragraph (5)(A)(i), by inserting
16 “that also secure the senior project obligations”
17 after “sources”; and

18 (2) in subsection (c)—

19 (A) in paragraph (2)—

20 (i) by striking “scheduled”;

21 (ii) by inserting “be scheduled to”
22 after “shall”; and

23 (iii) by striking “be fully repaid, with
24 interest,” and inserting “to conclude, with

1 full repayment of principal and interest,”;

2 and

3 (B) by striking paragraph (3).

4 (e) PROGRAM ADMINISTRATION.—Section 185 of title
5 23, United States Code, is amended to read as follows:

6 **“§ 185. Program administration**

7 “(a) REQUIREMENT.—The Secretary shall establish
8 a uniform system to service the Federal credit instruments
9 made available under this subchapter.

10 “(b) FEES.—The Secretary may establish fees at a
11 level to cover all or a portion of the costs to the Federal
12 government of servicing the Federal credit instruments.

13 “(c) SERVICER.—

14 “(1) IN GENERAL.—The Secretary may appoint
15 a financial entity to assist the Secretary in servicing
16 the Federal credit instruments.

17 “(2) DUTIES.—The servicer shall act as the
18 agent for the Secretary.

19 “(3) FEE.—The servicer shall receive a serv-
20 icing fee, subject to approval by the Secretary.

21 “(d) ASSISTANCE FROM EXPERT FIRMS.—The Sec-
22 retary may retain the services of expert firms, including
23 counsel, in the field of municipal and project finance to
24 assist in the underwriting and servicing of Federal credit
25 instruments.”.

1 (f) FUNDING.—Section 188 of title 23, United States
2 Code, is amended to read as follows:

3 **“§ 188. Funding**

4 “(a) FUNDING.—

5 “(1) IN GENERAL.—There is authorized to be
6 appropriated from the Highway Trust Fund (other
7 than the Mass Transit Account) to carry out this
8 subchapter \$130,000,000 for each of fiscal years
9 2004 through 2009.

10 “(2) ADMINISTRATIVE COSTS.—Of amounts
11 made available under paragraph (1), the Secretary
12 may use for the administration of this subchapter
13 not more than \$2,000,000 for each of fiscal years
14 2004 through 2009.

15 “(3) COLLECTED FEES AND SERVICES.—In ad-
16 dition to funds provided under paragraph (2)—

17 “(A) all fees collected under this sub-
18 chapter shall be made available without further
19 appropriation to the Secretary until expended,
20 for use in administering this subchapter; and

21 “(B) the Secretary may accept and use
22 payment or services provided by transaction
23 participants, or third parties that are paid by
24 participants from transaction proceeds, for due
25 diligence, legal, financial, or technical services.

1 “(4) AVAILABILITY.—Amounts made available
2 under paragraph (1) shall remain available until ex-
3 pended.

4 “(b) CONTRACT AUTHORITY.—

5 “(1) IN GENERAL.—Notwithstanding any other
6 provision of law, approval by the Secretary of a Fed-
7 eral credit instrument that uses funds made avail-
8 able under this subchapter shall be deemed to be ac-
9 ceptance by the United States of a contractual obli-
10 gation to fund the Federal credit investment.

11 “(2) AVAILABILITY.—Amounts authorized
12 under this section for a fiscal year shall be available
13 for obligation on October 1 of the fiscal year.”.

14 “(g) REPEAL.—Section 189 of title 23, United States
15 code, is repealed.

16 “(h) CONFORMING AMENDMENTS.—The analysis for
17 chapter 1 of title 23, United States Code, is amended—

18 (1) by striking the item relating to section 185
19 and inserting the following:

“185. Program administration.”;

20 and

21 (2) by striking the item relating to section 189.

1 **SEC. 1304. FACILITATION OF INTERNATIONAL REGISTRA-**
2 **TION PLANS AND INTERNATIONAL FUEL TAX**
3 **AGREEMENTS.**

4 (a) IN GENERAL.—Chapter 317 of title 49, United
5 States Code, is amended by adding at the end the fol-
6 lowing:

7 **“§ 31708. Facilitation of international registration**
8 **plans and international fuel tax agree-**
9 **ments**

10 “The Secretary may provide assistance to any State
11 that is participating in the International Registration Plan
12 and International Fuel Tax Agreement, as provided in sec-
13 tions 31704 and 31705, respectively, and that serves as
14 a base jurisdiction for motor carriers that are domiciled
15 in Mexico, to assist the State with administrative costs
16 resulting from serving as a base jurisdiction for motor car-
17 riers from Mexico.”.

18 (b) CONFORMING AMENDMENT.—The analysis for
19 chapter 317 of title 49, United States Code, is amended
20 by adding at the end the following:

“31708. Facilitation of international registration plans and international fuel
tax agreements.”.

1 **SEC. 1305. NATIONAL COMMISSION ON FUTURE REVENUE**
2 **SOURCES TO SUPPORT THE HIGHWAY TRUST**
3 **FUND AND FINANCE THE NEEDS OF THE SUR-**
4 **FACE TRANSPORTATION SYSTEM.**

5 (a) **ESTABLISHMENT.**—There is established a com-
6 mission to be known as the “National Commission on Fu-
7 ture Revenue Sources to Support the Highway Trust
8 Fund and Finance the Needs of the Surface Transpor-
9 tation System” (referred to in this section as the “Com-
10 mission”).

11 (b) **MEMBERSHIP.**—

12 (1) **COMPOSITION.**—The Commission shall be
13 composed of 11 members, of whom—

14 (A) 3 members shall be appointed by the
15 President;

16 (B) 2 members shall be appointed by the
17 Speaker of the House of Representatives;

18 (C) 2 members shall be appointed by the
19 minority leader of the House of Representa-
20 tives;

21 (D) 2 members shall be appointed by the
22 majority leader of the Senate; and

23 (E) 2 members shall be appointed by the
24 minority leader of the Senate.

1 (2) QUALIFICATIONS.—Members appointed
2 under paragraph (1) shall have experience in or rep-
3 resent the interests of—

4 (A) public finance, including experience in
5 developing State and local revenue resources;

6 (B) surface transportation program admin-
7 istration;

8 (C) organizations that use surface trans-
9 portation facilities;

10 (D) academic research into related issues;

11 or

12 (E) other activities that provide unique
13 perspectives on current and future requirements
14 for revenue sources to support the Highway
15 Trust Fund.

16 (3) DATE OF APPOINTMENTS.—The appoint-
17 ment of a member of the Commission shall be made
18 not later than 120 days after the date of establish-
19 ment of the Commission.

20 (4) TERMS.—A member shall be appointed for
21 the life of the Commission.

22 (5) VACANCIES.—A vacancy on the
23 Commission—

24 (A) shall not affect the powers of the Com-
25 mission; and

1 (B) shall be filled in the same manner as
2 the original appointment was made.

3 (6) INITIAL MEETING.—Not later than 30 days
4 after the date on which all members of the Commis-
5 sion have been appointed, the Commission shall hold
6 the initial meeting of the Commission.

7 (7) MEETINGS.—The Commission shall meet at
8 the call of the Chairperson.

9 (8) QUORUM.—A majority of the members of
10 the Commission shall constitute a quorum, but a
11 lesser number of members may hold hearings.

12 (9) CHAIRPERSON AND VICE CHAIRPERSON.—
13 The Commission shall select a Chairperson and Vice
14 Chairperson from among the members of the Com-
15 mission.

16 (c) DUTIES.—

17 (1) IN GENERAL.—The Commission shall—

18 (A) conduct a comprehensive study of al-
19 ternatives to replace or to supplement the fuel
20 tax as the principal revenue source to support
21 the Highway Trust Fund and suggest new or
22 alternative sources of revenue to fund the needs
23 of the surface transportation system over at
24 least the next 30 years;

1 (B) conduct the study in a manner that
2 builds on—

3 (i) findings, conclusions, and rec-
4 ommendations of the recent study con-
5 ducted by the Transportation Research
6 Board on alternatives to the fuel tax to
7 support highway program financing; and

8 (ii) other relevant prior research;

9 (C) consult with the Secretary and the
10 Secretary of the Treasury in conducting the
11 study to ensure that the views of the Secre-
12 taries concerning essential attributes of High-
13 way Trust Fund revenue alternatives are con-
14 sidered;

15 (D) consult with representatives of State
16 Departments of Transportation and metropoli-
17 tan planning organizations and other key inter-
18 ested stakeholders in conducting the study to
19 ensure that—

20 (i) the views of the stakeholders on al-
21 ternative revenue sources to support State
22 transportation improvement programs are
23 considered; and

1 (ii) any recommended Federal financ-
2 ing strategy takes into account State fi-
3 nancial requirements; and

4 (E) based on the study, make specific rec-
5 ommendations regarding—

6 (i) actions that should be taken to de-
7 velop alternative revenue sources to sup-
8 port the Highway Trust Fund; and

9 (ii) the time frame for taking those
10 actions.

11 (2) SPECIFIC MATTERS.—The study shall ad-
12 dress specifically—

13 (A) the advantages and disadvantages of
14 alternative revenue sources to meet anticipated
15 Federal surface transportation financial re-
16 quirements;

17 (B) recommendations concerning the most
18 promising revenue sources to support long-term
19 Federal surface transportation financing re-
20 quirements;

21 (C) development of a broad transition
22 strategy to move from the current tax base to
23 new funding mechanisms, including the time
24 frame for various components of the transition
25 strategy;

1 (D) recommendations for additional re-
2 search that may be needed to implement rec-
3 ommended alternatives; and

4 (E) the extent to which revenues should re-
5 flect the relative use of the highway system.

6 (3) RELATED WORK.—To the maximum extent
7 practicable, the study shall build on related work
8 that has been done by—

9 (A) the Secretary of Transportation;

10 (B) the Secretary of Energy;

11 (C) the Transportation Research Board;

12 and

13 (D) other entities and persons.

14 (4) FACTORS.—In developing recommendations
15 under this subsection, the Commission shall
16 consider—

17 (A) the ability to generate sufficient reve-
18 nues from all modes to meet anticipated long-
19 term surface transportation financing needs;

20 (B) the roles of the various levels of gov-
21 ernment and the private sector in meeting fu-
22 ture surface transportation financing needs;

23 (C) administrative costs (including enforce-
24 ment costs) to implement each option;

1 (D) the expected increase in non-taxed
2 fuels and the impact of taxing those fuels;

3 (E) the likely technological advances that
4 could ease implementation of each option;

5 (F) the equity and economic efficiency of
6 each option;

7 (G) the flexibility of different options to
8 allow various pricing alternatives to be imple-
9 mented; and

10 (H) potential compatibility issues with
11 State and local tax mechanisms under each al-
12 ternative.

13 (5) REPORT AND RECOMMENDATIONS.—Not
14 later than September 30, 2007, the Commission
15 shall submit to Congress a final report that
16 contains—

17 (A) a detailed statement of the findings
18 and conclusions of the Commission; and

19 (B) the recommendations of the Commis-
20 sion for such legislation and administrative ac-
21 tions as the Commission considers appropriate.

22 (d) POWERS.—

23 (1) HEARINGS.—The Commission may hold
24 such hearings, meet and act at such times and
25 places, take such testimony, and receive such evi-

1 dence as the Commission considers advisable to
2 carry out this section.

3 (2) INFORMATION FROM FEDERAL AGENCIES.—

4 (A) IN GENERAL.—The Commission may
5 secure directly from a Federal agency such in-
6 formation as the Commission considers nec-
7 essary to carry out this section.

8 (B) PROVISION OF INFORMATION.—On re-
9 quest of the Chairperson of the Commission,
10 the head of the agency shall provide the infor-
11 mation to the Commission.

12 (3) POSTAL SERVICES.—The Commission may
13 use the United States mails in the same manner and
14 under the same conditions as other agencies of the
15 Federal Government.

16 (4) DONATIONS.—The Commission may accept,
17 use, and dispose of donations of services or property.

18 (e) COMMISSION PERSONNEL MATTERS.—

19 (1) MEMBERS.—A member of the Commission
20 shall serve without pay but shall be allowed travel
21 expenses, including per diem in lieu of subsistence,
22 at rates authorized for an employee of an agency
23 under subchapter I of chapter 57 of title 5, United
24 States Code, while away from the home or regular

1 place of business of the member in the performance
2 of the duties of the Commission.

3 (2) CONTRACTOR.—The Commission may con-
4 tract with an appropriate organization, agency, or
5 entity to conduct the study required under this sec-
6 tion, under the strategic guidance of the Commis-
7 sion.

8 (3) ADMINISTRATIVE SUPPORT.—On the re-
9 quest of the Commission, the Administrator of the
10 Federal Highway Administration shall provide to the
11 Commission, on a reimbursable basis, the adminis-
12 trative support and services necessary for the Com-
13 mission to carry out the duties of the Commission
14 under this section.

15 (4) DETAIL OF DEPARTMENT PERSONNEL.—

16 (A) IN GENERAL.—On the request of the
17 Commission, the Secretary may detail, on a re-
18 imburseable basis, any of the personnel of the
19 Department to the Commission to assist the
20 Commission in carrying out the duties of the
21 Commission under this section.

22 (B) CIVIL SERVICE STATUS.—The detail of
23 the employee shall be without interruption or
24 loss of civil service status or privilege.

1 (5) COOPERATION.—The staff of the Secretary
2 shall cooperate with the Commission in the study re-
3 quired under this section, including providing such
4 nonconfidential data and information as are nec-
5 essary to conduct the study.

6 (f) RELATIONSHIP TO OTHER LAWS.—

7 (1) IN GENERAL.—Except as provided in para-
8 graphs (2) and (3), funds made available to carry
9 out this section shall be available for obligation in
10 the same manner as if the funds were apportioned
11 under chapter 1 of title 23, United States Code.

12 (2) FEDERAL SHARE.—The Federal share of
13 the cost of the study and the Commission under this
14 section shall be 100 percent.

15 (3) AVAILABILITY.—Funds made available to
16 carry out this section shall remain available until ex-
17 pended.

18 (g) AUTHORIZATION OF APPROPRIATIONS.—There is
19 authorized to be appropriated from the Highway Trust
20 Fund (other than the Mass Transit Account) to carry out
21 this section \$3,000,000 for fiscal year 2004.

22 (h) TERMINATION.—

23 (1) IN GENERAL.—The Commission shall termi-
24 nate on the date that is 180 days after the date on

1 which the Commission submits the report of the
2 Commission under subsection (c)(5).

3 (2) RECORDS.—Not later than the termination
4 date for the Commission, all records and papers of
5 the Commission shall be delivered to the Archivist of
6 the United States for deposit in the National Ar-
7 chives.

8 **SEC. 1306. STATE INFRASTRUCTURE BANKS.**

9 Section 1511(b)(1)(A) of the Transportation Equity
10 Act for the 21st Century (23 U.S.C. 181 note; 112 Stat.
11 251) is amended by striking “Missouri,” and all that fol-
12 lows through “for the establishment” and inserting “Mis-
13 souri, Rhode Island, Texas, and any other State that seeks
14 such an agreement for the establishment”.

15 **SEC. 1307. PUBLIC-PRIVATE PARTNERSHIPS PILOT PRO-**
16 **GRAM.**

17 Section 109(e) of title 23, United States Code, is
18 amended by adding at the end the following:

19 “(3) PUBLIC-PRIVATE PARTNERSHIPS PILOT
20 PROGRAM.—

21 “(A) IN GENERAL.—The Secretary may
22 undertake a pilot program to demonstrate the
23 advantages of public-private partnerships for
24 critical capital development projects, including

1 highway, bridge, and freight intermodal con-
 2 nector projects authorized under this title.

3 “(B) PROJECTS.—In carrying out the pro-
 4 gram, the Secretary shall—

5 “(i) select not less than 10 qualified
 6 public-private partnership projects that are
 7 authorized under applicable State and local
 8 laws; and

9 “(ii) use funds made available to
 10 carry out the program to provide to spon-
 11 sors of the projects assistance for develop-
 12 ment phase activities described in section
 13 181(1)(A), to enhance project delivery and
 14 reduce overall costs.”.

15 **SEC. 1308. WAGERING.**

16 (a) IN GENERAL.—Chapter 35 of the Internal Rev-
 17 enue Code of 1986 is repealed.

18 (b) CONFORMING AMENDMENTS.—

19 (1) Section 4901 of the Internal Revenue Code
 20 is amended to read as follows:

21 **“SEC. 4901. PAYMENT OF TAX.**

22 “All special taxes shall be imposed as of on the first
 23 day of July in each year, or on commencing any trade
 24 or business on which such tax is imposed. In the former
 25 case the tax shall be reckoned for 1 year, and in the latter

1 case it shall be reckoned proportionately, from the first
2 day of the month in which the liability to a special tax
3 commenced, to and including the 30th day of June fol-
4 lowing.”.

5 (2) Section 4903 of such Code is amended by
6 striking “, other than the tax imposed by section
7 4411,”.

8 (3) Section 4905 of such Code is amended to
9 read as follows:

10 **“SEC. 4905. LIABILITY IN CASE OF DEATH OR CHANGE OF**
11 **LOCATION.**

12 “When any person who has paid the special tax for
13 any trade or business dies, his spouse or child, or execu-
14 tors or administrators or other legal representatives, may
15 occupy the house or premises, and in like manner carry
16 on, for the residue of the term for which the tax is paid,
17 the same trade or business as the deceased before carried
18 on, in the same house and upon the same premises, with-
19 out the payment of any additional tax. When any person
20 removes from the house or premises for which any trade
21 or business was taxed to any other place, he may carry
22 on the trade or business specified in the register kept in
23 the office of the official in charge of the internal revenue
24 district at the place to which he removes, without the pay-
25 ment of any additional tax: *Provided*, That all cases of

1 death, change, or removal, as aforesaid, with the name of
2 the successor to any person deceased, or of the person
3 making such change or removal, shall be registered with
4 the Secretary, under regulations to be prescribed by the
5 Secretary.”.

6 (4) Section 4907 of such Code is amended by
7 striking “, except the tax imposed by section 4411,”.

8 (5) Section 6103(i)(8)(A) of such Code is
9 amended—

10 (A) by striking “, except to the extent au-
11 thorized by subsection (f) or (p)(6), disclose to
12 any person, other than another officer or em-
13 ployee of such office whose official duties re-
14 quire such disclosure, any return or return in-
15 formation described in section 4424(a) in a
16 form which can be associated with, or otherwise
17 identify, directly or indirectly, a particular tax-
18 payer, nor shall such officer or employee dis-
19 close any other” and inserting “disclose any”,
20 and

21 (B) by striking “such other officer” and
22 inserting “such officer”.

23 (6) Section 6103(o) of such Code is amended to
24 read as follows:

1 “(o) DISCLOSURE OF RETURNS AND RETURN INFOR-
2 MATION WITH RESPECT TO TAXES IMPOSED BY SUB-
3 TITLE E.—Returns and return information with respect
4 to taxes imposed by subtitle E (relating to taxes on alco-
5 hol, tobacco, and firearms) shall be open to inspection by
6 or disclosure to officers and employees of a Federal agency
7 whose official duties require such inspection or disclo-
8 sure.”.

9 (7)(A) Subchapter B of chapter 65 of such
10 Code is amended by striking section 6419 (relating
11 to excise tax on wagering).

12 (B) The table of section of subchapter B of
13 chapter 65 of such Code is amended by striking the
14 item relating to section 6419.

15 (8) Section 6806 of such Code is amended by
16 striking “under subchapter B of chapter 35, under
17 subchapter B of chapter 36,” and inserting “under
18 subchapter B of chapter 36”.

19 (9) Section 7012 of such Code is amended by
20 striking paragraph (2) and by redesignating para-
21 graphs (3), (4), and (5) as paragraphs (2), (3), and
22 (4), respectively.

23 (10)(A) Subchapter B of chapter 75 of such
24 Code is amended by striking section 7262 (relating

1 to violation of occupational tax laws relating to wa-
2 gering-failure to pay special tax).

3 (B) The table of sections of subchapter B of
4 chapter 75 of such Code is amended by striking the
5 item relating to section 7262.

6 (11) Section 7272 of such Code, as amended by
7 section 5244 of this Act, is amended to read as fol-
8 lows:

9 **“SEC. 7272. PENALTY FOR FAILURE TO REGISTER.**

10 “Any person (other than persons required to register
11 under subtitle E, or persons engaging in a trade or busi-
12 ness on which a special tax is imposed by such subtitle)
13 who fails to register with the Secretary as required by this
14 title or by regulations issued thereunder shall be liable to
15 a penalty of \$50 (\$10,000 in the case of a failure to reg-
16 ister under section 4101).”.

17 (12) Section 7613(a) is amended by striking
18 “or other data in the case of” and all that follows
19 and inserting “or other data in the case of alcohol,
20 tobacco, and firearms taxes, see subtitle E.”.

21 (13) The table of chapters of subtitle D of such
22 Code is amended by striking the item relating to
23 chapter 35.

24 (c) EFFECTIVE DATE.—

1 (1) IN GENERAL.—Except as provided in para-
2 graph (2), the amendments made by this section
3 shall apply to wagers placed after the date of the en-
4 actment of this Act.

5 (2) SPECIAL TAXES.—In the case of amend-
6 ments made by this section relating to special taxes
7 imposed by subchapter B of chapter 35, the amend-
8 ments made by this section shall take effect on July
9 1, 2004.

10 **Subtitle D—Safety**

11 **SEC. 1401. HIGHWAY SAFETY IMPROVEMENT PROGRAM.**

12 (a) SAFETY IMPROVEMENT.—

13 (1) IN GENERAL.—Section 148 of title 23,
14 United States Code, is amended to read as follows:

15 **“§ 148. Highway safety improvement program**

16 “(a) DEFINITIONS.—In this section:

17 “(1) HIGHWAY SAFETY IMPROVEMENT PRO-
18 GRAM.—The term ‘highway safety improvement pro-
19 gram’ means the program carried out under this sec-
20 tion.

21 “(2) HIGHWAY SAFETY IMPROVEMENT
22 PROJECT.—

23 “(A) IN GENERAL.—The term ‘highway
24 safety improvement project’ means a project de-

1 scribed in the State strategic highway safety
2 plan that—

3 “(i) corrects or improves a hazardous
4 road location or feature; or

5 “(ii) addresses a highway safety prob-
6 lem.

7 “(B) INCLUSIONS.—The term ‘highway
8 safety improvement project’ includes a project
9 for—

10 “(i) an intersection safety improve-
11 ment;

12 “(ii) pavement and shoulder widening
13 (including addition of a passing lane to
14 remedy an unsafe condition);

15 “(iii) installation of rumble strips or
16 another warning device, if the rumble
17 strips or other warning devices do not ad-
18 versely affect the safety or mobility of
19 bicyclists and pedestrians;

20 “(iv) installation of a skid-resistant
21 surface at an intersection or other location
22 with a high frequency of accidents;

23 “(v) an improvement for pedestrian or
24 bicyclist safety;

1 “(vi)(I) construction of any project for
2 the elimination of hazards at a railway-
3 highway crossing that is eligible for fund-
4 ing under section 130, including the sepa-
5 ration or protection of grades at railway-
6 highway crossings;

7 “(II) construction of a railway-high-
8 way crossing safety feature; or

9 “(III) the conduct of a model traffic
10 enforcement activity at a railway-highway
11 crossing;

12 “(vii) construction of a traffic calming
13 feature;

14 “(viii) elimination of a roadside obsta-
15 cle;

16 “(ix) improvement of highway signage
17 and pavement markings;

18 “(x) installation of a priority control
19 system for emergency vehicles at signalized
20 intersections;

21 “(xi) installation of a traffic control or
22 other warning device at a location with
23 high accident potential;

24 “(xii) safety-conscious planning;

1 “(xiii) improvement in the collection
2 and analysis of crash data;

3 “(xiv) planning, integrated, interoper-
4 able emergency communications, equip-
5 ment, operational activities, or traffic en-
6 forcement activities (including police as-
7 sistance) relating to workzone safety;

8 “(xv) installation of guardrails, bar-
9 riers (including barriers between construc-
10 tion work zones and traffic lanes for the
11 safety of motorists and workers), and
12 crash attenuators;

13 “(xvi) the addition or retrofitting of
14 structures or other measures to eliminate
15 or reduce accidents involving vehicles and
16 wildlife; or

17 “(xvii) installation and maintenance
18 of signs (including fluorescent, yellow-
19 green signs) at pedestrian-bicycle crossings
20 and in school zones.

21 “(3) SAFETY PROJECT UNDER ANY OTHER SEC-
22 TION.—

23 “(A) IN GENERAL.—The term ‘safety
24 project under any other section’ means a

1 project carried out for the purpose of safety
 2 under any other section of this title.

3 “(B) INCLUSION.—The term ‘safety
 4 project under any other section’ includes a
 5 project to—

6 “(i) promote the awareness of the
 7 public and educate the public concerning
 8 highway safety matters; or

9 “(ii) enforce highway safety laws.

10 “(4) STATE HIGHWAY SAFETY IMPROVEMENT
 11 PROGRAM.—The term ‘State highway safety im-
 12 provement program’ means projects or strategies in-
 13 cluded in the State strategic highway safety plan
 14 carried out as part of the State transportation im-
 15 provement program under section 135(f).

16 “(5) STATE STRATEGIC HIGHWAY SAFETY
 17 PLAN.—The term ‘State strategic highway safety
 18 plan’ means a plan developed by the State transpor-
 19 tation department that—

20 “(A) is developed after consultation with—

21 “(i) a highway safety representative of
 22 the Governor of the State;

23 “(ii) regional transportation planning
 24 organizations and metropolitan planning
 25 organizations, if any;

1 “(iii) representatives of major modes
2 of transportation;

3 “(iv) State and local traffic enforce-
4 ment officials;

5 “(v) persons responsible for admin-
6 istering section 130 at the State level;

7 “(vi) representatives conducting Oper-
8 ation Lifesaver;

9 “(vii) representatives conducting a
10 motor carrier safety program under section
11 31104 or 31107 of title 49;

12 “(viii) motor vehicle administration
13 agencies; and

14 “(ix) other major State and local safe-
15 ty stakeholders;

16 “(B) analyzes and makes effective use of
17 State, regional, or local crash data;

18 “(C) addresses engineering, management,
19 operation, education, enforcement, and emer-
20 gency services elements (including integrated,
21 interoperable emergency communications) of
22 highway safety as key factors in evaluating
23 highway projects;

24 “(D) considers safety needs of, and high-
25 fatality segments of, public roads;

1 “(E) considers the results of State, re-
2 gional, or local transportation and highway
3 safety planning processes;

4 “(F) describes a program of projects or
5 strategies to reduce or eliminate safety hazards;

6 “(G) is approved by the Governor of the
7 State or a responsible State agency; and

8 “(H) is consistent with the requirements of
9 section 135(f).

10 “(b) PROGRAM.—

11 “(1) IN GENERAL.—The Secretary shall carry
12 out a highway safety improvement program.

13 “(2) PURPOSE.—The purpose of the highway
14 safety improvement program shall be to achieve a
15 significant reduction in traffic fatalities and serious
16 injuries on public roads.

17 “(c) ELIGIBILITY.—

18 “(1) IN GENERAL.—To obligate funds appor-
19 tioned under section 104(b)(5) to carry out this sec-
20 tion, a State shall have in effect a State highway
21 safety improvement program under which the
22 State—

23 “(A) develops and implements a State
24 strategic highway safety plan that identifies and

1 analyzes highway safety problems and opportu-
2 nities as provided in paragraph (2);

3 “(B) produces a program of projects or
4 strategies to reduce identified safety problems;

5 “(C) evaluates the plan on a regular basis
6 to ensure the accuracy of the data and priority
7 of proposed improvements; and

8 “(D) submits to the Secretary an annual
9 report that—

10 “(i) describes, in a clearly understand-
11 able fashion, not less than 5 percent of lo-
12 cations determined by the State, using cri-
13 teria established in accordance with para-
14 graph (2)(B)(ii), as exhibiting the most se-
15 vere safety needs; and

16 “(ii) contains an assessment of—

17 “(I) potential remedies to haz-
18 ardous locations identified;

19 “(II) estimated costs associated
20 with those remedies; and

21 “(III) impediments to implemen-
22 tation other than cost associated with
23 those remedies.

24 “(2) IDENTIFICATION AND ANALYSIS OF HIGH-
25 WAY SAFETY PROBLEMS AND OPPORTUNITIES.—As

1 part of the State strategic highway safety plan, a
2 State shall—

3 “(A) have in place a crash data system
4 with the ability to perform safety problem iden-
5 tification and countermeasure analysis;

6 “(B) based on the analysis required by
7 subparagraph (A)—

8 “(i) identify hazardous locations, sec-
9 tions, and elements (including roadside ob-
10 stacles, railway-highway crossing needs,
11 and unmarked or poorly marked roads)
12 that constitute a danger to motorists,
13 bicyclists, pedestrians, and other highway
14 users; and

15 “(ii) using such criteria as the State
16 determines to be appropriate, establish the
17 relative severity of those locations, in terms
18 of accidents, injuries, deaths, traffic vol-
19 ume levels, and other relevant data;

20 “(C) adopt strategic and performance-
21 based goals that—

22 “(i) address traffic safety, including
23 behavioral and infrastructure problems and
24 opportunities on all public roads;

1 “(ii) focus resources on areas of
2 greatest need; and

3 “(iii) are coordinated with other State
4 highway safety programs;

5 “(D) advance the capabilities of the State
6 for traffic records data collection, analysis, and
7 integration with other sources of safety data
8 (such as road inventories) in a manner that—

9 “(i) complements the State highway
10 safety program under chapter 4 and the
11 commercial vehicle safety plan under sec-
12 tion 31102 of title 49;

13 “(ii) includes all public roads;

14 “(iii) identifies hazardous locations,
15 sections, and elements on public roads that
16 constitute a danger to motorists, bicyclists,
17 pedestrians, and other highway users; and

18 “(iv) includes a means of identifying
19 the relative severity of hazardous locations
20 described in clause (iii) in terms of acci-
21 dents, injuries, deaths, and traffic volume
22 levels;

23 “(E)(i) determine priorities for the correc-
24 tion of hazardous road locations, sections, and
25 elements (including railway-highway crossing

1 improvements), as identified through crash data
2 analysis;

3 “(ii) identify opportunities for preventing
4 the development of such hazardous conditions;
5 and

6 “(iii) establish and implement a schedule
7 of highway safety improvement projects for haz-
8 ard correction and hazard prevention; and

9 “(F)(i) establish an evaluation process to
10 analyze and assess results achieved by highway
11 safety improvement projects carried out in ac-
12 cordance with procedures and criteria estab-
13 lished by this section; and

14 “(ii) use the information obtained under
15 clause (i) in setting priorities for highway safety
16 improvement projects.

17 “(d) ELIGIBLE PROJECTS.—

18 “(1) IN GENERAL.—A State may obligate funds
19 apportioned to the State under section 104(b)(5) to
20 carry out—

21 “(A) any highway safety improvement
22 project on any public road or publicly owned bi-
23 cycle or pedestrian pathway or trail; or

24 “(B) as provided in subsection (e), for
25 other safety projects.

1 “(2) USE OF OTHER FUNDING FOR SAFETY.—

2 “(A) EFFECT OF SECTION.—Nothing in
3 this section prohibits the use of funds made
4 available under other provisions of this title for
5 highway safety improvement projects.

6 “(B) USE OF OTHER FUNDS.—States are
7 encouraged to address the full scope of their
8 safety needs and opportunities by using funds
9 made available under other provisions of this
10 title (except a provision that specifically pro-
11 hibits that use).

12 “(e) FLEXIBLE FUNDING FOR STATES WITH A STRA-
13 TEGIC HIGHWAY SAFETY PLAN.—

14 “(1) IN GENERAL.—To further the implementa-
15 tion of a State strategic highway safety plan, a State
16 may use up to 25 percent of the amount of funds
17 made available under this section for a fiscal year to
18 carry out safety projects under any other section as
19 provided in the State strategic highway safety plan.

20 “(2) OTHER TRANSPORTATION AND HIGHWAY
21 SAFETY PLANS.—Nothing in this subsection requires
22 a State to revise any State process, plan, or program
23 in effect on the date of enactment of this section.

24 “(f) REPORTS.—

1 “(1) IN GENERAL.—A State shall submit to the
2 Secretary a report that—

3 “(A) describes progress being made to im-
4 plement highway safety improvement projects
5 under this section;

6 “(B) assesses the effectiveness of those im-
7 provements; and

8 “(C) describes the extent to which the im-
9 provements funded under this section contribute
10 to the goals of—

11 “(i) reducing the number of fatalities
12 on roadways;

13 “(ii) reducing the number of roadway-
14 related injuries;

15 “(iii) reducing the occurrences of
16 roadway-related crashes;

17 “(iv) mitigating the consequences of
18 roadway-related crashes; and

19 “(v) reducing the occurrences of road-
20 way-railroad grade crossing crashes.

21 “(2) CONTENTS; SCHEDULE.—The Secretary
22 shall establish the content and schedule for a report
23 under paragraph (1).

1 “(3) TRANSPARENCY.—The Secretary shall
2 make reports under subsection (c)(1)(D) available to
3 the public through—

4 “(A) the Internet site of the Department;
5 and

6 “(B) such other means as the Secretary
7 determines to be appropriate.

8 “(4) DISCOVERY AND ADMISSION INTO EVI-
9 DENCE OF CERTAIN REPORTS, SURVEYS, AND INFOR-
10 MATION.—Notwithstanding any other provision of
11 law, reports, surveys, schedules, lists, or data com-
12 piled or collected for any purpose directly relating to
13 paragraph (1) or subsection (c)(1)(D), or published
14 by the Secretary in accordance with paragraph (3),
15 shall not be subject to discovery or admitted into
16 evidence in a Federal or State court proceeding or
17 considered for other purposes in any action for dam-
18 ages arising from any occurrence at a location iden-
19 tified or addressed in such reports, surveys, sched-
20 ules, lists, or other data.

21 “(g) FEDERAL SHARE OF HIGHWAY SAFETY IM-
22 PROVEMENT PROJECTS.—Except as provided in sections
23 120 and 130, the Federal share of the cost of a highway
24 safety improvement project carried out with funds made
25 available under this section shall be 90 percent.

1 “(h) FUNDS FOR BICYCLE AND PEDESTRIAN SAFE-
 2 TY.—A State shall allocate for bicycle and pedestrian im-
 3 provements in the State a percentage of the funds remain-
 4 ing after implementation of sections 130(e) and 150, in
 5 an amount that is equal to or greater than the percentage
 6 of all fatal crashes in the States involving bicyclists and
 7 pedestrians.

8 “(i) ROADWAY SAFETY IMPROVEMENTS FOR OLDER
 9 DRIVERS AND PEDESTRIANS.—For each of fiscal years
 10 2004 through 2009, \$25,000,000 is authorized to be ap-
 11 propriated out of the Highway Trust Fund (other than
 12 the Mass Transit Account) for projects in all States to
 13 improve traffic signs and pavement markings in a manner
 14 consistent with the recommendations included in the pub-
 15 lication of the Federal Highway Administration entitled
 16 ‘Guidelines and Recommendations to Accommodate Older
 17 Drivers and Pedestrians (FHWA-RD-01-103)’ and dated
 18 October 2001.”.

19 (2) ALLOCATIONS OF APPORTIONED FUNDS.—
 20 Section 133(d) of title 23, United States Code, is
 21 amended—

22 (A) by striking paragraph (1);

23 (B) by redesignating paragraphs (2)
 24 through (5) as paragraphs (1) through (4), re-
 25 spectively;

1 (C) in paragraph (2) (as redesignated by
2 subparagraph (B))—

3 (i) in the first sentence of subpara-
4 graph (A)—

5 (I) by striking “subparagraphs
6 (C) and (D)” and inserting “subpara-
7 graph (C)”; and

8 (II) by striking “80 percent” and
9 inserting “90 percent”;

10 (ii) in subparagraph (B), by striking
11 “tobe” and inserting “to be”;

12 (iii) by striking subparagraph (C);

13 (iv) by redesignating subparagraphs
14 (D) and (E) as subparagraphs (C) and
15 (D), respectively; and

16 (v) in subparagraph (C) (as redesign-
17 ated by clause (iv)), by adding a period at
18 the end; and

19 (D) in paragraph (4)(A) (as redesignated
20 by subparagraph (B)), by striking “paragraph
21 (2)” and inserting “paragraph (1)”.

22 (3) ADMINISTRATION.—Section 133(e) of title
23 23, United States Code, is amended in each of para-
24 graphs (3)(B)(i), (5)(A), and (5)(B) of subsection

1 (e), by striking “(d)(2)” each place it appears and
 2 inserting “(d)(1)”.

3 (4) CONFORMING AMENDMENTS.—

4 (A) The analysis for chapter 1 of title 23,
 5 United States Code, is amended by striking the
 6 item relating to section 148 and inserting the
 7 following:

“148. Highway safety improvement program.”.

8 (B) Section 104(g) of title 23, United
 9 States Code, is amended in the first sentence by
 10 striking “sections 130, 144, and 152 of this
 11 title” and inserting “sections 130 and 144”.

12 (C) Section 126 of title 23, United States
 13 Code, is amended—

14 (i) in subsection (a), by inserting
 15 “under” after “State’s apportionment”;
 16 and

17 (ii) in subsection (b)—

18 (I) in the first sentence, by strik-
 19 ing “the last sentence of section
 20 133(d)(1) or to section 104(f) or to
 21 section 133(d)(3)” and inserting “sec-
 22 tion 104(f) or 133(d)(2)”; and

23 (II) in the second sentence, by
 24 striking “or 133(d)(2)”.

1 (D) Sections 154, 164, and 409 of title 23,
2 United States Code, are amended by striking
3 “152” each place it appears and inserting
4 “148”.

5 (b) APPORTIONMENT OF HIGHWAY SAFETY IM-
6 PROVEDMENT PROGRAM FUNDS.—Section 104(b) of title
7 23, United States Code, is amended—

8 (1) in the matter preceding paragraph (1), by
9 inserting after “Improvement program,” the fol-
10 lowing: “the highway safety improvement program,”;
11 and

12 (2) by adding at the end the following:

13 “(5) HIGHWAY SAFETY IMPROVEMENT PRO-
14 GRAM.—

15 “(A) IN GENERAL.—For the highway safe-
16 ty improvement program, in accordance with
17 the following formula:

18 “(i) 25 percent of the apportionments
19 in the ratio that—

20 “(I) the total lane miles of Fed-
21 eral-aid highways in each State; bears
22 to

23 “(II) the total lane miles of Fed-
24 eral-aid highways in all States.

1 “(ii) 40 percent of the apportionments
2 in the ratio that—

3 “(I) the total vehicle miles trav-
4 eled on lanes on Federal-aid highways
5 in each State; bears to

6 “(II) the total vehicle miles trav-
7 eled on lanes on Federal-aid highways
8 in all States.

9 “(iii) 35 percent of the apporportion-
10 ments in the ratio that—

11 “(I) the estimated tax payments
12 attributable to highway users in each
13 State paid into the Highway Trust
14 Fund (other than the Mass Transit
15 Account) in the latest fiscal year for
16 which data are available; bears to

17 “(II) the estimated tax payments
18 attributable to highway users in all
19 States paid into the Highway Trust
20 Fund (other than the Mass Transit
21 Account) in the latest fiscal year for
22 which data are available.

23 “(B) MINIMUM APPORTIONMENT.—Not-
24 withstanding subparagraph (A), each State

1 shall receive a minimum of $\frac{1}{2}$ of 1 percent of
2 the funds apportioned under this paragraph.”.

3 (c) ELIMINATION OF HAZARDS RELATING TO RAIL-
4 WAY-HIGHWAY CROSSINGS.—

5 (1) FUNDS FOR RAILWAY-HIGHWAY CROSS-
6 INGS.—Section 130(e) of title 23, United States
7 Code, is amended by inserting before “At least” the
8 following: “For each fiscal year, at least
9 \$200,000,000 of the funds authorized and expended
10 under section 148 shall be available for the elimi-
11 nation of hazards and the installation of protective
12 devices at railway-highway crossings.”.

13 (2) BIENNIAL REPORTS TO CONGRESS.—Sec-
14 tion 130(g) of title 23, United States Code, is
15 amended in the third sentence—

16 (A) by inserting “and the Committee on
17 Commerce, Science, and Transportation,” after
18 “Public Works”; and

19 (B) by striking “not later than April 1 of
20 each year” and inserting “every other year”.

21 (3) EXPENDITURE OF FUNDS.—Section 130 of
22 title 23, United States Code, is amended by adding
23 at the end the following:

24 “(k) EXPENDITURE OF FUNDS.—Funds made avail-
25 able to carry out this section shall be—

1 “(1) available for expenditure on compilation
2 and analysis of data in support of activities carried
3 out under subsection (g); and

4 “(2) apportioned in accordance with section
5 104(b)(5).”.

6 (d) TRANSITION.—

7 (1) IMPLEMENTATION.—Except as provided in
8 paragraph (2), the Secretary shall approve obliga-
9 tions of funds apportioned under section 104(b)(5)
10 of title 23, United States Code (as added by sub-
11 section (b)) to carry out section 148 of that title,
12 only if, not later than October 1 of the second fiscal
13 year after the date of enactment of this Act, a State
14 has developed and implemented a State strategic
15 highway safety plan as required under section
16 148(c) of that title.

17 (2) INTERIM PERIOD.—

18 (A) IN GENERAL.—Before October 1 of the
19 second fiscal year after the date of enactment
20 of this Act and until the date on which a State
21 develops and implements a State strategic high-
22 way safety plan, the Secretary shall apportion
23 funds to a State for the highway safety im-
24 provement program and the State may obligate
25 funds apportioned to the State for the highway

1 safety improvement program under section 148
2 for projects that were eligible for funding under
3 sections 130 and 152 of that title, as in effect
4 on the day before the date of enactment of this
5 Act.

6 (B) NO STRATEGIC HIGHWAY SAFETY
7 PLAN.—If a State has not developed a strategic
8 highway safety plan by October 1 of the second
9 fiscal year after the date of enactment of this
10 Act, but demonstrates to the satisfaction of the
11 Secretary that progress is being made toward
12 developing and implementing such a plan, the
13 Secretary shall continue to apportion funds for
14 1 additional fiscal year for the highway safety
15 improvement program under section 148 of title
16 23, United States Code, to the State, and the
17 State may continue to obligate funds appor-
18 tioned to the State under this section for
19 projects that were eligible for funding under
20 sections 130 and 152 of that title, as in effect
21 on the day before the date of enactment of this
22 Act.

23 (C) PENALTY.—If a State has not adopted
24 a strategic highway safety plan by the date that
25 is 2 years after the date of enactment of this

1 Act, funds made available to the State under
2 section 1101(6) shall be redistributed to other
3 States in accordance with section 104(b)(3) of
4 title 23, United States Code.

5 **SEC. 1402. OPERATION LIFESAVER.**

6 Section 104(d)(1) of title 23, United States Code, is
7 amended—

8 (1) by striking “subsection (b)(3)” and insert-
9 ing “subsection (b)(5)”; and

10 (2) by striking “\$500,000” and inserting
11 “\$600,000”.

12 **SEC. 1403. LICENSE SUSPENSION.**

13 Section 164(a) of title 23, United States Code, is
14 amended by striking paragraph (3) and inserting the fol-
15 lowing:

16 “(3) LICENSE SUSPENSION.—The term ‘license
17 suspension’ means—

18 “(A) the suspension of all driving privi-
19 leges of an individual for the duration of the
20 suspension period; or

21 “(B) a combination of suspension of all
22 driving privileges of an individual for the first
23 90 days of the suspension period, followed by
24 reinstatement of limited driving privileges re-
25 quiring the individual to operate only motor ve-

1 hicles equipped with an ignition interlock sys-
 2 tem or other device approved by the Secretary
 3 during the remainder of the suspension pe-
 4 riod.”.

5 **SEC. 1404. BUS AXLE WEIGHT EXEMPTION.**

6 Section 1023 of the Intermodal Surface Transpor-
 7 tation Efficiency Act of 1991 (23 U.S.C. 127 note; 105
 8 Stat. 1951) is amended by striking subsection (h) and in-
 9 serting the following:

10 “(h) OVER-THE-ROAD BUS AND PUBLIC TRANSIT
 11 VEHICLE EXEMPTION.—

12 “(1) IN GENERAL.—The second sentence of sec-
 13 tion 127 of title 23, United States Code (relating to
 14 axle weight limitations for vehicles using the Dwight
 15 D. Eisenhower System of Interstate and Defense
 16 Highways), shall not apply to—

17 “(A) any over-the-road bus (as defined in
 18 section 301 of the Americans With Disabilities
 19 Act of 1990 (42 U.S.C. 12181)); or

20 “(B) any vehicle that is regularly and ex-
 21 clusively used as an intrastate public agency
 22 transit passenger bus.

23 “(2) STATE ACTION.—No State or political sub-
 24 division of a State, or any political authority of 2 or
 25 more States, shall impose any axle weight limitation

1 on any vehicle described in paragraph (1) in any
 2 case in which such a vehicle is using the Dwight D.
 3 Eisenhower System of Interstate and Defense High-
 4 ways.”.

5 **SEC. 1405. SAFE ROUTES TO SCHOOLS PROGRAM.**

6 (a) IN GENERAL.—Subchapter I of chapter I of title
 7 23, United States Code, is amended by inserting after sec-
 8 tion 149 the following:

9 **“§ 150. Safe routes to schools program**

10 “(a) DEFINITIONS.—In this section:

11 “(1) PRIMARY AND SECONDARY SCHOOL.—The
 12 term ‘primary and secondary school’ means a school
 13 that provides education to children in any of grades
 14 kindergarten through 12.

15 “(2) PROGRAM.—The term ‘program’ means
 16 the safe routes to schools program established under
 17 subsection (b).

18 “(3) VICINITY OF A SCHOOL.—The term ‘vicin-
 19 ity of a school’ means the area within 2 miles of a
 20 primary or secondary school.

21 “(b) ESTABLISHMENT.—The Secretary shall estab-
 22 lish and carry out a safe routes to school program for the
 23 benefit of children in primary and secondary schools in
 24 accordance with this section.

1 “(c) PURPOSES.—The purposes of the program shall
2 be—

3 “(1) to enable and to encourage children to
4 walk and bicycle to school;

5 “(2) to encourage a healthy and active lifestyle
6 by making walking and bicycling to school safer and
7 more appealing transportation alternatives; and

8 “(3) to facilitate the planning, development,
9 and implementation of projects and activities that
10 will improve safety in the vicinity of schools.

11 “(d) ELIGIBLE RECIPIENTS.—A State shall use
12 amounts apportioned under this section to provide finan-
13 cial assistance to State, regional, and local agencies that
14 demonstrate an ability to meet the requirements of this
15 section.

16 “(e) ELIGIBLE PROJECTS AND ACTIVITIES.—

17 “(1) INFRASTRUCTURE-RELATED PROJECTS.—

18 “(A) IN GENERAL.—Amounts apportioned
19 to a State under this section may be used for
20 the planning, design, and construction of infra-
21 structure-related projects to encourage walking
22 and bicycling to school, including—

23 “(i) sidewalk improvements;

24 “(ii) traffic calming and speed reduc-
25 tion improvements;

1 “(iii) pedestrian and bicycle crossing
2 improvements;

3 “(iv) on-street bicycle facilities;

4 “(v) off-street bicycle and pedestrian
5 facilities;

6 “(vi) secure bicycle parking facilities;

7 “(vii) traffic signal improvements; and

8 “(viii) pedestrian-railroad grade cross-
9 ing improvements.

10 “(B) LOCATION OF PROJECTS.—Infra-
11 structure-related projects under subparagraph
12 (A) may be carried out on—

13 “(i) any public road in the vicinity of
14 a school; or

15 “(ii) any bicycle or pedestrian path-
16 way or trail in the vicinity of a school.

17 “(2) BEHAVIORAL ACTIVITIES.—

18 “(A) IN GENERAL.—In addition to projects
19 described in paragraph (1), amounts appor-
20 tioned to a State under this section may be
21 used for behavioral activities to encourage walk-
22 ing and bicycling to school, including—

23 “(i) public awareness campaigns and
24 outreach to press and community leaders;

1 “(ii) traffic education and enforce-
2 ment in the vicinity of schools; and

3 “(iii) student sessions on bicycle and
4 pedestrian safety, health, and environment.

5 “(B) ALLOCATION.—Of the amounts ap-
6 portioned to a State under this section for a fis-
7 cal year, not less than 10 percent shall be used
8 for behavioral activities under this paragraph.

9 “(f) FUNDING.—

10 “(1) SET ASIDE.—Before apportioning amounts
11 to carry out section 148 for a fiscal year, the Sec-
12 retary shall set aside and use \$70,000,000 to carry
13 out this section.

14 “(2) APPORTIONMENT.—Amounts made avail-
15 able to carry out this section shall be apportioned to
16 States in accordance with section 104(b)(5).

17 “(3) ADMINISTRATION OF AMOUNTS.—Amounts
18 apportioned to a State under this section shall be
19 administered by the State transportation depart-
20 ment.

21 “(4) FEDERAL SHARE.—Except as provided in
22 sections 120 and 130, the Federal share of the cost
23 of a project or activity funded under this section
24 shall be 90 percent.

1 “(5) PERIOD OF AVAILABILITY.—Notwith-
 2 standing section 118(b)(2), amounts apportioned
 3 under this section shall remain available until ex-
 4 pended.”.

5 (b) CONFORMING AMENDMENTS.—The analysis for
 6 subchapter I of chapter 1 of title 23, United States Code
 7 is amended by inserting after the item relating to section
 8 149 the following:

“150. Safe routes to school program.”.

9 **SEC. 1406. PURCHASES OF EQUIPMENT.**

10 (a) IN GENERAL.—Section 152 of title 23, United
 11 States Code is amended to read as follows:

12 **“§ 152. Purchases of equipment**

13 “(a) IN GENERAL.—Subject to subsection (b), a
 14 State carrying out a project under this chapter shall pur-
 15 chase device, tool or other equipment needed for the
 16 project only after completing and providing a written anal-
 17 ysis demonstrating the cost savings associated with pur-
 18 chasing the equipment compared with renting the equip-
 19 ment from a qualified equipment rental provider before
 20 the project commences

21 “(b) APPLICABILITY.—This section shall apply to—

22 “(1) earth moving, road machinery, and mate-
 23 rial handling equipment, or any other item, with a
 24 purchase price in excess of \$75,000; and

1 “(2) aerial work platforms with a purchase
2 price in excess of \$25,000.”.

3 (b) CONFORMING AMENDMENT.—The analysis for
4 subchapter I of chapter 1 of title 23, United States Code,
5 is amended by striking the item relating to section 152
6 and inserting the following:

 “152. Purchases of equipment.”.

7 **SEC. 1407. WORKZONE SAFETY.**

8 Section 358(b) of the National Highway System Des-
9 ignation Act of 1995 (109 Stat. 625) is amended by add-
10 ing at the end the following:

11 “(7) Recommending all federally-assisted
12 projects in excess of \$15,000,000 to enter into con-
13 tracts only with work zone safety services contrac-
14 tors, traffic control contractors, and trench safety
15 and shoring contractors that carry general liability
16 insurance in an amount not less than \$15,000,000.

17 “(8) Recommending federally-assisted projects
18 the costs of which exceed \$15,000,000 to include
19 work zone intelligent transportation systems that
20 are—

21 “(A) provided by a qualified vendor; and

22 “(B) monitored continuously.

23 “(9) Recommending federally-assisted projects
24 to fully fund not less than 5 percent of project costs
25 for work zone safety and temporary traffic control

1 measures, in addition to the cost of the project,
2 which measures shall be provided by a qualified
3 work zone safety or traffic control provider.

4 “(10) Ensuring that any recommendation made
5 under any of paragraphs (7) through (9) provides
6 for an exemption for applicability to a State, with
7 respect to a project or class of projects, to the extent
8 that a State notifies the Secretary in writing that
9 safety is not expected to be adversely affected by
10 nonapplication of the requirement to the project or
11 class of projects.”.

12 **SEC. 1408. WORKER INJURY PREVENTION AND FREE FLOW**
13 **OF VEHICULAR TRAFFIC.**

14 Not later than 1 year after the date of enactment
15 of this Act, the Secretary shall promulgate regulations—

16 (1) to decrease the probability of worker injury;

17 (2) to maintain the free flow of vehicular traffic

18 by requiring workers whose duties place the workers
19 on, or in close proximity to, a Federal-aid highway
20 (as defined in section 101 of title 23, United States
21 Code) to wear high-visibility clothing; and

22 (3) to require such other worker-safety meas-
23 ures for workers described in paragraph (2) as the
24 Secretary determines appropriate.

1 **SEC. 1409. IDENTITY AUTHENTICATION STANDARDS.**

2 (a) IN GENERAL.—Subchapter I of chapter 1 of title
3 23, United States Code (as amended by section 1815(a)),
4 is amended by adding at the end the following:

5 **“§ 178. Identity authentication standards**

6 “(a) DEFINITION OF INFORMATION-BASED IDENTITY
7 AUTHENTICATION.—In this section, the term ‘informa-
8 tion-based identity authentication’ means the determina-
9 tion of the identity of an individual, through the compari-
10 son of information provided by a person, with other infor-
11 mation pertaining to that individual with a system using
12 scoring models and algorithms.

13 “(b) STANDARDS.—Not later than 180 days after the
14 date of enactment of this section, the Secretary, in con-
15 sultation with the Secretary of Homeland Security and the
16 Federal Motor Carrier Safety Administration, shall pro-
17 mulgate regulations establishing minimum standards for
18 State departments of motor vehicles regarding the use of
19 information-based identity authentication to determine the
20 identity of an applicant for a commercial driver’s license,
21 or the renewal, transfer or upgrading, of a commercial
22 driver’s license.

23 “(c) MINIMUM STANDARDS.—The regulations shall,
24 at a minimum, require State departments of motor vehi-
25 cles to implement, and applicants for commercial driver’s
26 licenses, (or the renewal, transfer, or upgrading of com-

1 merical driver’s licenses), to comply with, reasonable pro-
2 cedures for operating an information-based identity au-
3 thentication program before issuing, renewing, transfer-
4 ring, or upgrading a commercial driver’s license.

5 “(d) KEY FACTORS.—In promulgating regulations
6 under this section, the Secretary shall require that an in-
7 formation-based identity authentication program carried
8 out under this section establish processes that—

9 “(1) use multiple sources of matching informa-
10 tion;

11 “(2) enable the measurement of the accuracy of
12 the determination of an applicant’s identity;

13 “(3) support continuous auditing of compliance
14 with applicable laws, policies, and practices gov-
15 erning the collection, use, and distribution of infor-
16 mation in the operation of the program; and

17 “(4) incorporate industry best practices to pro-
18 tect significant privacy interests in the information
19 used in the program and the appropriate safe-
20 guarding of the storage of the information.”.

21 (b) CONFORMING AMENDMENT.—The analysis for
22 subchapter I of chapter I of title 23, United States Code
23 (as amended by section 1815(b)), is amended by adding
24 at the end the following:

“178. Identity authentication standards.”.

1 **SEC. 1410. OPEN CONTAINER REQUIREMENTS.**

2 Section 154 of title 23, United States Code, is
3 amended by striking subsection (c) and inserting the fol-
4 lowing:

5 “(c) **TRANSFER OF FUNDS.**—

6 “(1) **IN GENERAL.**—The Secretary shall with-
7 hold the applicable percentage for the fiscal year of
8 the amount required to be apportioned for Federal-
9 aid highways to any State under each of paragraphs
10 (1), (3), and (4) of section 104(b), if a State has not
11 enacted or is not enforcing a provision described in
12 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 subse- quent fiscal year.	2 percent.

13 “(2) **RESTORATION.**—If (during the 4-year pe-
14 riod beginning on the date the apportionment for
15 any State is reduced in accordance with this sub-
16 section) the Secretary determines that the State has
17 enacted and is enforcing a provision described in
18 subsection (b), the apportionment of the State shall
19 be increased by an amount equal to the amount of
20 the reduction made during the 4-year period.”.

1 **Subtitle E—Environmental**
2 **Planning and Review**
3 **CHAPTER 1—TRANSPORTATION**
4 **PLANNING**

5 **SEC. 1501. INTEGRATION OF NATURAL RESOURCE CON-**
6 **CERNS INTO STATE AND METROPOLITAN**
7 **TRANSPORTATION PLANNING.**

8 (a) METROPOLITAN PLANNING.—Section 134(f) of
9 title 23, United States Code, is amended—

10 (1) in paragraph (1)—

11 (A) in subparagraph (D)—

12 (i) by inserting after “environment”
13 the following: “(including the protection of
14 habitat, water quality, and agricultural and
15 forest land, while minimizing invasive spe-
16 cies)”; and

17 (ii) by inserting before the semicolon
18 the following: “(including minimizing ad-
19 verse health effects from mobile source air
20 pollution and promoting the linkage of the
21 transportation and development goals of
22 the metropolitan area)”; and

23 (B) in subparagraph (G), by inserting
24 “and efficient use” after “preservation”;

1 (2) by redesignating paragraph (2) as para-
2 graph (3); and

3 (3) by inserting after paragraph (1) the fol-
4 lowing:

5 “(2) SELECTION OF FACTORS.—After soliciting
6 and considering any relevant public comments, the
7 metropolitan planning organization shall determine
8 which of the factors described in paragraph (1) are
9 most appropriate for the metropolitan area to con-
10 sider.”.

11 (b) STATEWIDE PLANNING.—Section 135(c) of title
12 23, United States Code, is amended—

13 (1) in paragraph (1)—

14 (A) in subparagraph (D)—

15 (i) by inserting after “environment”
16 the following: “(including the protection of
17 habitat, water quality, and agricultural and
18 forest land, while minimizing invasive spe-
19 cies)”; and

20 (ii) by inserting before the semicolon
21 the following: “(including minimizing ad-
22 verse health effects from mobile source air
23 pollution and promoting the linkage of the
24 transportation and development goals of
25 the State)”; and

1 (B) in subparagraph (G), by inserting
2 “and efficient use” after “preservation”;

3 (2) by redesignating paragraph (2) as para-
4 graph (3); and

5 (3) by inserting after paragraph (1) the fol-
6 lowing:

7 “(2) SELECTION OF PROJECTS AND STRATE-
8 GIES.—After soliciting and considering any relevant
9 public comments, the State shall determine which of
10 the projects and strategies described in paragraph
11 (1) are most appropriate for the State to consider.”.

12 **SEC. 1502. CONSULTATION BETWEEN TRANSPORTATION**
13 **AGENCIES AND RESOURCE AGENCIES IN**
14 **TRANSPORTATION PLANNING.**

15 (a) IN GENERAL.—Section 134(g) of title 23, United
16 States Code, is amended—

17 (1) in paragraph (2)—

18 (A) by redesignating subparagraphs (B)
19 through (D) as subparagraphs (C) through (E),
20 respectively; and

21 (B) by inserting after subparagraph (A)
22 the following:

23 “(B) MITIGATION ACTIVITIES.—

1 “(i) IN GENERAL.—A long-range
2 transportation plan shall include a discus-
3 sion of—

4 “(I) types of potential habitat,
5 hydrological, and environmental miti-
6 gation activities that may assist in
7 compensating for loss of habitat, wet-
8 land, and other environmental func-
9 tions; and

10 “(II) potential areas to carry out
11 these activities, including a discussion
12 of areas that may have the greatest
13 potential to restore and maintain the
14 habitat types and hydrological or envi-
15 ronmental functions affected by the
16 plan.

17 “(ii) CONSULTATION.—The discussion
18 shall be developed in consultation with
19 Federal, State, and tribal wildlife, land
20 management, and regulatory agencies.”;

21 (2) by redesignating paragraphs (4), (5), and
22 (6) as paragraphs (5), (6), and (7), respectively; and

23 (3) by inserting after paragraph (3) the fol-
24 lowing:

25 “(4) CONSULTATION.—

1 “(A) IN GENERAL.—In each metropolitan
2 area, the metropolitan planning organization
3 shall consult, as appropriate, with State and
4 local agencies responsible for land use manage-
5 ment, natural resources, environmental protec-
6 tion, conservation, and historic preservation
7 concerning the development of a long-range
8 transportation plan.

9 “(B) ISSUES.—The consultation shall
10 involve—

11 “(i) comparison of transportation
12 plans with State conservation plans or with
13 maps, if available;

14 “(ii) comparison of transportation
15 plans to inventories of natural or historic
16 resources, if available; or

17 “(iii) consideration of areas where
18 wildlife crossing structures may be needed
19 to ensure connectivity between wildlife
20 habitat linkage areas.”.

21 (b) IMPROVED CONSULTATION DURING STATE
22 TRANSPORTATION PLANNING.—

23 (1) IN GENERAL.—Section 135(e)(2) of title 23,
24 United States Code, is amended by adding at the
25 end the following:

1 “(D) CONSULTATION, COMPARISON, AND
2 CONSIDERATION.—

3 “(i) IN GENERAL.—The long-range
4 transportation plan shall be developed, as
5 appropriate, in consultation with State and
6 local agencies responsible for—

7 “(I) land use management;

8 “(II) natural resources;

9 “(III) environmental protection;

10 “(IV) conservation; and

11 “(V) historic preservation.

12 “(ii) COMPARISON AND CONSIDER-
13 ATION.—Consultation under clause (i)
14 shall involve—

15 “(I) comparison of transportation
16 plans to State conservation plans or
17 maps, if available;

18 “(II) comparison of transpor-
19 tation plans to inventories of natural
20 or historic resources, if available; or

21 “(III) consideration of areas
22 where wildlife crossing structures may
23 be needed to ensure connectivity be-
24 tween wildlife habitat linkage areas.”.

1 (2) ADDITIONAL REQUIREMENTS.—Section
2 135(e) of title 23, United States Code, is amended—

3 (A) by redesignating paragraphs (4) and
4 (5) as paragraphs (6) and (7), respectively; and

5 (B) by inserting after paragraph (3) the
6 following:

7 “(4) MITIGATION ACTIVITIES.—

8 “(A) IN GENERAL.—A long-range trans-
9 portation plan shall include a discussion of—

10 “(i) types of potential habitat,
11 hydrological, and environmental mitigation
12 activities that may assist in compensating
13 for loss of habitat, wetlands, and other en-
14 vironmental functions; and

15 “(ii) potential areas to carry out these
16 activities, including a discussion of areas
17 that may have the greatest potential to re-
18 store and maintain the habitat types and
19 hydrological or environmental functions af-
20 fected by the plan.

21 “(B) CONSULTATION.—The discussion
22 shall be developed in consultation with Federal,
23 State, and tribal wildlife, land management,
24 and regulatory agencies.

1 “(5) TRANSPORTATION STRATEGIES.—A long-
 2 range transportation plan shall identify transpor-
 3 tation strategies necessary to efficiently serve the
 4 mobility needs of people.”.

5 **SEC. 1503. INTEGRATION OF NATURAL RESOURCE CON-**
 6 **CERNS INTO TRANSPORTATION PROJECT**
 7 **PLANNING.**

8 Section 109(c)(2) of title 23, United States Code, is
 9 amended—

10 (1) by striking “consider the results” and in-
 11 sserting “consider—

12 “(A) the results”;

13 (2) by striking the period at the end and insert-
 14 ing a semicolon; and

15 (3) by adding at the end the following:

16 “(B) the publication entitled ‘Flexibility in
 17 Highway Design’ of the Federal Highway Ad-
 18 ministration;

19 “(C) ‘Eight Characteristics of Process to
 20 Yield Excellence and the Seven Qualities of Ex-
 21 cellence in Transportation Design’ developed by
 22 the conference held during 1998 entitled
 23 ‘Thinking Beyond the Pavement National
 24 Workshop on Integrating Highway Develop-
 25 ment with Communities and the Environment

1 while Maintaining Safety and Performance’;
2 and
3 “(D) any other material that the Secretary
4 determines to be appropriate.”.

5 **SEC. 1504. PUBLIC INVOLVEMENT IN TRANSPORTATION**
6 **PLANNING AND PROJECTS.**

7 (a) METROPOLITAN PLANNING.—

8 (1) PARTICIPATION BY INTERESTED PAR-
9 TIES.—Section 134(g)(5) of title 23, United States
10 Code (as redesignated by section 1502(a)(1)), is
11 amended—

12 (A) by striking “Before approving” and in-
13 serting the following:

14 “(A) IN GENERAL.—Before approving”;
15 and

16 (B) by adding at the end the following:

17 “(B) METHODS.—In carrying out subpara-
18 graph (A), the metropolitan planning organiza-
19 tion shall, to the maximum extent practicable—

20 “(i) hold any public meetings at con-
21 venient and accessible locations and times;

22 “(ii) employ visualization techniques
23 to describe plans; and

1 “(iii) make public information avail-
2 able in electronically accessible format and
3 means, such as the World Wide Web.”.

4 (2) PUBLICATION OF LONG-RANGE TRANSPOR-
5 TATION PLANS.—Section 134(g)(6)(i) of title 23,
6 United States Code (as redesignated by section
7 1502(a)(1)), is amended by inserting before the
8 semicolon the following: “, including (to the max-
9 imum extent practicable) in electronically accessible
10 formats and means such as the World Wide Web”.

11 (b) STATEWIDE PLANNING.—

12 (1) PARTICIPATION BY INTERESTED PAR-
13 TIES.—Section 135(e)(3) of title 23, United States
14 Code, is amended by striking subparagraph (B) and
15 inserting the following:

16 “(B) METHODS.—In carrying out subpara-
17 graph (A), the State shall, to the maximum ex-
18 tent practicable—

19 “(i) hold any public meetings at con-
20 venient and accessible locations and times;

21 “(ii) employ visualization techniques
22 to describe plans; and

23 “(iii) make public information avail-
24 able in electronically accessible format and
25 means, such as the World Wide Web.”.

1 (2) PUBLICATION OF LONG-RANGE TRANSPOR-
2 TATION PLANS.—Section 135(e) of title 23, United
3 States Code (as amended by section 1502(b)(2)), is
4 amended by adding at the end the following:

5 “(8) PUBLICATION OF LONG-RANGE TRANSPOR-
6 TATION PLANS.—Each long-range transportation
7 plan prepared by a State shall be published or other-
8 wise made available, including (to the maximum ex-
9 tent practicable) in electronically accessible formats
10 and means, such as the World Wide Web.”.

11 **SEC. 1505. PROJECT MITIGATION.**

12 (a) MITIGATION FOR NATIONAL HIGHWAY SYSTEM
13 PROJECTS.—Section 103(b)(6)(M) of title 23, United
14 States Code, is amended—

15 (1) by inserting “(i)” after “(M); and

16 (2) by adding at the end the following:

17 “(ii) State habitat, streams, and wetlands
18 mitigation efforts under section 155.”.

19 (b) MITIGATION FOR SURFACE TRANSPORTATION
20 PROGRAM PROJECTS.—Section 133(b)(11) of title 23,
21 United States Code, is amended—

22 (1) by inserting “(A)” after “(11)”; and

23 (2) by adding at the end the following:

24 “(B) State habitat, streams, and wetlands miti-
25 gation efforts under section 155.”.

1 (c) STATE HABITAT, STREAMS, AND WETLANDS
 2 MITIGATION FUNDS.—Section 155 of title 23, United
 3 States Code, is amended to read as follows:

4 **“§ 155. State habitat, streams, and wetlands mitiga-**
 5 **tion funds**

6 “(a) ESTABLISHMENT.—A State should establish a
 7 habitat, streams, and wetlands mitigation fund (referred
 8 to in this section as a ‘State fund’).

9 “(b) PURPOSE.—The purpose of a State fund is to
 10 encourage efforts for habitat, streams, and wetlands miti-
 11 gation in advance of or in conjunction with highway or
 12 transit projects to—

13 “(1) ensure that the best habitat, streams, and
 14 wetland mitigation sites now available are used; and

15 “(2) accelerate transportation project delivery
 16 by making high-quality habitat, streams, and wet-
 17 land mitigation credits available when needed.

18 “(c) FUNDS.—A State may deposit into a State fund
 19 part of the funds apportioned to the State under—

20 “(1) section 104(b)(1) for the National High-
 21 way System; and

22 “(2) section 104(b)(3) for the surface transpor-
 23 tation program.

24 “(d) USE.—

1 “(1) IN GENERAL.—Amounts deposited in a
2 State fund shall be used (in a manner consistent
3 with this section) for habitat, streams, or wetlands
4 mitigation related to 1 or more projects funded
5 under this title, including a project under the trans-
6 portation improvement program of the State devel-
7 oped under section 135(f).

8 “(2) ENDANGERED SPECIES.—In carrying out
9 this section, a State and cooperating agency shall
10 give consideration to mitigation projects, on-site or
11 off-site, that restore and preserve the best available
12 sites to conserve biodiversity and habitat for—

13 “(A) Federal or State listed threatened or
14 endangered species of plants and animals; and

15 “(B) plant or animal species warranting
16 listing as threatened or endangered, as deter-
17 mined by the Secretary of the Interior in ac-
18 cordance with section 4(b)(3)(B) of the Endan-
19 gered Species Act of 1973 (16 U.S.C.
20 1533(b)(3)(B)).

21 “(e) CONSISTENCY WITH APPLICABLE REQUIRE-
22 MENTS.—Contributions from the State fund to mitigation
23 efforts may occur in advance of project construction only
24 if the efforts are consistent with all applicable require-
25 ments of Federal law (including regulations).”.

1 (d) CONFORMING AMENDMENT.—The analysis for
 2 subchapter I of chapter 1 of title 23, United States Code,
 3 is amended by striking the item relating to section 155
 4 and inserting the following:

“155. State habitat, streams, and wetlands mitigation funds.”.

5 **CHAPTER 2—TRANSPORTATION PROJECT**
 6 **DEVELOPMENT PROCESS**

7 **SEC. 1511. TRANSPORTATION PROJECT DEVELOPMENT**
 8 **PROCESS.**

9 (a) IN GENERAL.—Chapter 3 of title 23, United
 10 States Code (as amended by section 1203(a)), is amended
 11 by inserting after section 325 the following:

12 **“§ 326. Transportation project development process**

13 “(a) DEFINITIONS.—In this section:

14 “(1) AGENCY.—The term ‘agency’ means any
 15 agency, department, or other unit of Federal, State,
 16 local, or federally recognized tribal government.

17 “(2) ENVIRONMENTAL IMPACT STATEMENT.—
 18 The term ‘environmental impact statement’ means a
 19 detailed statement of the environmental impacts of
 20 a project required to be prepared under the National
 21 Environmental Policy Act of 1969 (42 U.S.C. 4321
 22 et seq.).

23 “(3) ENVIRONMENTAL REVIEW PROCESS.—

1 “(A) IN GENERAL.—The term ‘environ-
2 mental review process’ means the process for
3 preparing, for a project—

4 “(i) an environmental impact state-
5 ment; or

6 “(ii) any other document or analysis
7 required to be prepared under the National
8 Environmental Policy Act of 1969 (42
9 U.S.C. 4321 et seq.)

10 “(B) INCLUSIONS.—The term ‘environ-
11 mental review process’ includes the process for
12 and completion of any environmental permit,
13 approval, review, or study required for a project
14 under any Federal law other than the National
15 Environmental Policy Act of 1969 (42 U.S.C.
16 4321 et seq.).

17 “(4) PROJECT.—The term ‘project’ means any
18 highway or transit project that requires the approval
19 of the Secretary.

20 “(5) PROJECT SPONSOR.—The term ‘project
21 sponsor’ means an agency or other entity (including
22 any private or public-private entity), that seeks ap-
23 proval of the Secretary for a project.

24 “(6) STATE TRANSPORTATION DEPARTMENT.—
25 The term ‘State transportation department’ means

1 any statewide agency of a State with responsibility
2 for transportation.

3 “(b) PROCESS.—

4 “(1) LEAD AGENCY.—

5 “(A) IN GENERAL.—The Department of
6 Transportation shall be the lead Federal agency
7 in the environmental review process for a
8 project.

9 “(B) JOINT LEAD AGENCIES.—Nothing in
10 this section precludes another agency from
11 being a joint lead agency in accordance with
12 regulations under the National Environmental
13 Policy Act of 1969 (42 U.S.C. 4321 et seq.).

14 “(C) CONCURRENCE OF PROJECT SPON-
15 SOR.—The lead agency may carry out the envi-
16 ronmental review process in accordance with
17 this section only with the concurrence of the
18 project sponsor.

19 “(2) REQUEST FOR PROCESS.—

20 “(A) IN GENERAL.—A project sponsor may
21 request that the lead agency carry out the envi-
22 ronmental review process for a project or group
23 of projects in accordance with this section.

24 “(B) GRANT OF REQUEST; PUBLIC NO-
25 TICE.—The lead agency shall—

1 “(i) grant a request under subpara-
2 graph (A); and

3 “(ii) provide public notice of the re-
4 quest.

5 “(3) EFFECTIVE DATE.—The environmental re-
6 view process described in this section may be applied
7 to a project only after the date on which public no-
8 tice is provided under subparagraph (B)(ii).

9 “(c) ROLES AND RESPONSIBILITY OF LEAD AGEN-
10 CY.—With respect to the environmental review process for
11 any project, the lead agency shall have authority and re-
12 sponsibility to—

13 “(A) identify and invite cooperating agen-
14 cies in accordance with subsection (d);

15 “(B) develop an agency coordination plan
16 with review, schedule, and timelines in accord-
17 ance with subsection (e);

18 “(C) determine the purpose and need for
19 the project in accordance with subsection (f);

20 “(D) determine the range of alternatives to
21 be considered in accordance with subsection (g);

22 “(E) convene dispute-avoidance and deci-
23 sion resolution meetings and related efforts in
24 accordance with subsection (h);

1 “(F) take such other actions as are nec-
2 essary and proper, within the authority of the
3 lead agency, to facilitate the expeditious resolu-
4 tion of the environmental review process for the
5 project; and

6 “(G) prepare or ensure that any required
7 environmental impact statement or other docu-
8 ment required to be completed under the Na-
9 tional Environmental Policy Act of 1969 (42
10 U.S.C. 4321 et seq.) is completed in accordance
11 with this section and applicable Federal law.

12 “(d) ROLES AND RESPONSIBILITIES OF COOPER-
13 ATING AGENCIES.—

14 “(1) IN GENERAL.—With respect to a project,
15 each Federal agency shall carry out any obligations
16 of the Federal agency in the environmental review
17 process in accordance with this section and applica-
18 ble Federal law.

19 “(2) INVITATION.—

20 “(A) IN GENERAL.—The lead agency
21 shall—

22 “(i) identify, as early as practicable in
23 the environmental review process for a
24 project, any other agencies that may have
25 an interest in the project, including—

1 “(I) agencies with jurisdiction
2 over environmentally-related matters
3 that may affect the project or may be
4 required by law to conduct an envi-
5 ronmental-related independent review
6 or analysis of the project or determine
7 whether to issue an environmental-re-
8 lated permit, license, or approval for
9 the project; and

10 “(II) agencies with special exper-
11 tise relevant to the project;

12 “(ii) invite the agencies identified in
13 clause (i) to become participating agencies
14 in the environmental review process for
15 that project; and

16 “(iii) grant requests to become co-
17 operating agencies from agencies not origi-
18 nally invited.

19 “(B) RESPONSES.—The deadline for re-
20 ceipt of a response from an agency that receives
21 an invitation under subparagraph (A)(ii)—

22 “(i) shall be 30 days after the date of
23 receipt by the agency of the invitation; but

24 “(ii) may be extended by the lead
25 agency for good cause.

1 “(3) DECLINING OF INVITATIONS.—A Federal
2 agency that is invited by the lead agency to partici-
3 pate in the environmental review process for a
4 project shall be designated as a cooperating agency
5 by the lead agency, unless the invited agency in-
6 forms the lead agency in writing, by the deadline
7 specified in the invitation, that the invited agency—

8 “(A) has no jurisdiction or authority with
9 respect to the project;

10 “(B) has no expertise or information rel-
11 evant to the project; and

12 “(C) does not intend to submit comments
13 on the project.

14 “(4) EFFECT OF DESIGNATION.—Designation
15 as a cooperating agency under this subsection shall
16 not imply that the cooperating agency—

17 “(A) supports a proposed project; or

18 “(B) has any jurisdiction over, or special
19 expertise with respect to evaluation of, the
20 project.

21 “(5) DESIGNATIONS FOR CATEGORIES OF
22 PROJECTS.—

23 “(A) IN GENERAL.—The Secretary may in-
24 vite other agencies to become cooperating agen-
25 cies for a category of projects.

1 “(B) DESIGNATION.—An agency may be
2 designated as a cooperating agency for a cat-
3 egory of projects only with the consent of the
4 agency.

5 “(6) CONCURRENT REVIEWS.—Each Federal
6 agency shall, to the maximum extent practicable—

7 “(A) carry out obligations of the Federal
8 agency under other applicable law concurrently,
9 and in conjunction, with the review required
10 under the National Environmental Policy Act of
11 1969 (42 U.S.C. 4321 et seq.), unless doing so
12 would impair the ability of the Federal agency
13 to carry out those obligations; and

14 “(B) formulate and implement administra-
15 tive, policy, and procedural mechanisms to en-
16 able the agency to ensure completion of the en-
17 vironmental review process in a timely, coordi-
18 nated, and environmentally responsible manner.

19 “(e) DEVELOPMENT OF FLEXIBLE PROCESS AND
20 TIMELINE.—

21 “(1) COORDINATION PLAN.—

22 “(A) IN GENERAL.—The lead agency shall
23 establish a coordination plan, which may be in-
24 corporated into a memorandum of under-
25 standing, to coordinate agency and public par-

1 participation in and comment on the environmental
2 review process for a project or category of
3 projects.

4 “(B) WORKPLAN.—

5 “(i) IN GENERAL.—The lead agency
6 shall develop, as part of the coordination
7 plan, a workplan for completing the collec-
8 tion, analysis, and evaluation of baseline
9 data and future impacts modeling nec-
10 essary to complete the environmental re-
11 view process, including any data, analyses,
12 and modeling necessary for related per-
13 mits, approvals, reviews, or studies re-
14 quired for the project under other laws.

15 “(ii) CONSULTATION.—In developing
16 the workplan under clause (i), the lead
17 agency shall consult with—

18 “(I) each cooperating agency for
19 the project;

20 “(II) the State in which the
21 project is located; and

22 “(III) if the State is not the
23 project sponsor, the project sponsor.

24 “(C) SCHEDULE.—

1 “(i) IN GENERAL.—The lead agency
2 shall establish as part of the coordination
3 plan, after consultation with each cooper-
4 ating agency for the project and with the
5 State in which the project is located (and,
6 if the State is not the project sponsor, with
7 the project sponsor), a schedule for com-
8 pletion of the environmental review process
9 for the project.

10 “(ii) FACTORS FOR CONSIDER-
11 ATION.—In establishing the schedule, the
12 lead agency shall consider factors such
13 as—

14 “(I) the responsibilities of co-
15 operating agencies under applicable
16 laws;

17 “(II) resources available to the
18 cooperating agencies;

19 “(III) overall size and complexity
20 of a project;

21 “(IV) the overall schedule for
22 and cost of a project; and

23 “(V) the sensitivity of the natural
24 and historic resources that could be
25 affected by the project.

1 “(D) CONSISTENCY WITH OTHER TIME PE-
2 RIODS.—A schedule under subparagraph (C)
3 shall be consistent with any other relevant time
4 periods established under Federal law.

5 “(E) MODIFICATION.—The lead agency
6 may—

7 “(i) lengthen a schedule established
8 under subparagraph (C) for good cause;
9 and

10 “(ii) shorten a schedule only with the
11 concurrence of the affected cooperating
12 agencies.

13 “(F) DISSEMINATION.—A copy of a sched-
14 ule under subparagraph (C), and of any modi-
15 fications to the schedule, shall be—

16 “(i) provided to all cooperating agen-
17 cies and to the State transportation de-
18 partment of the State in which the project
19 is located (and, if the State is not the
20 project sponsor, to the project sponsor);
21 and

22 “(ii) made available to the public.

23 “(2) COMMENTS AND TIMELINES.—

24 “(A) IN GENERAL.—A schedule established
25 under paragraph (1)(C) shall include—

1 “(i) opportunities for comment, dead-
2 line for receipt of any comments sub-
3 mitted, deadline for lead agency response
4 to comments; and

5 “(ii) except as otherwise provided
6 under paragraph (1)—

7 “(I) an opportunity to comment
8 by agencies and the public on a draft
9 or final environmental impact state-
10 ment for a period of not more than 60
11 days longer than the minimum period
12 required under the National Environ-
13 mental Policy Act of 1969 (42 U.S.C.
14 4321 et seq.); and

15 “(II) for all other comment peri-
16 ods established by the lead agency for
17 agency or public comments in the en-
18 vironmental review process, a period
19 of not more than the longer of—

20 “(aa) 30 days after the final
21 day of the minimum period re-
22 quired under Federal law (includ-
23 ing regulations), if available; or

1 “(bb) if a minimum period
2 is not required under Federal law
3 (including regulations), 30 days.

4 “(B) EXTENSION OF COMMENT PERI-
5 ODS.—The lead agency may extend a period of
6 comment established under this paragraph for
7 good cause.

8 “(C) LATE COMMENTS.—A comment con-
9 cerning a project submitted under this para-
10 graph after the date of termination of the appli-
11 cable comment period or extension of a com-
12 ment period shall not be eligible for consider-
13 ation by the lead agency unless the lead agency
14 or project sponsor determines there was good
15 cause for the delay or the lead agency is re-
16 quired to consider significant new cir-
17 cumstances or information in accordance with
18 sections 1501.7 and 1502.9 of title 40, Code of
19 Federal Regulations.

20 “(D) DEADLINES FOR DECISIONS UNDER
21 OTHER LAWS.—In any case in which a decision
22 under any Federal law relating to a project (in-
23 cluding the issuance or denial of a permit or li-
24 cense) is required to be made by the later of the
25 date that is 180 days after the date on which

1 the Secretary made all final decisions of the
2 lead agency with respect to the project, or 180
3 days after the date on which an application was
4 submitted for the permit or license, the Sec-
5 retary shall submit to the Committee on Envi-
6 ronment and Public Works of the Senate and
7 the Committee on Transportation and Infra-
8 structure of the House of Representatives—

9 “(i) as soon as practicable after the
10 180-day period, an initial notice of the fail-
11 ure of the Federal agency to make the de-
12 cision; and

13 “(ii) every 60 day thereafter until
14 such date as all decisions of the Federal
15 agency relating to the project have been
16 made by the Federal agency, an additional
17 notice that describes the number of deci-
18 sions of the Federal agency that remain
19 outstanding as of the date of the additional
20 notice.

21 “(3) INVOLVEMENT OF THE PUBLIC.—Nothing
22 in this subsection shall reduce any time period pro-
23 vided for public comment in the environmental re-
24 view process under existing Federal law (including a
25 regulation).

1 “(f) DEVELOPMENT OF PROJECT PURPOSE AND
2 NEED STATEMENT.—

3 “(1) IN GENERAL.—With respect to the envi-
4 ronmental review process for a project, the purpose
5 and need for the project shall be defined in accord-
6 ance with this subsection.

7 “(2) AUTHORITY.—The lead agency shall define
8 the purpose and need for a project, including the
9 transportation objectives and any other objectives in-
10 tended to be achieved by the project.

11 “(3) INVOLVEMENT OF COOPERATING AGEN-
12 CIES AND THE PUBLIC.—Before determining the
13 purpose and need for a project, the lead agency shall
14 solicit for 30 days, and consider, any relevant com-
15 ments on the draft statement of purpose and need
16 for a proposed project received from the public and
17 cooperating agencies.

18 “(4) EFFECT ON OTHER REVIEWS.—For the
19 purpose of compliance with the National Environ-
20 mental Policy Act of 1969 (42 U.S.C. 4321 et seq.)
21 and any other law requiring an agency that is not
22 the lead agency to determine or consider a project
23 purpose or project need, such an agency acting, per-
24 mitting, or approving under, or otherwise applying,
25 Federal law with respect to a project shall adopt the

1 determination of purpose and need for the project
2 made by the lead agency.

3 “(5) SAVINGS.—Nothing in this subsection pre-
4 empts or interferes with any power, jurisdiction, re-
5 sponsibility, or authority of an agency under applica-
6 ble law (including regulations) with respect to a
7 project.

8 “(6) CONTENTS.—

9 “(A) IN GENERAL.—The statement of pur-
10 pose and need shall include a clear statement of
11 the objectives that the proposed project is in-
12 tended to achieve.

13 “(B) EFFECT ON EXISTING STANDARDS.—
14 Nothing in this subsection shall alter existing
15 standards for defining the purpose and need of
16 a project.

17 “(7) FACTORS TO CONSIDER.—The lead agency
18 may determine that any of the following factors and
19 documents are appropriate for consideration in de-
20 termining the purpose of and need for a project:

21 “(A) Transportation plans and related
22 planning documents developed through the
23 statewide and metropolitan transportation plan-
24 ning process under sections 134 and 135.

1 “(B) Land use plans adopted by units of
2 State, local, or tribal government (or, in the
3 case of Federal land, by the applicable Federal
4 land management agencies).

5 “(C) Economic development plans adopted
6 by—

7 “(i) units of State, local, or tribal gov-
8 ernment; or

9 “(ii) established economic develop-
10 ment planning organizations or authorities.

11 “(D) Environmental protection plans, in-
12 cluding plans for the protection or treatment
13 of—

14 “(i) air quality;

15 “(ii) water quality and runoff;

16 “(iii) habitat needs of plants and ani-
17 mals;

18 “(iv) threatened and endangered spe-
19 cies;

20 “(v) invasive species;

21 “(vi) historic properties; and

22 “(vii) other environmental resources.

23 “(E) Any publicly available plans or poli-
24 cies relating to the national defense, national
25 security, or foreign policy of the United States.

1 “(g) DEVELOPMENT OF PROJECT ALTERNATIVES.—

2 “(1) IN GENERAL.—With respect to the envi-
3 ronmental review process for a project, the alter-
4 natives shall be determined in accordance with this
5 subsection.

6 “(2) AUTHORITY.—The lead agency shall deter-
7 mine the alternatives to be considered for a project.

8 “(3) INVOLVEMENT OF COOPERATING AGEN-
9 CIES AND THE PUBLIC.—

10 “(A) IN GENERAL.—Before determining
11 the alternatives for a project, the lead agency
12 shall solicit for 30 days and consider any rel-
13 evant comments on the proposed alternatives
14 received from the public and cooperating agen-
15 cies.

16 “(B) ALTERNATIVES.—The lead agency
17 shall consider—

18 “(i) alternatives that meet the pur-
19 pose and need of the project; and

20 “(ii) the alternative of no action.

21 “(C) EFFECT ON EXISTING STANDARDS.—

22 Nothing in this subsection shall alter the exist-
23 ing standards for determining the range of al-
24 ternatives.

1 “(4) EFFECT ON OTHER REVIEWS.—Any other
2 agency acting under or applying Federal law with
3 respect to a project shall consider only the alter-
4 natives determined by the lead agency.

5 “(5) SAVINGS.—Nothing in this subsection pre-
6 empts or interferes with any power, jurisdiction, re-
7 sponsibility, or authority of an agency under applica-
8 ble law (including regulations) with respect to a
9 project.

10 “(6) FACTORS TO CONSIDER.—The lead agency
11 may determine that any of the following factors and
12 documents are appropriate for consideration in de-
13 termining the alternatives for a project:

14 “(A) The overall size and complexity of the
15 proposed action.

16 “(B) The sensitivity of the potentially af-
17 fected resources.

18 “(C) The overall schedule and cost of the
19 project.

20 “(D) Transportation plans and related
21 planning documents developed through the
22 statewide and metropolitan transportation plan-
23 ning process under sections 134 and 135 of
24 title 23 of the United States Code.

1 “(E) Land use plans adopted by units of
2 State, local, or tribal government (or, in the
3 case of Federal land, by the applicable Federal
4 land management agencies).

5 “(F) Economic development plans adopted
6 by—

7 “(i) units of State, local, or tribal gov-
8 ernment; or

9 “(ii) established economic develop-
10 ment planning organizations or authorities.

11 “(G) environmental protection plans, in-
12 cluding plans for the protection or treatment
13 of—

14 “(i) air quality;

15 “(ii) water quality and runoff;

16 “(iii) habitat needs of plants and ani-
17 mals;

18 “(iv) threatened and endangered spe-
19 cies;

20 “(v) invasive species;

21 “(vi) historic properties; and

22 “(vii) other environmental resources.

23 “(H) Any publicly available plans or poli-
24 cies relating to the national defense, national
25 security, or foreign policy of the United States.

1 “(h) PROMPT ISSUE IDENTIFICATION AND RESOLU-
2 TION PROCESS.—

3 “(1) IN GENERAL.—The lead agency, the
4 project sponsor, and the cooperating agencies shall
5 work cooperatively, in accordance with this section,
6 to identify and resolve issues that could—

7 “(A) delay completion of the environmental
8 review process; or

9 “(B) result in denial of any approvals re-
10 quired for the project under applicable laws.

11 “(2) LEAD AGENCY RESPONSIBILITIES.—

12 “(A) IN GENERAL.—The lead agency, with
13 the assistance of the project sponsor, shall
14 make information available to the cooperating
15 agencies, as early as practicable in the environ-
16 mental review process, regarding—

17 “(i) the environmental and socio-
18 economic resources located within the
19 project area; and

20 “(ii) the general locations of the alter-
21 natives under consideration.

22 “(B) BASIS FOR INFORMATION.—Informa-
23 tion about resources in the project area may be
24 based on existing data sources, including geo-
25 graphic information systems mapping.

1 “(3) COOPERATING AGENCY RESPONSIBIL-
2 ITIES.—

3 “(A) IN GENERAL.—Based on information
4 received from the lead agency, cooperating
5 agencies shall promptly identify to the lead
6 agency any major issues of concern regarding
7 the potential environmental or socioeconomic
8 impacts of a project.

9 “(B) MAJOR ISSUES OF CONCERN.—A
10 major issue of concern referred to in subpara-
11 graph (A) may include any issue that could
12 substantially delay or prevent an agency from
13 granting a permit or other approval that is
14 needed for a project, as determined by a cooper-
15 ating agency.

16 “(4) ISSUE RESOLUTION.—On identification of
17 a major issue of concern under paragraph (3), or at
18 any time upon the request of a project sponsor or
19 the Governor of a State, the lead agency shall
20 promptly convene a meeting with representatives of
21 each of the relevant cooperating agencies, the project
22 sponsor, and the Governor to address and resolve
23 the issue.

24 “(5) NOTIFICATION.—If a resolution of a major
25 issue of concern under paragraph (4) cannot be

1 achieved by the date that is 30 days after the date
2 on which a meeting under that paragraph is con-
3 vened, the lead agency shall provide notification of
4 the failure to resolve the major issue of concern to—

5 “(A) the heads of all cooperating agencies;

6 “(B) the project sponsor;

7 “(C) the Governor involved;

8 “(D) the Committee on Environment and
9 Public Works of the Senate; and

10 “(E) the Committee on Transportation
11 and Infrastructure of the House of Representa-
12 tives.

13 “(i) PERFORMANCE MEASUREMENT.—

14 “(1) PROGRESS REPORTS.—The Secretary shall
15 establish a program to measure and report on
16 progress toward improving and expediting the plan-
17 ning and environmental review process.

18 “(2) MINIMUM REQUIREMENTS.—The program
19 shall include, at a minimum—

20 “(A) the establishment of criteria for
21 measuring consideration of—

22 “(i) State and metropolitan planning,
23 project planning, and design criteria; and

24 “(ii) environmental processing times
25 and costs;

1 “(B) the collection of data to assess per-
2 formance based on the established criteria; and

3 “(C) the annual reporting of the results of
4 the performance measurement studies.

5 “(3) INVOLVEMENT OF THE PUBLIC AND CO-
6 OPERATING AGENCIES.—

7 “(A) IN GENERAL.—The Secretary shall
8 biennially conduct a survey of agencies partici-
9 pating in the environmental review process
10 under this section to assess the expectations
11 and experiences of each surveyed agency with
12 regard to the planning and environmental re-
13 view process for projects reviewed under this
14 section.

15 “(B) PUBLIC PARTICIPATION.—In con-
16 ducting the survey, the Secretary shall solicit
17 comments from the public.

18 “(j) ASSISTANCE TO AFFECTED FEDERAL AND
19 STATE AGENCIES.—

20 “(1) IN GENERAL.—The Secretary may approve
21 a request by a State or recipient to provide funds
22 made available under this title for a highway project,
23 or made available under chapter 53 of title 49 for
24 a mass transit project, to agencies participating in
25 the coordinated environmental review process estab-

1 lished under this section in order to provide the re-
2 sources necessary to meet any time limits estab-
3 lished under this section.

4 “(2) AMOUNTS.—Such requests under para-
5 graph (1) shall be approved only—

6 “(A) for such additional amounts as the
7 Secretary determines are necessary for the af-
8 fected Federal and State agencies to meet the
9 time limits for environmental review; and

10 “(B) if those time limits are less than the
11 customary time necessary for that review.

12 “(k) JUDICIAL REVIEW AND SAVINGS CLAUSE.—

13 “(1) JUDICIAL REVIEW.—Nothing in this sec-
14 tion shall affect the reviewability of any final Fed-
15 eral agency action in any United States district
16 court or State court.

17 “(2) SAVINGS CLAUSE.—Nothing in this section
18 shall affect—

19 “(A) the applicability of the National Envi-
20 ronmental Policy Act of 1969 (42 U.S.C. 4321
21 et seq.) or any other Federal environmental
22 statute; or

23 “(B) the responsibility of any Federal offi-
24 cer to comply with or enforce such a statute.”.

25 (b) CONFORMING AMENDMENTS.—

1 (1) The analysis for chapter 3 of title 23,
2 United States Code, is amended by inserting after
3 the item relating to section 325 (as added by section
4 1203(f)) the following:

“326. Transportation project development process.”.

5 (2) Section 1309 of the Transportation Equity
6 Act for the 21st Century (112 Stat. 232) is re-
7 pealed.

8 **SEC. 1512. ASSUMPTION OF RESPONSIBILITY FOR CAT-**
9 **EGORICAL EXCLUSIONS.**

10 (a) IN GENERAL.—Chapter 3 of title 23, United
11 States Code (as amended by section 1511(a)), is amended
12 by inserting after section 326 the following:

13 **“§ 327. Assumption of responsibility for categorical**
14 **exclusions**

15 “(a) CATEGORICAL EXCLUSION DETERMINATIONS.—

16 “(1) IN GENERAL.—The Secretary may assign,
17 and a State may assume, responsibility for deter-
18 mining whether certain designated activities are in-
19 cluded within classes of action identified in regula-
20 tion by the Secretary that are categorically excluded
21 from requirements for environmental assessments or
22 environmental impact statements pursuant to regu-
23 lations promulgated by the Council on Environ-
24 mental Quality under part 1500 of title 40, Code of

1 Federal Regulations (as in effect on October 1,
2 2003).

3 “(2) SCOPE OF AUTHORITY.—A determination
4 described in paragraph (1) shall be made by a State
5 in accordance with criteria established by the Sec-
6 retary and only for types of activities specifically
7 designated by the Secretary.

8 “(3) CRITERIA.—The criteria under paragraph
9 (2) shall include provisions for public availability of
10 information consistent with section 552 of title 5
11 and the National Environmental Policy Act of 1969
12 (42 U.S.C. 4321 et seq.).

13 “(b) OTHER APPLICABLE FEDERAL LAWS.—

14 “(1) IN GENERAL.—If a State assumes respon-
15 sibility under subsection (a), the Secretary may also
16 assign and the State may assume all or part of the
17 responsibilities of the Secretary for environmental
18 review, consultation, or other related actions re-
19 quired under any Federal law applicable to activities
20 that are classified by the Secretary as categorical ex-
21 clusions, with the exception of government-to-govern-
22 ment consultation with Indian tribes, subject to the
23 same procedural and substantive requirements as
24 would be required if that responsibility were carried
25 out by the Secretary.

1 “(2) SOLE RESPONSIBILITY.—A State that as-
2 sumes responsibility under paragraph (1) with re-
3 spect to a Federal law shall be solely responsible and
4 solely liable for complying with and carrying out
5 that law, and the Secretary shall have no such re-
6 sponsibility or liability.

7 “(c) MEMORANDA OF UNDERSTANDING.—

8 “(1) IN GENERAL.—The Secretary and the
9 State, after providing public notice and opportunity
10 for comment, shall enter into a memorandum of un-
11 derstanding setting forth the responsibilities to be
12 assigned under this section and the terms and condi-
13 tions under which the assignments are made, includ-
14 ing establishment of the circumstances under which
15 the Secretary would reassume responsibility for cat-
16 egorical exclusion determinations.

17 “(2) TERM.—A memorandum of
18 understanding—

19 “(A) shall have term of not more than 3
20 years; and

21 “(B) shall be renewable.

22 “(3) ACCEPTANCE OF JURISDICTION.—In a
23 memorandum of understanding, the State shall con-
24 sent to accept the jurisdiction of the Federal courts
25 for the compliance, discharge, and enforcement of

1 any responsibility of the Secretary that the State as-
2 sumes.

3 “(4) MONITORING.—The Secretary shall—

4 “(A) monitor compliance by the State with
5 the memorandum of understanding and the
6 provision by the State of financial resources to
7 carry out the memorandum of understanding;
8 and

9 “(B) take into account the performance by
10 the State when considering renewal of the
11 memorandum of understanding.

12 “(d) TERMINATION.—The Secretary may terminate
13 any assumption of responsibility under a memorandum of
14 understanding on a determination that the State is not
15 adequately carrying out the responsibilities assigned to the
16 State.

17 “(e) STATE AGENCY DEEMED TO BE FEDERAL
18 AGENCY.—A State agency that is assigned a responsibility
19 under a memorandum of understanding shall be deemed
20 to be a Federal agency for the purposes of the Federal
21 law under which the responsibility is exercised.”.

22 (b) CONFORMING AMENDMENT.—The analysis for
23 chapter 3 of title 23, United States Code (as amended by
24 section 1511(b)), is amended by inserting after the item
25 relating to section 326 the following:

“327. Assumption of responsibility for categorical exclusions.”.

1 **SEC. 1513. SURFACE TRANSPORTATION PROJECT DELIV-**
2 **ERY PILOT PROGRAM.**

3 (a) IN GENERAL.—Chapter 3 of title 23, United
4 States Code (as amended by section 1512(a)), is amended
5 by inserting after section 327 the following:

6 **“§ 328. Surface transportation project delivery pilot**
7 **program**

8 “(a) ESTABLISHMENT.—

9 “(1) IN GENERAL.—The Secretary shall carry
10 out a surface transportation project delivery pilot
11 program (referred to in this section as the ‘pro-
12 gram’).

13 “(2) ASSUMPTION OF RESPONSIBILITY.—

14 “(A) IN GENERAL.—Subject to the other
15 provisions of this section, with the written
16 agreement of the Secretary and a State, which
17 may be in the form of a memorandum of under-
18 standing, the Secretary may assign, and the
19 State may assume, the responsibilities of the
20 Secretary with respect to 1 or more highway
21 projects within the State under the National
22 Environmental Policy Act of 1969 (42 U.S.C.
23 4321 et seq.).

24 “(B) ADDITIONAL RESPONSIBILITY.—If a
25 State assumes responsibility under subpara-
26 graph (A)—

1 “(i) the Secretary may assign to the
2 State, and the State may assume, all or
3 part of the responsibilities of the Secretary
4 for environmental review, consultation, or
5 other action required under any Federal
6 environmental law pertaining to the review
7 or approval of a specific project; but

8 “(ii) the Secretary may not assign—

9 “(I) responsibility for any con-
10 formity determination required under
11 section 176 of the Clean Air Act (42
12 U.S.C. 7506); or

13 “(II) any responsibility imposed
14 on the Secretary by section 134 or
15 135.

16 “(C) PROCEDURAL AND SUBSTANTIVE RE-
17 QUIREMENTS.—A State shall assume responsi-
18 bility under this section subject to the same
19 procedural and substantive requirements as
20 would apply if that responsibility were carried
21 out by the Secretary.

22 “(D) FEDERAL RESPONSIBILITY.—Any re-
23 sponsibility of the Secretary not explicitly as-
24 sumed by the State by written agreement under

1 this section shall remain the responsibility of
2 the Secretary.

3 “(E) NO EFFECT ON AUTHORITY.—Noth-
4 ing in this section preempts or interferes with
5 any power, jurisdiction, responsibility, or au-
6 thority of an agency, other than the Depart-
7 ment of Transportation, under applicable law
8 (including regulations) with respect to a
9 project.

10 “(b) STATE PARTICIPATION.—

11 “(1) NUMBER OF PARTICIPATING STATES.—
12 The Secretary may permit not more than 5 States
13 (including the State of Oklahoma) to participate in
14 the program.

15 “(2) APPLICATION.—Not later than 270 days
16 after the date of enactment of this section, the Sec-
17 retary shall promulgate regulations that establish re-
18 quirements relating to information required to be
19 contained in any application of a State to participate
20 in the program, including, at a minimum—

21 “(A) the projects or classes of projects for
22 which the State anticipates exercising the au-
23 thority that may be granted under the program;

1 “(B) verification of the financial resources
2 necessary to carry out the authority that may
3 be granted under the program; and

4 “(C) evidence of the notice and solicitation
5 of public comment by the State relating to par-
6 ticipation of the State in the program, including
7 copies of comments received from that solicita-
8 tion.

9 “(3) PUBLIC NOTICE.—

10 “(A) IN GENERAL.—Each State that sub-
11 mits an application under this subsection shall
12 give notice of the intent of the State to partici-
13 pate in the program not later than 30 days be-
14 fore the date of submission of the application.

15 “(B) METHOD OF NOTICE AND SOLICITA-
16 TION.—The State shall provide notice and so-
17 licit public comment under this paragraph by
18 publishing the complete application of the State
19 in accordance with the appropriate public notice
20 law of the State.

21 “(4) SELECTION CRITERIA.—The Secretary
22 may approve the application of a State under this
23 section only if—

24 “(A) the regulatory requirements under
25 paragraph (2) have been met;

1 “(B) the Secretary determines that the
2 State has the capability, including financial and
3 personnel, to assume the responsibility; and

4 “(C) the head of the State agency having
5 primary jurisdiction over highway matters en-
6 ters into a written agreement with the Sec-
7 retary described in subsection (c).

8 “(5) OTHER FEDERAL AGENCY VIEWS.—If a
9 State applies to assume a responsibility of the Sec-
10 retary that would have required the Secretary to
11 consult with another Federal agency, the Secretary
12 shall solicit the views of the Federal agency before
13 approving the application.

14 “(c) WRITTEN AGREEMENT.—A written agreement
15 under this section shall—

16 “(1) be executed by the Governor or the top-
17 ranking transportation official in the State who is
18 charged with responsibility for highway construction;

19 “(2) be in such form as the Secretary may pre-
20 scribe;

21 “(3) provide that the State—

22 “(A) agrees to assume all or part of the re-
23 sponsibilities of the Secretary described in sub-
24 section (a);

1 “(B) expressly consents, on behalf of the
2 State, to accept the jurisdiction of the Federal
3 courts for the compliance, discharge, and en-
4 forcement of any responsibility of the Secretary
5 assumed by the State;

6 “(C) certifies that State laws (including
7 regulations) are in effect that—

8 “(i) authorize the State to take the
9 actions necessary to carry out the respon-
10 sibilities being assumed; and

11 “(ii) are comparable to section 552 of
12 title 5, including providing that any deci-
13 sion regarding the public availability of a
14 document under those State laws is review-
15 able by a court of competent jurisdiction;
16 and

17 “(D) agrees to maintain the financial re-
18 sources necessary to carry out the responsibil-
19 ities being assumed.

20 “(d) JURISDICTION.—

21 “(1) IN GENERAL.—The United States district
22 courts shall have exclusive jurisdiction over any civil
23 action against a State for failure to carry out any
24 responsibility of the State under this section.

1 “(2) LEGAL STANDARDS AND REQUIRE-
2 MENTS.—A civil action under paragraph (1) shall be
3 governed by the legal standards and requirements
4 that would apply in such a civil action against the
5 Secretary had the Secretary taken the actions in
6 question.

7 “(3) INTERVENTION.—The Secretary shall have
8 the right to intervene in any action described in
9 paragraph (1).

10 “(e) EFFECT OF ASSUMPTION OF RESPONSI-
11 BILITY.—A State that assumes responsibility under sub-
12 section (a)(2) shall be solely responsible and solely liable
13 for carrying out, in lieu of the Secretary, the responsibil-
14 ities assumed under subsection (a)(2), until the program
15 is terminated as provided in subsection (i).

16 “(f) LIMITATIONS ON AGREEMENTS.—Nothing in
17 this section permits a State to assume any rulemaking au-
18 thority of the Secretary under any Federal law.

19 “(g) AUDITS.—

20 “(1) IN GENERAL.—To ensure compliance by a
21 State with any agreement of the State under sub-
22 section (c)(1) (including compliance by the State
23 with all Federal laws for which responsibility is as-
24 sumed under subsection (a)(2)), for each State par-

1 participating in the program under this section, the
2 Secretary shall conduct—

3 “(A) semiannual audits during each of the
4 first 2 years of State participation; and

5 “(B) annual audits during each subsequent
6 year of State participation.

7 “(2) PUBLIC AVAILABILITY AND COMMENT.—

8 “(A) IN GENERAL.—An audit conducted
9 under paragraph (1) shall be provided to the
10 public for comment.

11 “(B) RESPONSE.—Not later than 60 days
12 after the date on which the period for public
13 comment ends, the Secretary shall respond to
14 public comments received under subparagraph
15 (A).

16 “(h) REPORT TO CONGRESS.—The Secretary shall
17 submit to Congress an annual report that describes the
18 administration of the program.

19 “(i) TERMINATION.—

20 “(1) IN GENERAL.—Except as provided in para-
21 graph (2), the program shall terminate on the date
22 that is 6 years after the date of enactment of this
23 section.

1 “(2) TERMINATION BY SECRETARY.—The Sec-
2 retary may terminate the participation of any State
3 in the program if—

4 “(A) the Secretary determines that the
5 State is not adequately carrying out the respon-
6 sibilities assigned to the State;

7 “(B) the Secretary provides to the State—

8 “(i) notification of the determination
9 of noncompliance; and

10 “(ii) a period of at least 30 days dur-
11 ing which to take such corrective action as
12 the Secretary determines is necessary to
13 comply with the applicable agreement; and

14 “(C) the State, after the notification and
15 period provided under subparagraph (B), fails
16 to take satisfactory corrective action, as deter-
17 mined by Secretary.”.

18 (b) CONFORMING AMENDMENT.—The analysis for
19 chapter 3 of title 23, United States Code (as amended by
20 section 1512(b)), is amended by inserting after the item
21 relating to section 327 the following:

 “328. Surface transportation project delivery pilot program.”.

22 **SEC. 1514. PARKS, RECREATION AREAS, WILDLIFE AND WA-**
23 **TERFOWL REFUGES, AND HISTORIC SITES.**

24 (a) PROGRAMS AND PROJECTS WITH DE MINIMIS IM-
25 PACTS.—

1 (1) TITLE 23.—Section 138 of title 23, United
2 States Code, is amended—

3 (A) in the first sentence, by striking “It is
4 hereby” and inserting the following:

5 “(a) DECLARATION OF POLICY.—It is”; and

6 (B) by adding at the end the following:

7 “(b) DE MINIMIS IMPACTS.—

8 “(1) REQUIREMENTS.—

9 “(A) IN GENERAL.—The requirements of
10 this section shall be considered to be satisfied
11 with respect to an area described in paragraph
12 (2) or (3) if the Secretary determines, in ac-
13 cordance with this subsection, that a transpor-
14 tation program or project will have a de mini-
15 mis impact on the area.

16 “(B) CRITERIA.—In making any deter-
17 mination under this subsection, the Secretary
18 shall consider to be part of a transportation
19 program or project any avoidance, minimiza-
20 tion, mitigation, or enhancement measures that
21 are required to be implemented as a condition
22 of approval of the transportation program or
23 project.

1 “(2) HISTORIC SITES.—With respect to historic
2 sites, the Secretary may make a finding of de mini-
3 mis impact only if—

4 “(A) the Secretary has determined, in ac-
5 cordance with the consultation process required
6 under section 106 of the National Historic
7 Preservation Act (16 U.S.C. 470f), that—

8 “(i) the transportation program or
9 project will have no adverse effect on the
10 historic site; or

11 “(ii) there will be no historic prop-
12 erties affected by the transportation pro-
13 gram or project;

14 “(B) the finding of the Secretary has re-
15 ceived written concurrence from the applicable
16 State historic preservation officer or tribal his-
17 toric preservation officer (and from the Advi-
18 sory Council on Historic Preservation, if par-
19 ticipating in the consultation); and

20 “(C) the finding of the Secretary has been
21 developed in consultation with parties con-
22 sulting as part of the process referred to in sub-
23 paragraph (A).

24 “(3) PARKS, RECREATION AREAS, AND WILD-
25 LIFE AND WATERFOWL REFUGES.—With respect to

1 parks, recreation areas, and wildlife or waterfowl
 2 refuges, the Secretary may make a finding of de
 3 minimis impact only if—

4 “(A) the Secretary has determined, in ac-
 5 cordance with the National Environmental Pol-
 6 icy Act of 1969 (42 U.S.C. 4321 et seq.) (in-
 7 cluding public notice and opportunity for public
 8 review and comment), that the transportation
 9 program or project will not adversely affect the
 10 activities, features, and attributes of the park,
 11 recreation area, or wildlife or waterfowl refuge
 12 eligible for protection under this section; and

13 “(B) the finding of the Secretary has re-
 14 ceived concurrence from the officials with juris-
 15 diction over the park, recreation area, or wild-
 16 life or waterfowl refuge.”.

17 (2) TITLE 49.—Section 303 of title 49, United
 18 States Code, is amended—

19 (A) by striking “(c) The Secretary” and
 20 inserting the following:

21 “(c) APPROVAL OF PROGRAMS AND PROJECTS.—

22 Subject to subsection (d), the Secretary”; and

23 (B) by adding at the end the following:

24 “(d) DE MINIMIS IMPACTS.—

25 “(1) REQUIREMENTS.—

1 “(A) IN GENERAL.—The requirements of
2 this section shall be considered to be satisfied
3 with respect to an area described in paragraph
4 (2) or (3) if the Secretary determines, in ac-
5 cordance with this subsection, that a transpor-
6 tation program or project will have a de mini-
7 mis impact on the area.

8 “(B) CRITERIA.—In making any deter-
9 mination under this subsection, the Secretary
10 shall consider to be part of a transportation
11 program or project any avoidance, minimiza-
12 tion, mitigation, or enhancement measures that
13 are required to be implemented as a condition
14 of approval of the transportation program or
15 project.

16 “(2) HISTORIC SITES.—With respect to historic
17 sites, the Secretary may make a finding of de mini-
18 mis impact only if—

19 “(A) the Secretary has determined, in ac-
20 cordance with the consultation process required
21 under section 106 of the National Historic
22 Preservation Act (16 U.S.C. 470f), that—

23 “(i) the transportation program or
24 project will have no adverse effect on the
25 historic site; or

1 “(ii) there will be no historic prop-
2 erties affected by the transportation pro-
3 gram or project;

4 “(B) the finding of the Secretary has re-
5 ceived written concurrence from the applicable
6 State historic preservation officer or tribal his-
7 toric preservation officer (and from the Advi-
8 sory Council on Historic Preservation, if par-
9 ticipating in the consultation); and

10 “(C) the finding of the Secretary has been
11 developed in consultation with parties con-
12 sulting as part of the process referred to in sub-
13 paragraph (A).

14 “(3) PARKS, RECREATION AREAS, AND WILD-
15 LIFE AND WATERFOWL REFUGES.—With respect to
16 parks, recreation areas, and wildlife or waterfowl
17 refuges, the Secretary may make a finding of de-
18 minimis impact only if—

19 “(A) the Secretary has determined, in ac-
20 cordance with the National Environmental Pol-
21 icy Act of 1969 (42 U.S.C. 4321 et seq.) (in-
22 cluding public notice and opportunity for public
23 review and comment), that the transportation
24 program or project will not adversely affect the
25 activities, features, and attributes of the park,

1 recreation area, or wildlife or waterfowl refuge
2 eligible for protection under this section; and

3 “(B) the finding of the Secretary has re-
4 ceived concurrence from the officials with juris-
5 diction over the park, recreation area, or wild-
6 life or waterfowl refuge.”.

7 (b) CLARIFICATION OF EXISTING STANDARDS.—

8 (1) IN GENERAL.—Not later than 1 year after
9 the date of enactment of this Act, the Secretary
10 shall (in consultation with affected agencies and in-
11 terested parties) promulgate regulations that clarify
12 the factors to be considered and the standards to be
13 applied in determining the prudence and feasibility
14 of alternatives under section 138 of title 23 and sec-
15 tion 303 of title 49, United States Code.

16 (2) REQUIREMENTS.—The regulations—

17 (A) shall clarify the application of the legal
18 standards to a variety of different types of
19 transportation programs and projects depending
20 on the circumstances of each case; and

21 (B) may include, as appropriate, examples
22 to facilitate clear and consistent interpretation
23 by agency decisionmakers.

24 (c) IMPLEMENTATION STUDY.—

1 (1) IN GENERAL.—The Secretary and the
2 Transportation Research Board of the National
3 Academy of Sciences shall jointly conduct a study on
4 the implementation of this section and the amend-
5 ments made by this section.

6 (2) COMPONENTS.—In conducting the study,
7 the Secretary and the Transportation Research
8 Board shall evaluate—

9 (A) the processes developed under this sec-
10 tion and the amendments made by this section
11 and the efficiencies that may result;

12 (B) the post-construction effectiveness of
13 impact mitigation and avoidance commitments
14 adopted as part of projects conducted under
15 this section and the amendments made by this
16 section; and

17 (C) the quantity of projects with impacts
18 that are considered de minimis under this sec-
19 tion and the amendments made by this section,
20 including information on the location, size, and
21 cost of the projects.

22 (3) REPORT REQUIREMENT.—The Secretary
23 and the Transportation Research Board shall
24 prepare—

1 (A) not earlier than the date that is 4
2 years after the date of enactment of this Act,
3 a report on the results of the study conducted
4 under this subsection; and

5 (B) not later than September 30, 2009, an
6 update on the report required under subpara-
7 graph (A).

8 (4) REPORT RECIPIENTS.—The Secretary and
9 the Transportation Research Board shall—

10 (A) submit the report and update required
11 under paragraph (3) to—

12 (i) the appropriate committees of Con-
13 gress;

14 (ii) the Secretary of the Interior; and

15 (iii) the Advisory Council on Historic
16 Preservation; and

17 (B) make the report and update available
18 to the public.

19 **SEC. 1515. REGULATIONS.**

20 Except as provided in section 1513, not later than
21 1 year after the date of enactment of this Act, the Sec-
22 retary shall promulgate regulations necessary to imple-
23 ment the amendments made by chapter 1 and this chap-
24 ter.

1 **CHAPTER 3—MISCELLANEOUS**

2 **SEC. 1521. CRITICAL REAL PROPERTY ACQUISITION.**

3 Section 108 of title 23, United States Code, is
4 amended by adding at the end the following:

5 “(d) CRITICAL REAL PROPERTY ACQUISITION.—

6 “(1) IN GENERAL.—Subject to paragraph (2),
7 funds apportioned to a State under this title may be
8 used to pay the costs of acquiring any real property
9 that is determined to be critical under paragraph (2)
10 for a project proposed for funding under this title.

11 “(2) REIMBURSEMENT.—The Federal share of
12 the costs referred to in paragraph (1) shall be eligi-
13 ble for reimbursement out of funds apportioned to a
14 State under this title if, before the date of acquisi-
15 tion, the Secretary determines that—

16 “(A) the property is offered for sale on the
17 open market;

18 “(B) in acquiring the property, the State
19 will comply with the Uniform Relocation Assist-
20 ance and Real Property Acquisition Policies Act
21 of 1970 (42 U.S.C. 4601 et seq.); and

22 “(C) immediate acquisition of the property
23 is critical because—

1 “(i) based on an appraisal of the
2 property, the value of the property is in-
3 creasing significantly;

4 “(ii) there is an imminent threat of
5 development or redevelopment of the prop-
6 erty; and

7 “(iii) the property is necessary for the
8 implementation of the goals stated in the
9 proposal for the project.

10 “(3) APPLICABLE LAW.—An acquisition of real
11 property under this section shall be considered to be
12 an exempt project under section 176 of the Clean
13 Air Act (42 U.S.C. 7506).

14 “(4) ENVIRONMENTAL REVIEW.—

15 “(A) IN GENERAL.—A project proposed to
16 be conducted under this title shall not be con-
17 ducted on property acquired under paragraph
18 (1) until all required environmental reviews for
19 the project have been completed.

20 “(B) EFFECT ON CONSIDERATION OF
21 PROJECT ALTERNATIVES.—The number of crit-
22 ical acquisitions of real property associated with
23 a project shall not affect the consideration of
24 project alternatives during the environmental
25 review process.

1 “(5) PROCEEDS FROM THE SALE OR LEASE OF
2 REAL PROPERTY.—Section 156(c) shall not apply to
3 the sale, use, or lease of any real property acquired
4 under paragraph (1).”.

5 **SEC. 1522. PLANNING CAPACITY BUILDING INITIATIVE.**

6 Section 104 of title 23, United States Code, is
7 amended by adding at the end the following:

8 “(m) PLANNING CAPACITY BUILDING INITIATIVE.—

9 “(1) IN GENERAL.—The Secretary shall carry
10 out a planning capacity building initiative to support
11 enhancements in transportation planning to—

12 “(A) strengthen the processes and prod-
13 ucts of metropolitan and statewide transpor-
14 tation planning under this title;

15 “(B) enhance tribal capacity to conduct
16 joint transportation planning under chapter 2;

17 “(C) participate in the metropolitan and
18 statewide transportation planning programs
19 under this title; and

20 “(D) increase the knowledge and skill level
21 of participants in metropolitan and statewide
22 transportation.

23 “(2) PRIORITY.—The Secretary shall give pri-
24 ority to planning practices and processes that
25 support—

1 “(A) the transportation elements of home-
2 land security planning, including—

3 “(i) training and best practices relat-
4 ing to emergency evacuation;

5 “(ii) developing materials to assist
6 areas in coordinating emergency manage-
7 ment and transportation officials; and

8 “(iii) developing training on how plan-
9 ning organizations may examine security
10 issues;

11 “(B) performance-based planning,
12 including—

13 “(i) data and data analysis tech-
14 nologies to be shared with States, metro-
15 politan planning organizations, local gov-
16 ernments, and nongovernmental organiza-
17 tions that—

18 “(I) participate in transportation
19 planning;

20 “(II) use the data and data anal-
21 ysis to engage in metropolitan, tribal,
22 or statewide transportation planning;

23 “(III) involve the public in the
24 development of transportation plans,

1 projects, and alternative scenarios;
2 and

3 “(IV) develop strategies to avoid,
4 minimize, and mitigate the impacts of
5 transportation facilities and projects;
6 and

7 “(ii) improvement of the quality of
8 congestion management systems, including
9 the development of—

10 “(I) a measure of congestion;

11 “(II) a measure of transportation
12 system reliability; and

13 “(III) a measure of induced de-
14 mand;

15 “(C) safety planning, including—

16 “(i) development of State strategic
17 safety plans consistent with section 148;

18 “(ii) incorporation of work zone safety
19 into planning; and

20 “(iii) training in the development of
21 data systems relating to highway safety;

22 “(D) operations planning, including—

23 “(i) developing training of the integra-
24 tion of transportation system operations

1 and management into the transportation
2 planning process; and
3 “(ii) training and best practices relat-
4 ing to regional concepts of operations;
5 “(E) freight planning, including—
6 “(i) modeling of freight at a regional
7 and statewide level; and
8 “(ii) techniques for engaging the
9 freight community with the planning proc-
10 ess;
11 “(F) air quality planning, including—
12 “(i) assisting new and existing non-
13 attainment and maintenance areas in de-
14 veloping the technical capacity to perform
15 air quality conformity analysis;
16 “(ii) providing training on areas such
17 as modeling and data collection to support
18 air quality planning and analysis;
19 “(iii) developing concepts and tech-
20 niques to assist areas in meeting air qual-
21 ity performance timeframes; and
22 “(iv) developing materials to explain
23 air quality issues to decisionmakers and
24 the public; and

1 “(G) integration of environment and plan-
2 ning.

3 “(3) USE OF FUNDS.—The Secretary shall use
4 amounts made available under paragraph (4) to
5 make grants to, or enter into contracts, cooperative
6 agreements, and other transactions with, a Federal
7 agency, State agency, local agency, federally recog-
8 nized Indian tribal government or tribal consortium,
9 authority, association, nonprofit or for-profit cor-
10 poration, or institution of higher education for re-
11 search, program development, information collection
12 and dissemination, and technical assistance.

13 “(4) SET-ASIDE.—

14 “(A) IN GENERAL.—On October 1 of each
15 fiscal year, of the funds made available under
16 subsection (a), the Secretary shall set aside
17 \$4,000,000 to carry out this subsection.

18 “(B) FEDERAL SHARE.—The Federal
19 share of the cost of an activity carried out
20 using funds made available under subparagraph
21 (A) shall be 100 percent.

22 “(C) AVAILABILITY.—Funds made avail-
23 able under subparagraph (A) shall remain avail-
24 able until expended.”.

1 **Subtitle F—Environment**

2 **SEC. 1601. ENVIRONMENTAL RESTORATION AND POLLU-**
3 **TION ABATEMENT; CONTROL OF INVASIVE**
4 **PLANT SPECIES AND ESTABLISHMENT OF NA-**
5 **TIVE SPECIES.**

6 (a) MODIFICATION TO NHS/STP FOR ENVIRON-
7 MENTAL RESTORATION, POLLUTION ABATEMENT, AND
8 INVASIVE SPECIES.—

9 (1) MODIFICATIONS TO NATIONAL HIGHWAY
10 SYSTEM.—Section 103(b)(6) of title 23, United
11 States Code, is amended by adding at the end the
12 following:

13 “(Q) Environmental restoration and pollu-
14 tion abatement in accordance with section 165.

15 “(R) Control of invasive plant species and
16 establishment of native species in accordance
17 with section 166.”.

18 (2) MODIFICATIONS TO SURFACE TRANSPOR-
19 TATION PROGRAM.—Section 133(b) of title 23, is
20 amended by striking paragraph (14) and inserting
21 the following:

22 “(14) Environmental restoration and pollution
23 abatement in accordance with section 165.

1 “(15) Control of invasive plant species and es-
2 tablishment of native species in accordance with sec-
3 tion 166.”.

4 (b) ELIGIBLE ACTIVITIES.—Subchapter I of chapter
5 1 of title 23, United States Code, is amended by adding
6 at the end the following:

7 **“§ 165. Eligibility for environmental restoration and**
8 **pollution abatement**

9 “(a) IN GENERAL.—Subject to subsection (b), envi-
10 ronmental restoration and pollution abatement to mini-
11 mize or mitigate the impacts of any transportation project
12 funded under this title (including retrofitting and con-
13 struction of storm water treatment systems to meet Fed-
14 eral and State requirements under sections 401 and 402
15 of the Federal Water Pollution Control Act (33 U.S.C.
16 1341, 1342)) may be carried out to address water pollu-
17 tion or environmental degradation caused wholly or par-
18 tially by a transportation facility.

19 “(b) MAXIMUM EXPENDITURE.—In a case in which
20 a transportation facility is undergoing reconstruction, re-
21 habilitation, resurfacing, or restoration, the expenditure of
22 funds under this section for environmental restoration or
23 pollution abatement described in subsection (a) shall not
24 exceed 20 percent of the total cost of the reconstruction,
25 rehabilitation, resurfacing, or restoration of the facility.

1 **“§ 166. Control of invasive plant species and estab-**
2 **lishment of native species**

3 “(a) DEFINITIONS.—In this section:

4 “(1) INVASIVE PLANT SPECIES—The term
5 ‘invasive plant species’ means a nonindigenous spe-
6 cies the introduction of which causes or is likely to
7 cause economic or environmental harm or harm to
8 human health.

9 “(2) NATIVE PLANT SPECIES.—The term ‘na-
10 tive plant species’ means, with respect to a par-
11 ticular ecosystem, a species that, other than as re-
12 sult of an introduction, historically occurred or cur-
13 rently occurs in that ecosystem.

14 “(b) CONTROL OF SPECIES.—

15 “(1) IN GENERAL.—In accordance with all ap-
16 plicable Federal law (including regulations), funds
17 made available to carry out this section may be used
18 for—

19 “(A) participation in the control of invasive
20 plant species; and

21 “(B) the establishment of native species.

22 “(2) INCLUDED ACTIVITIES.—The participation
23 and establishment under paragraph (1) may
24 include—

1 “(A) participation in statewide inventories
2 of invasive plant species and desirable plant
3 species;

4 “(B) regional native plant habitat con-
5 servation and mitigation;

6 “(C) native revegetation;

7 “(D) elimination of invasive species to cre-
8 ate fuel breaks for the prevention and control of
9 wildfires; and

10 “(E) training.

11 “(3) CONTRIBUTIONS.—

12 “(A) IN GENERAL.—Subject to subpara-
13 graph (B), an activity described in paragraph
14 (1) may be carried out concurrently with, in ad-
15 vance of, or following the construction of a
16 project funded under this title.

17 “(B) CONDITION FOR ACTIVITIES CON-
18 DUCTED IN ADVANCE OF PROJECT CONSTRUC-
19 TION.—An activity described in paragraph (1)
20 may be carried out in advance of construction
21 of a project only if the activity is carried out in
22 accordance with all applicable requirements of
23 Federal law (including regulations) and State
24 transportation planning processes.”.

1 (c) CONFORMING AMENDMENT.—The analysis for
 2 subchapter I of chapter 1 of title 23, United States Code
 3 (as amended by section 1406(b)), is amended by adding
 4 at the end the following:

“165. Eligibility for environmental restoration and pollution abatement.
 “166. Control of invasive plant species and establishment of native species.”.

5 **SEC. 1602. NATIONAL SCENIC BYWAYS PROGRAM.**

6 (a) IN GENERAL.—Section 162 of title 23, United
 7 States Code, is amended—

8 (1) in subsection (a)(1), by striking “the roads
 9 as” and all that follows and inserting “the roads
 10 as—

11 “(A) National Scenic Byways;

12 “(B) All-American Roads; or

13 “(C) America’s Byways.”;

14 (2) in subsection (b)—

15 (A) in paragraph (1)(A), by striking “des-
 16 ignated as” and all that follows and inserting
 17 “designated as—

18 “(i) National Scenic Byways;

19 “(ii) All-American Roads; or

20 “(iii) America’s Byways; and”;

21 (B) in paragraph (2)—

22 (i) in subparagraph (A), by striking
 23 “Byway or All-American Road” and insert-

1 ing “Byway, All-American Road, or 1 of
2 America’s Byways”; and

3 (ii) in subparagraph (B), by striking
4 “designation as a” and all that follows and
5 inserting “designation as—

6 “(i) a National Scenic Byway;

7 “(ii) an All-American Road; or

8 “(iii) 1 of America’s Byways; and”;

9 and

10 (3) in subsection (c)(4), by striking “passing
11 lane,”.

12 (b) RESEARCH, TECHNICAL ASSISTANCE, MAR-
13 KETING, AND PROMOTION.—Section 162 of title 23,
14 United States Code, is amended—

15 (1) by redesignating subsections (d), (e), and
16 (f) as subsections (e), (f), and (g), respectively;

17 (2) by inserting after subsection (c) the fol-
18 lowing:

19 “(d) RESEARCH, TECHNICAL ASSISTANCE, MAR-
20 KETING, AND PROMOTION.—

21 “(1) IN GENERAL.—The Secretary may carry
22 out technical assistance, marketing, market re-
23 search, and promotion with respect to State Scenic
24 Byways, National Scenic Byways, All-American
25 Roads, and America’s Byways.

1 “(2) COOPERATION, GRANTS, AND CON-
2 TRACTS.—The Secretary may make grants to, or
3 enter into contracts, cooperative agreements, and
4 other transactions with, any Federal agency, State
5 agency, authority, association, institution, for-profit
6 or nonprofit corporation, organization, or person, to
7 carry out projects and activities under this sub-
8 section.

9 “(3) FUNDS.—The Secretary may use not more
10 than \$2,000,000 for each fiscal year of funds made
11 available for the National Scenic Byways Program
12 to carry out projects and activities under this sub-
13 section.

14 “(4) PRIORITY.—The Secretary shall give pri-
15 ority under this subsection to partnerships that le-
16 verage Federal funds for research, technical assist-
17 ance, marketing and promotion.”; and

18 (3) in subsection (g) (as redesignated by para-
19 graph (1)), by striking “80 percent” and inserting
20 “the share applicable under section 120, as adjusted
21 under subsection (d) of that section”.

22 **SEC. 1603. RECREATIONAL TRAILS PROGRAM.**

23 (a) RECREATIONAL TRAILS PROGRAM FORMULA.—
24 Section 104(h)(1) of title 23, United States Code, is
25 amended—

1 (1) by striking “Whenever” and inserting the
2 following:

3 “(A) IN GENERAL.—In any case in which”;

4 (2) by striking “research and technical assist-
5 ance under the recreational trails program and for
6 the administration of the National Recreational
7 Trails Advisory Committee” and inserting “research,
8 technical assistance, and training under the rec-
9 reational trails program”; and

10 (3) by striking “The Secretary” and inserting
11 the following:

12 “(B) CONTRACTS AND AGREEMENTS.—The
13 Secretary”.

14 (b) RECREATIONAL TRAILS PROGRAM ADMINISTRA-
15 TION.—Section 206 of title 23, United States Code, is
16 amended—

17 (1) in subsection (d)—

18 (A) by striking paragraph (2) and insert-
19 ing the following:

20 “(2) PERMISSIBLE USES.—Permissible uses of
21 funds apportioned to a State for a fiscal year to
22 carry out this section include—

23 “(A) maintenance and restoration of rec-
24 reational trails;

1 “(B) development and rehabilitation of
2 trailside and trailhead facilities and trail link-
3 ages for recreational trails;

4 “(C) purchase and lease of recreational
5 trail construction and maintenance equipment;

6 “(D) construction of new recreational
7 trails, except that, in the case of new rec-
8 reational trails crossing Federal land, construc-
9 tion of the trails shall be—

10 “(i) permissible under other law;

11 “(ii) necessary and recommended by a
12 statewide comprehensive outdoor recreation
13 plan that is—

14 “(I) required under the Land
15 and Water Conservation Fund Act of
16 1965 (16 U.S.C. 4601–4 et seq.); and

17 “(II) in effect;

18 “(iii) approved by the administering
19 agency of the State designated under sub-
20 section (c)(1)(A); and

21 “(iv) approved by each Federal agency
22 having jurisdiction over the affected land,
23 under such terms and conditions as the
24 head of the Federal agency determines to
25 be appropriate, except that the approval

1 shall be contingent on compliance by the
2 Federal agency with all applicable laws,
3 including—

4 “(I) the National Environmental
5 Policy Act of 1969 (42 U.S.C. 4321
6 et seq.);

7 “(II) the Forest and Rangeland
8 Renewable Resources Planning Act of
9 1974 (16 U.S.C. 1600 et seq.); and

10 “(III) the Federal Land Policy
11 and Management Act of 1976 (43
12 U.S.C. 1701 et seq.);

13 “(E) acquisition of easements and fee sim-
14 ple title to property for recreational trails or
15 recreational trail corridors;

16 “(F) assessment of trail conditions for ac-
17 cessibility and maintenance;

18 “(G) use of trail crews, youth conservation
19 or service corps, or other appropriate means to
20 carry out activities under this section;

21 “(H) development and dissemination of
22 publications and operation of educational pro-
23 grams to promote safety and environmental
24 protection, as those objectives relate to the use
25 of recreational trails, supporting non-law en-

1 forcement trail safety and trail use monitoring
2 patrol programs, and providing trail-related
3 training, but in an amount not to exceed 5 per-
4 cent of the apportionment made to the State for
5 the fiscal year; and

6 “(I) payment of costs to the State incurred
7 in administering the program, but in an amount
8 not to exceed 7 percent of the apportionment
9 made to the State for the fiscal year to carry
10 out this section.”; and

11 (B) in paragraph (3)—

12 (i) in subparagraph (D), by striking
13 “(2)(F)” and inserting “(2)(I)”; and

14 (ii) by adding at the end the fol-
15 lowing:

16 “(E) USE OF YOUTH CONSERVATION OR
17 SERVICE CORPS.—A State shall make available
18 not less than 10 percent of the apportionments
19 of the State to provide grants to, or to enter
20 into cooperative agreements or contracts with,
21 qualified youth conservation or service corps to
22 perform recreational trails program activities.”;

23 (2) in subsection (f)—

24 (A) in paragraph (1)—

1 (i) by inserting “and the Federal
2 share of the administrative costs of a
3 State” after “project”; and

4 (ii) by striking “not exceed 80 per-
5 cent” and inserting “be determined in ac-
6 cordance with section 120”;

7 (B) in paragraph (2)—

8 (i) in subparagraph (A), by striking
9 “80 percent of” and inserting “the amount
10 determined in accordance with section 120
11 for”; and

12 (ii) in subparagraph (B), by inserting
13 “sponsoring the project” after “Federal
14 agency”;

15 (C) by striking paragraph (5);

16 (D) by redesignating paragraph (4) as
17 paragraph (5);

18 (E) by inserting after paragraph (3) the
19 following:

20 “(4) USE OF RECREATIONAL TRAILS PROGRAM
21 FUNDS TO MATCH OTHER FEDERAL PROGRAM
22 FUNDS.—Notwithstanding any other provision of
23 law, funds made available under this section may be
24 used to pay the non-Federal matching share for
25 other Federal program funds that are—

1 “(A) expended in accordance with the re-
2 quirements of the Federal program relating to
3 activities funded and populations served; and

4 “(B) expended on a project that is eligible
5 for assistance under this section.”; and

6 (F) in paragraph (5) (as redesignated by
7 subparagraph (D)), by striking “80 percent”
8 and inserting “the Federal share as determined
9 in accordance with section 120”; and
10 (3) in subsection (h)—

11 (A) in paragraph (1), by inserting after
12 subparagraph (B) the following:

13 “(C) PLANNING AND ENVIRONMENTAL AS-
14 SESSMENT COSTS INCURRED PRIOR TO PROJECT
15 APPROVAL.—A project funded under any of
16 subparagraphs (A) through (H) of subsection
17 (d)(2) may permit preapproval planning and en-
18 vironmental compliance costs incurred not more
19 than 18 months before project approval to be
20 credited toward the non-Federal share in ac-
21 cordance with subsection (f).”; and

22 (B) by striking paragraph (2) and insert-
23 ing the following:

24 “(2) WAIVER OF HIGHWAY PROGRAM REQUIRE-
25 MENTS.—A project funded under this section—

1 “(A) is intended to enhance recreational
2 opportunity;

3 “(B) is not considered to be a highway
4 project; and

5 “(C) is not subject to—

6 “(i) section 112, 114, 116, 134, 135,
7 138, 217, or 301 of this title; or

8 “(ii) section 303 of title 49.”.

9 **SEC. 1604. EXEMPTION OF INTERSTATE SYSTEM.**

10 Subsection 103(c) of title 23, United States Code, is
11 amended by adding at the end the following:

12 “(5) EXEMPTION OF INTERSTATE SYSTEM.—

13 “(A) IN GENERAL.—Except as provided in
14 subparagraph (B), the Interstate System shall
15 not be considered to be a historic site under
16 section 303 of title 49 or section 138 of this
17 title, regardless of whether the Interstate Sys-
18 tem or portions of the Interstate System are
19 listed on, or eligible for listing on, the National
20 Register of Historic Places.

21 “(B) INDIVIDUAL ELEMENTS.—A portion
22 of the Interstate System that possesses an inde-
23 pendent feature of historic significance, such as
24 a historic bridge or a highly significant engi-
25 neering feature, that would qualify independ-

1 ently for listing on the National Register of
2 Historic Places, shall be considered to be a his-
3 toric site under section 303 of title 49 or sec-
4 tion 138 of this title, as applicable.”.

5 **SEC. 1605. STANDARDS.**

6 (a) **IN GENERAL.**—Section 109(a) of title 23, United
7 States Code, is amended—

8 (1) in paragraph (1), by striking “and” at the
9 end;

10 (2) in paragraph (2), by striking the period at
11 the end and inserting “; and”; and

12 (3) by adding at the end the following:

13 “(3) consider the preservation, historic, scenic,
14 natural environmental, and community values.”.

15 (b) **CONTEXT SENSITIVE DESIGN.**—Section 109 of
16 title 23, United States Code, is amended by striking sub-
17 section (p) and inserting the following:

18 “(p) **CONTEXT SENSITIVE DESIGN.**—

19 “(1) **IN GENERAL.**—The Secretary shall encour-
20 age States to design projects funded under this title
21 that—

22 “(A) allow for the preservation of environ-
23 mental, scenic, or historic values;

24 “(B) ensure the safe use of the facility;

1 “(C) provide for consideration of the con-
2 text of the locality;

3 “(D) encourage access for other modes of
4 transportation; and

5 “(E) comply with subsection (a).

6 “(2) APPROVAL BY SECRETARY.—Notwith-
7 standing subsections (b) and (c), the Secretary may
8 approve a project described in paragraph (1) for the
9 National Highway System if the project is designed
10 to achieve the criteria specified in that paragraph.”.

11 **SEC. 1606. USE OF HIGH OCCUPANCY VEHICLE LANES.**

12 Section 102 of title 23, United States Code, is
13 amended by striking subsection (a) and inserting the fol-
14 lowing:

15 “(a) HIGH OCCUPANCY VEHICLE LANE PASSENGER
16 REQUIREMENTS.—

17 “(1) DEFINITIONS.—In this subsection:

18 “(A) RESPONSIBLE AGENCY.—The term
19 ‘responsible agency’ means—

20 “(i) a State transportation depart-
21 ment; and

22 “(ii) a local agency in a State that is
23 responsible for transportation matters.

24 “(B) SERIOUSLY DEGRADED.—The term
25 ‘seriously degraded’, with respect to a high oc-

1 cupancy vehicle lane, means, in the case of a
2 high occupancy vehicle lane, the minimum aver-
3 age operating speed, performance threshold,
4 and associated time period of the high occu-
5 pancy vehicle lane, calculated and determined
6 jointly by all applicable responsible agencies and
7 based on conditions unique to the roadway, are
8 unsatisfactory.

9 “(2) REQUIREMENTS.—

10 “(A) IN GENERAL.—Subject to subpara-
11 graph (B), for each State, 1 or more respon-
12 sible agencies shall establish the occupancy re-
13 quirements of vehicles operating on high occu-
14 pancy vehicle lanes.

15 “(B) MINIMUM NUMBER OF OCCUPANTS.—
16 Except as provided in paragraph (3), an occu-
17 pancy requirement established under subpara-
18 graph (A) shall—

19 “(i) require at least 2 occupants per
20 vehicle for a vehicle operating on a high
21 occupancy vehicle lane; and

22 “(ii) in the case of a high occupancy
23 vehicle lane that traverses an adjacent
24 State, be established in consultation with
25 the adjacent State.

1 “(3) EXCEPTIONS TO HOV OCCUPANCY RE-
2 QUIREMENTS.—

3 “(A) MOTORCYCLES.—For the purpose of
4 this subsection, a motorcycle—

5 “(i) shall not be considered to be a
6 single occupant vehicle; and

7 “(ii) shall be allowed to use a high oc-
8 cupancy vehicle lane unless a responsible
9 agency—

10 “(I) certifies to the Secretary the
11 use of a high occupancy vehicle lane
12 by a motorcycle would create a safety
13 hazard; and

14 “(II) restricts that the use of the
15 high occupancy vehicle lane by motor-
16 cycles.

17 “(B) LOW EMISSION AND ENERGY-EFFI-
18 CIENT VEHICLES.—

19 “(i) DEFINITION OF LOW EMISSION
20 AND ENERGY-EFFICIENT VEHICLE.—In
21 this subparagraph, the term ‘low emission
22 and energy-efficient vehicle’ means a vehi-
23 cle that has been certified by the Adminis-
24 trator of the Environmental Protection
25 Agency—

1 “(I)(aa) to have a 45-mile per
2 gallon or greater fuel economy high-
3 way rating; or

4 “(bb) to qualify as an alternative
5 fueled vehicle under section 301 of the
6 Energy Policy Act of 1992 (42 U.S.C.
7 13211); and

8 “(II) as meeting Tier II emission
9 level established in regulations pro-
10 mulgated by the Administrator of the
11 Environmental Protection Agency
12 under section 202(i) of the Clean Air
13 Act (42 U.S.C. 7521(i)) for that make
14 and model year vehicle.

15 “(ii) EXEMPTION FOR LOW EMISSION
16 AND ENERGY-EFFICIENT VEHICLES.—A re-
17 sponsible agency may permit qualifying low
18 emission and energy-efficient vehicles that
19 do not meet applicable occupancy require-
20 ments (as determined by the responsible
21 agency) to use high occupancy vehicle
22 lanes if the responsible agency—

23 “(I) establishes a program that
24 addresses how those qualifying low

1 emission and energy-efficient vehicles
2 are selected and certified;

3 “(II) establishes requirements for
4 labeling qualifying low emission and
5 energy-efficient vehicles (including
6 procedures for enforcing those re-
7 quirements);

8 “(III) continuously monitors,
9 evaluates, and reports to the Sec-
10 retary on performance; and

11 “(IV) imposes such restrictions
12 on the use on high occupancy vehicle
13 lanes by vehicles that do not satisfy
14 established occupancy requirements as
15 are necessary to ensure that the per-
16 formance of individual high occupancy
17 vehicle lanes, and the entire high oc-
18 cupancy vehicle lane system, will not
19 become seriously degraded.

20 “(C) TOLLING OF VEHICLES.—

21 “(i) IN GENERAL.—A responsible
22 agency may permit vehicles, in addition to
23 the vehicles described in paragraphs (A),
24 (B), and (D) that do not satisfy estab-
25 lished occupancy requirements, to use a

1 high occupancy vehicle lane only if the re-
2 sponsible agency charges those vehicles a
3 toll.

4 “(ii) APPLICABLE AUTHORITY.—In
5 imposing a toll under clause (i), a respon-
6 sible agency shall—

7 “(I) be subject to section 129;

8 “(II) establish a toll program
9 that addresses ways in which motor-
10 ists may enroll and participate in the
11 program;

12 “(III) develop, manage, and
13 maintain a system that will automati-
14 cally collect the tolls from covered ve-
15 hicles;

16 “(IV) continuously monitor,
17 evaluate, and report on performance
18 of the system;

19 “(V) establish such policies and
20 procedures as are necessary—

21 “(aa) to vary the toll
22 charged in order to manage the
23 demand for use of high occu-
24 pancy vehicle lanes; and

1 “(bb) to enforce violations;
2 and

3 “(VI) establish procedures to im-
4 pose such restrictions on the use of
5 high occupancy vehicle lanes by vehi-
6 cles that do not satisfy established oc-
7 cupancy requirements as are nec-
8 essary to ensure that the performance
9 of individual high occupancy vehicle
10 lanes, and the entire high occupancy
11 vehicle lane system, will not become
12 seriously degraded.

13 “(D) DESIGNATED PUBLIC TRANSPOR-
14 TATION VEHICLES.—

15 “(i) DEFINITION OF DESIGNATED
16 PUBLIC TRANSPORTATION VEHICLE.—In
17 this subparagraph, the term ‘designated
18 public transportation vehicle’ means a vehi-
19 cle that—

20 “(I) provides designated public
21 transportation (as defined in section
22 221 of the Americans with Disabilities
23 Act of 1990 (42 U.S.C. 12141)); and

24 “(II)(aa) is owned or operated by
25 a public entity; or

1 “(bb) is operated under a con-
2 tract with a public entity.

3 “(ii) USE OF HIGH OCCUPANCY VEHI-
4 CLE LANES.—A responsible agency may
5 permit designated public transportation ve-
6 hicles that do not satisfy established occu-
7 pancy requirements to use high occupancy
8 vehicle lanes if the responsible agency—

9 “(I) requires the clear and identi-
10 fiable labeling of each designated pub-
11 lic transportation vehicle operating
12 under a contract with a public entity
13 with the name of the public entity on
14 all sides of the vehicle;

15 “(II) continuously monitors, eval-
16 uates, and reports on performance of
17 those designated public transportation
18 vehicles; and

19 “(III) imposes such restrictions
20 on the use of high occupancy vehicle
21 lanes by designated public transpor-
22 tation vehicles as are necessary to en-
23 sure that the performance of indi-
24 vidual high occupancy vehicle lanes,
25 and the entire high occupancy vehicle

1 lane system, will not become seriously
2 degraded.

3 “(E) HOV LANE MANAGEMENT, OPER-
4 ATION, AND MONITORING.—

5 “(i) IN GENERAL.—A responsible
6 agency that permits any of the exceptions
7 specified in this paragraph shall comply
8 with clauses (ii) and (iii).

9 “(ii) PERFORMANCE MONITORING,
10 EVALUATION, AND REPORTING.—A respon-
11 sible agency described in clause (i) shall es-
12 tablish, manage, and support a perform-
13 ance monitoring, evaluation, and reporting
14 program under which the responsible agen-
15 cy continuously monitors, assesses, and re-
16 ports on the effects that any vehicle per-
17 mitted to use a high occupancy vehicle lane
18 under an exception under this paragraph
19 may have on the operation of—

20 “(I) individual high occupancy
21 vehicle lanes; and

22 “(II) the entire high occupancy
23 vehicle lane system.

24 “(iii) OPERATION OF HOV LANE OR
25 SYSTEM.—A responsible agency described

1 in clause (i) shall limit use of, or cease to
 2 use, any of the exceptions specified in this
 3 paragraph if the presence of any vehicle
 4 permitted to use a high occupancy vehicle
 5 lane under an exception under this para-
 6 graph seriously degrades the operation
 7 of—

8 “(I) individual high occupancy
 9 vehicle lanes; and

10 “(II) the entire high occupancy
 11 vehicle lane system.”.

12 **SEC. 1607. BICYCLE TRANSPORTATION AND PEDESTRIAN**
 13 **WALKWAYS.**

14 (a) IN GENERAL.—Section 217 of title 23, United
 15 States Code, is amended—

16 (1) in subsection (a), by inserting “pedestrian
 17 and” after “safe”;

18 (2) in subsection (e), by striking “bicycles”
 19 each place it appears and inserting “pedestrians or
 20 bicyclists”;

21 (3) by striking subsection (f) and inserting the
 22 following:

23 “(f) FEDERAL SHARE.—The Federal share of the
 24 construction of bicycle transportation facilities and pedes-
 25 trian walkways, and for carrying out nonconstruction

1 projects relating to safe pedestrian and bicycle use, shall
2 be determined in accordance with section 120(b).”;

3 (4) by redesignating subsection (j) as sub-
4 section (k);

5 (5) by inserting after subsection (i) the fol-
6 lowing:

7 “(j) BICYCLE AND PEDESTRIAN SAFETY GRANTS.—

8 “(1) IN GENERAL.—The Secretary shall select
9 and make grants to a national, nonprofit organiza-
10 tion engaged in promoting bicycle and pedestrian
11 safety—

12 “(A) to operate a national bicycle and pe-
13 destrian clearinghouse;

14 “(B) to develop information and edu-
15 cational programs regarding walking and bicy-
16 cling; and

17 “(C) to disseminate techniques and strate-
18 gies for improving bicycle and pedestrian safety.

19 “(2) FUNDING.—The Secretary may use funds
20 set aside under section 104(n) to carry out this sub-
21 section.

22 “(3) APPLICABILITY OF TITLE 23.—Funds au-
23 thorized to be appropriated to carry out this sub-
24 section shall be available for obligation in the same
25 manner as if the funds were apportioned under sec-

1 tion 104, except that the funds shall remain avail-
2 able until expended.”; and

3 (6) in subsection (k) (as redesignated by para-
4 graph (4))—

5 (A) by redesignating paragraph (4) as
6 paragraph (5); and

7 (B) by inserting after paragraph (3) the
8 following:

9 “(4) SHARED USE PATH.—The term ‘shared
10 use path’ means a multiuse trail or other path that
11 is—

12 “(A) physically separated from motorized
13 vehicular traffic by an open space or barrier, ei-
14 ther within a highway right-of-way or within an
15 independent right-of-way; and

16 “(B) usable for transportation purposes
17 (including by pedestrians, bicyclists, skaters,
18 equestrians, and other nonmotorized users).”.

19 (b) RESERVATION OF FUNDS.—Section 104 of title
20 23, United States Code (as amended by section 1522), is
21 amended by adding at the end the following:

22 “(n) BICYCLE AND PEDESTRIAN SAFETY GRANTS.—
23 On October 1 of each of fiscal years 2004 through 2009,
24 the Secretary, after making the deductions authorized by
25 subsections (a) and (f), shall set aside \$500,000 of the

1 remaining funds apportioned under subsection (b)(3) for
2 use in carrying out the bicycle and pedestrian safety grant
3 program under section 217.”.

4 **SEC. 1608. IDLING REDUCTION FACILITIES IN INTERSTATE**
5 **RIGHTS-OF-WAY.**

6 Section 111 of title 23, United States Code, is
7 amended by adding at the end the following:

8 “(d) IDLING REDUCTION FACILITIES IN INTERSTATE
9 RIGHTS-OF-WAY.—

10 “(1) IN GENERAL.—Notwithstanding subsection
11 (a), a State may—

12 “(A) permit electrification or other idling
13 reduction facilities and equipment, for use by
14 motor vehicles used for commercial purposes, to
15 be placed in rest and recreation areas, and in
16 safety rest areas, constructed or located on
17 rights-of-way of the Interstate System in the
18 State, so long as those idling reduction meas-
19 ures do not—

20 “(i) reduce the existing number of
21 designated truck parking spaces at any
22 given rest or recreation area; or

23 “(ii) preclude the use of those spaces
24 by trucks employing alternative idle reduc-
25 tion technologies; and

1 “(B) charge a fee, or permit the charging
2 of a fee, for the use of those parking spaces ac-
3 tively providing power to a truck to reduce
4 idling.

5 “(2) PURPOSE.—The exclusive purpose of the
6 facilities described in paragraph (1) (or similar tech-
7 nologies) shall be to enable operators of motor vehi-
8 cles used for commercial purposes—

9 “(A) to reduce idling of a truck while
10 parked in the rest or recreation area; and

11 “(B) to use installed or other equipment
12 specifically designed to reduce idling of a truck,
13 or provide alternative power for supporting
14 driver comfort, while parked.”.

15 **SEC. 1609. TOLL PROGRAMS.**

16 (a) INTERSTATE SYSTEM RECONSTRUCTION AND RE-
17 HABILITATION PILOT PROGRAM.—Section 1216(b) of the
18 Transportation Equity Act for the 21st Century (23
19 U.S.C. 129 note; 112 Stat. 212)—

20 (1) is amended—

21 (A) in paragraph (1)—

22 (i) by striking “The Secretary” and
23 inserting “Notwithstanding section 301,
24 the Secretary”; and

1 (ii) by striking “that could not other-
2 wise be adequately maintained or function-
3 ally improved without the collection of
4 tolls”;

5 (B) in paragraph (3), by striking subpara-
6 graph (C) and inserting the following:

7 “(C) An analysis demonstrating that fi-
8 nancing the reconstruction or rehabilitation of
9 the facility with the collection of tolls under this
10 pilot program is the most efficient, economical,
11 or expeditious way to advance the project.”;

12 (C) in paragraph (4)—

13 (i) by striking subparagraph (A) and
14 inserting the following:

15 “(A) the State’s analysis showing that fi-
16 nancing the reconstruction or rehabilitation of a
17 facility with the collection of tolls under the
18 pilot program is the most efficient, economical,
19 or expeditious way to advance the project;”;

20 (ii) by striking subparagraph (B) and
21 inserting the following:

22 “(B) the facility needs reconstruction or
23 rehabilitation, including major work that may
24 require replacing sections of the existing facility
25 on new alignment;”;

1 (iii) by striking subparagraph (C);

2 and

3 (iv) by redesignating subparagraphs

4 (D) and (E) as subparagraphs (C) and

5 (D), respectively;

6 (2) is redesignated as subsection (d) of section

7 129 of title 23, United States Code, and moved to

8 appear at the end of that section; and

9 (3) by striking “of title 23, United States
10 Code” each place it appears.

11 (b) FAST AND SENSIBLE TOLL (FAST) LANES PRO-
12 GRAM.—Section 129 of title 23, United States Code (as
13 amended by subsection (a)(2)), is amended by adding at
14 the end the following:

15 “(e) FAST AND SENSIBLE TOLL (FAST) LANES PRO-
16 GRAM.—

17 “(1) DEFINITIONS.—In this subsection:

18 “(A) ELIGIBLE TOLL FACILITY.—The term
19 ‘eligible toll facility’ includes—

20 “(i) a facility in existence on the date
21 of enactment of this subsection that col-
22 lects tolls;

23 “(ii) a facility in existence on the date
24 of enactment of this subsection, including

1 a facility that serves high occupancy vehi-
2 cles;

3 “(iii) a facility modified or con-
4 structed after the date of enactment of this
5 subsection to create additional tolled ca-
6 pacity (including a facility constructed by a
7 private entity or using private funds); and

8 “(iv) in the case of a new lane added
9 to a previously non-tolled facility, only the
10 new lane.

11 “(B) NONATTAINMENT AREA.—The term
12 ‘nonattainment area’ has the meaning given the
13 term in section 171 of the Clean Air Act (42
14 U.S.C. 7501).

15 “(2) ESTABLISHMENT.—Notwithstanding sec-
16 tions 129 and 301, the Secretary shall permit a
17 State, public authority, or a public or private entity
18 designated by a State, to collect a toll from motor
19 vehicles at an eligible toll facility for any highway,
20 bridge, or tunnel, including facilities on the Inter-
21 state System—

22 “(A) to manage high levels of congestion;

23 “(B) to reduce emissions in a nonattain-
24 ment area or maintenance area; or

1 “(C) to finance the expansion of a high-
2 way, for the purpose of reducing traffic conges-
3 tion, by constructing 1 or more additional lanes
4 (including bridge, tunnel, support, and other
5 structures necessary for that construction) on
6 the Interstate System.

7 “(3) LIMITATION ON USE OF REVENUES.—

8 “(A) USE.—

9 “(i) IN GENERAL.—Toll revenues re-
10 ceived under paragraph (2) shall be used
11 by a State, public authority, or private en-
12 tity designated by a State, for—

13 “(I) debt service for debt in-
14 curred on 1 or more highway or tran-
15 sit projects carried out under this title
16 or title 49;

17 “(II) a reasonable return on in-
18 vestment of any private financing;

19 “(III) the costs necessary for
20 proper operation and maintenance of
21 any facilities under paragraph (2) (in-
22 cluding reconstruction, resurfacing,
23 restoration, and rehabilitation); or

24 “(IV) if the State, public author-
25 ity, or private entity annually certifies

1 that the tolled facility is being ade-
2 quately operated and maintained, any
3 other purpose relating to a highway or
4 transit project carried out under this
5 title or title 49.

6 “(B) REQUIREMENTS.—

7 “(i) VARIABLE PRICE REQUIRE-
8 MENT.—A facility that charges tolls under
9 this subsection may establish a toll that
10 varies in price according to time of day or
11 level of traffic, as appropriate to manage
12 congestion or improve air quality.

13 “(ii) HOV VARIABLE PRICING RE-
14 QUIREMENT.—The Secretary shall require,
15 for each high occupancy vehicle facility
16 that charges tolls under this subsection,
17 that the tolls vary in price according to
18 time of day or level of traffic, as appro-
19 priate to manage congestion or improve air
20 quality.

21 “(iii) HOV PASSENGER REQUIRE-
22 MENTS.—In addition to the exceptions to
23 the high occupancy vehicle passenger re-
24 quirements established under section
25 102(a)(2), a State may permit motor vehi-

1 cles with fewer than 2 occupants to oper-
2 ate in high occupancy vehicle lanes as part
3 of a variable toll pricing program estab-
4 lished under this subsection.

5 “(C) AGREEMENT.—

6 “(i) IN GENERAL.—Before the Sec-
7 retary may permit a facility to charge tolls
8 under this subsection, the Secretary and
9 the applicable State, public authority, or
10 private entity designated by a State shall
11 enter into an agreement for each facility
12 incorporating the conditions described in
13 subparagraphs (A) and (B).

14 “(ii) TERMINATION.—An agreement
15 under clause (i) shall terminate with re-
16 spect to a facility upon the decision of the
17 State, public authority, or private entity
18 designated by a State to discontinue the
19 variable tolling program under this sub-
20 section for the facility.

21 “(iii) DEBT.—

22 “(I) IN GENERAL.—If there is
23 any debt outstanding on a facility at
24 the time at which the decision is made
25 to discontinue the program under this

1 subsection with respect to the facility,
2 the facility may continue to charge
3 tolls in accordance with the terms of
4 the agreement until such time as the
5 debt is retired.

6 “(II) NOTICE.—On retirement of
7 the debt of a tolled facility, the appli-
8 cable State, public authority, or pri-
9 vate entity designated by a State shall
10 provide notice to the public of that re-
11 tirement.

12 “(D) LIMITATION ON FEDERAL SHARE.—
13 The Federal share of the cost of a project on
14 a facility tolled under this subsection, including
15 a project to install the toll collection facility
16 shall be a percentage, not to exceed 80 percent,
17 determined by the applicable State.

18 “(4) ELIGIBILITY.—To be eligible to participate
19 in the program under this subsection, a State, public
20 authority, or private entity designated by a State
21 shall provide to the Secretary—

22 “(A) a description of the congestion or air
23 quality problems sought to be addressed under
24 the program;

25 “(B) a description of—

1 “(i) the goals sought to be achieved
2 under the program; and

3 “(ii) the performance measures that
4 would be used to gauge the success made
5 toward reaching those goals; and

6 “(C) such other information as the Sec-
7 retary may require.

8 “(5) AUTOMATION.—Fees collected from motor-
9 ists using a FAST lane shall be collected only
10 through the use of noncash electronic technology
11 that optimizes the free flow of traffic on the tolled
12 facility.

13 “(6) INTEROPERABILITY.—

14 “(A) RULE.—

15 “(i) IN GENERAL.—Not later than
16 180 days after the date of enactment of
17 this paragraph, the Secretary shall promul-
18 gate a final rule specifying requirements,
19 standards, or performance specifications
20 for automated toll collection systems imple-
21 mented under this section.

22 “(ii) DEVELOPMENT.—In developing
23 that rule, which shall be designed to maxi-
24 mize the interoperability of electronic col-

1 lection systems, the Secretary shall, to the
2 maximum extent practicable—

3 “(I) seek to accelerate progress
4 toward the national goal of achieving
5 a nationwide interoperable electronic
6 toll collection system;

7 “(II) take into account the use of
8 noncash electronic technology cur-
9 rently deployed within an appropriate
10 geographical area of travel and the
11 noncash electronic technology likely to
12 be in use within the next 5 years; and

13 “(III) seek to minimize addi-
14 tional costs and maximize convenience
15 to users of toll facility and to the toll
16 facility owner or operator.

17 “(B) FUTURE MODIFICATIONS.—As the
18 state of technology progresses, the Secretary
19 shall modify the rule promulgated under sub-
20 paragraph (A), as appropriate.

21 “(7) REPORTING.—

22 “(A) IN GENERAL.—The Secretary, in co-
23 operation with State and local agencies and
24 other program participants and with oppor-
25 tunity for public comment, shall—

1 “(i) develop and publish performance
2 goals for each FAST lane project;

3 “(ii) establish a program for regular
4 monitoring and reporting on the achieve-
5 ment of performance goals, including—

6 “(I) effects on travel, traffic, and
7 air quality;

8 “(II) distribution of benefits and
9 burdens;

10 “(III) use of alternative transpor-
11 tation modes; and

12 “(IV) use of revenues to meet
13 transportation or impact mitigation
14 needs.

15 “(B) REPORTS TO CONGRESS.—The Sec-
16 retary shall submit to the Committee on Envi-
17 ronment and Public Works of the Senate and
18 the Committee on Transportation and Infra-
19 structure of the House of Representatives—

20 “(i) not later than 1 year after the
21 date of enactment of this subsection, and
22 annually thereafter, a report that describes
23 in detail the uses of funds under this sub-
24 section in accordance with paragraph
25 (8)(D); and

1 “(ii) not later than 3 years after the
2 date of enactment of this subsection, and
3 every 3 years thereafter, a report that de-
4 scribes any success of the program under
5 this subsection in meeting congestion re-
6 duction and other performance goals estab-
7 lished for FAST lane programs.

8 “(8) FUNDING.—

9 “(A) AUTHORIZATION OF APPROPRIA-
10 TIONS.—There is authorized to be appropriated
11 from the Highway Trust Fund (other than the
12 Mass Transit Account) to carry out pre-imple-
13 mentation studies and post-implementation
14 evaluations of projects planned or implemented
15 under this subsection \$11,000,000 for each of
16 fiscal years 2004 through 2009.

17 “(B) AVAILABILITY.—Funds allocated by
18 the Secretary to a State under this subsection
19 shall remain available for obligation by the
20 State for a period of 3 years after the last day
21 of the fiscal year for which the funds were au-
22 thorized.

23 “(C) CONTRACT AUTHORITY.—Funds au-
24 thorized to be appropriated under this para-
25 graph shall be available for obligation in the

1 same manner as if the funds were apportioned
2 under this chapter, except that the Federal
3 share of the cost of any project carried out
4 under this subsection and the availability of
5 funds authorized by this paragraph shall be de-
6 termined in accordance with this subsection.

7 “(D) PROGRAM PROMOTION.—Notwith-
8 standing any other provision of this section, the
9 Secretary shall use an amount not to exceed 2
10 percent of the funds made available under sub-
11 paragraph (A)—

12 “(i) to make grants to promote the
13 purposes of the program under this sub-
14 section;

15 “(ii) to provide technical support to
16 State and local governments or other pub-
17 lic or private entities involved in imple-
18 menting or considering FAST lane pro-
19 grams; and

20 “(iii) to conduct research on variable
21 pricing that will support State or local ef-
22 forts to initiate those pricing requirements.

23 “(E) EFFECT ON OTHER APPORTION-
24 MENTS AND ALLOCATIONS.—Revenues collected
25 from tolls established under this subsection

1 shall not be taken into account in determining
2 the apportionments and allocations that any
3 State or transportation district within a State
4 shall be entitled to receive under or in accord-
5 ance with this chapter.

6 “(9) COMPLIANCE.—The Secretary shall ensure
7 that any project or activity carried out under this
8 section complies with requirements under section
9 106 of this title and section 307 of title 49.

10 “(10) VOLUNTARY USE.—Nothing in this sub-
11 section requires any highway user to use a FAST
12 lane.

13 “(11) ENVIRONMENTAL REQUIREMENTS.—
14 Nothing in this subsection affects any environmental
15 requirement applicable to the construction or oper-
16 ation of an eligible toll facility under this title or any
17 other provision of law.”.

18 (c) CONFORMING AMENDMENTS.—

19 (1) IN GENERAL.—Section 1012 of the Inter-
20 modal Surface Transportation Efficiency Act (23
21 U.S.C. 149 note; 105 Stat. 1938; 112 Stat. 211) is
22 amended by striking subsection (b).

23 (2) CONTINUATION OF PROGRAM.—Notwith-
24 standing the amendment made by paragraph (1),
25 the Secretary shall monitor and allow any value prie-

1 ing program established under a cooperative agree-
2 ment in effect on the day before the date of enact-
3 ment of this Act to continue.

4 **SEC. 1610. FEDERAL REFERENCE METHOD.**

5 (a) IN GENERAL.—Section 6102 of the Transpor-
6 tation Equity Act for the 21st Century (42 U.S.C. 7407
7 note; 112 Stat. 464) is amended by striking subsection
8 (e) and inserting the following:

9 “(e) FIELD STUDY.—Not later than 2 years after the
10 date of enactment of the Safe, Accountable, Flexible, and
11 Efficient Transportation Equity Act of 2004, the Adminis-
12 trator shall—

13 “(1) conduct a field study of the ability of the
14 PM_{2.5} Federal Reference Method to differentiate
15 those particles that are larger than 2.5 micrometers
16 in diameter;

17 “(2) develop a Federal reference method to
18 measure directly particles that are larger than 2.5
19 micrometers in diameter without reliance on sub-
20 tracting from coarse particle measurements those
21 particles that are equal to or smaller than 2.5 mi-
22 crometers in diameter;

23 “(3) develop a method of measuring the com-
24 position of coarse particles; and

1 “(4) submit a report on the study and respon-
2 sibilities of the Administrator under paragraphs (1)
3 through (3) to—

4 “(A) the Committee on Commerce of the
5 House of Representatives; and

6 “(B) the Committee on Environment and
7 Public Works of the Senate.”.

8 **SEC. 1611. ADDITION OF PARTICULATE MATTER AREAS TO**
9 **CMAQ.**

10 Section 104(b)(2) of title 23, United States Code, is
11 amended—

12 (1) in subparagraph (B)—

13 (A) in the matter preceding clause (i), by
14 striking “ozone or carbon monoxide” and in-
15 serting “ozone, carbon monoxide, or fine partic-
16 ulate matter (PM_{2.5})”;

17 (B) by striking clause (i) and inserting the
18 following:

19 “(i) 1.0, if at the time of apportion-
20 ment, the area is a maintenance area;”;

21 (C) in clause (vi), by striking “or” after
22 the semicolon; and

23 (D) in clause (vii)—

24 (i) by striking “area as described in
25 section 149(b) for ozone,” and inserting

1 “area for ozone (as described in section
2 149(b) or for PM–2.5”; and

3 (ii) by striking the period at the end
4 and inserting a semicolon;

5 (2) by adding at the end the following:

6 “(viii) 1.0 if, at the time of apportion-
7 ment, any county that is not designated as
8 a nonattainment or maintenance area
9 under the 1-hour ozone standard is des-
10 ignated as nonattainment under the 8-hour
11 ozone standard; or

12 “(ix) 1.2 if, at the time of apportion-
13 ment, the area is not a nonattainment or
14 maintenance area as described in section
15 149(b) for ozone or carbon monoxide, but
16 is an area designated nonattainment under
17 the PM–2.5 standard.”;

18 (3) by striking subparagraph (C) and inserting
19 the following:

20 “(C) ADDITIONAL ADJUSTMENT FOR CAR-
21 BON MONOXIDE AREAS.—If, in addition to
22 being designated as a nonattainment or mainte-
23 nance area for ozone as described in section
24 149(b), any county within the area was also
25 classified under subpart 3 of part D of title I

1 of the Clean Air Act (42 U.S.C. 7512 et seq.)
2 as a nonattainment or maintenance area de-
3 scribed in section 149(b) for carbon monoxide,
4 the weighted nonattainment or maintenance
5 area population of the county, as determined
6 under clauses (i) through (vi) or clause (viii) of
7 subparagraph (B), shall be further multiplied
8 by a factor of 1.2.”;

9 (4) by redesignating subparagraph (D) and (E)
10 as subparagraphs (E) and (F) respectively; and

11 (5) by inserting after subparagraph (C) the fol-
12 lowing:

13 “(D) ADDITIONAL ADJUSTMENT FOR PM
14 2.5 AREAS.—If, in addition to being designated
15 as a nonattainment or maintenance area for
16 ozone or carbon monoxide, or both as described
17 in section 149(b), any county within the area
18 was also designated under the PM–2.5 standard
19 as a nonattainment or maintenance area, the
20 weighted nonattainment or maintenance area
21 population of those counties shall be further
22 multiplied by a factor of 1.2.”.

23 **SEC. 1612. ADDITION TO CMAQ-ELIGIBLE PROJECTS.**

24 (a) ELIGIBLE PROJECTS.—Section 149(b) of title 23,
25 United States Code, is amended—

1 (1) in paragraph (4), by striking “or” at the
2 end;

3 (2) in paragraph (5), by striking the period at
4 the end and inserting a semicolon; and

5 (3) by adding at the end the following:

6 “(6) if the project or program is for the pur-
7 chase of alternative fuel (as defined in section 301
8 of the Energy Policy Act of 1992 (42 U.S.C.
9 13211)) or biodiesel; or

10 “(7) if the project or program involves the pur-
11 chase of integrated, interoperable emergency com-
12 munications equipment.”.

13 (b) STATES RECEIVING MINIMUM APPORTION-
14 MENT.—Section 149(c) of title 23, United States Code,
15 is amended—

16 (1) in paragraph (1), by striking “for any
17 project eligible under the surface transportation pro-
18 gram under section 133.” and inserting the fol-
19 lowing: “for any project in the State that—

20 “(A) would otherwise be eligible under this
21 section as if the project were carried out in a
22 nonattainment or maintenance area; or

23 “(B) is eligible under the surface transpor-
24 tation program under section 133.”; and

1 (2) in paragraph (2), by striking “for any
2 project in the State eligible under section 133.” and
3 inserting the following: “for any project in the State
4 that—

5 “(A) would otherwise be eligible under this
6 section as if the project were carried out in a
7 nonattainment or maintenance area; or

8 “(B) is eligible under the surface transpor-
9 tation program under section 133.”.

10 (c) RESPONSIBILITY OF STATES.—

11 (1) IN GENERAL.—Each State shall be respon-
12 sible for ensuring that subrecipients of Federal
13 funds within the State under section 149 of title 23,
14 United States Code, have emission reduction strate-
15 gies for fleets that are—

16 (A) used in construction projects located in
17 nonattainment and maintenance areas; and

18 (B) funded under title 23, United States
19 Code.

20 (2) EMISSION REDUCTION STRATEGIES.—The
21 Administrator of the Environmental Protection
22 Agency, in consultation with the Secretary, shall de-
23 velop a nonbinding list of emission reduction strate-
24 gies and supporting technical information for each
25 strategy, including—

- 1 (A) contract preferences;
- 2 (B) requirements for the use of anti-idling
3 equipment;
- 4 (C) diesel retrofits; and
- 5 (D) such other matters as the Adminis-
6 trator of the Environmental Protection Agency,
7 in consultation with the Secretary, determine to
8 be appropriate.

9 (3) USE OF CMAQ FUNDS.—A State may use
10 funds made available under this title and title 23,
11 United States Code, for the congestion mitigation
12 and air quality program under section 149 of title
13 23, United States Code, to ensure the deployment of
14 the emission reduction strategies described in para-
15 graph (1).

16 **SEC. 1613. IMPROVED INTERAGENCY CONSULTATION.**

17 Section 149 of title 23, United States Code, is
18 amended by adding at the end the following:

19 “(g) INTERAGENCY CONSULTATION.—The Secretary
20 shall encourage States and metropolitan planning organi-
21 zations to consult with State and local air quality agencies
22 in nonattainment and maintenance areas on the estimated
23 emission reductions from proposed congestion mitigation
24 and air quality improvement programs and projects.”.

1 **SEC. 1614. EVALUATION AND ASSESSMENT OF CMAQ**
2 **PROJECTS.**

3 Section 149 of title 23, United States Code, is
4 amended by adding at the end the following:

5 “(h) EVALUATION AND ASSESSMENT OF
6 PROJECTS.—

7 “(1) IN GENERAL.—The Secretary, in consulta-
8 tion with the Administrator of the Environmental
9 Protection Agency, shall evaluate and assess a rep-
10 resentative sample of projects funded under the con-
11 gestion mitigation and air quality program to—

12 “(A) determine the direct and indirect im-
13 pact of the projects on air quality and conges-
14 tion levels; and

15 “(B) ensure the effective implementation
16 of the program.

17 “(2) DATABASE.—Using appropriate assess-
18 ments of projects funded under the congestion miti-
19 gation and air quality program and results from
20 other research, the Secretary shall maintain and dis-
21 seminate a cumulative database describing the im-
22 pacts of the projects.

23 “(3) CONSIDERATION.—The Secretary, in con-
24 sultation with the Administrator of the Environ-
25 mental Protection Agency, shall consider the rec-
26 ommendations and findings of the report submitted

1 to Congress under section 1110(e) of the Transpor-
2 tation Equity Act for the 21st Century (112 Stat.
3 144), including recommendations and findings that
4 would improve the operation and evaluation of the
5 congestion mitigation and air quality improvement
6 program under section 149.”.

7 **SEC. 1615. SYNCHRONIZED PLANNING AND CONFORMITY**
8 **TIMELINES, REQUIREMENTS, AND HORIZON.**

9 (a) METROPOLITAN PLANNING.—

10 (1) DEVELOPMENT OF LONG-RANGE TRANSPOR-
11 TATION PLAN.—Section 134(g)(1) of title 23, United
12 States Code, is amended by striking “periodically,
13 according to a schedule that the Secretary deter-
14 mines to be appropriate,” and inserting “every 4
15 years (or more frequently, in a case in which the
16 metropolitan planning organization elects to update
17 a transportation plan more frequently) in areas des-
18 ignated as nonattainment, as defined in section
19 107(d) of the Clean Air Act (42 U.S.C. 7407(d)),
20 and in areas that were nonattainment that have
21 been redesignated to attainment in accordance with
22 section 107(d)(3) of that Act (42 U.S.C.
23 7407(d)(3)), with a maintenance plan under section
24 175A of that Act (42 U.S.C. 7505a), or every 5
25 years (or more frequently, in a case in which the

1 metropolitan planning organization elects to update
2 a transportation plan more frequently) in areas des-
3 ignated as attainment (as defined in section 107(d)
4 of that Act (42 U.S.C. 7407(d))),”.

5 (2) METROPOLITAN TRANSPORTATION IM-
6 PROVEMENT PROGRAM.—Section 134(h) of title 23,
7 United States Code, is amended—

8 (A) in paragraph (1)(D), by striking “2
9 years” and inserting “4 years”; and

10 (B) in paragraph (2)(A), by striking “3-
11 year” and inserting “4-year”.

12 (3) STATEWIDE TRANSPORTATION IMPROVE-
13 MENT PROGRAM.—Section 135(f)(1)(A) of title 23,
14 United States Code, is amended by inserting after
15 “program” the following: “(which program shall
16 cover a period of 4 years and be updated every 4
17 years)”.

18 (4) FINAL REGULATIONS.—Not later than 18
19 months after the date of enactment of the Safe, Ac-
20 countable, Flexible, and Efficient Transportation
21 Equity Act of 2004, the Secretary shall promulgate
22 regulations that are consistent with the amendments
23 made by this subsection.

1 (b) SYNCHRONIZED CONFORMITY DETERMINA-
2 TION.—Section 176(e) of the Clean Air Act (42 U.S.C.
3 7506(e)) is amended—

4 (1) in paragraph (2)—

5 (A) by striking “(2) Any transportation
6 plan” and inserting the following:

7 “(2) TRANSPORTATION PLANS AND PRO-
8 GRAMS.—Any transportation plan”;

9 (B) in subparagraph (C)(iii), by striking
10 the period at the end and inserting a semicolon;

11 (C) in subparagraph (D)—

12 (i) by striking “Any project” and in-
13 serting “any transportation project”; and

14 (ii) by striking the period at the end
15 and inserting “; and”; and

16 (D) by adding at the end the following:

17 “(E) the appropriate metropolitan plan-
18 ning organization shall redetermine conformity
19 of existing transportation plans and programs
20 not later than 2 years after the date on which
21 the Administrator—

22 “(i) finds a motor vehicle emissions
23 budget to be adequate in accordance with
24 section 93.118(e)(4) of title 40, Code of

1 Federal Regulations (as in effect on Octo-
2 ber 1, 2003);

3 “(ii) approves an implementation plan
4 that establishes a motor vehicle emissions
5 budget, if that budget has not yet been
6 used in a conformity determination prior
7 to approval; or

8 “(iii) promulgates an implementation
9 plan that establishes or revises a motor ve-
10 hicle emissions budget.”;

11 (2) in paragraph (4)(B)(ii), by striking “but in
12 no case shall such determinations for transportation
13 plans and programs be less frequent than every 3
14 years; and” and inserting “but the frequency for
15 making conformity determinations on updated trans-
16 portation plans and programs shall be every 4 years,
17 except in a case in which—

18 “(I) the metropolitan planning
19 organization elects to update a trans-
20 portation plan or program more fre-
21 quently; or

22 “(II) the metropolitan planning
23 organization is required to determine
24 conformity in accordance with para-
25 graph (2)(E); and”;

1 (3) in paragraph (4)(B)—

2 (A) in clause (ii), by striking “and” at the
3 end;

4 (B) in clause (iii), by striking the period at
5 the end and inserting “; and”; and

6 (C) by adding at the end the following:

7 “(iv) address the effects of the most
8 recent population, economic, employment,
9 travel, transit ridership, congestion, and
10 induced travel demand information in the
11 development and application of the latest
12 travel and emissions models.”;

13 (4) by adding at the end the following:

14 “(7) CONFORMITY HORIZON FOR TRANSPOR-
15 TATION PLANS.—

16 “(A) IN GENERAL.—For the purposes of
17 this section, a transportation plan in a non-
18 attainment or maintenance area shall be consid-
19 ered to be a transportation plan or a portion of
20 a transportation plan that extends for the long-
21 est of the following periods:

22 “(i) The first 10-year period of any
23 such transportation plan.

1 “(ii) The latest year in the implemen-
2 tation plan applicable to the area that con-
3 tains a motor vehicle emission budget.

4 “(iii) The year after the completion
5 date of a regionally significant project, if
6 the project requires approval before the
7 subsequent conformity determination.

8 “(B) EXCEPTION.—In a case in which an
9 area has a revision to an implementation plan
10 under section 175A(b) and the Administrator
11 has found the motor vehicle emissions budgets
12 from that revision to be adequate in accordance
13 with section 93.118(e)(4) of title 40, Code of
14 Federal Regulations (as in effect on October 1,
15 2003), or has approved the revision, the trans-
16 portation plan shall be considered to be a trans-
17 portation plan or portion of a transportation
18 plan that extends through the last year of the
19 implementation plan required under section
20 175A(b).

21 “(8) DEFINITIONS.—In this subsection:

22 “(A) REGIONALLY SIGNIFICANT
23 PROJECT.—

24 “(i) IN GENERAL.—The term ‘region-
25 ally significant project’ means a transpor-

1 tation project that is on a facility that
2 serves a regional transportation need,
3 including—

4 “(I) access to and from the area
5 outside of the region;

6 “(II) access to and from major
7 planned developments, including new
8 retail malls, sports complexes, or
9 transportation terminals; and

10 “(III) most transportation termi-
11 nals.

12 “(ii) PRINCIPAL ARTERIALS AND
13 FIXED GUIDEWAYS.—The term ‘regionally
14 significant project’ includes, at a
15 minimum—

16 “(I) all principal arterial high-
17 ways; and

18 “(II) all fixed guideway transit
19 facilities that offer an alternative to
20 regional highway travel.

21 “(iii) ADDITIONAL PROJECTS.—The
22 interagency consultation process and pro-
23 cedures described in section 93.105(c) of
24 title 40, Code of Federal Regulations (as
25 in effect on October 1, 2003), shall be used

1 to make determinations as to whether
2 minor arterial highways and other trans-
3 portation projects should be considered ‘re-
4 gionally significant projects’.

5 “(iv) EXCLUSIONS.—The term ‘re-
6 gionally significant project’ does not in-
7 clude any project of a type listed in sec-
8 tions 93.126 or 127 of title 40, Code of
9 Federal Regulations (as in effect on Octo-
10 ber 1, 2003).

11 “(B) SIGNIFICANT REVISION.—The term
12 ‘significant revision’ means—

13 “(i) with respect to a regionally sig-
14 nificant project, a significant change in de-
15 sign concept or scope to the project; and

16 “(ii) with respect to any other kind of
17 project, a change that converts a project
18 that is not a regionally significant project
19 into a regionally significant project.

20 “(C) TRANSPORTATION PROJECT.—The
21 term ‘transportation project’ includes only a
22 project that is—

23 “(i) a regionally significant project; or

24 “(ii) a project that makes a signifi-
25 cant revision to an existing project.”; and

1 (5) in the matter following paragraph (3)(B),
2 by inserting “transportation” before “project” each
3 place it appears.

4 **SEC. 1616. TRANSITION TO NEW AIR QUALITY STANDARDS.**

5 Section 176(c) of the Clean Air Act (42 U.S.C.
6 7506(c)) is amended by striking paragraph (3) and insert-
7 ing the following:

8 “(3) METHODS OF CONFORMITY DETERMINA-
9 TION BEFORE BUDGET IS AVAILABLE.—

10 “(A) IN GENERAL.—Until such time as a
11 motor vehicle emission budget from an imple-
12 mentation plan submitted for a national ambi-
13 ent air quality standard is determined to be
14 adequate in accordance with section
15 93.118(e)(4) of title 40, Code of Federal Regu-
16 lations (as in effect on October 1, 2003), or the
17 submitted implementation plan is approved,
18 conformity of such a plan, program, or project
19 shall be demonstrated, in accordance with
20 clauses (i) and (ii) and as selected through the
21 consultation process required under paragraph
22 (4)(D)(i), with—

23 “(i) a motor vehicle emission budget
24 that has been found adequate in accord-
25 ance with section 93.118(e)(4) of title 40,

1 Code of Federal Regulations (as in effect
2 on October 1, 2003), or that has been ap-
3 proved, from an implementation plan for
4 the most recent prior applicable national
5 ambient air quality standard addressing
6 the same pollutant; or

7 “(ii) other such tests as the Adminis-
8 trator shall determine to ensure that—

9 “(I) the transportation plan or
10 program—

11 “(aa) is consistent with the
12 most recent estimates of mobile
13 source emissions;

14 “(bb) provides for the expe-
15 ditious implementation of trans-
16 portation control measures in the
17 applicable implementation plan;
18 and

19 “(cc) with respect to an
20 ozone or carbon monoxide non-
21 attainment area, contributes to
22 annual emissions reductions con-
23 sistent with sections 182(b)(1)
24 and 187(a)(7); and

25 “(II) the transportation project—

1 “(aa) comes from a con-
2 forming transportation plan and
3 program described in this sub-
4 paragraph; and

5 “(bb) in a carbon monoxide
6 nonattainment area, eliminates
7 or reduces the severity and num-
8 ber of violations of the carbon
9 monoxide standards in the area
10 substantially affected by the
11 project.

12 “(B) DETERMINATION FOR A TRANSPOR-
13 TATION PROJECT IN A CARBON MONOXIDE NON-
14 ATTAINMENT AREA.—A determination under
15 subparagraph (A)(ii)(II)(bb) may be made as
16 part of either the conformity determination for
17 the transportation program or for the individual
18 project taken as a whole during the environ-
19 mental review phase of project development.”.

20 **SEC. 1617. REDUCED BARRIERS TO AIR QUALITY IMPROVE-**
21 **MENTS.**

22 Section 176(c) of the Clean Air Act (42 U.S.C.
23 7506(c)) (as amended by section 1615(b)(4)) is
24 amended—

1 (1) by redesignating paragraph (8) as para-
2 graph (9); and

3 (2) by inserting after paragraph (7) the fol-
4 lowing:

5 “(8) SUBSTITUTION FOR TRANSPORTATION
6 CONTROL MEASURES.—

7 “(A) IN GENERAL.—Transportation con-
8 trol measures that are specified in an imple-
9 mentation plan may be replaced or added to the
10 implementation plan with alternate or addi-
11 tional transportation control measures if—

12 “(i) the substitute measures achieve
13 equivalent or greater emissions reductions
14 than the control measure to be replaced, as
15 demonstrated with an analysis that is con-
16 sistent with the current methodology used
17 for evaluating the replaced control measure
18 in the implementation plan;

19 “(ii) the substitute control measures
20 are implemented—

21 “(I) in accordance with a sched-
22 ule that is consistent with the sched-
23 ule provided for control measures in
24 the implementation plan; or

1 “(II) if the implementation plan
2 date for implementation of the control
3 measure to be replaced has passed, as
4 soon as practicable after the imple-
5 mentation plan date but not later
6 than the date on which emission re-
7 ductions are necessary to achieve the
8 purpose of the implementation plan;

9 “(iii) the substitute and additional
10 control measures are accompanied with evi-
11 dence of adequate personnel, funding, and
12 authority under State or local law to im-
13 plement, monitor, and enforce the control
14 measures;

15 “(iv) the substitute and additional
16 control measures were developed through a
17 collaborative process that included—

18 “(I) participation by representa-
19 tives of all affected jurisdictions (in-
20 cluding local air pollution control
21 agencies, the State air pollution con-
22 trol agency, and State and local trans-
23 portation agencies);

24 “(II) consultation with the Ad-
25 ministrators; and

1 “(III) reasonable public notice
2 and opportunity for comment; and

3 “(v) the metropolitan planning organi-
4 zation, State air pollution control agency,
5 and the Administrator concur with the
6 equivalency of the substitute or additional
7 control measures.

8 “(B) ADOPTION.—After carrying out sub-
9 paragraph (A), a State shall adopt the sub-
10 stitute or additional transportation control
11 measure in the applicable implementation plan.

12 “(C) NO REQUIREMENT FOR EXPRESS
13 PERMISSION.—The substitution or addition of a
14 transportation control measure in accordance
15 with this paragraph shall not be contingent on
16 there being any provision in the implementation
17 plan that expressly permits such a substitution
18 or addition.

19 “(D) NO REQUIREMENT FOR NEW CON-
20 FORMITY DETERMINATION.—The substitution
21 or addition of a transportation control measure
22 in accordance with this paragraph shall not
23 require—

24 “(i) a new conformity determination
25 for the transportation plan; or

1 “(ii) a revision of the implementation
2 plan.

3 “(E) CONTINUATION OF CONTROL MEAS-
4 URE BEING REPLACED.—A control measure
5 that is being replaced by a substitute control
6 measure under this paragraph shall remain in
7 effect until the substitute control measure is
8 adopted by the State pursuant to subparagraph
9 (B).

10 “(F) EFFECT OF ADOPTION.—Adoption of
11 a substitute control measure shall constitute re-
12 scission of the previously applicable control
13 measure.”.

14 **SEC. 1618. AIR QUALITY MONITORING DATA INFLUENCED**
15 **BY EXCEPTIONAL EVENTS.**

16 (a) IN GENERAL.—Section 319 of the Clean Air Act
17 (42 U.S.C. 7619) is amended—

18 (1) by striking the section heading and all that
19 follows through “after notice and opportunity for
20 public hearing” and inserting the following:

21 **“SEC. 319. AIR QUALITY MONITORING.**

22 “(a) IN GENERAL.—After notice and opportunity for
23 public hearing”; and

24 (2) by adding at the end the following:

1 “(b) AIR QUALITY MONITORING DATA INFLUENCED
2 BY EXCEPTIONAL EVENTS.—

3 “(1) DEFINITION OF EXCEPTIONAL EVENT.—In
4 this section:

5 “(A) IN GENERAL.—The term ‘exceptional
6 event’ means an event that—

7 “(i) affects air quality;

8 “(ii) is not reasonably controllable or
9 preventable;

10 “(iii) is—

11 “(I) a natural event; or

12 “(II) an event caused by human
13 activity that is unlikely to recur at a
14 particular location; and

15 “(iv) is determined by the Adminis-
16 trator through the process established in
17 the regulations promulgated under para-
18 graph (2) to be an exceptional event.

19 “(B) EXCLUSIONS.—The term ‘exceptional
20 event’ does not include—

21 “(i) stagnation of air masses or mete-
22 orological inversions;

23 “(ii) a meteorological event involving
24 high temperatures or lack of precipitation;

25 or

1 “(iii) air pollution relating to source
2 noncompliance.

3 “(2) REGULATIONS.—

4 “(A) PROPOSED REGULATIONS.—Not later
5 than March 1, 2005, after consultation with
6 Federal land managers and State air pollution
7 control agencies, the Administrator shall pub-
8 lish in the Federal Register proposed regula-
9 tions governing the review and handling of air
10 quality monitoring data influenced by excep-
11 tional events.

12 “(B) FINAL REGULATIONS.—Not later
13 than 1 year after the date on which the Admin-
14 istrator publishes proposed regulations under
15 subparagraph (A), and after providing an op-
16 portunity for interested persons to make oral
17 presentations of views, data, and arguments re-
18 garding the proposed regulations, the Adminis-
19 trator shall promulgate final regulations gov-
20 erning the review and handling or air quality
21 monitoring data influenced by an exceptional
22 event that are consistent with paragraph (3).

23 “(3) PRINCIPLES AND REQUIREMENTS.—

1 “(A) PRINCIPLES.—In promulgating regu-
2 lations under this section, the Administrator
3 shall follow—

4 “(i) the principle that protection of
5 public health is the highest priority;

6 “(ii) the principle that timely informa-
7 tion should be provided to the public in
8 any case in which the air quality is
9 unhealthy;

10 “(iii) the principle that all ambient air
11 quality data should be included in a timely
12 manner, an appropriate Federal air quality
13 database that is accessible to the public;

14 “(iv) the principle that each State
15 must take necessary measures to safeguard
16 public health regardless of the source of
17 the air pollution; and

18 “(v) the principle that air quality data
19 should be carefully screened to ensure that
20 events not likely to recur are represented
21 accurately in all monitoring data and anal-
22 yses.

23 “(B) REQUIREMENTS.—Regulations pro-
24 mulgated under this section shall, at a min-
25 imum, provide that—

1 “(i) the occurrence of an exceptional
2 event must be demonstrated by reliable,
3 accurate data that is promptly produced
4 and provided by Federal, State, or local
5 government agencies;

6 “(ii) a clear causal relationship must
7 exist between the measured exceedances of
8 a national ambient air quality standard
9 and the exceptional event to demonstrate
10 that the exceptional event caused a specific
11 air pollution concentration at a particular
12 air quality monitoring location;

13 “(iii) there is a public process for de-
14 termining whether an event is exceptional;
15 and

16 “(iv) there are criteria and procedures
17 for the Governor of a State to petition the
18 Administrator to exclude air quality moni-
19 toring data that is directly due to excep-
20 tional events from use in determinations by
21 the Environmental Protection Agency with
22 respect to exceedances or violations of the
23 national ambient air quality standards.

24 “(4) INTERIM PROVISION.—Until the effective
25 date of a regulation promulgated under paragraph

1 (2), the following guidance issued by the Adminis-
2 trator shall continue to apply:

3 “(A) Guidance on the identification and
4 use of air quality data affected by exceptional
5 events (July 1986).

6 “(B) Areas affected by PM-10 natural
7 events, May 30, 1996.

8 “(C) Appendices I, K, and N to part 50 of
9 title 40, Code of Federal Regulations.”.

10 **SEC. 1619. CONFORMING AMENDMENTS.**

11 Section 176(c)(4) of the Clean Air Act (42 U.S.C.
12 7506(c)(4) is amended—

13 (1) by redesignating subparagraphs (B)
14 through (D) as subparagraphs (D) through (F), re-
15 spectively;

16 (2) by striking “(4)(A) No later than one year
17 after the date of enactment of the Clean Air Act
18 Amendments of 1990, the Administrator shall pro-
19 mulgate” and inserting the following:

20 “(4) CRITERIA AND PROCEDURES FOR DETER-
21 MINING CONFORMITY.—

22 “(A) IN GENERAL.—The Administrator
23 shall promulgate, and periodically update,”;

24 (3) in subparagraph (A)—

1 (A) in the second sentence, by striking
2 “No later than one year after such date of en-
3 actment, the Administrator, with the concur-
4 rence of the Secretary of Transportation, shall
5 promulgate” and inserting the following:

6 “(B) TRANSPORTATION PLANS, PROGRAMS,
7 AND PROJECTS.—The Administrator, with the
8 concurrence of the Secretary of Transportation,
9 shall promulgate, and periodically update,”; and

10 (B) in the third sentence, by striking “A
11 suit” and inserting the following:

12 “(C) CIVIL ACTION TO COMPEL PROMUL-
13 GATION.—A civil action”; and

14 (4) by striking subparagraph (E) (as redesign-
15 nated by paragraph (1)) and inserting the following:

16 “(E) INCLUSION OF CRITERIA AND PROCE-
17 DURES IN SIP.—Not later than 2 years after
18 the date of enactment of the Safe, Accountable,
19 Flexible, and Efficient Transportation Equity
20 Act of 2004, the procedures under subpara-
21 graph (A) shall include a requirement that each
22 State include in the State implementation plan
23 criteria and procedures for consultation in ac-
24 cordance with the Administrator’s criteria and

1 procedures for consultation required by sub-
2 paragraph (D)(i).”.

3 **SEC. 1620. HIGHWAY STORMWATER DISCHARGE MITIGA-**
4 **TION PROGRAM.**

5 (a) HIGHWAY STORMWATER MITIGATION
6 PROJECTS.—Section 133(d) of title 23, United States
7 Code (as amended by section 1401(a)(2)(B)), is amended
8 by adding at the end the following:

9 “(5) HIGHWAY STORMWATER DISCHARGE MITI-
10 GATION PROJECTS.—Of the amount apportioned to a
11 State under section 104(b)(3) for a fiscal year, 2
12 percent shall be available only for projects and ac-
13 tivities carried out under section 167.”.

14 (b) HIGHWAY STORMWATER DISCHARGE MITIGA-
15 TION PROGRAM.—Subchapter I of chapter 1 of title 23,
16 United States Code (as amended by section 1601(a)), is
17 amended by adding at the end the following:

18 **“§ 167. Highway stormwater discharge mitigation**
19 **program**

20 “(a) DEFINITIONS.—In this section:

21 “(1) ADMINISTRATOR.—The term ‘Adminis-
22 trator’ means the Administrator of the Environ-
23 mental Protection Agency.

1 “(2) ELIGIBLE MITIGATION PROJECT.—The
2 term ‘eligible mitigation project’ means a practice or
3 technique that—

4 “(A) improves stormwater discharge water
5 quality;

6 “(B) attains preconstruction hydrology;

7 “(C) promotes infiltration of stormwater
8 into groundwater;

9 “(D) recharges groundwater;

10 “(E) minimizes stream bank erosion;

11 “(F) promotes natural filters;

12 “(G) otherwise mitigates water quality im-
13 pacts of highway stormwater discharges, im-
14 proves surface water quality, or enhances
15 groundwater recharge; or

16 “(H) reduces flooding caused by highway
17 stormwater discharge.

18 “(3) FEDERAL-AID HIGHWAY AND ASSOCIATED
19 FACILITY.—The term ‘Federal-aid highway and as-
20 sociated facility’ means—

21 “(A) a Federal-aid highway; or

22 “(B) a facility or land owned by a State
23 (or political subdivision of a State) that is di-
24 rectly associated with the Federal-aid highway.

1 “(4) HIGHWAY STORMWATER DISCHARGE.—The
2 term ‘highway stormwater discharge’ means
3 stormwater discharge from a Federal-aid highway,
4 or a Federal-aid highway and associated facility,
5 that was constructed before the date of enactment of
6 this section.

7 “(5) HIGHWAY STORMWATER DISCHARGE MITI-
8 GATION.—The term ‘highway stormwater discharge
9 mitigation’ means—

10 “(A) the reduction of water quality im-
11 pacts of stormwater discharges from Federal-
12 aid highways or Federal-aid highways and asso-
13 ciated facilities; or

14 “(B) the enhancement of groundwater re-
15 charge from stormwater discharges from Fed-
16 eral-aid highways or Federal-aid highways and
17 associated facilities.

18 “(6) PROGRAM.—The term ‘program’ means
19 the highway stormwater discharge mitigation pro-
20 gram established under subsection (b).

21 “(b) ESTABLISHMENT.—The Secretary shall estab-
22 lish a highway stormwater discharge mitigation
23 program—

1 “(1) to improve the quality of stormwater dis-
2 charge from Federal-aid highways or Federal-aid
3 highways and associated facilities; and

4 “(2) to enhance groundwater recharge.

5 “(c) PRIORITY OF PROJECTS.—For projects funded
6 from the allocation under section 133(d)(6), a State shall
7 give priority to projects sponsored by a State or local gov-
8 ernment that assist the State or local government in com-
9 plying with the Federal Water Pollution Control Act (33
10 U.S.C. 1251 et seq.).

11 “(d) GUIDANCE.—

12 “(1) IN GENERAL.—Not later than 180 days
13 after the date of enactment of this section, the Sec-
14 retary, in consultation with the Administrator, shall
15 issue guidance to assist States in carrying out this
16 section.

17 “(2) REQUIREMENTS FOR GUIDANCE.—The
18 guidance issued under paragraph (1) shall include
19 information concerning innovative technologies and
20 nonstructural best management practices to mitigate
21 highway stormwater discharges.”.

22 “(c) CONFORMING AMENDMENT.—The analysis for
23 subchapter I of chapter 1 of title 23, United States Code
24 (as amended by section 1601(b), is amended by inserting
25 after the item relating to section 166 the following:

“167. Highway stormwater discharge mitigation program.”.

1 **SEC. 1621. EXEMPTION FROM CERTAIN HAZARDOUS MATE-**
 2 **RIALS TRANSPORTATION REQUIREMENTS.**

3 (a) DEFINITION OF ELIGIBLE PERSON.—In this sec-
 4 tion, the term “eligible person” means an agricultural pro-
 5 ducer that has gross agricultural commodity sales that do
 6 not exceed \$500,000.

7 (b) EXEMPTION.—Subject to subsection (c), part 172
 8 of title 49, Code of Federal Regulations, shall not apply
 9 to an eligible person that transports a fertilizer, pesticide,
 10 propane, gasoline, or diesel fuel for agricultural purposes,
 11 to the extent determined by the Secretary.

12 (c) APPLICABILITY.—Subsection (b) applies to secu-
 13 rity plan requirements under subpart I of part 172 of title
 14 49, Code of Federal Regulations (or a successor regula-
 15 tion).

16 **SEC. 1622. FUNDS FOR REBUILDING FISH STOCKS.**

17 Section 105 of the Miscellaneous Appropriations and
 18 Offsets Act, 2004 (Division H of the Consolidated Appro-
 19 priations Act, 2004 (Public Law 108–199)) is repealed.

20 **Subtitle G—Operations**

21 **SEC. 1701. TRANSPORTATION SYSTEMS MANAGEMENT AND**
 22 **OPERATIONS.**

23 (a) SURFACE TRANSPORTATION PROGRAM ELIGI-
 24 BILITY.—Section 133(b) of title 23, United States Code
 25 (as amended by section 1601(a)(2)), is amended by adding
 26 at the end the following:

1 “(16) Regional transportation operations col-
2 laboration and coordination activities that are asso-
3 ciated with regional improvements, such as traffic
4 incident management, technology deployment, emer-
5 gency management and response, traveler informa-
6 tion, and regional congestion relief.

7 “(17) RUSH HOUR CONGESTION RELIEF.—

8 “(A) IN GENERAL.—Subject to subpara-
9 graph (B), a State may spend the funds appor-
10 tioned under this section to reduce traffic
11 delays caused by motor vehicle accidents and
12 breakdowns on highways during peak driving
13 times.

14 “(B) USE OF FUNDS.—A State, metropoli-
15 tan planning organization, or local government
16 may use the funds under subparagraph (A)—

17 “(i) to develop a region-wide coordi-
18 nated plan to mitigate traffic delays caused
19 by motor vehicle accidents and break-
20 downs;

21 “(ii) to purchase or lease tele-
22 communications equipment for first re-
23 sponders;

24 “(iii) to purchase or lease towing and
25 recovery services;

1 “(iv) to pay contractors for towing
2 and recovery;

3 “(v) to rent vehicle storage areas ad-
4 jacent to roadways;

5 “(vi) to fund service patrols, equip-
6 ment, and operations;

7 “(vii) to purchase incident detection
8 equipment;

9 “(viii) to carry out training.”

10 (b) CONGESTION MITIGATION AND AIR QUALITY IM-
11 PROVEMENT PROGRAM ELIGIBILITY.—Section 149(b)(5)
12 of title 23, United States Code, is amended by inserting
13 “improve transportation systems management and oper-
14 ations,” after “intersections,”.

15 (c) TRANSPORTATION SYSTEMS MANAGEMENT AND
16 OPERATIONS.—

17 (1) IN GENERAL.—Subchapter I of chapter 1 of
18 title 23, United States Code (as amended by section
19 1620(b)), is amended by adding at the end the fol-
20 lowing:

21 **“§ 168. Transportation systems management and op-
22 erations**

23 “(a) IN GENERAL.—The Secretary shall carry out a
24 transportation systems management and operations pro-
25 gram to—

1 “(1) ensure efficient and effective transpor-
2 tation systems management and operations on Fed-
3 eral-aid highways through collaboration, coordina-
4 tion, and real-time information sharing at a regional
5 and Statewide level among—

6 “(A) managers and operators of major
7 modes of transportation;

8 “(B) public safety officials; and

9 “(C) the general public; and

10 “(2) manage and operate Federal-aid highways
11 in a coordinated manner to preserve the capacity
12 and maximize the performance of highway and tran-
13 sit facilities for travelers and carriers.

14 “(b) AUTHORIZED ACTIVITIES.—

15 “(1) IN GENERAL.—In carrying out the pro-
16 gram under subsection (a), the Secretary may carry
17 out activities to—

18 “(A) encourage managers and operators of
19 major modes of transportation, public safety of-
20 ficials, and transportation planners in urban-
21 ized areas that are responsible for conducting
22 the day-to-day management, operations, public
23 safety, and planning of transportation facilities
24 and services to collaborate on and coordinate,
25 on a regional level and in a continuous and sus-

1 tained manner, improved transportation sys-
2 tems management and operations; and

3 “(B) encourage States to—

4 “(i) establish a system of basic real-
5 time monitoring for the surface transpor-
6 tation system; and

7 “(ii) provide the means to share the
8 data gathered under clause (i) among—

9 “(I) highway, transit, and public
10 safety agencies;

11 “(II) jurisdictions (including
12 States, cities, counties, and metropoli-
13 tan planning organizations);

14 “(III) private-sector entities; and

15 “(IV) the general public.

16 “(2) ACTIVITIES.—Activities to be carried out
17 under paragraph (1) include—

18 “(A) developing a regional concept of oper-
19 ations that defines a regional strategy shared
20 by all transportation and public safety partici-
21 pants with respect to the manner in which the
22 transportation systems of the region should be
23 managed, operated, and measured;

1 “(B) the sharing of information among op-
2 erators, service providers, public safety officials,
3 and the general public; and

4 “(C) guiding, in a regionally-coordinated
5 manner and in a manner consistent with and
6 integrated into the metropolitan and statewide
7 transportation planning processes and regional
8 intelligent transportation system architecture,
9 the implementation of regional transportation
10 system management and operations initiatives,
11 including—

12 “(i) emergency evacuation and re-
13 sponse;

14 “(ii) traffic incident management;

15 “(iii) technology deployment; and

16 “(iv) traveler information systems de-
17 livery.

18 “(c) COOPERATION.—In carrying out the program
19 under subsection (a), the Secretary may assist and cooper-
20 ate with other Federal agencies, State and local govern-
21 ments, metropolitan planning organizations, private indus-
22 try, and other interested parties to improve regional col-
23 laboration and real-time information sharing between
24 managers and operators of major modes of transportation,
25 public safety officials, emergency managers, and the gen-

1 eral public to increase the security, safety, and reliability
2 of Federal-aid highways.

3 “(d) GUIDANCE; REGULATIONS.—

4 “(1) IN GENERAL.—In carrying out the pro-
5 gram under subsection (a), the Secretary may issue
6 guidance or promulgate regulations for the procure-
7 ment of transportation system management and op-
8 erations facilities, equipment, and services,
9 including—

10 “(A) equipment procured in preparation
11 for natural disasters, disasters caused by
12 human activity, and emergencies;

13 “(B) system hardware;

14 “(C) software; and

15 “(D) software integration services.

16 “(2) CONSIDERATIONS.—In developing the
17 guidance or regulations under paragraph (1), the
18 Secretary may consider innovative procurement
19 methods that support the timely and streamlined
20 execution of transportation system management and
21 operations programs and projects.

22 “(3) FINANCIAL ASSISTANCE.—The Secretary
23 may authorize the use of funds made available under
24 section 104(b)(3) to provide assistance for regional
25 operations collaboration and coordination activities

1 that are associated with regional improvements, such
2 as—

3 “(A) traffic incident management;

4 “(B) technology deployment;

5 “(C) emergency management and re-
6 sponse;

7 “(D) traveler information; and

8 “(E) congestion relief.”.

9 (2) CONFORMING AMENDMENT.—The analysis
10 for subchapter I of chapter 1 of title 23, United
11 States Code (as amended by section 1620(c)), is
12 amended by adding at the end:

“168. Transportation systems management and operations.”.

13 **SEC. 1702. REAL-TIME SYSTEM MANAGEMENT INFORMA-**
14 **TION PROGRAM.**

15 (a) IN GENERAL.—Subchapter I of chapter 1 of title
16 23, United States Code (as amended by section
17 1701(c)(1)), is amended by adding at the end the fol-
18 lowing:

19 **“§ 169. Real-time system management information**
20 **program**

21 “(a) IN GENERAL.—The Secretary shall carry out a
22 real-time system management information program to—

23 “(1) provide a nationwide system of basic real-
24 time information for managing and operating the
25 surface transportation system;

1 “(2)(A) identify long-range real-time highway
2 and transit monitoring needs; and

3 “(B) develop plans and strategies for meeting
4 those needs;

5 “(3) provide the capability and means to share
6 the basic real-time information with State and local
7 governments and the traveling public; and

8 “(4) provide the nationwide capability to mon-
9 itor, in real-time, the traffic and travel conditions of
10 major highways in the United States, and to share
11 that information with State and local governments
12 and the traveling public, to—

13 “(A) improve the security of the surface
14 transportation system;

15 “(B) address congestion problems;

16 “(C) support improved response to weather
17 events; and

18 “(D) facilitate the distribution of national
19 and regional traveler information.

20 “(b) DATA EXCHANGE FORMATS.—Not later than 1
21 year after the date of enactment of this section, the Sec-
22 retary shall establish data exchange formats to ensure that
23 the data provided by highway and transit monitoring sys-
24 tems (including statewide incident reporting systems) can
25 readily be exchanged between jurisdictions to facilitate the

1 nationwide availability of information on traffic and travel
2 conditions.

3 “(c) STATEWIDE INCIDENT REPORTING SYSTEM.—

4 Not later than 2 years after the date of enactment of this
5 section, or not later than 5 years after the date of enact-
6 ment of this section if the Secretary determines that ade-
7 quate real-time communications capability will not be
8 available within 2 years after the date of enactment of
9 this section, each State shall establish a statewide incident
10 reporting system to facilitate the real-time electronic re-
11 porting of highway and transit incidents to a central loca-
12 tion for use in—

13 “(1) monitoring an incident;

14 “(2) providing accurate traveler information on
15 the incident; and

16 “(3) responding to the incident as appropriate.

17 “(d) REGIONAL ITS ARCHITECTURE.—

18 “(1) IN GENERAL.—In developing or updating
19 regional intelligent transportation system architec-
20 tures under section 940.9 of title 23, Code of Fed-
21 eral Regulations (or any successor regulation),
22 States and local governments shall address—

23 “(A) the real-time highway and transit in-
24 formation needs of the State or local govern-
25 ment, including coverage, monitoring systems,

1 data fusion and archiving, and methods of ex-
 2 changing or sharing information; and

3 “(B) the systems needed to meet those
 4 needs.

5 “(2) DATA EXCHANGE FORMATS.—In devel-
 6 oping or updating regional intelligent transportation
 7 system architectures, States and local governments
 8 are encouraged to incorporate the data exchange for-
 9 mats developed by the Secretary under subsection
 10 (b) to ensure that the data provided by highway and
 11 transit monitoring systems can readily be—

12 “(A) exchanged between jurisdictions; and

13 “(B) shared with the traveling public.

14 “(e) ELIGIBLE FUNDING.—Subject to project ap-
 15 proval by the Secretary, a State may—

16 “(1) use funds available to the State under sec-
 17 tion 505(a) to carry out activities relating to the
 18 planning of real-time monitoring elements; and

19 “(2) use funds apportioned to the State under
 20 paragraphs (1) and (3) of section 104(b) to carry
 21 out activities relating to the planning and deploy-
 22 ment of real-time monitoring elements.”.

23 (b) CONFORMING AMENDMENT.—The analysis for
 24 subchapter I of chapter 1 of title 23, United States Code

1 (as amended by section 1701(c)(2)), is amended adding
2 at the end the following:

“169. Real-time system management information program.”.

3 **SEC. 1703. CONTRACTING FOR ENGINEERING AND DESIGN**
4 **SERVICES.**

5 Section 112(b)(2) of title 23, United States Code, is
6 amended—

7 (1) in subparagraph (A), by striking “title 40”
8 and all that follows through the period and inserting
9 “title 40.”;

10 (2) by striking subparagraph (B);

11 (3) by redesignating subparagraphs (C) through
12 (F) as subparagraphs (B) through (E), respectively;
13 and

14 (4) by striking subparagraph (G).

15 **SEC. 1704. OFF-DUTY TIME FOR DRIVERS OF COMMERCIAL**
16 **VEHICLES.**

17 Section 345(a)(2) of the National Highway System
18 Designation Act of 1995 (49 U.S.C. 31136 note; 109 Stat.
19 613) is amended by adding at the end the following: “No
20 additional off-duty time for a driver of such a vehicle shall
21 be required in order for the driver to operate the vehicle.”.

1 **SEC. 1705. DESIGNATION OF TRANSPORTATION MANAGE-**
 2 **MENT AREAS.**

3 (a) FUNDING.—Section 134(d)(3)(C)(ii) of title 23,
 4 United States Code, is amended by striking subclause (II)
 5 and inserting the following:

6 “(II) FUNDING.—In addition to
 7 funds made available to the metropoli-
 8 tan planning organization for the
 9 Lake Tahoe Region under this title
 10 and chapter 53 of title 49, 1 percent
 11 of all funds distributed under section
 12 202 shall be used to carry out the
 13 transportation planning process for
 14 the Lake Tahoe region under this
 15 subparagraph.”.

16 (b) SPECIAL DESIGNATION.—Section 134(i)(1) of
 17 title 23, United States Code, is amended by adding at the
 18 end the following:

19 “(C) SPECIAL DESIGNATION.—

20 “(i) IN GENERAL.—The urbanized
 21 areas of Oklahoma City, Oklahoma, and
 22 Norman, Oklahoma, shall be designated as
 23 a single transportation management area.

24 “(ii) ALLOCATION.—The allocation of
 25 funds to the Oklahoma City-Norman
 26 Transportation Management Area des-

1 ignated under clause (i) shall be based on
 2 the aggregate population of the 2 urban-
 3 ized areas referred to in that clause, as de-
 4 termined by the Bureau of the Census.”.

5 **Subtitle H—Federal-Aid** 6 **Stewardship**

7 **SEC. 1801. FUTURE INTERSTATE SYSTEM ROUTES.**

8 Section 103(c)(4)(B) of title 23, United States Code,
 9 is amended—

10 (1) in clause (ii), by striking “12” and inserting
 11 “25”; and

12 (2) in clause (iii)—

13 (A) in subclause (I), by striking “in the
 14 agreement between the Secretary and the State
 15 or States”; and

16 (B) by adding at the end the following:

17 “(III) EXISTING AGREEMENTS.—

18 An agreement described in clause (ii)
 19 that is entered into before the date of
 20 enactment of this subparagraph shall
 21 be deemed to include the 25-year time
 22 limitation described in that clause, re-
 23 gardless of any earlier construction
 24 completion date in the agreement.”.

1 **SEC. 1802. STEWARDSHIP AND OVERSIGHT.**

2 (a) IN GENERAL.—Section 106 of title 23, United
3 States Code, is amended—

4 (1) by striking subsection (e) and inserting the
5 following:

6 “(e) VALUE ENGINEERING ANALYSIS.—

7 “(1) DEFINITION OF VALUE ENGINEERING
8 ANALYSIS.—

9 “(A) IN GENERAL.—In this subsection, the
10 term ‘value engineering analysis’ means a sys-
11 tematic process of review and analysis of a
12 project, during the concept and design phases,
13 by a multidisciplined team of persons not in-
14 volved in the project, that is conducted to pro-
15 vide recommendations such as those described
16 in subparagraph (B) for—

17 “(i) providing the needed functions
18 safely, reliably, and at the lowest overall
19 cost; and

20 “(ii) improving the value and quality
21 of the project.

22 “(B) INCLUSIONS.—The recommendations
23 referred to in subparagraph (A) include, with
24 respect to a project—

25 “(i) combining or eliminating other-
26 wise inefficient use of costly parts of the

1 original proposed design for the project;
2 and

3 “(ii) completely redesigning the
4 project using different technologies, mate-
5 rials, or methods so as to accomplish the
6 original purpose of the project.

7 “(2) ANALYSIS.—The State shall provide a
8 value engineering analysis or other cost-reduction
9 analysis for—

10 “(A) each project on the Federal-Aid Sys-
11 tem with an estimated total cost of
12 \$25,000,000 or more;

13 “(B) a bridge project with an estimated
14 total cost of \$20,000,000 or more; and

15 “(C) any other project the Secretary deter-
16 mines to be appropriate.

17 “(3) MAJOR PROJECTS.—The Secretary may
18 require more than 1 analysis described in paragraph
19 (2) for a major project described in subsection (h).

20 “(4) REQUIREMENTS.—Analyses described in
21 paragraph (1) for a bridge project shall—

22 “(A) include bridge substructure require-
23 ments based on construction material; and

24 “(B) be evaluated—

1 “(i) on engineering and economic
2 bases, taking into consideration acceptable
3 designs for bridges; and

4 “(ii) using an analysis of life-cycle
5 costs and duration of project construc-
6 tion.”; and

7 (2) by striking subsections (g) and (h) and in-
8 serting the following:

9 “(g) OVERSIGHT PROGRAM.—

10 “(1) PROGRAM.—

11 “(A) IN GENERAL.—The Secretary shall
12 establish an oversight program to monitor the
13 effective and efficient use of funds made avail-
14 able under this title.

15 “(B) MINIMUM REQUIREMENTS.—At a
16 minimum, the program shall monitor and re-
17 spond to all areas relating to financial integrity
18 and project delivery.

19 “(2) FINANCIAL INTEGRITY.—

20 “(A) FINANCIAL MANAGEMENT SYS-
21 TEMS.—

22 “(i) IN GENERAL.—The Secretary
23 shall perform annual reviews of the finan-
24 cial management systems of State trans-

1 portation departments that affect projects
2 approved under subsection (a).

3 “(ii) REVIEW AREAS.—In carrying out
4 clause (i), the Secretary shall use risk as-
5 sessment procedures to identify areas to be
6 reviewed.

7 “(B) PROJECT COSTS.—The Secretary
8 shall—

9 “(i) develop minimum standards for
10 estimating project costs; and

11 “(ii) periodically evaluate practices of
12 the States for—

13 “(I) estimating project costs;

14 “(II) awarding contracts; and

15 “(III) reducing project costs.

16 “(C) RESPONSIBILITY OF THE STATES.—

17 “(i) IN GENERAL.—Each State shall
18 be responsible for ensuring that subrecipi-
19 ents of Federal funds within the State
20 under this section have—

21 “(I) sufficient accounting con-
22 trols to properly manage the Federal
23 funds; and

1 “(II) adequate project delivery
2 systems for projects approved under
3 this section.

4 “(ii) REVIEW BY SECRETARY.—The
5 Secretary shall periodically review moni-
6 toring by the States of those subrecipients.

7 “(3) PROJECT DELIVERY.—The Secretary
8 shall—

9 “(A) perform annual reviews of the project
10 delivery system of each State, including analysis
11 of 1 or more activities that are involved in the
12 life cycle of a project; and

13 “(B) employ risk assessment procedures to
14 identify areas to be reviewed.

15 “(4) SPECIFIC OVERSIGHT RESPONSIBIL-
16 ITIES.—Nothing in this section discharges or other-
17 wise affects any oversight responsibility of the
18 Secretary—

19 “(A) specifically provided for under this
20 title or other Federal law; or

21 “(B) for the design and construction of all
22 Appalachian development highways under sec-
23 tion 14501 of title 40 or section 170 of this
24 title.

25 “(h) MAJOR PROJECTS.—

1 “(1) IN GENERAL.—Notwithstanding any other
2 provision of this section, a recipient of Federal fi-
3 nancial assistance for a project under this title with
4 an estimated total cost of \$1,000,000,000 or more,
5 and recipients for such other projects as may be
6 identified by the Secretary, shall submit to the Sec-
7 retary for each project—

8 “(A) a project management plan; and

9 “(B) an annual financial plan.

10 “(2) PROJECT MANAGEMENT PLAN.—A project
11 management plan shall document—

12 “(A) the procedures and processes that are
13 in effect to provide timely information to the
14 project decisionmakers to effectively manage the
15 scope, costs, schedules, and quality of, and the
16 Federal requirements applicable to, the project;
17 and

18 “(B) the role of the agency leadership and
19 management team in the delivery of the project.

20 “(3) FINANCIAL PLAN.—A financial plan
21 shall—

22 “(A) be based on detailed estimates of the
23 cost to complete the project; and

24 “(B) provide for the annual submission of
25 updates to the Secretary that are based on rea-

1 sonable assumptions, as determined by the Sec-
2 retary, of future increases in the cost to com-
3 plete the project.

4 “(i) OTHER PROJECTS.—A recipient of Federal fi-
5 nancial assistance for a project under this title that re-
6 ceives \$100,000,000 or more in Federal assistance for the
7 project, and that is not covered by subsection (h), shall
8 prepare, and make available to the Secretary at the re-
9 quest of the Secretary, an annual financial plan for the
10 project.”.

11 (b) CONFORMING AMENDMENTS.—

12 (1) Section 114(a) of title 23, United States
13 Code, is amended—

14 (A) in the first sentence by striking “high-
15 ways or portions of highways located on a Fed-
16 eral-aid system” and inserting “Federal-aid
17 highway or a portion of a Federal-aid high-
18 way”; and

19 (B) by striking the second sentence and in-
20 serting “The Secretary shall have the right to
21 conduct such inspections and take such correc-
22 tive action as the Secretary determines to be
23 appropriate.”.

24 (2) Section 117 of title 23, United States Code,
25 is amended—

1 (A) by striking subsection (d); and

2 (B) by redesignating subsections (e)
3 through (h) as subsections (d) through (g), re-
4 spectively.

5 (c) CONTRACTOR SUSPENSION AND DEBARMENT
6 POLICY; SHARING FRAUD MONETARY RECOVERIES.—

7 (1) IN GENERAL.—Section 307 of title 49,
8 United States Code, is amended to read as follows:

9 **“§ 307. Contractor suspension and debarment policy;
10 sharing fraud monetary recoveries**

11 **“(a) MANDATORY ENFORCEMENT POLICY.—**

12 **“(1) IN GENERAL.—**Notwithstanding any other
13 provision of law, the Secretary—

14 **“(A)** shall debar any contractor or subcon-
15 tractor convicted of a criminal or civil offense
16 involving fraud relating to a project receiving
17 Federal highway or transit funds for such pe-
18 riod as the Secretary determines to be appro-
19 priate; and

20 **“(B)** subject to approval by the Attorney
21 General—

22 **“(i)** except as provided in paragraph
23 (2), shall suspend any contractor or sub-
24 contractor upon indictment for criminal or
25 civil offenses involving fraud; and

1 “(ii) may exclude nonaffiliated sub-
2 sidiaries of a debarred business entity.

3 “(2) NATIONAL SECURITY EXCEPTION.—If the
4 Secretary finds that mandatory debarment or sus-
5 pension of a contractor or subcontractor under para-
6 graph (1) would be contrary to the national security
7 of the United States, the Secretary—

8 “(A) may waive the debarment or suspen-
9 sion; and

10 “(B) in the instance of each waiver, shall
11 provide notification to Congress of the waiver
12 with appropriate details.

13 “(b) SHARING OF MONETARY RECOVERIES.—

14 “(1) IN GENERAL.—Notwithstanding any other
15 provision of law—

16 “(A) monetary judgments accruing to the
17 Federal Government from judgments in Federal
18 criminal prosecutions and civil judgments per-
19 taining to fraud in highway and transit pro-
20 grams shall be shared with the State or local
21 transit agency involved; and

22 “(B) the State or local transit agency shall
23 use the funds for transportation infrastructure
24 and oversight activities relating to programs au-
25 thorized under title 23 and this title.

1 “(2) AMOUNT.—The amount of recovered funds
2 to be shared with an affected State or local transit
3 agency shall be—

4 “(A) determined by the Attorney General,
5 in consultation with the Secretary; and

6 “(B) considered to be Federal funds to be
7 used in compliance with other relevant Federal
8 transportation laws (including regulations).

9 “(3) FRAUDULENT ACTIVITY.—Paragraph (1)
10 shall not apply in any case in which a State or local
11 transit agency is found by the Attorney General, in
12 consultation with the Secretary, to have been in-
13 volved or negligent with respect to the fraudulent ac-
14 tivities.”.

15 (2) CONFORMING AMENDMENT.—The analysis
16 for chapter 3 of title 49, United States Code, is
17 amended by striking the item relating to section 307
18 and inserting the following:

“307. Contractor suspension and debarment policy; sharing fraud monetary re-
coveries.”.

19 **SEC. 1803. DESIGN-BUILD CONTRACTING.**

20 Section 112(b)(3) of title 23, United States Code, is
21 amended by striking subparagraph (C) and inserting the
22 following:

23 “(C) QUALIFIED PROJECTS.—A qualified
24 project referred to in subparagraph (A) is a

1 project under this chapter (including intermodal
2 projects) for which the Secretary has approved
3 the use of design-build contracting under cri-
4 teria specified in regulations promulgated by
5 the Secretary.”.

6 **SEC. 1804. PROGRAM EFFICIENCIES—FINANCE.**

7 (a) **ADVANCE CONSTRUCTION.**—Section 115 of title
8 23, United States Code, is amended—

9 (1) by redesignating subsection (c) as sub-
10 section (d);

11 (2) by redesignating subsections (a)(2),
12 (a)(2)(A), and (a)(2)(B) as subsections (c), (c)(1),
13 and (c)(2), respectively, and indenting appropriately;

14 (3) by striking “(a) **CONGESTION**” and all that
15 follows through subsection (a)(1)(B);

16 (4) by striking subsection (b); and

17 (5) by inserting after the section heading the
18 following:

19 “(a) **IN GENERAL.**—The Secretary may authorize a
20 State to proceed with a project authorized under this
21 title—

22 “(1) without the use of Federal funds; and

23 “(2) in accordance with all procedures and re-
24 quirements applicable to the project other than those

1 procedures and requirements that limit the State to
2 implementation of a project—

3 “(A) with the aid of Federal funds pre-
4 viously apportioned or allocated to the State; or

5 “(B) with obligation authority previously
6 allocated to the State.

7 “(b) OBLIGATION OF FEDERAL SHARE.—The Sec-
8 retary, on the request of a State and execution of a project
9 agreement, may obligate all or a portion of the Federal
10 share of the project authorized under this section from
11 any category of funds for which the project is eligible.”.

12 (b) OBLIGATION AND RELEASE OF FUNDS.—Section
13 118 of title 23, United States Code, is amended by strik-
14 ing subsection (d) and inserting the following:

15 “(d) OBLIGATION AND RELEASE OF FUNDS.—

16 “(1) IN GENERAL.—Funds apportioned or allo-
17 cated to a State for a particular purpose for any fis-
18 cal year shall be considered to be obligated if a sum
19 equal to the total of the funds apportioned or allo-
20 cated to the State for that purpose for that fiscal
21 year and previous fiscal years is obligated.

22 “(2) RELEASED FUNDS.—Any funds released
23 by the final payment for a project, or by modifying
24 the project agreement for a project, shall be—

1 “(A) credited to the same class of funds
2 previously apportioned or allocated to the State;
3 and

4 “(B) immediately available for obligation.

5 “(3) NET OBLIGATIONS.—Notwithstanding any
6 other provision of law (including a regulation), obli-
7 gations recorded against funds made available under
8 this section shall be recorded and reported as net ob-
9 ligations.”.

10 **SEC. 1805. SET-ASIDES FOR INTERSTATE DISCRETIONARY**
11 **PROJECTS.**

12 Section 118(c)(1) of title 23, United States Code, is
13 amended—

14 (1) by striking “\$50,000,000” and all that
15 follows through “2003” and inserting
16 “\$100,000,000 for each of fiscal years 2004
17 through 2009”; and

18 (2) by striking “Transportation Equity Act
19 for the 21st Century” and inserting “Safe, Ac-
20 countable, Flexible, and Efficient Transpor-
21 tation Equity Act of 2004”.

22 **SEC. 1806. FEDERAL LANDS HIGHWAYS PROGRAM.**

23 (a) FEDERAL SHARE PAYABLE.—

24 (1) IN GENERAL.—Section 120(k) of title 23,
25 United States Code, is amended—

1 (A) by striking “Federal-aid highway”;
2 and

3 (B) by striking “section 104” and insert-
4 ing “this title or chapter 53 of title 49”.

5 (2) TECHNICAL REFERENCES.—Section 120(l)
6 of title 23, United States Code, is amended by strik-
7 ing “section 104” and inserting “this title or chap-
8 ter 53 of title 49”.

9 (b) PAYMENTS TO FEDERAL AGENCIES FOR FED-
10 ERAL-AID PROJECTS.—Section 132 of title 23, United
11 States Code, is amended—

12 (1) by striking the first 2 sentences and insert-
13 ing the following:

14 “(a) IN GENERAL.—In a case in which a proposed
15 Federal-aid project is to be undertaken by a Federal agen-
16 cy in accordance with an agreement between a State and
17 the Federal agency, the State may—

18 “(1) direct the Secretary to transfer the funds
19 for the Federal share of the project directly to the
20 Federal agency; or

21 “(2) make such deposit with, or payment to,
22 the Federal agency as is required to meet the obliga-
23 tion of the State under the agreement for the work
24 undertaken or to be undertaken by the Federal
25 agency.

1 “(b) REIMBURSEMENT.—On execution of a project
2 agreement with a State described in subsection (a), the
3 Secretary may reimburse the State, using any available
4 funds, for the estimated Federal share under this title of
5 the obligation of the State deposited or paid under sub-
6 section (a)(2).”; and

7 (2) in the last sentence, by striking “Any
8 sums” and inserting the following:

9 “(c) RECOVERY AND CREDITING OF FUNDS.—Any
10 sums”.

11 (c) ALLOCATIONS.—Section 202 of title 23, United
12 States Code, is amended—

13 (1) in subsection (a), by striking “(a) On Octo-
14 ber 1” and all that follows through “Such alloca-
15 tion” and inserting the following:

16 “(a) ALLOCATION BASED ON NEED.—

17 “(1) IN GENERAL.—On October 1 of each fiscal
18 year, the Secretary shall allocate sums authorized to
19 be appropriated for the fiscal year for forest develop-
20 ment roads and trails according to the relative needs
21 of the various national forests and grasslands.

22 “(2) PLANNING.—The allocation under para-
23 graph (1)”;

24 (2) by striking subsection (b) and inserting the
25 following:

1 “(b) ALLOCATION FOR PUBLIC LANDS HIGHWAYS.—

2 “(1) PUBLIC LANDS HIGHWAYS.—

3 “(A) IN GENERAL.—On October 1 of each
4 fiscal year, the Secretary shall allocate $33\frac{1}{3}$
5 percent of the sums authorized to be appro-
6 priated for that fiscal year for public lands
7 highways among those States having unappro-
8 priated or unreserved public lands, or non-
9 taxable Indian lands or other Federal reserva-
10 tions, on the basis of need in the States, respec-
11 tively, as determined by the Secretary, on appli-
12 cation of the State transportation departments
13 of the respective States.

14 “(B) PREFERENCE.—In making the allo-
15 cation under subparagraph (A), the Secretary
16 shall give preference to those projects that are
17 significantly impacted by Federal land and re-
18 source management activities that are proposed
19 by a State that contains at least 3 percent of
20 the total public land in the United States.

21 “(2) FOREST HIGHWAYS.—

22 “(A) IN GENERAL.—On October 1 of each
23 fiscal year, the Secretary shall allocate $66\frac{2}{3}$
24 percent of the funds authorized to be appro-
25 priated for public lands highways for forest

1 highways in accordance with section 134 of the
 2 Federal-Aid Highway Act of 1987 (23 U.S.C.
 3 202 note; 101 Stat. 173).

4 “(B) PUBLIC ACCESS TO AND WITHIN NA-
 5 TIONAL FOREST SYSTEM.—In making the allo-
 6 cation under subparagraph (A), the Secretary
 7 shall give equal consideration to projects that
 8 provide access to and within the National For-
 9 est System, as identified by the Secretary of
 10 Agriculture through—

11 “(i) renewable resource and land use
 12 planning; and

13 “(ii) assessments of the impact of that
 14 planning on transportation facilities.”;

15 (3) in subsection (c)—

16 (A) by striking “(c) On” and inserting the
 17 following:

18 “(c) PARK ROADS AND PARKWAYS.—

19 “(1) IN GENERAL.—On”; and

20 (B) by adding at the end the following:

21 “(2) PRIORITY.—

22 “(A) DEFINITION OF QUALIFYING NA-
 23 TIONAL PARK.—In this paragraph, the term
 24 “qualifying national park” means a National
 25 Park that is used more than 1,000,000 rec-

1 reational visitor days per year, based on an av-
 2 erage of the 3 most recent years of available
 3 data from the National Park Service.

4 “(B) PRIORITY.—Notwithstanding any
 5 other provision of law, with respect to funds au-
 6 thorized for park roads and parkways, the Sec-
 7 retary shall give priority in the allocation of
 8 funds to projects for highways that—

9 “(i) are located in, or provide access
 10 to, a qualifying National Park; and

11 “(ii) were initially constructed before
 12 1940.

13 “(C) PRIORITY CONFLICTS.—If there is a
 14 conflict between projects described in subpara-
 15 graph (B), the Secretary shall give highest pri-
 16 ority to projects that—

17 “(i) are in, or that provide access to,
 18 parks that are adjacent to a National Park
 19 of a foreign country; or

20 “(ii) are located in more than 1
 21 State;”;

22 (4) in subsection (d)—

23 (A) in paragraph (1)—

24 (i) in the paragraph heading, by strik-
 25 ing “1999” and inserting “2005”; and

1 (ii) by striking “1999” and inserting
2 “2005”;

3 (B) in paragraph (2)—

4 (i) in the paragraph heading, by strik-
5 ing “2000” and inserting “2005”;

6 (ii) in subparagraphs (A), (B), and
7 (D), by striking “2000” each place it ap-
8 pears and inserting “2005”;

9 (iii) in subparagraph (B), by striking
10 “1999” each place it appears and inserting
11 “2004”; and

12 (iv) by adding at the end the fol-
13 lowing:

14 “(E) TRANSFERRED FUNDS.—

15 “(i) IN GENERAL.—Not later than 30
16 days after the date on which funds are
17 made available to the Secretary of the In-
18 terior under this paragraph, the funds
19 shall be distributed to, and available for
20 immediate use by, the eligible Indian
21 tribes, in accordance with the formula ap-
22 plicable for each fiscal year.

23 “(ii) FORMULA.—If the Secretary of
24 the Interior has not promulgated final reg-
25 ulations for the distribution of funds under

1 clause (i) for a fiscal year by the date on
2 which the funds for the fiscal year are re-
3 quired to be distributed under that clause,
4 the Secretary of the Interior shall dis-
5 tribute the funds under clause (i) in ac-
6 cordance with the applicable funding for-
7 mula for the preceding year.

8 “(iii) USE OF FUNDS.—Notwith-
9 standing any other provision of this sec-
10 tion, funds available to Indian tribes for
11 Indian reservation roads shall be expended
12 on projects identified in a transportation
13 improvement program approved by the
14 Secretary.”;

15 (C) in paragraph (3)—

16 (i) in subparagraph (A), by striking
17 “under this title” and inserting “under
18 this chapter and section 125(e)”; and

19 (ii) by adding at the end the fol-
20 lowing:

21 “(C) FEDERAL LANDS HIGHWAY PROGRAM
22 DEMONSTRATION PROJECT.—

23 “(i) IN GENERAL.—The Secretary
24 shall establish a demonstration project
25 under which all funds made available

1 under this chapter for Indian reservation
2 roads and for highway bridges located on
3 Indian reservation roads as provided for in
4 subparagraph (A) shall be made available,
5 on the request of an affected Indian tribal
6 government, to the Indian tribal govern-
7 ment for use in carrying out, in accordance
8 with the Indian Self-Determination and
9 Education Assistance Act (25 U.S.C. 450b
10 et seq.), contracts and agreements for the
11 planning, research, engineering, and con-
12 struction described in that subparagraph.

13 “(ii) EXCLUSION OF AGENCY PARTICI-
14 PATION.—In accordance with subpara-
15 graph (B), all funds for Indian reservation
16 roads and for highway bridges located on
17 Indian reservation roads to which clause
18 (i) applies shall be paid without regard to
19 the organizational level at which the Fed-
20 eral lands highway program has previously
21 carried out the programs, functions, serv-
22 ices, or activities involved.

23 “(iii) SELECTION OF PARTICIPATING
24 TRIBES.—

25 “(I) PARTICIPANTS.—

1 “(aa) IN GENERAL.—In ad-
2 dition to Indian tribes or tribal
3 organizations that, as of the date
4 of enactment of this subpara-
5 graph, are contracting or com-
6 pacting for any Indian reserva-
7 tion road function or program,
8 for each fiscal year, the Secretary
9 may select up to 15 Indian tribes
10 from the applicant pool described
11 in subclause (II) to participate in
12 the demonstration project carried
13 out under clause (i).

14 “(bb) CONSORTIA.—Two or
15 more Indian tribes that are oth-
16 erwise eligible to participate in a
17 program or activity to which this
18 title applies may form a consor-
19 tium to be considered as a single
20 Indian tribe for the purpose of
21 becoming part of the applicant
22 pool under subclause (II).

23 “(cc) FUNDING.—An Indian
24 tribe participating in the pilot
25 program under this subpara-

1 graph shall receive funding in an
2 amount equal to the sum of the
3 funding that the Indian tribe
4 would otherwise receive in ac-
5 cordance with the funding for-
6 mula established under the other
7 provisions of this subsection, and
8 an additional percentage of that
9 amount equal to the percentage
10 of funds withheld during the ap-
11 plicable fiscal year for the road
12 program management costs of
13 the Bureau of Indian Affairs
14 under subsection (f)(1).

15 “(II) APPLICANT POOL.—The ap-
16 plicant pool described in this sub-
17 clause shall consist of each Indian
18 tribe (or consortium) that—

19 “(aa) has successfully com-
20 pleted the planning phase de-
21 scribed in subclause (IV);

22 “(bb) has requested partici-
23 pation in the demonstration
24 project under this subparagraph
25 through the adoption of a resolu-

1 tion or other official action by
2 the tribal governing body; and

3 “(cc) has demonstrated fi-
4 nancial stability and financial
5 management capability in accord-
6 ance with subclause (III) during
7 the 3-fiscal-year period imme-
8 diately preceding the fiscal year
9 for which participation under this
10 subparagraph is being requested.

11 “(III) CRITERIA FOR DETER-
12 MINING FINANCIAL STABILITY AND FI-
13 NANCIAL MANAGEMENT CAPACITY.—
14 For the purpose of subclause (II), evi-
15 dence that, during the 3-year period
16 referred to in subclause (II)(cc), an
17 Indian tribe had no uncorrected sig-
18 nificant and material audit exceptions
19 in the required annual audit of the In-
20 dian tribe’s self-determination con-
21 tracts or self-governance funding
22 agreements with any Federal agency
23 shall be conclusive evidence of the re-
24 quired stability and capability.

25 “(IV) PLANNING PHASE.—

1 “(aa) IN GENERAL.—An In-
2 dian tribe (or consortium) re-
3 questing participation in the
4 demonstration project under this
5 subparagraph shall complete a
6 planning phase that shall include
7 legal and budgetary research and
8 internal tribal government and
9 organization preparation.

10 “(bb) ELIGIBILITY.—An In-
11 dian tribe (or consortium) de-
12 scribed in item (aa) shall be eligi-
13 ble to receive a grant under this
14 subclause to plan and negotiate
15 participation in a project de-
16 scribed in that item.

17 “(V) REPORT TO CONGRESS.—
18 Not later than September 30, 2006,
19 the Secretary shall submit to Con-
20 gress a report describing the imple-
21 mentation of the demonstration
22 project and any recommendations for
23 improving the project.”; and

24 (D) in paragraph (4)—

25 (i) in subparagraph (B)—

1 (I) by striking “(B) RESERVA-
2 TION.—Of the amounts” and all that
3 follows through “to replace,” and in-
4 serting the following:

5 “(B) FUNDING.—

6 “(i) AUTHORIZATION OF APPROPRIA-
7 TIONS.—In addition to any other funds
8 made available for Indian reservation roads
9 for each fiscal year, there is authorized to
10 be appropriated from the Highway Trust
11 Fund (other than the Mass Transit Ac-
12 count) \$15,000,000 for each of fiscal years
13 2004 through 2009 to carry out planning,
14 design, engineering, preconstruction, con-
15 struction, and inspection of projects to re-
16 place,”; and

17 (II) by adding at the end the fol-
18 lowing:

19 “(ii) AVAILABILITY.—Funds made
20 available to carry out this subparagraph
21 shall be available for obligation in the same
22 manner as if the funds were apportioned
23 under chapter 1.”; and

24 (ii) by striking subparagraph (D) and
25 inserting the following:

1 “(D) APPROVAL REQUIREMENT.—

2 “(i) IN GENERAL.—Subject to clause
3 (ii), on request by an Indian tribe or the
4 Secretary of the Interior, the Secretary
5 may make funds available under this sub-
6 section for preliminary engineering for In-
7 dian reservation road bridge projects.

8 “(ii) CONSTRUCTION AND CONSTRUC-
9 TION ENGINEERING.—The Secretary may
10 make funds available under clause (i) for
11 construction and construction engineering
12 only after approval by the Secretary of ap-
13 plicable plans, specifications, and esti-
14 mates.”; and

15 (5) by adding at the end the following:

16 “(f) ADMINISTRATION OF INDIAN RESERVATION
17 ROADS.—

18 “(1) CONTRACT AUTHORITY.—Notwithstanding
19 any other provision of law, for any fiscal year, not
20 more than 6 percent of the contract authority
21 amounts made available from the Highway Trust
22 Fund to the Bureau of Indian Affairs under this
23 title shall be used to pay the expenses incurred by
24 the Bureau in administering the Indian reservation
25 roads program (including the administrative ex-

1 penses relating to individual projects associated with
2 the Indian reservation roads program).

3 “(2) HEALTH AND SAFETY ASSURANCES.—Not-
4 withstanding any other provision of law, an Indian
5 tribe or tribal organization may commence road and
6 bridge construction under the Transportation Equity
7 Act for the 21st Century (Public Law 105-178) or
8 the Safe, Accountable, Flexible, and Efficient Trans-
9 portation Equity Act of 2004 that is funded through
10 a contract or agreement under the Indian Self-De-
11 termination and Education Assistance Act (25
12 U.S.C. 450b et seq.) if the Indian tribe or tribal
13 organization—

14 “(A) provides assurances in the contract or
15 agreement that the construction will meet or ex-
16 ceed applicable health and safety standards;

17 “(B) obtains the advance review of the
18 plans and specifications from a licensed profes-
19 sional that has certified that the plans and
20 specifications meet or exceed the applicable
21 health and safety standards; and

22 “(C) provides a copy of the certification
23 under subparagraph (B) to the Assistant Sec-
24 retary for Indian Affairs.”.

1 (d) PLANNING AND AGENCY COORDINATION.—Sec-
2 tion 204 of title 23, United States Code, is amended—

3 (1) in subsection (a)(1), by inserting “refuge
4 roads, recreation roads,” after “parkways,”;

5 (2) by striking subsection (b) and inserting the
6 following:

7 “(b) USE OF FUNDS.—

8 “(1) IN GENERAL.—Funds available for public
9 lands highways, recreation roads, park roads and
10 parkways, forest highways, and Indian reservation
11 roads shall be used by the Secretary and the Sec-
12 retary of the appropriate Federal land management
13 agency to pay the cost of transportation planning,
14 research, engineering, operation and maintenance of
15 transit facilities, and construction of the highways,
16 roads, parkways, forest highways, and transit facili-
17 ties located on public land, national parks, and In-
18 dian reservations.

19 “(2) CONTRACT.—In connection with an activ-
20 ity described in paragraph (1), the Secretary and the
21 Secretary of the appropriate Federal land manage-
22 ment agency may enter into a construction contract
23 or other appropriate agreement with—

24 “(A) a State (including a political subdivi-
25 sion of a State); or

1 “(B) an Indian tribe.

2 “(3) INDIAN RESERVATION ROADS.—In the case
3 of an Indian reservation road—

4 “(A) Indian labor may be used, in accord-
5 ance with such rules and regulations as may be
6 promulgated by the Secretary of the Interior, to
7 carry out any construction or other activity de-
8 scribed in paragraph (1); and

9 “(B) funds made available to carry out
10 this section may be used to pay bridge
11 preconstruction costs (including planning, de-
12 sign, and engineering).

13 “(4) FEDERAL EMPLOYMENT.—No maximum
14 on Federal employment shall be applicable to con-
15 struction or improvement of Indian reservation
16 roads.

17 “(5) AVAILABILITY OF FUNDS.—Funds avail-
18 able under this section for each class of Federal
19 lands highway shall be available for any kind of
20 transportation project eligible for assistance under
21 this title that is within or adjacent to, or that pro-
22 vides access to, the areas served by the particular
23 class of Federal lands highway.

24 “(6) RESERVATION OF FUNDS.—The Secretary
25 of the Interior may reserve funds from administra-

1 tive funds of the Bureau of Indian Affairs that are
2 associated with the Indian reservation road program
3 to finance the Indian technical centers authorized
4 under section 504(b).”; and

5 (3) in subsection (k)(1)—

6 (A) in subparagraph (B)—

7 (i) by striking “(2), (5),” and insert-
8 ing “(2), (3), (5),”; and

9 (ii) by striking “and” after the semi-
10 colon;

11 (B) in subparagraph (C), by striking the
12 period at the end and inserting a semicolon;
13 and

14 (C) by adding at the end the following:

15 “(D) maintenance of public roads in na-
16 tional fish hatcheries under the jurisdiction of
17 the United States Fish and Wildlife Service;

18 “(E) the non-Federal share of the cost of
19 any project funded under this title or chapter
20 53 of title 49 that provides access to or within
21 a wildlife refuge; and

22 “(F) maintenance and improvement of rec-
23 reational trails (except that expenditures on
24 trails under this subparagraph shall not exceed

1 5 percent of available funds for each fiscal
2 year).”.

3 (e) MAINTENANCE OF INDIAN RESERVATION
4 ROADS.—Section 204(c) of title 23, United States Code,
5 is amended by striking the second and third sentences and
6 inserting the following: “Notwithstanding any other provi-
7 sion of this title, of the amount of funds apportioned for
8 Indian reservation roads from the Highway Trust Fund,
9 an Indian tribe may expend for the purpose of mainte-
10 nance not more than the greater of \$250,000 or 25 per-
11 cent of the apportioned amount. The Bureau of Indian
12 Affairs shall continue to retain primary responsibility, in-
13 cluding annual funding request responsibility, for road
14 maintenance programs on Indian reservations. The Sec-
15 retary shall ensure that funding made available under this
16 subsection for maintenance of Indian reservation roads for
17 each fiscal year is supplementary to and not in lieu of any
18 obligation of funds by the Bureau of Indian Affairs for
19 road maintenance programs on Indian reservations.”.

20 (e) SAFETY.—

21 (1) ALLOCATIONS.—Section 202 of title 23,
22 United States Code (as amended by subsection
23 (c)(5)), is amended by adding at the end the fol-
24 lowing:

1 “(g) SAFETY.—Subject to paragraph (2), on October
2 1 of each fiscal year, the Secretary shall allocate the sums
3 authorized to be appropriated for the fiscal year for safety
4 as follows:

5 “(1) 12 percent to the Bureau of Reclamation.

6 “(2) 18 percent to the Bureau of Indian Af-
7 fairs.

8 “(3) 17 percent to the Bureau of Land Man-
9 agement.

10 “(4) 17 percent to the Forest Service.

11 “(5) 7 percent to the United States Fish and
12 Wildlife Service.

13 “(6) 17 percent to the National Park Service.

14 “(7) 12 percent to the Corps of Engineers.”.

15 (2) AVAILABILITY OF FUNDS.—Section 203 of
16 title 23, United States Code, is amended by insert-
17 ing “safety projects or activities,” after “refuge
18 roads,” each place it appears.

19 (3) USE OF FUNDING.—Section 204 of title 23,
20 United States Code, is amended by adding at the
21 end the following:

22 “(1) SAFETY ACTIVITIES.—

23 “(1) IN GENERAL.—Notwithstanding any other
24 provision of this title, funds made available for safe-
25 ty under this title shall be used by the Secretary and

1 the head of the appropriate Federal land manage-
2 ment agency only to pay the costs of carrying out—

3 “(A) transportation safety improvement
4 activities;

5 “(B) activities to eliminate high-accident
6 locations;

7 “(C) projects to implement protective
8 measures at, or eliminate, at-grade railway-
9 highway crossings;

10 “(D) collection of safety information;

11 “(E) transportation planning projects or
12 activities;

13 “(F) bridge inspection;

14 “(G) development and operation of safety
15 management systems;

16 “(H) highway safety education programs;

17 and

18 “(I) other eligible safety projects and ac-
19 tivities authorized under chapter 4.

20 “(2) CONTRACTS.—In carrying out paragraph
21 (1), the Secretary and the Secretary of the appro-
22 priate Federal land management agency may enter
23 into contracts or agreements with—

24 “(A) a State;

25 “(B) a political subdivision of a State; or

1 “(C) an Indian tribe.

2 “(3) EXCEPTION.—The cost sharing require-
3 ments under the Federal Water Project Recreation
4 Act (16 U.S.C. 4601–12 et seq.) shall not apply to
5 funds made available to the Bureau of Reclamation
6 under this subsection.”.

7 (f) RECREATION ROADS.—

8 (1) AUTHORIZATIONS.—Section 201 of title 23,
9 United States Code, is amended in the first sentence
10 by inserting “recreation roads,” after “public lands
11 highways,”.

12 (2) ALLOCATIONS.—Section 202 of title 23,
13 United States Code (as amended by subsection
14 (e)(1)), is amended by adding at the end the fol-
15 lowing:

16 “(h) RECREATION ROADS.—

17 “(1) IN GENERAL.—Subject to paragraphs (2)
18 and (3), on October 1 of each fiscal year, the Sec-
19 retary, after completing the transfer under sub-
20 section 204(i), shall allocate the sums authorized to
21 be appropriated for the fiscal year for recreation
22 roads as follows:

23 “(A) 8 percent to the Bureau of Reclama-
24 tion.

25 “(B) 9 percent to the Corps of Engineers.

1 “(C) 13 percent to the Bureau of Land
2 Management.

3 “(D) 70 percent to the Forest Service.

4 “(2) ALLOCATION WITHIN AGENCIES.—Recre-
5 ation road funds allocated to a Federal agency under
6 paragraph (1) shall be allocated for projects and ac-
7 tivities of the Federal agency according to the rel-
8 ative needs of each area served by recreation roads
9 under the jurisdiction of the Federal agency, as indi-
10 cated in the approved transportation improvement
11 program for each Federal agency.”.

12 (3) AVAILABILITY OF FUNDS.—Section 203 of
13 title 23, United States Code, is amended—

14 (A) in the first sentence, by inserting
15 “recreation roads,” after “Indian reservation
16 roads,”; and

17 (B) in the fourth sentence, by inserting “,
18 recreation roads,” after “Indian roads”.

19 (4) USE OF FUNDING.—Section 204 of title 23,
20 United States Code (as amended by subsection
21 (e)(3)), is amended by adding at the end the fol-
22 lowing:

23 “(m) RECREATION ROADS.—

24 “(1) IN GENERAL.—Notwithstanding any other
25 provision of this title, funds made available for

1 recreation roads under this title shall be used by the
2 Secretary and the Secretary of the appropriate Fed-
3 eral land management agency only to pay the cost
4 of—

5 “(A) maintenance or improvements of ex-
6 isting recreation roads;

7 “(B) maintenance and improvements of eli-
8 gible projects described in paragraph (1), (2),
9 (3), (5), or (6) of subsection (h) that are lo-
10 cated in or adjacent to Federal land under the
11 jurisdiction of—

12 “(i) the Department of Agriculture; or

13 “(ii) the Department of the Interior;

14 “(C) transportation planning and adminis-
15 trative activities associated with those mainte-
16 nance and improvements; and

17 “(D) the non-Federal share of the cost of
18 any project funded under this title or chapter
19 53 of title 49 that provides access to or within
20 Federal land described in subparagraph (B).

21 “(2) CONTRACTS.—In carrying out paragraph
22 (1), the Secretary and the Secretary of the appro-
23 priate Federal land management agency may enter
24 into contracts or agreements with—

25 “(A) a State;

1 “(B) a political subdivision of a State; or

2 “(C) an Indian tribe.

3 “(3) NEW ROADS.—No funds made available
4 under this section shall be used to pay the cost of
5 the design or construction of new recreation roads.

6 “(4) COMPLIANCE WITH OTHER ENVIRON-
7 MENTAL LAWS.—A maintenance or improvement
8 project that is funded under this subsection, and
9 that is consistent with or has been identified in a
10 land use plan for an area under the jurisdiction of
11 a Federal agency, shall not require any additional
12 environmental reviews or assessments under the Na-
13 tional Environmental Policy Act of 1969 (42 U.S.C.
14 4321 et seq.) if—

15 “(A) the Federal agency that promulgated
16 the land use plan analyzed the specific proposal
17 for the maintenance or improvement project
18 under that Act; and

19 “(B) as of the date on which the funds are
20 to be expended, there are—

21 “(i) no significant changes to the pro-
22 posal bearing on environmental concerns;
23 and

24 “(ii) no significant new information.

1 “(5) EXCEPTION.—The cost sharing require-
2 ments under the Federal Water Project Recreation
3 Act (16 U.S.C. 460l–12 et seq.) shall not apply to
4 funds made available to the Bureau of Reclamation
5 under this subsection.”.

6 (g) CONFORMING AMENDMENTS.—

7 (1) Sections 120(e) and 125(e) of title 23,
8 United States Code, are amended by striking “public
9 lands highways,” each place it appears and inserting
10 “public lands highways, recreation roads,”.

11 (2) Sections 120(e), 125(e), 201, 202(a), and
12 203 of title 23, United States Code, are amended by
13 striking “forest development roads” each place it ap-
14 pears and inserting “National Forest System
15 roads”.

16 (3) Section 202(e) of title 23, United States
17 Code, is amended by striking “Refuge System,” and
18 inserting “Refuge System and the various national
19 fish hatcheries,”.

20 (4) Section 204 of title 23, United States Code,
21 is amended—

22 (A) in subsection (a)(1), by striking “pub-
23 lic lands highways,” and inserting “public lands
24 highways, recreation roads, forest highways,”;
25 and

1 (B) in subsection (i), by striking “public
2 lands highways” each place it appears and in-
3 serting “public lands highways, recreation
4 roads, and forest highways”.

5 (5) Section 205 of title 23, United States Code,
6 is amended—

7 (A) by striking the section heading and in-
8 serting the following:

9 **“§ 205. National Forest System roads and trails”;**

10 and

11 (B) in subsections (a) and (d), by striking
12 “forest development roads” each place it ap-
13 pears and inserting “National Forest System
14 roads”.

15 (6) The analysis for chapter 2 of title 23,
16 United States Code, is amended by striking the item
17 relating to section 205 and inserting the following:

“205. National Forest System roads and trails.”.

18 (7) Section 217(e) of title 23, United States
19 Code, is amended by inserting “refuge roads,” after
20 “Indian reservation roads,”.

21 **SEC. 1807. HIGHWAY BRIDGE PROGRAM.**

22 (a) IN GENERAL.—Section 144 of title 23, United
23 States Code, is amended—

1 (1) by striking the section heading and all that
2 follows through subsection (a) and inserting the fol-
3 lowing:

4 **“§ 144. Highway bridge program**

5 “(a) CONGRESSIONAL STATEMENT.—Congress finds
6 and declares that it is in the vital interest of the United
7 States that a highway bridge program be established to
8 enable States to improve the condition of their bridges
9 through replacement, rehabilitation, and systematic pre-
10 ventative maintenance on highway bridges over waterways,
11 other topographical barriers, other highways, or railroads
12 at any time at which the States and the Secretary deter-
13 mine that a bridge is unsafe because of structural defi-
14 ciencies, physical deterioration, or functional obsoles-
15 cence.”;

16 (2) by striking subsection (d) and inserting the
17 following:

18 “(d) PARTICIPATION IN PROGRAM.—

19 “(1) IN GENERAL.—On application by a State
20 to the Secretary for assistance in replacing or reha-
21 bilitating a highway bridge that has been determined
22 to be eligible for replacement or rehabilitation under
23 subsection (b) or (c), the Secretary may approve
24 Federal participation in—

1 “(A) replacing the bridge with a com-
2 parable bridge; or

3 “(B) rehabilitating the bridge.

4 “(2) SPECIFIC KINDS OF REHABILITATION.—

5 On application by a State to the Secretary for as-
6 sistance in painting, seismic retrofit, or preventative
7 maintenance of, or installation of scour counter-
8 measures or applying calcium magnesium acetate,
9 sodium acetate/formate, or other environmentally ac-
10 ceptable, minimally corrosive anti-icing and de-icing
11 compositions to, the structure of a highway bridge,
12 the Secretary may approve Federal participation in
13 the painting, seismic retrofit, or preventative mainte-
14 nance of, or installation of scour countermeasures or
15 application of acetate or sodium acetate/formate or
16 such anti-icing or de-icing composition to, the struc-
17 ture.

18 “(3) ELIGIBILITY.—

19 “(A) IN GENERAL.—Except as provided in
20 subparagraph (B), the Secretary shall deter-
21 mine the eligibility of highway bridges for re-
22 placement or rehabilitation for each State based
23 on the number of unsafe highway bridges in the
24 State.

1 “(B) PREVENTATIVE MAINTENANCE.—A
2 State may carry out a project for preventative
3 maintenance on a bridge, seismic retrofit of a
4 bridge, or installation of scour countermeasures
5 to a bridge under this section without regard to
6 whether the bridge is eligible for replacement or
7 rehabilitation under this section.”;

8 (3) in subsection (e)—

9 (A) in the third sentence, by striking
10 “square footage” and inserting “area”;

11 (B) in the fourth sentence—

12 (i) by striking “by the total cost of
13 any highway bridges constructed under
14 subsection (m) in such State, relating to
15 replacement of destroyed bridges and fer-
16 ryboat services, and,”; and

17 (ii) by striking “1997” and inserting
18 “2003”; and

19 (C) in the seventh sentence, by striking
20 “the Federal-aid primary system” and inserting
21 “Federal-aid highways”;

22 (4) by striking subsections (f) and (g) and in-
23 serting the following:

24 “(f) SET ASIDES.—

25 “(1) DISCRETIONARY BRIDGE PROGRAM.—

1 “(A) IN GENERAL.—Of the amounts au-
2 thorized to be appropriated to carry out the
3 bridge program under this section for each of
4 fiscal years 2004 through 2009, all but
5 \$150,000,000 shall be apportioned as provided
6 in subsection (e).

7 “(B) AVAILABILITY.—The \$150,000,000
8 referred to in subparagraph (A) shall be avail-
9 able at the discretion of the Secretary, except
10 that not to exceed \$25,000,000 of that amount
11 shall be available only for projects for the seis-
12 mic retrofit of bridges.

13 “(C) SET ASIDES.—For fiscal year 2004,
14 the Secretary shall provide—

15 “(i) \$50,000,000 to the State of Ne-
16 vada for construction of a replacement of
17 the federally-owned bridge over the Hoover
18 Dam in the Lake Mead National Recre-
19 ation Area; and

20 “(ii) \$50,000,000 to the State of Mis-
21 souri for construction of a structure over
22 the Mississippi River to connect the city of
23 St. Louis, Missouri, to the State of Illinois.

24 “(2) OFF-SYSTEM BRIDGES.—

1 “(A) IN GENERAL.—Not less than 15 per-
2 cent of the amount apportioned to each State in
3 each of fiscal years 2004 through 2009 shall be
4 expended for projects to replace, rehabilitate,
5 perform systematic preventative maintenance or
6 seismic retrofit, or apply calcium magnesium
7 acetate, sodium acetate/formate, or other envi-
8 ronmentally acceptable, minimally corrosive
9 anti-icing and de-icing compositions or install
10 scour countermeasures to highway bridges lo-
11 cated on public roads, other than those on a
12 Federal-aid highway, or to complete the War-
13 wick Intermodal Station (including the con-
14 struction of a people mover between the Station
15 and the T.F. Green Airport).

16 “(B) REDUCTION OF EXPENDITURES.—
17 The Secretary, after consultation with State
18 and local officials, may, with respect to the
19 State, reduce the requirement for expenditure
20 for bridges not on a Federal-aid highway if the
21 Secretary determines that the State has inad-
22 equate needs to justify the expenditure.”;

23 (5) in subsection (i)—

24 (A) in paragraph (3), by striking “and”;

1 (B) in paragraph (4), by striking the pe-
2 riod at the end and inserting “; and”;

3 (C) by striking “Such reports” and all that
4 follows through “to Congress.”; and

5 (D) by adding at the end the following:

6 “(5) biennially submit such reports as are re-
7 quired under this subsection to the appropriate com-
8 mittees of Congress simultaneously with the report
9 required by section 502(g).”;

10 (6) in the first sentence of subsection (n), by
11 striking “all standards” and inserting “all general
12 engineering standards”;

13 (7) in subsection (o)—

14 (A) in paragraph (3)—

15 (i) by striking “title (including this
16 section)” and inserting “section”; and

17 (ii) by inserting “200 percent of”
18 after “shall not exceed”; and

19 (B) in paragraph (4)(B)—

20 (i) in the second sentence, by insert-
21 ing “200 percent of” after “not to exceed”;
22 and

23 (ii) in the last sentence, by striking
24 “title” and inserting “section”;

1 (8) by redesignating subsections (h) through (q)
2 as subsections (g) through (p), respectively; and

3 (9) by adding at the end the following:

4 “(q) CONTINUATION OF ANNUAL MATERIALS RE-
5 PORT ON NEW BRIDGE CONSTRUCTION AND BRIDGE RE-
6 HABILITATION.—Not later than 1 year after the date of
7 enactment of this subsection, and annually thereafter, the
8 Secretary shall publish in the Federal Register a report
9 describing construction materials used in new Federal-aid
10 bridge construction and bridge rehabilitation projects.

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

16 (b) CONFORMING AMENDMENT.—The analysis for
17 subchapter I of chapter 1 of title 23, United States Code,
18 is amended by striking the item relating to section 144
19 and inserting the following:

“144. Highway bridge program.”.

20 **SEC. 1808. APPALACHIAN DEVELOPMENT HIGHWAY SYS-**
21 **TEM.**

22 (a) IN GENERAL.—Subchapter I of chapter 1 of title
23 23, United States Code (as amended by section 1702(a)),
24 is amended by adding at the end the following:

1 **“§ 170. Appalachian development highway system**

2 “(a) APPORTIONMENT.—

3 “(1) IN GENERAL.—The Secretary shall appor-
4 tion funds made available under section 1101(7) of
5 the Safe, Accountable, Flexible, and Efficient Trans-
6 portation Equity Act of 2004 for fiscal years 2004
7 through 2009 among States based on the latest
8 available estimate of the cost to construct highways
9 and access roads for the Appalachian development
10 highway system program prepared by the Appa-
11 lachian Regional Commission under section 14501 of
12 title 40.

13 “(2) AVAILABILITY.—Funds described in para-
14 graph (1) shall be available to construct highways
15 and access roads under chapter 145 of title 40.

16 “(b) APPLICABILITY OF TITLE.—Funds made avail-
17 able under section 1101(7) of the Safe, Accountable,
18 Flexible, and Efficient Transportation Equity Act of 2004
19 for the Appalachian development highway system shall be
20 available for obligation in the same manner as if the funds
21 were apportioned under this chapter, except that—

22 “(1) the Federal share of the cost of any
23 project under this section shall be determined in ac-
24 cordance with subtitle IV of title 40; and

25 “(2) the funds shall remain available until ex-
26 pended.”.

1 (b) CONFORMING AMENDMENTS.—

2 (1) USE OF TOLL CREDITS.—Section 120(j)(1)
3 of title 23, United States Code is amended by insert-
4 ing “and the Appalachian development highway sys-
5 tem program under subtitle IV of title 40” after
6 “(other than the emergency relief program author-
7 ized by section 125”.

8 (2) ANALYSIS.—The analysis of chapter 1 of
9 title 23, United States Code (as amended by section
10 1702(b)), is amended by adding at the end the fol-
11 lowing:

“170. Appalachian development highway system.”.

12 **SEC. 1809. MULTISTATE CORRIDOR PROGRAM.**

13 (a) IN GENERAL.—Subchapter I of chapter 1 of title
14 23, United States Code (as amended by 1808(a)), is
15 amended by adding at the end the following:

16 **“§ 171. Multistate corridor program**

17 “(a) ESTABLISHMENT AND PURPOSE.—The Sec-
18 retary shall carry out a program to—

19 “(1) support and encourage multistate trans-
20 portation planning and development; and

21 “(2) facilitate transportation decisionmaking
22 and coordinate project delivery involving multistate
23 corridors.

1 “(b) ELIGIBLE RECIPIENTS.—A State transportation
2 department and a metropolitan planning organization may
3 receive and administer funds provided under this section.

4 “(c) ELIGIBLE ACTIVITIES.—The Secretary shall
5 make allocations under this program for multistate high-
6 way and multimodal planning studies and construction.

7 “(d) OTHER PROVISIONS REGARDING ELIGI-
8 BILITY.—

9 “(1) STUDIES.—All studies funded under this
10 program shall be consistent with the continuing, co-
11 operative, and comprehensive planning processes re-
12 quired by sections 134 and 135.

13 “(2) CONSTRUCTION.—All construction funded
14 under this program shall be consistent with section
15 133(b)(1).

16 “(e) SELECTION CRITERIA.—The Secretary shall se-
17 lect studies and projects to be carried out under the pro-
18 gram based on—

19 “(1) the existence and significance of signed
20 and binding multijurisdictional agreements;

21 “(2) endorsement of the study or project by ap-
22 plicable elected State and local representatives;

23 “(3) prospects for early completion of the study
24 or project; or

1 “(4) whether the projects to be studied or con-
2 structed are located on corridors identified by sec-
3 tion 1105(c) of the Intermodal Surface Transpor-
4 tation Efficiency Act of 1991 (Public Law 102-240;
5 105 Stat. 2032).

6 “(f) PROGRAM PRIORITIES.—In administering the
7 program, the Secretary shall—

8 “(1) encourage and enable States and other ju-
9 risdictions to work together to develop plans for
10 multimodal and multijurisdictional transportation
11 decisionmaking; and

12 “(2) give priority to studies or projects that em-
13 phasize multimodal planning, including planning for
14 operational improvements that—

15 “(A) increase—

16 “(i) mobility;

17 “(ii) freight productivity;

18 “(iii) access to marine or inland ports;

19 “(iv) safety and security; and

20 “(v) reliability; and

21 “(B) enhance the environment.

22 “(g) FEDERAL SHARE.—Except as provided in sec-
23 tion 120, the Federal share of the cost of a study or
24 project carried out under the program, using funds from
25 all Federal sources, shall be 80 percent.

1 “(h) APPLICABILITY.—Funds authorized to be appro-
2 priated under section 1101(10) of the Safe, Accountable,
3 Flexible, and Efficient Transportation Equity Act of 2004
4 to carry out this section shall be available for obligation
5 in the same manner as if the funds were apportioned
6 under this chapter.”.

7 (b) CONFORMING AMENDMENT.—The analysis for
8 subchapter I of chapter 1 of title 23, United States Code
9 (as amended by section 1809(b)) is amended by adding
10 at the end the following:

“171. Multistate corridor program.”.

11 **SEC. 1810. BORDER PLANNING, OPERATIONS, TECH-**
12 **NOLOGY, AND CAPACITY PROGRAM.**

13 (a) IN GENERAL.—Subchapter I of chapter 1 of title
14 23, United States Code (as amended by section 1809(a)),
15 is amended by adding at the end the following:

16 **“§ 172. Border planning, operations, technology, and**
17 **capacity program**

18 “(a) DEFINITIONS.—In this section:

19 “(1) BORDER STATE.—The term ‘border State’
20 means any of the States of Alaska, Arizona, Cali-
21 fornia, Idaho, Maine, Michigan, Minnesota, Mon-
22 tana, New Hampshire, New Mexico, New York,
23 North Dakota, Texas, Vermont, and Washington.

1 “(2) PROGRAM.—The term ‘program’ means
2 the border planning, operations, technology, and ca-
3 pacity program established under subsection (b).

4 “(b) ESTABLISHMENT AND PURPOSE.—The Sec-
5 retary shall establish and carry out a border planning, op-
6 erations, technology, and capacity improvement program
7 to support coordination and improvement in bi-national
8 transportation planning, operations, efficiency, informa-
9 tion exchange, safety, and security at the international
10 borders of the United States with Canada and Mexico.

11 “(c) ELIGIBLE ACTIVITIES.—

12 “(1) IN GENERAL.—The Secretary shall make
13 allocations under the program for projects to carry
14 out eligible activities described in paragraph (2) at
15 or near international land borders in border States.

16 “(2) ELIGIBLE ACTIVITIES.—A border State
17 may obligate funds apportioned to the border State
18 under this section for—

19 “(A) highway and multimodal planning or
20 environmental studies;

21 “(B) cross-border port of entry and safety
22 inspection improvements, including operational
23 enhancements and technology applications;

24 “(C) technology and information exchange
25 activities; and

1 “(D) right-of-way acquisition, design, and
2 construction, as needed—

3 “(i) to implement the enhancements
4 or applications described in subparagraphs
5 (B) and (C);

6 “(ii) to decrease air pollution emis-
7 sions from vehicles or inspection facilities
8 at border crossings; or

9 “(iii) to increase highway capacity at
10 or near international borders.

11 “(d) OTHER PROVISIONS REGARDING ELIGI-
12 BILITY.—

13 “(1) IN GENERAL.—Each project funded under
14 the program shall be carried out in accordance with
15 the continuing, cooperative, and comprehensive plan-
16 ning processes required by sections 134 and 135.

17 “(2) REGIONALLY SIGNIFICANT PROJECTS.—To
18 be funded under the program, a regionally signifi-
19 cant project shall be included on the applicable
20 transportation plan and program required by sec-
21 tions 134 and 135.

22 “(e) PROGRAM PRIORITIES.—Border States shall
23 give priority to projects that emphasize—

24 “(1) multimodal planning;

25 “(2) improvements in infrastructure; and

1 “(3) operational improvements that—

2 “(A) increase safety, security, freight ca-
3 pacity, or highway access to rail, marine, and
4 air services; and

5 “(B) enhance the environment.

6 “(f) MANDATORY PROGRAM.—

7 “(1) IN GENERAL.—For each fiscal year, the
8 Secretary shall allocate among border States, in ac-
9 cordance with the formula described in paragraph
10 (2), funds to be used in accordance with subsection
11 (d).

12 “(2) FORMULA.—Subject to paragraph (3), the
13 amount allocated to a border State under this para-
14 graph shall be determined by the Secretary, as fol-
15 lows:

16 “(A) 25 percent in the ratio that—

17 “(i) the average annual weight of all
18 cargo entering the border State by com-
19 mercial vehicle across the international
20 border with Canada or Mexico, as the case
21 may be; bears to

22 “(ii) the average annual weight of all
23 cargo entering all border States by com-
24 mercial vehicle across the international
25 borders with Canada and Mexico.

1 “(B) 25 percent in the ratio that—

2 “(i) the average trade value of all
3 cargo imported into the border State and
4 all cargo exported from the border State
5 by commercial vehicle across the inter-
6 national border with Canada or Mexico, as
7 the case may be; bears to

8 “(ii) the average trade value of all
9 cargo imported into all border States and
10 all cargo exported from all border States
11 by commercial vehicle across the inter-
12 national borders with Canada and Mexico.

13 “(C) 25 percent in the ratio that—

14 “(i) the number of commercial vehi-
15 cles annually entering the border State
16 across the international border with Can-
17 ada or Mexico, as the case may be; bears
18 to

19 “(ii) the number of all commercial ve-
20 hicles annually entering all border States
21 across the international borders with Can-
22 ada and Mexico.

23 “(D) 25 percent in the ratio that—

24 “(i) the number of passenger vehicles
25 annually entering the border State across

1 the international border with Canada or
2 Mexico, as the case may be; bears to

3 “(ii) the number of all passenger vehi-
4 cles annually entering all border States
5 across the international borders with Can-
6 ada and Mexico.

7 “(3) DATA SOURCE.—

8 “(A) IN GENERAL.—The data used by the
9 Secretary in making allocations under this sub-
10 section shall be based on the Bureau of Trans-
11 portation Statistics Transborder Surface
12 Freight Dataset (or other similar database).

13 “(B) BASIS OF CALCULATION.—All for-
14 mula calculations shall be made using the aver-
15 age values for the most recent 5-year period for
16 which data are available.

17 “(4) MINIMUM ALLOCATION.—Notwithstanding
18 paragraph (2), for each fiscal year, each border
19 State shall receive at least $\frac{1}{2}$ of 1 percent of the
20 funds made available for allocation under this para-
21 graph for the fiscal year.

22 “(g) FEDERAL SHARE.—Except as provided in sec-
23 tion 120, the Federal share of the cost of a project carried
24 out under the program shall be 80 percent.

1 “(h) OBLIGATION.—Funds made available under sec-
2 tion 1101(11) of the Safe, Accountable, Flexible, and Effi-
3 cient Transportation Equity Act of 2004 to carry out the
4 program shall be available for obligation in the same man-
5 ner as if the funds were apportioned under this chapter.

6 “(i) INFORMATION EXCHANGE.—No individual
7 project the scope of work of which is limited to informa-
8 tion exchange shall receive an allocation under the pro-
9 gram in an amount that exceeds \$500,000 for any fiscal
10 year.

11 “(j) PROJECTS IN CANADA OR MEXICO.—A project
12 in Canada or Mexico, proposed by a border State to di-
13 rectly and predominantly facilitate cross-border vehicle
14 and commercial cargo movements at an international gate-
15 way or port of entry into the border region of the State,
16 may be constructed using funds made available under the
17 program if, before obligation of those funds, Canada or
18 Mexico, or the political subdivision of Canada or Mexico
19 that is responsible for the operation of the facility to be
20 constructed, provides assurances satisfactory to the Sec-
21 retary that any facility constructed under this subsection
22 will be—

23 “(1) constructed in accordance with standards
24 equivalent to applicable standards in the United
25 States; and

1 “(2) properly maintained and used over the
2 useful life of the facility for the purpose for which
3 the Secretary allocated funds to the project.

4 “(k) TRANSFER OF FUNDS TO THE GENERAL SERV-
5 ICES ADMINISTRATION.—

6 “(1) STATE FUNDS.—At the request of a bor-
7 der State, funds made available under the program
8 may be transferred to the General Services Adminis-
9 tration for the purpose of funding 1 or more specific
10 projects if—

11 “(A) the Secretary determines, after con-
12 sultation with the State transportation depart-
13 ment of the border State, that the General
14 Services Administration should carry out the
15 project; and

16 “(B) the General Services Administration
17 agrees to accept the transfer of, and to admin-
18 ister, those funds.

19 “(2) NON-FEDERAL SHARE.—

20 “(A) IN GENERAL.—A border State that
21 makes a request under paragraph (1) shall pro-
22 vide directly to the General Services Adminis-
23 tration, for each project covered by the request,
24 the non-Federal share of the cost of each
25 project described in subsection (f).

1 “(B) NO AUGMENTATION OF APPROPRIA-
2 TIONS.—Funds provided by a border State
3 under subparagraph (A)—

4 “(i) shall not be considered to be an
5 augmentation of the appropriations made
6 available to the General Services Adminis-
7 tration; and

8 “(ii) shall be—

9 “(I) administered in accordance
10 with the procedures of the General
11 Services Administration; but

12 “(II) available for obligation in
13 the same manner as if the funds were
14 apportioned under this chapter.

15 “(C) OBLIGATION AUTHORITY.—Obligation
16 authority shall be transferred to the General
17 Services Administration in the same manner
18 and amount as the funds provided for projects
19 under subparagraph (A).

20 “(3) DIRECT TRANSFER OF AUTHORIZED
21 FUNDS.—

22 “(A) IN GENERAL.—In addition to alloca-
23 tions to States and metropolitan planning orga-
24 nizations under subsection (c), the Secretary
25 may transfer funds made available to carry out

1 this section to the General Services Administra-
2 tion for construction of transportation infra-
3 structure projects at or near the border in bor-
4 der States, if—

5 “(i) the Secretary determines that the
6 transfer is necessary to effectively carry
7 out the purposes of this program; and

8 “(ii) the General Services Administra-
9 tion agrees to accept the transfer of, and
10 to administer, those funds.

11 “(B) NO AUGMENTATION OF APPROPRIA-
12 TIONS.—Funds transferred by the Secretary
13 under subparagraph (A)—

14 “(i) shall not be considered to be an
15 augmentation of the appropriations made
16 available to the General Services Adminis-
17 tration; and

18 “(ii) shall be—

19 “(I) administered in accordance
20 with the procedures of the General
21 Services Administration; but

22 “(II) available for obligation in
23 the same manner as if the funds were
24 apportioned under this chapter.

1 “(C) OBLIGATION AUTHORITY.—Obligation
2 authority shall be transferred to the General
3 Services Administration in the same manner
4 and amount as the funds transferred under
5 subparagraph (A).”.

6 (b) CONFORMING AMENDMENT.—The analysis for
7 subchapter I of chapter 1 of title 23, United States Code
8 (as amended by section 1809(b)), is amended by adding
9 at the end the following:

 “172. Border planning, operations, and technology program.”.

10 **SEC. 1811. PUERTO RICO HIGHWAY PROGRAM.**

11 (a) IN GENERAL.—Subchapter I of chapter 1 of title
12 23, United States Code (as amended by section 1810(a)),
13 is amended by adding at the end the following:

14 **“§ 173. Puerto Rico highway program**

15 “(a) IN GENERAL.—The Secretary shall allocate
16 funds authorized by section 1101(15) of the Safe, Ac-
17 countable, Flexible, and Efficient Transportation Equity
18 Act of 2004 for each of fiscal years 2004 through 2009
19 to the Commonwealth of Puerto Rico to carry out a high-
20 way program in the Commonwealth.

21 “(b) APPLICABILITY OF TITLE.—

22 “(1) IN GENERAL.—Amounts made available by
23 section 1101(15) of the Safe, Accountable, Flexible,
24 and Efficient Transportation Equity Act of 2004
25 shall be available for obligation in the same manner

1 as if such funds were apportioned under this chap-
2 ter.

3 “(2) LIMITATION ON OBLIGATIONS.—The
4 amounts shall be subject to any limitation on obliga-
5 tions for Federal-aid highway and highway safety
6 construction programs.

7 “(c) TREATMENT OF FUNDS.—Amounts made avail-
8 able to carry out this section for a fiscal year shall be ad-
9 ministered as follows:

10 “(1) APPORTIONMENT.—For the purpose of im-
11 posing any penalty under this title or title 49, the
12 amounts shall be treated as being apportioned to
13 Puerto Rico under sections 104(b) and 144, for each
14 program funded under those sections in an amount
15 determined by multiplying—

16 “(A) the aggregate of the amounts for the
17 fiscal year; by

18 “(B) the ratio that—

19 “(i) the amount of funds apportioned
20 to Puerto Rico for each such program for
21 fiscal year 1997; bears to

22 “(ii) the total amount of funds appor-
23 tioned to Puerto Rico for all such pro-
24 grams for fiscal year 1997.

1 “(2) PENALTY.—The amounts treated as being
2 apportioned to Puerto Rico under each section re-
3 ferred to in paragraph (1) shall be deemed to be re-
4 quired to be apportioned to Puerto Rico under that
5 section for purposes of the imposition of any penalty
6 under this title and title 49.

7 “(3) EFFECT ON ALLOCATIONS AND APPOR-
8 TIONMENTS.—Subject to paragraph (2), nothing in
9 this section affects any allocation under section 105
10 and any apportionment under sections 104 and
11 144.”.

12 (b) CONFORMING AMENDMENT.—The analysis for
13 subchapter I of chapter 1 of title 23, United States Code
14 (as amended by section 1810(b)), is amended by adding
15 at the end the following:

“173. Puerto Rico highway program.”.

16 **SEC. 1812. NATIONAL HISTORIC COVERED BRIDGE PRESER-**
17 **VATION.**

18 (a) IN GENERAL.—Subchapter I of chapter 1 of title
19 23, United States Code (as amended by section 1811(a)),
20 is amended by adding at the end the following:

21 **“§ 174. National historic covered bridge preservation**

22 “(a) DEFINITION OF HISTORIC COVERED BRIDGE.—
23 In this section, the term ‘historic covered bridge’ means
24 a covered bridge that is listed or eligible for listing on the
25 National Register of Historic Places.

1 “(b) HISTORIC COVERED BRIDGE PRESERVATION.—
2 Subject to the availability of appropriations, the Secretary
3 shall—

4 “(1) collect and disseminate information on his-
5 toric covered bridges;

6 “(2) conduct educational programs relating to
7 the history and construction techniques of historic
8 covered bridges;

9 “(3) conduct research on the history of historic
10 covered bridges; and

11 “(4) conduct research on, and study techniques
12 for, protecting historic covered bridges from rot, fire,
13 natural disasters, or weight-related damage.

14 “(c) GRANTS.—

15 “(1) IN GENERAL.—Subject to the availability
16 of appropriations, the Secretary shall make a grant
17 to a State that submits an application to the Sec-
18 retary that demonstrates a need for assistance in
19 carrying out 1 or more historic covered bridge
20 projects described in paragraph (2).

21 “(2) ELIGIBLE PROJECTS.—A grant under
22 paragraph (1) may be made for a project—

23 “(A) to rehabilitate or repair a historic
24 covered bridge; or

1 “(B) to preserve a historic covered bridge,
2 including through—

3 “(i) installation of a fire protection
4 system, including a fireproofing or fire de-
5 tection system and sprinklers;

6 “(ii) installation of a system to pre-
7 vent vandalism and arson; or

8 “(iii) relocation of a bridge to a pres-
9 ervation site.

10 “(3) AUTHENTICITY REQUIREMENTS.—A grant
11 under paragraph (1) may be made for a project only
12 if—

13 “(A) to the maximum extent practicable,
14 the project—

15 “(i) is carried out in the most histori-
16 cally appropriate manner; and

17 “(ii) preserves the existing structure
18 of the historic covered bridge; and

19 “(B) the project provides for the replace-
20 ment of wooden components with wooden com-
21 ponents, unless the use of wood is impracticable
22 for safety reasons.

23 “(4) FEDERAL SHARE.—Except as provided in
24 section 120, the Federal share of the cost of a

1 project carried out with a grant under this sub-
2 section shall be 80 percent.

3 “(d) FUNDING.—There is authorized to be appro-
4 priated to carry out this section \$14,000,000 for each of
5 fiscal years 2004 through 2009, to remain available until
6 expended.”.

7 (b) CONFORMING AMENDMENT.—The analysis for
8 subchapter I of chapter 1 of title 23, United States Code
9 (as amended by section 1811(b)), is amended by adding
10 at the end the following:

“174. National historic covered bridge preservation.”.

11 **SEC. 1813. TRANSPORTATION AND COMMUNITY AND SYS-**
12 **TEM PRESERVATION PROGRAM.**

13 (a) IN GENERAL.—Subchapter I of chapter 1 of title
14 23, United States Code (as amended by section 1812(a)),
15 is amended by adding at the end the following:

16 **“§ 175. Transportation and community and system**
17 **preservation program**

18 “(a) ESTABLISHMENT.—The Secretary shall estab-
19 lish a comprehensive program to facilitate the planning,
20 development, and implementation of strategies by States,
21 metropolitan planning organizations, federally-recognized
22 Indian tribes, and local governments to integrate transpor-
23 tation, community, and system preservation plans and
24 practices that address the goals described in subsection
25 (b).

1 “(b) GOALS.—The goals of the program are to—

2 “(1) improve the efficiency of the transpor-
3 tation system in the United States;

4 “(2) reduce the impacts of transportation on
5 the environment;

6 “(3) reduce the need for costly future invest-
7 ments in public infrastructure;

8 “(4) provide efficient access to jobs, services,
9 and centers of trade; and

10 “(5) examine development patterns, and to
11 identify strategies, to encourage private sector devel-
12 opment patterns that achieve the goals identified in
13 paragraphs (1) through (4).

14 “(c) ALLOCATION OF FUNDS FOR IMPLEMENTA-
15 TION.—

16 “(1) IN GENERAL.—The Secretary shall allo-
17 cate funds made available to carry out this sub-
18 section to States, metropolitan planning organiza-
19 tions, and local governments to carry out projects to
20 address transportation efficiency and community
21 and system preservation.

22 “(2) CRITERIA.—In allocating funds made
23 available to carry out this subsection, the Secretary
24 shall give priority to applicants that—

1 “(A) have instituted preservation or devel-
2 opment plans and programs that—

3 “(i) meet the requirements of this title
4 and chapter 53 of title 49, United States
5 Code; and

6 “(ii)(I) are coordinated with State and
7 local adopted preservation or development
8 plans;

9 “(II) are intended to promote cost-ef-
10 fective and strategic investments in trans-
11 portation infrastructure that minimize ad-
12 verse impacts on the environment; or

13 “(III) are intended to promote innova-
14 tive private sector strategies.

15 “(B) have instituted other policies to inte-
16 grate transportation and community and sys-
17 tem preservation practices, such as—

18 “(i) spending policies that direct
19 funds to high-growth areas;

20 “(ii) urban growth boundaries to
21 guide metropolitan expansion;

22 “(iii) ‘green corridors’ programs that
23 provide access to major highway corridors
24 for areas targeted for efficient and com-
25 pact development; or

1 “(iv) other similar programs or poli-
2 cies as determined by the Secretary;

3 “(C) have preservation or development
4 policies that include a mechanism for reducing
5 potential impacts of transportation activities on
6 the environment;

7 “(D) examine ways to encourage private
8 sector investments that address the purposes of
9 this section; and

10 “(E) propose projects for funding that ad-
11 dress the purposes described in subsection
12 (b)(2).

13 “(3) **EQUITABLE DISTRIBUTION.**—In allocating
14 funds to carry out this subsection, the Secretary
15 shall ensure the equitable distribution of funds to a
16 diversity of populations and geographic regions.

17 “(4) **USE OF ALLOCATED FUNDS.**—

18 “(A) **IN GENERAL.**—An allocation of funds
19 made available to carry out this subsection shall
20 be used by the recipient to implement the
21 projects proposed in the application to the Sec-
22 retary.

23 “(B) **TYPES OF PROJECTS.**—The allocation
24 of funds shall be available for obligation for—

1 “(i) any project eligible for funding
2 under this title or chapter 53 of title 49,
3 United States Code; or

4 “(ii) any other activity relating to
5 transportation and community and system
6 preservation that the Secretary determines
7 to be appropriate, including corridor pres-
8 ervation activities that are necessary to
9 implement—

10 “(I) transit-oriented development
11 plans;

12 “(II) traffic calming measures; or

13 “(III) other coordinated trans-
14 portation and community and system
15 preservation practices.

16 “(d) FUNDING.—

17 “(1) IN GENERAL.—There is authorized to be
18 appropriated from the Highway Trust Fund (other
19 than the Mass Transit Account) to carry out this
20 section \$50,000,000 for each of fiscal years 2004
21 through 2009.

22 “(2) CONTRACT AUTHORITY.—Funds author-
23 ized under this subsection shall be available for obli-
24 gation in the same manner as if the funds were ap-
25 portioned under this chapter.”.

1 (b) ELIGIBLE PROJECTS.—Section 133(b) of title 23,
2 United States Code (as amended by section 1701(a)), is
3 amended by adding at the end the following:

4 “(18) Transportation and community system
5 preservation to facilitate the planning, development,
6 and implementation of strategies of metropolitan
7 planning organizations and local governments to in-
8 tegrate transportation, community, and system pres-
9 ervation plans and practices that address the fol-
10 lowing:

11 “(A) Improvement of the efficiency of the
12 transportation system in the United States.

13 “(B) Reduction of the impacts of transpor-
14 tation on the environment.

15 “(C) Reduction of the need for costly fu-
16 ture investments in public infrastructure.

17 “(D) Provision of efficient access to jobs,
18 services, and centers of trade.

19 “(E) Examination of development pat-
20 terns, and identification of strategies to encour-
21 age private sector development patterns, that
22 achieve the goals identified in subparagraphs
23 (A) through (D).

24 “(19) Projects relating to intersections, includ-
25 ing intersections—

1 “(A) that—

2 “(i) have disproportionately high acci-
3 dent rates;

4 “(ii) have high levels of congestion, as
5 evidenced by—

6 “(I) interrupted traffic flow at
7 the intersection; and

8 “(II) a level of service rating,
9 issued by the Transportation Re-
10 search Board of the National Acad-
11 emy of Sciences in accordance with
12 the Highway Capacity Manual, that is
13 not better than ‘F’ during peak travel
14 hours; and

15 “(iii) are directly connected to or lo-
16 cated on a Federal-aid highway; and

17 “(B) improvements that are approved in
18 the regional plan of the appropriate local metro-
19 politan planning organization.”.

20 (c) CONFORMING AMENDMENT.—The analysis for
21 subchapter I of chapter 1 of title 23, United States Code
22 (as amended by section 1812(b)), is amended by adding
23 at the end the following:

“175. Transportation and community and system preservation pilot program.”.

1 **SEC. 1814. PARKING PILOT PROGRAMS.**

2 (a) IN GENERAL.—Subchapter I of chapter 1 of title
3 23, United States Code (as amended by section 1813(a)),
4 is amended by adding at the end the following:

5 **“§ 176. Parking pilot programs**

6 “(a) COMMERCIAL TRUCK PARKING PILOT PRO-
7 GRAM.—

8 “(1) ESTABLISHMENT.—In cooperation with
9 appropriate State, regional, and local governments,
10 the Secretary shall establish a pilot program to ad-
11 dress the shortage of long-term parking for drivers
12 of commercial motor vehicles on the National High-
13 way System.

14 “(2) ALLOCATION OF FUNDS.—

15 “(A) IN GENERAL.—The Secretary shall
16 allocate funds made available under this sub-
17 section to States, metropolitan planning organi-
18 zations, and local governments.

19 “(B) CRITERIA.—In allocating funds under
20 this subsection, the Secretary shall give priority
21 to an applicant that—

22 “(i) demonstrates a severe shortage of
23 commercial vehicle parking capacity on the
24 corridor to be addressed;

25 “(ii) consults with affected State and
26 local governments, community groups, pri-

1 vate providers of commercial vehicle park-
2 ing, and motorist and trucking organiza-
3 tions; and

4 “(iii) demonstrates that the project
5 proposed by the applicant is likely to have
6 a positive effect on highway safety, traffic
7 congestion, or air quality.

8 “(3) USE OF ALLOCATED FUNDS.—

9 “(A) IN GENERAL.—A recipient of funds
10 allocated under this subsection shall use the
11 funds to carry out the project proposed in the
12 application submitted by the recipient to the
13 Secretary.

14 “(B) TYPES OF PROJECTS.—Funds under
15 this subsection shall be available for obligation
16 for projects that serve the National Highway
17 System, including—

18 “(i) construction of safety rest areas
19 that include parking for commercial motor
20 vehicles;

21 “(ii) construction of commercial motor
22 vehicle parking facilities that are adjacent
23 to commercial truck stops and travel pla-
24 zas;

1 “(iii) costs associated with the open-
2 ing of facilities (including inspection and
3 weigh stations and park-and-ride facilities)
4 to provide commercial motor vehicle park-
5 ing;

6 “(iv) projects that promote awareness
7 of the availability of public or private com-
8 mercial motor vehicle parking on the Na-
9 tional Highway System, including parking
10 in connection with intelligent transpor-
11 tation systems and other systems;

12 “(v) construction of turnouts along
13 the National Highway System for commer-
14 cial motor vehicles;

15 “(vi) capital improvements to public
16 commercial motor vehicle truck parking fa-
17 cilities closed on a seasonal basis in order
18 to allow the facilities to remain open year-
19 around; and

20 “(vii) improvements to the geometric
21 design at interchanges on the National
22 Highway System to improve access to com-
23 mercial motor vehicle parking facilities.

24 “(4) REPORT.—Not later than 5 years after the
25 date of enactment of this section, the Secretary shall

1 submit to Congress a report on the results of the
2 pilot program carried out under this subsection.

3 “(5) FEDERAL SHARE.—The Federal share of
4 the cost of a project carried out under this sub-
5 section shall be consistent with section 120.

6 “(6) FUNDING.—

7 “(A) IN GENERAL.—There is authorized to
8 be appropriated from the Highway Trust Fund
9 (other than the Mass Transit Account) to carry
10 out this subsection \$10,000,000 for each of fis-
11 cal years 2005 through 2009.

12 “(B) CONTRACT AUTHORITY.—Funds au-
13 thorized under this paragraph shall be available
14 for obligation in the same manner as if the
15 funds were apportioned under this chapter.

16 “(b) CORRIDOR AND FRINGE PARKING PILOT PRO-
17 GRAM.—

18 “(1) ESTABLISHMENT.—

19 “(A) IN GENERAL.—In cooperation with
20 appropriate State, regional, and local govern-
21 ments, the Secretary shall carry out a pilot pro-
22 gram to provide corridor and fringe parking fa-
23 cilities.

24 “(B) PRIMARY FUNCTION.—The primary
25 function of a corridor and fringe parking facil-

1 ity funded under this subsection shall be to pro-
2 vide parking capacity to support car pooling,
3 van pooling, ride sharing, commuting, and high
4 occupancy vehicle travel.

5 “(C) OVERNIGHT PARKING.—A State may
6 permit a facility described in subparagraph (B)
7 to be used for the overnight parking of commer-
8 cial vehicles if the use does not foreclose or un-
9 duly limit the primary function of the facility
10 described in subparagraph (B).

11 “(2) ALLOCATION OF FUNDS.—

12 “(A) IN GENERAL.—The Secretary shall
13 allocate funds made available to carry out this
14 subsection to States.

15 “(B) CRITERIA.—In allocating funds under
16 this subsection, the Secretary shall give priority
17 to a State that—

18 “(i) demonstrates demand for corridor
19 and fringe parking on the corridor to be
20 addressed;

21 “(ii) consults with affected metropoli-
22 tan planning organizations, local govern-
23 ments, community groups, and providers of
24 corridor and fringe parking; and

1 “(iii) demonstrates that the project
2 proposed by the State is likely to have a
3 positive effect on ride sharing, traffic con-
4 gestion, or air quality.

5 “(3) USE OF ALLOCATED FUNDS.—

6 “(A) IN GENERAL.—A recipient of funds
7 allocated under this subsection shall use the
8 funds to carry out the project proposed in the
9 application submitted by the recipient to the
10 Secretary.

11 “(B) TYPES OF PROJECTS.—Funds under
12 this subsection shall be available for obligation
13 for projects that serve the Federal-aid system,
14 including—

15 “(i) construction of corridor and
16 fringe parking facilities;

17 “(ii) costs associated with the opening
18 of facilities;

19 “(iii) projects that promote awareness
20 of the availability of corridor and fringe
21 parking through the use of signage and
22 other means;

23 “(iv) capital improvements to corridor
24 and fringe parking facilities closed on a

1 seasonal basis in order to allow the facili-
2 ties to remain open year-around; and

3 “(v) improvements to the geometric
4 design on adjoining roadways to facilitate
5 access to, and egress from, corridor and
6 fringe parking facilities.

7 “(4) REPORT.—Not later than 5 years after the
8 date of enactment of this section, the Secretary shall
9 submit to Congress a report on the results of the
10 pilot program carried out under this subsection.

11 “(5) FEDERAL SHARE.—The Federal share of
12 the cost of a project carried out under this sub-
13 section shall be consistent with section 120.

14 “(6) FUNDING.—

15 “(A) IN GENERAL.—There is authorized to
16 be appropriated from the Highway Trust Fund
17 (other than the Mass Transit Account) to carry
18 out this subsection \$10,000,000 for each of fis-
19 cal years 2005 through 2009.

20 “(B) CONTRACT AUTHORITY.—Funds au-
21 thorized under this paragraph shall be available
22 for obligation in the same manner as if the
23 funds were apportioned under this chapter.”.

24 (b) CONFORMING AMENDMENT.—The analysis for
25 subchapter I of chapter I of title 23, United States Code

1 (as amended by section 1813(c)), is amended by adding
 2 at the end the following:

“176. Parking pilot programs.”.

3 **SEC. 1815. INTERSTATE OASIS PROGRAM.**

4 (a) IN GENERAL.—Subchapter I of chapter 1 of title
 5 23, United States Code (as amended by section 1814(a)),
 6 is amended by adding at the end the following:

7 **“§ 177. Interstate oasis program**

8 “(a) IN GENERAL.—Not later than 180 days after
 9 the date of enactment of this section, in consultation with
 10 the States and other interested parties, the Secretary
 11 shall—

12 “(1) establish an Interstate oasis program; and

13 “(2) develop standards for designating, as an
 14 Interstate oasis, a facility that—

15 “(A) offers—

16 “(i) products and services to the pub-
 17 lic;

18 “(ii) 24-hour access to restrooms; and

19 “(iii) parking for automobiles and
 20 heavy trucks; and

21 “(B) meets other standards established by
 22 the Secretary.

23 “(b) STANDARDS FOR DESIGNATION.—The stand-
 24 ards for designation under subsection (a) shall include
 25 standards relating to—

1 “(1) the appearance of a facility; and

2 “(2) the proximity of the facility to the Inter-
3 state System.

4 “(c) ELIGIBILITY FOR DESIGNATION.—If a State
5 elects to participate in the interstate oasis program, any
6 facility meeting the standards established by the Secretary
7 shall be eligible for designation under this section.

8 “(d) LOGO.—The Secretary shall design a logo to be
9 displayed by a facility designated under this section.”.

10 (b) CONFORMING AMENDMENT.—The analysis for
11 subchapter I of chapter I of title 23, United States Code
12 (as amended by section 1814(b)), is amended by adding
13 at the end the following:

“177. Interstate oasis program.”.

14 **SEC. 1816. TRIBAL-STATE ROAD MAINTENANCE AGREE-**
15 **MENTS.**

16 Section 204 of title 23, United States Code (as
17 amended by section 1806(f)(4)), is amended by adding at
18 the end the following:

19 “(n) TRIBAL-STATE ROAD MAINTENANCE AGREE-
20 MENTS.—

21 “(1) IN GENERAL.—Notwithstanding any other
22 provision of law, regulation, policy, or guideline, an
23 Indian tribe and a State may enter into a road
24 maintenance agreement under which an Indian tribe
25 assumes the responsibilities of the State for—

1 “(A) Indian reservation roads; and

2 “(B) roads providing access to Indian res-
3 ervation roads.

4 “(2) TRIBAL-STATE AGREEMENTS.—Agree-
5 ments entered into under paragraph (1)—

6 “(A) shall be negotiated between the State
7 and the Indian tribe; and

8 “(B) shall not require the approval of the
9 Secretary.

10 “(3) ANNUAL REPORT.—Effective beginning
11 with fiscal year 2004, the Secretary shall prepare
12 and submit to Congress an annual report that
13 identifies—

14 “(A) the Indian tribes and States that
15 have entered into agreements under paragraph
16 (1);

17 “(B) the number of miles of roads for
18 which Indian tribes have assumed maintenance
19 responsibilities; and

20 “(C) the amount of funding transferred to
21 Indian tribes for the fiscal year under agree-
22 ments entered into under paragraph (1).”.

23 **SEC. 1817. NATIONAL FOREST SYSTEM ROADS.**

24 Section 205 of title 23, United States Code, is
25 amended by adding at the end the following:

1 “(e) Of the amounts made available for National For-
 2 est System roads, \$15,000,000 for each fiscal year shall
 3 be used by the Secretary of Agriculture to pay the costs
 4 of facilitating the passage of aquatic species beneath roads
 5 in the National Forest System, including the costs of con-
 6 structing, maintaining, replacing, or removing culverts
 7 and bridges, as appropriate.”.

8 **SEC. 1818. TERRITORIAL HIGHWAY PROGRAM.**

9 (a) IN GENERAL.—Chapter 2 of title 23, United
 10 States Code, is amended by striking section 215 and in-
 11 serting the following:

12 **“§ 215. Territorial highway program**

13 “(a) DEFINITIONS.—In this section:

14 “(1) PROGRAM.—The term ‘program’ means
 15 the territorial highway program established under
 16 subsection (b).

17 “(2) TERRITORY.—The term ‘territory’ means
 18 the any of the following territories of the United
 19 States:

20 “(A) American Samoa.

21 “(B) The Commonwealth of the Northern
 22 Mariana Islands.

23 “(C) Guam.

24 “(D) The United States Virgin Islands.

25 “(b) PROGRAM.—

1 “(1) IN GENERAL.—Recognizing the mutual
2 benefits that will accrue to the territories and the
3 United States from the improvement of highways in
4 the territories, the Secretary may carry out a pro-
5 gram to assist each territorial government in the
6 construction and improvement of a system of arte-
7 rial and collector highways, and necessary inter-is-
8 land connectors, that is—

9 “(A) designated by the Governor or chief
10 executive officer of each territory; and

11 “(B) approved by the Secretary.

12 “(2) FEDERAL SHARE.—The Secretary shall
13 provide Federal financial assistance to territories
14 under this section in accordance with section 120(h).

15 “(c) TECHNICAL ASSISTANCE.—

16 “(1) IN GENERAL.—To continue a long-range
17 highway development program, the Secretary may
18 provide technical assistance to the governments of
19 the territories to enable the territories to, on a con-
20 tinuing basis—

21 “(A) engage in highway planning;

22 “(B) conduct environmental evaluations;

23 “(C) administer right-of-way acquisition
24 and relocation assistance programs; and

1 “(D) design, construct, operate, and main-
2 tain a system of arterial and collector highways,
3 including necessary inter-island connectors.

4 “(2) FORM AND TERMS OF ASSISTANCE.—Tech-
5 nical assistance provided under paragraph (1), and
6 the terms for the sharing of information among ter-
7 ritories receiving the technical assistance, shall be
8 included in the agreement required by subsection
9 (e).

10 “(d) NONAPPLICABILITY OF CERTAIN PROVISIONS.—

11 “(1) IN GENERAL.—Except to the extent that
12 provisions of chapter 1 are determined by the Sec-
13 retary to be inconsistent with the needs of the terri-
14 tories and the intent of the program, chapter 1
15 (other than provisions of chapter 1 relating to the
16 apportionment and allocation of funds) shall apply
17 to funds authorized to be appropriated for the pro-
18 gram.

19 “(2) APPLICABLE PROVISIONS.—The specific
20 sections of chapter 1 that are applicable to each ter-
21 ritory, and the extent of the applicability of those
22 section, shall be identified in the agreement required
23 by subsection (e).

24 “(e) AGREEMENT.—

1 “(1) IN GENERAL.—Except as provided in para-
2 graph (3), none of the funds made available for the
3 program shall be available for obligation or expendi-
4 ture with respect to any territory until the Governor
5 or chief executive officer of the territory enters into
6 a new agreement with the Secretary (which new
7 agreement shall be entered into not later than 1 year
8 after the date of enactment of the Safe, Account-
9 able, Flexible, and Efficient Transportation Equity
10 Act of 2004), providing that the government of the
11 territory shall—

12 “(A) implement the program in accordance
13 with applicable provisions of chapter 1 and sub-
14 section (d);

15 “(B) design and construct a system of ar-
16 terial and collector highways, including nec-
17 essary inter-island connectors, in accordance
18 with standards that are—

19 “(i) appropriate for each territory;

20 and

21 “(ii) approved by the Secretary;

22 “(C) provide for the maintenance of facili-
23 ties constructed or operated under this section
24 in a condition to adequately serve the needs of
25 present and future traffic; and

1 “(D) implement standards for traffic oper-
2 ations and uniform traffic control devices that
3 are approved by the Secretary.

4 “(2) TECHNICAL ASSISTANCE.—The new agree-
5 ment required by paragraph (1) shall—

6 “(A) specify the kind of technical assist-
7 ance to be provided under the program;

8 “(B) include appropriate provisions regard-
9 ing information sharing among the territories;
10 and

11 “(C) delineate the oversight role and re-
12 sponsibilities of the territories and the Sec-
13 retary.

14 “(3) REVIEW AND REVISION OF AGREEMENT.—
15 The new agreement entered into under paragraph
16 (1) shall be reevaluated and, as necessary, revised,
17 at least every 2 years.

18 “(4) EXISTING AGREEMENTS.—With respect to
19 an agreement between the Secretary and the Gov-
20 ernor or chief executive officer of a territory that is
21 in effect as of the date of enactment of the Safe, Ac-
22 countable, Flexible, and Efficient Transportation
23 Equity Act of 2004—

1 “(A) the agreement shall continue in force
2 until replaced by a new agreement in accord-
3 ance with paragraph (1); and

4 “(B) amounts made available for the pro-
5 gram under the agreement shall be available for
6 obligation or expenditure so long as the agree-
7 ment, or a new agreement under paragraph (1),
8 is in effect.

9 “(f) PERMISSIBLE USES OF FUNDS.—

10 “(1) IN GENERAL.—Funds made available for
11 the program may be used only for the following
12 projects and activities carried out in a territory:

13 “(A) Eligible surface transportation pro-
14 gram projects described in section 133(b).

15 “(B) Cost-effective, preventive mainte-
16 nance consistent with section 116.

17 “(C) Ferry boats, terminal facilities, and
18 approaches, in accordance with subsections (b)
19 and (c) of section 129.

20 “(D) Engineering and economic surveys
21 and investigations for the planning, and the fi-
22 nancing, of future highway programs.

23 “(E) Studies of the economy, safety, and
24 convenience of highway use.

1 “(F) The regulation and equitable taxation
2 of highway use.

3 “(G) Such research and development as
4 are necessary in connection with the planning,
5 design, and maintenance of the highway system.

6 “(2) PROHIBITION ON USE OF FUNDS FOR ROU-
7 TINE MAINTENANCE.—None of the funds made
8 available for the program shall be obligated or ex-
9 pended for routine maintenance.

10 “(g) LOCATION OF PROJECTS.—Territorial highway
11 projects (other than those described in paragraphs (1),
12 (3), and (4) of section 133(b)) may not be undertaken on
13 roads functionally classified as local.”.

14 (b) CONFORMING AMENDMENTS.—

15 (1) ELIGIBLE PROJECTS.—Section 103(b)(6) of
16 title 23, United States Code, is amended by striking
17 subparagraph (P) and inserting the following:

18 “(P) Projects eligible for assistance under the
19 territorial highway program under section 215.”.

20 (2) FUNDING.—Section 104(b)(1)(A) of title
21 23, United States Code, is amended by striking “to
22 the Virgin Islands, Guam, American Samoa, and the
23 Commonwealth of Northern Mariana Islands” and
24 inserting “for the territorial highway program au-
25 thorized under section 215”.

1 (3) ANALYSIS.—The analysis for chapter 2 of
 2 title 23, United States Code, is amended by striking
 3 the item relating to section 215 and inserting the
 4 following:

“215. Territorial highway program.”.

5 **SEC. 1819. MAGNETIC LEVITATION TRANSPORTATION**
 6 **TECHNOLOGY DEPLOYMENT PROGRAM.**

7 Section 322 of title 23, United States Code, is
 8 amended—

9 (1) in subsection (c)—

10 (A) by striking “Not later than” and in-
 11 serting the following:

12 “(1) INITIAL SOLICITATION.—Not later than”;
 13 and

14 (B) by adding at the end the following:

15 “(2) ADDITIONAL SOLICITATION.—Not later
 16 than 1 year after the date of enactment of this para-
 17 graph, the Secretary may solicit additional applica-
 18 tions from States, or authorities designated by 1 or
 19 more States, for financial assistance authorized by
 20 subsection (b) for planning, design, and construction
 21 of eligible MAGLEV projects.”;

22 (2) in subsection (e), by striking “Prior to solici-
 23 ting applications, the Secretary” and inserting “The
 24 Secretary”;

25 (3) in subsection (h)—

1 (A) in subparagraph (A), by striking
2 clause (i) and inserting the following:

3 “(i) IN GENERAL.—There is author-
4 ized to be appropriated from the Highway
5 Trust Fund (other than the Mass Transit
6 Account) to carry out this section
7 \$15,000,000 for each of fiscal years 2004
8 through 2009.”; and

9 (B) in subparagraph (B), by striking
10 clause (i) and inserting the following:

11 “(i) IN GENERAL.—There are author-
12 ized to be appropriated from the Highway
13 Trust Fund (other than the Mass Transit
14 Account) to carry out this section—

15 “(I) \$375,000,000 for fiscal year
16 2004;

17 “(II) \$400,000,000 for fiscal
18 year 2005;

19 “(III) \$415,000,000 for fiscal
20 year 2006;

21 “(IV) \$425,000,000 for fiscal
22 year 2007;

23 “(V) \$435,000,000 for fiscal year
24 2008; and

1 “(VI) \$450,000,000 for fiscal
2 year 2009.”; and

3 (4) by striking subsection (i).

4 **SEC. 1820. DONATIONS AND CREDITS.**

5 Section 323 of title 23, United States Code, is
6 amended—

7 (1) in the first sentence of subsection (c), by in-
8 serting “, or a local government from offering to do-
9 nate funds, materials, or services performed by local
10 government employees,” after “services”; and

11 (2) striking subsection (e).

12 **SEC. 1821. DISADVANTAGED BUSINESS ENTERPRISES.**

13 (a) GENERAL RULE.—Except to the extent that the
14 Secretary determines otherwise, not less than 10 percent
15 of the amounts made available for any program under ti-
16 tles I, II, and III of this Act shall be expended with small
17 business concerns owned and controlled by socially and
18 economically disadvantaged individuals.

19 (b) DEFINITIONS.—In this section:

20 (1) SMALL BUSINESS CONCERN.—

21 (A) IN GENERAL.—The term “small busi-
22 ness concern” has the meaning given the term
23 under section 3 of the Small Business Act (15
24 U.S.C. 632).

1 (B) EXCLUSION.—The term “small busi-
2 ness concern” does not include any concern or
3 group of concerns controlled by the same so-
4 cially and economically disadvantaged individual
5 or individuals that has average annual gross re-
6 ceipts over the preceding 3 fiscal years in excess
7 of \$17,420,000, as adjusted by the Secretary
8 for inflation.

9 (2) SOCIALLY AND ECONOMICALLY DISADVAN-
10 TAGED INDIVIDUALS.—The term “socially and eco-
11 nomically disadvantaged individuals” has the mean-
12 ing given the term under section 8(d) of the Small
13 Business Act (15 U.S.C. 637(d)) and relevant sub-
14 contracting regulations promulgated under that sec-
15 tion, except that women shall be presumed to be so-
16 cially and economically disadvantaged individuals for
17 the purposes of this section.

18 (c) ANNUAL LISTING OF DISADVANTAGED BUSINESS
19 ENTERPRISES.—Each State shall annually survey and
20 compile a list of the small business concerns referred to
21 in subsection (a) and the location of such concerns in the
22 State and notify the Secretary, in writing, of the percent-
23 age of such concerns which are controlled by women, by
24 socially and economically disadvantaged individuals (other
25 than women), and by individuals who are women and are

1 otherwise socially and economically disadvantaged individ-
2 uals.

3 (d) UNIFORM CERTIFICATION.—The Secretary shall
4 establish minimum uniform criteria for State governments
5 to use in certifying whether a concern qualifies for pur-
6 poses of this section. Such minimum uniform criteria shall
7 include on-site visits, personal interviews, licenses, analysis
8 of stock ownership, listing of equipment, analysis of bond-
9 ing capacity, listing of work completed, resume of prin-
10 cipal owners, financial capacity, and type of work pre-
11 ferred.

12 (e) COMPLIANCE WITH COURT ORDERS.—Nothing in
13 this section limits the eligibility of an entity or person to
14 receive funds made available under titles I, III, and V of
15 this Act, if the entity or person is prevented, in whole or
16 in part, from complying with subsection (a) because a
17 Federal court issues a final order in which the court finds
18 that the requirement of subsection (a), or the program es-
19 tablished under subsection (a), is unconstitutional.

20 **SEC. 1822. EMERGENCY RELIEF.**

21 Section 125(c)(1) of title 23, United States Code, is
22 amended by striking “\$100,000,000” and inserting
23 “\$300,000,000”.

1 **SEC. 1823. PRIORITY FOR PEDESTRIAN AND BICYCLE FA-**
 2 **CILITY ENHANCEMENT PROJECTS.**

3 Section 133(e)(5) of title 23, United States Code, is
 4 amended by adding at the end the following:

5 “(D) PRIORITY FOR PEDESTRIAN AND BI-
 6 CYCLE FACILITY ENHANCEMENT PROJECTS.—
 7 The Secretary shall encourage States to give
 8 priority to pedestrian and bicycle facility en-
 9 hancement projects that include a coordinated
 10 physical activity or healthy lifestyles program.”.

11 **SEC. 1824. THE DELTA REGIONAL AUTHORITY.**

12 (a) IN GENERAL.—Subchapter I of chapter 1 of title
 13 23, United States Code (as amended by section 1814(a)),
 14 is amended by adding at the end the following:

15 **“§ 178. Delta Region transportation development**
 16 **program**

17 “(a) IN GENERAL.—The Secretary shall carry out a
 18 program to—

19 “(1) support and encourage multistate trans-
 20 portation planning and corridor development;

21 “(2) provide for transportation project develop-
 22 ment;

23 “(3) facilitate transportation decisionmaking;
 24 and

25 “(4) support transportation construction.

1 “(b) ELIGIBLE RECIPIENTS.—A State transportation
2 department or metropolitan planning organization may re-
3 ceive and administer funds provided under the program.

4 “(c) ELIGIBLE ACTIVITIES.—The Secretary shall
5 make allocations under the program for multistate high-
6 way and transit planning, development, and construction
7 projects.

8 “(d) OTHER PROVISIONS REGARDING ELIGI-
9 BILITY.—All activities funded under this program shall be
10 consistent with the continuing, cooperative, and com-
11 prehensive planning processes required by section 134 and
12 135.

13 “(e) SELECTION CRITERIA.—The Secretary shall se-
14 lect projects to be carried out under the program based
15 on—

16 “(1) whether the project is located—

17 “(A) in an area that is part of the Delta
18 Regional Authority; and

19 “(B) on the Federal-aid system;

20 “(2) endorsement of the project by the State
21 department of transportation; and

22 “(3) evidence of the ability to complete the
23 project.

24 “(f) PROGRAM PRIORITIES.—In administering the
25 program, the Secretary shall—

1 “(1) encourage State and local officials to work
2 together to develop plans for multimodal and multi-
3 jurisdictional transportation decisionmaking; and

4 “(2) give priority to projects that emphasize
5 multimodal planning, including planning for oper-
6 ational improvements that—

7 “(A) increase the mobility of people and
8 goods;

9 “(B) improve the safety of the transpor-
10 tation system with respect to catastrophic—

11 “(i) natural disasters; or

12 “(ii) disasters caused by human activ-
13 ity; and

14 “(C) contribute to the economic vitality of
15 the area in which the project is being carried
16 out.

17 “(g) FEDERAL SHARE.—Amounts provided by the
18 Delta Regional Authority to carry out a project under this
19 section shall be applied to the non-Federal share required
20 by section 120.

21 “(h) AVAILABILITY OF FUNDS.—Amounts made
22 available to carry out this section shall remain available
23 until expended.”.

24 (b) CONFORMING AMENDMENT.—The analysis for
25 chapter 1 of title 23, United States Code (as amended by

1 section 1814(b)), is amended by adding at the end the
 2 following:

“178. Delta Region transportation development program.”.

3 **SEC. 1825. MULTISTATE INTERNATIONAL CORRIDOR DE-**
 4 **VELOPMENT PROGRAM.**

5 (a) **ESTABLISHMENT.**—The Secretary shall establish
 6 a program to develop international trade corridors to fa-
 7 cilitate the movement of freight from international ports
 8 of entry and inland ports through and to the interior of
 9 the United States.

10 (b) **ELIGIBLE RECIPIENTS.**—State transportation de-
 11 partments and metropolitan planning organizations shall
 12 be eligible to receive and administer funds provided under
 13 the program.

14 (c) **ELIGIBLE ACTIVITIES.**—The Secretary shall
 15 make allocations under this program for any activity eligi-
 16 ble for funding under title 23, United States Code, includ-
 17 ing multistate highway and multistate multimodal plan-
 18 ning and project construction.

19 (d) **OTHER PROVISIONS REGARDING ELIGIBILITY.**—
 20 All activities funded under this program shall be con-
 21 sistent with the continuing, cooperative, and comprehen-
 22 sive planning processes required by sections 134 and 135
 23 of title 23, United States Code.

24 (e) **SELECTION CRITERIA.**—The Secretary shall only
 25 select projects for corridors—

1 (1) that have significant levels or increases in
2 truck and traffic volume relating to international
3 freight movement;

4 (2) connect to at least 1 international terminus
5 or inland port;

6 (3) traverse at least 3 States; and

7 (4) are identified by section 115(c) of the Inter-
8 modal Transportation Efficiency Act of 1991 (Public
9 Law 102–240; 105 Stat. 2032).

10 (f) PROGRAM PRIORITIES.—In administering the pro-
11 gram, the Secretary shall—

12 (1) encourage and enable States and other ju-
13 risdictions to work together to develop plans for
14 multimodal and multijurisdictional transportation
15 decisionmaking; and

16 (2) give priority to studies that emphasize
17 multimodal planning, including planning for oper-
18 ational improvements that increase mobility, freight
19 productivity, access to marine ports, safety, and se-
20 curity while enhancing the environment.

21 (g) FEDERAL SHARE.—The Federal share required
22 for any study carried out under this section shall be avail-
23 able for obligation in the same manner as if the funds
24 were apportioned under chapter I of title 23, United
25 States Code.

1 **SEC. 1826. AUTHORIZATION OF CONTRACT AUTHORITY FOR**
 2 **STATES WITH INDIAN RESERVATIONS.**

3 Section 1214(d) of the Transportation Equity Act for
 4 the 21st Century (23 U.S.C. 202 note; 112 Stat. 206) is
 5 amended—

6 (1) in paragraph (1), by inserting “(except Ari-
 7 zona)” after “each State”; and

8 (2) in paragraph (5)(A), by striking
 9 “\$1,500,000 for each of fiscal years 1998 through
 10 2003” and inserting “\$1,800,000 for each of fiscal
 11 years 2004 through 2009”.

12 **Subtitle I—Technical Corrections**

13 **SEC. 1901. REPEAL OR UPDATE OF OBSOLETE TEXT.**

14 (a) LETTING OF CONTRACTS.—Section 112 of title
 15 23, United States Code, is amended—

16 (1) by striking subsection (f); and

17 (2) by redesignating subsection (g) as sub-
 18 section (f).

19 (b) FRINGE AND CORRIDOR PARKING FACILITIES.—

20 Section 137(a) of title 23, United States Code, is amended
 21 in the first sentence by striking “on the Federal-aid urban
 22 system” and inserting “on a Federal-aid highway”.

23 **SEC. 1902. CLARIFICATION OF DATE.**

24 Section 109(g) of title 23, United States Code, is
 25 amended in the first sentence by striking “The Secretary”

1 and all that follows through “of 1970” and inserting “Not
2 later than January 30, 1971, the Secretary shall issue”.

3 **SEC. 1903. INCLUSION OF REQUIREMENTS FOR SIGNS IDENTIFYING FUNDING SOURCES IN TITLE 23.**

4
5 (a) IN GENERAL.—Section 154 of the Federal-Aid
6 Highway Act of 1987 (23 U.S.C. 101 note; 101 Stat. 209)
7 is—

8 (1) transferred to title 23, United States Code;

9 (2) redesignated as section 321;

10 (3) moved to appear after section 320 of that
11 title; and

12 (4) amended by striking the section heading
13 and inserting the following:

14 **“§ 321. Signs identifying funding sources”.**

15 (b) CONFORMING AMENDMENT.—The analysis for
16 chapter 3 of title 23, United States Code, is amended by
17 inserting after the item relating to section 320 the fol-
18 lowing:

“321. Signs identifying funding sources.”.

19 **SEC. 1904. INCLUSION OF BUY AMERICA REQUIREMENTS IN TITLE 23.**

20
21 (a) IN GENERAL.—Section 165 of the Highway Im-
22 provement Act of 1982 (23 U.S.C. 101 note; 96 Stat.
23 2136) is—

24 (1) transferred to title 23, United States Code;

25 (2) redesignated as section 313;

1 (3) moved to appear after section 312 of that
2 title; and

3 (4) amended by striking the section heading
4 and inserting the following:

5 **“§ 313. Buy America”.**

6 (b) CONFORMING AMENDMENTS.—

7 (1) The analysis for chapter 3 of title 23,
8 United States Code, is amended by inserting after
9 the item relating to section 312 the following:

“313. Buy America.”.

10 (2) Section 313 of title 23, United States Code
11 (as added by subsection (a)), is amended—

12 (A) in subsection (a), by striking “by this
13 Act” the first place it appears and all that fol-
14 lows through “of 1978” and inserting “to carry
15 out the Surface Transportation Assistance Act
16 of 1982 (96 Stat. 2097) or this title”;

17 (B) in subsection (b), by redesignating
18 paragraph (4) as paragraph (3);

19 (C) in subsection (d), by striking “this
20 Act,” and all that follows through “Code,
21 which” and inserting “the Surface Transpor-
22 tation Assistance Act of 1982 (96 Stat. 2097)
23 or this title that”;

24 (D) by striking subsection (e); and

1 (E) by redesignating subsections (f) and
2 (g) as subsections (e) and (f), respectively.

3 **SEC. 1905. TECHNICAL AMENDMENTS TO NONDISCRIMINA-**
4 **TION SECTION.**

5 Section 140 of title 23, United States Code, is
6 amended—

7 (1) in subsection (a)—

8 (A) in the first sentence, by striking “sub-
9 section (a) of section 105 of this title” and in-
10 sserting “section 135”;

11 (B) in the second sentence, by striking
12 “He” and inserting “The Secretary”;

13 (C) in the third sentence, by striking
14 “where he considers it necessary to assure” and
15 inserting “if necessary to ensure”; and

16 (D) in the last sentence—

17 (i) by striking “him” and inserting
18 “the Secretary” and

19 (ii) by striking “he” and inserting
20 “the Secretary”;

21 (2) in subsection (b)—

22 (A) in the first sentence, by striking “high-
23 way construction” and inserting “surface trans-
24 portation”; and

25 (B) in the second sentence—

1 (i) by striking “as he may deem nec-
2 essary” and inserting “as necessary”; and

3 (ii) by striking “not to exceed
4 \$2,500,000 for the transition quarter end-
5 ing September 30, 1976, and”;

6 (3) in the second sentence of subsection (c)—

7 (A) by striking “subsection 104(b)(3) of
8 this title” and inserting “section 104(b)(3)”;
9 and

10 (B) by striking “he may deem”; and

11 (4) in the heading of subsection (d), by striking
12 “AND CONTRACTING”.

13 **TITLE II—TRANSPORTATION**

14 **RESEARCH**

15 **Subtitle A—Funding**

16 **SEC. 2001. AUTHORIZATION OF APPROPRIATIONS.**

17 (a) IN GENERAL.—The following sums are author-
18 ized to be appropriated out of the Highway Trust Fund
19 (other than the Mass Transit Account):

20 (1) SURFACE TRANSPORTATION RESEARCH.—

21 (A) IN GENERAL.—For carrying out sec-
22 tions 502, 503, 506, 507, 508, and 511 of title
23 23, United States Code—

24 (i) \$211,000,000 for each of fiscal
25 years 2004 and 2005;

- 1 (ii) \$215,000,000 for fiscal year 2006;
2 (iii) \$218,000,000 for fiscal year
3 2007;
4 (iv) \$220,000,000 for fiscal year
5 2008; and
6 (v) \$223,000,000 for fiscal year 2009.

7 (B) SURFACE TRANSPORTATION-ENVIRON-
8 MENTAL COOPERATIVE RESEARCH PROGRAM.—
9 For each of fiscal years 2004 through 2009, the
10 Secretary shall set aside \$20,000,000 of the
11 funds authorized under subparagraph (A) to
12 carry out the surface transportation-envir-
13 mental cooperative research program under sec-
14 tion 507 of title 23, United States Code.

15 (2) TRAINING AND EDUCATION.—For carrying
16 out section 504 of title 23, United States Code—

- 17 (A) \$27,000,000 for fiscal year 2004;
18 (B) \$28,000,000 for fiscal year 2005;
19 (C) \$29,000,000 for fiscal year 2006;
20 (D) \$30,000,000 for fiscal year 2007;
21 (E) \$31,000,000 for fiscal year 2008; and
22 (F) \$32,000,000 for fiscal year 2009.

23 (3) BUREAU OF TRANSPORTATION STATIS-
24 TICS.—For the Bureau of Transportation Statistics
25 to carry out section 111 of title 49, United States

1 Code, \$28,000,000 for each of fiscal years 2004
2 through 2009.

3 (4) ITS STANDARDS, RESEARCH, OPERATIONAL
4 TESTS, AND DEVELOPMENT.—For carrying out sec-
5 tions 524, 525, 526, 527, 528, and 529 of title 23,
6 United States Code—

7 (A) \$120,000,000 for fiscal year 2004;

8 (B) \$123,000,000 for fiscal year 2005;

9 (C) \$126,000,000 for fiscal year 2006;

10 (D) \$129,000,000 for fiscal year 2007;

11 (E) \$132,000,000 for fiscal year 2008; and

12 (F) \$135,000,000 for fiscal year 2009.

13 (5) UNIVERSITY TRANSPORTATION CENTERS.—
14 For carrying out section 510 of title 23, United
15 States Code—

16 (A) \$40,000,000 for fiscal year 2004; and

17 (B) \$45,000,000 for each of fiscal years
18 2005 through 2009.

19 (b) APPLICABILITY OF TITLE 23, UNITED STATES
20 CODE.—Funds authorized to be appropriated by sub-
21 section (a)—

22 (1) shall be available for obligation in the same
23 manner as if the funds were apportioned under
24 chapter 1 of title 23, United States Code, except
25 that the Federal share of the cost of a project or ac-

1 tivity carried out using the funds shall be the share
2 applicable under section 120(b) of title 23, United
3 States Code, as adjusted under subsection (d) of
4 that section (unless otherwise specified or otherwise
5 determined by the Secretary); and

6 (2) shall remain available until expended.

7 (c) ALLOCATIONS.—

8 (1) SURFACE TRANSPORTATION RESEARCH.—

9 Of the amounts made available under subsection
10 (a)(1)—

11 (A) \$27,000,000 for each of fiscal years
12 2004 through 2009 shall be available to carry
13 out advanced, high-risk, long-term research
14 under section 502(d) of title 23, United States
15 Code;

16 (B) \$18,000,000 for fiscal years 2004 and
17 2005, \$17,000,000 for fiscal year 2006,
18 \$15,000,000 for fiscal year 2007, \$12,000,000
19 for fiscal year 2008, and \$10,00,000 for fiscal
20 year 2009 shall be available to carry out the
21 long-term pavement performance program
22 under section 502(e) of that title;

23 (C) \$6,000,000 for each of fiscal years
24 2004 through 2009 shall be available to carry
25 out the high-performance concrete bridge re-

1 search and technology transfer program under
2 section 502(i) of that title;

3 (D) \$6,000,000 for each of fiscal years
4 2004 through 2009 shall be made available to
5 carry out research on asphalt used in highway
6 pavements;

7 (E) \$6,000,000 for each of fiscal years
8 2004 through 2009 shall be made available to
9 carry out research on concrete pavements;

10 (F) \$3,000,000 for each of fiscal years
11 2004 through 2009 shall be made available to
12 carry out research on aggregates used in high-
13 way pavements;

14 (G) \$4,750,000 for each of fiscal years
15 2004 through 2009 shall be made available for
16 further development and deployment of tech-
17 niques to prevent and mitigate alkali silica reac-
18 tivity;

19 (H) \$2,000,000 for fiscal year 2005 shall
20 be remain available until expended for asphalt
21 and asphalt-related reclamation research at the
22 South Dakota School of Mines; and

23 (I) \$3,000,000 for each of fiscal years
24 2004 through 2009 shall be made available to

1 carry out section 502(f)(3) of title 23, United
2 States Code.

3 (2) TECHNOLOGY APPLICATION PROGRAM.—Of
4 the amounts made available under subsection (a)(1),
5 \$60,000,000 for each of fiscal years 2004 through
6 2009 shall be available to carry out section 503 of
7 title 23, United States Code.

8 (3) TRAINING AND EDUCATION.—Of the
9 amounts made available under subsection (a)(2)—

10 (A) \$12,000,000 for fiscal year 2004,
11 \$12,500,000 for fiscal year 2005, \$13,000,000
12 for fiscal year 2006, \$13,500,000 for fiscal year
13 2007, \$14,000,000 for fiscal year 2008, and
14 \$14,500,000 for fiscal year 2009 shall be avail-
15 able to carry out section 504(a) of title 23,
16 United States Code (relating to the National
17 Highway Institute);

18 (B) \$15,000,000 for each of fiscal years
19 2004 through 2009 shall be available to carry
20 out section 504(b) of that title (relating to local
21 technical assistance); and

22 (C) \$3,000,000 for each of fiscal years
23 2004 through 2009 shall be available to carry
24 out section 504(c)(2) of that title (relating to

1 the Eisenhower Transportation Fellowship Pro-
2 gram).

3 (4) INTERNATIONAL HIGHWAY TRANSPOR-
4 TATION OUTREACH PROGRAM.—Of the amounts
5 made available under subsection (a)(1), \$500,000
6 for each of fiscal years 2004 through 2009 shall be
7 available to carry out section 506 of title 23, United
8 States Code.

9 (5) NEW STRATEGIC HIGHWAY RESEARCH PRO-
10 GRAM.—For each of fiscal years 2004 through 2009,
11 to carry out section 509 of title 23, United States
12 Code, the Secretary shall set aside—

13 (A) \$15,000,000 of the amounts made
14 available to carry out the interstate mainte-
15 nance program under section 119 of title 23,
16 United States Code, for the fiscal year;

17 (B) \$19,000,000 of the amounts made
18 available for the National Highway System
19 under section 101 of title 23, United States
20 Code, for the fiscal year;

21 (C) \$13,000,000 of the amounts made
22 available to carry out the bridge program under
23 section 144 of title 23, United States Code, for
24 the fiscal year;

1 (D) \$20,000,000 of the amounts made
2 available to carry out the surface transportation
3 program under section 133 of title 23, United
4 States Code, for the fiscal year;

5 (E) \$5,000,000 of the amounts made
6 available to carry out the congestion mitigation
7 and air quality improvement program under
8 section 149 of title 23, United States Code, for
9 the fiscal year; and

10 (F) \$3,000,000 of the amounts made avail-
11 able to carry out the highway safety improve-
12 ment program under section 148 of title 23,
13 United States Code, for the fiscal year.

14 (6) COMMERCIAL VEHICLE INTELLIGENT
15 TRANSPORTATION SYSTEM INFRASTRUCTURE PRO-
16 GRAM.—Of the amounts made available under sub-
17 section (a)(4), not less than \$30,000,000 for each of
18 fiscal years 2004 through 2009 shall be available to
19 carry out section 527 of title 23, United States
20 Code.

21 (d) TRANSFERS OF FUNDS.—The Secretary may
22 transfer—

23 (1) to an amount made available under para-
24 graphs (1), (2), or (4) of subsection (c), not to ex-

1 ceed 10 percent of the amount allocated for a fiscal
2 year under any other of those paragraphs; and

3 (2) to an amount made available under sub-
4 paragraphs (A), (B), or (C) of subsection (c)(3), not
5 to exceed 10 percent of the amount allocated for a
6 fiscal year under any other of those subparagraphs.

7 **SEC. 2002. OBLIGATION CEILING.**

8 Notwithstanding any other provision of law, the total
9 of all obligations from amounts made available from the
10 Highway Trust Fund (other than the Mass Transit Ac-
11 count) by section 2001(a) shall not exceed—

12 (1) \$426,200,000 for fiscal year 2004;

13 (2) \$435,200,000 for fiscal year 2005;

14 (3) \$443,200,000 for fiscal year 2006;

15 (4) \$450,200,000 for fiscal year 2007;

16 (5) \$456,200,000 for fiscal year 2008; and

17 (6) \$463,200,000 for fiscal year 2009.

18 **SEC. 2003. NOTICE.**

19 (a) NOTICE OF REPROGRAMMING.—If any funds au-
20 thorized for carrying out this title or the amendments
21 made by this title are subject to a reprogramming action
22 that requires notice to be provided to the Committee on
23 Appropriations of the House of Representatives and the
24 Committee on Appropriations of the Senate, notice of that
25 action shall be concurrently provided to the Committee on

1 Transportation and Infrastructure and the Committee on
 2 Science of the House of Representatives and the Com-
 3 mittee on Environment and Public Works of the Senate.

4 (b) NOTICE OF REORGANIZATION.—On or before the
 5 15th day preceding the date of any major reorganization
 6 of a program, project, or activity of the Department of
 7 Transportation for which funds are authorized by this title
 8 or the amendments made by this title, the Secretary shall
 9 provide notice of the reorganization to the Committee on
 10 Transportation and Infrastructure and the Committee on
 11 Science of the House of Representatives and the Com-
 12 mittee on Environment and Public Works of the Senate.

13 **Subtitle B—Research and** 14 **Technology**

15 **SEC. 2101. RESEARCH AND TECHNOLOGY PROGRAM.**

16 (a) IN GENERAL.—Chapter 5 of title 23, United
 17 States Code, is amended to read as follows:

18 **“CHAPTER 5—RESEARCH AND** 19 **TECHNOLOGY**

“SUBCHAPTER I—SURFACE TRANSPORTATION

“Sec.

“501. Definitions.

“502. Surface transportation research.

“503. Technology application program.

“504. Training and education.

“505. State planning and research.

“506. International highway transportation outreach program.

“507. Surface transportation-environmental cooperative research program.

“508. Surface transportation research technology deployment and strategic plan-
 ning.

“509. New strategic highway research program.

- “510. University transportation centers.
- “511. Multistate corridor operations and management.
- “512. Transportation analysis simulation system.

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

- “521. Finding.
- “522. Goals and purposes.
- “523. Definitions.
- “524. General authorities and requirements.
- “525. National ITS Program Plan.
- “526. National ITS architecture and standards.
- “527. Commercial vehicle intelligent transportation system infrastructure program.
- “528. Research and development.
- “529. Use of funds.

1 “SUBCHAPTER I—SURFACE TRANSPORTATION

2 **“§ 501. Definitions**

3 “In this subchapter:

4 “(1) FEDERAL LABORATORY.—The term ‘Federal
5 eral laboratory’ includes—

6 “(A) a Government-owned, Government-
7 operated laboratory; and

8 “(B) a Government-owned, contractor-op-
9 erated laboratory.

10 “(2) SAFETY.—The term ‘safety’ includes high-
11 way and traffic safety systems, research, and devel-
12 opment relating to—

13 “(A) vehicle, highway, driver, passenger,
14 bicyclist, and pedestrian characteristics;

15 “(B) accident investigations;

16 “(C) integrated, interoperable emergency
17 communications;

1 “(D) emergency medical care; and

2 “(E) transportation of the injured.

3 **“§ 502. Surface transportation research**

4 “(a) IN GENERAL.—

5 “(1) RESEARCH, DEVELOPMENT, AND TECH-
6 NOLOGY TRANSFER ACTIVITIES.—The Secretary may
7 carry out research, development, and technology
8 transfer activities with respect to—

9 “(A) all phases of transportation planning
10 and development (including new technologies,
11 construction, transportation systems manage-
12 ment and operations development, design, main-
13 tenance, safety, security, financing, data collec-
14 tion and analysis, demand forecasting,
15 multimodal assessment, and traffic conditions);
16 and

17 “(B) the effect of State laws on the activi-
18 ties described in subparagraph (A).

19 “(2) TESTS AND DEVELOPMENT.—The Sec-
20 retary may test, develop, or assist in testing and de-
21 veloping, any material, invention, patented article, or
22 process.

23 “(3) COOPERATION, GRANTS, AND CON-
24 TRACTS.—

- 1 “(A) IN GENERAL.—The Secretary may
2 carry out this section—
- 3 “(i) independently;
- 4 “(ii) in cooperation with—
- 5 “(I) any other Federal agency or
6 instrumentality; and
- 7 “(II) any Federal laboratory; or
- 8 “(iii) by making grants to, or entering
9 into contracts, cooperative agreements, and
10 other transactions with—
- 11 “(I) the National Academy of
12 Sciences;
- 13 “(II) the American Association of
14 State Highway and Transportation
15 Officials;
- 16 “(III) planning organizations;
- 17 “(IV) a Federal laboratory;
- 18 “(V) a State agency;
- 19 “(VI) an authority, association,
20 institution, or organization;
- 21 “(VII) a for-profit or nonprofit
22 corporation;
- 23 “(VIII) a foreign country; or
- 24 “(IX) any other person.

1 “(B) COMPETITION; REVIEW.—All parties
2 entering into contracts, cooperative agreements
3 or other transactions with the Secretary, or re-
4 ceiving grants, to perform research or provide
5 technical assistance under this section shall be
6 selected, to the maximum extent practicable and
7 appropriate—

8 “(i) on a competitive basis; and

9 “(ii) on the basis of the results of peer
10 review of proposals submitted to the Sec-
11 retary.

12 “(4) TECHNOLOGICAL INNOVATION.—The pro-
13 grams and activities carried out under this section
14 shall be consistent with the surface transportation
15 research and technology development strategic plan
16 developed under section 508(c).

17 “(5) FUNDS.—

18 “(A) SPECIAL ACCOUNT.—In addition to
19 other funds made available to carry out this
20 section, the Secretary shall use such funds as
21 may be deposited by any cooperating organiza-
22 tion or person in a special account of the Treas-
23 ury established for this purpose.

24 “(B) USE OF FUNDS.—The Secretary shall
25 use funds made available to carry out this sec-

1 tion to develop, administer, communicate, and
2 promote the use of products of research, devel-
3 opment, and technology transfer programs
4 under this section.

5 “(b) COLLABORATIVE RESEARCH AND DEVELOP-
6 MENT.—

7 “(1) IN GENERAL.—To encourage innovative
8 solutions to surface transportation problems and
9 stimulate the deployment of new technology, the
10 Secretary may carry out, on a cost-shared basis, col-
11 laborative research and development with—

12 “(A) non-Federal entities (including State
13 and local governments, foreign governments,
14 colleges and universities, corporations, institu-
15 tions, partnerships, sole proprietorships, and
16 trade associations that are incorporated or es-
17 tablished under the laws of any State); and

18 “(B) Federal laboratories.

19 “(2) AGREEMENTS.—In carrying out this sub-
20 section, the Secretary may enter into cooperative re-
21 search and development agreements (as defined in
22 section 12 of the Stevenson-Wydler Technology In-
23 novation Act of 1980 (15 U.S.C. 3710a)).

24 “(3) FEDERAL SHARE.—

1 “(A) IN GENERAL.—The Federal share of
2 the cost of activities carried out under a cooper-
3 ative research and development agreement en-
4 tered into under this subsection shall not exceed
5 50 percent, except that if there is substantial
6 public interest or benefit, the Secretary may ap-
7 prove a greater Federal share.

8 “(B) NON-FEDERAL SHARE.—All costs di-
9 rectly incurred by the non-Federal partners, in-
10 cluding personnel, travel, and hardware develop-
11 ment costs, shall be credited toward the non-
12 Federal share of the cost of the activities de-
13 scribed in subparagraph (A).

14 “(4) USE OF TECHNOLOGY.—The research, de-
15 velopment, or use of a technology under a cooper-
16 ative research and development agreement entered
17 into under this subsection, including the terms
18 under which the technology may be licensed and the
19 resulting royalties may be distributed, shall be sub-
20 ject to the Stevenson-Wydler Technology Innovation
21 Act of 1980 (15 U.S.C. 3701 et seq.).

22 “(5) WAIVER OF ADVERTISING REQUIRE-
23 MENTS.—Section 3709 of the Revised Statutes (41
24 U.S.C. 5) shall not apply to a contract or agreement
25 entered into under this chapter.

1 “(c) CONTENTS OF RESEARCH PROGRAM.—The Sec-
2 retary shall include as priority areas of effort within the
3 surface transportation research program—

4 “(1) the development of new technologies and
5 methods in materials, pavements, structures, design,
6 and construction, with the objectives of—

7 “(A)(i) increasing to 50 years the expected
8 life of pavements;

9 “(ii) increasing to 100 years the expected
10 life of bridges; and

11 “(iii) significantly increasing the durability
12 of other infrastructure;

13 “(B) lowering the life-cycle costs,
14 including—

15 “(i) construction costs;

16 “(ii) maintenance costs;

17 “(iii) operations costs; and

18 “(vi) user costs.

19 “(2) the development, and testing for effective-
20 ness, of nondestructive evaluation technologies for
21 civil infrastructure using existing and new tech-
22 nologies;

23 “(3) the investigation of—

1 “(A) the application of current natural
2 hazard mitigation techniques to manmade haz-
3 ards; and

4 “(B) the continuation of hazard mitigation
5 research combining manmade and natural haz-
6 ards;

7 “(4) the improvement of safety—

8 “(A) at intersections;

9 “(B) with respect to accidents involving ve-
10 hicles run off the road; and

11 “(C) on rural roads;

12 “(5) the reduction of work zone incursions and
13 improvement of work zone safety;

14 “(6) the improvement of geometric design of
15 roads for the purpose of safety;

16 “(7) the examination of data collected through
17 the national bridge inventory conducted under sec-
18 tion 144 using the national bridge inspection stand-
19 ards established under section 151, with the objec-
20 tives of determining whether—

21 “(A) the most useful types of data are
22 being collected; and

23 “(B) any improvement could be made in
24 the types of data collected and the manner in

1 which the data is collected, with respect to
2 bridges in the United States;

3 “(8) the improvement of the infrastructure in-
4 vestment needs report described in subsection (g)
5 through—

6 “(A) the study and implementation of new
7 methods of collecting better quality data, par-
8 ticularly with respect to performance, conges-
9 tion, and infrastructure conditions;

10 “(B) monitoring of the surface transpor-
11 tation system in a system-wide manner, through
12 the use of—

13 “(i) intelligent transportation system
14 technologies of traffic operations centers;
15 and

16 “(ii) other new data collection tech-
17 nologies as sources of better quality per-
18 formance data;

19 “(C) the determination of the critical
20 metrics that should be used to determine the
21 condition and performance of the surface trans-
22 portation system; and

23 “(D) the study and implementation of new
24 methods of statistical analysis and computer

1 models to improve the prediction of future in-
2 frastructure investment requirements;

3 “(9) the development of methods to improve the
4 determination of benefits from infrastructure im-
5 provements, including—

6 “(A) more accurate calculations of benefit-
7 to-cost ratios, considering benefits and impacts
8 throughout local and regional transportation
9 systems;

10 “(B) improvements in calculating life-cycle
11 costs; and

12 “(C) valuation of assets;

13 “(10) the improvement of planning processes to
14 better predict outcomes of transportation projects,
15 including the application of computer simulations in
16 the planning process to predict outcomes of planning
17 decisions;

18 “(11) the multimodal applications of Geo-
19 graphic Information Systems and remote sensing,
20 including such areas of application as—

21 “(A) planning;

22 “(B) environmental decisionmaking and
23 project delivery; and

24 “(C) freight movement;

1 “(12) the development and application of meth-
2 ods of providing revenues to the Highway Trust
3 Fund with the objective of offsetting potential reduc-
4 tions in fuel tax receipts;

5 “(13) the development of tests and methods to
6 determine the benefits and costs to communities of
7 major transportation investments and projects;

8 “(14) the conduct of extreme weather research,
9 including research to—

10 “(A) reduce contraction and expansion
11 damage;

12 “(B) reduce or repair road damage caused
13 by freezing and thawing;

14 “(C) improve deicing or snow removal
15 techniques;

16 “(D) develop better methods to reduce the
17 risk of thermal collapse, including collapse from
18 changes in underlying permafrost;

19 “(E) improve concrete and asphalt installa-
20 tion in extreme weather conditions; and

21 “(F) make other improvements to protect
22 highway infrastructure or enhance highway
23 safety or performance;

24 “(15) the improvement of surface transpor-
25 tation planning;

1 “(16) environmental research;

2 “(17) transportation system management and
3 operations; and

4 “(18) any other surface transportation research
5 topics that the Secretary determines, in accordance
6 with the strategic planning process under section
7 508, to be critical.

8 “(d) **ADVANCED, HIGH-RISK RESEARCH.**—

9 “(1) **IN GENERAL.**—The Secretary shall estab-
10 lish and carry out, in accordance with the surface
11 transportation research and technology development
12 strategic plan developed under section 508(c) and
13 research priority areas described in subsection (c),
14 an advanced research program that addresses
15 longer-term, higher-risk research with potentially
16 dramatic breakthroughs for improving the durability,
17 efficiency, environmental impact, productivity, and
18 safety (including bicycle and pedestrian safety) as-
19 pects of highway and intermodal transportation sys-
20 tems.

21 “(2) **PARTNERSHIPS.**—In carrying out the pro-
22 gram, the Secretary shall seek to develop partner-
23 ships with the public and private sectors.

24 “(3) **REPORT.**—The Secretary shall include in
25 the strategic plan required under section 508(c) a

1 description of each of the projects, and the amount
2 of funds expended for each project, carried out
3 under this subsection during the fiscal year.

4 “(e) LONG-TERM PAVEMENT PERFORMANCE PRO-
5 GRAM.—

6 “(1) AUTHORITY.—The Secretary shall con-
7 tinue, through September 30, 2009, the long-term
8 pavement performance program tests, monitoring,
9 and data analysis.

10 “(2) GRANTS, COOPERATIVE AGREEMENTS, AND
11 CONTRACTS.—Under the program, the Secretary
12 shall make grants and enter into cooperative agree-
13 ments and contracts to—

14 “(A) monitor, material-test, and evaluate
15 highway test sections in existence as of the date
16 of the grant, agreement, or contract;

17 “(B) analyze the data obtained in carrying
18 out subparagraph (A); and

19 “(C) prepare products to fulfill program
20 objectives and meet future pavement technology
21 needs.

22 “(3) CONCLUSION OF PROGRAM.—

23 “(A) SUMMARY REPORT.—The Secretary
24 shall include in the strategic plan required
25 under section 508(c) a report on the initial con-

1 elusions of the long-term pavement performance
2 program that includes—

3 “(i) an analysis of any research objec-
4 tives that remain to be achieved under the
5 program;

6 “(ii) an analysis of other associated
7 longer-term expenditures under the pro-
8 gram that are in the public interest;

9 “(iii) a detailed plan regarding the
10 storage, maintenance, and user support of
11 the database, information management
12 system, and materials reference library of
13 the program;

14 “(iv) a schedule for continued imple-
15 mentation of the necessary data collection
16 and analysis and project plan under the
17 program; and

18 “(v) an estimate of the costs of car-
19 rying out each of the activities described in
20 clauses (i) through (iv) for each fiscal year
21 during which the program is carried out.

22 “(B) DEADLINE; USEFULNESS OF AD-
23 VANCES.—The Secretary shall, to the maximum
24 extent practicable—

1 “(i) ensure that the long-term pave-
2 ment performance program is concluded
3 not later than September 30, 2009; and

4 “(ii) make such allowances as are nec-
5 essary to ensure the usefulness of the tech-
6 nological advances resulting from the pro-
7 gram.

8 “(f) SEISMIC RESEARCH.—The Secretary shall—

9 “(1) in consultation and cooperation with Fed-
10 eral agencies participating in the National Earth-
11 quake Hazards Reduction Program established by
12 section 5 of the Earthquake Hazards Reduction Act
13 of 1977 (42 U.S.C. 7704), coordinate the conduct of
14 seismic research;

15 “(2) take such actions as are necessary to en-
16 sure that the coordination of the research is con-
17 sistent with—

18 “(A) planning and coordination activities
19 of the Director of the Federal Emergency Man-
20 agement Agency under section 5(b)(1) of that
21 Act (42 U.S.C. 7704(b)(1)); and

22 “(B) the plan developed by the Director of
23 the Federal Emergency Management Agency
24 under section 8(b) of that Act (42 U.S.C.
25 7705b(b)); and

1 “(3) in cooperation with the Center for Civil
2 Engineering Research at the University of Nevada,
3 Reno, carry out a seismic research program—

4 “(A) to study the vulnerability of the Fed-
5 eral-aid highway system and other surface
6 transportation systems to seismic activity;

7 “(B) to develop and implement cost-effec-
8 tive methods to reduce the vulnerability; and

9 “(C) to conduct seismic research and up-
10 grade earthquake simulation facilities as nec-
11 essary to carry out the program.

12 “(g) INFRASTRUCTURE INVESTMENT NEEDS RE-
13 PORT.—

14 “(1) IN GENERAL.—Not later than July 31,
15 2004, and July 31 of every second year thereafter,
16 the Secretary shall submit to the Committee on En-
17 vironment and Public Works of the Senate and the
18 Committee on Transportation and Infrastructure of
19 the House of Representatives a report that
20 describes—

21 “(A) estimates of the future highway and
22 bridge needs of the United States; and

23 “(B) the backlog of current highway and
24 bridge needs.

1 “(2) COMPARISON WITH PRIOR REPORTS.—

2 Each report under paragraph (1) shall provide the
3 means, including all necessary information, to relate
4 and compare the conditions and service measures
5 used in the previous biennial reports.

6 “(h) SECURITY RELATED RESEARCH AND TECH-
7 NOLOGY TRANSFER ACTIVITIES.—

8 “(1) IN GENERAL.—Not later than 180 days
9 after the date of enactment of the Safe, Account-
10 able, Flexible, and Efficient Transportation Equity
11 Act of 2004, the Secretary, in consultation with the
12 Secretary of Homeland Security, with key stake-
13 holder input (including State transportation depart-
14 ments) shall develop a 5-year strategic plan for re-
15 search and technology transfer and deployment ac-
16 tivities pertaining to the security aspects of highway
17 infrastructure and operations.

18 “(2) COMPONENTS OF PLAN.—The plan shall
19 include—

20 “(A) an identification of which agencies
21 are responsible for the conduct of various re-
22 search and technology transfer activities;

23 “(B) a description of the manner in which
24 those activities will be coordinated; and

1 “(C) a description of the process to be
2 used to ensure that the advances derived from
3 relevant activities supported by the Federal
4 Highway Administration are consistent with the
5 operational guidelines, policies, recommenda-
6 tions, and regulations of the Department of
7 Homeland Security; and

8 “(D) a systematic evaluation of the re-
9 search that should be conducted to address, at
10 a minimum—

11 “(i) vulnerabilities of, and measures
12 that may be taken to improve, emergency
13 response capabilities and evacuations;

14 “(ii) recommended upgrades of traffic
15 management during crises;

16 “(iii) integrated, interoperable emer-
17 gency communications among the public,
18 the military, law enforcement, fire and
19 emergency medical services, and transpor-
20 tation agencies;

21 “(iv) protection of critical, security-re-
22 lated infrastructure; and

23 “(v) structural reinforcement of key
24 facilities.

1 “(3) SUBMISSION.—On completion of the plan
2 under this subsection, the Secretary shall submit to
3 the Committee on Environment and Public Works of
4 the Senate and the Committee on Transportation
5 and Infrastructure of the House of
6 Representatives—

7 “(A) a copy of the plan developed under
8 paragraph (1); and

9 “(B) a copy of a memorandum of under-
10 standing specifying coordination strategies and
11 assignment of responsibilities covered by the
12 plan that is signed by the Secretary and the
13 Secretary of Homeland Security.

14 “(i) HIGH-PERFORMANCE CONCRETE BRIDGE RE-
15 SEARCH AND TECHNOLOGY TRANSFER PROGRAM.—In ac-
16 cordance with the objectives described in subsection (c)(1)
17 and the requirements under sections 503(b)(4) and
18 504(b), the Secretary shall carry out a program to dem-
19 onstrate the application of high-performance concrete in
20 the construction and rehabilitation of bridges.

21 “(j) BIOBASED TRANSPORTATION RESEARCH.—
22 There shall be available from the Highway Trust Fund
23 (other than the Mass Transit Account) \$18,000,000 for
24 each of fiscal years 2004 through 2009 equally divided
25 and available to carry out biobased research of national

1 importance at the National Biodiesel Board and at re-
2 search centers identified in section 9011 of Public Law
3 107–171.

4 **“§ 503. Technology application program**

5 “(a) TECHNOLOGY APPLICATION INITIATIVES AND
6 PARTNERSHIPS PROGRAM.—

7 “(1) ESTABLISHMENT.—The Secretary, in con-
8 sultation with interested stakeholders, shall develop
9 and administer a national technology and innovation
10 application initiatives and partnerships program.

11 “(2) PURPOSE.—The purpose of the program
12 shall be to significantly accelerate the adoption of
13 technology and innovation by the surface transpor-
14 tation community.

15 “(3) APPLICATION GOALS.—

16 “(A) ESTABLISHMENT.—Not later than
17 180 days after the date of enactment of the
18 Safe, Accountable, Flexible, and Efficient
19 Transportation Equity Act of 2004, the Sec-
20 retary, in consultation with the Surface Trans-
21 portation Research Technology Advisory Com-
22 mittee, State transportation departments, and
23 other interested stakeholders, shall establish, as
24 part of the surface transportation research and
25 technology development strategic plan under

1 section 508(c), goals to carry out paragraph
2 (1).

3 “(B) DESIGN.—Each of the goals and the
4 program developed to achieve the goals shall be
5 designed to provide tangible benefits, with re-
6 spect to transportation systems, in the areas of
7 efficiency, safety, reliability, service life, envi-
8 ronmental protection, and sustainability.

9 “(C) STRATEGIES FOR ACHIEVEMENT.—
10 For each goal, the Secretary, in cooperation
11 with representatives of the transportation com-
12 munity, such as States, local governments, the
13 private sector, and academia, shall use domestic
14 and international technology to develop strate-
15 gies and initiatives to achieve the goal, includ-
16 ing technical assistance in deploying technology
17 and mechanisms for sharing information among
18 program participants.

19 “(4) INTEGRATION WITH OTHER PROGRAMS.—
20 The Secretary shall integrate activities carried out
21 under this subsection with the efforts of the Sec-
22 retary to—

23 “(A) disseminate the results of research
24 sponsored by the Secretary; and

25 “(B) facilitate technology transfer.

1 “(5) LEVERAGING OF FEDERAL RESOURCES.—
2 In selecting projects to be carried out under this
3 subsection, the Secretary shall give preference to
4 projects that leverage Federal funds with other sig-
5 nificant public or private resources.

6 “(6) GRANTS, COOPERATIVE AGREEMENTS, AND
7 CONTRACTS.—Under the program, the Secretary
8 may make grants and enter into cooperative agree-
9 ments and contracts to foster alliances and support
10 efforts to stimulate advances in transportation tech-
11 nology.

12 “(7) REPORTS.—The results and progress of
13 activities carried out under this section shall be pub-
14 lished as part of the annual transportation research
15 report prepared by the Secretary under section
16 508(c)(5).

17 “(8) ALLOCATION.—To the extent appropriate
18 to achieve the goals established under paragraph (3),
19 the Secretary may further allocate funds made avail-
20 able to carry out this section to States for use by
21 those States.

22 “(b) INNOVATIVE SURFACE TRANSPORTATION IN-
23 FRASTRUCTURE RESEARCH AND CONSTRUCTION PRO-
24 GRAM.—

1 “(1) IN GENERAL.—The Secretary shall estab-
2 lish and carry out a program for the application of
3 innovative material, design, and construction tech-
4 nologies in the construction, preservation, and reha-
5 bilitation of elements of surface transportation infra-
6 structure.

7 “(2) GOALS.—The goals of the program shall
8 include—

9 “(A) the development of new, cost-effec-
10 tive, and innovative materials;

11 “(B) the reduction of maintenance costs
12 and life-cycle costs of elements of infrastruc-
13 ture, including the costs of new construction,
14 replacement, and rehabilitation;

15 “(C) the development of construction tech-
16 niques to increase safety and reduce construc-
17 tion time and traffic congestion;

18 “(D) the development of engineering de-
19 sign criteria for innovative products and mate-
20 rials for use in surface transportation infra-
21 structure;

22 “(E) the development of highway bridges
23 and structures that will withstand natural dis-
24 asters and disasters caused by human activity;
25 and

1 “(F) the development of new, non-
2 destructive technologies and techniques for the
3 evaluation of elements of transportation infra-
4 structure.

5 “(3) GRANTS, COOPERATIVE AGREEMENTS, AND
6 CONTRACTS.—

7 “(A) IN GENERAL.—Under the program,
8 the Secretary shall make grants to, and enter
9 into cooperative agreements and contracts
10 with—

11 “(i) States, other Federal agencies,
12 universities and colleges, private sector en-
13 tities, and nonprofit organizations, to pay
14 the Federal share of the cost of research,
15 development, and technology transfer con-
16 cerning innovative materials and methods;
17 and

18 “(ii) States, to pay the Federal share
19 of the cost of repair, rehabilitation, re-
20 placement, and new construction of ele-
21 ments of surface transportation infrastruc-
22 ture that demonstrate the application of
23 innovative materials and methods.

24 “(B) APPLICATIONS.—

1 “(i) IN GENERAL.—To receive a grant
2 under this subsection, an entity described
3 in subparagraph (A) shall submit to the
4 Secretary an application in such form and
5 containing such information as the Sec-
6 retary may require.

7 “(ii) APPROVAL.—The Secretary shall
8 select and approve an application based on
9 whether the proposed project that is the
10 subject of the application would meet the
11 goals described in paragraph (2).

12 “(4) TECHNOLOGY AND INFORMATION TRANS-
13 FER.—The Secretary shall take such action as is
14 necessary to—

15 “(A) ensure that the information and tech-
16 nology resulting from research conducted under
17 paragraph (3) is made available to State and
18 local transportation departments and other in-
19 terested parties, as specified by the Secretary;
20 and

21 “(B) encourage the use of the information
22 and technology.

23 “(5) FEDERAL SHARE.—The Federal share of
24 the cost of a project under this section shall be de-
25 termined by the Secretary.

1 **“§ 504. Training and education**

2 “(a) NATIONAL HIGHWAY INSTITUTE.—

3 “(1) IN GENERAL.—The Secretary shall—

4 “(A) operate, in the Federal Highway Ad-
5 ministration, a National Highway Institute (re-
6 ferred to in this subsection as the ‘Institute’);
7 and

8 “(B) administer, through the Institute, the
9 authority vested in the Secretary by this title or
10 by any other law for the development and con-
11 duct of education and training programs relat-
12 ing to highways.

13 “(2) DUTIES OF THE INSTITUTE.—In coopera-
14 tion with State transportation departments, indus-
15 tries in the United States, and national or inter-
16 national entities, the Institute shall develop and ad-
17 minister education and training programs of instruc-
18 tion for—

19 “(A) Federal Highway Administration,
20 State, and local transportation agency employ-
21 ees;

22 “(B) regional, State, and metropolitan
23 planning organizations;

24 “(C) State and local police, public safety,
25 and motor vehicle employees; and

1 “(D) United States citizens and foreign
2 nationals engaged or to be engaged in surface
3 transportation work of interest to the United
4 States.

5 “(3) COURSES.—

6 “(A) IN GENERAL.—The Institute shall—

7 “(i) develop or update existing courses
8 in asset management, including courses
9 that include such components as—

10 “(I) the determination of life-
11 cycle costs;

12 “(II) the valuation of assets;

13 “(III) benefit-to-cost ratio cal-
14 culations; and

15 “(IV) objective decisionmaking
16 processes for project selection; and

17 “(ii) continually develop courses relat-
18 ing to the application of emerging tech-
19 nologies for—

20 “(I) transportation infrastructure
21 applications and asset management;

22 “(II) intelligent transportation
23 systems;

24 “(III) operations (including secu-
25 rity operations);

1 “(IV) the collection and archiving
2 of data;

3 “(V) expediting the planning and
4 development of transportation
5 projects; and

6 “(VI) the intermodal movement
7 of individuals and freight.

8 “(B) ADDITIONAL COURSES.—In addition
9 to the courses developed under subparagraph
10 (A), the Institute, in consultation with State
11 transportation departments, metropolitan plan-
12 ning organizations, and the American Associa-
13 tion of State Highway and Transportation Offi-
14 cials, may develop courses relating to tech-
15 nology, methods, techniques, engineering, con-
16 struction, safety, maintenance, environmental
17 mitigation and compliance, regulations, man-
18 agement, inspection, and finance.

19 “(C) REVISION OF COURSES OFFERED.—
20 The Institute shall periodically—

21 “(i) review the course inventory of the
22 Institute; and

23 “(ii) revise or cease to offer courses
24 based on course content, applicability, and
25 need.

1 “(4) ELIGIBILITY; FEDERAL SHARE.—The
2 funds apportioned to a State under section
3 104(b)(3) for the surface transportation program
4 shall be available for expenditure by the State trans-
5 portation department for the payment of not to ex-
6 ceed 80 percent of the cost of tuition and direct edu-
7 cational expenses (excluding salaries) in connection
8 with the education and training of employees of
9 State and local transportation agencies in accord-
10 ance with this subsection.

11 “(5) FEDERAL RESPONSIBILITY.—

12 “(A) IN GENERAL.—Except as provided in
13 subparagraph (B), education and training of
14 employees of Federal, State, and local transpor-
15 tation (including highway) agencies authorized
16 under this subsection may be provided—

17 “(i) by the Secretary, at no cost to
18 the States and local governments, if the
19 Secretary determines that provision at no
20 cost is in the public interest; or

21 “(ii) by the State, through grants, co-
22 operative agreements, and contracts with
23 public and private agencies, institutions,
24 individuals, and the Institute.

1 “(B) PAYMENT OF FULL COST BY PRIVATE
2 PERSONS.—Private agencies, international or
3 foreign entities, and individuals shall pay the
4 full cost of any education and training (includ-
5 ing the cost of course development) received by
6 the agencies, entities, and individuals, unless
7 the Secretary determines that payment of a
8 lesser amount of the cost is of critical impor-
9 tance to the public interest.

10 “(6) TRAINING FELLOWSHIPS; COOPERATION.—

11 The Institute may—

12 “(A) engage in training activities author-
13 ized under this subsection, including the grant-
14 ing of training fellowships; and

15 “(B) exercise the authority of the Institute
16 independently or in cooperation with any—

17 “(i) other Federal or State agency;

18 “(ii) association, authority, institu-
19 tion, or organization;

20 “(iii) for-profit or nonprofit corpora-
21 tion;

22 “(iv) national or international entity;

23 “(v) foreign country; or

24 “(vi) person.

25 “(7) COLLECTION OF FEES.—

1 “(A) IN GENERAL.—In accordance with
2 this subsection, the Institute may assess and
3 collect fees to defray the costs of the Institute
4 in developing or administering education and
5 training programs under this subsection.

6 “(B) PERSONS SUBJECT TO FEES.—Fees
7 may be assessed and collected under this sub-
8 section only with respect to—

9 “(i) persons and entities for whom
10 education or training programs are devel-
11 oped or administered under this sub-
12 section; and

13 “(ii) persons and entities to whom
14 education or training is provided under
15 this subsection.

16 “(C) AMOUNT OF FEES.—The fees as-
17 sessed and collected under this subsection shall
18 be established in a manner that ensures that
19 the liability of any person or entity for a fee is
20 reasonably based on the proportion of the costs
21 referred to in subparagraph (A) that relate to
22 the person or entity.

23 “(D) USE.—All fees collected under this
24 subsection shall be used, without further appro-
25 priation, to defray costs associated with the de-

1 velopment or administration of education and
2 training programs authorized under this sub-
3 section.

4 “(8) RELATION TO FEES.—The funds made
5 available to carry out this subsection may be com-
6 bined with or held separate from the fees collected
7 under—

8 “(A) paragraph (7);

9 “(B) memoranda of understanding;

10 “(C) regional compacts; and

11 “(D) other similar agreements.

12 “(b) LOCAL TECHNICAL ASSISTANCE PROGRAM.—

13 “(1) AUTHORITY.—The Secretary shall carry
14 out a local technical assistance program that will
15 provide access to surface transportation technology
16 to—

17 “(A) highway and transportation agencies
18 in urbanized areas;

19 “(B) highway and transportation agencies
20 in rural areas;

21 “(C) contractors that perform work for the
22 agencies; and

23 “(D) infrastructure security.

24 “(2) GRANTS, COOPERATIVE AGREEMENTS, AND
25 CONTRACTS.—The Secretary may make grants and

1 enter into cooperative agreements and contracts to
2 provide education and training, technical assistance,
3 and related support services to—

4 “(A) assist rural, local transportation
5 agencies and tribal governments, and the con-
6 sultants and construction personnel working for
7 the agencies and governments, to—

8 “(i) develop and expand expertise in
9 road and transportation areas (including
10 pavement, bridge, concrete structures,
11 intermodal connections, safety manage-
12 ment systems, intelligent transportation
13 systems, incident response, operations, and
14 traffic safety countermeasures);

15 “(ii) improve roads and bridges;

16 “(iii) enhance—

17 “(I) programs for the movement
18 of passengers and freight; and

19 “(II) intergovernmental transpor-
20 tation planning and project selection;
21 and

22 “(iv) deal effectively with special
23 transportation-related problems by pre-
24 paring and providing training packages,

1 manuals, guidelines, and technical resource
2 materials;

3 “(B) develop technical assistance for tour-
4 ism and recreational travel;

5 “(C) identify, package, and deliver trans-
6 portation technology and traffic safety informa-
7 tion to local jurisdictions to assist urban trans-
8 portation agencies in developing and expanding
9 their ability to deal effectively with transpor-
10 tation-related problems (particularly the pro-
11 motion of regional cooperation);

12 “(D) operate, in cooperation with State
13 transportation departments and universities—

14 “(i) local technical assistance program
15 centers designated to provide transpor-
16 tation technology transfer services to rural
17 areas and to urbanized areas; and

18 “(ii) local technical assistance pro-
19 gram centers designated to provide trans-
20 portation technical assistance to tribal gov-
21 ernments; and

22 “(E) allow local transportation agencies
23 and tribal governments, in cooperation with the
24 private sector, to enhance new technology im-
25 plementation.

1 “(c) RESEARCH FELLOWSHIPS.—

2 “(1) GENERAL AUTHORITY.—The Secretary,
3 acting independently or in cooperation with other
4 Federal agencies and instrumentalities, may make
5 grants for research fellowships for any purpose for
6 which research is authorized by this chapter.

7 “(2) DWIGHT DAVID EISENHOWER TRANSPOR-
8 TATION FELLOWSHIP PROGRAM.—The Secretary
9 shall establish and implement a transportation re-
10 search fellowship program, to be known as the
11 ‘Dwight David Eisenhower Transportation Fellow-
12 ship Program’, for the purpose of attracting quali-
13 fied students to the field of transportation.

14 **“§ 505. State planning and research**

15 “(a) IN GENERAL.—Two percent of the sums appor-
16 tioned to a State for fiscal year 2004 and each fiscal year
17 thereafter under sections 104 (other than subsections (f)
18 and (h)) and 144 shall be available for expenditure by the
19 State, in consultation with the Secretary, only for—

20 “(1) the conduct of engineering and economic
21 surveys and investigations;

22 “(2) the planning of—

23 “(A) future highway programs and local
24 public transportation systems; and

1 “(B) the financing of those programs and
2 systems, including metropolitan and statewide
3 planning under sections 134 and 135;

4 “(3) the development and implementation of
5 management systems under section 303;

6 “(4) the conduct of studies on—

7 “(A) the economy, safety, and convenience
8 of surface transportation systems; and

9 “(B) the desirable regulation and equitable
10 taxation of those systems;

11 “(5) research, development, and technology
12 transfer activities necessary in connection with the
13 planning, design, construction, management, and
14 maintenance of highway, public transportation, and
15 intermodal transportation systems;

16 “(6) the conduct of studies, research, and train-
17 ing relating to the engineering standards and con-
18 struction materials for surface transportation sys-
19 tems described in paragraph (5) (including the eval-
20 uation and accreditation of inspection and testing
21 and the regulation of and charging for the use of the
22 standards and materials); and

23 “(7) the conduct of activities relating to the
24 planning of real-time monitoring elements.

1 “(b) MINIMUM EXPENDITURES ON RESEARCH, DE-
2 VELOPMENT, AND TECHNOLOGY TRANSFER ACTIVI-
3 TIES.—

4 “(1) IN GENERAL.—Subject to paragraph (2),
5 not less than 25 percent of the funds subject to sub-
6 section (a) that are apportioned to a State for a fis-
7 cal year shall be expended by the State for research,
8 development, and technology transfer activities
9 that—

10 “(A) are described in subsection (a); and

11 “(B) relate to highway, public transpor-
12 tation, and intermodal transportation systems.

13 “(2) WAIVERS.—The Secretary may waive the
14 application of paragraph (1) with respect to a State
15 for a fiscal year if—

16 “(A) the State certifies to the Secretary
17 for the fiscal year that total expenditures by the
18 State for transportation planning under sec-
19 tions 134 and 135 will exceed 75 percent of the
20 funds described in paragraph (1); and

21 “(B) the Secretary accepts the certification
22 of the State.

23 “(3) NONAPPLICABILITY OF ASSESSMENT.—
24 Funds expended under paragraph (1) shall not be
25 considered to be part of the extramural budget of

1 the agency for the purpose of section 9 of the Small
2 Business Act (15 U.S.C. 638).

3 “(c) FEDERAL SHARE.—The Federal share of the
4 cost of a project carried out using funds subject to sub-
5 section (a) shall be the share applicable under section
6 120(b), as adjusted under subsection (d) of that section.

7 “(d) ADMINISTRATION OF SUMS.—Funds subject to
8 subsection (a) shall be—

9 “(1) combined and administered by the Sec-
10 retary as a single fund; and

11 “(2) available for obligation for the period de-
12 scribed in section 118(b)(2).

13 “(e) ELIGIBLE USE OF STATE PLANNING AND RE-
14 SEARCH FUNDS.—A State, in coordination with the Sec-
15 retary, may obligate funds made available to carry out this
16 section for any purpose authorized under section 506(a).

17 **“§ 506. International highway transportation out-
18 reach program**

19 “(a) ESTABLISHMENT.—The Secretary may establish
20 an international highway transportation outreach
21 program—

22 “(1) to inform the United States highway com-
23 munity of technological innovations in foreign coun-
24 tries that could significantly improve highway trans-
25 portation in the United States;

1 “(2) to promote United States highway trans-
2 portation expertise, goods, and services in foreign
3 countries; and

4 “(3) to increase transfers of United States
5 highway transportation technology to foreign coun-
6 tries.

7 “(b) ACTIVITIES.—Activities carried out under the
8 program may include—

9 “(1) the development, monitoring, assessment,
10 and dissemination in the United States of informa-
11 tion about highway transportation innovations in
12 foreign countries that could significantly improve
13 highway transportation in the United States;

14 “(2) research, development, demonstration,
15 training, and other forms of technology transfer and
16 exchange;

17 “(3) the provision to foreign countries, through
18 participation in trade shows, seminars, expositions,
19 and other similar activities, of information relating
20 to the technical quality of United States highway
21 transportation goods and services;

22 “(4) the offering of technical services of the
23 Federal Highway Administration that cannot be
24 readily obtained from private sector firms in the
25 United States for incorporation into the proposals of

1 those firms undertaking highway transportation
2 projects outside the United States, if the costs of the
3 technical services will be recovered under the terms
4 of the project;

5 “(5) the conduct of studies to assess the need
6 for, or feasibility of, highway transportation im-
7 provements in foreign countries; and

8 “(6) the gathering and dissemination of infor-
9 mation on foreign transportation markets and indus-
10 tries.

11 “(c) COOPERATION.—The Secretary may carry out
12 this section in cooperation with any appropriate—

13 “(1) Federal, State, or local agency;

14 “(2) authority, association, institution, or orga-
15 nization;

16 “(3) for-profit or nonprofit corporation;

17 “(4) national or international entity;

18 “(5) foreign country; or

19 “(6) person.

20 “(d) FUNDS.—

21 “(1) CONTRIBUTIONS.—Funds available to
22 carry out this section shall include funds deposited
23 by any cooperating organization or person into a
24 special account of the Treasury established for this
25 purpose.

1 “(2) ELIGIBLE USES OF FUNDS.—The funds
2 deposited into the account, and other funds available
3 to carry out this section, shall be available to cover
4 the cost of any activity eligible under this section,
5 including the cost of—

6 “(A) promotional materials;

7 “(B) travel;

8 “(C) reception and representation ex-
9 penses; and

10 “(D) salaries and benefits.

11 “(3) REIMBURSEMENTS FOR SALARIES AND
12 BENEFITS.—Reimbursements for salaries and bene-
13 fits of Department of Transportation employees pro-
14 viding services under this section shall be credited to
15 the account.

16 “(e) REPORT—For each fiscal year, the Secretary
17 shall submit to the Committee on Environment and Public
18 Works of the Senate and the Committee on Transpor-
19 tation and Infrastructure of the House of Representatives
20 a report that describes the destinations and individual trip
21 costs of international travel conducted in carrying out ac-
22 tivities described in this section.

1 **“§ 507. Surface transportation-environmental cooper-**
2 **ative research program**

3 “(a) IN GENERAL.—The Secretary shall establish
4 and carry out a surface transportation-environmental co-
5 operative research program.

6 “(b) CONTENTS.—The program carried out under
7 this section may include research—

8 “(1) to develop more accurate models for evalu-
9 ating transportation control measures and transpor-
10 tation system designs that are appropriate for use
11 by State and local governments (including metropoli-
12 tan planning organizations) in designing implemen-
13 tation plans to meet Federal, State, and local envi-
14 ronmental requirements;

15 “(2) to improve understanding of the factors
16 that contribute to the demand for transportation;

17 “(3) to develop indicators of economic, social,
18 and environmental performance of transportation
19 systems to facilitate analysis of potential alter-
20 natives;

21 “(4) to meet additional priorities as determined
22 by the Secretary in the strategic planning process
23 under section 508; and

24 “(5) to refine, through the conduct of work-
25 shops, symposia, and panels, and in consultation
26 with stakeholders (including the Department of En-

1 ergy, the Environmental Protection Agency, and
2 other appropriate Federal and State agencies and
3 associations) the scope and research emphases of the
4 program.

5 “(c) PROGRAM ADMINISTRATION.—The Secretary
6 shall—

7 “(1) administer the program established under
8 this section; and

9 “(2) ensure, to the maximum extent prac-
10 ticable, that—

11 “(A) the best projects and researchers are
12 selected to conduct research in the priority
13 areas described in subsection (b)—

14 “(i) on the basis of merit of each sub-
15 mitted proposal; and

16 “(ii) through the use of open solicita-
17 tions and selection by a panel of appro-
18 priate experts;

19 “(B) a qualified, permanent core staff with
20 the ability and expertise to manage a large
21 multiyear budget is used;

22 “(C) the stakeholders are involved in the
23 governance of the program, at the executive,
24 overall program, and technical levels, through
25 the use of expert panels and committees; and

1 “(D) there is no duplication of research ef-
2 fort between the program established under this
3 section and the new strategic highway research
4 program established under section 509.

5 “(d) NATIONAL ACADEMY OF SCIENCES.—The Sec-
6 retary may make grants to, and enter into cooperative
7 agreements with, the National Academy of Sciences to
8 carry out such activities relating to the research, tech-
9 nology, and technology transfer activities described in sub-
10 sections (b) and (c) as the Secretary determines to be ap-
11 propriate.

12 **“§ 508. Surface transportation research technology**
13 **deployment and strategic planning**

14 “(a) PLANNING.—

15 “(1) ESTABLISHMENT.—The Secretary shall—

16 “(A) establish, in accordance with section
17 306 of title 5, a strategic planning process
18 that—

19 “(i) enhances effective implementation
20 of this section through the establishment
21 in accordance with paragraph (2) of the
22 Surface Transportation Research Tech-
23 nology Advisory Committee; and

24 “(ii) focuses on surface transportation
25 research funded through paragraphs (1),

1 (2), (4), and (5) of section 2001(a) of the
2 Safe, Accountable, Flexible, and Efficient
3 Transportation Equity Act of 2004, taking
4 into consideration national surface trans-
5 portation system needs and intermodality
6 requirements;

7 “(B) coordinate Federal surface transpor-
8 tation research, technology development, and
9 deployment activities;

10 “(C) at such intervals as are appropriate
11 and practicable, measure the results of those
12 activities and the ways in which the activities
13 affect the performance of the surface transpor-
14 tation systems of the United States; and

15 “(D) ensure, to the maximum extent prac-
16 ticable, that planning and reporting activities
17 carried out under this section are coordinated
18 with all other surface transportation planning
19 and reporting requirements.

20 “(2) SURFACE TRANSPORTATION RESEARCH
21 TECHNOLOGY ADVISORY COMMITTEE.—

22 “(A) ESTABLISHMENT.—Not later than 90
23 days after the date of enactment of the Safe,
24 Accountable, Flexible, and Efficient Transpor-
25 tation Equity Act of 2004, the Secretary shall

1 establish a committee to be known as the ‘Sur-
2 face Transportation Research Technology Advi-
3 sory Committee’ (referred to in this section as
4 the ‘Committee’).

5 “(B) MEMBERSHIP.—The Committee shall
6 be composed of 12 members appointed by the
7 Secretary—

8 “(i) each of which shall have expertise
9 in a particular area relating to Federal
10 surface transportation programs,
11 including—

12 “(I) safety;

13 “(II) operations;

14 “(III) infrastructure (including
15 pavements and structures);

16 “(IV) planning and environment;

17 “(V) policy; and

18 “(VI) asset management; and

19 “(ii) of which—

20 “(I) 3 members shall be individ-
21 uals representing the Federal Govern-
22 ment;

23 “(II) 3 members—

24 “(aa) shall be exceptionally
25 qualified to serve on the Com-

1 committee, as determined by the Sec-
2 retary, based on education, train-
3 ing, and experience; and

4 “(bb) shall not be officers or
5 employees of the United States;

6 “(III) 3 members—

7 “(aa) shall represent the
8 transportation industry (includ-
9 ing the pavement industry); and

10 “(bb) shall not be officers or
11 employees of the United States;
12 and

13 “(IV) 3 members shall represent
14 State transportation departments
15 from 3 different geographical regions
16 of the United States.

17 “(C) MEETINGS.—The advisory sub-
18 committees shall meet on a regular basis, but
19 not less than twice each year.

20 “(D) DUTIES.—The Committee shall pro-
21 vide to the Secretary, on a continuous basis, ad-
22 vice and guidance relating to—

23 “(i) the determination of surface
24 transportation research priorities;

1 “(ii) the improvement of the research
2 planning and implementation process;

3 “(iii) the design and selection of re-
4 search projects;

5 “(iv) the review of research results;

6 “(v) the planning and implementation
7 of technology transfer activities and

8 “(vi) the formulation of the surface
9 transportation research and technology de-
10 ployment and deployment strategic plan re-
11 quired under subsection (c).

12 “(E) AUTHORIZATION OF APPROPRIA-
13 TIONS.—There is authorized to be appropriated
14 from the Highway Trust Fund (other than the
15 Mass Transit Account) to carry out this para-
16 graph \$200,000 for each fiscal year.

17 “(b) IMPLEMENTATION.—The Secretary shall—

18 “(1) provide for the integrated planning, coordi-
19 nation, and consultation among the operating ad-
20 ministrations of the Department of Transportation,
21 all other Federal agencies with responsibility for sur-
22 face transportation research and technology develop-
23 ment, State and local governments, institutions of
24 higher education, industry, and other private and
25 public sector organizations engaged in surface trans-

1 portation-related research and development activi-
2 ties; and

3 “(2) ensure that the surface transportation re-
4 search and technology development programs of the
5 Department do not duplicate other Federal, State,
6 or private sector research and development pro-
7 grams.

8 “(c) SURFACE TRANSPORTATION RESEARCH AND
9 TECHNOLOGY DEPLOYMENT STRATEGIC PLAN.—

10 “(1) IN GENERAL.—After receiving, and based
11 on, extensive consultation and input from stake-
12 holders representing the transportation community
13 and the Surface Transportation Research Advisory
14 Committee, the Secretary shall, not later than 1
15 year after the date of enactment of the Safe, Ac-
16 countable, Flexible, and Efficient Transportation
17 Equity Act of 2004, complete, and shall periodically
18 update thereafter, a strategic plan for each of the
19 core surface transportation research areas,
20 including—

21 “(A) safety;

22 “(B) operations;

23 “(C) infrastructure (including pavements
24 and structures);

25 “(D) planning and environment;

1 “(E) policy; and

2 “(F) asset management.

3 “(2) COMPONENTS.—The strategic plan shall
4 specify—

5 “(A) surface transportation research objec-
6 tives and priorities;

7 “(B) specific surface transportation re-
8 search projects to be conducted;

9 “(C) recommended technology transfer ac-
10 tivities to promote the deployment of advances
11 resulting from the surface transportation re-
12 search conducted; and

13 “(D) short- and long-term technology de-
14 velopment and deployment activities.

15 “(3) REVIEW AND SUBMISSION OF FINDINGS.—
16 The Secretary shall enter into a contract with the
17 Transportation Research Board of the National
18 Academy of Sciences, on behalf of the Research and
19 Technology Coordinating Committee of the National
20 Research Council, under which—

21 “(A) the Transportation Research Board
22 shall—

23 “(i) review the research and tech-
24 nology planning and implementation proc-

1 ess used by Federal Highway Administra-
2 tion; and

3 “(ii) evaluate each of the strategic
4 plans prepared under this subsection—

5 “(I) to ensure that sufficient
6 stakeholder input is being solicited
7 and considered throughout the prepa-
8 ration process; and

9 “(II) to offer recommendations
10 relevant to research priorities, project
11 selection, and deployment strategies;
12 and

13 “(B) the Secretary shall ensure that the
14 Research and Technology Coordinating Com-
15 mittee, in a timely manner, informs the Com-
16 mittee on Environment and Public Works of the
17 Senate and the Committee on Transportation
18 and Infrastructure of the House of Representa-
19 tives of the findings of the review and evalua-
20 tion under subparagraph (A).

21 “(4) RESPONSES OF SECRETARY.—Not later
22 than 60 days after the date of completion of the
23 strategic plan under this subsection, the Secretary
24 shall submit to the Committee on Environment and
25 Public Works of the Senate and the Committee on

1 Transportation and Infrastructure of the House of
2 Representatives written responses to each of the rec-
3 ommendations of the Research and Technology Co-
4 ordinating Committee under paragraph
5 (3)(A)(ii)(II).

6 “(d) CONSISTENCY WITH GOVERNMENT PERFORM-
7 ANCE AND RESULTS ACT OF 1993.—The plans and re-
8 ports developed under this section shall be consistent with
9 and incorporated as part of the plans developed under sec-
10 tion 306 of title 5 and sections 1115 and 1116 of title
11 31.

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

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

16 “(b) BASIS; PRIORITIES.—With respect to the pro-
17 gram established under subsection (a)—

18 “(1) the program shall be based on—

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

22 “(B) the results of the detailed planning
23 work subsequently carried out to scope the re-
24 search areas through National Cooperative Re-
25 search Program Project 20–58.

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

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

6 “(B) include an examination of—

7 “(i) the roles of highway infrastruc-
8 ture, drivers, and vehicles in fatalities on
9 public roads;

10 “(ii) high-risk areas and activities as-
11 sociated with the greatest numbers of high-
12 way fatalities;

13 “(iii) the roles of various levels of gov-
14 ernment agencies and non-governmental
15 organizations in reducing highway fatali-
16 ties (including recommendations for meth-
17 ods of strengthening highway safety part-
18 nerships);

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

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

1 “(vi) driving behavior and likely crash
2 causal factors to support improved coun-
3 termeasures;

4 “(vii) reduction in congestion due to
5 nonrecurring congestion;

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

9 “(3) the program shall consider, at a minimum,
10 the results of studies relating to the implementation
11 of the Strategic Highway Safety Plan prepared by
12 the American Association of State Highway and
13 Transportation Officials; and

14 “(4) the research results of the program, ex-
15 pressed in terms of technologies, methodologies, and
16 other appropriate categorizations, shall be dissemi-
17 nated to practicing engineers as soon as practicable
18 for their use.

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

23 “(1) the best projects and researchers are se-
24 lected to conduct research for the program and pri-
25 orities described in subsection (b)—

1 “(A) on the basis of the merit of each sub-
2 mitted proposal; and

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

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

9 “(3) the stakeholders are involved in the gov-
10 ernance of the program, at the executive, overall
11 program, and technical levels, through the use of ex-
12 pert panels and committees; and

13 “(4) there is no duplication of research effort
14 between the program established under this section
15 and the surface transportation-environment coopera-
16 tive research program established under section 507
17 or any other research effort of the Department.

18 “(d) NATIONAL ACADEMY OF SCIENCES.—The Sec-
19 retary may make grants to, and enter into cooperative
20 agreements with, the National Academy of Sciences to
21 carry out such activities relating to research, technology,
22 and technology transfer described in subsections (b) and
23 (c) as the Secretary determines to be appropriate.

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

1 “(1) IN GENERAL.—Not later than October 1,
2 2007, the Secretary shall enter into a contract with
3 the Transportation Research Board of the National
4 Academy of Sciences under which the Transpor-
5 tation Research Board shall complete a report on
6 the strategies and administrative structure to be
7 used for implementation of the results of new stra-
8 tegic highway research program.

9 “(2) COMPONENTS.—The report under para-
10 graph (1) shall include, with respect to the new stra-
11 tegic highway research program—

12 “(A) an identification of the most prom-
13 ising results of research under the program (in-
14 cluding the persons most likely to use the re-
15 sults);

16 “(B) a discussion of potential incentives
17 for, impediments to, and methods of, imple-
18 menting those results;

19 “(C) an estimate of costs that would be in-
20 curred in expediting implementation of those re-
21 sults; and

22 “(D) recommendations for the way in
23 which implementation of the results of the pro-
24 gram under this section should be conducted,
25 coordinated, and supported in future years, in-

1 including a discussion of the administrative struc-
2 ture and organization best suited to carry out
3 those responsibilities.

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

7 “(A) the American Association of State
8 highway Officials;

9 “(B) the Federal Highway Administration;
10 and

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

13 “(4) SUBMISSION.—Not later than February 1,
14 2009, the Secretary shall submit to the Committee
15 on Environment and Public Works of the Senate
16 and the Committee on Transportation and Infra-
17 structure of the House of Representatives the report
18 under this subsection.

19 **“§ 510. University transportation centers**

20 “(a) CENTERS.—

21 “(1) IN GENERAL.—During fiscal year 2004,
22 the Secretary shall provide grants to 40 nonprofit
23 institutions of higher learning (or consortia of insti-
24 tutions of higher learning) to establish centers to ad-
25 dress transportation design, management, research,

1 development, and technology matters, especially the
2 education and training of greater numbers of indi-
3 viduals to enter into the professional field of trans-
4 portation.

5 “(2) DISTRIBUTION OF CENTERS.—Not more
6 than 1 university transportation center (or lead uni-
7 versity in a consortia of institutions of higher learn-
8 ing), other than a center or university selected
9 through a competitive process, may be located in any
10 State.

11 “(3) IDENTIFICATION OF CENTERS.—The uni-
12 versity transportation centers established under this
13 section shall—

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

16 “(B) be located at the institutions of high-
17 er learning specified in paragraph (4).

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

21 “(A) GROUP A.—Group A shall consist of
22 the 10 regional centers selected under sub-
23 section (b).

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

- 1 “(i) [_____].
- 2 “(ii) [_____].
- 3 “(iii) [_____].
- 4 “(iv) [_____].
- 5 “(v) [_____].
- 6 “(vi) [_____].
- 7 “(vii) [_____].
- 8 “(viii) [_____].
- 9 “(ix) [_____].
- 10 “(x) [_____].
- 11 “(xi) [_____].

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

- 14 “(i) [_____].
- 15 “(ii) [_____].
- 16 “(iii) [_____].
- 17 “(iv) [_____].
- 18 “(v) [_____].
- 19 “(vi) [_____].
- 20 “(vii) [_____].
- 21 “(viii) [_____].
- 22 “(ix) [_____].
- 23 “(x) [_____].
- 24 “(xi) [_____].

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

3 “(i) [_____].

4 “(ii) [_____].

5 “(iii) [_____].

6 “(iv) [_____].

7 “(v) [_____].

8 “(vi) [_____].

9 “(vii) [_____].

10 “(viii) [_____].

11 “(b) REGIONAL CENTERS.—

12 “(1) IN GENERAL.—Not later than September
13 30, 2004, the Secretary shall provide to nonprofit
14 institutions of higher learning (or consortia of insti-
15 tutions of higher learning) grants to be used during
16 the period of fiscal years 2005 through 2009 to es-
17 tablish and operate 1 university transportation cen-
18 ter in each of the 10 Federal regions that comprise
19 the Standard Federal Regional Boundary System.

20 “(2) SELECTION OF REGIONAL CENTERS.—

21 “(A) PROPOSALS.—In order to be eligible
22 to receive a grant under this subsection, an in-
23 stitution described in paragraph (1) shall sub-
24 mit to the Secretary a proposal, in response to
25 any request for proposals that shall be made by

1 the Secretary, that is in such form and contains
2 such information as the Secretary shall pre-
3 scribe.

4 “(B) REQUEST SCHEDULE.—The Sec-
5 retary shall request proposals once for the pe-
6 riod of fiscal years 2004 through 2006 and
7 once for the period of fiscal years 2007 through
8 2009.

9 “(C) ELIGIBILITY.—Any institution of
10 higher learning (or consortium of institutions of
11 higher learning) that meets the criteria de-
12 scribed in subsection (c) (including any institu-
13 tion identified in subsection (a)(4)) may apply
14 for a grant under this subsection.

15 “(D) SELECTION CRITERIA.—The Sec-
16 retary shall select each recipient of a grant
17 under this subsection through a competitive
18 process on the basis of—

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

21 “(ii) the demonstrated research capa-
22 bilities and extension resources available to
23 the recipient to carry out this section;

24 “(iii) the capability of the recipient to
25 provide leadership in making national and

1 regional contributions to the solution of
2 immediate and long-range transportation
3 problems;

4 “(iv) the demonstrated ability of the
5 recipient to disseminate results of trans-
6 portation research and education programs
7 through a statewide or regionwide con-
8 tinuing education program; and

9 “(v) the strategic plan that the recipi-
10 ent proposes to carry out using funds from
11 the grant.

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

16 “(i) the Research and Special Pro-
17 grams Administration;

18 “(ii) the Federal Highway Adminis-
19 tration; and

20 “(iii) the Federal Transit Administra-
21 tion.

22 “(c) CENTER REQUIREMENTS.—

23 “(1) IN GENERAL.—With respect to a univer-
24 sity transportation center established under sub-

1 section (a) or (b), the institution or consortium that
2 receives a grant to establish the center—

3 “(A) shall annually contribute at least
4 \$250,000 to the operation and maintenance of
5 the center, except that payment by the institu-
6 tion or consortium of the salary required for
7 transportation-related faculty and staff for a
8 period greater than 90 days may not be counted
9 against that contribution;

10 “(B) shall have established, as of the date
11 of receipt of the grant, undergraduate or grad-
12 uate programs in—

13 “(i) civil engineering;

14 “(ii) transportation engineering;

15 “(iii) transportation systems manage-
16 ment and operations; or

17 “(iv) any other field significantly re-
18 lated to surface transportation systems, as
19 determined by the Secretary; and

20 “(C) not later than 120 days after the date
21 on which the institution or consortium receives
22 notice of selection as a site for the establish-
23 ment of a university transportation center
24 under this section, shall submit to the Secretary
25 a 6-year program plan for the university trans-

1 portation center that includes, with respect to
2 the center—

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

5 “(ii) a description of the under-
6 graduate and graduate transportation edu-
7 cation efforts to be carried out by the cen-
8 ter;

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

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

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

18 “(D) shall establish an advisory committee
19 that—

20 “(i) is composed of a representative
21 from each of the State transportation de-
22 partment of the State in which the institu-
23 tion or consortium is located, the Depart-
24 ment of Transportation, and the institu-

1 tion or consortia, as appointed by those re-
2 spective entities;

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

7 “(iii) shall, to the maximum extent
8 practicable, ensure that the proposed re-
9 search to be carried out by the university
10 transportation center will contribute to the
11 national highway research and technology
12 agenda, as periodically updated by the Sec-
13 retary, in consultation with stakeholders
14 representing the highway community.

15 “(2) PEER REVIEW.—

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

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

23 “(i) the relevance of the research de-
24 scribed in the report with respect to the

1 strategic plan under, and the goals of, this
2 section;

3 “(ii) the research covered by the re-
4 port, and to recommend modifications to
5 individual project plans;

6 “(iii) the results of the research be-
7 fore publication of those results; and

8 “(iv) the overall outcomes of the re-
9 search.

10 “(C) INTERNET AVAILABILITY.—Each re-
11 port under this section that is received by the
12 Secretary shall be published—

13 “(i) by the Secretary, on the Internet
14 website of the Department of Transpor-
15 tation; and

16 “(ii) by the University Transportation
17 Center.

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

23 “(4) FAILURE TO COMPLY.—If a recipient of a
24 grant under this subsection fails to submit a pro-

1 gram plan acceptable to the Secretary and in accord-
2 ance with paragraph (1)(C)—

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

7 “(B) the Secretary shall select a replace-
8 ment recipient for the forfeited grant.

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

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

16 “(1) undergraduate or graduate education pro-
17 grams that include—

18 “(A) multidisciplinary coursework; and

19 “(B) opportunities for students to partici-
20 pate in research;

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

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

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

7 “(1) enter into an agreement with the Secretary
8 to ensure that the applicant will maintain total ex-
9 penditures from all other sources to establish and
10 operate a university transportation center and re-
11 lated educational and research activities at a level
12 that is at least equal to the average level of those
13 expenditures during the 2 fiscal years before the
14 date on which the grant is provided;

15 “(2) provide the annual institutional contribu-
16 tion required under subsection (c)(1); and

17 “(3) submit to the Secretary, in a timely man-
18 ner, for use by the Secretary in the preparation of
19 the annual research report under section 508(c)(5)
20 of title 23, an annual report on the projects and ac-
21 tivities of the university transportation center for
22 which funds are made available under section 2001
23 of the Safe, Accountable, Flexible, and Efficient
24 Transportation Equity Act of 2004 that contains, at

1 a minimum, for the fiscal year covered by the report,
2 a description of—

3 “(A) the goals of the center;

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

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

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

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

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

17 “(iii) the current schedule for each re-
18 search project; and

19 “(iv) the results of each research
20 project through the date of submission of
21 the report, with particular emphasis on re-
22 sults for the fiscal year covered by the re-
23 port; and

24 “(E) overall technology transfer and imple-
25 mentation efforts of the center.

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

3 “(1) coordinate the research, education, train-
4 ing, and technology transfer activities carried out by
5 recipients of grants under this section; and

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

8 “(g) FUNDING.—

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

12 “(A) GROUP A.—For each of fiscal years
13 2004 through 2009, the Secretary shall make a
14 grant in the amount of \$20,000,000 to each of
15 the institutions in group A (as described in sub-
16 section (a)(4)(A)).

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

21 “(i) \$4,000,000 for each of fiscal
22 years 2004 and 2005; and

23 “(ii) \$6,000,000 for each of fiscal
24 years 2006 and 2007.

1 “(C) GROUP C.—For each of fiscal years
2 2004 through 2007, the Secretary shall make a
3 grant in the amount of \$10,000,000 to each of
4 the institutions in group C (as described in sub-
5 section (a)(4)(C)).

6 “(D) GROUP D.—For each of fiscal years
7 2004 through 2009, the Secretary shall make a
8 grant in the amount of \$25,000,000 to each of
9 the institutions in group D (as described in
10 subsection (a)(4)(D)).

11 “(E) LIMITED GRANTS FOR GROUPS B AND
12 C.—For each of fiscal years 2008 and 2009, of
13 the institutions classified in groups B and C (as
14 described in subsection (a)(4)(B)), the Sec-
15 retary shall select and make a grant in the
16 amount of \$10,000,000 to each of not more
17 than 15 institutions.

18 “(2) USE OF FUNDS—

19 “(A) IN GENERAL.—Of the funds made
20 available for a fiscal year to a university trans-
21 portation center established under subsection
22 (a) or (b)—

23 “(i) not less than \$250,000 shall be
24 used to establish and maintain new faculty

1 positions for the teaching of under-
2 graduate, transportation-related courses;

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

7 “(iii) not more than \$300,000 for the
8 fiscal year may be used for student intern-
9 ships of not more than 180 days in dura-
10 tion to enable students to gain experience
11 by working on transportation projects as
12 interns with design or construction firms.

13 “(B) FACILITIES AND ADMINISTRATION
14 FEE.—Not more than 10 percent of any grant
15 made available to a university transportation
16 center (or any institution or consortium that es-
17 tablishes such a center) for a fiscal year may be
18 used to pay to the appropriate nonprofit institu-
19 tion of higher learning any administration and
20 facilities fee (or any similar overhead fee) for
21 the fiscal year.

22 “(3) LIMITATION ON AVAILABILITY OF
23 FUNDS.—Funds made available under this sub-
24 section shall remain available for obligation for a pe-

1 riod of 2 years after September 30 of the fiscal year
2 for which the funds are authorized.

3 **“§ 511. Multistate corridor operations and manage-**
4 **ment**

5 “(a) IN GENERAL.—The Secretary shall encourage
6 multistate cooperative agreements, coalitions, or other ar-
7 rangements to promote regional cooperation, planning,
8 and shared project implementation for programs and
9 projects to improve transportation system management
10 and operations.

11 “(b) INTERSTATE ROUTE I–95 CORRIDOR COALI-
12 TION TRANSPORTATION SYSTEMS MANAGEMENT AND OP-
13 ERATIONS.—

14 “(1) IN GENERAL.—The Secretary shall make
15 grants under this subsection to States to continue
16 intelligent transportation system management and
17 operations in the Interstate Route I–95 corridor coa-
18 lition region initiated under the Intermodal Surface
19 Transportation Efficiency Act of 1991 (Public Law
20 102–240).

21 “(2) FUNDING.—Of the amounts made avail-
22 able under section 2001(a)(4) of the Safe, Account-
23 able, Flexible, and Efficient Transportation Equity
24 Act of 2004, the Secretary shall use to carry out
25 this subsection—

- 1 “(A) \$8,000,000 for fiscal year 2004;
2 “(B) \$10,000,000 for fiscal year 2005;
3 “(C) \$12,000,000 for fiscal year 2006;
4 “(D) \$12,000,000 for fiscal year 2007;
5 “(E) \$12,000,000 for fiscal year 2008; and
6 “(F) \$12,000,000 for fiscal year 2009.

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

8 “(a) CONTINUATION OF TRANSIMS DEVELOP-
9 MENT.—

10 “(1) IN GENERAL.—The Secretary shall con-
11 tinue the deployment of the advanced transportation
12 model known as the ‘Transportation Analysis Sim-
13 ulation System’ (referred to in this section as
14 ‘TRANSIMS’) developed by the Los Alamos Na-
15 tional Laboratory.

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

18 “(A) further improve TRANSIMS to re-
19 duce the cost and complexity of using the
20 TRANSIMS;

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

1 “(C) assist State transportation depart-
2 ments and metropolitan planning organizations,
3 especially smaller metropolitan planning organi-
4 zations, in the implementation of TRANSIMS
5 by providing training and technical assistance.

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

8 “(1) to further develop TRANSIMS for addi-
9 tional applications, including—

10 “(A) congestion analyses;

11 “(B) major investment studies;

12 “(C) economic impact analyses;

13 “(D) alternative analyses;

14 “(E) freight movement studies;

15 “(F) emergency evacuation studies;

16 “(G) port studies; and

17 “(H) airport access studies;

18 “(2) provide training and technical assistance
19 with respect to the implementation and application
20 of TRANSIMS to States, local governments, and
21 metropolitan planning organizations with responsi-
22 bility for travel modeling;

23 “(3) develop methods to simulate the national
24 transportation infrastructure as a single, integrated
25 system for the movement of individuals and goods;

1 “(4) provide funding to State transportation de-
2 partments and metropolitan planning organizations
3 for implementation of TRANSIMS.

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

8 “(d) FUNDING.—Of the amounts made available
9 under section 2001(a) of the Safe, Accountable, Flexible,
10 and Efficient Transportation Equity Act of 2004 for each
11 of fiscal years 2004 through 2009, the Secretary shall use
12 \$1,000,000 to carry out this section.

13 “(e) AVAILABILITY OF FUNDS.—Funds made avail-
14 able under this section shall be available to the Secretary
15 through the Transportation Planning, Research, and De-
16 velopment Account of the Office of the Secretary.”.

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

23 (1) through a competitive process that incor-
24 porates merit-based peer review; and

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

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

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

8 (a) DEFINITIONS.—In this section:

9 (1) ADMINISTRATION.—The term “Administra-
10 tion” means the Federal Highway Administration.

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

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

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

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

20 (b) PRIORITY AREAS OF EFFORT.—

21 (1) STATISTICAL STANDARDS.—The Secretary
22 shall direct the Bureau to assume the role of the
23 lead agency in working with other agencies of the
24 Department to establish, by not later the date that

1 is 1 year after the date of enactment of this Act,
2 statistical standards for the Department.

3 (2) STATISTICAL ANALYSIS EFFORT.—

4 (A) IN GENERAL.—The Bureau shall pro-
5 vide to the Secretary, on an annual basis, an
6 overview of the level of effort expended on sta-
7 tistical analyses by each agency within the De-
8 partment.

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

13 (3) NATIONAL SECURITY.—The Bureau shall—

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

17 (B) submit to the Transportation Security
18 Administration recommendations for means by
19 which the use of transportation statistics for
20 the purpose of national security may be im-
21 proved.

22 (4) MODERNIZATION.—The Bureau shall de-
23 velop new protocols for adapting data collection and
24 delivery efforts in existence as of the date of enact-

1 ment of this Act to deliver information in a more
2 timely and frequent fashion.

3 (c) STUDY.—

4 (1) IN GENERAL.—Not later than 90 days after
5 the date of enactment of this Act, the Secretary
6 shall provide a grant to, or enter into a cooperative
7 agreement or contract with, the Board for the con-
8 duct of a study of the data collection and statistical
9 analysis efforts of the Department with respect to
10 the modes of surface transportation for which funds
11 are made available under this Act.

12 (2) PURPOSE.—The purpose of the study shall
13 be to provide to the Department information for use
14 by agencies of the Department in providing to sur-
15 face transportation agencies and individuals engaged
16 in the surface transportation field higher quality,
17 and more relevant and timely, data, statistical anal-
18 yses, and products.

19 (3) CONTENT.—The study shall include—

20 (A) an examination and analysis of the ef-
21 forts, analyses, and products (with respect to
22 usefulness and policy relevance) of the Bureau
23 as of the date of the study, as compared with
24 the duties of the Bureau specified in sub-

1 sections (c) through (f) of section 111 of title
2 49, United States Code;

3 (B) an examination and analysis of data
4 collected by, methods of data collection of, and
5 analyses performed by, agencies within the De-
6 partment; and

7 (C) recommendations relating to—

8 (i) the future efforts of the Depart-
9 ment in the area of surface transportation
10 with respect to—

11 (I) types of data collected;

12 (II) methods of data collection;

13 (III) types of analyses performed;

14 and

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

18 (ii) the means by which the Depart-
19 ment may cooperate with State transpor-
20 tation departments to provide technical as-
21 sistance in the use of data collected by
22 traffic operations centers; and

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

1 (I) the duplication may be re-
2 duced or eliminated; and

3 (II) each agency of the Depart-
4 ment may cooperate with, and com-
5 plement the efforts of, the others.

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

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

14 (A) the Board shall submit to the Sec-
15 retary, the Committee on Environment and
16 Public Works of the Senate, and the Committee
17 on Transportation and Infrastructure of the
18 House of Representatives a final report on the
19 results of the study; and

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

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

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

1 (6) IMPLEMENTATION OF RESULTS.—The Bu-
2 reau shall, to the maximum extent practicable, im-
3 plement any recommendations made with respect to
4 the results of the study under this subsection.

5 (7) COMPLIANCE.—

6 (A) IN GENERAL.—The Comptroller Gen-
7 eral of the United States shall conduct a review
8 of the study under this subsection.

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

16 (d) CONFORMING AMENDMENTS.—

17 (1) Section 111 of title 49, United States Code,
18 is amended—

19 (A) by redesignating subsection (k) as sub-
20 section (m);

21 (B) by inserting after subsection (j) the
22 following:

23 “(k) ANNUAL REPORT.—

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

4 “(A) describes progress made in respond-
5 ing to study recommendations for the fiscal
6 year; and

7 “(B) summarizes the activities and expend-
8 iture of funds by the Bureau for the fiscal year.

9 “(2) AVAILABILITY.—The Bureau shall—

10 “(A) make the report described in para-
11 graph (1) available to the public; and

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

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

18 “(1) EXPENDITURE OF FUNDS.—Funds from the
19 Highway Trust Fund (other than the Mass Transit Ac-
20 count) that are authorized to be appropriated, and made
21 available, in accordance with section 2001(a)(3) of the
22 Safe, Accountable, Flexible, and Efficient Transportation
23 Equity Act of 2004 shall be used only for the collection
24 and statistical analysis of information relating to surface
25 transportation systems.”; and

1 (C) in subsection (m) (as redesignated by
 2 subparagraph (A)), by inserting “surface trans-
 3 portation” after “sale of”.

4 (2) The analysis for chapter 55 of title 49,
 5 United States Code, is amended by striking the item
 6 relating to section 5505 and inserting the following:

“5505. University transportation centers.”.

7 **SEC. 2103. CENTERS FOR SURFACE TRANSPORTATION EX-**
 8 **CELLENCE.**

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

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

19 (b) CENTERS.—The centers for surface transpor-
 20 tation excellence referred to in subsection (a) are—

- 21 (1) a Center for Environmental Excellence to
 22 provide technical assistance, information sharing of
 23 best practices, and training in the use of tools and
 24 decision-making processes to assist States in plan-

1 ning and delivering environmentally-sound surface
2 transportation projects;

3 (2) a Center for Operations Excellence to pro-
4 vide support for an integrated and coordinated na-
5 tional program for implementing operations in plan-
6 ning and management (including standards develop-
7 ment) for the transportation system in the United
8 States;

9 (3) a Center for Excellence in Surface Trans-
10 portation Safety to implement a program of support
11 for State transportation departments, including—

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

14 (B) the provision of technical assistance to
15 support a lead State transportation department
16 for each of the safety emphasis areas (as identi-
17 fied by the Secretary); and

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

22 (4) a Center for Excellence in Project
23 Finance—

1 (A) to provide support to State transpor-
2 tation departments in the development of fi-
3 nance plans and project oversight tools; and

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

7 (5) a Center for Excellence in Asset Manage-
8 ment to develop and conduct research, provide train-
9 ing and education, and disseminate information on
10 the benefits and tools for asset management.

11 (c) PROGRAM ADMINISTRATION.—

12 (1) IN GENERAL.—Before funds authorized
13 under this section for fiscal years 2005 through
14 2009 are obligated, the Secretary shall review and
15 approve a multiyear strategic plan to be submitted
16 by each of the centers.

17 (2) TIMING.—The plan shall be submitted be-
18 fore the beginning of fiscal year 2005 and, subse-
19 quently, shall be annually updated.

20 (3) CONTENT.—The plan shall include—

21 (A) a list of research and technical assist-
22 ance projects and objectives; and

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

1 (4) COOPERATION AND COMPETITION.—

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

6 (i) the National Academy of Sciences;

7 (ii) the American Association of State
8 Highway and Transportation Officials;

9 (iii) planning organizations;

10 (iv) a Federal laboratory;

11 (v) a State agency;

12 (vi) an authority, association, institu-
13 tion, or organization; or

14 (vii) a for-profit or nonprofit corpora-
15 tion.

16 (B) COMPETITION; REVIEW.—All parties
17 entering into contracts, cooperative agreements,
18 or other transactions with the Secretary, or re-
19 ceiving grants, to perform research or provide
20 technical assistance under this section shall be
21 selected, to the maximum extent practicable—

22 (i) on a competitive basis; and

23 (ii) on the basis of the results of peer
24 review of proposals submitted to the Sec-
25 retary.

1 (5) NONDUPLICATION.—The Secretary shall en-
2 sure that activities conducted by each of the centers
3 do not duplicate, and to the maximum extent prac-
4 ticable, are integrated and coordinated with similar
5 activities conducted by the Federal Highway Admin-
6 istration, the local technical assistance program, uni-
7 versity transportation centers, and other research ef-
8 forts supported with funds authorized by this title.

9 (d) ALLOCATIONS.—

10 (1) IN GENERAL.—For each of fiscal years
11 2004 through 2009, of the funds made available
12 under section 2001(a)(1)(A), the Secretary shall set
13 aside \$10,000,000 to carry out this section.

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

16 (A) 20 percent shall be allocated to the
17 Center for Environmental Excellence estab-
18 lished under subsection (b)(1);

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

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

1 (D) 10 percent shall be allocated to the
2 Center for Excellence in Project Finance estab-
3 lished under subsection (b)(4); and

4 (E) 20 percent shall be allocated to the
5 Center for Excellence in Asset Management es-
6 tablished under subsection (b)(5).

7 (3) APPLICABILITY OF TITLE 23.—Funds made
8 available under this section shall be available for ob-
9 ligation in the same manner as if the funds were ap-
10 portioned under chapter 1 of title 23, United States
11 Code, except that the Federal share shall be 100
12 percent.

13 **SEC. 2104. MOTORCYCLE CRASH CAUSATION STUDY**
14 **GRANTS.**

15 (a) GRANTS.—The Secretary shall provide grants for
16 the purpose of conducting a comprehensive, in-depth mo-
17 torcycle crash causation study that employs the common
18 international methodology for in-depth motorcycle acci-
19 dent investigation of the Organization for Economic Co-
20 operation and Development.

21 (b) FUNDING.—Of the amounts made available under
22 section 2001(a)(3), \$1,500,000 for each of fiscal years
23 2004 and 2005 shall be available to carry out this section.

1 **SEC. 2105. TRANSPORTATION TECHNOLOGY INNOVATION**
2 **AND DEMONSTRATION PROGRAM.**

3 (a) IN GENERAL.—Section 5117(b)(3) of the Trans-
4 portation Equity Act for the 21st Century (112 Stat. 449;
5 112 Stat. 864; 115 Stat. 2330) is amended—

6 (1) in subparagraph (B)—

7 (A) in clause (i)—

8 (i) in the first sentence—

9 (I) by striking “Build an” and
10 inserting “Build or integrate an”; and

11 (II) by striking “\$2,000,000”
12 and inserting “\$2,500,000”; and

13 (ii) in the second sentence—

14 (I) by striking “300,000 and
15 that” and inserting “300,000,”; and

16 (II) by inserting before the pe-
17 riod at the end the following: “, and
18 includes major transportation cor-
19 ridors serving that metropolitan
20 area”;

21 (B) in clause (ii), by striking all that fol-
22 lows “will be” and inserting “reinvested in the
23 intelligent transportation infrastructure sys-
24 tem.”;

25 (C) by striking clause (iii); and

1 (D) by redesignating clauses (iv) and (v)
2 as clauses (iii) and (iv), respectively;

3 (2) in subparagraph (C)(ii), by striking “July
4 1, 2002” and inserting “the date that is 180 days
5 after the date of enactment of the Safe, Account-
6 able, Flexible, and Efficient Transportation Equity
7 Act of 2003”;

8 (3) in subparagraph (E), by striking clause (ii)
9 and inserting the following:

10 “(ii) The term “follow-on deployment
11 areas” means the metropolitan areas of Al-
12 bany, Atlanta, Austin, Baltimore, Bir-
13 mingham, Boston, Burlington Vermont,
14 Charlotte, Chicago, Cleveland, Columbus,
15 Dallas/Ft. Worth, Denver, Detroit, Greens-
16 boro, Hartford, Houston, Indianapolis,
17 Jacksonville, Kansas City, Las Vegas, Los
18 Angeles, Louisville, Miami, Milwaukee,
19 Minneapolis-St. Paul, Nashville, New Orle-
20 ans, New York/Northern New Jersey, Nor-
21 folk, Northern Kentucky/Cincinnati, Okla-
22 homa City, Orlando, Philadelphia, Phoenix,
23 Pittsburgh, Portland, Providence, Raleigh,
24 Richmond, Sacramento, Salt Lake, San
25 Diego, San Francisco, San Jose, St. Louis,

1 Seattle, Tampa, Tucson, Tulsa, and Wash-
2 ington, District of Columbia.”;

3 (4) in subparagraph (F)—

4 (A) by striking “Of the amounts” and in-
5 serting the following:

6 “ (i) THIS ACT.—Of the amounts”;

7 and

8 (B) by adding at the end the following:

9 “ (ii) SAFETEA.—There are author-
10 ized to be appropriated out of the Highway
11 Trust Fund (other than the Mass Transit
12 Account) \$5,000,000 for each fiscal year
13 to carry out this paragraph.

14 “ (iii) AVAILABILITY; NO REDUCTION
15 OR SETASIDE.—Amounts made available
16 by this subparagraph—

17 “ (I) shall remain available until
18 expended; and

19 “ (II) shall not be subject to any
20 reduction or setaside.”; and

21 (5) by adding at the end the following:

22 “ (H) USE OF RIGHTS-OF-WAY.—

23 “ (i) IN GENERAL.—An intelligent
24 transportation system project described in
25 paragraph (3) or (6) that involves privately

1 owned intelligent transportation system
2 components and is carried out using funds
3 made available from the Highway Trust
4 Fund shall not be subject to any law (in-
5 cluding a regulation) of a State or political
6 subdivision of a State prohibiting or regu-
7 lating commercial activities in the rights-
8 of-way of a highway for which Federal-aid
9 highway funds have been used for plan-
10 ning, design, construction, or maintenance,
11 if the Secretary determines that such use
12 is in the public interest.

13 “(ii) EFFECT OF SUBPARAGRAPH.—
14 Nothing in this subparagraph affects the
15 authority of a State or political subdivision
16 of a State to regulate highway safety.”

17 (b) CONFORMING AMENDMENT.—Section 5204 of the
18 Transportation Equity Act for the 21st Century (112
19 Stat. 453) is amended by striking subsection (k) (112
20 Stat. 2681–478).

1 **Subtitle C—Intelligent**
2 **Transportation System Research**

3 **SEC. 2201. INTELLIGENT TRANSPORTATION SYSTEM RE-**
4 **SEARCH AND TECHNICAL ASSISTANCE PRO-**
5 **GRAM.**

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

9 “SUBCHAPTER II—INTELLIGENT TRANSPOR-
10 TATION SYSTEM RESEARCH AND TECH-
11 NICAL ASSISTANCE PROGRAM

12 “**§ 521. Finding**

13 “Congress finds that continued investment in archi-
14 tecture and standards development, research, technical as-
15 sistance for State and local governments, and systems in-
16 tegration is needed to accelerate the rate at which intel-
17 ligent transportation systems—

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

20 “(2) as a result of that incorporation, improve
21 transportation safety and efficiency and reduce costs
22 and negative impacts on communities and the envi-
23 ronment.

1 **“§ 522. Goals and purposes**

2 “(a) GOALS.—The goals of the intelligent transpor-
3 tation system research and technical assistance program
4 include—

5 “(1) enhancement of surface transportation ef-
6 ficiency and facilitation of intermodalism and inter-
7 national trade—

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

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

14 “(2) the acceleration of the use of intelligent
15 transportation systems to assist in the achievement
16 of national transportation safety goals, including the
17 enhancement of safe operation of motor vehicles and
18 nonmotorized vehicles, with particular emphasis on
19 decreasing the number and severity of collisions;

20 “(3) protection and enhancement of the natural
21 environment and communities affected by surface
22 transportation, with particular emphasis on assisting
23 State and local governments in achieving national
24 environmental goals;

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

1 “(A) operators of commercial vehicles, pas-
2 senger vehicles, and motorcycles;

3 “(B) users of public transportation users
4 (with respect to intelligent transportation sys-
5 tem user services); and

6 “(C) individuals with disabilities; and

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

10 “(B) enhancement of national security and de-
11 fense mobility.

12 “(b) PURPOSES.—The Secretary shall carry out ac-
13 tivities under the intelligent transportation system re-
14 search and technical assistance program to, at a
15 minimum—

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

18 “(2) ensure that Federal, State, and local
19 transportation officials have adequate knowledge of
20 intelligent transportation systems for full consider-
21 ation in the transportation planning process;

22 “(3) improve regional cooperation, interoper-
23 ability, and operations for effective intelligent trans-
24 portation system performance;

1 “(4) promote the innovative use of private re-
2 sources;

3 “(5) assist State transportation departments in
4 developing a workforce capable of developing, oper-
5 ating, and maintaining intelligent transportation
6 systems;

7 “(6) maintain an updated national ITS archi-
8 tecture and consensus-based standards while ensur-
9 ing an effective Federal presence in the formulation
10 of domestic and international ITS standards;

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

13 “(A) to improve the safety and produc-
14 tivity of commercial vehicles and drivers; and

15 “(B) to reduce costs associated with com-
16 mercial vehicle operations and Federal and
17 State commercial vehicle regulatory require-
18 ments;

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

21 “(9) improve, as part of the Archived Data
22 User Service and in cooperation with the Bureau of
23 Transportation Statistics, the collection of surface
24 transportation system condition and performance

1 data through the use of intelligent transportation
2 system technologies; and

3 “(10) ensure access to transportation informa-
4 tion and services by travelers of all ages.

5 **“§ 523. Definitions**

6 “In this subchapter:

7 “(1) COMMERCIAL VEHICLE INFORMATION SYS-
8 TEMS AND NETWORKS.—The term ‘commercial vehi-
9 cle information systems and networks’ means the in-
10 formation systems and communications networks
11 that support commercial vehicle operations.

12 “(2) COMMERCIAL VEHICLE OPERATIONS.—

13 “(A) IN GENERAL.—The term ‘commercial
14 vehicle operations’ means motor carrier oper-
15 ations and motor vehicle regulatory activities
16 associated with the commercial movement of
17 goods (including hazardous materials) and pas-
18 sengers.

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

22 “(i) the issuance of operating creden-
23 tials;

24 “(ii) the administration of motor vehi-
25 cle and fuel taxes; and

1 “(iii) roadside safety and border
2 crossing inspection and regulatory compli-
3 ance operations.

4 “(3) INTELLIGENT TRANSPORTATION INFRA-
5 STRUCTURE.—The term ‘intelligent transportation
6 infrastructure’ means fully integrated public sector
7 intelligent transportation system components, as de-
8 fined by the Secretary.

9 “(4) INTELLIGENT TRANSPORTATION SYS-
10 TEM.—The term ‘intelligent transportation system’
11 means electronics, communications, or information
12 processing used singly or in combination to improve
13 the efficiency or safety of a surface transportation
14 system.

15 “(5) NATIONAL ITS ARCHITECTURE.—The term
16 ‘national ITS architecture’ means the common
17 framework for interoperability adopted by the Sec-
18 retary that defines—

19 “(A) the functions associated with intel-
20 ligent transportation system user services;

21 “(B) the physical entities or subsystems
22 within which the functions reside;

23 “(C) the data interfaces and information
24 flows between physical subsystems; and

1 “(D) the communications requirements as-
2 sociated with the information flows.

3 “(6) STANDARD.—The term ‘standard’ means a
4 document that—

5 “(A) contains technical specifications or
6 other precise criteria for intelligent transpor-
7 tation systems that are to be used consistently
8 as rules, guidelines, or definitions of character-
9 istics so as to ensure that materials, products,
10 processes, and services are fit for their pur-
11 poses; and

12 “(B) may—

13 “(i) support the national ITS archi-
14 tecture; and

15 “(ii) promote—

16 “(I) the widespread use and
17 adoption of intelligent transportation
18 system technology as a component of
19 the surface transportation systems of
20 the United States; and

21 “(II) interoperability among in-
22 telligent transportation system tech-
23 nologies implemented throughout the
24 States.

1 **“§ 524. General authorities and requirements**

2 “(a) SCOPE.—Subject to this subchapter, the Sec-
3 retary shall carry out an ongoing intelligent transportation
4 system research program—

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

7 “(2) to provide technical assistance in the na-
8 tionwide application of those systems as a compo-
9 nent of the surface transportation systems of the
10 United States.

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

16 “(c) COOPERATION WITH GOVERNMENTAL, PRI-
17 VATE, AND EDUCATIONAL ENTITIES.—The Secretary
18 shall carry out the intelligent transportation system re-
19 search and technical assistance program in cooperation
20 with—

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

23 “(2) the private sector;

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

1 “(4) colleges and universities, including histori-
2 cally black colleges and universities and other minor-
3 ity institutions of higher education.

4 “(d) CONSULTATION WITH FEDERAL OFFICIALS.—
5 In carrying out the intelligent transportation system re-
6 search program, the Secretary, as appropriate, shall con-
7 sult with—

8 “(1) the Secretary of Commerce;

9 “(2) the Secretary of the Treasury;

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

12 “(4) the Director of the National Science Foun-
13 dation; and

14 “(5) the Secretary of Homeland Security.

15 “(e) TECHNICAL ASSISTANCE, TRAINING, AND IN-
16 FORMATION.—The Secretary may provide technical assist-
17 ance, training, and information to State and local govern-
18 ments seeking to implement, operate, maintain, or evalu-
19 ate intelligent transportation system technologies and
20 services.

21 “(f) TRANSPORTATION PLANNING.—The Secretary
22 may provide funding to support adequate consideration of
23 transportation system management and operations (in-
24 cluding intelligent transportation systems) within metro-
25 politan and statewide transportation planning processes.

1 “(g) INFORMATION CLEARINGHOUSE.—The Sec-
2 retary shall—

3 “(1) maintain a repository for technical and
4 safety data collected as a result of federally spon-
5 sored projects carried out under this subchapter;
6 and

7 “(2) on request, make that information (except
8 for proprietary information and data) readily avail-
9 able to all users of the repository at an appropriate
10 cost.

11 “(h) ADVISORY COMMITTEES.—

12 “(1) IN GENERAL.—In carrying out this sub-
13 chapter, the Secretary—

14 “(A) may use 1 or more advisory commit-
15 tees; and

16 “(B) shall designate a public-private orga-
17 nization, the members of which participate in
18 on-going research, planning, standards develop-
19 ment, deployment, and marketing of ITS pro-
20 grams, products, and services, and coordinate
21 the development and deployment of intelligent
22 transportation systems in the United States, as
23 the Federal advisory committee authorized by
24 section 5204(h) of the Transportation Equity
25 Act for the 21st Century (112 Stat. 454).

1 “(2) FUNDING.—Of the amount made available
2 to carry out this subchapter, the Secretary may use
3 \$1,500,000 for each fiscal year for advisory commit-
4 tees described in paragraph (1).

5 “(3) APPLICABILITY OF FEDERAL ADVISORY
6 COMMITTEE ACT.—Any advisory committee de-
7 scribed in paragraph (1) shall be subject to the Fed-
8 eral Advisory Committee Act (5 U.S.C. App.).

9 “(i) PROCUREMENT METHODS.—The Secretary shall
10 develop and provide appropriate technical assistance and
11 guidance to assist State and local agencies in evaluating
12 and selecting appropriate methods of deployment and pro-
13 curement for intelligent transportation system projects
14 carried out using funds made available from the Highway
15 Trust Fund, including innovative and nontraditional
16 methods such as Information Technology Omnibus Pro-
17 curement (as developed by the Secretary).

18 “(j) EVALUATIONS.—

19 “(1) GUIDELINES AND REQUIREMENTS.—

20 “(A) IN GENERAL.—The Secretary shall
21 issue revised guidelines and requirements for
22 the evaluation of operational tests and other in-
23 telligent transportation system projects carried
24 out under this subchapter.

1 “(B) OBJECTIVITY AND INDEPENDENCE.—

2 The guidelines and requirements issued under
3 subparagraph (A) shall include provisions to en-
4 sure the objectivity and independence of the
5 evaluator so as to avoid any real or apparent
6 conflict of interest or potential influence on the
7 outcome by—

8 “(i) parties to any such test; or

9 “(ii) any other formal evaluation car-
10 ried out under this subchapter.

11 “(C) FUNDING.—The guidelines and re-
12 quirements issued under subparagraph (A) shall
13 establish evaluation funding levels based on the
14 size and scope of each test that ensure adequate
15 evaluation of the results of the test or project.

16 “(2) SPECIAL RULE.—Any survey, question-
17 naire, or interview that the Secretary considers nec-
18 essary to carry out the evaluation of any test or pro-
19 gram assessment activity under this subchapter shall
20 not be subject to chapter 35 of title 44.

21 **“§ 525. National ITS Program Plan**

22 “(a) IN GENERAL.—

23 “(1) UPDATES.—Not later than 1 year after
24 the date of enactment of the Safe, Accountable,
25 Flexible, and Efficient Transportation Equity Act of

1 2004, the Secretary, in consultation with interested
2 stakeholders (including State transportation depart-
3 ments) shall develop a 5-year National ITS Program
4 Plan.

5 “(2) SCOPE.—The National ITS Program Plan
6 shall—

7 “(A) specify the goals, objectives, and mile-
8 stones for the research and deployment of intel-
9 ligent transportation systems in the contexts
10 of—

11 “(i) major metropolitan areas;

12 “(ii) smaller metropolitan and rural
13 areas; and

14 “(iii) commercial vehicle operations;

15 “(B) specify the manner in which specific
16 programs and projects will achieve the goals,
17 objectives, and milestones referred to in sub-
18 paragraph (A), including consideration of a 5-
19 year timeframe for the goals and objectives;

20 “(C) identify activities that provide for the
21 dynamic development, testing, and necessary re-
22 vision of standards and protocols to promote
23 and ensure interoperability in the implementa-
24 tion of intelligent transportation system tech-

1 nologies, including actions taken to establish
2 standards; and

3 “(D) establish a cooperative process with
4 State and local governments for—

5 “(i) determining desired surface
6 transportation system performance levels;
7 and

8 “(ii) developing plans for accelerating
9 the incorporation of specific intelligent
10 transportation system capabilities into sur-
11 face transportation systems.

12 “(b) REPORTING.—The National ITS Program Plan
13 shall be transmitted and biennially updated as part of the
14 surface transportation research and technology develop-
15 ment strategic plan developed under section 508(c).

16 **“§ 526. National ITS architecture and standards**

17 “(a) IN GENERAL.—

18 “(1) DEVELOPMENT, IMPLEMENTATION, AND
19 MAINTENANCE.—In accordance with section 12(d) of
20 the National Technology Transfer and Advancement
21 Act of 1995 (15 U.S.C. 272 note; 110 Stat. 783),
22 the Secretary shall develop, implement, and maintain
23 a national ITS architecture and supporting stand-
24 ards and protocols to promote the widespread use
25 and evaluation of intelligent transportation system

1 technology as a component of the surface transpor-
2 tation systems of the United States.

3 “(2) INTEROPERABILITY AND EFFICIENCY.—To
4 the maximum extent practicable, the national ITS
5 architecture shall promote interoperability among,
6 and efficiency of, intelligent transportation system
7 technologies implemented throughout the United
8 States.

9 “(3) USE OF STANDARDS DEVELOPMENT ORGA-
10 NIZATIONS.—In carrying out this section, the Sec-
11 retary shall use the services of such standards devel-
12 opment organizations as the Secretary determines to
13 be appropriate.

14 “(b) PROVISIONAL STANDARDS.—

15 “(1) IN GENERAL.—If the Secretary finds that
16 the development or selection of an intelligent trans-
17 portation system standard jeopardizes the timely
18 achievement of the objectives identified in subsection
19 (a), the Secretary may establish a provisional
20 standard—

21 “(A) after consultation with affected par-
22 ties; and

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

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

7 “(A) after consultation with affected par-
8 ties; and

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

12 “(3) PERIOD OF EFFECTIVENESS.—A provi-
13 sional standard established under paragraph (1) or
14 (2) shall—

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

16 and

17 “(B) remain in effect until such time as
18 the appropriate standards development organi-
19 zation adopts and publishes a standard.

20 “(c) WAIVER OF REQUIREMENT TO ESTABLISH PRO-
21 VISIONAL CRITICAL STANDARD.—

22 “(1) IN GENERAL.—The Secretary may waive
23 the requirement under subsection (b)(2) to establish
24 a provisional standard if the Secretary determines
25 that additional time would be productive in, or that

1 establishment of a provisional standard would be
2 counterproductive to, the timely achievement of the
3 objectives identified in subsection (a).

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

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

9 “(B) the reasons for and effects of grant-
10 ing the waiver; and

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

17 “(3) WITHDRAWAL OF WAIVER.—

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

21 “(B) NOTICE.—On withdrawal of a waiver,
22 the Secretary shall publish in the Federal Reg-
23 ister a notice that describes—

24 “(i) each standard for which the waiv-
25 er has been withdrawn; and

1 “(ii) the reasons for withdrawing the
2 waiver.

3 “(d) CONFORMITY WITH NATIONAL ITS ARCHITEC-
4 TURE.—

5 “(1) IN GENERAL.—Except as provided in para-
6 graphs (2) and (3), the Secretary shall ensure that
7 intelligent transportation system projects carried out
8 using funds made available from the Highway Trust
9 Fund conform to the national ITS architecture, ap-
10 plicable standards or provisional standards, and pro-
11 tocols developed under subsection (a).

12 “(2) DISCRETION OF SECRETARY.—The Sec-
13 retary may authorize exceptions to paragraph (1) for
14 projects designed to achieve specific research objec-
15 tives outlined in—

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

18 “(B) the surface transportation research
19 and technology development strategic plan de-
20 veloped under section 508(c).

21 “(3) EXCEPTIONS.—Paragraph (1) shall not
22 apply to funds used for operation or maintenance of
23 an intelligent transportation system in existence on
24 the date of enactment of this subchapter.

1 **“§ 527. Commercial vehicle information systems and**
2 **networks deployment**

3 “(a) DEFINITIONS.—In this section:

4 “(1) COMMERCIAL VEHICLE INFORMATION SYS-
5 TEMS AND NETWORKS.—The term ‘commercial vehi-
6 cle information systems and networks’ means the in-
7 formation systems and communications networks
8 that provide the capability to—

9 “(A) improve the safety of commercial ve-
10 hicle operations;

11 “(B) increase the efficiency of regulatory
12 inspection processes to reduce administrative
13 burdens by advancing technology to facilitate
14 inspections and increase the effectiveness of en-
15 forcement efforts;

16 “(C) advance electronic processing of reg-
17 istration information, driver licensing informa-
18 tion, fuel tax information, inspection and crash
19 data, and other safety information;

20 “(D) enhance the safe passage of commer-
21 cial vehicles across the United States and
22 across international borders; and

23 “(E) promote the communication of infor-
24 mation among the States and encourage
25 multistate cooperation and corridor develop-
26 ment.

1 “(2) COMMERCIAL VEHICLE OPERATIONS.—

2 “(A) IN GENERAL.—The term ‘commercial
3 vehicle operations’ means motor carrier oper-
4 ations and motor vehicle regulatory activities
5 associated with the commercial movement of
6 goods (including hazardous materials) and pas-
7 sengers.

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

11 “(i) the issuance of operating creden-
12 tials;

13 “(ii) the administration of motor vehi-
14 cle and fuel taxes; and

15 “(iii) the administration of roadside
16 safety and border crossing inspection and
17 regulatory compliance operations.

18 “(3) CORE DEPLOYMENT.—The term ‘core de-
19 ployment’ means the deployment of systems in a
20 State necessary to provide the State with—

21 “(A) safety information exchange to—

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

1 “(ii) connect to the Safety and Fit-
2 ness Electronic Records system for access
3 to—

4 “(I) interstate carrier and com-
5 mercial vehicle data;

6 “(II) summaries of past safety
7 performance; and

8 “(III) commercial vehicle creden-
9 tials information; and

10 “(iii) exchange carrier data and com-
11 mercial vehicle safety and credentials infor-
12 mation within the State and connect to
13 Safety and Fitness Electronic Records sys-
14 tem for access to interstate carrier and
15 commercial vehicle data;

16 “(B) interstate credentials administration
17 to—

18 “(i)(I) perform end-to-end (including
19 carrier application) jurisdiction application
20 processing, and credential issuance, of at
21 least the International Registration Plan
22 and International Fuel Tax Agreement cre-
23 dentials; and

24 “(II) extend the processing to other
25 credentials, including intrastate, titling,

1 oversize or overweight requirements, car-
2 rier registration, and hazardous materials;

3 “(ii) connect to the International Reg-
4 istration Plan and International Fuel Tax
5 Agreement clearinghouses; and

6 “(iii)(I) have at least 10 percent of
7 the transaction volume handled electroni-
8 cally; and

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

12 “(C) roadside electronic screening to elec-
13 tronically screen transponder-equipped commer-
14 cial vehicles at a minimum of 1 fixed or mobile
15 inspection site and to replicate the screening at
16 other sites.

17 “(4) EXPANDED DEPLOYMENT.—The term ‘ex-
18 panded deployment’ means the deployment of sys-
19 tems in a State that—

20 “(A) exceed the requirements of a core de-
21 ployment of commercial vehicle information sys-
22 tems and networks;

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

25 “(C) enhance transportation security.

1 “(b) PROGRAM.—The Secretary shall carry out a
2 commercial vehicle information systems and networks pro-
3 gram to—

4 “(1) improve the safety and productivity of
5 commercial vehicles and drivers; and

6 “(2) reduce costs associated with commercial
7 vehicle operations and Federal and State commercial
8 vehicle regulatory requirements.

9 “(c) PURPOSE.—It is the purpose of the program to
10 advance the technological capability and promote the de-
11 ployment of intelligent transportation system applications
12 for commercial vehicle operations, including commercial
13 vehicle, commercial driver, and carrier-specific information
14 systems and networks.

15 “(d) CORE DEPLOYMENT GRANTS.—

16 “(1) IN GENERAL.—The Secretary shall make
17 grants to eligible States for the core deployment of
18 commercial vehicle information systems and net-
19 works.

20 “(2) ELIGIBILITY.—To be eligible for a core de-
21 ployment grant under this subsection, a State
22 shall—

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

1 “(B) certify to the Secretary that the com-
2 mercial vehicle information systems and net-
3 works deployment activities of the State (in-
4 cluding hardware procurement, software and
5 system development, and infrastructure modi-
6 fications)—

7 “(i) are consistent with the national
8 intelligent transportation systems and com-
9 mercial vehicle information systems and
10 networks architectures and available stand-
11 ards; and

12 “(ii) promote interoperability and effi-
13 ciency, to the maximum extent practicable;
14 and

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

22 “(3) AMOUNT OF GRANTS.—The maximum ag-
23 gregate amount a State may receive under this sub-
24 section for the core deployment of commercial vehi-
25 cle information systems and networks may not ex-

1 ceed \$2,500,000, including funds received under sec-
2 tion 2001(a) of the Safe, Accountable, Flexible, and
3 Efficient Transportation Equity Act of 2004 for the
4 core deployment of commercial vehicle information
5 systems and networks.

6 “(4) USE OF FUNDS.—

7 “(A) IN GENERAL.—Subject to subpara-
8 graph (B), funds from a grant under this sub-
9 section may only be used for the core deploy-
10 ment of commercial vehicle information systems
11 and networks.

12 “(B) REMAINING FUNDS.—An eligible
13 State that has completed the core deployment
14 of commercial vehicle information systems and
15 networks, or completed the deployment before
16 core deployment grant funds are expended, may
17 use the remaining core deployment grant funds
18 for the expanded deployment of commercial ve-
19 hicle information systems and networks in the
20 State.

21 “(e) EXPANDED DEPLOYMENT GRANTS.—

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

1 request, for the expanded deployment of commercial
2 vehicle information systems and networks.

3 “(2) ELIGIBILITY.—Each State that has com-
4 pleted the core deployment of commercial vehicle in-
5 formation systems and networks shall be eligible for
6 an expanded deployment grant.

7 “(3) AMOUNT OF GRANTS.—Each fiscal year,
8 the Secretary may distribute funds available for ex-
9 panded deployment grants equally among the eligible
10 States in an amount that does not exceed
11 \$1,000,000 for each State.

12 “(4) USE OF FUNDS.—A State may use funds
13 from a grant under this subsection only for the ex-
14 panded deployment of commercial vehicle informa-
15 tion systems and networks.

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

21 “(g) FUNDING.—Funds authorized to be appro-
22 priated to carry out this section shall be available for obli-
23 gation in the same manner and to the same extent as if
24 the funds were apportioned under chapter 1, except that
25 the funds shall remain available until expended.

1 **“§ 528. Research and development**

2 “(a) IN GENERAL.—The Secretary shall carry out a
3 comprehensive program of intelligent transportation sys-
4 tem research, development, and operational tests of intel-
5 ligent vehicles and intelligent infrastructure systems, and
6 other similar activities that are necessary to carry out this
7 subchapter.

8 “(b) PRIORITY AREAS.—Under the program, the Sec-
9 retary shall give priority to funding projects that—

10 “(1) assist in the development of an inter-
11 connected national intelligent transportation system
12 network that—

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

15 “(B) supports national security;

16 “(C) reduces, by at least 20 percent, the
17 cost of manufacturing, deploying, and operating
18 intelligent transportation systems network com-
19 ponents;

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

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

24 “(2) address traffic management, incident man-
25 agement, transit management, toll collection traveler

1 information, or highway operations systems with
2 goals of—

3 “(A) reducing metropolitan congestion by
4 5 percent by 2010;

5 “(B) ensuring that a national, interoper-
6 able 511 system, along with a national traffic
7 information system that includes a user-friend-
8 ly, comprehensive website, is fully implemented
9 for use by travelers throughout the United
10 States by September 30, 2010; and

11 “(C)(i) improving incident management re-
12 sponse, particularly in rural areas, so that rural
13 emergency response times are reduced by an av-
14 erage of 10 minutes; and

15 “(ii) subject to subsection (d), improving
16 communication between emergency care pro-
17 viders and trauma centers;

18 “(3) address traffic management, incident man-
19 agement, transit management, toll collection, trav-
20 eler information, or highway operations systems;

21 “(4) conduct operational tests of the integration
22 of at least 3 crash-avoidance technologies in pas-
23 senger vehicles;

24 “(5) incorporate human factors research, in-
25 cluding the science of the driving process;

1 “(6) facilitate the integration of intelligent in-
2 frastructure, vehicle, and control technologies;

3 “(7) incorporate research on the impact of envi-
4 ronmental, weather, and natural conditions on intel-
5 ligent transportation systems, including the effects
6 of cold climates;

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

12 “(9) examine—

13 “(A) the application to intelligent trans-
14 portation systems of appropriately modified ex-
15 isting technologies from other industries; and

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

19 “(10) develop and test communication tech-
20 nologies that—

21 “(A) are based on an assessment of the
22 needs of officers participating in a motor car-
23 rier safety program funded under section 31104
24 of title 49;

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

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

6 “(D) provide the means for officers partici-
7 pating in a motor carrier safety program fund-
8 ed under section 31104 of title 49 to directly
9 assess, without an intermediary, current and
10 accurate safety and regulatory information on
11 motor carriers, commercial motor vehicles and
12 drivers at roadside or mobile inspection facili-
13 ties;

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

17 “(12) improve sensing and wireless communica-
18 tions that provide real-time information regarding
19 congestion and incidents;

20 “(13) develop and test high-accuracy, lane-level,
21 real-time accessible digital map architectures that
22 can be used by intelligent vehicles and intelligent in-
23 frastructure elements to facilitate safety and crash
24 avoidance (including establishment of national
25 standards for an open-architecture digital map of all

1 public roads that is compatible with electronic 9-1-
2 1 services);

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

6 “(A) emergency services;

7 “(B) road pricing; and

8 “(C) local economic development; and

9 “(15) advance the use of intelligent transpor-
10 tation systems to facilitate high-performance trans-
11 portation systems, such as through—

12 “(A) congestion-pricing;

13 “(B) real-time facility management;

14 “(C) rapid-emergency response; and

15 “(D) just-in-time transit.

16 “(c) OPERATIONAL TESTS.—Operational tests con-
17 ducted under this section shall be designed for—

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

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

23 “(3) the development and implementation of
24 standards.

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

4 **“§ 529. Use of funds**

5 “(a) IN GENERAL.—For each fiscal year, not more
6 than \$5,000,000 of the funds made available to carry out
7 this subchapter shall be used for intelligent transportation
8 system outreach, public relations, displays, tours, and bro-
9 chures.

10 “(b) APPLICABILITY.—Subsection (a) shall not apply
11 to intelligent transportation system training, scholarships,
12 or the publication or distribution of research findings,
13 technical guidance, or similar documents.”

14 (b) CONFORMING AMENDMENT.—Title V of the
15 Transportation Equity Act for the 21st Century is amend-
16 ed by striking subtitle C (23 U.S.C. 502 note; 112 Stat.
17 452).

18 **TITLE III—PUBLIC**
19 **TRANSPORTATION**

20 **SEC. 3001. SHORT TITLE.**

21 This title may be cited as the “Federal Public Trans-
22 portation Act of 2004”.

1 **SEC. 3002. AMENDMENTS TO TITLE 49, UNITED STATES**
2 **CODE; UPDATED TERMINOLOGY.**

3 (a) AMENDMENTS TO TITLE 49.—Except as other-
4 wise specifically provided, whenever in this title an amend-
5 ment or repeal is expressed in terms of an amendment
6 to, or repeal of, a section or other provision of law, the
7 reference shall be considered to be made to a section or
8 other provision of title 49, United States Code.

9 (b) UPDATED TERMINOLOGY.—Except for sections
10 5301(f), 5302(a)(7), and 5315, chapter 53, including the
11 chapter analysis, is amended by striking “mass transpor-
12 tation” each place it appears and inserting “public trans-
13 portation”.

14 **SEC. 3003. POLICIES, FINDINGS, AND PURPOSES.**

15 (a) DEVELOPMENT AND REVITALIZATION OF PUBLIC
16 TRANSPORTATION SYSTEMS.—Section 5301(a) is amend-
17 ed to read as follows:

18 “(a) DEVELOPMENT AND REVITALIZATION OF PUB-
19 LIC TRANSPORTATION SYSTEMS.—It is in the economic
20 interest of the United States to foster the development and
21 revitalization of public transportation systems, which are
22 coordinated with other modes of transportation, that
23 maximize the efficient, secure, and safe mobility of individ-
24 uals and minimize environmental impacts.”.

25 (b) GENERAL FINDINGS.—Section 5301(b)(1) is
26 amended—

1 (1) by striking “70 percent” and inserting
2 “two-thirds”; and

3 (2) by striking “urban areas” and inserting
4 “urbanized areas”.

5 (c) PRESERVING THE ENVIRONMENT.—Section
6 5301(e) is amended—

7 (1) by striking “an urban” and inserting “a”;
8 and

9 (2) by striking “under sections 5309 and 5310
10 of this title”.

11 (d) GENERAL PURPOSES.—Section 5301(f) is
12 amended—

13 (1) in paragraph (1)—

14 (A) by striking “improved mass” and in-
15 serting “improved public”; and

16 (B) by striking “public and private mass
17 transportation companies” and inserting “pub-
18 lic transportation companies and private compa-
19 nies engaged in public transportation”;

20 (2) in paragraph (2)—

21 (A) by striking “urban mass” and insert-
22 ing “public”; and

23 (B) by striking “public and private mass
24 transportation companies” and inserting “pub-

1 lic transportation companies and private compa-
2 nies engaged in public transportation”;

3 (3) in paragraph (3)—

4 (A) by striking “urban mass” and insert-
5 ing “public”; and

6 (B) by striking “public or private mass
7 transportation companies” and inserting “pub-
8 lic transportation companies or private compa-
9 nies engaged in public transportation”; and

10 (4) in paragraph (5), by striking “urban mass”
11 and inserting “public”.

12 **SEC. 3004. DEFINITIONS.**

13 Section 5302(a) is amended—

14 (1) in paragraph (1)—

15 (A) in subparagraph (G)(i), by inserting
16 “including the intercity bus and intercity rail
17 portions of such facility or mall,” after “trans-
18 portation mall,”;

19 (B) in subparagraph (G)(ii), by inserting
20 “, except for the intercity bus portion of inter-
21 modal facilities or malls,” after “commercial
22 revenue-producing facility”;

23 (C) in subparagraph (H)—

24 (i) by striking “and” after “innova-
25 tive” and inserting “or”; and

1 (ii) by striking “or” after the semi-
2 colon at the end;

3 (D) in subparagraph (I), by striking the
4 period at the end and inserting a semicolon;
5 and

6 (E) by adding at the end the following:

7 “(J) crime prevention and security,
8 including—

9 “(i) projects to refine and develop se-
10 curity and emergency response plans; or

11 “(ii) projects to detect chemical or bi-
12 ological agents in public transportation;

13 “(K) conducting emergency response
14 drills with public transportation agencies
15 and local first response agencies or secu-
16 rity training for public transportation em-
17 ployees, except for expenses relating to op-
18 erations; or

19 “(L) establishing a debt service re-
20 serve, made up of deposits with a bond-
21 holder’s trustee, to ensure the timely pay-
22 ment of principal and interest on bonds
23 issued by a grant recipient to finance an
24 eligible project under this chapter.”;

25 (2) by striking paragraph (16);

1 (3) by redesignating paragraphs (8) through
2 (15) as paragraphs (9) through (16), respectively;

3 (4) by striking paragraph (7) and inserting the
4 following:

5 “(7) MASS TRANSPORTATION.—The term ‘mass
6 transportation’ means public transportation.

7 “(8) MOBILITY MANAGEMENT.—The term ‘mo-
8 bility management’ means a short-range planning or
9 management activity or project that does not include
10 operating public transportation services and—

11 “(A) improves coordination among public
12 transportation providers, including private com-
13 panies engaged in public transportation;

14 “(B) addresses customer needs by tailoring
15 public transportation services to specific market
16 niches; or

17 “(C) manages public transportation de-
18 mand.”;

19 (5) by amending paragraph (11), as redesign-
20 ated, to read as follows:

21 “(11) PUBLIC TRANSPORTATION.—The term
22 ‘public transportation’ means transportation by a
23 conveyance that provides local regular and con-
24 tinuing general or special transportation to the pub-
25 lic, but does not include school bus, charter bus,

1 intercity bus or passenger rail, or sightseeing trans-
2 portation.”;

3 (6) in subparagraphs (A) and (E) of paragraph
4 (16), as redesignated, by striking “and” each place
5 it appears and inserting “or”; and

6 (7) by amending paragraph (17) to read as fol-
7 lows:

8 “(17) URBANIZED AREA.—The term ‘urbanized
9 area’ means an area encompassing a population of
10 not less than 50,000 people that has been defined
11 and designated in the most recent decennial census
12 as an ‘urbanized area’ by the Secretary of Com-
13 merce.”.

14 **SEC. 3005. METROPOLITAN TRANSPORTATION PLANNING.**

15 Section 5303 is amended to read as follows:

16 **“§ 5303. Metropolitan transportation planning**

17 “(a) DEFINITIONS.—As used in this section and in
18 section 5304, the following definitions shall apply:

19 “(1) CONSULTATION.—A ‘consultation’ occurs
20 when 1 party—

21 “(A) confers with another identified party
22 in accordance with an established process;

23 “(B) prior to taking action, considers the
24 views of the other identified party; and

1 “(C) periodically informs that party about
2 action taken.

3 “(2) METROPOLITAN PLANNING AREA.—The
4 term ‘metropolitan planning area’ means the geo-
5 graphic area determined by agreement between the
6 metropolitan planning organization and the Gov-
7 ernor under subsection (d).

8 “(3) METROPOLITAN PLANNING ORGANIZA-
9 TION.—The term ‘metropolitan planning organiza-
10 tion’ means the Policy Board of the organization
11 designated under subsection (e).

12 “(4) NONMETROPOLITAN AREA.—The term
13 ‘nonmetropolitan area’ means any geographic area
14 outside all designated metropolitan planning areas.

15 “(5) NONMETROPOLITAN LOCAL OFFICIAL.—
16 The term ‘nonmetropolitan local official’ means any
17 elected or appointed official of general purpose local
18 government located in a nonmetropolitan area who is
19 responsible for transportation services for such local
20 government.

21 “(b) GENERAL REQUIREMENTS.—

22 “(1) DEVELOPMENT OF PLANS AND PRO-
23 GRAMS.—To accomplish the objectives described in
24 section 5301(a), each metropolitan planning organi-
25 zation, in cooperation with the State and public

1 transportation operators, shall develop transpor-
2 tation plans and programs for metropolitan planning
3 areas of the State in which it is located.

4 “(2) CONTENTS.—The plans and programs de-
5 veloped under paragraph (1) for each metropolitan
6 planning area shall provide for the development and
7 integrated management and operation of transpor-
8 tation systems and facilities (including pedestrian
9 walkways and bicycle transportation facilities) that
10 will function as an intermodal transportation system
11 for the metropolitan planning area and as an inte-
12 gral part of an intermodal transportation system for
13 the State and the United States.

14 “(3) PROCESS OF DEVELOPMENT.—The process
15 for developing the plans and programs shall provide
16 for consideration of all modes of transportation and
17 shall be continuing, cooperative, and comprehensive
18 to the degree appropriate, based on the complexity
19 of the transportation problems to be addressed.

20 “(4) PLANNING AND PROJECT DEVELOP-
21 MENT.—The metropolitan planning organization, the
22 State Department of Transportation, and the appro-
23 priate public transportation provider shall agree
24 upon the approaches that will be used to evaluate al-
25 ternatives and identify transportation improvements

1 that address the most complex problems and press-
2 ing transportation needs in the metropolitan area.

3 “(c) DESIGNATION OF METROPOLITAN PLANNING
4 ORGANIZATIONS.—

5 “(1) IN GENERAL.—To carry out the transpor-
6 tation planning process under this section, a metro-
7 politan planning organization shall be designated for
8 each urbanized area—

9 “(A) by agreement between the Governor
10 and units of general purpose local government
11 that combined represent not less than 75 per-
12 cent of the affected population (including the
13 incorporated city or cities named by the Bureau
14 of the Census in designating the urbanized
15 area); or

16 “(B) in accordance with procedures estab-
17 lished by applicable State or local law.

18 “(2) STRUCTURE.—Each metropolitan planning
19 organization designated under paragraph (1) that
20 serves an area identified as a transportation man-
21 agement area shall consist of—

22 “(A) local elected officials;

23 “(B) officials of public agencies that ad-
24 minister or operate major modes of transpor-
25 tation in the metropolitan area; and

1 “(C) appropriate State officials.

2 “(3) LIMITATION ON STATUTORY CONSTRUC-
3 TION.—Nothing in this subsection shall be construed
4 to interfere with the authority, under any State law
5 in effect on December 18, 1991, of a public agency
6 with multimodal transportation responsibilities—

7 “(A) to develop plans and programs for
8 adoption by a metropolitan planning organiza-
9 tion; and

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

13 “(4) CONTINUING DESIGNATION.—The designa-
14 tion of a metropolitan planning organization under
15 this subsection or any other provision of law shall
16 remain in effect until the metropolitan planning or-
17 ganization is redesignated under paragraph (5).

18 “(5) REDESIGNATION PROCEDURES.—A metro-
19 politan planning organization may be redesignated
20 by agreement between the Governor and units of
21 general purpose local government that combined rep-
22 resent not less than 75 percent of the existing plan-
23 ning area population (including the incorporated city
24 or cities named by the Bureau of the Census in des-

1 ignating the urbanized area) as appropriate to carry
2 out this section.

3 “(6) DESIGNATION OF MORE THAN 1 METRO-
4 POLITAN PLANNING ORGANIZATION.—More than 1
5 metropolitan planning organization may be des-
6 ignated within an existing metropolitan planning
7 area only if the Governor and the existing metropoli-
8 tan planning organization determine that the size
9 and complexity of the existing metropolitan planning
10 area make designation of more than 1 metropolitan
11 planning organization for the area appropriate.

12 “(d) METROPOLITAN PLANNING AREA BOUND-
13 ARIES.—

14 “(1) IN GENERAL.—For the purposes of this
15 section, the boundaries of a metropolitan planning
16 area shall be determined by agreement between the
17 metropolitan planning organization and the Gov-
18 ernor.

19 “(2) INCLUDED AREA.—Each metropolitan
20 planning area—

21 “(A) shall encompass at least the existing
22 urbanized area and the contiguous area ex-
23 pected to become urbanized within a 20-year
24 forecast period for the transportation plan; and

1 “(B) may encompass the entire metropoli-
2 tan statistical area or consolidated metropolitan
3 statistical area, as defined by the Office of
4 Management and Budget.

5 “(3) IDENTIFICATION OF NEW URBANIZED
6 AREAS WITHIN EXISTING PLANNING AREA BOUND-
7 ARIES.—The designation by the Bureau of the Cen-
8 sus of new urbanized areas within an existing metro-
9 politan planning area shall not require the redesis-
10 gation of the existing metropolitan planning organi-
11 zation.

12 “(4) EXISTING METROPOLITAN PLANNING
13 AREAS IN NONATTAINMENT.—Notwithstanding para-
14 graph (2), in the case of an urbanized area des-
15 ignated as a nonattainment area for ozone or carbon
16 monoxide under the Clean Air Act (42 U.S.C. 7401
17 et seq.), the boundaries of the metropolitan planning
18 area in existence as of the date of enactment of the
19 Federal Public Transportation Act of 2004 shall be
20 retained, except that the boundaries may be adjusted
21 by agreement of the Governor and affected metro-
22 politan planning organizations in accordance with
23 paragraph (5).

24 “(5) NEW METROPOLITAN PLANNING AREAS IN
25 NONATTAINMENT.—If an urbanized area is des-

1 ignated after the date of enactment of this para-
2 graph in a nonattainment area for ozone or carbon
3 monoxide, the boundaries of the metropolitan plan-
4 ning area—

5 “(A) shall be established in accordance
6 with subsection (c)(1);

7 “(B) shall encompass the areas described
8 in paragraph (2)(A);

9 “(C) may encompass the areas described in
10 paragraph (2)(B); and

11 “(D) may address any nonattainment iden-
12 tified under the Clean Air Act (42 U.S.C. 7401
13 et seq.) for ozone or carbon monoxide.

14 “(e) COORDINATION IN MULTISTATE AREAS.—

15 “(1) IN GENERAL.—The Secretary shall encour-
16 age each Governor with responsibility for a portion
17 of a multistate metropolitan area and the appro-
18 priate metropolitan planning organizations to pro-
19 vide coordinated transportation planning for the en-
20 tire metropolitan area.

21 “(2) INTERSTATE COMPACTS.—States are
22 authorized—

23 “(A) to enter into agreements or compacts
24 with other States, which agreements or com-
25 pacts are not in conflict with any law of the

1 United States, for cooperative efforts and mu-
2 tual assistance in support of activities author-
3 ized under this section as the activities pertain
4 to interstate areas and localities within the
5 States; and

6 “(B) to establish such agencies, joint or
7 otherwise, as the States may determine desir-
8 able for making the agreements and compacts
9 effective.

10 “(3) LAKE TAHOE REGION.—

11 “(A) DEFINITION.—In this paragraph, the
12 term ‘Lake Tahoe region’ has the meaning
13 given the term ‘region’ in subdivision (a) of ar-
14 ticle II of the Tahoe Regional Planning Com-
15 pact, as set forth in the first section of Public
16 Law 96–551 (94 Stat. 3234).

17 “(B) TRANSPORTATION PLANNING PROC-
18 ESS.—The Secretary shall—

19 “(i) establish with the Federal land
20 management agencies that have jurisdic-
21 tion over land in the Lake Tahoe region a
22 transportation planning process for the re-
23 gion; and

24 “(ii) coordinate the transportation
25 planning process with the planning process

1 required of State and local governments
2 under this section and section 5304.

3 “(C) INTERSTATE COMPACT.—

4 “(i) IN GENERAL.—Subject to clause
5 (ii) and notwithstanding subsection (c), to
6 carry out the transportation planning proc-
7 ess required by this section, California and
8 Nevada may designate a metropolitan
9 planning organization for the Lake Tahoe
10 region, by agreement between the Governor
11 of the State of California, the Governor of
12 the State of Nevada, and units of general
13 purpose local government that combined
14 represent not less than 75 percent of the
15 affected population (including the incor-
16 porated city or cities named by the Bureau
17 of the Census in designating the urbanized
18 area), or in accordance with procedures es-
19 tablished by applicable State or local law.

20 “(ii) INVOLVEMENT OF FEDERAL
21 LAND MANAGEMENT AGENCIES.—

22 “(I) REPRESENTATION.—The
23 policy board of a metropolitan plan-
24 ning organization designated under
25 clause (i) shall include a representa-

1 tive of each Federal land management
2 agency that has jurisdiction over land
3 in the Lake Tahoe region.

4 “(II) FUNDING.—In addition to
5 funds made available to the metropoli-
6 tan planning organization under other
7 provisions of title 23 and this chapter,
8 not more than 1 percent of the funds
9 allocated under section 202 of title 23
10 may be used to carry out the trans-
11 portation planning process for the
12 Lake Tahoe region under this sub-
13 paragraph.

14 “(D) ACTIVITIES.—Highway projects in-
15 cluded in transportation plans developed under
16 this paragraph—

17 “(i) shall be selected for funding in a
18 manner that facilitates the participation of
19 the Federal land management agencies
20 that have jurisdiction over land in the
21 Lake Tahoe region; and

22 “(ii) may, in accordance with chapter
23 2 of title 23, be funded using funds allo-
24 cated under section 202 of title 23.

1 “(f) COORDINATION OF METROPOLITAN PLANNING
2 ORGANIZATIONS.—

3 “(1) NONATTAINMENT AREAS.—If more than 1
4 metropolitan planning organization has authority
5 within a metropolitan area or an area which is des-
6 igned as a nonattainment area for ozone or carbon
7 monoxide under the Clean Air Act (42 U.S.C. 7401
8 et seq.), each metropolitan planning organization
9 shall consult with the other metropolitan planning
10 organizations designated for such area and the State
11 in the coordination of plans required by this section.

12 “(2) TRANSPORTATION IMPROVEMENTS LO-
13 CATED IN MULTIPLE METROPOLITAN PLANNING
14 AREAS.—If a transportation improvement funded
15 from the highway trust fund is located within the
16 boundaries of more than 1 metropolitan planning
17 area, the metropolitan planning organizations shall
18 coordinate plans regarding the transportation im-
19 provement.

20 “(3) INTERREGIONAL AND INTERSTATE
21 PROJECT IMPACTS.—Planning for National Highway
22 System, commuter rail projects, or other projects
23 with substantial impacts outside a single metropoli-
24 tan planning area or State shall be coordinated di-

1 rectly with the affected, contiguous, metropolitan
2 planning organizations and States.

3 “(4) COORDINATION WITH OTHER PLANNING
4 PROCESSES.—

5 “(A) IN GENERAL.—The Secretary shall
6 encourage each metropolitan planning organiza-
7 tion to coordinate its planning process, to the
8 maximum extent practicable, with those officials
9 responsible for other types of planning activities
10 that are affected by transportation, including
11 State and local land use planning, economic de-
12 velopment, environmental protection, airport op-
13 erations, housing, and freight.

14 “(B) OTHER CONSIDERATIONS.—The met-
15 ropolitan planning process shall develop trans-
16 portation plans with due consideration of, and
17 in coordination with, other related planning ac-
18 tivities within the metropolitan area. This
19 should include the design and delivery of trans-
20 portation services within the metropolitan area
21 that are provided by—

22 “(i) recipients of assistance under this
23 chapter;

24 “(ii) governmental agencies and non-
25 profit organizations (including representa-

1 tives of the agencies and organizations)
2 that receive Federal assistance from a
3 source other than the Department of
4 Transportation to provide nonemergency
5 transportation services; and

6 “(iii) recipients of assistance under
7 section 204 of title 23.

8 “(g) SCOPE OF PLANNING PROCESS.—

9 “(1) IN GENERAL.—The goals and objectives
10 developed through the metropolitan planning process
11 for a metropolitan planning area under this section
12 shall address, in relation to the performance of the
13 metropolitan area transportation systems—

14 “(A) supporting the economic vitality of
15 the metropolitan area, especially by enabling
16 global competitiveness, productivity, and effi-
17 ciency, including through services provided by
18 public and private operators;

19 “(B) increasing the safety of the transpor-
20 tation system for motorized and nonmotorized
21 users;

22 “(C) increasing the security of the trans-
23 portation system for motorized and non-
24 motorized users;

1 “(D) increasing the accessibility and mobil-
2 ity of people and for freight, including through
3 services provided by public and private opera-
4 tors;

5 “(E) protecting and enhancing the environ-
6 ment (including the protection of habitat, water
7 quality, and agricultural and forest land, while
8 minimizing invasive species), promoting energy
9 conservation, and promoting consistency be-
10 tween transportation improvements and State
11 and local land use planning and economic devel-
12 opment patterns (including minimizing adverse
13 health effects from mobile source air pollution
14 and promoting the linkage of the transportation
15 and development goals of the metropolitan
16 area);

17 “(F) enhancing the integration and
18 connectivity of the transportation system,
19 across and between modes, for people and
20 freight, including through services provided by
21 public and private operators;

22 “(G) promoting efficient system manage-
23 ment and operation; and

24 “(H) emphasizing the preservation and ef-
25 ficient use of the existing transportation sys-

1 tem, including services provided by public and
2 private operators.

3 “(2) SELECTION OF FACTORS.—After soliciting
4 and considering any relevant public comments, the
5 metropolitan planning organization shall determine
6 which of the factors described in paragraph (1) are
7 most appropriate to consider.

8 “(3) FAILURE TO CONSIDER FACTORS.—The
9 failure to consider any factor specified in paragraph
10 (1) shall not be reviewable by any court under title
11 23, this title, subchapter II of chapter 5 of title 5,
12 or chapter 7 of title 5 in any matter affecting a
13 transportation plan, a transportation improvement
14 plan, a project or strategy, or the certification of a
15 planning process.

16 “(h) DEVELOPMENT OF TRANSPORTATION PLAN.—

17 “(1) IN GENERAL.—

18 “(A) REQUIREMENT.—Each metropolitan
19 planning organization shall develop a transpor-
20 tation plan for its metropolitan planning area in
21 accordance with this subsection, and update
22 such plan—

23 “(i) not less frequently than once
24 every 4 years in areas designated as non-
25 attainment, as defined in section 107(d) of

1 the Clean Air Act (42 U.S.C. 7407(d)),
2 and in areas that were nonattainment that
3 have been redesignated as attainment, in
4 accordance with paragraph (3) of such sec-
5 tion, with a maintenance plan under sec-
6 tion 175A of the Clean Air Act (42 U.S.C.
7 7505a); or

8 “(ii) not less frequently than once
9 every 5 years in areas designated as at-
10 tainment, as defined in section 107(d) of
11 the Clean Air Act.

12 “(B) COORDINATION FACTORS.—In devel-
13 oping the transportation plan under this sec-
14 tion, each metropolitan planning organization
15 shall consider the factors described in sub-
16 section (f) over a 20-year forecast period.

17 “(C) FINANCIAL ESTIMATES.—For the
18 purpose of developing the transportation plan,
19 the metropolitan planning organization, transit
20 operator, and State shall cooperatively develop
21 estimates of funds that will be available to sup-
22 port plan implementation.

23 “(2) MITIGATION ACTIVITIES.—

1 “(A) IN GENERAL.—A transportation plan
2 under this subsection shall include a discussion
3 of—

4 “(i) types of potential habitat,
5 hydrological, and environmental mitigation
6 activities that may assist in compensating
7 for loss of habitat, wetland, and other envi-
8 ronmental functions; and

9 “(ii) potential areas to carry out these
10 activities, including a discussion of areas
11 that may have the greatest potential to re-
12 store and maintain the habitat types and
13 hydrological or environmental functions af-
14 fected by the plan.

15 “(B) CONSULTATION.—The discussion de-
16 scribed in subparagraph (A) shall be developed
17 in consultation with Federal and State tribal
18 wildlife, land management, and regulatory
19 agencies.

20 “(3) CONTENTS.— A transportation plan under
21 this subsection shall be in a form that the Secretary
22 determines to be appropriate and shall contain—

23 “(A) an identification of transportation fa-
24 cilities, including major roadways, transit,
25 multimodal and intermodal facilities, intermodal

1 connectors, and other relevant facilities identi-
2 fied by the metropolitan planning organization,
3 which should function as an integrated metro-
4 politan transportation system, emphasizing
5 those facilities that serve important national
6 and regional transportation functions;

7 “(B) a financial plan that—

8 “(i) demonstrates how the adopted
9 transportation plan can be implemented;

10 “(ii) indicates resources from public
11 and private sources that are reasonably ex-
12 pected to be made available to carry out
13 the plan;

14 “(iii) recommends any additional fi-
15 nancing strategies for needed projects and
16 programs; and

17 “(iv) may include, for illustrative pur-
18 poses, additional projects that would be in-
19 cluded in the adopted transportation plan
20 if approved by the Secretary and reason-
21 able additional resources beyond those
22 identified in the financial plan were avail-
23 able;

24 “(C) operational and management strate-
25 gies to improve the performance of existing

1 transportation facilities to relieve vehicular con-
2 gestion and maximize the safety and mobility of
3 people and goods;

4 “(D) capital investment and other strate-
5 gies to preserve the existing metropolitan trans-
6 portation infrastructure and provide for
7 multimodal capacity increases based on regional
8 priorities and needs; and

9 “(E) proposed transportation and transit
10 enhancement activities.

11 “(4) CONSULTATION.—

12 “(A) IN GENERAL.—In each metropolitan
13 area, the metropolitan planning organization
14 shall consult, as appropriate, with State and
15 local agencies responsible for land use manage-
16 ment, natural resources, environmental protec-
17 tion, conservation, and historic preservation
18 concerning the development of a long-range
19 transportation plan.

20 “(B) ISSUES.—The consultation shall
21 involve—

22 “(i) comparison of transportation
23 plans with State conservation plans or with
24 maps, if available;

1 “(ii) comparison of transportation
2 plans to inventories of natural or historic
3 resources, if available; or

4 “(iii) consideration of areas where
5 wildlife crossing structures may be needed
6 to ensure connectivity between wildlife
7 habitat linkage areas.

8 “(5) COORDINATION WITH CLEAN AIR ACT
9 AGENCIES.—In metropolitan areas in nonattainment
10 for ozone or carbon monoxide under the Clean Air
11 Act (42 U.S.C. 7401 et seq.), the metropolitan plan-
12 ning organization shall coordinate the development
13 of a transportation plan with the process for devel-
14 opment of the transportation control measures of the
15 State implementation plan required by the Clean Air
16 Act.

17 “(6) APPROVAL OF THE TRANSPORTATION
18 PLAN.—Each transportation plan prepared by a
19 metropolitan planning organization shall be—

20 “(A) approved by the metropolitan plan-
21 ning organization; and

22 “(B) submitted to the Governor for infor-
23 mation purposes at such time and in such man-
24 ner as the Secretary may reasonably require.

25 “(i) PARTICIPATION BY INTERESTED PARTIES.—

1 “(1) DEVELOPMENT OF PARTICIPATION
2 PLAN.—Not less frequently than every 4 years, each
3 metropolitan planning organization shall develop and
4 adopt a plan for participation in the process for de-
5 veloping the metropolitan transportation plan and
6 programs by—

7 “(A) citizens;

8 “(B) affected public agencies;

9 “(C) representatives of public transpor-
10 tation employees;

11 “(D) freight shippers;

12 “(E) providers of freight transportation
13 services;

14 “(F) private providers of transportation;

15 “(G) representatives of users of public
16 transit;

17 “(H) representatives of users of pedestrian
18 walkways and bicycle transportation facilities;

19 and

20 “(I) other interested parties.

21 “(2) CONTENTS OF PARTICIPATION PLAN.—The
22 participation plan—

23 “(A) shall be developed in a manner the
24 Secretary determines to be appropriate;

1 “(B) shall be developed in consultation
2 with all interested parties; and

3 “(C) shall provide that all interested par-
4 ties have reasonable opportunities to comment
5 on—

6 “(i) the process for developing the
7 transportation plan; and

8 “(ii) the contents of the transpor-
9 tation plan.

10 “(3) METHODS.—The participation plan shall
11 provide that the metropolitan planning organization
12 shall, to the maximum extent practicable—

13 “(A) hold any public meetings at conven-
14 ient and accessible locations and times;

15 “(B) employ visualization techniques to de-
16 scribe plans; and

17 “(C) make public information available in
18 electronically accessible format and means, such
19 as the World Wide Web.

20 “(4) CERTIFICATION.—Before the metropolitan
21 planning organizations approve a transportation
22 plan or program, each metropolitan planning organi-
23 zation shall certify that it has complied with the re-
24 quirements of the participation plan it has adopted.

25 “(j) TRANSPORTATION IMPROVEMENT PROGRAM.—

1 “(1) DEVELOPMENT AND UPDATE.—

2 “(A) IN GENERAL.—In cooperation with
3 the State and affected operators of public
4 transportation, a metropolitan planning organi-
5 zation designated for a metropolitan planning
6 area shall develop a transportation improvement
7 program for the area.

8 “(B) PARTICIPATION.—In developing the
9 transportation improvement program, the met-
10 ropolitan planning organization, in cooperation
11 with the Governor and any affected operator of
12 public transportation, shall provide an oppor-
13 tunity for participation by interested parties in
14 the development of the program, in accordance
15 with subsection (i).

16 “(C) UPDATES.—The transportation im-
17 provement program shall be updated not less
18 than once every 4 years and shall be approved
19 by the metropolitan planning organization and
20 the Governor.

21 “(D) FUNDING ESTIMATE.—In developing
22 the transportation improvement program, the
23 metropolitan planning organization, operators
24 of public transportation, and the State shall co-
25 operatively develop estimates of funds that are

1 reasonably expected to be available to support
2 program implementation.

3 “(E) PROJECT ADVANCEMENT.—Projects
4 listed in the transportation improvement pro-
5 gram may be selected for advancement con-
6 sistent with the project selection requirements.

7 “(F) MAJOR AMENDMENTS.—Major
8 amendments to the list described in subpara-
9 graph (E), including the addition, deletion, or
10 concept and scope change of a regionally signifi-
11 cant project, may not be advanced without—

12 “(i) appropriate public involvement;

13 “(ii) financial planning;

14 “(iii) transportation conformity anal-
15 yses; and

16 “(iv) a finding by the Federal High-
17 way Administration and Federal Transit
18 Administration that the amended plan was
19 produced in a manner consistent with this
20 section.

21 “(2) INCLUDED PROJECTS.—

22 “(A) PROJECTS UNDER CHAPTER 1 OF
23 TITLE 23 AND THIS CHAPTER.—A transpor-
24 tation improvement program developed under
25 this section for a metropolitan area shall in-

1 clude the projects and strategies within the
2 metropolitan area that are proposed for funding
3 under chapter 1 of title 23 and this chapter.

4 “(B) PROJECTS UNDER CHAPTER 2 OF
5 TITLE 23.—

6 “(i) REGIONALLY SIGNIFICANT
7 PROJECTS.—Regionally significant projects
8 proposed for funding under chapter 2 of
9 title 23 shall be identified individually in
10 the metropolitan transportation improve-
11 ment program.

12 “(ii) OTHER PROJECTS.—Projects
13 proposed for funding under chapter 2 of
14 title 23 that are not regionally significant
15 shall be grouped in 1 line item or identified
16 individually in the metropolitan transpor-
17 tation improvement program.

18 “(3) SELECTION OF PROJECTS.—

19 “(A) IN GENERAL.—Except as otherwise
20 provided under subsection (k)(4), the selection
21 of federally funded projects in metropolitan
22 planning areas shall be carried out, from the
23 approved transportation plan—

24 “(i) by the State, in the case of
25 projects under chapter 1 of title 23 or sec-

1 tion 5308, 5310, 5311, or 5317 of this
2 title;

3 “(ii) by the designated recipient, in
4 the case of projects under section 5307;
5 and

6 “(iii) in cooperation with the metro-
7 politan planning organization.

8 “(B) MODIFICATIONS TO PROJECT PRI-
9 ORITY.—Notwithstanding any other provision of
10 law, a project may be advanced from the trans-
11 portation improvement program in place of an-
12 other project in the same transportation im-
13 provement program without the approval of the
14 Secretary.

15 “(4) PUBLICATION REQUIREMENTS.—

16 “(A) PUBLICATION OF TRANSPORTATION
17 IMPROVEMENT PROGRAM.—A transportation
18 improvement program involving Federal partici-
19 pation shall be published or otherwise made
20 readily available by the metropolitan planning
21 organization for public review, including, to the
22 maximum extent practicable, in electronically
23 accessible formats and means, such as the
24 World Wide Web.

1 “(B) PUBLICATION OF ANNUAL LISTINGS
2 OF PROJECTS.—An annual listing of projects,
3 including investments in pedestrian walkways
4 and bicycle transportation facilities, for which
5 Federal funds have been obligated in the pre-
6 ceding 4 years shall be published or otherwise
7 made available for public review by the coopera-
8 tive effort of the State, transit operator, and
9 the metropolitan planning organization. This
10 listing shall be consistent with the funding cat-
11 egories identified in the transportation improve-
12 ment program.

13 “(C) RULEMAKING.—Not later than 120
14 days after the date of enactment of the Federal
15 Public Transportation Act of 2004, the Sec-
16 retary shall issue regulations specifying—

17 “(i) the types of data to be included
18 in the list described in subparagraph (B),
19 including—

20 “(I) the name, type, purpose, and
21 geocoded location of each project;

22 “(II) the Federal, State, and
23 local identification numbers assigned
24 to each project;

1 “(III) amounts obligated and ex-
2 pended on each project, sorted by
3 funding source and transportation
4 mode, and the date on which each ob-
5 ligation was made; and

6 “(IV) the status of each project;
7 and

8 “(ii) the media through which the list
9 described in subparagraph (B) will be
10 made available to the public, including
11 written and visual components for each of
12 the projects listed.

13 “(k) TRANSPORTATION MANAGEMENT AREAS.—

14 “(1) REQUIRED IDENTIFICATION.—The Sec-
15 retary shall identify each urbanized area with a pop-
16 ulation of more than 200,000 individuals as a trans-
17 portation management area.

18 “(2) TRANSPORTATION PLANS AND PRO-
19 GRAMS.—Transportation plans and programs for a
20 metropolitan planning area serving a transportation
21 management area shall be based on a continuing
22 and comprehensive transportation planning process
23 carried out by the metropolitan planning organiza-
24 tion in cooperation with the State and transit opera-
25 tors.

1 “(3) CONGESTION MANAGEMENT SYSTEM.—

2 “(A) IN GENERAL.—The transportation
3 planning process under this section shall ad-
4 dress congestion management through a process
5 that provides for effective management and op-
6 eration, based on a cooperatively developed and
7 implemented metropolitan-wide strategy, of new
8 and existing transportation facilities eligible for
9 funding under title 23 and this chapter through
10 the use of travel demand reduction and oper-
11 ational management strategies.

12 “(B) PHASE-IN SCHEDULE.—The Sec-
13 retary shall establish a phase-in schedule that
14 provides for full compliance with the require-
15 ments of this section not later than 1 year after
16 the identification of transportation management
17 areas under paragraph (1).

18 “(4) SELECTION OF PROJECTS.—

19 “(A) IN GENERAL.—All federally funded
20 projects carried out within the boundaries of a
21 metropolitan planning area serving a transpor-
22 tation management area under title 23 (except
23 for projects carried out on the National High-
24 way System and projects carried out under the
25 bridge program or the interstate maintenance

1 program) or under this chapter shall be selected
2 for implementation from the approved transpor-
3 tation improvement program by the metropoli-
4 tan planning organization designated for the
5 area in consultation with the State and any af-
6 fected public transit operator.

7 “(B) NATIONAL HIGHWAY SYSTEM
8 PROJECTS.—Projects on the National Highway
9 System carried out within the boundaries of a
10 metropolitan planning area serving a transpor-
11 tation management area and projects carried
12 out within such boundaries under the bridge
13 program or the interstate maintenance program
14 under title 23 shall be selected for implementa-
15 tion from the approved transportation improve-
16 ment program by the State in cooperation with
17 the metropolitan planning organization des-
18 ignated for the area.

19 “(5) CERTIFICATION.—

20 “(A) IN GENERAL.—The Secretary shall—

21 “(i) ensure that the metropolitan
22 planning process of a metropolitan plan-
23 ning organization serving a transportation
24 management area is being carried out in
25 accordance with Federal law; and

1 “(ii) subject to subparagraph (B), cer-
 2 tify, not less frequently than once every 4
 3 years in nonattainment and maintenance
 4 areas (as defined under the Clean Air Act)
 5 and not less frequently than once every 5
 6 years in attainment areas (as defined
 7 under such Act), that the requirements of
 8 this paragraph are met with respect to the
 9 metropolitan planning process.

10 “(B) REQUIREMENTS FOR CERTIFI-
 11 CATION.—The Secretary may make the certifi-
 12 cation under subparagraph (A) if—

13 “(i) the transportation planning proc-
 14 ess complies with the requirements of this
 15 section and all other applicable Federal
 16 law; and

17 “(ii) a transportation plan and a
 18 transportation improvement program for
 19 the metropolitan planning area have been
 20 approved by the metropolitan planning or-
 21 ganization and the Governor.

22 “(C) PENALTY FOR FAILING TO CER-
 23 TIFY.—

24 “(i) WITHHOLDING PROJECT
 25 FUNDS.—If the metropolitan planning

1 process of a metropolitan planning organi-
2 zation serving a transportation manage-
3 ment area is not certified, the Secretary
4 may withhold any funds otherwise available
5 to the metropolitan planning area for
6 projects funded under title 23 and this
7 chapter.

8 “(ii) RESTORATION OF WITHHELD
9 FUNDS.—Any funds withheld under clause
10 (i) shall be restored to the metropolitan
11 planning area when the metropolitan plan-
12 ning process is certified by the Secretary.

13 “(D) REVIEW OF CERTIFICATION.—In
14 making a certification under this paragraph,
15 the Secretary shall provide for public involve-
16 ment appropriate to the metropolitan area
17 under review.

18 “(I) ABBREVIATED PLANS FOR CERTAIN AREAS.—

19 “(1) IN GENERAL.—Subject to paragraph (2),
20 in the case of a metropolitan area not designated as
21 a transportation management area under this sec-
22 tion, the Secretary may provide for the development
23 of an abbreviated transportation plan and transpor-
24 tation improvement program for the metropolitan
25 planning area that the Secretary determines is ap-

1 appropriate to achieve the purposes of this section,
2 after considering the complexity of transportation
3 problems in the area.

4 “(2) NONATTAINMENT AREAS.—The Secretary
5 may not permit abbreviated plans for a metropolitan
6 area that is in nonattainment for ozone or carbon
7 monoxide under the Clean Air Act (42 U.S.C. 7401
8 et seq.).

9 “(m) ADDITIONAL REQUIREMENTS FOR CERTAIN
10 NONATTAINMENT AREAS.—

11 “(1) IN GENERAL.—Notwithstanding any other
12 provisions of title 23 or this chapter, Federal funds
13 may not be advanced for transportation management
14 areas classified as nonattainment for ozone or car-
15 bon monoxide pursuant to the Clean Air Act (42
16 U.S.C. 7401 et seq.) for any highway project that
17 will result in a significant increase in carrying ca-
18 pacity for single-occupant vehicles unless the project
19 is addressed through a congestion management proc-
20 ess.

21 “(2) APPLICABILITY.—This subsection applies
22 to any nonattainment area within the metropolitan
23 planning area boundaries determined under sub-
24 section (d).

1 “(n) **LIMITATION ON STATUTORY CONSTRUCTION.**—
 2 Nothing in this section shall be construed to confer on
 3 a metropolitan planning organization the authority to im-
 4 pose legal requirements on any transportation facility,
 5 provider, or project that is not eligible under title 23 or
 6 this chapter.

7 “(o) **AVAILABILITY OF FUNDS.**—Funds set aside
 8 under section 104(f) of title 23 or section 5308 of this
 9 title shall be available to carry out this section.

10 “(p) **CONTINUATION OF CURRENT REVIEW PRAC-**
 11 **TICE.**—Any decision by the Secretary concerning a plan
 12 or program described in this section shall not be consid-
 13 ered to be a Federal action subject to review under the
 14 National Environmental Policy Act of 1969 (42 U.S.C.
 15 4321 et seq.).”.

16 **SEC. 3006. STATEWIDE TRANSPORTATION PLANNING.**

17 Section 5304 is amended to read as follows:

18 **“§ 5304. Statewide transportation planning**

19 “(a) **GENERAL REQUIREMENTS.**—

20 “(1) **DEVELOPMENT OF PLANS AND PRO-**
 21 **GRAMS.**—To support the policies described in section
 22 5301(a), each State shall develop a statewide trans-
 23 portation plan (referred to in this section as a
 24 “Plan”) and a statewide transportation improvement
 25 program (referred to in this section as a “Pro-

1 gram”) for all areas of the State subject to section
2 5303.

3 “(2) CONTENTS.—The Plan and the Program
4 developed for each State shall provide for the devel-
5 opment and integrated management and operation
6 of transportation systems and facilities (including
7 pedestrian walkways and bicycle transportation fa-
8 cilities) that will function as an intermodal transpor-
9 tation system for the State and an integral part of
10 an intermodal transportation system for the United
11 States.

12 “(3) PROCESS OF DEVELOPMENT.—The process
13 for developing the Plan and the Program shall—

14 “(A) provide for the consideration of all
15 modes of transportation and the policies de-
16 scribed in section 5301(a); and

17 “(B) be continuing, cooperative, and com-
18 prehensive to the degree appropriate, based on
19 the complexity of the transportation problems
20 to be addressed.

21 “(b) COORDINATION WITH METROPOLITAN PLAN-
22 NING; STATE IMPLEMENTATION PLAN.—Each State
23 shall—

24 “(1) coordinate planning under this section
25 with—

1 “(A) the transportation planning activities
2 under section 5303 for metropolitan areas of
3 the State; and

4 “(B) other related statewide planning ac-
5 tivities, including trade and economic develop-
6 ment and related multistate planning efforts;
7 and

8 “(2) develop the transportation portion of the
9 State implementation plan, as required by the Clean
10 Air Act (42 U.S.C. 7401 et seq.).

11 “(c) INTERSTATE AGREEMENTS.—States may enter
12 into agreements or compacts with other States for cooper-
13 ative efforts and mutual assistance in support of activities
14 authorized under this section related to interstate areas
15 and localities in the States and establishing authorities the
16 States consider desirable for making the agreements and
17 compacts effective.

18 “(d) SCOPE OF PLANNING PROCESS.—

19 “(1) IN GENERAL.—Each State shall carry out
20 a statewide transportation planning process that
21 provides for the consideration of projects, strategies,
22 and implementing projects and services that will—

23 “(A) support the economic vitality of the
24 United States, the States, nonmetropolitan
25 areas, and metropolitan areas, especially by en-

1 abling global competitiveness, productivity, and
2 efficiency;

3 “(B) increase the safety of the transpor-
4 tation system for motorized and nonmotorized
5 users;

6 “(C) increase the security of the transpor-
7 tation system for motorized and nonmotorized
8 users;

9 “(D) increase the accessibility and mobility
10 of people and freight;

11 “(E) protect and enhance the environment
12 (including the protection of habitat, water qual-
13 ity, and agricultural and forest land, while
14 minimizing invasive species), promote energy
15 conservation, promote consistency between
16 transportation improvements and State and
17 local land use planning and economic develop-
18 ment patterns, and improve the quality of life
19 (including minimizing adverse health effects
20 from mobile source air pollution and promoting
21 the linkage of the transportation and develop-
22 ment goals of the State);

23 “(F) enhance the integration and
24 connectivity of the transportation system,

1 across and between modes throughout the
2 State, for people and freight;

3 “(G) promote efficient system management
4 and operation; and

5 “(H) emphasize the preservation and effi-
6 cient use of the existing transportation system.

7 “(2) SELECTION OF PROJECTS AND STRATE-
8 GIES.—After soliciting and considering any relevant
9 public comments, the State shall determine which of
10 the projects and strategies described in paragraph
11 (1) are most appropriate.

12 “(3) MITIGATION ACTIVITIES.—

13 “(A) IN GENERAL.—A transportation plan
14 under this subsection shall include a discussion
15 of—

16 “(i) types of potential habitat,
17 hydrological, and environmental mitigation
18 activities that may assist in compensating
19 for loss of habitat, wetland, and other envi-
20 ronmental functions; and

21 “(ii) potential areas to carry out these
22 activities, including a discussion of areas
23 that may have the greatest potential to re-
24 store and maintain the habitat types and

1 hydrological or environmental functions af-
2 fected by the plan.

3 “(B) CONSULTATION.—The discussion de-
4 scribed in subparagraph (A) shall be developed
5 in consultation with Federal and State tribal
6 wildlife, land management, and regulatory
7 agencies.

8 “(4) FAILURE TO CONSIDER FACTORS.—The
9 failure to consider any factor described in paragraph
10 (1) shall not be reviewable by any court under title
11 23, this title, subchapter II of chapter 5 of title 5,
12 or chapter 7 of title 5 in any matter affecting a
13 Plan, a Program, a project or strategy, or the cer-
14 tification of a planning process.

15 “(e) ADDITIONAL REQUIREMENTS.—In carrying out
16 planning under this section, each State shall consider—

17 “(1) with respect to nonmetropolitan areas, the
18 concerns of affected local officials with responsibility
19 for transportation;

20 “(2) the concerns of Indian tribal governments
21 and Federal land management agencies that have
22 jurisdiction over land within the boundaries of the
23 State; and

24 “(3) coordination of Plans, Programs, and
25 planning activities with related planning activities

1 being carried out outside of metropolitan planning
2 areas and between States.

3 “(f) STATEWIDE TRANSPORTATION PLAN.—

4 “(1) DEVELOPMENT.—Each State shall develop
5 a Plan, with a minimum 20-year forecast period for
6 all areas of the State, that provides for the develop-
7 ment and implementation of the intermodal trans-
8 portation system of the State.

9 “(2) CONSULTATION WITH GOVERNMENTS.—

10 “(A) METROPOLITAN PLANNING AREAS.—

11 The Plan shall be developed for each metropoli-
12 tan planning area in the State in cooperation
13 with the metropolitan planning organization
14 designated for the metropolitan planning area
15 under section 5303.

16 “(B) NONMETROPOLITAN AREAS.—With

17 respect to nonmetropolitan areas, the statewide
18 transportation plan shall be developed in con-
19 sultation with affected nonmetropolitan officials
20 with responsibility for transportation. The con-
21 sultation process shall not require the review or
22 approval of the Secretary.

23 “(C) INDIAN TRIBAL AREAS.—With respect

24 to each area of the State under the jurisdiction
25 of an Indian tribal government, the Plan shall

1 be developed in consultation with the tribal gov-
2 ernment and the Secretary of the Interior.

3 “(D) CONSULTATION, COMPARISON, AND
4 CONSIDERATION.—

5 “(i) IN GENERAL.—The Plan shall be
6 developed, as appropriate, in consultation
7 with State and local agencies responsible
8 for—

9 “(I) land use management;

10 “(II) natural resources;

11 “(III) environmental protection;

12 “(IV) conservation; and

13 “(V) historic preservation.

14 “(ii) COMPARISON AND CONSIDER-
15 ATION.—Consultation under clause (i)
16 shall involve—

17 “(I) comparison of transportation
18 plans to State conservation plans or
19 maps, if available;

20 “(II) comparison of transpor-
21 tation plans to inventories of natural
22 or historic resources, if available; or

23 “(III) consideration of areas
24 where wildlife crossing structures may

1 be needed to ensure connectivity be-
2 tween wildlife habitat linkage areas.

3 “(3) PARTICIPATION BY INTERESTED PAR-
4 TIES.—In developing the Plan, the State shall—

5 “(A) provide citizens, affected public agen-
6 cies, representatives of public transportation
7 employees, freight shippers, private providers of
8 transportation, representatives of users of pub-
9 lic transportation, representatives of users of
10 pedestrian walkways and bicycle transportation
11 facilities, providers of freight transportation
12 services, and other interested parties with a
13 reasonable opportunity to comment on the pro-
14 posed Plan; and

15 “(B) to the maximum extent practicable—

16 “(i) hold any public meetings at con-
17 venient and accessible locations and times;

18 “(ii) employ visualization techniques
19 to describe plans; and

20 “(iii) make public information avail-
21 able in electronically accessible format and
22 means, such as the World Wide Web.

23 “(4) MITIGATION ACTIVITIES.—

24 “(A) IN GENERAL.—A Plan shall include a
25 discussion of—

1 “(i) types of potential habitat,
2 hydrological, and environmental mitigation
3 activities that may assist in compensating
4 for loss of habitat, wetlands, and other en-
5 vironmental functions; and

6 “(ii) potential areas to carry out these
7 activities, including a discussion of areas
8 that may have the greatest potential to re-
9 store and maintain the habitat types and
10 hydrological or environmental functions af-
11 fected by the plan.

12 “(B) CONSULTATION.—The discussion de-
13 scribed in subparagraph (A) shall be developed
14 in consultation with Federal and State tribal
15 wildlife, land management, and regulatory
16 agencies.

17 “(5) TRANSPORTATION STRATEGIES.—A Plan
18 shall identify transportation strategies necessary to
19 efficiently serve the mobility needs of people.

20 “(6) FINANCIAL PLAN.—The Plan may include
21 a financial plan that—

22 “(A) demonstrates how the adopted Plan
23 can be implemented;

1 “(B) indicates resources from public and
2 private sources that are reasonably expected to
3 be made available to carry out the Plan;

4 “(C) recommends any additional financing
5 strategies for needed projects and programs;
6 and

7 “(D) may include, for illustrative purposes,
8 additional projects that would be included in
9 the adopted Plan if reasonable additional re-
10 sources beyond those identified in the financial
11 plan were available.

12 “(7) SELECTION OF PROJECTS FROM ILLUS-
13 TRATIVE LIST.—A State shall not be required to se-
14 lect any project from the illustrative list of addi-
15 tional projects described in paragraph (6)(D).

16 “(8) EXISTING SYSTEM.—The Plan should in-
17 clude capital, operations and management strategies,
18 investments, procedures, and other measures to en-
19 sure the preservation and most efficient use of the
20 existing transportation system.

21 “(9) PUBLICATION OF LONG-RANGE TRANSPOR-
22 TATION PLANS.—Each Plan prepared by a State
23 shall be published or otherwise made available, in-
24 cluding, to the maximum extent practicable, in elec-

1 tronicly accessible formats and means, such as the
2 World Wide Web.

3 “(g) STATEWIDE TRANSPORTATION IMPROVEMENT
4 PROGRAM.—

5 “(1) DEVELOPMENT.—Each State shall develop
6 a Program for all areas of the State.

7 “(2) CONSULTATION WITH GOVERNMENTS.—

8 “(A) METROPOLITAN PLANNING AREAS.—

9 With respect to each metropolitan planning
10 area in the State, the Program shall be devel-
11 oped in cooperation with the metropolitan plan-
12 ning organization designated for the metropoli-
13 tan planning area under section 5303.

14 “(B) NONMETROPOLITAN AREAS.—With

15 respect to each nonmetropolitan area in the
16 State, the Program shall be developed in con-
17 sultation with affected nonmetropolitan local of-
18 ficials with responsibility for transportation.
19 The consultation process shall not require the
20 review or approval of the Secretary.

21 “(C) INDIAN TRIBAL AREAS.—With respect

22 to each area of the State under the jurisdiction
23 of an Indian tribal government, the Program
24 shall be developed in consultation with the trib-
25 al government and the Secretary of the Interior.

1 “(3) PARTICIPATION BY INTERESTED PAR-
2 TIES.—In developing the Program, the State shall
3 provide citizens, affected public agencies, representa-
4 tives of public transportation employees, freight
5 shippers, private providers of transportation, pro-
6 viders of freight transportation services, representa-
7 tives of users of public transit, representatives of
8 users of pedestrian walkways and bicycle transpor-
9 tation facilities, and other interested parties with a
10 reasonable opportunity to comment on the proposed
11 Program.

12 “(4) INCLUDED PROJECTS.—

13 “(A) IN GENERAL.—A Program developed
14 under this subsection for a State shall include
15 federally supported surface transportation ex-
16 penditures within the boundaries of the State.

17 “(B) LISTING OF PROJECTS.—

18 “(i) IN GENERAL.—The Program
19 shall cover a minimum of 4 years, identify
20 projects by year, be fiscally constrained by
21 year, and be updated not less than once
22 every 4 years.

23 “(ii) PUBLICATION.—An annual list-
24 ing of projects for which funds have been
25 obligated in the preceding 4 years in each

1 metropolitan planning area shall be pub-
2 lished or otherwise made available by the
3 cooperative effort of the State, transit op-
4 erator, and the metropolitan planning or-
5 ganization for public review. The listing
6 shall be consistent with the funding cat-
7 egories identified in each metropolitan
8 transportation improvement program.

9 “(C) INDIVIDUAL IDENTIFICATION.—

10 “(i) REGIONALLY SIGNIFICANT
11 PROJECTS.—Regionally significant projects
12 proposed for funding under chapter 2 of
13 title 23 shall be identified individually in
14 the transportation improvement program.

15 “(ii) OTHER PROJECTS.—Projects
16 proposed for funding under chapter 2 of
17 title 23 that are not determined to be re-
18 gionally significant shall be grouped in 1
19 line item or identified individually.

20 “(D) CONSISTENCY WITH STATEWIDE
21 TRANSPORTATION PLAN.—Each project in-
22 cluded in the list described in subparagraph (B)
23 shall be—

24 “(i) consistent with the Plan devel-
25 oped under this section for the State;

1 “(ii) identical to the project or phase
2 of the project as described in each year of
3 the approved metropolitan transportation
4 improvement program; and

5 “(iii) in conformance with the applica-
6 ble State air quality implementation plan
7 developed under the Clean Air Act (42
8 U.S.C. 7401 et seq.), if the project is car-
9 ried out in an area designated as non-
10 attainment for ozone or carbon monoxide
11 under that Act.

12 “(E) REQUIREMENT OF ANTICIPATED
13 FULL FUNDING.—The Program shall not in-
14 clude a project, or an identified phase of a
15 project, unless full funding can reasonably be
16 anticipated to be available for the project within
17 the time period contemplated for completion of
18 the project.

19 “(F) FINANCIAL PLAN.—The Program
20 may include a financial plan that—

21 “(i) demonstrates how the approved
22 Program can be implemented;

23 “(ii) indicates resources from public
24 and private sources that are reasonably ex-

1 pected to be made available to carry out
2 the Program;

3 “(iii) recommends any additional fi-
4 nancing strategies for needed projects and
5 programs; and

6 “(iv) may include, for illustrative pur-
7 poses, additional projects that would be in-
8 cluded in the adopted transportation plan
9 if reasonable additional resources beyond
10 those identified in the financial plan were
11 available.

12 “(G) SELECTION OF PROJECTS FROM IL-
13 LUSTRATIVE LIST.—

14 “(i) NO REQUIRED SELECTION.—Not-
15 withstanding subparagraph (F), a State
16 shall not be required to select any project
17 from the illustrative list of additional
18 projects described in subparagraph (F)(iv).

19 “(ii) REQUIRED APPROVAL BY THE
20 SECRETARY.—A State shall not include
21 any project from the illustrative list of ad-
22 ditional projects described in subparagraph
23 (F)(iv) in an approved Program without
24 the approval of the Secretary.

1 “(H) PRIORITIES.—The Program shall re-
2 flect the priorities for programming and ex-
3 penditures of funds, including transportation
4 and transit enhancement activities, required by
5 title 23 and this chapter, and transportation
6 control measures included in the State’s air
7 quality implementation plan.

8 “(5) PROJECT SELECTION FOR AREAS WITH
9 FEWER THAN 50,000 INDIVIDUALS.—

10 “(A) IN GENERAL.—Each State, in co-
11 operation with the affected nonmetropolitan
12 local officials with responsibility for transpor-
13 tation, shall select projects to be carried out in
14 areas with fewer than 50,000 individuals from
15 the approved Program (excluding projects car-
16 ried out under the National Highway System,
17 the bridge program, or the interstate mainte-
18 nance program under title 23 or sections 5310
19 and 5311 of this title).

20 “(B) CERTAIN PROGRAMS.—Each State, in
21 consultation with the affected nonmetropolitan
22 local officials with responsibility for transpor-
23 tation, shall select, from the approved Program,
24 projects to be carried out in areas with fewer
25 than 50,000 individuals under the National

1 Highway System, the bridge program, or the
2 Interstate maintenance program under title 23
3 or under sections 5310 and 5311 of this title.

4 “(6) STATEWIDE TRANSPORTATION IMPROVE-
5 MENT PROGRAM APPROVAL.—A Program developed
6 under this subsection shall be reviewed and based on
7 a current planning finding approved by the Sec-
8 retary not less frequently than once every 4 years.

9 “(7) PLANNING FINDING.—Not less frequently
10 than once every 4 years, the Secretary shall deter-
11 mine whether the transportation planning process
12 through which Plans and Programs are developed
13 are consistent with this section and section 5303.

14 “(8) MODIFICATIONS TO PROJECT PRIORITY.—
15 Notwithstanding any other provision of law, a
16 project included in the approved Program may be
17 advanced in place of another project in the program
18 without the approval of the Secretary.

19 “(h) FUNDING.—Funds set aside pursuant to section
20 104(i) of title 23 and 5308 of this title shall be available
21 to carry out this section.

22 “(i) TREATMENT OF CERTAIN STATE LAWS AS CON-
23 GESTION MANAGEMENT SYSTEMS.—For purposes of this
24 section and section 5303, State laws, rules, or regulations
25 pertaining to congestion management systems or pro-

1 grams may constitute the congestion management system
 2 under section 5303(i)(3) if the Secretary determines that
 3 the State laws, rules, or regulations are consistent with,
 4 and fulfill the intent of, the purposes of section 5303.

5 “(j) CONTINUATION OF CURRENT REVIEW PRAC-
 6 TICE.—Any decision by the Secretary under this section,
 7 regarding a metropolitan or statewide transportation plan
 8 or the Program, shall not be considered to be a Federal
 9 action subject to review under the National Environmental
 10 Policy Act of 1969 (42 U.S.C. 4321 et seq.).”

11 **SEC. 3007. TRANSPORTATION MANAGEMENT AREAS.**

12 Section 5305 is repealed.

13 **SEC. 3008. PRIVATE ENTERPRISE PARTICIPATION.**

14 Section 5306 is amended—

15 (1) in subsection (a)—

16 (A) by striking “5305 of this title” and in-
 17 serting “5308”; and

18 (B) by inserting “, as determined by local
 19 policies, criteria, and decision making,” after
 20 “feasible”;

21 (2) in subsection (b) by striking “5303–5305 of
 22 this title” and inserting “5303, 5304, and 5308”;
 23 and

24 (3) by adding at the end the following:

1 “(c) REGULATIONS.—Not later than 1 year after the
2 date of enactment of the Federal Public Transportation
3 Act of 2004, the Secretary shall issue regulations describ-
4 ing how the requirements under this chapter relating to
5 subsection (a) shall be enforced.”.

6 **SEC. 3009. URBANIZED AREA FORMULA GRANTS.**

7 (a) TECHNICAL AMENDMENTS.—Section 5307 is
8 amended—

9 (1) by striking subsections (h), (j) and (k); and
10 (2) by redesignating subsections (i), (l), (m),
11 and (n) as subsections (h), (i), (j), and (k), respec-
12 tively.

13 (b) DEFINITIONS.—Section 5307(a) is amended—

14 (1) by amending paragraph (2)(A) to read as
15 follows:

16 “(A) an entity designated, in accordance
17 with the planning process under sections 5303,
18 5304, and 5306, by the chief executive officer
19 of a State, responsible local officials, and pub-
20 licly owned operators of public transportation,
21 to receive and apportion amounts under sec-
22 tions 5336 and 5337 that are attributable to
23 transportation management areas designated
24 under section 5303; or”;

25 (2) by adding at the end the following:

1 “(3) SUBRECIPIENT.—The term ‘subrecipient’
2 means a State or local governmental authority, a
3 nonprofit organization, or a private operator of pub-
4 lic transportation service that may receive a Federal
5 transit program grant indirectly through a recipient,
6 rather than directly from the Federal Government.”.

7 (c) GENERAL AUTHORITY.—Section 5307(b) is
8 amended—

9 (1) by amending paragraph (1) to read as fol-
10 lows:

11 “(1) IN GENERAL.—The Secretary of Transpor-
12 tation may award grants under this section for—

13 “(A) capital projects, including associated
14 capital maintenance items;

15 “(B) planning, including mobility manage-
16 ment;

17 “(C) transit enhancements;

18 “(D) operating costs of equipment and fa-
19 cilities for use in public transportation in an ur-
20 banized area with a population of less than
21 200,000; and

22 “(E) operating costs of equipment and fa-
23 cilities for use in public transportation in a por-
24 tion or portions of an urbanized area with a

1 population of at least 200,000, but not more
2 than 225,000, if—

3 “(i) the urbanized area includes parts
4 of more than 1 State;

5 “(ii) the portion of the urbanized area
6 includes only 1 State;

7 “(iii) the population of the portion of
8 the urbanized area is less than 30,000; and

9 “(iv) the grants will not be used to
10 provide public transportation outside of the
11 portion of the urbanized area.”;

12 (2) by amending paragraph (2) to read as fol-
13 lows:

14 “(2) SPECIAL RULE FOR FISCAL YEARS 2004
15 THROUGH 2006—

16 “(A) INCREASED FLEXIBILITY.—The Sec-
17 retary may award grants under this section,
18 from funds made available to carry out this sec-
19 tion for each of the fiscal years 2004 through
20 2006, to finance the operating cost of equip-
21 ment and facilities for use in mass transpor-
22 tation in an urbanized area with a population of
23 at least 200,000, as determined by the 2000 de-
24 cennial census of population if—

1 “(i) the urbanized area had a popu-
2 lation of less than 200,000, as determined
3 by the 1990 decennial census of popu-
4 lation;

5 “(ii) a portion of the urbanized area
6 was a separate urbanized area with a pop-
7 ulation of less than 200,000, as deter-
8 mined by the 1990 decennial census of
9 population;

10 “(iii) the area was not designated as
11 an urbanized area, as determined by the
12 1990 decennial census of population; or

13 “(iv) a portion of the area was not
14 designated as an urbanized area, as deter-
15 mined by the 1990 decennial census, and
16 received assistance under section 5311 in
17 fiscal year 2002.

18 “(B) MAXIMUM AMOUNTS IN FISCAL YEAR
19 2004.—In fiscal year 2004—

20 “(i) amounts made available to any
21 urbanized area under clause (i) or (ii) of
22 subparagraph (A) shall be not more than
23 the amount apportioned in fiscal year 2002
24 to the urbanized area with a population of

1 less than 200,000, as determined in the
2 1990 decennial census of population;

3 “(ii) amounts made available to any
4 urbanized area under subparagraph (A)(iii)
5 shall be not more than the amount appor-
6 tioned to the urbanized area under this
7 section for fiscal year 2003; and

8 “(iii) each portion of any area not
9 designated as an urbanized area, as deter-
10 mined by the 1990 decennial census, and
11 eligible to receive funds under subpara-
12 graph (A)(iv), shall receive an amount of
13 funds to carry out this section that is not
14 less than the amount the portion of the
15 area received under section 5311 for fiscal
16 year 2002.

17 “(C) MAXIMUM AMOUNTS IN FISCAL YEAR
18 2005.—In fiscal year 2005—

19 “(i) amounts made available to any
20 urbanized area under clause (i) or (ii) of
21 subparagraph (A) shall be not more than
22 50 percent of the amount apportioned in
23 fiscal year 2002 to the urbanized area with
24 a population of less than 200,000, as de-

1 terminated in the 1990 decennial census of
2 population;

3 “(ii) amounts made available to any
4 urbanized area under subparagraph (A)(iii)
5 shall be not more than 50 percent of the
6 amount apportioned to the urbanized area
7 under this section for fiscal year 2003; and

8 “(iii) each portion of any area not
9 designated as an urbanized area, as deter-
10 mined by the 1990 decennial census, and
11 eligible to receive funds under subpara-
12 graph (A)(iv), shall receive an amount of
13 funds to carry out this section that is not
14 less 50 percent of the amount the portion
15 of the area received under section 5311 for
16 fiscal year 2002.

17 “(D) MAXIMUM AMOUNTS IN FISCAL YEAR
18 2006.—In fiscal year 2006—

19 “(i) amounts made available to any
20 urbanized area under clause (i) or (ii) of
21 subparagraph (A) shall be not more than
22 25 percent of the amount apportioned in
23 fiscal year 2002 to the urbanized area with
24 a population of less than 200,000, as de-

1 terminated in the 1990 decennial census of
2 population;

3 “(ii) amounts made available to any
4 urbanized area under subparagraph (A)(iii)
5 shall be not more than 25 percent of the
6 amount apportioned to the urbanized area
7 under this section for fiscal year 2003; and

8 “(iii) each portion of any area not
9 designated as an urbanized area, as deter-
10 mined by the 1990 decennial census, and
11 eligible to receive funds under subpara-
12 graph (A)(iv), shall receive an amount of
13 funds to carry out this section that is not
14 less than 25 percent of the amount the
15 portion of the area received under section
16 5311 in fiscal year 2002.”; and

17 (3) by striking paragraph (4).

18 (d) PUBLIC PARTICIPATION REQUIREMENTS.—Sec-
19 tion 5307(c)(5) is amended by striking “section 5336”
20 and inserting “sections 5336 and 5337”.

21 (e) GRANT RECIPIENT REQUIREMENTS.—Section
22 5307(d)(1) is amended—

23 (1) in subparagraph (A), by inserting “, includ-
24 ing safety and security aspects of the program”
25 after “program”;

1 (2) in subparagraph (E), by striking “section”
2 and all that follows and inserting “section, the re-
3 cipient will comply with sections 5323 and 5325;”;

4 (3) in subparagraph (H), by striking “sections
5 5301(a) and (d), 5303-5306, and 5310(a)-(d) of this
6 title” and inserting “subsections (a) and (d) of sec-
7 tion 5301 and sections 5303 through 5306”;

8 (4) in subparagraph (I) by striking “and” at
9 the end;

10 (5) in subparagraph (J), by striking the period
11 at the end and inserting “; and”; and

12 (6) by adding at the end the following:

13 “(K) if located in an urbanized area with
14 a population of at least 200,000, will expend
15 not less than 1 percent of the amount the re-
16 cipient receives each fiscal year under this sec-
17 tion for transit enhancement activities described
18 in section 5302(a)(15).”.

19 (f) GOVERNMENT’S SHARE OF COSTS.—Section
20 5307(e) is amended—

21 (1) by striking the first sentence and inserting
22 the following:

23 “(1) CAPITAL PROJECTS.—A grant for a capital
24 project under this section shall cover 80 percent of
25 the net project cost.”;

1 (2) by striking “A grant for operating ex-
2 penses” and inserting the following:

3 “(2) OPERATING EXPENSES.—A grant for oper-
4 ating expenses”;

5 (3) by striking the fourth sentence and insert-
6 ing the following:

7 “(3) REMAINING COSTS.—The remainder of the
8 net project cost shall be provided in cash from non-
9 Federal sources or revenues derived from the sale of
10 advertising and concessions and amounts received
11 under a service agreement with a State or local so-
12 cial service agency or a private social service organi-
13 zation.”; and

14 (4) by adding at the end the following: “The
15 prohibitions on the use of funds for matching re-
16 quirements under section 403(a)(5)(C)(vii) of the
17 Social Security Act (42 U.S.C. 603(a)(5)(C)(vii))
18 shall not apply to the remainder.”.

19 (g) UNDERTAKING PROJECTS IN ADVANCE.—Section
20 5307(g) is amended by striking paragraph (4).

21 (h) RELATIONSHIP TO OTHER LAWS.—Section
22 5307(k), as redesignated, is amended to read as follows:

23 “(k) RELATIONSHIP TO OTHER LAWS.—

24 “(1) APPLICABLE PROVISIONS.—Sections 5301,
25 5302, 5303, 5304, 5306, 5315(c), 5318, 5319,

1 5323, 5325, 5327, 5329, 5330, 5331, 5332, 5333
 2 and 5335 apply to this section and to any grant
 3 made under this section.

4 “(2) INAPPLICABLE PROVISIONS.—

5 “(A) IN GENERAL.—Except as provided
 6 under this section, no other provision of this
 7 chapter applies to this section or to a grant
 8 made under this section.

9 “(B) TITLE 5.—The provision of assist-
 10 ance under this chapter shall not be construed
 11 as bringing within the application of chapter 15
 12 of title 5, any nonsupervisory employee of a
 13 public transportation system (or any other
 14 agency or entity performing related functions)
 15 to which such chapter is otherwise inappli-
 16 cable.”.

17 **SEC. 3010. PLANNING PROGRAMS.**

18 (a) IN GENERAL.—Section 5308 is amended to read
 19 as follows:

20 **“§ 5308. Planning programs**

21 “(a) GRANTS AUTHORIZED.—Under criteria estab-
 22 lished by the Secretary, the Secretary may award grants
 23 to States, authorities of the States, metropolitan planning
 24 organizations, and local governmental authorities, make
 25 agreements with other departments, agencies, or instru-

1 mentalities of the Government, or enter into contracts
2 with private nonprofit or for-profit entities to—

3 “(1) develop transportation plans and pro-
4 grams;

5 “(2) plan, engineer, design, and evaluate a pub-
6 lic transportation project; or

7 “(3) conduct technical studies relating to public
8 transportation, including—

9 “(A) studies related to management, plan-
10 ning, operations, capital requirements, and eco-
11 nomic feasibility;

12 “(B) evaluations of previously financed
13 projects;

14 “(C) peer reviews and exchanges of tech-
15 nical data, information, assistance, and related
16 activities in support of planning and environ-
17 mental analyses among metropolitan planning
18 organizations and other transportation plan-
19 ners; and

20 “(D) other similar and related activities
21 preliminary to, and in preparation for, con-
22 structing, acquiring, or improving the operation
23 of facilities and equipment.

24 “(b) PURPOSE.—To the extent practicable, the Sec-
25 retary shall ensure that amounts appropriated pursuant

1 to section 5338 to carry out this section and sections
2 5303, 5304, and 5306 are used to support balanced and
3 comprehensive transportation planning that considers the
4 relationships among land use and all transportation
5 modes, without regard to the programmatic source of the
6 planning amounts.

7 “(c) METROPOLITAN PLANNING PROGRAM.—

8 “(1) ALLOCATIONS TO STATES.—

9 “(A) IN GENERAL.—The Secretary shall
10 allocate 80 percent of the amount made avail-
11 able under subsection (g)(3)(A) to States to
12 carry out sections 5303 and 5306 in a ratio
13 equal to the population in urbanized areas in
14 each State, divided by the total population in
15 urbanized areas in all States, as shown by the
16 latest available decennial census of population.

17 “(B) MINIMUM ALLOCATION.—Each State
18 shall receive not less than 0.5 percent of the
19 total amount allocated under this paragraph.

20 “(2) AVAILABILITY OF FUNDS.—A State receiv-
21 ing an allocation under paragraph (1) shall promptly
22 distribute such funds to metropolitan planning orga-
23 nizations in the State under a formula—

24 “(A) developed by the State in cooperation
25 with the metropolitan planning organizations;

1 “(B) approved by the Secretary of Trans-
2 portation;

3 “(C) that considers population in urban-
4 ized areas; and

5 “(D) that provides an appropriate distribu-
6 tion for urbanized areas to carry out the coop-
7 erative processes described in this section.

8 “(3) SUPPLEMENTAL ALLOCATIONS.—

9 “(A) IN GENERAL.—The Secretary shall
10 allocate 20 percent of the amount made avail-
11 able under subsection (g)(3)(A) to States to
12 supplement allocations made under paragraph
13 (1) for metropolitan planning organizations.

14 “(B) ALLOCATION FORMULA.—Amounts
15 under this paragraph shall be allocated under a
16 formula that reflects the additional cost of car-
17 rying out planning, programming, and project
18 selection responsibilities in complex metropoli-
19 tan planning areas under sections 5303, 5304,
20 and 5306.

21 “(d) STATE PLANNING AND RESEARCH PROGRAM.—

22 “(1) IN GENERAL.—The Secretary shall allo-
23 cate amounts made available pursuant to subsection
24 (g)(3)(B) to States for grants and contracts to carry
25 out sections 5304, 5306, 5315, and 5322 so that

1 each State receives an amount equal to the ratio of
2 the population in urbanized areas in that State, di-
3 vided by the total population in urbanized areas in
4 all States, as shown by the latest available decennial
5 census.

6 “(2) MINIMUM ALLOCATION.—Each State shall
7 receive not less than 0.5 percent of the amount allo-
8 cated under this subsection.

9 “(3) REALLOCATION.—A State may authorize
10 part of the amount made available under this sub-
11 section to be used to supplement amounts available
12 under subsection (c).

13 “(e) PLANNING CAPACITY BUILDING PROGRAM.—

14 “(1) ESTABLISHMENT.—The Secretary shall es-
15 tablish a Planning Capacity Building Program (re-
16 ferred to in this subsection as the “Program”) to
17 support and fund innovative practices and enhance-
18 ments in transportation planning.

19 “(2) PURPOSE.—The purpose of the Program
20 shall be to promote activities that support and
21 strengthen the planning processes required under
22 this section and sections 5303 and 5304.

23 “(3) ADMINISTRATION.—The Program shall be
24 administered by the Federal Transit Administration

1 in cooperation with the Federal Highway Adminis-
2 tration.

3 “(4) USE OF FUNDS.—

4 “(A) IN GENERAL.—Appropriations au-
5 thorized under subsection (g)(1) to carry out
6 this subsection may be used—

7 “(i) to provide incentive grants to
8 States, metropolitan planning organiza-
9 tions, and public transportation operators;
10 and

11 “(ii) to conduct research, disseminate
12 information, and provide technical assist-
13 ance.

14 “(B) GRANTS, CONTRACTS, COOPERATIVE
15 AGREEMENTS.—In carrying out the activities
16 described in subparagraph (A), the Secretary
17 may—

18 “(i) expend appropriated funds di-
19 rectly; or

20 “(ii) award grants to, or enter into
21 contracts, cooperative agreements, and
22 other transactions with, a Federal agency,
23 State agency, local governmental authority,
24 association, nonprofit or for-profit entity,
25 or institution of higher education.

1 “(f) GOVERNMENT’S SHARE OF COSTS.—Amounts
2 made available to carry out subsections (c), (d), and (e)
3 may not exceed 80 percent of the costs of the activity un-
4 less the Secretary of Transportation determines that it is
5 in the interest of the Government not to require State or
6 local matching funds.

7 “(g) ALLOCATION OF FUNDS.—Of the amounts made
8 available under section 5338(b)(2)(B) for fiscal year 2005
9 and each fiscal year thereafter to carry out this section—

10 “(1) \$5,000,000 shall be allocated for the Plan-
11 ning Capacity Building Program established under
12 subsection (e);

13 “(2) \$20,000,000 shall be allocated for grants
14 under subsection (a)(2) for alternatives analyses re-
15 quired by section 5309(e)(2)(A); and

16 “(3) of the remaining amount—

17 “(A) 82.72 percent shall be allocated for
18 the metropolitan planning program described in
19 subsection (d); and

20 “(B) 17.28 percent shall be allocated to
21 carry out subsection (b).

22 “(h) REALLOCATIONS.—Any amount allocated under
23 this section that has not been used 3 years after the end
24 of the fiscal year in which the amount was allocated shall
25 be reallocated among the States.”.

1 (b) CONFORMING AMENDMENT.—The item relating
2 to section 5308 in the table of sections for chapter 53 is
3 amended to read as follows:

“5308. Planning programs.”.

4 **SEC. 3011. CAPITAL INVESTMENT PROGRAM.**

5 (a) SECTION HEADING.—The section heading of sec-
6 tion 5309 is amended to read as follows:

7 **“§ 5309. Capital investment grants”.**

8 (b) GENERAL AUTHORITY.—Section 5309(a) is
9 amended—

10 (1) in paragraph (1)—

11 (A) by striking “(1) The Secretary of
12 Transportation may make grants and loans”
13 and inserting the following:

14 “(1) GRANTS AUTHORIZED.—The Secretary
15 may award grants”;

16 (B) in subparagraph (A), by striking “al-
17 ternatives analysis related to the development of
18 systems,”;

19 (C) by striking subparagraphs (B), (C),
20 (D), and (G);

21 (D) by redesignating subparagraphs (E),
22 (F), and (H) as subparagraphs (B), (C), and
23 (D), respectively;

24 (E) in subparagraph (C), as redesignated,
25 by striking the semicolon at the end and insert-

1 ing “, including programs of bus and bus-re-
2 lated projects for assistance to subrecipients
3 which are public agencies, private companies
4 engaged in public transportation, or private
5 nonprofit organizations; and”;

6 (F) in subparagraph (D), as
7 redesignated—

8 (i) by striking “to support fixed
9 guideway systems”; and

10 (ii) by striking “dedicated bus and
11 high occupancy vehicle”;

12 (2) by amending paragraph (2) to read as fol-
13 lows:

14 “(2) GRANTEE REQUIREMENTS.—

15 “(A) GRANTEE IN URBANIZED AREA.—The
16 Secretary shall require that any grants awarded
17 under this section to a recipient or subrecipient
18 located in an urbanized area shall be subject to
19 all terms, conditions, requirements, and provi-
20 sions that the Secretary determines to be nec-
21 essary or appropriate for the purposes of this
22 section, including requirements for the disposi-
23 tion of net increases in the value of real prop-
24 erty resulting from the project assisted under
25 this section.

1 “(B) GRANTEE NOT IN URBANIZED
2 AREA.—The Secretary shall require that any
3 grants awarded under this section to a recipient
4 or subrecipient not located in an urbanized area
5 shall be subject to the same terms, conditions,
6 requirements, and provisions as a recipient or
7 subrecipient of assistance under section 5311.

8 “(C) SUBRECIPIENT.—The Secretary shall
9 require that any private, nonprofit organization
10 that is a subrecipient of a grant awarded under
11 this section shall be subject to the same terms,
12 conditions, requirements, and provisions as a
13 subrecipient of assistance under section 5310.

14 “(D) STATEWIDE TRANSIT PROVIDER
15 GRANTEES.—A statewide transit provider that
16 receives a grant under this section shall be sub-
17 ject to the terms, conditions, requirements, and
18 provisions of this section or section 5311, con-
19 sistent with the scope and purpose of the grant
20 and the location of the project.”; and

21 (3) by adding at the end the following:

22 “(3) CERTIFICATION.—An applicant that has
23 submitted the certifications required under subpara-
24 graphs (A), (B), (C), and (H) of section 5307(d)(1)
25 shall be deemed to have provided sufficient informa-

1 tion upon which the Secretary may make the find-
2 ings required under this subsection.”.

3 (c) DEFINED TERM.—Section 5309(b) is amended to
4 read as follows:

5 “(b) DEFINED TERM.—As used in this section, the
6 term ‘alternatives analysis’ means a study conducted as
7 part of the transportation planning process required under
8 sections 5303 and 5304, which includes—

9 “(1) an assessment of a wide range of public
10 transportation alternatives designed to address a
11 transportation problem in a corridor or subarea;

12 “(2) sufficient information to enable the Sec-
13 retary to make the findings of project justification
14 and local financial commitment required under this
15 section;

16 “(3) the selection of a locally preferred alter-
17 native; and

18 “(4) the adoption of the locally preferred alter-
19 native as part of the long-range transportation plan
20 required under section 5303.”.

21 (d) GRANT REQUIREMENTS.—Section 5309(d) is
22 amended to read as follows:

23 “(d) GRANT REQUIREMENTS.—The Secretary may
24 not approve a grant for a project under this section unless
25 the Secretary determines that—

1 “(1) the project is part of an approved trans-
2 portation plan and program of projects required
3 under sections 5303, 5304, and 5306; and

4 “(2) the applicant has, or will have—

5 “(A) the legal, financial, and technical ca-
6 pacity to carry out the project, including safety
7 and security aspects of the project;

8 “(B) satisfactory continuing control over
9 the use of the equipment or facilities; and

10 “(C) the capability and willingness to
11 maintain the equipment or facilities.”.

12 (e) MAJOR CAPITAL INVESTMENT PROJECTS OF
13 \$75,000,000 OR MORE.—Section 5309(e) is amended to
14 read as follows:

15 “(e) MAJOR CAPITAL INVESTMENT PROJECTS OF
16 \$75,000,000 OR MORE.—

17 “(1) FULL FUNDING GRANT AGREEMENT.—The
18 Secretary shall enter into a full funding grant agree-
19 ment, based on the evaluations and ratings required
20 under this subsection, with each grantee receiving
21 not less than \$75,000,000 under this subsection for
22 a new fixed guideway capital project that—

23 “(A) is authorized for final design and
24 construction; and

1 “(B) has been rated as medium, medium-
2 high, or high, in accordance with paragraph
3 (5)(B).

4 “(2) DETERMINATIONS.—The Secretary may
5 not award a grant under this subsection for a new
6 fixed guideway capital project unless the Secretary
7 determines that the proposed project is—

8 “(A) based on the results of an alter-
9 natives analysis and preliminary engineering;

10 “(B) justified based on a comprehensive
11 review of its mobility improvements, environ-
12 mental benefits, cost-effectiveness, operating ef-
13 ficiencies, economic development effects, and
14 public transportation supportive land use pat-
15 terns and policies; and

16 “(C) supported by an acceptable degree of
17 local financial commitment, including evidence
18 of stable and dependable financing sources to
19 construct the project, and maintain and operate
20 the entire public transportation system, while
21 ensuring that the extent and quality of existing
22 public transportation services are not degraded.

23 “(3) EVALUATION OF PROJECT JUSTIFICA-
24 TION.—In making the determinations under para-

1 graph (2)(B) for a major capital investment grant,
2 the Secretary shall analyze, evaluate, and consider—

3 “(A) the results of the alternatives analysis
4 and preliminary engineering for the proposed
5 project;

6 “(B) the reliability of the forecasts of costs
7 and utilization made by the recipient and the
8 contractors to the recipient;

9 “(C) the direct and indirect costs of rel-
10 evant alternatives;

11 “(D) factors such as—

12 “(i) congestion relief;

13 “(ii) improved mobility;

14 “(iii) air pollution;

15 “(iv) noise pollution;

16 “(v) energy consumption; and

17 “(vi) all associated ancillary and miti-
18 gation costs necessary to carry out each al-
19 ternative analyzed;

20 “(E) reductions in local infrastructure
21 costs achieved through compact land use devel-
22 opment and positive impacts on the capacity,
23 utilization, or longevity of other surface trans-
24 portation assets and facilities;

25 “(F) the cost of suburban sprawl;

1 “(G) the degree to which the project in-
2 creases the mobility of the public transportation
3 dependent population or promotes economic de-
4 velopment;

5 “(H) population density and current tran-
6 sit ridership in the transportation corridor;

7 “(I) the technical capability of the grant
8 recipient to construct the project;

9 “(J) any adjustment to the project jus-
10 tification necessary to reflect differences in local
11 land, construction, and operating costs; and

12 “(K) other factors that the Secretary de-
13 termines to be appropriate to carry out this
14 chapter.

15 “(4) EVALUATION OF LOCAL FINANCIAL COM-
16 MITMENT.—

17 “(A) IN GENERAL.—In evaluating a
18 project under paragraph (2)(C), the Secretary
19 shall require that—

20 “(i) the proposed project plan pro-
21 vides for the availability of contingency
22 amounts that the Secretary determines to
23 be reasonable to cover unanticipated cost
24 increases;

1 “(ii) each proposed local source of
2 capital and operating financing is stable,
3 reliable, and available within the proposed
4 project timetable; and

5 “(iii) local resources are available to
6 recapitalize and operate the overall pro-
7 posed public transportation system, includ-
8 ing essential feeder bus and other services
9 necessary to achieve the projected ridership
10 levels, while ensuring that the extent and
11 quality of existing public transportation
12 services are not degraded.

13 “(B) EVALUATION CRITERIA.—In assess-
14 ing the stability, reliability, and availability of
15 proposed sources of local financing under para-
16 graph (2)(C), the Secretary shall consider—

17 “(i) the reliability of the forecasts of
18 costs and utilization made by the recipient
19 and the contractors to the recipient;

20 “(ii) existing grant commitments;

21 “(iii) the degree to which financing
22 sources are dedicated to the proposed pur-
23 poses;

24 “(iv) any debt obligation that exists,
25 or is proposed by the recipient, for the pro-

1 posed project or other public transpor-
2 tation purpose; and

3 “(v) the extent to which the project
4 has a local financial commitment that ex-
5 ceeds the required non-Federal share of
6 the cost of the project, provided that if the
7 Secretary gives priority to financing
8 projects that include more than the non-
9 Federal share required under subsection
10 (h), the Secretary shall give equal consider-
11 ation to differences in the fiscal capacity of
12 State and local governments.

13 “(5) PROJECT ADVANCEMENT AND RATINGS.—

14 “(A) PROJECT ADVANCEMENT.—A pro-
15 posed project under this subsection shall not
16 advance from alternatives analysis to prelimi-
17 nary engineering or from preliminary engineer-
18 ing to final design and construction unless the
19 Secretary determines that the project meets the
20 requirements of this section and there is a rea-
21 sonable likelihood that the project will continue
22 to meet such requirements.

23 “(B) RATINGS.—In making a determina-
24 tion under subparagraph (A), the Secretary
25 shall evaluate and rate the project on a 5-point

1 scale (high, medium-high, medium, medium-low,
2 or low) based on the results of the alternatives
3 analysis, the project justification criteria, and
4 the degree of local financial commitment, as re-
5 quired under this subsection. In rating the
6 projects, the Secretary shall provide, in addition
7 to the overall project rating, individual ratings
8 for each of the criteria established by regula-
9 tion.

10 “(6) APPLICABILITY.—This subsection shall not
11 apply to projects for which the Secretary has issued
12 a letter of intent or entered into a full funding grant
13 agreement before the date of enactment of the Fed-
14 eral Public Transportation Act of 2004.

15 “(7) RULEMAKING.—Not later than 240 days
16 after the date of enactment of the Federal Public
17 Transportation Act of 2004, the Secretary shall
18 issue regulations on the manner by which the Sec-
19 retary shall evaluate and rate projects based on the
20 results of alternatives analysis, project justification,
21 and local financial commitment, in accordance with
22 this subsection.

23 “(8) POLICY GUIDANCE.—

1 “(A) PUBLICATION.—The Secretary shall
2 publish policy guidance regarding the new
3 starts project review and evaluation process—

4 “(i) not later than 120 days after the
5 date of enactment of the Federal Public
6 Transportation Act of 2004; and

7 “(ii) each time significant changes are
8 made by the Secretary to the new starts
9 project review and evaluation process and
10 criteria, but not less frequently than once
11 every 2 years.

12 “(B) PUBLIC COMMENT AND RESPONSE.—
13 The Secretary shall—

14 “(i) invite public comment to the pol-
15 icy guidance published under subparagraph
16 (A); and

17 “(ii) publish a response to the com-
18 ments received under clause (i).”.

19 (f) MAJOR CAPITAL INVESTMENT PROJECTS OF
20 LESS THAN \$75,000,000.— Section 5309(f) is amended
21 to read as follows:

22 “(f) MAJOR CAPITAL INVESTMENT PROJECTS OF
23 LESS THAN \$75,000,000.—

24 “(1) PROJECT CONSTRUCTION GRANT AGREE-
25 MENT.—

1 “(A) IN GENERAL.—The Secretary shall
2 enter into a project construction grant agree-
3 ment, based on evaluations and ratings required
4 under this subsection, with each grantee receiv-
5 ing less than \$75,000,000 under this subsection
6 for a new fixed guideway or corridor improve-
7 ment capital project that—

8 “(i) is authorized by law; and

9 “(ii) has been rated as medium, me-
10 dium-high, or high, in accordance with
11 paragraph (3)(B).

12 “(B) CONTENTS.—

13 “(i) IN GENERAL.—An agreement
14 under this paragraph shall specify—

15 “(I) the scope of the project to be
16 constructed;

17 “(II) the estimated net cost of
18 the project;

19 “(III) the schedule under which
20 the project shall be constructed;

21 “(IV) the maximum amount of
22 funding to be obtained under this sub-
23 section;

1 “(V) the proposed schedule for
2 obligation of future Federal grants;
3 and

4 “(VI) the sources of non-Federal
5 funding.

6 “(ii) ADDITIONAL FUNDING.—The
7 agreement may include a commitment on
8 the part of the Secretary to provide fund-
9 ing for the project in future fiscal years.

10 “(C) FULL FUNDING GRANT AGREE-
11 MENT.—An agreement under this paragraph
12 shall be considered a full funding grant agree-
13 ment for the purposes of subsection (g).

14 “(2) SELECTION PROCESS.—

15 “(A) SELECTION CRITERIA.—The Sec-
16 retary may not award a grant under this sub-
17 section for a proposed project unless the Sec-
18 retary determines that the project is—

19 “(i) based on the results of planning
20 and alternatives analysis;

21 “(ii) justified based on a review of its
22 public transportation supportive land use
23 policies, cost effectiveness, and effect on
24 local economic development; and

1 “(iii) supported by an acceptable de-
2 gree of local financial commitment.

3 “(B) PLANNING AND ALTERNATIVES.—In
4 evaluating a project under subparagraph (A)(i),
5 the Secretary shall analyze and consider the re-
6 sults of planning and alternatives analysis for
7 the project.

8 “(C) PROJECT JUSTIFICATION.—In mak-
9 ing the determinations under subparagraph
10 (A)(ii), the Secretary shall—

11 “(i) determine the degree to which
12 local land use policies are supportive of the
13 public transportation project and the de-
14 gree to which the project is likely to
15 achieve local developmental goals;

16 “(ii) determine the cost effectiveness
17 of the project at the time of the initiation
18 of revenue service;

19 “(iii) determine the degree to which
20 the project will have a positive effect on
21 local economic development;

22 “(iv) consider the reliability of the
23 forecasts of costs and ridership associated
24 with the project; and

1 “(v) consider other factors that the
2 Secretary determines to be appropriate to
3 carry out this subsection.

4 “(D) LOCAL FINANCIAL COMMITMENT.—
5 For purposes of subparagraph (A)(iii), the Sec-
6 retary shall require that each proposed local
7 source of capital and operating financing is sta-
8 ble, reliable, and available within the proposed
9 project timetable.

10 “(3) ADVANCEMENT OF PROJECT TO DEVELOP-
11 MENT AND CONSTRUCTION.—

12 “(A) IN GENERAL.—A proposed project
13 under this subsection may not advance from the
14 planning and alternatives analysis stage to
15 project development and construction unless—

16 “(i) the Secretary finds that the
17 project meets the requirements of this sub-
18 section and there is a reasonable likelihood
19 that the project will continue to meet such
20 requirements; and

21 “(ii) the metropolitan planning orga-
22 nization has adopted the locally preferred
23 alternative for the project into the long-
24 range transportation plan.

1 “(B) EVALUATION.—In making the find-
2 ings under subparagraph (A), the Secretary
3 shall evaluate and rate the project as high, me-
4 dium-high, medium, medium-low, or low, based
5 on the results of the analysis of the project jus-
6 tification criteria and the degree of local finan-
7 cial commitment, as required under this sub-
8 section.

9 “(4) IMPACT REPORT.—

10 “(A) IN GENERAL.—Not later than 240
11 days after the date of enactment of the Federal
12 Public Transportation Act of 2004, the Federal
13 Transit Administration shall submit a report on
14 the methodology to be used in evaluating the
15 land use and economic development impacts of
16 non-fixed guideway or partial fixed guideway
17 projects to—

18 “(i) the Committee on Banking,
19 Housing, and Urban Affairs of the Senate;
20 and

21 “(ii) the Committee on Transportation
22 and Infrastructure of the House of Rep-
23 resentatives.

24 “(B) CONTENTS.—The report submitted
25 under subparagraph (A) shall address any qual-

1 itative and quantitative differences between
2 fixed guideway and non-fixed guideway projects
3 with respect to land use and economic develop-
4 ment impacts.

5 “(5) REGULATIONS.—Not later than 120 days
6 after the date of enactment of the Federal Public
7 Transportation Act of 2004, the Secretary shall
8 issue regulations establishing an evaluation and rat-
9 ing process for proposed projects under this sub-
10 section that is based on the results of project jus-
11 tification and local financial commitment, as re-
12 quired under this subsection.”.

13 (g) FULL FUNDING GRANT AGREEMENTS.—Section
14 5309(g)(2) is amended by adding at the end the following:

15 “(C) BEFORE AND AFTER STUDY.—

16 “(i) IN GENERAL.—Each full funding grant
17 agreement shall require the applicant to conduct a
18 study that—

19 “(I) describes and analyzes the impacts of
20 the new start project on transit services and
21 transit ridership;

22 “(II) evaluates the consistency of predicted
23 and actual project characteristics and perform-
24 ance; and

1 “(III) identifies sources of differences be-
2 tween predicted and actual outcomes.

3 “(ii) INFORMATION COLLECTION AND ANALYSIS
4 PLAN.—

5 “(I) SUBMISSION OF PLAN.—Applicants
6 seeking a full funding grant agreement shall
7 submit a complete plan for the collection and
8 analysis of information to identify the impacts
9 of the new start project and the accuracy of the
10 forecasts prepared during the development of
11 the project. Preparation of this plan shall be in-
12 cluded in the full funding grant agreement as
13 an eligible activity.

14 “(II) CONTENTS OF PLAN.—The plan sub-
15 mitted under subclause (I) shall provide for—

16 “(aa) the collection of data on the
17 current transit system regarding transit
18 service levels and ridership patterns, in-
19 cluding origins and destinations, access
20 modes, trip purposes, and rider character-
21 istics;

22 “(bb) documentation of the predicted
23 scope, service levels, capital costs, oper-
24 ating costs, and ridership of the project;

1 “(cc) collection of data on the transit
2 system 2 years after the opening of the
3 new start project, including analogous in-
4 formation on transit service levels and rid-
5 ership patterns and information on the as-
6 built scope and capital costs of the new
7 start project; and

8 “(dd) analysis of the consistency of
9 predicted project characteristics with the
10 after data.

11 “(D) COLLECTION OF DATA ON CURRENT SYSTEM.—
12 To be eligible for a full funding grant agreement, recipi-
13 ents shall have collected data on the current system, ac-
14 cording to the plan required, before the beginning of con-
15 struction of the proposed new start project. Collection of
16 this data shall be included in the full funding grant agree-
17 ment as an eligible activity.

18 “(E) PUBLIC PRIVATE PARTNERSHIP PILOT PRO-
19 GRAM.—

20 “(i) AUTHORIZATION.—The Secretary may es-
21 tablish a pilot program to demonstrate the advan-
22 tages of public-private partnerships for certain fixed
23 guideway systems development projects.

24 “(ii) IDENTIFICATION OF QUALIFIED
25 PROJECTS.—The Secretary shall identify qualified

1 public-private partnership projects as permitted by
2 applicable State and local enabling laws and work
3 with project sponsors to enhance project delivery and
4 reduce overall costs.”.

5 (h) FEDERAL SHARE OF NET PROJECT COST.—Sec-
6 tion 5309(h) is amended to read as follows:

7 “(h) FEDERAL SHARE OF ADJUSTED NET PROJECT
8 COST.—

9 “(1) IN GENERAL.—The Secretary shall esti-
10 mate the net project cost based on engineering stud-
11 ies, studies of economic feasibility, and information
12 on the expected use of equipment or facilities.

13 “(2) ADJUSTMENT FOR COMPLETION UNDER
14 BUDGET.—The Secretary may adjust the final net
15 project cost of a major capital investment project
16 evaluated under subsections (e) and (f) to include
17 the cost of eligible activities not included in the
18 originally defined project if the Secretary determines
19 that the originally defined project has been com-
20 pleted at a cost that is significantly below the origi-
21 nal estimate.

22 “(3) MAXIMUM FEDERAL SHARE.—

23 “(A) IN GENERAL.—A grant for the
24 project shall be for 80 percent of the net project
25 cost, or the net project cost as adjusted under

1 paragraph (2), unless the grant recipient re-
2 quests a lower grant percentage.

3 “(B) EXCEPTIONS.—The Secretary may
4 provide a higher grant percentage than re-
5 quested by the grant recipient if—

6 “(i) the Secretary determines that the
7 net project cost of the project is not more
8 than 10 percent higher than the net
9 project cost estimated at the time the
10 project was approved for advancement into
11 preliminary engineering; and

12 “(ii) the ridership estimated for the
13 project is not less than 90 percent of the
14 ridership estimated for the project at the
15 time the project was approved for advance-
16 ment into preliminary engineering.

17 “(4) OTHER SOURCES.—The costs not funded
18 by a grant under this section may be funded from—

19 “(A) an undistributed cash surplus;

20 “(B) a replacement or depreciation cash
21 fund or reserve; or

22 “(C) new capital, including any Federal
23 funds that are eligible to be expended for trans-
24 portation.

1 “(5) PLANNED EXTENSION TO FIXED GUIDE-
2 WAY SYSTEM.—In addition to amounts allowed
3 under paragraph (1), a planned extension to a fixed
4 guideway system may include the cost of rolling
5 stock previously purchased if the Secretary deter-
6 mines that only non-Federal funds were used and
7 that the purchase was made for use on the exten-
8 sion. A refund or reduction of the costs not funded
9 by a grant under this section may be made only if
10 a refund of a proportional amount of the grant is
11 made at the same time.

12 “(6) EXCEPTION.—The prohibitions on the use
13 of funds for matching requirements under section
14 403(a)(5)(C)(vii) of the Social Security Act (42
15 U.S.C. 603(a)(5)(C)(vii)) shall not apply to amounts
16 allowed under paragraph (4).”.

17 (i) LOAN PROVISIONS AND FISCAL CAPACITY CON-
18 SIDERATIONS.—Section 5309 is amended—

19 (1) by striking subsections (i), (j), (k), and (l);

20 (2) by redesignating subsections (m) and (n) as
21 subsections (i) and (j), respectively;

22 (3) by striking subsection (o) (as added by sec-
23 tion 3009(i) of the Federal Transit Act of 1998);

24 and

1 (4) by redesignating subsections (o) and (p) as
2 subsections (k) and (l), respectively.

3 (j) ALLOCATING AMOUNTS.—Section 5309(i), as re-
4 designated, is amended to read as follows:

5 “(i) ALLOCATING AMOUNTS.—

6 “(1) FISCAL YEAR 2004.—Of the amounts made
7 available or appropriated for fiscal year 2004 under
8 section 5338(a)(3)—

9 “(A) \$1,315,983,615 shall be allocated for
10 projects of not less than \$75,000,000 for major
11 capital projects for new fixed guideway systems
12 and extensions of such systems under sub-
13 section (e) and projects for new fixed guideway
14 or corridor improvement capital projects under
15 subsection (f);

16 “(B) \$1,199,387,615 shall be allocated for
17 capital projects for fixed guideway moderniza-
18 tion; and

19 “(C) \$603,617,520 shall be allocated for
20 capital projects for buses and bus-related equip-
21 ment and facilities.

22 “(2) IN GENERAL.—Of the amounts made
23 available or appropriated for fiscal year 2005 and
24 each fiscal year thereafter for grants under this sec-

1 tion pursuant to subsections (b)(4) and (c) of sec-
2 tion 5338—

3 “(A) the amounts appropriated under sec-
4 tion 5338(c) shall be allocated for major capital
5 projects for—

6 “(i) new fixed guideway systems and
7 extensions of not less than \$75,000,000, in
8 accordance with subsection (e); and

9 “(ii) projects for new fixed guideway
10 or corridor improvement capital projects,
11 in accordance with subsection (f); and

12 “(B) the amounts made available under
13 section 5338(b)(4) shall be allocated for capital
14 projects for buses and bus-related equipment
15 and facilities.

16 “(3) FIXED GUIDEWAY MODERNIZATION.—The
17 amounts made available for fixed guideway mod-
18 ernization under section 5338(b)(2)(K) for fiscal
19 year 2005 and each fiscal year thereafter shall be al-
20 located in accordance with section 5337.

21 “(4) PRELIMINARY ENGINEERING.—Not more
22 than 8 percent of the allocation described in para-
23 graphs (1)(A) and (2)(A) may be expended on pre-
24 liminary engineering.

1 “(5) FUNDING FOR FERRY BOATS.—Of the
2 amounts described in paragraphs (1)(A) and (2)(A),
3 \$10,400,000 shall be available in each of the fiscal
4 years 2004 through 2009 for capital projects in
5 Alaska and Hawaii for new fixed guideway systems
6 and extension projects utilizing ferry boats, ferry
7 boat terminals, or approaches to ferry boat termi-
8 nals.

9 “(6) BUS AND BUS FACILITY GRANTS.—

10 “(A) CONSIDERATIONS.—In making grants
11 under paragraphs (1)(C) and (2)(B), the Sec-
12 retary shall consider the age and condition of
13 buses, bus fleets, related equipment, and bus-re-
14 lated facilities.

15 “(B) PROJECTS NOT IN URBANIZED
16 AREAS.—Of the amounts made available under
17 paragraphs (1)(C) and (2)(B), not less than 5.5
18 percent shall be available in each fiscal year for
19 projects that are not in urbanized areas.

20 “(C) INTERMODAL TERMINALS.—Of the
21 amounts made available under paragraphs
22 (1)(C) and (2)(B), not less than \$75,000,000
23 shall be available in each fiscal year for inter-
24 modal terminal projects, including the intercity
25 bus portion of such projects.”.

1 (k) REPORTS.—Section 5309 is amended by inserting
2 at the end the following:

3 “(m) REPORTS.—

4 “(1) ANNUAL REPORT ON FUNDING REC-
5 OMMENDATIONS.—

6 “(A) IN GENERAL.—Not later than the
7 first Monday of February of each year, the Sec-
8 retary shall submit a report on funding rec-
9 ommendations to—

10 “(i) the Committee on Transportation
11 and Infrastructure of the House of Rep-
12 resentatives;

13 “(ii) the Committee on Banking,
14 Housing, and Urban Affairs of the Senate;

15 “(iii) the Subcommittee on Transpor-
16 tation of the Committee on Appropriations
17 of the House of Representatives; and

18 “(iv) the Subcommittee on Transpor-
19 tation of the Committee on Appropriations
20 of the Senate.

21 “(B) CONTENTS.—The report submitted
22 under subparagraph (A) shall contain—

23 “(i) a proposal on the allocation of
24 amounts to finance grants for capital in-
25 vestment projects among grant applicants;

1 “(ii) a recommendation of projects to
2 be funded based on—

3 “(I) the evaluations and ratings
4 determined under subsection (e) and
5 (f); and

6 “(II) existing commitments and
7 anticipated funding levels for the sub-
8 sequent 3 fiscal years; and

9 “(iii) detailed ratings and evaluations
10 on each project recommended for funding.

11 “(2) TRIENNIAL REPORTS ON PROJECT RAT-
12 INGS.—

13 “(A) IN GENERAL.—Not later than the
14 first Monday of February, the first Monday of
15 June, and the first Monday of October of each
16 year, the Secretary shall submit a report on
17 project ratings to—

18 “(i) the Committee on Transportation
19 and Infrastructure of the House of Rep-
20 resentatives;

21 “(ii) the Committee on Banking,
22 Housing, and Urban Affairs of the Senate;

23 “(iii) the Subcommittee on Transpor-
24 tation of the Committee on Appropriations
25 of the House of Representatives; and

1 “(iv) the Subcommittee on Transpor-
2 tation of the Committee on Appropriations
3 of the Senate.

4 “(B) CONTENTS.—Each report submitted
5 under subparagraph (A) shall contain—

6 “(i) a summary of the ratings of all
7 capital investment projects for which fund-
8 ing was requested under this section;

9 “(ii) detailed ratings and evaluations
10 on the project of each applicant that had
11 significant changes to the finance or
12 project proposal or has completed alter-
13 natives analysis or preliminary engineering
14 since the date of the latest report; and

15 “(iii) all relevant information sup-
16 porting the evaluation and rating of each
17 updated project, including a summary of
18 the financial plan of each updated project.

19 “(3) BEFORE AND AFTER STUDY REPORTS.—
20 Not later than the first Monday of August of each
21 year, the Secretary shall submit a report containing
22 a summary of the results of the studies conducted
23 under subsection (g)(2) to—

24 “(A) the Committee on Transportation and
25 Infrastructure of the House of Representatives;

1 “(B) the Committee on Banking, Housing,
2 and Urban Affairs of the Senate;

3 “(C) the Subcommittee on Transportation
4 of the Committee on Appropriations of the
5 House of Representatives; and

6 “(D) the Subcommittee on Transportation
7 of the Committee on Appropriations of the Sen-
8 ate.

9 “(4) CONTRACTOR PERFORMANCE ASSESSMENT
10 REPORT.—

11 “(A) IN GENERAL.—Not later than 180
12 days after the enactment of the Federal Public
13 Transportation Act of 2004, and each year
14 thereafter, the Secretary shall submit a report
15 analyzing the consistency and accuracy of cost
16 and ridership estimates made by each con-
17 tractor to public transportation agencies devel-
18 oping major investment projects to the commit-
19 tees and subcommittees listed under paragraph
20 (3).

21 “(B) CONTENTS.—The report submitted
22 under subparagraph (A) shall compare the cost
23 and ridership estimates made at the time
24 projects are approved for entrance into prelimi-
25 nary engineering with—

1 “(i) estimates made at the time
2 projects are approved for entrance into
3 final design;

4 “(ii) costs and ridership when the
5 project commences revenue operation; and

6 “(iii) costs and ridership when the
7 project has been in operation for 2 years.

8 “(5) ANNUAL GENERAL ACCOUNTING OFFICE
9 REVIEW.—

10 “(A) REVIEW.—The Comptroller General
11 of the United States shall conduct an annual
12 review of the processes and procedures for eval-
13 uating and rating projects and recommending
14 projects and the Secretary’s implementation of
15 such processes and procedures.

16 “(B) REPORT.—Not later than 90 days
17 after the submission of each report required
18 under paragraph (1), the Comptroller General
19 shall submit a report to Congress that summa-
20 rizes the results of the review conducted under
21 subparagraph (A).

22 “(6) CONTRACTOR PERFORMANCE INCENTIVE
23 REPORT.—Not later than 180 days after the enact-
24 ment of the Federal Public Transportation Act of
25 2004, the Secretary shall submit a report to the

1 committees and subcommittees listed under para-
2 graph (3) on the suitability of allowing contractors
3 to public transportation agencies that undertake
4 major capital investments under this section to re-
5 ceive performance incentive awards if a project is
6 completed for less than the original estimated cost.”.

7 **SEC. 3012. NEW FREEDOM FOR ELDERLY PERSONS AND**
8 **PERSONS WITH DISABILITIES.**

9 (a) IN GENERAL.—Section 5310 is amended to read
10 as follows:

11 **“§ 5310. New freedom for elderly persons and persons**
12 **with disabilities**

13 “(a) GENERAL AUTHORITY.—

14 “(1) AUTHORIZATION.—The Secretary may
15 award grants to a State for capital public transpor-
16 tation projects that are planned, designed, and car-
17 ried out to meet the needs of elderly individuals and
18 individuals with disabilities, with priority given to
19 the needs of these individuals to access necessary
20 health care.

21 “(2) ACQUISITION OF PUBLIC TRANSPORTATION
22 SERVICES.—A capital public transportation project
23 under this section may include acquiring public
24 transportation services as an eligible capital expense.

1 “(3) ADMINISTRATIVE COSTS.—A State may
2 use not more than 15 percent of the amounts re-
3 ceived under this section to administer, plan, and
4 provide technical assistance for a project funded
5 under this section.

6 “(b) ALLOTMENTS AMONG STATES.—

7 “(1) IN GENERAL.—From amounts made avail-
8 able or appropriated in each fiscal year under sub-
9 sections (a)(1)(C)(iv) and (b)(2)(D) of section 5338
10 for grants under this section, the Secretary shall
11 allot amounts to each State under a formula based
12 on the number of elderly individuals and individuals
13 with disabilities in each State.

14 “(2) TRANSFER OF FUNDS.—Any funds allotted
15 to a State under paragraph (1) may be transferred
16 by the State to the apportionments made under sec-
17 tions 5311(c) and 5336 if such funds are only used
18 for eligible projects selected under this section.

19 “(3) REALLOCATION OF FUNDS.—A State re-
20 ceiving a grant under this section may reallocate
21 such grant funds to—

22 “(A) a private nonprofit organization;

23 “(B) a public transportation agency or au-
24 thority; or

25 “(C) a governmental authority that—

1 “(i) has been approved by the State to
2 coordinate services for elderly individuals
3 and individuals with disabilities;

4 “(ii) certifies that nonprofit organiza-
5 tions are not readily available in the area
6 that can provide the services described
7 under this subsection; or

8 “(iii) will provide services to persons
9 with disabilities that exceed those services
10 required by the Americans with Disabilities
11 Act.

12 “(c) FEDERAL SHARE.—

13 “(1) MAXIMUM.—

14 “(A) IN GENERAL.—A grant for a capital
15 project under this section may not exceed 80
16 percent of the net capital costs of the project,
17 as determined by the Secretary.

18 “(B) EXCEPTION.—A State described in
19 section 120(d) of title 23 shall receive an in-
20 creased Federal share in accordance with the
21 formula under that section.

22 “(2) REMAINING COSTS.—The costs of a capital
23 project under this section that are not funded
24 through a grant under this section—

1 “(A) may be funded from an undistributed
2 cash surplus, a replacement or depreciation
3 cash fund or reserve, a service agreement with
4 a State or local social service agency or a pri-
5 vate social service organization, or new capital;
6 and

7 “(B) may be derived from amounts appro-
8 priated to or made available to any Federal
9 agency (other than the Department of Trans-
10 portation, except for Federal Lands Highway
11 funds) that are eligible to be expended for
12 transportation.

13 “(3) EXCEPTION.—For purposes of paragraph
14 (2), the prohibitions on the use of funds for match-
15 ing requirements under section 403(a)(5)(C)(vii) of
16 the Social Security Act (42 U.S.C.
17 603(a)(5)(C)(vii)) shall not apply to Federal or
18 State funds to be used for transportation purposes.

19 “(d) GRANT REQUIREMENTS.—

20 “(1) IN GENERAL.—A grant recipient under
21 this section shall be subject to the requirements of
22 a grant recipient under section 5307 to the extent
23 the Secretary determines to be appropriate.

24 “(2) CERTIFICATION REQUIREMENTS.—

1 “(A) FUND TRANSFERS.—A grant recipi-
2 ent under this section that transfers funds to a
3 project funded under section 5336 in accord-
4 ance with subsection (b)(2) shall certify that
5 the project for which the funds are requested
6 has been coordinated with private nonprofit
7 providers of services under this section.

8 “(B) PROJECT SELECTION AND PLAN DE-
9 VELOPMENT.—Each grant recipient under this
10 section shall certify that—

11 “(i) the projects selected were derived
12 from a locally developed, coordinated pub-
13 lic transit-human services transportation
14 plan; and

15 “(ii) the plan was developed through a
16 process that included representatives of
17 public, private, and nonprofit transpor-
18 tation and human services providers and
19 participation by the public.

20 “(C) ALLOCATIONS TO SUBRECIPIENTS.—
21 Each grant recipient under this section shall
22 certify that allocations of the grant to subrecipi-
23 ents, if any, are distributed on a fair and equi-
24 table basis.

25 “(e) STATE PROGRAM OF PROJECTS.—

1 “(1) SUBMISSION TO SECRETARY.—Each State
2 shall annually submit a program of transportation
3 projects to the Secretary for approval with an assur-
4 ance that the program provides for maximum fea-
5 sible coordination between transportation services
6 funded under this section and transportation serv-
7 ices assisted by other Federal sources.

8 “(2) USE OF FUNDS.—Each State may use
9 amounts made available to carry out this section to
10 provide transportation services for elderly individuals
11 and individuals with disabilities if such services are
12 included in an approved State program of projects.

13 “(f) LEASING VEHICLES.—Vehicles acquired under
14 this section may be leased to local governmental authori-
15 ties to improve transportation services designed to meet
16 the needs of elderly individuals and individuals with dis-
17 abilities.

18 “(g) MEAL DELIVERY FOR HOMEBOUND INDIVID-
19 UALS.—Public transportation service providers receiving
20 assistance under this section or section 5311(e) may co-
21 ordinate and assist in regularly providing meal delivery
22 service for homebound individuals if the delivery service
23 does not conflict with providing public transportation serv-
24 ice or reduce service to public transportation passengers.

1 “(h) TRANSFERS OF FACILITIES AND EQUIPMENT.—
 2 With the consent of the recipient in possession of a facility
 3 or equipment acquired with a grant under this section, a
 4 State may transfer the facility or equipment to any recipi-
 5 ent eligible to receive assistance under this chapter if the
 6 facility or equipment will continue to be used as required
 7 under this section.

8 “(i) FARES NOT REQUIRED.—This section does not
 9 require that elderly individuals and individuals with dis-
 10 abilities be charged a fare.”.

11 (b) CONFORMING AMENDMENT.—The item relating
 12 to section 5310 in the table of sections for chapter 53 is
 13 amended to read as follows:

“5310. New freedom for elderly persons and persons with disabilities.”.

14 **SEC. 3013. FORMULA GRANTS FOR OTHER THAN URBAN-**
 15 **IZED AREAS.**

16 (a) DEFINITIONS.—Section 5311(a) is amended to
 17 read as follows:

18 “(a) DEFINITIONS.—As used in this section, the fol-
 19 lowing definitions shall apply:

20 “(1) RECIPIENT.—The term ‘recipient’ means a
 21 State or Indian tribe that receives a Federal transit
 22 program grant directly from the Federal Govern-
 23 ment.

24 “(2) SUBRECIPIENT.—The term ‘subrecipient’
 25 means a State or local governmental authority, a

1 nonprofit organization, or a private operator of pub-
 2 lic transportation or intercity bus service that re-
 3 ceives Federal transit program grant funds indi-
 4 rectly through a recipient.”.

5 (b) GENERAL AUTHORITY.—Section 5311(b) is
 6 amended—

7 (1) by amending paragraph (1) to read as fol-
 8 lows:

9 “(1) GRANTS AUTHORIZED.—Except as pro-
 10 vided under paragraph (2), the Secretary may award
 11 grants under this section to recipients located in
 12 areas other than urbanized areas for—

13 “(A) public transportation capital projects;

14 “(B) operating costs of equipment and fa-
 15 cilities for use in public transportation; and

16 “(C) the acquisition of public transpor-
 17 tation services.”;

18 (2) by redesignating paragraph (2) as para-
 19 graph (3);

20 (3) by inserting after paragraph (1) the fol-
 21 lowing:

22 “(2) STATE PROGRAM.—

23 “(A) IN GENERAL.—A project eligible for a
 24 grant under this section shall be included in a
 25 State program for public transportation service

1 projects, including agreements with private pro-
 2 viders of public transportation service.

3 “(B) SUBMISSION TO SECRETARY.—Each
 4 State shall annually submit the program de-
 5 scribed in subparagraph (A) to the Secretary.

6 “(C) APPROVAL.—The Secretary may not
 7 approve the program unless the Secretary de-
 8 termines that—

9 “(i) the program provides a fair dis-
 10 tribution of amounts in the State; and

11 “(ii) the program provides the max-
 12 imum feasible coordination of public trans-
 13 portation service assisted under this sec-
 14 tion with transportation service assisted by
 15 other Federal sources.”;

16 (4) in paragraph (3), as redesignated—

17 (A) by striking “(3) The Secretary of
 18 Transportation” and inserting the following:

19 “(3) RURAL TRANSPORTATION ASSISTANCE
 20 PROGRAM.—

21 “(A) ESTABLISHMENT.—The Secretary”;

22 (B) by striking “make” and inserting “use
 23 not more than 2 percent of the amount made
 24 available to carry out this section to award”;
 25 and

1 (C) by adding at the end the following:

2 “(B) DATA COLLECTION.—

3 “(i) REPORT.—Each grantee under
4 this section shall submit an annual report
5 to the Secretary containing information on
6 capital investment, operations, and service
7 provided with funds received under this
8 section, including—

9 “(I) total annual revenue;

10 “(II) sources of revenue;

11 “(III) total annual operating
12 costs;

13 “(IV) total annual capital costs;

14 “(V) fleet size and type, and re-
15 lated facilities;

16 “(VI) revenue vehicle miles; and

17 “(VII) ridership.”; and

18 (5) by adding after paragraph (3) the following:

19 “(4) Of the amount made available to carry out
20 paragraph (3)—

21 “(A) not more than 15 percent may be
22 used to carry out projects of a national scope;
23 and

1 “(B) any amounts not used under sub-
2 paragraph (A) shall be allocated to the
3 States.”.

4 (c) APPORTIONMENTS.—Section 5311(c) is amended
5 to read as follows:

6 “(c) APPORTIONMENTS.—

7 “(1) PUBLIC TRANSPORTATION ON INDIAN RES-
8 ERVATIONS.—Of the amounts made available or ap-
9 propriated for each fiscal year pursuant to sub-
10 sections (a)(1)(C)(v) and (b)(2)(F) of section 5338,
11 the following amounts shall be apportioned for
12 grants to Indian tribes for any purpose eligible
13 under this section, under such terms and conditions
14 as may be established by the Secretary:

15 “(A) \$6,000,000 for fiscal year 2005.

16 “(B) \$8,000,000 for fiscal year 2006.

17 “(C) \$10,000,000 for fiscal year 2007.

18 “(D) \$12,000,000 for fiscal year 2008.

19 “(E) \$15,000,000 for fiscal year 2009.

20 “(2) REMAINING AMOUNTS.—Of the amounts
21 made available or appropriated for each fiscal year
22 pursuant to subsections (a)(1)(C)(v) and (b)(2)(F)
23 of section 5338 that are not apportioned under para-
24 graph (1)—

1 “(A) 20 percent shall be apportioned to the
2 States in accordance with paragraph (3); and

3 “(B) 80 percent shall be apportioned to
4 the States in accordance with paragraph (4).

5 “(3) APPORTIONMENTS BASED ON LAND AREA
6 IN NONURBANIZED AREAS.—

7 “(A) IN GENERAL.—Subject to subpara-
8 graph (B), each State shall receive an amount
9 that is equal to the amount apportioned under
10 paragraph (2)(A) multiplied by the ratio of the
11 land area in areas other than urbanized areas
12 in that State and divided by the land area in
13 all areas other than urbanized areas in the
14 United States, as shown by the most recent de-
15 cennial census of population.

16 “(B) MAXIMUM APPORTIONMENT.—No
17 State shall receive more than 5 percent of the
18 amount apportioned under this paragraph.

19 “(4) APPORTIONMENTS BASED ON POPULATION
20 IN NONURBANIZED AREAS.—Each State shall receive
21 an amount equal to the amount apportioned under
22 paragraph (2)(B) multiplied by the ratio of the pop-
23 ulation of areas other than urbanized areas in that
24 State divided by the population of all areas other

1 than urbanized areas in the United States, as shown
 2 by the most recent decennial census of population.”.

3 (d) USE FOR ADMINISTRATIVE, PLANNING, AND
 4 TECHNICAL ASSISTANCE.—Section 5311(e) is amended—

5 (1) by striking “AND TECHNICAL ASSIST-
 6 ANCE.—(1) The Secretary of Transportation” and
 7 inserting “, PLANNING, AND TECHNICAL ASSIST-
 8 ANCE.—The Secretary”;

9 (2) by striking “to a recipient”; and

10 (3) by striking paragraph (2).

11 (e) INTERCITY BUS TRANSPORTATION.—Section
 12 5311(f) is amended—

13 (1) in paragraph (1)—

14 (A) by striking “(1)” and inserting the fol-
 15 lowing:

16 “(1) IN GENERAL.—”; and

17 (B) by striking “after September 30,
 18 1993,”; and

19 (2) in paragraph (2)—

20 (A) by striking “A State” and inserting
 21 “After consultation with affected intercity bus
 22 service providers, a State”; and

23 (B) by striking “of Transportation”.

24 (f) FEDERAL SHARE OF COSTS.—Section 5311(g) is
 25 amended to read as follows:

1 “(g) FEDERAL SHARE OF COSTS.—

2 “(1) MAXIMUM FEDERAL SHARE.—

3 “(A) CAPITAL PROJECTS.—

4 “(i) IN GENERAL.—Except as pro-
5 vided under clause (ii), a grant awarded
6 under this section for any purpose other
7 than operating assistance may not exceed
8 80 percent of the net capital costs of the
9 project, as determined by the Secretary.

10 “(ii) EXCEPTION.—A State described
11 in section 120(d) of title 23 shall receive a
12 Federal share of the net capital costs in
13 accordance with the formula under that
14 section.

15 “(B) OPERATING ASSISTANCE.—

16 “(i) IN GENERAL.—Except as pro-
17 vided under clause (ii), a grant made
18 under this section for operating assistance
19 may not exceed 50 percent of the net oper-
20 ating costs of the project, as determined by
21 the Secretary.

22 “(ii) EXCEPTION.—A State described
23 in section 120(d) of title 23 shall receive a
24 Federal share of the net operating costs

1 equal to 62.5 percent of the Federal share
2 provided for under subparagraph (A)(ii).

3 “(2) OTHER FUNDING SOURCES.—Funds for a
4 project under this section that are not provided for
5 by a grant under this section—

6 “(A) may be provided from—

7 “(i) an undistributed cash surplus;

8 “(ii) a replacement or depreciation
9 cash fund or reserve;

10 “(iii) a service agreement with a State
11 or local social service agency or a private
12 social service organization; or

13 “(iv) new capital; and

14 “(B) may be derived from amounts appro-
15 priated to or made available to a Federal agen-
16 cy (other than the Department of Transpor-
17 tation, except for Federal Land Highway funds)
18 that are eligible to be expended for transpor-
19 tation.

20 “(3) USE OF FEDERAL GRANT.—A State car-
21 rying out a program of operating assistance under
22 this section may not limit the level or extent of use
23 of the Federal grant for the payment of operating
24 expenses.

1 “(4) EXCEPTION.—For purposes of paragraph
 2 (2)(B), the prohibitions on the use of funds for
 3 matching requirements under section
 4 403(a)(5)(c)(vii) of the Social Security Act (42
 5 U.S.C. 603(a)(5)(c)(vii)) shall not apply to Federal
 6 or State funds to be used for transportation pur-
 7 poses.”.

8 (g) WAIVER CONDITION.—Section 5311(j)(1) is
 9 amended by striking “but the Secretary of Labor may
 10 waive the application of section 5333(b)” and inserting “if
 11 the Secretary of Labor utilizes a Special Warranty that
 12 provides a fair and equitable arrangement to protect the
 13 interests of employees”.

14 **SEC. 3014. RESEARCH, DEVELOPMENT, DEMONSTRATION,**
 15 **AND DEPLOYMENT PROJECTS.**

16 (a) IN GENERAL.—Section 5312 is amended—

17 (1) by amending subsection (a) to read as fol-
 18 lows:

19 “(a) RESEARCH, DEVELOPMENT, AND DEMONSTRA-
 20 TION PROJECTS.—

21 “(1) IN GENERAL.—The Secretary may make
 22 grants, contracts, cooperative agreements, or other
 23 transactions (including agreements with depart-
 24 ments, agencies, and instrumentalities of the United
 25 States Government) for research, development, dem-

1 onstration or deployment projects, or evaluation of
2 technology of national significance to public trans-
3 portation that the Secretary determines will improve
4 public transportation service or help public transpor-
5 tation service meet the total transportation needs at
6 a minimum cost.

7 “(2) INFORMATION.—The Secretary may re-
8 quest and receive appropriate information from any
9 source.

10 “(3) SAVINGS PROVISION.—This subsection
11 does not limit the authority of the Secretary under
12 any other law.”;

13 (2) by striking subsections (b) and (c);

14 (3) by redesignating subsections (d) and (e) as
15 (b) and (c), respectively.

16 (4) in subsection (b), as redesignated—

17 (A) in paragraph (2), by striking “other
18 agreements” and inserting “other trans-
19 actions”; and

20 (B) in paragraph (5), by striking “within
21 the Mass Transit Account of the Highway
22 Trust Fund”; and

23 (5) in subsection (c), as redesignated—

1 (A) in paragraph (2), by striking “public
2 and private” and inserting “public or private”;
3 and

4 (B) in paragraph (3), by striking “within
5 the Mass Transit Account of the Highway
6 Trust Fund” .

7 (b) CONFORMING AMENDMENTS.—

8 (1) SECTION HEADING.—The heading of section
9 5312 is amended to read as follows:

10 **“§ 5312. Research, development, demonstration, and
11 deployment projects”.**

12 (2) TABLE OF SECTIONS.—The item relating to
13 section 5312 in the table of sections for chapter 53
14 is amended to read as follows:

“5312. Research, development, demonstration, and deployment projects.”.

15 **SEC. 3015. TRANSIT COOPERATIVE RESEARCH PROGRAM.**

16 (a) IN GENERAL.—Section 5313 is amended—

17 (1) by striking subsection (b);

18 (2) in subsection (a)—

19 (A) in paragraph (1), by striking “(1) The
20 amounts made available under paragraphs (1)
21 and (2)C(ii) of section 5338(c) of this title”
22 and inserting “The amounts made available
23 under subsections (a)(5)(C)(iii) and (b)(2)(G)(i)
24 of section 5338”; and

1 (B) in paragraph (2), by striking “(2)”
2 and inserting the following:

3 “(b) FEDERAL ASSISTANCE.—”; and

4 (3) by amending subsection (c) to read as fol-
5 lows:

6 “(c) FEDERAL SHARE.—If there would be a clear and
7 direct financial benefit to an entity under a grant or con-
8 tract financed under this section, the Secretary shall es-
9 tablish a Federal share consistent with such benefit.”.

10 (b) CONFORMING AMENDMENTS.—

11 (1) SECTION HEADING.—The heading of section
12 5313 is amended to read as follows:

13 **“§ 5313. Transit cooperative research program”.**

14 (2) TABLE OF SECTIONS.—The item relating to
15 section 5313 in the table of sections for chapter 53
16 is amended to read as follows:

“5313. Transit cooperative research program.”.

17 **SEC. 3016. NATIONAL RESEARCH PROGRAMS.**

18 (a) IN GENERAL.—Section 5314 is amended—

19 (1) in subsection (a)—

20 (A) by amending paragraph (1) to read as
21 follows:

22 “(1) AVAILABILITY OF FUNDS.—The Secretary
23 may use amounts made available under subsections
24 (a)(5)(C)(iv) and (b)(2)(G)(iv) of section 5338 for
25 grants, contracts, cooperative agreements, or other

1 transactions for the purposes described in sections
2 5312, 5315, and 5322.”;

3 (B) in paragraph (2), by striking “(2) Of”
4 and inserting the following:

5 “(2) ADA COMPLIANCE.—From”;

6 (C) by amending paragraph (3) to read as
7 follows:

8 “(3) SPECIAL DEMONSTRATION INITIATIVES.—
9 The Secretary may use not more than 25 percent of
10 the amounts made available under paragraph (1) for
11 special demonstration initiatives, subject to terms
12 that the Secretary determines to be consistent with
13 this chapter. For a nonrenewable grant of not more
14 than \$100,000, the Secretary shall provide expedited
15 procedures for complying with the requirements of
16 this chapter.”;

17 (D) in paragraph (4)—

18 (i) by striking subparagraph (B); and

19 (ii) by redesignating subparagraph
20 (C) as subparagraph (B); and

21 (E) by adding at the end the following:

22 “(6) MEDICAL TRANSPORTATION DEMONSTRA-
23 TION GRANTS.—

24 “(A) GRANTS AUTHORIZED.—The Sec-
25 retary may award demonstration grants, from

1 funds made available under paragraph (1), to
2 eligible entities to provide transportation serv-
3 ices to individuals to access dialysis treatments
4 and other medical treatments for renal disease.

5 “(B) ELIGIBLE ENTITIES.—An entity shall
6 be eligible to receive a grant under this para-
7 graph if the entity—

8 “(i) meets the conditions described in
9 section 501(c)(3) of the Internal Revenue
10 Code of 1986; or

11 “(ii) is an agency of a State or unit
12 of local government.

13 “(C) USE OF FUNDS.—Grant funds re-
14 ceived under this paragraph may be used to
15 provide transportation services to individuals to
16 access dialysis treatments and other medical
17 treatments for renal disease.

18 “(D) APPLICATION.—

19 “(i) IN GENERAL.—Each eligible enti-
20 ty desiring a grant under this paragraph
21 shall submit an application to the Sec-
22 retary at such time, at such place, and
23 containing such information as the Sec-
24 retary may reasonably require.

1 “(ii) SELECTION OF GRANTEES.—In
2 awarding grants under this paragraph, the
3 Secretary shall give preference to eligible
4 entities from communities with—

5 “(I) high incidence of renal dis-
6 ease; and

7 “(II) limited access to dialysis fa-
8 cilities.

9 “(E) RULEMAKING.—The Secretary shall
10 issue regulations to implement and administer
11 the grant program established under this para-
12 graph.

13 “(F) REPORT.—The Secretary shall sub-
14 mit a report on the results of the demonstration
15 projects funded under this paragraph to the
16 Committee on Banking, Housing, and Urban
17 Affairs of the Senate and the Committee on
18 Transportation and Infrastructure of the House
19 of Representatives.”; and

20 (2) by amending subsection (b) to read as fol-
21 lows:

22 “(b) FEDERAL SHARE.—If there would be a clear
23 and direct financial benefit to an entity under a grant,
24 contract, cooperative agreement, or other transaction fi-
25 nanced under subsection (a) or section 5312, 5313, 5315,

1 or 5322, the Secretary shall establish a Federal share con-
 2 sistent with such benefit.”.

3 (c) NATIONAL TECHNICAL ASSISTANCE CENTER FOR
 4 SENIOR TRANSPORTATION; ALTERNATIVE FUELS
 5 STUDY.—Section 5314 is amended by adding at the end
 6 the following:

7 “(c) NATIONAL TECHNICAL ASSISTANCE CENTER
 8 FOR SENIOR TRANSPORTATION.—

9 “(1) ESTABLISHMENT.—The Secretary shall
 10 award grants to a national not-for-profit organiza-
 11 tion for the establishment and maintenance of a na-
 12 tional technical assistance center.

13 “(2) ELIGIBILITY.—An organization shall be el-
 14 igible to receive the grant under paragraph (1) if the
 15 organization—

16 “(A) focuses significantly on serving the
 17 needs of the elderly;

18 “(B) has demonstrated knowledge and ex-
 19 pertise in senior transportation policy and plan-
 20 ning issues;

21 “(C) has affiliates in a majority of the
 22 States;

23 “(D) has the capacity to convene local
 24 groups to consult on operation and development
 25 of senior transportation programs; and

1 “(E) has established close working rela-
2 tionships with the Federal Transit Administra-
3 tion and the Administration on Aging.

4 “(3) USE OF FUNDS.—The national technical
5 assistance center established under this section
6 shall—

7 “(A) gather best practices from throughout
8 the country and provide such practices to local
9 communities that are implementing senior
10 transportation programs;

11 “(B) work with teams from local commu-
12 nities to identify how they are successfully
13 meeting the transportation needs of senior and
14 any gaps in services in order to create a plan
15 for an integrated senior transportation pro-
16 gram;

17 “(C) provide resources on ways to pay for
18 senior transportation services;

19 “(D) create a web site to publicize and cir-
20 culate information on senior transportation pro-
21 grams;

22 “(E) establish a clearinghouse for print,
23 video, and audio resources on senior mobility;
24 and

1 “(F) administer the demonstration grant
2 program established under paragraph (4).

3 “(4) GRANTS AUTHORIZED.—

4 “(A) IN GENERAL.—The national technical
5 assistance center established under this section,
6 in consultation with the Federal Transit Ad-
7 ministration, shall award senior transportation
8 demonstration grants to—

9 “(i) local transportation organizations;

10 “(ii) State agencies;

11 “(iii) units of local government; and

12 “(iv) nonprofit organizations.

13 “(B) USE OF FUNDS.—Grant funds re-
14 ceived under this paragraph may be used to—

15 “(i) evaluate the state of transpor-
16 tation services for senior citizens;

17 “(ii) recognize barriers to mobility
18 that senior citizens encounter in their com-
19 munities;

20 “(iii) establish partnerships and pro-
21 mote coordination among community
22 stakeholders, including public, not-for-prof-
23 it, and for-profit providers of transpor-
24 tation services for senior citizens;

1 “(iv) identify future transportation
2 needs of senior citizens within local com-
3 munities; and

4 “(v) establish strategies to meet the
5 unique needs of healthy and frail senior
6 citizens.

7 “(C) SELECTION OF GRANTEES.—The Sec-
8 retary shall select grantees under this sub-
9 section based on a fair representation of various
10 geographical locations throughout the United
11 States.

12 “(5) ALLOCATIONS.—From the funds made
13 available for each fiscal year under subsections
14 (a)(5)(C)(iv) and (b)(2)(G)(iv) of section 5338,
15 \$3,000,000 shall be allocated to carry out this sub-
16 section.

17 “(d) ALTERNATIVE FUELS STUDY.—

18 “(1) STUDY.—The Secretary shall conduct a
19 study of the actions necessary to facilitate the pur-
20 chase of increased volumes of alternative fuels (as
21 defined in section 301 of the Energy Policy Act of
22 1992 (42 U.S.C. 13211)) for use in public transit
23 vehicles

24 “(2) SCOPE OF STUDY.—The study conducted
25 under this subsection shall focus on the incentives

1 necessary to increase the use of alternative fuels in
2 public transit vehicles, including buses, fixed guide-
3 way vehicles, and ferries.

4 “(3) CONTENTS.—The study shall consider—

5 “(A) the environmental benefits of in-
6 creased use of alternative fuels in transit vehi-
7 cles;

8 “(B) existing opportunities available to
9 transit system operators that encourage the
10 purchase of alternative fuels for transit vehicle
11 operation;

12 “(C) existing barriers to transit system op-
13 erators that discourage the purchase of alter-
14 native fuels for transit vehicle operation, includ-
15 ing situations where alternative fuels that do
16 not require capital improvements to transit ve-
17 hicles are disadvantaged over fuels that do re-
18 quire such improvements; and

19 “(D) the necessary levels and type of sup-
20 port necessary to encourage additional use of
21 alternative fuels for transit vehicle operation.

22 “(4) RECOMMENDATIONS.—The study shall rec-
23 ommend regulatory and legislative alternatives that
24 will result in the increased use of alternative fuels in
25 transit vehicles.

1 “(5) REPORT.—Not later than 1 year after the
2 date of enactment of the Federal Public Transpor-
3 tation Act of 2004, the Secretary shall submit the
4 study completed under this subsection to the Com-
5 mittee on Banking, Housing, and Urban Affairs of
6 the Senate and the Committee on Transportation
7 and Infrastructure of the House of Representa-
8 tives”.

9 (c) CONFORMING AMENDMENTS.—

10 (1) SECTION HEADING.—The heading for sec-
11 tion 5314 is amended to read as follows:

12 **“§ 5314. National research programs”.**

13 (2) TABLE OF SECTIONS.—The item relating to
14 section 5314 in the table of sections for chapter 53
15 is amended to read as follows:

“5314. National research programs.”.

16 **SEC. 3017. NATIONAL TRANSIT INSTITUTE.**

17 (a) Section 5315 is amended—

18 (1) by striking subsections (a) and (b) and in-
19 serting the following:

20 “(a) ESTABLISHMENT.—The Secretary shall award a
21 grant to Rutgers University to conduct a national transit
22 institute.

23 “(b) DUTIES.—

24 “(1) IN GENERAL.—In cooperation with the
25 Federal Transit Administration, State transpor-

1 tation departments, public transportation authori-
2 ties, and national and international entities, the in-
3 stitute established pursuant to subsection (a) shall
4 develop and conduct training programs for Federal,
5 State, and local transportation employees, United
6 States citizens, and foreign nationals engaged or to
7 be engaged in Government-aid public transportation
8 work.

9 “(2) TRAINING PROGRAMS.—The training pro-
10 grams developed under paragraph (1) may include
11 courses in recent developments, techniques, and pro-
12 cedures related to—

13 “(A) intermodal and public transportation
14 planning;

15 “(B) management;

16 “(C) environmental factors;

17 “(D) acquisition and joint use rights of
18 way;

19 “(E) engineering and architectural design;

20 “(F) procurement strategies for public
21 transportation systems;

22 “(G) turnkey approaches to delivering pub-
23 lic transportation systems;

24 “(H) new technologies;

25 “(I) emission reduction technologies;

1 “(J) ways to make public transportation
2 accessible to individuals with disabilities;

3 “(K) construction, construction manage-
4 ment, insurance, and risk management;

5 “(L) maintenance;

6 “(M) contract administration;

7 “(N) inspection;

8 “(O) innovative finance;

9 “(P) workplace safety; and

10 “(Q) public transportation security.”; and

11 (2) in subsection (d), by striking “mass” each
12 place it appears.

13 **SEC. 3018. BUS TESTING FACILITY.**

14 Section 5318 is amended—

15 (1) in subsection (a)—

16 (A) by striking “ESTABLISHMENT.—The
17 Secretary of Transportation shall establish one
18 facility” and inserting “IN GENERAL.—The
19 Secretary shall maintain 1 facility”; and

20 (B) by striking “established by renovating”
21 and inserting “maintained at”; and

22 (2) in subsection (d), by striking “section
23 5309(m)(1)(C) of this title” and inserting “para-
24 graphs (1)(C) and (2)(B) of section 5309(i)”.

1 **SEC. 3019. BICYCLE FACILITIES.**

2 Section 5319 is amended by striking “5307(k)” and
3 inserting “5307(d)(1)(K)”.

4 **SEC. 3020. SUSPENDED LIGHT RAIL TECHNOLOGY PILOT**
5 **PROJECT.**

6 Section 5320 is repealed.

7 **SEC. 3021. CRIME PREVENTION AND SECURITY.**

8 Section 5321 is repealed.

9 **SEC. 3022. GENERAL PROVISIONS ON ASSISTANCE.**

10 Section 5323 is amended—

11 (1) in subsection (a)—

12 (A) by amending paragraph (1) to read as
13 follows:

14 “(1) IN GENERAL.—Financial assistance pro-
15 vided under this chapter to a State or a local gov-
16 ernmental authority may be used to acquire an in-
17 terest in, or to buy property of, a private company
18 engaged in public transportation, for a capital
19 project for property acquired from a private com-
20 pany engaged in public transportation after July 9,
21 1964, or to operate a public transportation facility
22 or equipment in competition with, or in addition to,
23 transportation service provided by an existing public
24 transportation company, only if—

25 “(A) the Secretary determines that such fi-
26 nancial assistance is essential to a program of

1 projects required under sections 5303, 5304,
2 and 5306;

3 “(B) the Secretary determines that the
4 program provides for the participation of pri-
5 vate companies engaged in public transpor-
6 tation to the maximum extent feasible; and

7 “(C) just compensation under State or
8 local law will be paid to the company for its
9 franchise or property.”; and

10 (B) in paragraph (2), by striking “(2)”
11 and inserting the following:

12 “(2) LIMITATION.—”;

13 (2) by amending subsection (b) to read as fol-
14 lows:

15 “(b) NOTICE AND PUBLIC HEARING.—

16 “(1) IN GENERAL.—An application for a grant
17 under this chapter for a capital project that will sub-
18 stantially affect a community, or the public trans-
19 portation service of a community, shall include, in
20 the environmental record for the project, evidence
21 that the applicant has—

22 “(A) provided an adequate opportunity for
23 public review and comment on the project;

1 “(B) held a public hearing on the project
2 if the project affects significant economic, so-
3 cial, or environmental interests;

4 “(C) considered the economic, social, and
5 environmental effects of the project; and

6 “(D) found that the project is consistent
7 with official plans for developing the urban
8 area.

9 “(2) CONTENTS OF NOTICE.—Notice of a hear-
10 ing under this subsection—

11 “(A) shall include a concise description of
12 the proposed project; and

13 “(B) shall be published in a newspaper of
14 general circulation in the geographic area the
15 project will serve.”;

16 (3) by amending subsection (c) to read as fol-
17 lows:

18 “(c) NEW TECHNOLOGY.—A grant for financial as-
19 sistance under this chapter for new technology, including
20 innovative or improved products, techniques, or methods,
21 shall be subject to the requirements of section 5309 to
22 the extent the Secretary determines to be appropriate.”;

23 (4) by amending subsection (d) to read as fol-
24 lows:

1 “(d) CONDITIONS ON BUS TRANSPORTATION SERV-
2 ICE.—Financial assistance under this chapter may be used
3 to buy or operate a bus only if the recipient agrees to com-
4 ply with the following conditions on bus transportation
5 service:

6 “(1) CHARTER BUS SERVICE.—

7 “(A) IN GENERAL.—Except as provided
8 under subparagraph (B), a recipient may pro-
9 vide incidental charter bus service only within
10 its lawful service area if—

11 “(i) the recipient annually publishes,
12 by electronic and other appropriate means,
13 a notice—

14 “(I) indicating its intent to offer
15 incidental charter bus service within
16 its lawful service area; and

17 “(II) soliciting notices from pri-
18 vate bus operators that wish to appear
19 on a list of carriers offering charter
20 bus service in that service area;

21 “(ii) the recipient provides private bus
22 operators with an annual opportunity to
23 notify the recipient of its desire to appear
24 on a list of carriers offering charter bus
25 service in such service area;

1 “(iii) upon receiving a request for
2 charter bus service, the recipient electroni-
3 cally notifies the private bus operators list-
4 ed as offering charter service in that serv-
5 ice area with the name and contact infor-
6 mation of the requestor and the nature of
7 the charter service request; and

8 “(iv) the recipient does not offer to
9 provide charter bus service unless no pri-
10 vate bus operator indicates that it is will-
11 ing and able to provide the service within
12 a 72-hour period after the receipt of such
13 notice.

14 “(B) EXCEPTION.—A recipient that oper-
15 ates 2,000 or fewer vehicles in fixed-route peak
16 hour service may provide incidental charter bus
17 transportation directly to —

18 “(i) local governments; and

19 “(ii) social service entities with limited
20 resources.

21 “(C) IRREGULARLY SCHEDULED
22 EVENTS.—Service, other than commuter serv-
23 ice, by a recipient to irregularly scheduled
24 events, where the service is conducted in whole
25 or in part outside the service area of the recipi-

1 ent, regardless of whether the service is con-
2 tracted for individually with passengers, is sub-
3 ject to a rebuttable presumption that such serv-
4 ice is charter service.

5 “(2) VIOLATION OF AGREEMENTS.—

6 “(A) COMPLAINTS.—A complaint regard-
7 ing the violation of a charter bus service agree-
8 ment shall be submitted to the Regional Admin-
9 istrator of the Federal Transit Administration,
10 who shall—

11 “(i) provide a reasonable opportunity
12 for the recipient to respond to the com-
13 plaint;

14 “(ii) provide the recipient with an op-
15 portunity for an informal hearing; and

16 “(iii) issue a written decision not later
17 than 60 days after the parties have com-
18 pleted their submissions.

19 “(B) APPEALS.—

20 “(i) IN GENERAL.—A decision by the
21 Regional Administrator may be appealed to
22 a panel comprised of the Federal Transit
23 Administrator, personnel in the Office of
24 the Secretary of Transportation, and other

1 persons with expertise in surface passenger
2 transportation issues.

3 “(ii) STANDARD OF REVIEW.—The
4 panel described in clause (i) shall consider
5 the complaint de novo on all issues of fact
6 and law.

7 “(iii) WRITTEN DECISION.—The ap-
8 peals panel shall issue a written decision
9 on an appeal not later than 60 days after
10 the completion of submissions. This deci-
11 sion shall be the final order of the agency
12 and subject to judicial review in district
13 court.

14 “(C) CORRECTION.—If the Secretary de-
15 termines that a violation of an agreement relat-
16 ing to the provision of charter service has oc-
17 curred, the Secretary shall correct the violation
18 under terms of the agreement.

19 “(D) REMEDIES.—The Secretary may
20 issue orders to recipients to cease and desist in
21 actions that violate the agreement, and such or-
22 ders shall be binding upon the parties. In addi-
23 tion to any remedy spelled out in the agree-
24 ment, if a recipient has failed to correct a viola-
25 tion within 60 days after the receipt of a notice

1 of violation from the Secretary, the Secretary
2 shall withhold from the recipient the lesser of—

3 “(i) 5 percent of the financial assist-
4 ance available to the recipient under this
5 chapter for the next fiscal year; or

6 “(ii) \$200,000.

7 “(3) REGULATIONS.—Not later than 1 year
8 after the date of enactment of the Federal Public
9 Transportation Act of 2004, the Secretary shall
10 issue amended regulations that—

11 “(A) implement this subsection, as revised
12 by such Act; and

13 “(B) impose restrictions, procedures, and
14 remedies in connection with sightseeing service
15 by a recipient.

16 “(4) PUBLIC NOTICE.—The Secretary shall
17 make all written decisions, guidance, and other per-
18 tinent materials relating to the procedures in this
19 subsection available to the public in electronic and
20 other appropriate formats in a timely manner.”;

21 (5) by striking subsection (e);

22 (6) by redesignating subsection (f) as sub-
23 section (e);

24 (7) in subsection (e), as redesignated—

1 (A) by striking “(1)” and inserting the fol-
2 lowing:

3 “(1) IN GENERAL.—”;

4 (B) by striking paragraph (2);

5 (C) by striking “This subsection” and in-
6 serting the following:

7 “(2) EXCEPTIONS.—This subsection; and

8 (D) by adding at the end the following:

9 “(3) PENALTY.—If the Secretary determines
10 that an applicant, governmental authority, or pub-
11 licly owned operator has violated the agreement re-
12 quired under paragraph (1), the Secretary shall bar
13 the applicant, authority, or operator from receiving
14 Federal transit assistance in an amount the Sec-
15 retary determines to be appropriate.”;

16 (8) by inserting after subsection (e) the fol-
17 lowing:

18 “(f) BOND PROCEEDS ELIGIBLE FOR LOCAL
19 SHARE.—

20 “(1) IN GENERAL.—Notwithstanding any other
21 provision of law, a recipient of assistance under sec-
22 tion 5307 or 5309, may use the proceeds from the
23 issuance of revenue bonds as part of the local
24 matching funds for a capital project.

1 “(2) REIMBURSEMENT BY SECRETARY.—The
2 Secretary may reimburse an eligible recipient for de-
3 posits of bond proceeds in a debt service reserve that
4 the recipient established pursuant to section
5 5302(a)(1)(K) from amounts made available to the
6 recipient under section 5307 or 5309.”;

7 (9) in subsection (g)—

8 (A) by striking “(f)” each place it appears
9 and inserting “(e)”; and

10 (B) by striking “103(e)(4) and 142 (a) or
11 (e)” each place it appears and inserting “133
12 and 142”;

13 (10) by amending subsection (h) to read as fol-
14 lows:

15 “(h) TRANSFER OF LANDS OR INTERESTS IN LANDS
16 OWNED BY THE UNITED STATES.—

17 (1) REQUEST BY SECRETARY.—If the Secretary
18 determines that any part of the lands or interests in
19 lands owned by the United States and made avail-
20 able as a result of a military base closure is nec-
21 essary for transit purposes eligible under this chap-
22 ter, including corridor preservation, the Secretary
23 shall submit a request to the head of the Federal
24 agency supervising the administration of such lands
25 or interests in lands. Such request shall include a

1 map showing the portion of such lands or interests
2 in lands, which is desired to be transferred for public
3 transportation purposes.

4 “(2) TRANSFER OF LAND.—If 4 months after
5 submitting a request under paragraph (1), the Sec-
6 retary does not receive a response from the Federal
7 agency described in paragraph (1) that certifies that
8 the proposed appropriation of land is contrary to the
9 public interest or inconsistent with the purposes for
10 which such land has been reserved, or if the head of
11 such agency agrees to the utilization or transfer
12 under conditions necessary for the adequate protec-
13 tion and utilization of the reserve, such land or in-
14 terests in land may be utilized or transferred to a
15 State, local governmental authority, or public trans-
16 portation operator for such purposes and subject to
17 the conditions specified by such agency.

18 “(3) REVERSION.—If at any time the lands or
19 interests in land utilized or transferred under para-
20 graph (2) are no longer needed for public transpor-
21 tation purposes, the State, local governmental au-
22 thority, or public transportation operator that re-
23 ceived the land shall notify to the Secretary, and
24 such lands shall immediately revert to the control of

1 the head of the Federal agency from which the land
2 was originally transferred.”;

3 (11) in subsection (j)(5), by striking “Inter-
4 modal Surface Transportation Efficiency Act of
5 1991 (Public Law 102–240, 105 Stat. 1914)” and
6 inserting “Federal Public Transportation Act of
7 2004”;

8 (12) by amending subsection (l) to read as fol-
9 lows:

10 “(l) RELATIONSHIP TO OTHER LAWS.—Section 1001
11 of title 18 applies to a certificate, submission, or statement
12 provided under this chapter. The Secretary may terminate
13 financial assistance under this chapter and seek reim-
14 bursement directly, or by offsetting amounts, available
15 under this chapter, if the Secretary determines that a re-
16 cipient of such financial assistance has made a false or
17 fraudulent statement or related act in connection with a
18 Federal transit program.”;

19 (13) in subsection (m), by inserting at the end
20 the following: “Requirements to perform preaward
21 and postdelivery reviews of rolling stock purchases to
22 ensure compliance with subsection (j) shall not apply
23 to private nonprofit organizations or to grantees
24 serving urbanized areas with a population of fewer
25 than 1,000,000.”;

1 (14) in subsection (o), by striking “the Trans-
2 portation Infrastructure Finance and Innovation Act
3 of 1998” and inserting “sections 181 through 188
4 of title 23”; and

5 (15) by adding at the end the following:

6 “(p) PROHIBITED USE OF FUNDS.—Grant funds re-
7 ceived under this chapter may not be used to pay ordinary
8 governmental or nonproject operating expenses.”.

9 **SEC. 3023. SPECIAL PROVISIONS FOR CAPITAL PROJECTS.**

10 (a) IN GENERAL.—Section 5324 is amended to read
11 as follows:

12 **“§ 5324. Special provisions for capital projects**

13 “(a) REAL PROPERTY AND RELOCATION SERV-
14 ICES.—Whenever real property is acquired or furnished as
15 a required contribution incident to a project, the Secretary
16 shall not approve the application for financial assistance
17 unless the applicant has made all payments and provided
18 all assistance and assurances that are required of a State
19 agency under sections 210 and 305 of the Uniform Relo-
20 cation Assistance and Real Property Acquisition Policies
21 Act of 1970 (42 U.S.C. 4630 and 4655). The Secretary
22 must be advised of specific references to any State law
23 that are believed to be an exception to section 301 or 302
24 of such Act (42 U.S.C. 4651 and 4652).

25 “(b) ADVANCE REAL PROPERTY ACQUISITIONS.—

1 (1) IN GENERAL.—The Secretary may partici-
2 pate in the acquisition of real property for any
3 project that may use the property if the Secretary
4 determines that external market forces are jeopard-
5 izing the potential use of the property for the project
6 and if—

7 “(A) there are offers on the open real es-
8 tate market to convey that property for a use
9 that is incompatible with the project under
10 study;

11 “(B) there is an imminent threat of devel-
12 opment or redevelopment of the property for a
13 use that is incompatible with the project under
14 study;

15 “(C) recent appraisals reflect a rapid in-
16 crease in the fair market value of the property;

17 “(D) the property, because it is located
18 near an existing transportation facility, is likely
19 to be developed and to be needed for a future
20 transportation improvement; or

21 “(E) the property owner can demonstrate
22 that, for health, safety, or financial reasons, re-
23 taining ownership of the property poses an
24 undue hardship on the owner in comparison to

1 other affected property owners and requests the
2 acquisition to alleviate that hardship.

3 “(2) ENVIRONMENTAL REVIEWS.—Property ac-
4 quired in accordance with this subsection may not be
5 developed in anticipation of the project until all re-
6 quired environmental reviews for the project have
7 been completed.

8 “(3) LIMITATION.—The Secretary shall limit
9 the size and number of properties acquired under
10 this subsection as necessary to avoid any prejudice
11 to the Secretary’s objective evaluation of project al-
12 ternatives.

13 “(4) EXEMPTION.—An acquisition under this
14 section shall be considered an exempt project under
15 section 176 of the Clean Air Act (42 U.S.C. 7506).

16 “(c) RAILROAD CORRIDOR PRESERVATION.—

17 “(1) IN GENERAL.—The Secretary may assist
18 an applicant to acquire railroad right-of-way before
19 the completion of the environmental reviews for any
20 project that may use the right-of-way if the acquisi-
21 tion is otherwise permitted under Federal law. The
22 Secretary may establish restrictions on such an ac-
23 quisition as the Secretary determines to be necessary
24 and appropriate.

1 “(2) ENVIRONMENTAL REVIEWS.—Railroad
2 right-of-way acquired under this subsection may not
3 be developed in anticipation of the project until all
4 required environmental reviews for the project have
5 been completed.

6 “(d) CONSIDERATION OF ECONOMIC, SOCIAL, AND
7 ENVIRONMENTAL INTERESTS.—

8 “(1) IN GENERAL.—The Secretary may not ap-
9 prove an application for financial assistance for a
10 capital project under this chapter unless the Sec-
11 retary determines that the project has been devel-
12 oped in accordance with the National Environmental
13 Policy Act of 1969 (42 U.S.C. 4321 et seq.). The
14 Secretary’s findings under this paragraph shall be
15 made a matter of public record.

16 “(2) COOPERATION AND CONSULTATION.—In
17 carrying out section 5301(e), the Secretary shall co-
18 operate and consult with the Secretary of the Inte-
19 rior and the Administrator of the Environmental
20 Protection Agency on each project that may have a
21 substantial impact on the environment.”.

22 (b) CONFORMING AMENDMENT.—The item relating
23 to section 5324 in the table of sections for chapter 53 is
24 amended to read as follows:

“5324. Special provisions for capital projects.”.

1 **SEC. 3024. CONTRACT REQUIREMENTS.**

2 (a) IN GENERAL.—Section 5325 is amended to read
3 as follows:

4 **“§ 5325. Contract requirements**

5 “(a) COMPETITION.—Recipients of assistance under
6 this chapter shall conduct all procurement transactions in
7 a manner that provides full and open competition as deter-
8 mined by the Secretary.

9 “(b) ARCHITECTURAL, ENGINEERING, AND DESIGN
10 CONTRACTS.—

11 “(1) IN GENERAL.—A contract or requirement
12 for program management, architectural engineering,
13 construction management, a feasibility study, and
14 preliminary engineering, design, architectural, engi-
15 neering, surveying, mapping, or related services for
16 a project for which Federal assistance is provided
17 under this chapter shall be awarded in the same
18 manner as a contract for architectural and engineer-
19 ing services is negotiated under chapter 11 of title
20 40, or an equivalent qualifications-based requirement
21 of a State. This subsection does not apply to the ex-
22 tent a State has adopted or adopts by law a formal
23 procedure for procuring those services.

24 “(2) ADDITIONAL REQUIREMENTS.—When
25 awarding a contract described in paragraph (1), re-

1 recipients of assistance under this chapter shall com-
2 ply with the following requirements:

3 “(A) Any contract or subcontract awarded
4 under this chapter shall be performed and au-
5 dited in compliance with cost principles con-
6 tained in part 31 of title 48, Code of Federal
7 Regulations (commonly known as the Federal
8 Acquisition Regulation).

9 “(B) A recipient of funds under a contract
10 or subcontract awarded under this chapter shall
11 accept indirect cost rates established in accord-
12 ance with the Federal Acquisition Regulation
13 for 1-year applicable accounting periods by a
14 cognizant Federal or State government agency,
15 if such rates are not currently under dispute.

16 “(C) After a firm’s indirect cost rates are
17 accepted under subparagraph (B), the recipient
18 of the funds shall apply such rates for the pur-
19 poses of contract estimation, negotiation, ad-
20 ministration, reporting, and contract payment,
21 and shall not be limited by administrative or de
22 facto ceilings.

23 “(D) A recipient requesting or using the
24 cost and rate data described in subparagraph
25 (C) shall notify any affected firm before such

1 request or use. Such data shall be confidential
2 and shall not be accessible or provided by the
3 group of agencies sharing cost data under this
4 subparagraph, except by written permission of
5 the audited firm. If prohibited by law, such cost
6 and rate data shall not be disclosed under any
7 circumstances.

8 “(c) EFFICIENT PROCUREMENT.—A recipient may
9 award a procurement contract under this chapter to other
10 than the lowest bidder if the award furthers an objective
11 consistent with the purposes of this chapter, including im-
12 proved long-term operating efficiency and lower long-term
13 costs.

14 “(d) DESIGN-BUILD PROJECTS.—

15 “(1) DEFINED TERM.—As used in this sub-
16 section, the term ‘design-build project’—

17 “(A) means a project under which a recipi-
18 ent enters into a contract with a seller, firm, or
19 consortium of firms to design and build an op-
20 erable segment of a public transportation sys-
21 tem that meets specific performance criteria;
22 and

23 “(B) may include an option to finance, or
24 operate for a period of time, the system or seg-
25 ment or any combination of designing, building,

1 operating, or maintaining such system or seg-
2 ment.

3 “(2) FINANCIAL ASSISTANCE FOR CAPITAL
4 COSTS.—Federal financial assistance under this
5 chapter may be provided for the capital costs of a
6 design-build project after the recipient complies with
7 Government requirements.

8 “(e) ROLLING STOCK.—

9 “(1) ACQUISITION.—A recipient of financial as-
10 sistance under this chapter may enter into a con-
11 tract to expend that assistance to acquire rolling
12 stock—

13 “(A) with a party selected through a com-
14 petitive procurement process; or

15 “(B) based on—

16 “(i) initial capital costs; or

17 “(ii) performance, standardization, life
18 cycle costs, and other factors.

19 “(2) MULTIYEAR CONTRACTS.—A recipient pro-
20 curing rolling stock with Federal financial assistance
21 under this chapter may make a multiyear contract,
22 including options, to buy not more than 5 years of
23 requirements for rolling stock and replacement
24 parts. The Secretary shall allow a recipient to act on
25 a cooperative basis to procure rolling stock under

1 this paragraph and in accordance with other Federal
2 procurement requirements.

3 “(f) EXAMINATION OF RECORDS.—Upon request, the
4 Secretary and the Comptroller General, or any of their
5 representatives, shall have access to and the right to exam-
6 ine and inspect all records, documents, and papers, includ-
7 ing contracts, related to a project for which a grant is
8 made under this chapter.

9 “(g) GRANT PROHIBITION.—A grant awarded under
10 this chapter may not be used to support a procurement
11 that uses an exclusionary or discriminatory specification.

12 “(h) BUS DEALER REQUIREMENTS.—No State law
13 requiring buses to be purchased through in-State dealers
14 shall apply to vehicles purchased with a grant under this
15 chapter.

16 “(i) AWARDS TO RESPONSIBLE CONTRACTORS.—

17 “(1) IN GENERAL.—Federal financial assistance
18 under this chapter may be provided for contracts
19 only if a recipient awards such contracts to respon-
20 sible contractors possessing the ability to success-
21 fully perform under the terms and conditions of a
22 proposed procurement.

23 “(2) CRITERIA.—Before making an award to a
24 contractor under paragraph (1), a recipient shall
25 consider—

1 “(A) the integrity of the contractor;

2 “(B) the contractor’s compliance with pub-
3 lic policy;

4 “(C) the contractor’s past performance, in-
5 cluding the performance reported in the Con-
6 tractor Performance Assessment Reports re-
7 quired under section 5309(m)(4); and

8 “(D) the contractor’s financial and tech-
9 nical resources.”.

10 (b) CONFORMING AMENDMENTS.—Chapter 53 is
11 amended by striking section 5326.

12 **SEC. 3025. PROJECT MANAGEMENT OVERSIGHT AND RE-**
13 **VIEW.**

14 (a) PROJECT MANAGEMENT PLAN REQUIRE-
15 MENTS.—Section 5327(a) is amended—

16 (1) in paragraph (11), by striking “and” at the
17 end;

18 (2) in paragraph (12), by striking the period at
19 the end and inserting “; and”; and

20 (3) by adding at the end the following:

21 “(13) safety and security management.”.

22 (b) LIMITATIONS ON USE OF AVAILABLE
23 AMOUNTS.—Section 5327(c) is amended—

24 (1) by amending paragraph (1) to read as fol-
25 lows:

1 “(1) IN GENERAL.—The Secretary may not use
 2 more than 1 percent of amounts made available for
 3 a fiscal year to carry out any of sections 5307
 4 through 5311, 5316, or 5317, or a project under the
 5 National Capital Transportation Act of 1969 (Public
 6 Law 91–143) to make a contract to oversee the con-
 7 struction of major projects under any of sections
 8 5307 through 5311, 5316, or 5317 or under that
 9 Act.”;

10 (2) in paragraph (2)—

11 (A) by striking “(2)” and inserting the fol-
 12 lowing:

13 “(2) OTHER ALLOWABLE USES.—”; and

14 (B) by inserting “and security” after
 15 “safety”; and

16 (3) in paragraph (3), by striking “(3) The Gov-
 17 ernment shall” and inserting the following:

18 “(3) FEDERAL SHARE.—Federal funds shall be
 19 used to”.

20 **SEC. 3026. PROJECT REVIEW.**

21 Section 5328 is amended—

22 (1) in subsection (a)—

23 (A) in paragraph (1) by striking “(1)

24 When the Secretary of Transportation allows a

25 new fixed guideway project to advance into the

1 alternatives analysis stage of project review, the
2 Secretary shall cooperate with the applicant”
3 and inserting the following:

4 “(1) ALTERNATIVES ANALYSIS.—The Secretary
5 shall cooperate with an applicant undertaking an al-
6 ternatives analysis under subsections (e) and (f) of
7 section 5309”;

8 (B) in paragraph (2)—

9 (i) by striking “(2)” and inserting the
10 following:

11 “(2) ADVANCEMENT TO PRELIMINARY ENGI-
12 NEERING STAGE.—”; and

13 (ii) by striking “is consistent with”
14 and inserting “meets the requirements of”;

15 (C) in paragraph (3)—

16 (i) by striking “(3)” and inserting the
17 following:

18 “(3) RECORD OF DECISION.—”;

19 (ii) by striking “of construction”; and

20 (iii) by adding before the period at the
21 end the following: “if the Secretary deter-
22 mines that the project meets the require-
23 ments of subsection (e) or (f) of section
24 5309”; and

25 (D) by striking paragraph (4); and

1 (2) by striking subsection (c).

2 **SEC. 3027. INVESTIGATIONS OF SAFETY AND SECURITY**
3 **RISK.**

4 (a) IN GENERAL.—Section 5329 is amended to read
5 as follows:

6 **“§ 5329. Investigation of safety hazards and security**
7 **risks**

8 “(a) IN GENERAL.—The Secretary may conduct in-
9 vestigations into safety hazards and security risks associ-
10 ated with a condition in equipment, a facility, or an oper-
11 ation financed under this chapter to establish the nature
12 and extent of the condition and how to eliminate, mitigate,
13 or correct it.

14 “(b) SUBMISSION OF CORRECTIVE PLAN.—If the
15 Secretary establishes that a safety hazard or security risk
16 warrants further protective measures, the Secretary shall
17 require the local governmental authority receiving
18 amounts under this chapter to submit a plan for elimi-
19 nating, mitigating, or correcting it.

20 “(c) WITHHOLDING OF FUNDS.—Financial assist-
21 ance under this chapter, in an amount to be determined
22 by the Secretary, may be withheld until a plan is approved
23 and carried out.

24 “(d) PUBLIC TRANSPORTATION SECURITY.—

1 “(1) IN GENERAL.—Not later than 90 days
2 after the date of enactment of the Federal Public
3 Transportation Act of 2004, the Secretary shall
4 enter into a memorandum of understanding with the
5 Secretary of Homeland Security to define and clarify
6 the respective roles and responsibilities of the De-
7 partment of Transportation and the Department of
8 Homeland Security relating to public transportation
9 security.

10 “(2) CONTENTS.—The memorandum of under-
11 standing described in paragraph (1) shall—

12 “(A) establish national security standards
13 for public transportation agencies;

14 “(B) establish funding priorities for grants
15 from the Department of Homeland Security to
16 public transportation agencies;

17 “(C) create a method of coordination with
18 public transportation agencies on security mat-
19 ters; and

20 “(D) address any other issues determined
21 to be appropriate by the Secretary and the Sec-
22 retary of Homeland Security.”.

23 (b) CONFORMING AMENDMENT.—The item relating
24 to section 5329 in the table of sections for chapter 53 is
25 amended to read as follows:

“5329. Investigation of safety hazards and security risks.”.

1 **SEC. 3028. STATE SAFETY OVERSIGHT.**

2 (a) IN GENERAL.—Section 5330 is amended—

3 (1) by amending the heading to read as follows:

4 **“§ 5330. Withholding amounts for noncompliance**
5 **with State safety oversight require-**
6 **ments”;**

7 (2) by amending subsection (a) to read as fol-
8 lows:

9 “(a) APPLICATION.—This section shall only apply
10 to—

11 “(1) States that have rail fixed guideway public
12 transportation systems that are not subject to regu-
13 lation by the Federal Railroad Administration; and

14 “(2) States that are designing rail fixed guide-
15 way public transportation systems that will not be
16 subjected to regulation by the Federal Railroad Ad-
17 ministration.”;

18 (3) in subsection (d), by striking “affected
19 States” and inserting the following: “affected
20 States—

21 “(1) shall ensure uniform safety standards and
22 enforcement; or

23 “(2) may designate”; and

24 (4) in subsection (f), by striking “Not later
25 than December 18, 1992, the” and inserting “The”.

1 (b) CONFORMING AMENDMENT.—The item relating
 2 to section 5330 in the table of sections for chapter 53 is
 3 amended to read as follows:

“5330. Withholding amounts for noncompliance with State safety oversight re-
 quirements.”.

4 **SEC. 3029. SENSITIVE SECURITY INFORMATION.**

5 Section 40119(b) is amended—

6 (1) in paragraph (1)(C), by inserting “, trans-
 7 portation facilities or infrastructure, or transpor-
 8 tation employees” before the period at the end; and

9 (2) by adding at the end the following:

10 “(3) A State or local government may not enact, en-
 11 force, prescribe, issue, or continue in effect any law, regu-
 12 lation, standard, or order to the extent it is inconsistent
 13 with this section or regulations prescribed under this sec-
 14 tion.”.

15 **SEC. 3030. TERRORIST ATTACKS AND OTHER ACTS OF VIO-**
 16 **LLENCE AGAINST PUBLIC TRANSPORTATION**
 17 **SYSTEMS.**

18 (a) IN GENERAL.—Section 1993 of title 18, United
 19 States Code, is amended—

20 (1) by striking “mass” each place it appears
 21 and inserting “public”;

22 (2) in subsection (a)(5), by inserting “control-
 23 ling,” after “operating”; and

1 (3) in subsection (c)(5), by striking
 2 “5302(a)(7) of title 49, United States Code,” and
 3 inserting “5302(a) of title 49,”.

4 (b) CONFORMING AMENDMENT.—The table of con-
 5 tents for chapter 97 of title 18, United States Code is
 6 amended by amending the item related to section 1993
 7 to read as follows:

“1993. Terrorist attacks and other acts of violence against public transportation
 systems.”.

8 **SEC. 3031. CONTROLLED SUBSTANCES AND ALCOHOL MIS-**
 9 **USE TESTING.**

10 Section 5331 is amended—

11 (1) in subsection (a)(3), by inserting before the
 12 period at the end the following: “or sections 2303a,
 13 7101(i), or 7302(e) of title 46. The Secretary may
 14 also decide that a form of public transportation is
 15 covered adequately, for employee alcohol and con-
 16 trolled substances testing purposes, under the alco-
 17 hol and controlled substance statutes or regulations
 18 of an agency within the Department of Transpor-
 19 tation or other Federal agency”; and

20 (2) in subsection (f), by striking paragraph (3).

21 **SEC. 3032. EMPLOYEE PROTECTIVE ARRANGEMENTS.**

22 Section 5333(b) is amended—

23 (1) in paragraph (3), by striking the period at
 24 the end and inserting “: *Provided*, That—

1 “(A) the protective period shall not exceed 4
2 years; and

3 “(B) the separation allowance shall not exceed
4 12 months.”; and

5 (2) by adding at the end the following:

6 “(4) An arrangement under this subsection shall not
7 guarantee continuation of employment as a result of a
8 change in private contractors through competitive bidding
9 unless such continuation is otherwise required under sub-
10 paragraph (A), (B), or (D) of paragraph (2).

11 “(5) Fair and equitable arrangements to protect the
12 interests of employees utilized by the Secretary of Labor
13 for assistance to purchase like-kind equipment or facilities,
14 and amendments to existing assistance agreements, shall
15 be certified without referral.

16 “(6) Nothing in this subsection shall affect the level
17 of protection provided to freight railroad employees.”.

18 **SEC. 3033. ADMINISTRATIVE PROCEDURES.**

19 Section 5334 is amended—

20 (1) in subsection (a)—

21 (A) in paragraph (1), by striking “5309–
22 5311 of this title” and all that follows and in-
23 serting “5309 through 5311;”;

24 (B) in paragraph (9), by striking “and” at
25 the end;

1 (C) in paragraph (10), by striking the pe-
2 riod at the end and inserting “; and”; and

3 (D) by inserting at the end the following:

4 “(11) issue regulations as necessary to carry
5 out the purposes of this chapter.”;

6 (2) by redesignating subsections (b), (c), (d),
7 (e), (f), (g), (h), (i), and (j) as subsections (c), (d),
8 (e), (f), (g), (h), (i), (j), and (k), respectively;

9 (3) by adding after subsection (a) the following:

10 “(b) PROHIBITIONS AGAINST REGULATING OPER-
11 ATIONS AND CHARGES.—

12 “(1) IN GENERAL.—Except as directed by the
13 President for purposes of national defense or in the
14 event of a national or regional emergency, the Sec-
15 retary may not regulate—

16 “(A) the operation, routes, or schedules of
17 a public transportation system for which a
18 grant is made under this chapter; or

19 “(B) the rates, fares, tolls, rentals, or
20 other charges prescribed by any public or pri-
21 vate transportation provider.

22 “(2) COMPLIANCE WITH AGREEMENT.—Noth-
23 ing in this subsection shall prevent the Secretary
24 from requiring a recipient of funds under this chap-

1 ter to comply with the terms and conditions of its
2 Federal assistance agreement.”; and

3 (4) in subsection (j)(1), as redesignated, by
4 striking “carry out section 5312(a) and (b)(1) of
5 this title” and inserting “advise and assist the Sec-
6 retary in carrying out section 5312(a)”.

7 **SEC. 3034. REPORTS AND AUDITS.**

8 Section 5335 is amended—

9 (1) by striking subsection (b); and

10 (2) in subsection (a)—

11 (A) in paragraph (1), by striking “(1)”;

12 and

13 (B) in paragraph (2), by striking “(2) The

14 Secretary may make a grant under section

15 5307 of this title” and inserting the following:

16 “(b) REPORTING AND UNIFORM SYSTEMS.—The Sec-

17 retary may award a grant under section 5307 or 5311”.

18 **SEC. 3035. APPORTIONMENTS OF APPROPRIATIONS FOR**

19 **FORMULA GRANTS.**

20 Section 5336 is amended—

21 (1) by striking subsection (d);

22 (2) by striking subsection (h);

23 (3) by striking subsection (k);

24 (4) by redesignating subsections (a) through (c)

25 as subsections (b) through (d), respectively;

1 (5) by adding before subsection (b), as redesignig-
2 nated, the following:

3 “(a) APPORTIONMENTS.—Of the amounts made
4 available for each fiscal year under subsections
5 (a)(1)(C)(vi) and (b)(2)(L) of section 5338—

6 “(1) there shall be apportioned, in fiscal year
7 2005 and each fiscal year thereafter, \$35,000,000 to
8 certain urbanized areas with populations of less than
9 200,000 in accordance with subsection (k); and

10 “(2) any amount not apportioned under para-
11 graph (1) shall be apportioned to urbanized areas in
12 accordance with subsections (b) through (d).”;

13 (6) in subsection (b), as redesignated—

14 (A) by striking “Of the amount made
15 available or appropriated under section 5338(a)
16 of this title” and inserting “Of the amount ap-
17 portioned under subsection (a)(3)”;

18 (B) in paragraph (2), by striking “sub-
19 sections (b) and (c) of this section” and insert-
20 ing “subsections (c) and (d)”;

21 (7) in subsection (c)(2), as redesignated, by
22 striking “subsection (a)(2) of this section” and in-
23 serting “subsection (b)(2)”;

1 (8) in subsection (d), as redesignated, by strik-
2 ing “subsection (a)(2) of this section” and inserting
3 “subsection (b)(2)”;

4 (9) in subsection (e)(1), by striking “sub-
5 sections (a) and (h)(2) of section 5338 of this title”
6 and inserting “subsections (a) and (b) of section
7 5338”;

8 (10) in subsection (g), by striking “subsection
9 (a)(1) of this section” each place it appears and in-
10 sserting “subsection (b)(1)”;

11 (11) by adding at the end the following:

12 “(k) SMALL TRANSIT INTENSIVE CITIES FACTORS.—
13 The amount apportioned under subsection (a)(1) shall be
14 apportioned to urbanized areas as follows:

15 “(1) The Secretary shall calculate a factor
16 equal to the sum of revenue vehicle hours operated
17 within urbanized areas with a population of between
18 200,000 and 1,000,000 divided by the sum of the
19 population of all such urbanized areas.

20 “(2) The Secretary shall designate as eligible
21 for an apportionment under this subsection all ur-
22 banized areas with a population of under 200,000
23 for which the number of revenue vehicle hours oper-
24 ated within the urbanized area divided by the popu-

1 lation of the urbanized area exceeds the factor cal-
2 culated under paragraph (1).

3 “(3) For each urbanized area qualifying for an
4 apportionment under paragraph (2), the Secretary
5 shall calculate an amount equal to the product of the
6 population of that urbanized area and the factor cal-
7 culated under paragraph (1).

8 “(4) For each urbanized area qualifying for an
9 apportionment under paragraph (2), the Secretary
10 shall calculate an amount equal to the difference be-
11 tween the number of revenue vehicle hours within
12 that urbanized area less the amount calculated in
13 paragraph (3).

14 “(5) Each urbanized area qualifying for an ap-
15 portionment under paragraph (2) shall receive an
16 amount equal to the amount to be apportioned
17 under this subsection multiplied by the amount cal-
18 culated for that urbanized area under paragraph (4)
19 divided by the sum of the amounts calculated under
20 paragraph (4) for all urbanized areas qualifying for
21 an apportionment under paragraph (2).

22 “(1) STUDY ON INCENTIVES IN FORMULA PRO-
23 GRAMS.—

24 “(1) STUDY.—The Secretary shall conduct a
25 study to assess the feasibility and appropriateness of

1 developing and implementing an incentive funding
2 system under sections 5307 and 5311 for operators
3 of public transportation.

4 “(2) REPORT.—

5 “(A) IN GENERAL.—Not later than 1 year
6 after the date of enactment of the Federal Pub-
7 lic Transportation Act of 2004, the Secretary
8 shall submit a report on the results of the study
9 conducted under paragraph (1) to the Com-
10 mittee on Banking, Housing, and Urban Affairs
11 of the Senate and the Committee on Transpor-
12 tation and Infrastructure of the House of Rep-
13 resentatives.

14 “(B) CONTENTS.—The report submitted
15 under subparagraph (A) shall include—

16 “(i) an analysis of the availability of
17 appropriate measures to be used as a basis
18 for the distribution of incentive payments;

19 “(ii) the optimal number and size of
20 any incentive programs;

21 “(iii) what types of systems should
22 compete for various incentives;

23 “(iv) how incentives should be distrib-
24 uted; and

1 “(v) the likely effects of the incentive
2 funding system.”.

3 **SEC. 3036. APPORTIONMENTS FOR FIXED GUIDEWAY MOD-
4 ERNIZATION.**

5 Section 5337 is amended—

6 (1) in subsection (a), by striking “for each of
7 fiscal years 1998 through 2003”; and

8 (2) by striking “section 5336(b)(2)(A)” each
9 place it appears and inserting “section
10 5336(e)(2)(A)”.

11 **SEC. 3037. AUTHORIZATIONS.**

12 Section 5338 is amended to read as follows:

13 **“§ 5338. Authorizations**

14 “(a) FISCAL YEAR 2004.—

15 “(1) FORMULA GRANTS.—

16 “(A) TRUST FUND.—For fiscal year 2004,
17 \$3,053,079,920 shall be available from the
18 Mass Transit Account of the Highway Trust
19 Fund to carry out sections 5307, 5309, 5310,
20 and 5311 of this chapter and section 3038 of
21 the Transportation Equity Act for the 21st
22 Century (49 U.S.C. 5310 note).

23 “(B) GENERAL FUND.—In addition to the
24 amounts made available under subparagraph
25 (A), there are authorized to be appropriated

1 \$763,269,980 for fiscal year 2004 to carry out
2 sections 5307, 5309, 5310, and 5311 of this
3 chapter and section 3038 of the Transportation
4 Equity Act for the 21st Century (49 U.S.C.
5 5310 note).

6 “(C) ALLOCATION OF FUNDS.—Of the
7 amounts made available or appropriated under
8 this paragraph—

9 “(i) \$4,821,335 shall be available to
10 the Alaska Railroad for improvements to
11 its passenger operations under section
12 5307;

13 “(ii) \$6,908,995 shall be available to
14 provide over-the-road bus accessibility
15 grants under section 3038 of the Trans-
16 portation Equity Act for the 21st Century
17 (49 U.S.C. 5310 note);

18 “(iii) \$90,117,950 shall be available
19 to provide transportation services to elderly
20 individuals and individuals with disabilities
21 under section 5310;

22 “(iv) \$239,188,058 shall be available
23 to provide financial assistance for other
24 than urbanized areas under section 5311;

1 “(v) \$3,425,608,562 shall be available
2 to provide financial assistance for urban-
3 ized areas under section 5307; and

4 “(vi) \$49,705,000 shall be available to
5 provide financial assistance for buses and
6 bus facilities under section 5309..

7 “(2) JOB ACCESS AND REVERSE COMMUTE.—

8 “(A) TRUST FUND.—For fiscal year 2004,
9 \$99,410,000 shall be available from the Mass
10 Transit Account of the Highway Trust Fund to
11 carry out section 3037 of the Transportation
12 Equity Act for the 21st Century (49 U.S.C.
13 5309 note).

14 “(B) GENERAL FUND.—In addition to the
15 amounts made available under paragraph (A),
16 there are authorized to be appropriated
17 \$24,852,500 for fiscal year 2004 to carry out
18 section 3037 of the Transportation Equity Act
19 of the 21st Century (49 U.S.C. 5309 note).

20 “(3) CAPITAL PROGRAM GRANTS.—

21 “(A) TRUST FUND.—For fiscal year 2004,
22 \$2,495,191,000 shall be available from the
23 Mass Transit Account of the Highway Trust
24 Fund to carry out section 5309.

1 “(B) GENERAL FUND.—In addition to the
2 amounts made available under subparagraph
3 (A), there are authorized to be appropriated
4 \$623,797,750 for fiscal year 2004 to carry out
5 section 5309.

6 “(4) PLANNING.—

7 “(A) TRUST FUND.—For fiscal year 2004,
8 \$58,254,260 shall be available from the Mass
9 Transit Account of the Highway Trust Fund to
10 carry out section 5308.

11 “(B) GENERAL FUND.—In addition to the
12 amounts made available under subparagraph
13 (A), there are authorized to be appropriated
14 \$14,315,040 for fiscal year 2004 to carry out
15 section 5308.

16 “(C) ALLOCATION OF FUNDS.—Of the
17 amounts made available or appropriated under
18 this paragraph—

19 “(i) 82.72 percent shall be allocated
20 for metropolitan planning under section
21 5308(e); and

22 “(ii) 17.28 percent shall be allocated
23 for State planning under section 5308(d).

24 “(5) RESEARCH.—

1 “(A) TRUST FUND.—For fiscal year 2004,
2 \$41,951,020 shall be available from the Mass
3 Transit Account of the Highway Trust Fund to
4 carry out sections 5311(b), 5312, 5313, 5314,
5 5315, and 5322.

6 “(B) GENERAL FUND.—In addition to the
7 amounts made available under subparagraph
8 (A), there are authorized to be appropriated
9 \$10,736,280 for fiscal year 2004 to carry out
10 sections 5311(b), 5312, 5313, 5314, 5315, and
11 5322.

12 “(C) ALLOCATION OF FUNDS.—Of the
13 funds made available or appropriated under this
14 paragraph—

15 “(i) not less than \$3,976,400 shall be
16 available to carry out programs of the Na-
17 tional Transit Institute under section
18 5315;

19 “(ii) not less than \$5,219,025 shall be
20 available to carry out section 5311(b)(2);

21 “(iii) not less than \$8,201,325 shall
22 be available to carry out section 5313; and

23 “(iv) the remainder shall be available
24 to carry out national research and tech-

1 nology programs under sections 5312,
2 5314, and 5322.

3 “(6) UNIVERSITY TRANSPORTATION RE-
4 SEARCH.—

5 “(A) TRUST FUND.—For fiscal year 2004,
6 \$4,771,680 shall be available from the Mass
7 Transit Account of the Highway Trust Fund to
8 carry out sections 5505 and 5506.

9 “(B) GENERAL FUND.—In addition to
10 amounts made available under subparagraph
11 (A), there are authorized to be appropriated
12 \$1,192,920 for fiscal year 2004 to carry out
13 sections 5505 and 5506.

14 “(C) ALLOCATION OF FUNDS.—Of the
15 amounts made available or appropriated under
16 this paragraph—

17 “(i) \$1,988,200 shall be available for
18 grants under 5506(f)(5) to the institution
19 identified in section 5505(j)(3)(E), as in
20 effect on the day before the date of enact-
21 ment of the Federal Public Transportation
22 Act of 2004;

23 “(ii) \$1,988,200 shall be available for
24 grants under section 5505(d) to the insti-
25 tution identified in section 5505(j)(4)(A),

1 as in effect on the date specified in clause
2 (i); and

3 “(iii) \$1,988,200 shall be available for
4 grants under section 5505(d) to the insti-
5 tution identified in section 5505(j)(4)(F),
6 as in effect on the date specified in sub-
7 clause (I).

8 “(C) SPECIAL RULE.—Nothing in this
9 paragraph shall be construed to limit the trans-
10 portation research conducted by the centers re-
11 ceiving financial assistance under this section.

12 “(7) ADMINISTRATION.—

13 “(A) TRUST FUND.—For fiscal year 2004,
14 \$60,043,640 shall be available from the Mass
15 Transit Account of the Highway Trust Fund to
16 carry out section 5334.

17 “(B) GENERAL FUND.—In addition to amounts
18 made available under subparagraph (A), there are
19 authorized to be appropriated \$15,010,910 for fiscal
20 year 2004 to carry out section 5334.

21 “(8) GRANTS AS CONTRACTUAL OBLIGA-
22 TIONS.—

23 “(A) GRANTS FINANCED FROM HIGHWAY
24 TRUST FUND.—A grant or contract that is approved
25 by the Secretary and financed with amounts made

1 available under paragraph (1)(A), (2)(A), (3)(A),
2 (4)(A), (5)(A), (6)(A), or (7)(A) is a contractual ob-
3 ligation of the United States Government to pay the
4 Federal share of the cost of the project.

5 “(B) GRANTS FINANCED FROM GENERAL
6 FUND.—A grant or contract that is approved by
7 the Secretary and financed with amounts ap-
8 propriated in advance under paragraph (1)(B),
9 (2)(B), (3)(B), (4)(B), (5)(B), (6)(B), or
10 (7)(B) is a contractual obligation of the United
11 States Government to pay the Federal share of
12 the cost of the project only to the extent that
13 amounts are appropriated for such purpose by
14 an Act of Congress.

15 “(9) AVAILABILITY OF AMOUNTS.—Amounts
16 made available or appropriated under paragraphs
17 (1) through (6) shall remain available until ex-
18 pended.”.

19 “(b) FORMULA GRANTS AND RESEARCH.—

20 “(1) IN GENERAL.—There shall be available
21 from the Mass Transit Account of the Highway
22 Trust Fund to carry out sections 5307, 5308, 5309,
23 5310 through 5316, 5322, 5335, 5340, and 5505 of
24 this title, and sections 3037 and 3038 of the Federal
25 Transit Act of 1998 (112 Stat. 387 et seq.)—

1 “(A) \$6,262,600,000 for fiscal year 2005;

2 “(B) \$6,577,629,000 for fiscal year 2006;

3 “(C) \$6,950,400,000 for fiscal year 2007;

4 “(D) \$7,594,760,000 for fiscal year 2008;

5 and

6 “(E) \$8,275,320,000 for fiscal year 2009.

7 “(2) ALLOCATION OF FUNDS.—Of the amounts
8 made available under paragraph (1) for each fiscal
9 year—

10 “(A) 0.092 percent shall be available for
11 grants to the Alaska Railroad under section
12 5307 for improvements to its passenger oper-
13 ations;

14 “(B) 1.75 percent shall be available to
15 carry out section 5308;

16 “(C) 2.05 percent shall be available to pro-
17 vide financial assistance for job access and re-
18 verse commute projects under section 3037 of
19 the Federal Transit Act of 1998 (49 U.S.C.
20 5309 note);

21 “(D) 3.00 percent shall be available to pro-
22 vide financial assistance for services for elderly
23 persons and persons with disabilities under sec-
24 tion 5310;

1 “(E) 0.125 percent shall be available to
2 carry out section 3038 of the Transportation
3 Equity Act for the 21st Century (49 U.S.C.
4 5310 note);

5 “(F) 6.25 percent shall be available to pro-
6 vide financial assistance for other than urban-
7 ized areas under section 5311;

8 “(G) 0.89 percent shall be available to
9 carry out transit cooperative research programs
10 under section 5313, the National Transit Insti-
11 tute under section 5315, university research
12 centers under section 5505, and national re-
13 search programs under sections 5312, 5313,
14 5314, and 5322, of which—

15 “(i) 17.0 percent shall be allocated to
16 carry out transit cooperative research pro-
17 grams under section 5313;

18 “(ii) 7.5 percent shall be allocated to
19 carry out programs under the National
20 Transit Institute under section 5315, in-
21 cluding not more than \$1,000,000 to carry
22 out section 5315(a)(16);

23 “(iii) 11.0 percent shall be allocated
24 to carry out the university centers program
25 under section 5505; and

1 “(iv) any funds made available under
2 this subparagraph that are not allocated
3 under clauses (i) through (iii) shall be allo-
4 cated to carry out national research pro-
5 grams under sections 5312, 5313, 5314,
6 and 5322;

7 “(H) \$25,000,000 shall be available for
8 each of the fiscal years 2005 through 2009 to
9 carry out section 5316;

10 “(I) there shall be available to carry out
11 section 5335—

12 “(i) \$3,700,000 in fiscal year 2005;

13 “(ii) \$3,900,000 in fiscal year 2006;

14 “(iii) \$4,200,000 in fiscal year 2007;

15 “(iv) \$4,600,000 in fiscal year 2008;

16 and

17 “(v) \$5,000,000 in fiscal year 2009;

18 “(J) 6.25 percent shall be allocated in ac-
19 cordance with section 5340 to provide financial
20 assistance for urbanized areas under section
21 5307 and other than urbanized areas under sec-
22 tion 5311; and

23 “(K) 22.0 percent shall be allocated in ac-
24 cordance with section 5337 to provide financial
25 assistance under section 5309(i)(3); and

1 “(L) any amounts not made available
2 under subparagraphs (A) through (K) shall be
3 allocated in accordance with section 5336 to
4 provide financial assistance for urbanized areas
5 under section 5307.

6 “(3) UNIVERSITY CENTERS PROGRAM.—

7 “(A) ALLOCATION.—Of the amounts allo-
8 cated under paragraph (2)(G)(iii), \$1,000,000
9 shall be available in each of the fiscal years
10 2005 through 2009 for Morgan State Univer-
11 sity to provide transportation research, train-
12 ing, and curriculum development.

13 “(B) REQUIREMENTS.—The university
14 specified under subparagraph (A) shall be con-
15 sidered a University Transportation Center
16 under section 510 of title 23, and shall be sub-
17 ject to the requirements under subsections (c),
18 (d), (e), and (f) of such section.

19 “(C) REPORT.—In addition to the report
20 required under section 510(e)(3) of title 23, the
21 university specified under subparagraph (A)
22 shall annually submit a report to the Secretary
23 that describes the university’s contribution to
24 public transportation.

1 “(4) BUS GRANTS.—In addition to the amounts
2 made available under paragraph (1), there shall be
3 available from the Mass Transit Account of the
4 Highway Trust Fund to carry out section
5 5309(i)(2)(B)—

6 “(A) \$839,829,000 for fiscal year 2005;

7 “(B) \$882,075,000 for fiscal year 2006;

8 “(C) \$932,064,000 for fiscal year 2007;

9 “(D) \$1,018,474,000 for fiscal year 2008;

10 and

11 “(E) \$1,109,739,000 for fiscal year 2009.

12 “(c) MAJOR CAPITAL INVESTMENT GRANTS.—There
13 are authorized to be appropriated to carry out section
14 5309(i)(2)(A)—

15 “(1) \$1,461,072,000 for fiscal year 2005;

16 “(2) \$1,534,568,000 for fiscal year 2006;

17 “(3) \$1,621,536,000 for fiscal year 2007;

18 “(4) \$1,771,866,000 for fiscal year 2008; and

19 “(5) \$1,930,641,000 for fiscal year 2009.

20 “(d) ADMINISTRATION.—There shall be available
21 from the Mass Transit Account of the Highway Trust
22 Fund to carry out section 5334—

23 “(1) \$86,500,000 for fiscal year 2005;

24 “(2) \$90,851,000 for fiscal year 2006;

25 “(3) \$96,000,000 for fiscal year 2007;

1 “(4) \$104,900,000 for fiscal year 2008; and

2 “(5) \$114,300,000 for fiscal year 2009.

3 “(e) GRANTS AS CONTRACTUAL OBLIGATIONS.—

4 “(1) MASS TRANSIT ACCOUNT FUNDS.—A grant
5 or contract approved by the Secretary that is fi-
6 nanced with amounts made available under sub-
7 section (b)(1) or (d) is a contractual obligation of
8 the United States Government to pay the Federal
9 share of the cost of the project.

10 “(2) APPROPRIATED FUNDS.—A grant or con-
11 tract approved by the Secretary that is financed with
12 amounts made available under subsection (b)(2) or
13 (c) is a contractual obligation of the United States
14 Government to pay the Federal share of the cost of
15 the project only to the extent that amounts are ap-
16 propriated in advance for such purpose by an Act of
17 Congress.

18 “(f) AVAILABILITY OF AMOUNTS.—Amounts made
19 available by or appropriated under subsections (b) and (c)
20 shall remain available until expended.”.

21 **SEC. 3038. APPORTIONMENTS BASED ON GROWING STATES**

22 **FORMULA FACTORS.**

23 (a) IN GENERAL.—Chapter 53 is amended by adding
24 at the end the following:

1 **“§ 5340. Apportionments based on growing States and**
2 **high density State formula factors**

3 “(a) ALLOCATION.—Of the amounts made available
4 for each fiscal year under section 5338(b)(2)(J), the Sec-
5 retary shall apportion—

6 “(1) 50 percent to States and urbanized areas
7 in accordance with subsection (b); and

8 “(2) 50 percent to States and urbanized areas
9 in accordance with subsection (c).

10 “(b) GROWING STATE APPORTIONMENTS.—

11 “(1) APPORTIONMENT AMONG STATES.—The
12 amounts apportioned under paragraph (a)(1) shall
13 provide each State with an amount equal to the total
14 amount apportioned multiplied by a ratio equal to
15 the population of that State forecast for the year
16 that is 15 years after the most recent decennial cen-
17 sus, divided by the total population of all States
18 forecast for the year that is 15 years after the most
19 recent decennial census. Such forecast shall be based
20 on the population trend for each State between the
21 most recent decennial census and the most recent
22 estimate of population made by the Secretary of
23 Commerce.

24 “(2) APPORTIONMENTS BETWEEN URBANIZED
25 AREAS AND OTHER THAN URBANIZED AREAS IN
26 EACH STATE.—

1 “(A) IN GENERAL.—The Secretary shall
2 apportion amounts to each State under para-
3 graph (1) so that urbanized areas in that State
4 receive an amount equal to the amount appor-
5 tioned to that State multiplied by a ratio equal
6 to the sum of the forecast population of all ur-
7 banized areas in that State divided by the total
8 forecast population of that State. In making the
9 apportionment under this subparagraph, the
10 Secretary shall utilize any available forecasts
11 made by the State. If no forecasts are available,
12 the Secretary shall utilize data on urbanized
13 areas and total population from the most recent
14 decennial census.

15 “(B) REMAINING AMOUNTS.—Amounts re-
16 maining for each State after apportionment
17 under subparagraph (A) shall be apportioned to
18 that State and added to the amount made avail-
19 able for grants under section 5311.

20 “(3) APPORTIONMENTS AMONG URBANIZED
21 AREAS IN EACH STATE.—The Secretary shall appor-
22 tion amounts made available to urbanized areas in
23 each State under subsection (b)(2)(A) so that each
24 urbanized area receives an amount equal to the
25 amount apportioned under subsection (b)(2)(A) mul-

1 multiplied by a ratio equal to the population of each ur-
2 banized area divided by the sum of populations of all
3 urbanized areas in the State. Amounts apportioned
4 to each urbanized area shall be added to amounts
5 apportioned to that urbanized area under section
6 5336, and made available for grants under section
7 5307.

8 “(c) HIGH DENSITY STATE APPORTIONMENTS.—
9 Amounts to be apportioned under subsection (a)(2) shall
10 be apportioned as follows:

11 “(1) ELIGIBLE STATES.—The Secretary shall
12 designate as eligible for an apportionment under this
13 subsection all States with a population density in ex-
14 cess of 370 persons per square mile.

15 “(2) STATE URBANIZED LAND FACTOR.—For
16 each State qualifying for an apportionment under
17 paragraph (1), the Secretary shall calculate an
18 amount equal to the product of the urban land area
19 of urbanized areas in the State times 370 persons
20 per square mile.

21 “(3) STATE APPORTIONMENT FACTOR.—For
22 each State qualifying for an apportionment under
23 paragraph (1), the Secretary shall calculate an
24 amount equal to the difference between the total

1 population of the State less the amount calculated in
2 paragraph (2).

3 “(4) STATE APPORTIONMENT.—Each State
4 qualifying for an apportionment under paragraph
5 (1) shall receive an amount equal to the amount to
6 be apportioned under this subsection multiplied by
7 the amount calculated for the State under paragraph
8 (3) divided by the sum of the amounts calculated
9 under paragraph (3) for all States qualifying for an
10 apportionment under paragraph (1).

11 “(5) APPORTIONMENTS BETWEEN URBANIZED
12 AREAS AND OTHER THAN URBANIZED AREAS IN
13 EACH STATE.—

14 “(A) IN GENERAL.—The Secretary shall
15 apportion amounts apportioned to each State
16 under paragraph (4) so that urbanized areas in
17 that State receive an amount equal to the
18 amount apportioned to that State multiplied by
19 a ratio equal to the sum of the population of all
20 urbanized areas in that State divided by the
21 total population of that State.

22 “(B) REMAINING AMOUNTS.—Amounts re-
23 maining for each State after apportionment
24 under subparagraph (a) shall be apportioned to

1 that State and added to the amount made avail-
2 able for grants under section 5311.

3 “(6) APPORTIONMENTS AMONG URBANIZED
4 AREAS IN EACH STATE.—The Secretary shall appor-
5 tion amounts made available to urbanized areas in
6 each State under subsection (c)(5)(A) so that each
7 urbanized area receives an amount equal to the
8 amount apportioned under subsection (c)(5)(A) mul-
9 tplied by a ratio equal to the population of each ur-
10 banized area divided by the sum of populations of all
11 urbanized areas in the State. Amounts apportioned
12 to each urbanized area shall be added to amounts
13 apportioned to that urbanized area under section
14 5336, and made available for grants under section
15 5307.”.

16 (b) CONFORMING AMENDMENT.—The table of sec-
17 tions for chapter 53 is amended by adding at the end the
18 following:

“5340. Apportionments based on growing States and high density States for-
 mula factors.”.

19 **SEC. 3039. JOB ACCESS AND REVERSE COMMUTE GRANTS.**

20 Section 3037 of the Federal Transit Act of 1998 (49
21 U.S.C. 5309 note) is amended—

22 (1) in subsection (b)—

23 (A) in paragraph (1)—

1 (i) by striking “means an individual”
2 and inserting the following: “means—
3 “(A) an individual”; and

4 (ii) by striking the period at the end
5 and inserting “; or

6 “(B) an individual who is eligible for as-
7 sistance under the State program of Temporary
8 Assistance to Needy Families funded under
9 part A of title IV of the Social Security Act (42
10 U.S.C. 601 et. seq.) in the State in which the
11 recipient of a grant under this section is lo-
12 cated.”; and

13 (B) in paragraph (2), by striking “develop-
14 ment of” each place it appears and inserting
15 “development and provision of”;

16 (2) in subsection (i), by amending paragraph
17 (2) to read as follows:

18 “(2) COORDINATION.—

19 “(A) IN GENERAL.—The Secretary shall
20 coordinate activities under this section with re-
21 lated activities under programs of other Federal
22 departments and agencies.

23 “(B) CERTIFICATION.—A recipient of
24 funds under this section shall certify that—

1 “(i) the project has been derived from
2 a locally developed, coordinated public
3 transit human services transportation plan;
4 and

5 “(ii) the plan was developed through a
6 process that included representatives of
7 public, private, and nonprofit transpor-
8 tation and human services providers and
9 participation by the public.”;

10 (3) by amending subsection (j) to read as fol-
11 lows:

12 “(j) GRANT REQUIREMENTS.—

13 “(1) IN GENERAL.—

14 “(A) URBANIZED AREAS.—A grant award-
15 ed under this section to a public agency or pri-
16 vate company engaged in public transportation
17 in an urbanized area shall be subject to the all
18 of the terms and conditions to which a grant
19 awarded under section 5307 of title 49, United
20 States Code, is subject, to the extent the Sec-
21 retary considers appropriate.

22 “(B) OTHER THAN URBANIZED AREAS.—A
23 grant awarded under this section to a public
24 agency or a private company engaged in public
25 transportation in an area other than urbanized

1 areas shall be subject to all of the terms and
2 conditions to which a grant awarded under sec-
3 tion 5311 of title 49, United States Code, is
4 subject, to the extent the Secretary considers
5 appropriate.

6 “(C) NONPROFIT ORGANIZATIONS.—A
7 grant awarded under this section to a private
8 nonprofit organization shall be subject to all of
9 the terms and conditions to which a grant made
10 under section 5310 of title 49, United States
11 Code, is subject, to the extent the Secretary
12 considers appropriate.

13 “(2) SPECIAL WARRANTY.—

14 “(A) IN GENERAL.—Section 5333(b) of
15 title 49, United States Code, shall apply to
16 grants under this section if the Secretary of
17 Labor utilizes a Special Warranty that provides
18 a fair and equitable arrangement to protect the
19 interests of employees.

20 “(B) WAIVER.—The Secretary may waive
21 the applicability of the Special Warranty under
22 subparagraph (A) for private non-profit recipi-
23 ents on a case-by-case basis as the Secretary
24 considers appropriate.”; and

25 (4) by striking subsections (k) and (l).

1 **SEC. 3040. OVER-THE-ROAD BUS ACCESSIBILITY PROGRAM.**

2 (a) SECTION HEADING.—The section heading for
3 section 3038 of the Federal Transit Act of 1998 (49
4 U.S.C. 5310 note), is amended to read as follows:

5 **“SEC. 3038. OVER-THE-ROAD BUS ACCESSIBILITY PRO-**
6 **GRAM.”.**

7 (b) FUNDING.—Section 3038(g) of the Federal Tran-
8 sit Act of 1998 (49 U.S.C. 5310 note) is amended to read
9 as follows:

10 “(g) FUNDING.—Of the amounts made available for
11 each fiscal year under subsections (a)(1)(C)(iii) and
12 (b)(2)(E) of section 5338 of title 49, United States
13 Code—

14 “(1) 75 percent shall be available, and shall re-
15 main available until expended, for operators of over-
16 the-road buses, used substantially or exclusively in
17 intercity, fixed-route over-the-road bus service, to fi-
18 nance the incremental capital and training costs of
19 the Department of Transportation’s final rule re-
20 garding accessibility of over-the-road buses; and

21 “(2) 25 percent shall be available, and shall re-
22 main available until expended, for operators of over-
23 the-road bus service not described in paragraph (1),
24 to finance the incremental capital and training costs
25 of the Department of Transportation’s final rule re-
26 garding accessibility of over-the-road buses.”.

1 (b) CONFORMING AMENDMENT.—The item relating
 2 to section 3038 in the table of contents for the Transpor-
 3 tation Equity Act for the 21st Century (Public Law 105–
 4 178) is amended to read as follows:

“Sec. 3038. Over-the-road bus accessibility program.”.

5 **SEC. 3041. ALTERNATIVE TRANSPORTATION IN PARKS AND**
 6 **PUBLIC LANDS.**

7 (a) IN GENERAL.—Chapter 53 is amended by insert-
 8 ing after section 5315 the following:

9 **“§ 5316. Alternative transportation in parks and pub-**
 10 **lic lands**

11 “(a) IN GENERAL.—

12 “(1) AUTHORIZATION.—

13 “(A) IN GENERAL.—The Secretary, in con-
 14 sultation with the Secretary of the Interior,
 15 may award a grant or enter into a contract, co-
 16 operative agreement, interagency agreement,
 17 intraagency agreement, or other transaction to
 18 carry out a qualified project under this section
 19 to enhance the protection of America’s National
 20 Parks and public lands and increase the enjoy-
 21 ment of those visiting the parks and public
 22 lands by ensuring access to all, including per-
 23 sons with disabilities, improving conservation
 24 and park and public land opportunities in
 25 urban areas through partnering with state and

1 local governments, and improving park and
2 public land transportation infrastructure.

3 “(B) CONSULTATION WITH OTHER AGEN-
4 CIES.—To the extent that projects are proposed
5 or funded in eligible areas that are not within
6 the jurisdiction of the Department of the Inte-
7 rior, the Secretary of the Interior shall consult
8 with the heads of the relevant Federal land
9 management agencies in carrying out the re-
10 sponsibilities under this section.

11 “(2) USE OF FUNDS.—A grant, cooperative
12 agreement, interagency agreement, intraagency
13 agreement, or other transaction for a qualified
14 project under this section shall be available to fi-
15 nance the leasing of equipment and facilities for use
16 in public transportation, subject to any regulation
17 that the Secretary may prescribe limiting the grant
18 or agreement to leasing arrangements that are more
19 cost-effective than purchase or construction.

20 “(b) DEFINITIONS.—As used in this section, the fol-
21 lowing definitions shall apply:

22 “(1) ELIGIBLE AREA.—The term ‘eligible area’
23 means any federally owned or managed park, refuge,
24 or recreational area that is open to the general pub-
25 lic, including—

1 “(A) a unit of the National Park System;

2 “(B) a unit of the National Wildlife Ref-
3 uge System;

4 “(C) a recreational area managed by the
5 Bureau of Land Management; and

6 “(D) a recreation area managed by the
7 Bureau of Reclamation.

8 “(2) FEDERAL LAND MANAGEMENT AGENCY.—
9 The term ‘Federal land management agency’ means
10 a Federal agency that manages an eligible area.

11 “(3) ALTERNATIVE TRANSPORTATION.—The
12 term ‘alternative transportation’ means transpor-
13 tation by bus, rail, or any other publicly or privately
14 owned conveyance that provides to the public general
15 or special service on a regular basis, including sight-
16 seeing service.

17 “(4) QUALIFIED PARTICIPANT.—The term
18 ‘qualified participant’ means—

19 “(A) a Federal land management agency;
20 or

21 “(B) a State, tribal, or local governmental
22 authority with jurisdiction over land in the vi-
23 cinity of an eligible area acting with the consent
24 of the Federal land management agency, alone
25 or in partnership with a Federal land manage-

1 ment agency or other Governmental or non-
2 governmental participant.

3 “(5) QUALIFIED PROJECT.—The term ‘qualified
4 project’ means a planning or capital project in or in
5 the vicinity of an eligible area that—

6 “(A) is an activity described in section
7 5302, 5303, 5304, 5308, or 5309(a)(1)(A);

8 “(B) involves—

9 “(i) the purchase of rolling stock that
10 incorporates clean fuel technology or the
11 replacement of buses of a type in use on
12 the date of enactment of this section with
13 clean fuel vehicles; or

14 “(ii) the deployment of alternative
15 transportation vehicles that introduce inno-
16 vative technologies or methods;

17 “(C) relates to the capital costs of coordi-
18 nating the Federal land management agency
19 public transportation systems with other public
20 transportation systems;

21 “(D) provides a nonmotorized transpor-
22 tation system (including the provision of facili-
23 ties for pedestrians, bicycles, and nonmotorized
24 watercraft);

1 “(E) provides waterborne access within or
2 in the vicinity of an eligible area, as appropriate
3 to and consistent with this section; or

4 “(F) is any other alternative transpor-
5 tation project that—

6 “(i) enhances the environment;

7 “(ii) prevents or mitigates an adverse
8 impact on a natural resource;

9 “(iii) improves Federal land manage-
10 ment agency resource management;

11 “(iv) improves visitor mobility and ac-
12 cessibility and the visitor experience;

13 “(v) reduces congestion and pollution
14 (including noise pollution and visual pollu-
15 tion); or

16 “(vi) conserves a natural, historical,
17 or cultural resource (excluding rehabilita-
18 tion or restoration of a non-transportation
19 facility).

20 “(c) FEDERAL AGENCY COOPERATIVE ARRANGE-
21 MENTS.—The Secretary shall develop cooperative arrange-
22 ments with the Secretary of the Interior that provide for—

23 “(1) technical assistance in alternative trans-
24 portation;

1 “(2) interagency and multidisciplinary teams to
2 develop Federal land management agency alternative
3 transportation policy, procedures, and coordination;
4 and

5 “(3) the development of procedures and criteria
6 relating to the planning, selection, and funding of
7 qualified projects and the implementation and over-
8 sight of the program of projects in accordance with
9 this section.

10 “(d) LIMITATION ON USE OF AVAILABLE
11 AMOUNTS.—

12 “(1) IN GENERAL.—The Secretary, in consulta-
13 tion with the Secretary of the Interior, may use not
14 more than 10 percent of the amount made available
15 for a fiscal year under section 5338(a)(2)(I) to carry
16 out planning, research, and technical assistance
17 under this section, including the development of
18 technology appropriate for use in a qualified project.

19 “(2) ADDITIONAL AMOUNTS.—Amounts made
20 available under this subsection are in addition to
21 amounts otherwise available to the Secretary to
22 carry out planning, research, and technical assist-
23 ance under this title or any other provision of law.

24 “(3) MAXIMUM AMOUNT.—No qualified project
25 shall receive more than 12 percent of the total

1 amount made available to carry out this section
2 under section 5338(a)(2)(I) for any fiscal year.

3 “(e) PLANNING PROCESS.—In undertaking a quali-
4 fied project under this section,

5 “(1) if the qualified participant is a Federal
6 land management agency—

7 “(A) the Secretary, in cooperation with the
8 Secretary of the Interior, shall develop trans-
9 portation planning procedures that are con-
10 sistent with—

11 “(i) the metropolitan planning provi-
12 sions under section 5303 of this title;

13 “(ii) the statewide planning provisions
14 under section 5304 of this title; and

15 “(iii) the public participation require-
16 ments under section 5307(e); and

17 “(B) in the case of a qualified project that
18 is at a unit of the National Park system, the
19 planning process shall be consistent with the
20 general management plans of the unit of the
21 National Park system; and

22 “(2) if the qualified participant is a State or
23 local governmental authority, or more than one
24 State or local governmental authority in more than
25 one State, the qualified participant shall—

1 “(A) comply with the metropolitan plan-
2 ning provisions under section 5303 of this title;

3 “(B) comply with the statewide planning
4 provisions under section 5304 of this title;

5 “(C) comply with the public participation
6 requirements under section 5307(e) of this title;

7 and

8 “(D) consult with the appropriate Federal
9 land management agency during the planning
10 process.

11 “(f) COST SHARING.—

12 “(1) The Secretary, in cooperation with the
13 Secretary of the Interior, shall establish the agency
14 share of net project cost to be provided under this
15 section to a qualified participant.

16 “(2) In establishing the agency share of net
17 project cost to be provided under this section, the
18 Secretary shall consider—

19 “(A) visitation levels and the revenue de-
20 rived from user fees in the eligible area in
21 which the qualified project is carried out;

22 “(B) the extent to which the qualified par-
23 ticipant coordinates with a public transpor-
24 tation authority or private entity engaged in
25 public transportation;

1 “(C) private investment in the qualified
2 project, including the provision of contract serv-
3 ices, joint development activities, and the use of
4 innovative financing mechanisms;

5 “(D) the clear and direct benefit to the
6 qualified participant; and

7 “(E) any other matters that the Secretary
8 considers appropriate to carry out this section.

9 “(3) Notwithstanding any other provision of
10 law, Federal funds appropriated to any Federal land
11 management agency may be counted toward the
12 non-agency share of the net project cost of a quali-
13 fied project.

14 “(g) SELECTION OF QUALIFIED PROJECTS.—

15 “(1) The Secretary of the Interior, after con-
16 sultation with and in cooperation with the Secretary,
17 shall determine the final selection and funding of an
18 annual program of qualified projects in accordance
19 with this section.

20 “(2) In determining whether to include a
21 project in the annual program of qualified projects,
22 the Secretary of the Interior shall consider—

23 “(A) the justification for the qualified
24 project, including the extent to which the quali-
25 fied project would conserve resources, prevent

1 or mitigate adverse impact, and enhance the en-
2 vironment;

3 “(B) the location of the qualified project,
4 to ensure that the selected qualified projects—

5 “(i) are geographically diverse nation-
6 wide; and

7 “(ii) include qualified projects in eligi-
8 ble areas located in both urban areas and
9 rural areas;

10 “(C) the size of the qualified project, to
11 ensure that there is a balanced distribution;

12 “(D) the historical and cultural signifi-
13 cance of a qualified project;

14 “(E) safety;

15 “(F) the extent to which the qualified
16 project would-

17 “(i) enhance livable communities;

18 “(ii) reduce pollution (including noise
19 pollution, air pollution, and visual pollu-
20 tion);

21 “(iii) reduce congestion; and

22 “(iv) improve the mobility of people in
23 the most efficient manner; and

1 “(G) any other matters that the Secretary
2 considers appropriate to carry out this section,
3 including—

4 “(i) visitation levels;

5 “(ii) the use of innovative financing or
6 joint development strategies; and

7 “(iii) coordination with gateway com-
8 munities.

9 “(h) QUALIFIED PROJECTS CARRIED OUT IN AD-
10 VANCE.—

11 “(1) When a qualified participant carries out
12 any part of a qualified project without assistance
13 under this section in accordance with all applicable
14 procedures and requirements, the Secretary, in con-
15 sultation with the Secretary of the Interior, may pay
16 the share of the net capital project cost of a quali-
17 fied project if—

18 “(A) the qualified participant applies for
19 the payment;

20 “(B) the Secretary approves the payment;
21 and

22 “(C) before carrying out that part of the
23 qualified project, the Secretary approves the
24 plans and specifications in the same manner as

1 plans and specifications are approved for other
2 projects assisted under this section.

3 “(2)(A) The cost of carrying out part of a
4 qualified project under paragraph (1) includes the
5 amount of interest earned and payable on bonds
6 issued by a State or local governmental authority, to
7 the extent that proceeds of the bond are expended
8 in carrying out that part.

9 “(B) The rate of interest under this paragraph
10 may not exceed the most favorable rate reasonably
11 available for the qualified project at the time of bor-
12 rowing.

13 “(C) The qualified participant shall certify, in
14 a manner satisfactory to the Secretary, that the
15 qualified participant has exercised reasonable dili-
16 gence in seeking the most favorable interest rate.

17 “(i) RELATIONSHIP TO OTHER LAWS.—

18 “(1) SECTION 5307.—A qualified participant
19 under this section shall be subject to the require-
20 ments of sections 5307 and 5333(a) to the extent
21 the Secretary determines to be appropriate.

22 “(2) OTHER REQUIREMENTS.—A qualified par-
23 ticipant under this section is subject to any other
24 terms, conditions, requirements, and provisions that
25 the Secretary determines to be appropriate to carry

1 out this section, including requirements for the dis-
2 tribution of proceeds on disposition of real property
3 and equipment resulting from a qualified project as-
4 sisted under this section.

5 “(3) PROJECT MANAGEMENT PLAN.—If the
6 amount of assistance anticipated to be required for
7 a qualified project under this section is not less than
8 \$25,000,000—

9 “(A) the qualified project shall, to the ex-
10 tent the Secretary considers appropriate, be
11 carried out through a full funding grant agree-
12 ment, in accordance with section 5309(g); and

13 “(B) the qualified participant shall prepare
14 a project management plan in accordance with
15 section 5327(a).

16 “(i) ASSET MANAGEMENT.—The Secretary, in con-
17 sultation with the Secretary of the Interior, may transfer
18 the interest of the Department of Transportation in, and
19 control over, all facilities and equipment acquired under
20 this section to a qualified participant for use and dispo-
21 sition in accordance with any property management regula-
22 tions that the Secretary determines to be appropriate.

23 “(j) COORDINATION OF RESEARCH AND DEPLOY-
24 MENT OF NEW TECHNOLOGIES.—

1 “(1) The Secretary, in cooperation with the
2 Secretary of the Interior, may undertake, or make
3 grants, cooperative agreements, contracts (including
4 agreements with departments, agencies, and instru-
5 mentalities of the Federal Government) or other
6 transactions for research, development, and deploy-
7 ment of new technologies in eligible areas that will—

8 “(A) conserve resources;

9 “(B) prevent or mitigate adverse environ-
10 mental impact;

11 “(C) improve visitor mobility, accessibility,
12 and enjoyment; and

13 “(D) reduce pollution (including noise pol-
14 lution and visual pollution).

15 “(2) The Secretary may request and receive ap-
16 propriate information from any source.

17 “(3) Grants, cooperative agreements, contracts
18 or other transactions under paragraph (1) shall be
19 awarded from amounts allocated under subsection
20 (c)(1).

21 “(k) INNOVATIVE FINANCING.—A qualified project
22 receiving financial assistance under this section shall be
23 eligible for funding through a state infrastructure bank
24 or other innovative financing mechanism available to fi-
25 nance an eligible project under this chapter.

1 “(1) REPORTS.—

2 “(1) IN GENERAL.—The Secretary, in consulta-
3 tion with the Secretary of the Interior, shall annu-
4 ally submit a report on the allocation of amounts
5 made available to assist qualified projects under this
6 section to—

7 “(A) the Committee on Banking, Housing,
8 and Urban Affairs of the Senate; and

9 “(B) the Committee on Transportation
10 and Infrastructure of the House of Representa-
11 tives.

12 “(2) ANNUAL AND SUPPLEMENTAL REPORTS.—
13 The report required under paragraph (1) shall be in-
14 cluded in the report submitted under section
15 5309(m).”.

16 (b) CONFORMING AMENDMENTS.—The table of sec-
17 tions for chapter 53 is amended by inserting after the item
18 relating to section 5315 the following:

“5316. Alternative transportation in parks and public lands.”.

19 **SEC. 3042. OBLIGATION CEILING.**

20 Notwithstanding any other provision of law, the total
21 of all obligations from amounts made available from the
22 Mass Transit Account of the Highway Trust Fund by, and
23 amounts appropriated under, subsections (a) through (c)
24 of section 5338 of title 49, United States Code, shall not
25 exceed—

- 1 (1) \$7,265,876,900 for fiscal year 2004;
- 2 (2) \$8,650,000,000 for fiscal year 2005;
- 3 (3) \$9,085,123,000 for fiscal year 2006;
- 4 (4) \$9,600,000,000 for fiscal year 2007;
- 5 (5) \$10,490,000,000 for fiscal year 2008; and
- 6 (6) \$11,430,000,000 for fiscal year 2009.

7 **SEC. 3043. ADJUSTMENTS FOR THE SURFACE TRANSPOR-**
8 **TATION EXTENSION ACT OF 2003.**

9 (a) IN GENERAL.—Notwithstanding any other provi-
10 sion of law, the Secretary shall reduce the total apporportion-
11 ments and allocations made for fiscal year 2004 to each
12 grant recipient under section 5338 of title 49, United
13 States Code, by the amount apportioned to that recipient
14 pursuant to section 8 of the Surface Transportation Ex-
15 tension Act of 2003 (117 Stat. 1121).

16 (b) FIXED GUIDEWAY MODERNIZATION ADJUST-
17 MENT.—In making the apportionments described in sub-
18 section (a), the Secretary shall adjust the amount appor-
19 tioned for fiscal year 2004 to each urbanized area for fixed
20 guideway modernization to reflect the apportionment
21 method set forth in 5337(a) of title 49, United States
22 Code.

1 **SEC. 3044. DISADVANTAGED BUSINESS ENTERPRISE.**

2 Section 1101(b) of the Transportation Equity Act of
3 the 21st Century shall apply to all funds authorized or
4 otherwise made available under this title.

5 **SEC. 3045. INTERMODAL PASSENGER FACILITIES.**

6 (a) IN GENERAL.—Chapter 55 of title 49, United
7 States Code, is amended by adding at the end the fol-
8 lowing:

9 “SUBCHAPTER III—INTERMODAL PASSENGER
10 FACILITIES

11 **§ 5571. Policy and purposes**

12 “(a) DEVELOPMENT AND ENHANCEMENT OF INTER-
13 MODAL PASSENGER FACILITIES.—It is in the economic in-
14 terest of the United States to improve the efficiency of
15 public surface transportation modes by ensuring their con-
16 nection with and access to intermodal passenger terminals,
17 thereby streamlining the transfer of passengers among
18 modes, enhancing travel options, and increasing passenger
19 transportation operating efficiencies.

20 “(b) GENERAL PURPOSES.—The purposes of this
21 subchapter are to accelerate intermodal integration among
22 North America’s passenger transportation modes
23 through—

24 “(1) ensuring intercity public transportation ac-
25 cess to intermodal passenger facilities;

1 “(2) encouraging the development of an inte-
2 grated system of public transportation information;
3 and

4 “(3) providing intercity bus intermodal pas-
5 senger facility grants.

6 **§ 5572. Definitions**

7 “In this subchapter—

8 “(1) ‘capital project’ means a project for—

9 “(A) acquiring, constructing, improving, or
10 renovating an intermodal facility that is related
11 physically and functionally to intercity bus serv-
12 ice and establishes or enhances coordination be-
13 tween intercity bus service and transportation,
14 including aviation, commuter rail, intercity rail,
15 public transportation, seaports, and the Na-
16 tional Highway System, such as physical infra-
17 structure associated with private bus operations
18 at existing and new intermodal facilities, includ-
19 ing special lanes, curb cuts, ticket kiosks and
20 counters, baggage and package express storage,
21 employee parking, office space, security, and
22 signage; and

23 “(B) establishing or enhancing coordina-
24 tion between intercity bus service and transpor-
25 tation, including aviation, commuter rail, inter-

1 city rail, public transportation, and the Na-
2 tional Highway System through an integrated
3 system of public transportation information.

4 “(2) ‘commuter service’ means service designed
5 primarily to provide daily work trips within the local
6 commuting area.

7 “(3) ‘intercity bus service’ means regularly
8 scheduled bus service for the general public which
9 operates with limited stops over fixed routes con-
10 necting two or more urban areas not in close prox-
11 imity, which has the capacity for transporting bag-
12 gage carried by passengers, and which makes mean-
13 ingful connections with scheduled intercity bus serv-
14 ice to more distant points, if such service is available
15 and may include package express service, if inci-
16 dental to passenger transportation, but does not in-
17 clude air, commuter, water or rail service.

18 “(4) ‘intermodal passenger facility’ means pas-
19 senger terminal that does, or can be modified to, ac-
20 commodate several modes of transportation and re-
21 lated facilities, including some or all of the following:
22 intercity rail, intercity bus, commuter rail, intracity
23 rail transit and bus transportation, airport limousine
24 service and airline ticket offices, rent-a-car facilities,

1 taxi, private parking, and other transportation serv-
2 ices.

3 “(5) ‘local governmental authority’ includes—

4 “(A) a political subdivision of a State;

5 “(B) an authority of at least one State or
6 political subdivision of a State;

7 “(C) an Indian tribe; and

8 “(D) a public corporation, board, or com-
9 mission established under the laws of the State.

10 “(6) ‘owner or operator of a public transpor-
11 tation facility’ means an owner or operator of inter-
12 city-rail, intercity-bus, commuter-rail, commuter-bus,
13 rail-transit, bus-transit, or ferry services.

14 “(7) ‘recipient’ means a State or local govern-
15 mental authority or a nonprofit organization that re-
16 ceives a grant to carry out this section directly from
17 the Federal government.

18 “(8) ‘Secretary’ means the Secretary of Trans-
19 portation.

20 “(9) ‘State’ means a State of the United
21 States, the District of Columbia, Puerto Rico, the
22 Northern Mariana Islands, Guam, American Samoa,
23 and the Virgin Islands.

24 “(10) ‘urban area’ means an area that includes
25 a municipality or other built-up place that the Sec-

1 retary, after considering local patterns and trends of
 2 urban growth, decides is appropriate for a local pub-
 3 lic transportation system to serve individuals in the
 4 locality.

5 **“§ 5573. Assurance of access to intermodal passenger**
 6 **facilities**

7 “Intercity buses and other modes of transportation
 8 shall, to the maximum extent practicable, have access to
 9 publicly funded intermodal passenger facilities, including
 10 those passenger facilities seeking funding under section
 11 5574.

12 **“§ 5574. Intercity bus intermodal passenger facility**
 13 **grants**

14 “(a) GENERAL AUTHORITY.—The Secretary of
 15 Transportation may make grants under this section to re-
 16 cipients in financing a capital project only if the Secretary
 17 finds that the proposed project is justified and has ade-
 18 quate financial commitment.

19 “(b) COMPETITIVE GRANT SELECTION.—The Sec-
 20 retary shall conduct a national solicitation for applications
 21 for grants under this section. Grantees shall be selected
 22 on a competitive basis.

23 “(c) SHARE OF NET PROJECT COSTS.—A grant shall
 24 not exceed 50 percent of the net project cost, as deter-
 25 mined by the Secretary.

1 “(d) REGULATIONS.—The Secretary may promulgate
2 such regulations as are necessary to carry out this section.

3 **“§ 5575. Funding**

4 “(a) HIGHWAY ACCOUNT.—

5 “(1) There is authorized to be appropriated
6 from the Highway Trust Fund (other than the Mass
7 Transit Account) to carry out this subchapter
8 \$10,000,000 for each of fiscal years 2005 through
9 2009.

10 “(2) The funding made available under para-
11 graph (1) shall be available for obligation in the
12 same manner as if such funds were apportioned
13 under chapter 1 of title 23 and shall be subject to
14 any obligation limitation imposed on funds for Fed-
15 eral-aid highways and highway safety construction
16 programs.

17 “(b) PERIOD OF AVAILABILITY.—Amounts made
18 available under subsection (a) shall remain available until
19 expended.”.

20 (b) CONFORMING AMENDMENT.—The chapter anal-
21 ysis for chapter 55 of title 49, United States Code, is
22 amended by adding at the end the following:

“SUBCHAPTER III—INTERMODAL PASSENGER FACILITIES

Sec.

“5571. Policy and Purposes.

“5572. Definitions.

“5573. Assurance of access to intermodal facilities.

“5574. Intercity bus intermodal facility grants.

“5575. Funding.”.

1 **TITLE IV—SURFACE**
 2 **TRANSPORTATION SAFETY**

3 **SEC. 4001. SHORT TITLE.**

4 This title may be cited as the “Surface Transpor-
 5 tation Safety Reauthorization Act of 2004”.

6 **Subtitle A—Highway Safety**

7 **PART I—HIGHWAY SAFETY GRANT PROGRAM**

8 **SEC. 4101. SHORT TITLE; AMENDMENT OF TITLE 23, UNITED**
 9 **STATES CODE.**

10 (a) **SHORT TITLE.**—This subpart may be cited as the
 11 “Highway Safety Grant Program Reauthorization Act of
 12 2004”.

13 (b) **AMENDMENT OF TITLE 23, UNITED STATES**
 14 **CODE.**—Except as otherwise expressly provided, whenever
 15 in this subpart an amendment or repeal is expressed in
 16 terms of an amendment to, or a repeal of, a section or
 17 other provision, the reference shall be considered to be
 18 made to a section or other provision of title 23, United
 19 States Code.

20 **SEC. 4102. AUTHORIZATION OF APPROPRIATIONS.**

21 (a) **AMOUNTS FOR FISCAL YEARS 2004 THROUGH**
 22 2009.—There are authorized to be appropriated from the
 23 Highway Trust Fund (other than the Mass Transit Ac-

1 count) to the Secretary of Transportation for the National
2 Highway Traffic Safety Administration the following:

3 (1) To carry out the Highway Safety Programs
4 under section 402 of title 23, United States Code,
5 \$170,000,000 in fiscal year 2004, \$174,000,000 in
6 fiscal year 2005, \$179,000,000 in fiscal year 2006,
7 \$185,000,000 in fiscal year 2007, \$204,000,000 in
8 fiscal year 2008, and \$207,000,000 in fiscal year
9 2009.

10 (2) To carry out the Highway Safety Research
11 and Outreach Programs under section 403 of title
12 23, United States Code, \$110,000,000 in fiscal year
13 2004, \$112,000,000 in fiscal year 2005,
14 \$114,000,000 in fiscal year 2006, \$116,000,000 in
15 fiscal year 2007, \$118,000,000 in fiscal year 2008,
16 and \$120,000,000 in fiscal year 2009.

17 (3) To carry out the Occupant Protection Pro-
18 grams under section 405 of title 23, United States
19 Code, \$120,000,000 in fiscal year 2004,
20 \$122,000,000 in fiscal year 2005, \$124,000,000 in
21 fiscal year 2006, \$126,000,000 in fiscal year 2007,
22 \$128,000,000 in fiscal year 2008, and \$130,000,000
23 in fiscal year 2009.

24 (4) To carry out the Emergency Medical Serv-
25 ices Program under section 407A of title 23, United

1 States Code, \$5,000,000 in each of fiscal years 2004
2 through 2009.

3 (5) To carry out the Impaired Driving Program
4 under section 410 of title 23, United States Code,
5 \$85,000,000 in fiscal year 2004, \$89,000,000 in fis-
6 cal year 2005, \$93,000,000 in fiscal year 2006,
7 \$110,000,000 in fiscal year 2007, \$126,000,000 in
8 fiscal year 2008, and \$130,000,000 in fiscal year
9 2009.

10 (6) To carry out the State Traffic Safety Infor-
11 mation System Improvements under section 412 of
12 title 23, United States Code, \$45,000,000 in each of
13 fiscal years 2004 through 2009.

14 (7) To carry out chapter 303 of title 49, United
15 States Code, \$4,000,000 for each of fiscal years
16 2004 through 2009.

17 (b) PROHIBITION ON OTHER USES.—Except as oth-
18 erwise provided in this subtitle, the amounts allocated
19 from the Highway Trust Fund for programs provided for
20 in chapter 4 of title 23, United States Code, shall only
21 be used for such programs and may not be used by States
22 or local governments for construction purposes.

23 (c) EFFECT OF REVENUE DEFICIENCY.—If revenue
24 to the Highway Trust Fund for a given fiscal year is lower
25 than the amounts authorized by this subpart, any subse-

1 quent reductions in the overall funding for highway and
 2 transit programs shall not affect the highway safety pro-
 3 grams provided for in chapter 4 of title 23, United States
 4 Code.

5 (d) PROPORTIONAL INCREASES.—For each fiscal
 6 year from 2004 through 2009, if revenue to the Highway
 7 Trust Fund increases above the amounts for each such
 8 fiscal year set forth in the fiscal year 2004 joint budget
 9 resolution, then the amounts made available in such year
 10 for the programs in sections 402, 405, and 410 shall in-
 11 crease by the same percentage.

12 **SEC. 4103. HIGHWAY SAFETY PROGRAMS.**

13 (a) PROGRAMS TO BE INCLUDED.—

14 (1) MOTOR VEHICLE AIRBAGS PUBLIC AWARE-
 15 NESS.—Section 402(a)(2) is amended by striking“
 16 vehicles and to increase public awareness of the ben-
 17 efit of motor vehicles equipped with airbags” and in-
 18 serting “vehicles,”.

19 (2) AGGRESSIVE DRIVING.—Section 402(a) is
 20 further amended—

21 (A) by redesignating clause (6) as clause
 22 (8);

23 (B) by inserting after “involving school
 24 buses,” at the end of clause (5) the following:

25 “(6) to reduce aggressive driving and to educate

1 drivers about defensive driving, (7) to reduce
2 accidents resulting from fatigued and distracted
3 drivers, including distractions arising from the
4 use of electronic devices in vehicles,”; and

5 (C) by inserting “aggressive driving, dis-
6 tracted driving,” after “school bus accidents,”.

7 (b) APPORTIONMENT.—

8 (1) TRIBAL GOVERNMENT PROGRAMS.—Section
9 402(c) is amended by striking “three-fourths of 1
10 percent” and inserting “2 percent”.

11 (c) EXTRA FUNDING FOR OCCUPANT PROTECTION
12 AND IMPAIRED DRIVING PROGRAMS.—Section 402 is
13 amended by inserting after subsection (g) the following:
14 “(h) GRANTS.—Funds available to States under this
15 section may be used for making grants of financial assist-
16 ance for programs and initiatives authorized by sections
17 405 and 410 of this title.”.

18 (d) LAW ENFORCEMENT CHASE TRAINING.—Section
19 402 is amended by adding at the end the following:

20 “(l) LIMITATION RELATING TO LAW ENFORCEMENT
21 VEHICULAR PURSUIT TRAINING.—No State may receive
22 any funds available for fiscal years after fiscal year 2004
23 for programs under this chapter until the State submits
24 to the Secretary a written statement that the State ac-
25 tively encourages all relevant law enforcement agencies in

1 that State to follow the guidelines established for police
2 chases issued by the International Association of Chiefs
3 of Police that are in effect on the date of enactment of
4 the Highway Safety Grant Program Reauthorization Act
5 of 2004, or as revised and in effect after that date as de-
6 termined by the Secretary.

7 “(m) CONSOLIDATION OF GRANT APPLICATIONS.—
8 The Secretary shall establish an approval process by which
9 a State may apply for all grants included under this chap-
10 ter through a single application with a single annual dead-
11 line. The Bureau of Indian Affairs shall establish a simi-
12 larly simplified process for applications from Indian tribes.

13 “(n) ADMINISTRATIVE EXPENSES.—Funds author-
14 ized to be appropriated to carry out this section shall be
15 subject to a deduction of not to exceed 5 percent for the
16 necessary costs of administering the provisions of this sec-
17 tion, section 405, section 407A, section 410, and 413 of
18 this chapter.”.

19 **SEC. 4104. HIGHWAY SAFETY RESEARCH AND OUTREACH**
20 **PROGRAMS.**

21 (a) REVISED AUTHORITY AND REQUIREMENTS.—
22 Section 403 is amended to read as follows:

1 **“§ 403. Highway safety research and development**

2 “(a) **AUTHORITY OF THE SECRETARY.**—The Sec-
3 retary is authorized to use funds appropriated to carry
4 out this section to—

5 “(1) conduct research on all phases of highway
6 safety and traffic conditions, including accident cau-
7 sation, highway or driver characteristics, commu-
8 nications, and emergency care;

9 “(2) conduct ongoing research into driver be-
10 havior and its effect on traffic safety;

11 “(3) conduct research on, and launch initiatives
12 to counter, fatigued driving by drivers of motor vehi-
13 cles and distracted driving in such vehicles, including
14 the effect that the use of electronic devices and other
15 factors deemed relevant by the Secretary have on
16 driving;

17 “(4) conduct training or education programs in
18 cooperation with other Federal departments and
19 agencies, States, private sector persons, highway
20 safety personnel, and law enforcement personnel;

21 “(5) conduct research on, and evaluate the ef-
22 fectiveness of, traffic safety countermeasures, includ-
23 ing seat belts and impaired driving initiatives; and

24 “(6) conduct demonstration projects.

25 “(b) **SPECIFIC RESEARCH PROGRAMS.**—

1 “(1) REQUIRED PROGRAMS.—The Secretary
2 shall conduct research on the following:

3 “(A) EFFECTS OF USE OF CONTROLLED
4 SUBSTANCES.—A study on the effects of the
5 use of controlled substances on driver behavior
6 to determine—

7 “(i) methodologies for measuring driv-
8 er impairment resulting from use of the
9 most common controlled substances (in-
10 cluding the use of such substances in com-
11 bination with alcohol); and

12 “(ii) effective and efficient methods
13 for training law enforcement personnel to
14 detect or measure the level of impairment
15 of a driver who is under the influence of a
16 controlled substance by the use of tech-
17 nology or otherwise.

18 “(B) ON-SCENE MOTOR VEHICLE COLLI-
19 SION CAUSATION.—A nationally representative
20 study to collect on-scene motor vehicle collision
21 data, and to determine crash causation, for
22 which the Secretary shall enter into a contract
23 with the National Academy of Sciences to con-
24 duct a review of the research, design, method-
25 ology, and implementation of the study.

1 “(C) TOLL FACILITIES WORKPLACE SAFE-
2 TY.—A study on the safety of highway toll col-
3 lection facilities, including toll booths, con-
4 ducted in cooperation with State and local high-
5 way safety organizations to determine the safe-
6 ty of highway toll collection facilities for the toll
7 collectors who work in and around such facili-
8 ties and to develop best practices that would be
9 of benefit to State and local highway safety or-
10 ganizations. The study shall consider—

11 “(i) any problems resulting from de-
12 sign or construction of facilities that con-
13 tribute to the occurrence of vehicle colli-
14 sions with the facilities;

15 “(ii) the safety of crosswalks used by
16 toll collectors in transit to and from toll
17 booths;

18 “(iii) the extent of the enforcement of
19 speed limits at and in the vicinity of toll
20 facilities;

21 “(iv) the use of warning devices, such
22 as vibration and rumble strips, to alert
23 drivers approaching toll facilities;

24 “(v) the use of cameras to record traf-
25 fic violations in the vicinity of toll facilities;

1 “(vi) the use of traffic control arms in
2 the vicinity of toll facilities;

3 “(vii) law enforcement practices and
4 jurisdictional issues that affect safety at
5 and in the vicinity of toll facilities; and

6 “(viii) data (which shall be collected
7 in conducting the research) regarding the
8 incidence of accidents and injuries at and
9 around toll booth facilities.

10 “(2) TIME FOR COMPLETION OF STUDIES.—

11 The studies conducted in subparagraphs (A), (B),
12 and (C) of paragraph (1) may be conducted in con-
13 cert with other Federal departments and agencies
14 with relevant expertise. The Secretary shall submit
15 an annual report to the Senate Committee on Com-
16 merce, Science, and Transportation and the House
17 of Representatives Committee on Transportation
18 and Infrastructure on the progress of each study
19 conducted under this subsection.

20 “(3) ONGOING STUDIES.—The studies under
21 subparagraphs (A) and (B) of paragraph (1) shall
22 be conducted on an ongoing basis.

23 “(4) REPORTS.—

24 “(A) ONE-TIME STUDY.—Not later than 2
25 years after the date of enactment of the High-

1 way Safety Grant Program Reauthorization Act
2 of 2004, the Secretary shall submit a final re-
3 port on the study referred to in paragraph
4 (1)(C) to the Committee on Commerce, Science,
5 and Transportation of the Senate and the Com-
6 mittee on Transportation and Infrastructure of
7 the House of Representatives.

8 “(B) ONGOING STUDIES.—The Secretary
9 shall submit a report on the studies referred to
10 in paragraph (3) to the Committees of Congress
11 referred to in subparagraph (A) not later than
12 December 31, 2005, and shall submit additional
13 reports on such studies to such committees
14 every 2 years. Such additional reports shall con-
15 tain the findings, progress, remaining chal-
16 lenges, research objectives, and other relevant
17 data relating to the ongoing studies.

18 “(5) RESEARCH ON DISTRACTED, INATTENTIVE,
19 AND FATIGUED DRIVERS.—In conducting research
20 under subsection (a)(3), the Secretary shall carry
21 out not less than 5 demonstration projects to evalu-
22 ate new and innovative means of combatting traffic
23 system problems caused by distracted, inattentive, or
24 fatigued drivers. The demonstration projects shall be

1 in addition to any other research carried out under
2 this subsection.

3 “(c) NATIONWIDE TRAFFIC SAFETY CAMPAIGNS.—

4 “(1) REQUIREMENT FOR CAMPAIGNS.—The Ad-
5 ministrator of the National Highway Traffic Safety
6 Administration shall establish and administer a pro-
7 gram under which 3 high-visibility traffic safety law
8 enforcement campaigns will be carried out for the
9 purposes specified in paragraph (2) in each of years
10 2004 through 2009.

11 “(2) PURPOSE.—The purpose of each law en-
12 forcement campaign is to achieve either or both of
13 the following objectives:

14 “(A) Reduce alcohol-impaired or drug-im-
15 paired operation of motor vehicles.

16 “(B) Increase use of seat belts by occu-
17 pants of motor vehicles.

18 “(3) ADVERTISING.—The Administrator may
19 use, or authorize the use of, funds available under
20 this section to pay for the development, production,
21 and use of broadcast and print media advertising in
22 carrying out traffic safety law enforcement cam-
23 paigns under this subsection. Consideration shall be
24 given to advertising directed at non-English speak-

1 ing populations, including those who listen, read, or
2 watch nontraditional media.

3 “(4) COORDINATION WITH STATES.—The Ad-
4 ministrator shall coordinate with the States in car-
5 rying out the traffic safety law enforcement cam-
6 paigns under this subsection, including advertising
7 funded under paragraph (3), with a view to—

8 “(A) relying on States to provide the law
9 enforcement resources for the campaigns out of
10 funding available under this section and sec-
11 tions 402, 405, and 410 of this title; and

12 “(B) providing out of National Highway
13 Traffic Safety Administration resources most of
14 the means necessary for national advertising
15 and education efforts associated with the law
16 enforcement campaigns.

17 “(5) ANNUAL EVALUATION.—The Secretary
18 shall conduct an annual evaluation of the effective-
19 ness of such initiatives.

20 “(6) FUNDING.—The Secretary shall use
21 \$24,000,000 in each of fiscal years 2004 through
22 2009 for advertising and educational initiatives to be
23 carried out nationwide in support of the campaigns
24 under this section.

25 “(d) IMPROVING OLDER DRIVER SAFETY.—

1 “(1) IN GENERAL.—Of the funds made avail-
2 able under this section, the Secretary shall allocate
3 \$2,000,000 in each of fiscal years 2004 through
4 2009 to conduct a comprehensive research and dem-
5 onstration program to improve traffic safety per-
6 taining to older drivers. The program shall—

7 “(A) provide information and guidelines to
8 assist physicians and other related medical per-
9 sonnel, families, licensing agencies, enforcement
10 officers, and various public and transit agencies
11 in enhancing the safety and mobility of older
12 drivers;

13 “(B) improve the scientific basis of medical
14 standards and screenings strategies used in the
15 licensing of all drivers in a non-discriminatory
16 manner;

17 “(C) conduct field tests to assess the safe-
18 ty benefits and mobility impacts of different
19 driver licensing strategies and driver assess-
20 ment and rehabilitation methods;

21 “(D) assess the value and improve the
22 safety potential of driver retraining courses of
23 particular benefit to older drivers; and

24 “(E) conduct other activities to accomplish
25 the objectives of this action.

1 “(2) FORMULATION OF PLAN.—After consulta-
2 tion with affected parties, the Secretary shall formu-
3 late an older driver traffic safety plan to guide the
4 design and implementation of this program. The
5 plan shall be submitted to the House of Representa-
6 tives Committee on Transportation and Infrastruc-
7 ture and the Senate Committee on Commerce,
8 Science, and Transportation within 180 days after
9 the date of enactment of the Highway Safety Grant
10 Program Reauthorization Act of 2004.

11 “(e) LAW ENFORCEMENT TRAINING.—

12 “(1) REQUIREMENT FOR PROGRAM.—The Ad-
13 ministrators of the National Highway Traffic Safety
14 Administration shall carry out a program to train
15 law enforcement personnel of each State and polit-
16 ical subdivision thereof in police chase techniques
17 that are consistent with the police chase guidelines
18 issued by the International Association of Chiefs of
19 Police.

20 “(2) AMOUNT FOR PROGRAM.—Of the amount
21 available for a fiscal year to carry out this section,
22 \$200,000 shall be available for carrying out this
23 subsection.

24 “(f) INTERNATIONAL COOPERATION.—

1 “(1) AUTHORITY.—The Administrator of the
2 National Highway Traffic Safety Administration
3 may participate and cooperate in international ac-
4 tivities to enhance highway safety.

5 “(2) AMOUNT FOR PROGRAM.—Of the amount
6 available for a fiscal year to carry out this section,
7 \$200,000 may be used for activities authorized
8 under paragraph (1).”.

9 (b) STUDY ON REFUSAL OF INTOXICATION TEST-
10 ING.—

11 (1) REQUIREMENT FOR STUDY.—In addition to
12 studies under section 403 of title 23, United States
13 Code, the Secretary of Transportation shall carry
14 out a study of the frequency with which persons ar-
15 rested for the offense of operating a motor vehicle
16 under the influence of alcohol and persons arrested
17 for the offense of operating a motor vehicle while in-
18 toxicated refuse to take a test to determine blood al-
19 cohol concentration levels and the effect such refus-
20 als have on the ability of States to prosecute such
21 persons for those offenses.

22 (2) CONSULTATION.—In carrying out the study
23 under this section, the Secretary shall consult with
24 the Governors of the States, the States’ Attorneys

1 General, and the United States Sentencing Commis-
2 sion.

3 (3) REPORT.—

4 (A) REQUIREMENT FOR REPORT.—Not
5 later than 1 year after the date of the enact-
6 ment of this Act, the Secretary shall submit a
7 report on the results of the study to the Com-
8 mittee on Commerce, Science, and Transpor-
9 tation of the Senate and the Committee on
10 Transportation and Infrastructure of the House
11 of Representatives.

12 (B) CONTENT.—The report shall include
13 any recommendation for legislation, including
14 any recommended model State legislation, and
15 any other recommendations that the Secretary
16 considers appropriate for implementing a pro-
17 gram designed to decrease the occurrence refus-
18 als by arrested persons to submit to a test to
19 determine blood alcohol concentration levels.

20 **SEC. 4105. NATIONAL HIGHWAY SAFETY ADVISORY COM-**
21 **MITTEE TECHNICAL CORRECTION.**

22 Section 404(d) is amended by striking “Commerce”
23 and inserting “Transportation”.

24 **SEC. 4106. OCCUPANT PROTECTION GRANTS.**

25 Section 405 is amended—

1 (1) by striking the second sentence of sub-
2 section (a)(1);

3 (2) by striking “Transportation Equity Act for
4 the 21st Century.” in subsection (a)(2) and insert-
5 ing “Highway Safety Grant Program Reauthoriza-
6 tion Act of 2004.”;

7 (3) by striking subsections (a)(3) and (4), (b),
8 (c), and (d) and redesignating subsections (e) and
9 (f) as subsections (d) and (e), respectively; and

10 (4) by inserting after subsection (a) the fol-
11 lowing:

12 “(b) OCCUPANT PROTECTION GRANTS.—

13 “(1) IN GENERAL.—In addition to the grants
14 authorized by subsection (a), the Secretary shall
15 make grants in accordance with this subsection.

16 “(2) SAFETY BELT PERFORMANCE GRANTS.—

17 “(A) PRIMARY SAFETY BELT USE LAW.—

18 “(i) For fiscal years 2004 and 2005,
19 the Secretary shall make a grant to each
20 State that enacted, and is enforcing, a pri-
21 mary safety belt use law for all passenger
22 motor vehicles that became effective by De-
23 cember 31, 2002.

24 “(ii) For each of fiscal years 2004
25 through 2009, the Secretary shall, after

1 making grants under clause (i) of this sub-
2 paragraph, make a one-time grant to each
3 State that either enacts for the first time
4 after December 31, 2002, and has in effect
5 a primary safety belt use law for all pas-
6 senger motor vehicles, or, in the case of a
7 State that does not have such a primary
8 safety belt use law, has a State safety belt
9 use rate in the preceding fiscal year of at
10 least 90 percent, as measured under cri-
11 teria determined by the Secretary.

12 “(iii) Of the funds authorized for
13 grants under this subsection,
14 \$100,000,000 in each of fiscal years 2004
15 through 2009 shall be available for grants
16 under this paragraph. The amount of a
17 grant available to a State in each of fiscal
18 years 2004 and 2005 under clause (i) of
19 this subparagraph shall be equal to $\frac{1}{2}$ of
20 the amount of funds apportioned to the
21 State under section 402(c) for fiscal year
22 2003. The amount of a grant available to
23 a State in fiscal year 2004 or in a subse-
24 quent fiscal year under clause (ii) of this
25 subparagraph shall be equal to 5 times the

1 amount apportioned to the State for fiscal
2 year 2003 under section 402(c). A State
3 that receives a grant under clause (ii) of
4 this subparagraph is ineligible to receive
5 funding under subparagraph (B) for that
6 fiscal year and the following fiscal year.
7 The Federal share payable for grants
8 under this subparagraph shall be 100 per-
9 cent. If the total amount of grants under
10 clause (ii) of this subparagraph for a fiscal
11 year exceeds the amount of funds available
12 in the fiscal year, grants shall be made to
13 each eligible State, in the order in which
14 its primary safety belt use law became ef-
15 fective or its safety belt use rate reached
16 90 percent, until the funds for the fiscal
17 year are exhausted. A State that does not
18 receive a grant for which it is eligible in a
19 fiscal year shall receive the grant in the
20 succeeding fiscal year so long as its law re-
21 mains in effect or its safety belt use rate
22 remains at or above 90 percent. If the
23 total amount of grants under this subpara-
24 graph for a fiscal year is less than the
25 amount available in the fiscal year, the

1 Secretary shall use any funds that exceed
2 the total amount for grants under subpara-
3 graph (B) of this paragraph.

4 “(B) SAFETY BELT USE RATE.—

5 “(i) For each fiscal year, from 2004
6 through 2009, the funds authorized for a
7 grant under this subparagraph shall be
8 awarded to States that increase their
9 measured safety belt use rate, as deter-
10 mined by the Secretary, by decreasing the
11 proportion of non-users of safety belts by
12 10 percent, as compared to the proportion
13 of non-users, in the preceding fiscal year.

14 “(ii) Each State that meets the re-
15 quirement of clause (i) of this subpara-
16 graph shall be apportioned an amount of
17 funds that is equal to the amount available
18 under this subparagraph for the relevant
19 fiscal year multiplied by the ratio that the
20 funds apportioned to the State under sec-
21 tion 402 for such fiscal year bear to the
22 funds apportioned under section 402 for
23 such fiscal year to all states that qualify
24 for a grant for such fiscal year.

1 “(iii) Of the funds authorized for
2 grants under this subsection, \$20,000,000
3 for fiscal year 2004, \$22,000,000 for fiscal
4 year 2005, \$24,000,000 for fiscal year
5 2006, \$26,000,000 for fiscal year 2007,
6 \$28,000,000 for fiscal year 2008, and
7 \$30,000,000 for fiscal year 2009 shall be
8 available for safety belt use rate grants
9 under this subparagraph.

10 “(iv) The Federal share payable for
11 grants under this subparagraph shall be
12 100 percent.

13 “(c) USE OF GRANTS.—A State allocated an amount
14 for a grant under subparagraph (A) or (B) of subsection
15 (b)(2) may use the amount for activities eligible for assist-
16 ance under sections 402, 405, and 410 of this title.”.

17 **SEC. 4107. SCHOOL BUS DRIVER TRAINING.**

18 Section 406(c) is amended by striking the first, sec-
19 ond, and third sentences.

20 **SEC. 4108. EMERGENCY MEDICAL SERVICES.**

21 (a) FEDERAL COORDINATION AND ENHANCED SUP-
22 PORT OF EMERGENCY MEDICAL SERVICES.—Chapter 4 is
23 amended by inserting after section 407 the following:

1 **“§ 407A. Federal coordination and enhanced support**
2 **of emergency medical services**

3 “(a) FEDERAL INTERAGENCY COMMITTEE ON EMER-
4 GENCY MEDICAL SERVICES.—

5 “(1) ESTABLISHMENT.—The Secretary of
6 Transportation and the Secretary of Homeland Se-
7 curity, through the Under Secretary for Emergency
8 Preparedness and Response, shall establish a Fed-
9 eral Interagency Committee on Emergency Medical
10 Services. In establishing the Interagency Committee,
11 the Secretary of Transportation and the Secretary of
12 Homeland Security through the Under Secretary for
13 Emergency Preparedness and Response shall consult
14 with the Secretary of Health and Human Services.

15 “(2) MEMBERSHIP.—The Interagency Com-
16 mittee shall consist of the following officials, or their
17 designees:

18 “(A) The Administrator, National High-
19 way Traffic Safety Administration.

20 “(B) The Director, Preparedness Division,
21 Emergency Preparedness and Response Direc-
22 torate, Department of Homeland Security.

23 “(C) The Administrator, Health Resources
24 and Services Administration, Department of
25 Health and Human Services.

1 “(D) The Director, Centers for Disease
2 Control and Prevention, Department of Health
3 and Human Services.

4 “(E) The Administrator, United States
5 Fire Administration, Emergency Preparedness
6 and Response Directorate, Department of
7 Homeland Security.

8 “(F) The Director, Center for Medicare
9 and Medicaid Services, Department of Health
10 and Human Services.

11 “(G) The Undersecretary of Defense for
12 Personnel and Readiness.

13 “(H) The Director, Indian Health Service,
14 Department of Health and Human Services.

15 “(I) The Chief, Wireless Telecom Bureau,
16 Federal Communications Commission.

17 “(J) A representative of any other Federal
18 agency identified by the Secretary of Transpor-
19 tation or the Secretary of Homeland Security
20 through the Under Secretary for Emergency
21 Preparedness and Response, in consultation
22 with the Secretary of Health and Human Serv-
23 ices, as having a significant role in relation to
24 the purposes of the Interagency Committee.

1 “(3) PURPOSES.—The purposes of the Inter-
2 agency Committee are as follows:

3 “(A) To ensure coordination among the
4 Federal agencies involved with State, local, trib-
5 al, or regional emergency medical services and
6 9–1–1 systems.

7 “(B) To identify State, local, tribal, or re-
8 gional emergency medical services and 9–1–1
9 needs.

10 “(C) To recommend new or expanded pro-
11 grams, including grant programs, for improving
12 State, local, tribal, or regional emergency med-
13 ical services and implementing improved emer-
14 gency medical services communications tech-
15 nologies, including wireless 9–1–1.

16 “(D) To identify ways to streamline the
17 process through which Federal agencies support
18 State, local, tribal or regional emergency med-
19 ical services.

20 “(E) To assist State, local, tribal or re-
21 gional emergency medical services in setting
22 priorities based on identified needs.

23 “(F) To advise, consult, and make rec-
24 ommendations on matters relating to the imple-

1 mentation of the coordinated State emergency
2 medical services programs.

3 “(4) ADMINISTRATION.—The Administrator of
4 the National Highway Traffic Safety Administra-
5 tion, in cooperation with the Director, Preparedness
6 Division, Emergency Preparedness and Response Di-
7 rectorate, Department of Homeland Security, shall
8 provide administrative support to the Interagency
9 Committee, including scheduling meetings, setting
10 agendas, keeping minutes and records, and pro-
11 ducing reports.

12 “(5) LEADERSHIP.—The members of the Inter-
13 agency Committee shall select a chairperson of the
14 Committee annually.

15 “(6) MEETINGS.—The Interagency Committee
16 shall meet as frequently as is determined necessary
17 by the chairperson of the Committee.

18 “(7) ANNUAL REPORTS.—The Interagency
19 Committee shall prepare an annual report to Con-
20 gress on the Committee’s activities, actions, and rec-
21 ommendations.

22 “(b) COORDINATED NATIONWIDE EMERGENCY MED-
23 ICAL SERVICES PROGRAM.—

24 “(1) PROGRAM REQUIREMENT.—The Secretary
25 of Transportation, acting through the Administrator

1 of the National Highway Traffic Safety Administra-
2 tion, shall coordinate with officials of other Federal
3 departments and agencies, and may assist State and
4 local governments and emergency medical services
5 organizations (whether or not a firefighter organiza-
6 tion), private industry, and other interested parties,
7 to ensure the development and implementation of a
8 coordinated nationwide emergency medical services
9 program that is designed to strengthen transpor-
10 tation safety and public health and to implement im-
11 proved emergency medical services communication
12 systems, including 9–1–1.

13 “(2) COORDINATED STATE EMERGENCY MED-
14 ICAL SERVICES PROGRAM.—Each State shall estab-
15 lish a program, to be approved by the Secretary, to
16 coordinate the emergency medical services and re-
17 sources deployed throughout the State, so as to
18 ensure—

19 “(A) improved emergency medical services
20 communication systems, including 9–1–1;

21 “(B) utilization of established best prac-
22 tices in system design and operations;

23 “(C) implementation of quality assurance
24 programs; and

1 “(D) incorporation of data collection and
2 analysis programs that facilitate system devel-
3 opment and data linkages with other systems
4 and programs useful to emergency medical serv-
5 ices.

6 “(3) ADMINISTRATION OF STATE PROGRAMS.—
7 The Secretary may not approve a coordinated State
8 emergency medical services program under this sub-
9 section unless the program—

10 “(A) provides that the Governor of the
11 State is responsible for its administration
12 through a State office of emergency medical
13 services that has adequate powers and is suit-
14 ably equipped and organized to carry out such
15 program and coordinates such program with the
16 highway safety office of the State; and

17 “(B) authorizes political subdivisions of the
18 State to participate in and receive funds under
19 such program, consistent with a goal of achiev-
20 ing statewide coordination of emergency medical
21 services and 9–1–1 activities.

22 “(4) FUNDING.—

23 “(A) USE OF FUNDS.—Funds authorized
24 to be appropriated to carry out this subsection
25 shall be used to aid the States in conducting co-

1 ordinated emergency medical services and 9-1-
2 1 programs as described in paragraph (2).

3 “(B) APPORTIONMENT.—

4 “(i) APPORTIONMENT FORMULA.—

5 The funds shall be apportioned as follows:
6 75 percent in the ratio that the population
7 of each State bears to the total population
8 of all the States, as shown by the latest
9 available Federal census, and 25 percent in
10 the ratio that the public road mileage in
11 each State bears to the total public road
12 mileage in all States. For the purpose of
13 this subparagraph, a ‘public road’ means
14 any road under the jurisdiction of and
15 maintained by a public authority and open
16 to public travel. Public road mileage as
17 used in this subsection shall be determined
18 as of the end of the calendar year prior to
19 the year in which the funds are appor-
20 tioned and shall be certified by the Gov-
21 ernor of the State and subject to approval
22 by the Secretary.

23 “(ii) MINIMUM APPORTIONMENT.—

24 The annual apportionment to each State
25 shall not be less than $\frac{1}{2}$ of 1 percent of

1 the total apportionment, except that the
2 apportionment to the Secretary of the Inte-
3 rior on behalf of Indian tribes shall not be
4 less than $\frac{3}{4}$ of 1 percent of the total ap-
5 portionment, and the apportionments to
6 the Virgin Islands, Guam, American
7 Samoa, and the Commonwealth of the
8 Northern Mariana Islands shall not be less
9 than $\frac{1}{4}$ of 1 percent of the total appor-
10 tionment.

11 “(5) APPLICABILITY OF CHAPTER 1.—Section
12 402(d) of this title shall apply in the administration
13 of this subsection.

14 “(6) FEDERAL SHARE.—The Federal share of
15 the cost of a project or program funded under this
16 subsection shall be 80 percent.

17 “(7) APPLICATION IN INDIAN COUNTRY.—

18 “(A) USE OF TERMS.—For the purpose of
19 application of this subsection in Indian country,
20 the terms ‘State’ and ‘Governor of the State’
21 include the Secretary of the Interior and the
22 term ‘political subdivisions of the State’ in-
23 cludes an Indian tribe.

24 “(B) INDIAN COUNTRY DEFINED.—In this
25 subsection, the term ‘Indian country’ means—

1 “(i) all land within the limits of any
2 Indian reservation under the jurisdiction of
3 the United States, notwithstanding the
4 issuance of any patent and including
5 rights-of-way running through the reserva-
6 tion;

7 “(ii) all dependent Indian commu-
8 nities within the borders of the United
9 States, whether within the original or sub-
10 sequently acquired territory thereof and
11 whether within or without the limits of a
12 State; and

13 “(iii) all Indian allotments, the Indian
14 titles to which have not been extinguished,
15 including rights-of-way running through
16 such allotments.

17 “(c) STATE DEFINED.—In this section, the term
18 ‘State’ means each of the 50 States, the District of Colum-
19 bia, Puerto Rico, the Virgin Islands, Guam, American
20 Samoa, the Commonwealth of the Northern Mariana Is-
21 lands, and the Secretary of the Interior on behalf of In-
22 dian tribes.

23 “(d) CONSTRUCTION WITH RESPECT TO DISTRICT
24 OF COLUMBIA.—In the administration of this section with
25 respect to the District of Columbia, a reference in this

1 section to the Governor of a State shall refer to the Mayor
2 of the District of Columbia.”.

3 (b) CLERICAL AMENDMENT.—The chapter analysis
4 for chapter 4 is amended by inserting after the item relat-
5 ing to section 407 the following:

“407A. Federal coordination and enhanced support of emergency medical serv-
ices.”.

6 **SEC. 4109. REPEAL OF AUTHORITY FOR ALCOHOL TRAFFIC**
7 **SAFETY PROGRAMS.**

8 (a) REPEAL.—Section 408 is repealed.

9 (b) CLERICAL AMENDMENT.—The chapter analysis
10 for chapter 4 is amended by striking the item relating to
11 section 408.

12 **SEC. 4110. IMPAIRED DRIVING PROGRAM.**

13 (a) MAINTENANCE OF EFFORT.—Section 410(a)(2)
14 is amended by striking “the Transportation Equity Act
15 for the 21st Century” and inserting “the Highway Safety
16 Grant Program Reauthorization Act of 2004”.

17 (b) REVISED GRANT AUTHORITY.—Section 410 is
18 amended—

19 (1) by striking paragraph (3) of subsection (a)
20 and redesignating paragraph (4) as paragraph (3);
21 and

22 (2) by striking subsections (b) through (f) and
23 inserting the following:

1 “(b) PROGRAM-RELATED ELIGIBILITY REQUIRE-
 2 MENTS.—To be eligible for a grant under this section, a
 3 State shall—

4 “(1) carry out each of the programs and activi-
 5 ties required under subsection (c);

6 “(2) comply with the additional requirements
 7 set forth in subsection (d) with respect to such pro-
 8 grams and activities; and

9 “(3) comply with any additional requirements
 10 of the Secretary.

11 “(c) REQUIRED STATE PROGRAMS AND ACTIVI-
 12 TIES.—For the purpose of subsection (b)(1), a State must
 13 meet the requirements of 4 of the following 6 criteria in
 14 order to receive a grant under this section:

15 “(1) CHECK-POINT, SATURATION PATROL PRO-
 16 GRAM.—

17 “(A) A State program to conduct of a se-
 18 ries of high-visibility, Statewide law enforce-
 19 ment campaigns in which law enforcement per-
 20 sonnel monitor for impaired driving, either
 21 through use of check-points or saturation pa-
 22 trols, on a nondiscriminatory, lawful basis for
 23 the purpose of determining whether the opera-
 24 tors of the motor vehicles are driving while
 25 under the influence of alcohol or controlled sub-

1 stances that meets the requirements of subpara-
2 graphs (B) and (C).

3 “(B) A program meets the requirements of
4 this subparagraph only if a State organizes the
5 campaigns in cooperation with related national
6 campaigns organized by the National Highway
7 Traffic Safety Administration, but this sub-
8 paragraph does not preclude a State from initi-
9 ating high-visibility, Statewide law enforcement
10 campaigns independently of the cooperative ef-
11 forts.

12 “(C) A program meets the requirements of
13 this subparagraph only if, for each fiscal year,
14 a State demonstrates to the Secretary that the
15 State and the political subdivisions of the State
16 that receive funds under this section have in-
17 creased, in the aggregate, the total number of
18 impaired driving law enforcement activities, as
19 described in subparagraph (A) (or any other
20 similar activity approved by the Secretary), ini-
21 tiated in such State during the preceding fiscal
22 year by a factor that the Secretary determines
23 meaningful for the State over the number of
24 such activities initiated in such State during the

1 preceding fiscal year, which shall not be less
2 than 5 percent.

3 “(2) PROSECUTION AND ADJUDICATION PRO-
4 GRAM.—For grants made during fiscal years after
5 fiscal year 2004, a State prosecution and adjudica-
6 tion program under which—

7 “(A) judges and prosecutors are actively
8 encouraged to prosecute and adjudicate cases of
9 defendants who repeatedly commit impaired
10 driving offenses by reducing the use of State di-
11 version programs, or other means that have the
12 effect of avoiding or expunging a permanent
13 record of impaired driving in such cases;

14 “(B) the courts in a majority of the judi-
15 cial jurisdictions of the State are monitored on
16 the courts’ adjudication of cases of impaired
17 driving offenses; or

18 “(C) annual Statewide outreach is provided
19 for judges and prosecutors on innovative ap-
20 proaches to the prosecution and adjudication of
21 cases of impaired driving offenses that have the
22 potential for significantly improving the pros-
23 ecution and adjudication of such cases.

24 “(3) IMPAIRED OPERATOR INFORMATION SYS-
25 TEM.—

1 “(A) A State impaired operator informa-
2 tion system that—

3 “(i) tracks drivers who are arrested or
4 convicted for violation of laws prohibiting
5 impaired operation of motor vehicles;

6 “(ii) includes information about each
7 case of an impaired driver beginning at the
8 time of arrest through case disposition, in-
9 cluding information about any trial, plea,
10 plea agreement, conviction or other disposi-
11 tion, sentencing or other imposition of
12 sanctions, and substance abuse treatment;

13 “(iii) provides—

14 “(I) accessibility to the informa-
15 tion for law enforcement personnel
16 Statewide and for United States law
17 enforcement personnel; and

18 “(II) linkage for the sharing of
19 the information and of the informa-
20 tion in State traffic record systems
21 among jurisdictions and appropriate
22 agencies, court systems and offices of
23 the States;

24 “(iv) shares information with the Na-
25 tional Highway Traffic Safety Administra-

1 tion for compilation and use for the track-
2 ing of impaired operators of motor vehicles
3 who move from State to State; and

4 “(v) meets the requirements of sub-
5 paragraphs (B), (C), and (D) of this para-
6 graph, as applicable.

7 “(B) A program meets the requirements of
8 this subparagraph only if, during fiscal years
9 2004 and 2005, a State—

10 “(i) assesses the system used by the
11 State for tracking drivers who are arrested
12 or convicted for violation of laws prohib-
13 iting impaired operation of motor vehicles;

14 “(ii) identifies ways to improve the
15 system, as well as to enhance the capability
16 of the system to provide information in co-
17 ordination with impaired operator informa-
18 tion systems of other States; and

19 “(iii) develops a strategic plan that
20 sets forth the actions to be taken and the
21 resources necessary to achieve the identi-
22 fied improvements and to enhance the ca-
23 pability for coordination with the systems
24 of other States.

1 “(C) A program meets the requirements of
2 this subparagraph only if, in each of fiscal
3 years 2006, 2007, and 2008, a State dem-
4 onstrates to the Secretary that the State has
5 made substantial and meaningful progress in
6 improving the State’s impaired operator infor-
7 mation system, and makes public a report on
8 the progress of the information system.

9 “(D) A program meets the requirements of
10 this subparagraph only if, in fiscal year 2009,
11 a State demonstrates to the Secretary that the
12 State’s impaired operator information system
13 meets the basic standards for such systems as
14 determined by the Secretary.

15 “(4) IMPAIRED DRIVING PERFORMANCE.—The
16 percentage of fatally-injured drivers with 0.08 per-
17 cent or greater blood alcohol concentration in the
18 State has decreased in each of the 2 most recent cal-
19 endar years.

20 “(5) IMPAIRED DRIVING TASK FORCE.—(A) Es-
21 tablishment of an impaired driving task force that
22 involves all relevant State, tribal, and local agencies
23 responsible for reducing alcohol impairment and im-
24 paired driving and meets the requirements of sub-
25 paragraphs (B), (C), and (D). The purpose of the

1 task force is to oversee efforts to reduce impaired
2 driving by strengthening applicable laws, regulations,
3 programs, and policies, and to coordinate impaired
4 driving resources and programs among different ju-
5 risdictions. The impaired driving task force shall in-
6 clude State, Tribal, and local law enforcement,
7 motor carrier safety agencies, and State alcohol and
8 drug abuse prevention agencies, State and local
9 court systems, State drivers licensing agencies, the
10 State highway safety office, and State parole and
11 probation agencies.

12 “(B) In fiscal year 2004 and fiscal year 2005,
13 the State shall establish a statewide impaired driving
14 task force to assess the State’s impaired driving sys-
15 tem, identify the opportunities for improvements in
16 the system, and develop a strategic plan that out-
17 lines the steps and resources necessary to improve
18 the system and enhance coordination among State
19 and local agencies responsible for reducing impaired
20 driving.

21 “(C) In each subsequent fiscal year, the State
22 demonstrates progress in the implementation of top
23 priorities of the strategic plan.

24 “(D) The State provides the Secretary a copy
25 of the strategic plan developed under subparagraph

1 and in subsequent years, a report detailing the
2 progress of the strategic plan. The Secretary shall
3 make available for public viewing each strategic plan
4 and progress report.

5 “(6) IMPAIRED DRIVING COURTS.—

6 “(A) IN GENERAL.—A program to consoli-
7 date and coordinate impaired driving cases into
8 courts that specialize in impaired driving cases,
9 with the emphasis on tracking and processing
10 offenders of impaired driving laws, (hereinafter
11 referred to as DWI courts) that meets the re-
12 quirements of this paragraph.

13 “(B) CHARACTERISTICS.—A DWI Court is
14 a distinct function performed by a court system
15 for the purpose of changing the behavior of al-
16 cohol or drug dependent offenders arrested for
17 driving while impaired. A DWI Court can be a
18 dedicated court with dedicated personnel, in-
19 cluding judges, prosecutors and probation offi-
20 cers. A DWI court may be an existing court
21 system that serves the following essential DWI
22 Court functions:

23 “(i) A DWI Court performs an assess-
24 ment of high-risk offenders utilizing a
25 team headed by the judge and including all

1 criminal justice stakeholders (prosecutors,
2 defense attorneys, probations officers, law
3 enforcement personnel and others) along
4 with alcohol/drug treatment professionals.

5 “(ii) The DWI Court team rec-
6 ommends a specific plea agreement or con-
7 tract for each offender that can include in-
8 carceration, treatment, and close commu-
9 nity supervision. The agreement maximizes
10 the probability of rehabilitation and mini-
11 mizes the likelihood of recidivism.

12 “(iii) Compliance with the agreement
13 is verified with thorough monitoring and
14 frequent alcohol testing. Periodic status
15 hearings assess offender progress and
16 allow an opportunity for modifying the sen-
17 tence if necessary.

18 “(C) ASSESSMENT.—In the first year of
19 operation, the States shall assess the number of
20 court systems in its jurisdiction that are con-
21 sistently performing the DWI Court functions.

22 “(D) PLAN.—In the second year of oper-
23 ation, the State shall develop a strategic plan
24 for increasing the number of courts performing
25 the DWI function.

1 “(E) PROGRESS.—In subsequent years of
2 operation, the State shall demonstrate progress
3 in increasing the number of DWI Courts and in
4 increasing the number of high-risk offenders
5 participating in and successfully completing
6 DWI Court agreements.

7 “(d) USES OF GRANTS.—Grants made under this
8 section may be used for programs and activities described
9 in subsection (c) and to defray the following costs:

10 “(1) Labor costs, management costs, and equip-
11 ment procurement costs for the high-visibility, State-
12 wide law enforcement campaigns under subsection
13 (c)(1).

14 “(2) The costs of the training of law enforce-
15 ment personnel and the procurement of technology
16 and equipment, such as and including video equip-
17 ment and passive alcohol sensors, to counter directly
18 impaired operation of motor vehicles.

19 “(3) The costs of public awareness, advertising,
20 and educational campaigns that publicize use of so-
21 briety check points or increased law enforcement ef-
22 forts to counter impaired operation of motor vehi-
23 cles.

24 “(4) The costs of public awareness, advertising,
25 and educational campaigns that target impaired op-

1 eration of motor vehicles by persons under 34 years
2 of age.

3 “(5) The costs of the development and imple-
4 mentation of a State impaired operator information
5 system described in subsection (c)(3).

6 “(6) The costs of operating programs that im-
7 pound the vehicle of an individual arrested as an im-
8 paired operator of a motor vehicle for not less than
9 12 hours after the operator is arrested.

10 “(e) ADDITIONAL AUTHORITIES FOR CERTAIN AU-
11 THORIZED USES.—

12 “(1) COMBINATION OF GRANT PROCEEDS.—
13 Grant funds used for a campaign under subsection
14 (d)(3) may be combined, or expended in coordina-
15 tion, with proceeds of grants under section 402 of
16 this title.

17 “(2) COORDINATION OF USES.—Grant funds
18 used for a campaign under paragraph (3) or (4) of
19 subsection (d) may be expended—

20 “(A) in coordination with employers,
21 schools, entities in the hospitality industry, and
22 nonprofit traffic safety groups; and

23 “(B) in coordination with sporting events
24 and concerts and other entertainment events.

25 “(f) FUNDING.—

1 “(1) IN GENERAL.—Except as provided in para-
2 graph (2), grant funding under this section shall be
3 allocated among eligible States on the basis of the
4 apportionment formula that applies for apportion-
5 ments under section 402(c) of this title.

6 “(2) HIGH FATALITY-RATE STATES.—The
7 amount of the grant funds allocated under this sub-
8 section to each of the 10 States with the highest im-
9 paired driving-related fatality rate for the most re-
10 cent fiscal year for which the data is available pre-
11 ceding the fiscal year of the allocation shall be twice
12 the amount that, except for this subparagraph,
13 would otherwise be allocated to the State under
14 paragraph (1).

15 “(g) USE OF FUNDS BY HIGH FATALITY-RATE
16 STATES.—

17 “(1) REQUIRED USES.—At least $\frac{1}{2}$ of the
18 amounts allocated to States under subsection (f)(2)
19 shall be used for the program described in sub-
20 section (c)(1).

21 “(2) REQUIREMENT FOR PLAN.—A State re-
22 ceiving an allocation of grant funds under subsection
23 (f)(2) shall expend those funds only after consulting
24 with the Administrator of the National Highway

1 Traffic Safety Administration regarding such ex-
2 penditures.

3 “(h) DEFINITIONS.—In this section:

4 “(1) IMPAIRED OPERATOR.—The term ‘im-
5 paired operator’ means a person who, while oper-
6 ating a motor vehicle—

7 “(A) has a blood alcohol content of 0.08
8 percent or higher; or

9 “(B) is under the influence of a controlled
10 substance.

11 “(2) IMPAIRED DRIVING-RELATED FATALITY
12 RATE.—The term ‘impaired driving-related fatality
13 rate’ means the rate of the fatal accidents that in-
14 volve impaired drivers while operating motor vehi-
15 cles, as calculated in accordance with regulations
16 which the Administrator of the National Highway
17 Traffic Safety Administration shall prescribe.”.

18 (c) NHTSA TO ISSUE REGULATIONS.—Not later
19 than 12 months after the date of enactment of the High-
20 way Safety Grant Program Reauthorization Act of 2004,
21 the National Highway Traffic Safety Administration shall
22 issue guidelines to the States specifying the types and for-
23 mats of data that States should collect relating to drivers
24 who are arrested or convicted for violation of laws prohib-
25 iting the impaired operation of motor vehicles.

1 **SEC. 4111. STATE TRAFFIC SAFETY INFORMATION SYSTEM**
2 **IMPROVEMENTS.**

3 (a) GRANT PROGRAM AUTHORITY.—Chapter 4 is
4 amended by adding at the end the following:

5 **“§ 412. State traffic safety information system im-**
6 **provements**

7 “(a) GRANT AUTHORITY.—Subject to the require-
8 ments of this section, the Secretary shall make grants of
9 financial assistance to eligible States to support the devel-
10 opment and implementation of effective programs by such
11 States to—

12 “(1) improve the timeliness, accuracy, complete-
13 ness, uniformity, integration, and accessibility of the
14 safety data of the State that is needed to identify
15 priorities for national, State, and local highway and
16 traffic safety programs;

17 “(2) evaluate the effectiveness of efforts to
18 make such improvements;

19 “(3) link the State data systems, including traf-
20 fic records, with other data systems within the
21 State, such as systems that contain medical, road-
22 way, and economic data; and

23 “(4) improve the compatibility and interoper-
24 ability of the data systems of the State with national
25 data systems and data systems of other States and
26 enhance the ability of the Secretary to observe and

1 analyze national trends in crash occurrences, rates,
2 outcomes, and circumstances.

3 “(b) FIRST-YEAR GRANTS.—

4 “(1) ELIGIBILITY.—To be eligible for a first-
5 year grant under this section in a fiscal year, a
6 State shall demonstrate to the satisfaction of the
7 Secretary that the State has—

8 “(A) established a highway safety data and
9 traffic records coordinating committee with a
10 multidisciplinary membership that includes,
11 among others, managers, collectors, and users
12 of traffic records and public health and injury
13 control data systems; and

14 “(B) developed a multiyear highway safety
15 data and traffic records system strategic plan
16 that addresses existing deficiencies in the
17 State’s highway safety data and traffic records
18 system, is approved by the highway safety data
19 and traffic records coordinating committee,
20 and—

21 “(i) specifies how existing deficiencies
22 in the State’s highway safety data and
23 traffic records system were identified;

24 “(ii) prioritizes, on the basis of the
25 identified highway safety data and traffic

1 records system deficiencies, the highway
2 safety data and traffic records system
3 needs and goals of the State, including the
4 activities under subsection (a);

5 “(iii) identifies performance-based
6 measures by which progress toward those
7 goals will be determined; and

8 “(iv) specifies how the grant funds
9 and any other funds of the State are to be
10 used to address needs and goals identified
11 in the multiyear plan.

12 “(2) GRANT AMOUNT.—Subject to subsection
13 (d)(3), the amount of a first-year grant to a State
14 for a fiscal year shall the higher of—

15 “(A) the amount determined by
16 multiplying—

17 “(i) the amount appropriated to carry
18 out this section for such fiscal year, by

19 “(ii) the ratio that the funds appor-
20 tioned to the State under section 402 of
21 this title for fiscal year 2003 bears to the
22 funds apportioned to all States under such
23 section for fiscal year 2003; or

24 “(B) \$300,000.

25 “(c) SUCCESSIVE YEAR GRANTS.—

1 “(1) ELIGIBILITY.—A State shall be eligible for
2 a grant under this subsection in a fiscal year suc-
3 ceeding the first fiscal year in which the State re-
4 ceives a grant under subsection (b) if the State, to
5 the satisfaction of the Secretary—

6 “(A) submits an updated multiyear plan
7 that meets the requirements of subsection
8 (b)(1)(B);

9 “(B) certifies that its highway safety data
10 and traffic records coordinating committee con-
11 tinues to operate and supports the multiyear
12 plan;

13 “(C) specifies how the grant funds and any
14 other funds of the State are to be used to ad-
15 dress needs and goals identified in the
16 multiyear plan;

17 “(D) demonstrates measurable progress to-
18 ward achieving the goals and objectives identi-
19 fied in the multiyear plan; and

20 “(E) includes a current report on the
21 progress in implementing the multiyear plan.

22 “(2) GRANT AMOUNT.—Subject to subsection
23 (d)(3), the amount of a year grant made to a State
24 for a fiscal year under this subsection shall equal the
25 higher of—

1 “(A) the amount determined by
2 multiplying—

3 “(i) the amount appropriated to carry
4 out this section for such fiscal year, by

5 “(ii) the ratio that the funds appor-
6 tioned to the State under section 402 of
7 this title for fiscal year 2003 bears to the
8 funds apportioned to all States under such
9 section for fiscal year 2003; or

10 “(B) \$500,000.

11 “(d) ADDITIONAL REQUIREMENTS AND LIMITA-
12 TIONS.—

13 “(1) MODEL DATA ELEMENTS.—The Secretary,
14 in consultation with States and other appropriate
15 parties, shall determine the model data elements
16 that are useful for the observation and analysis of
17 State and national trends in occurrences, rates, out-
18 comes, and circumstances of motor vehicle traffic ac-
19 cidents. In order to be eligible for a grant under this
20 section, a State shall submit to the Secretary a cer-
21 tification that the State has adopted and uses such
22 model data elements, or a certification that the
23 State will use grant funds provided under this sec-
24 tion toward adopting and using the maximum num-

1 ber of such model data elements as soon as prac-
2 ticable.

3 “(2) DATA ON USE OF ELECTRONIC DEVICES.—

4 The model data elements required under paragraph
5 (1) shall include data elements, as determined ap-
6 propriate by the Secretary in consultation with the
7 States and with appropriate elements of the law en-
8 forcement community, on the impact on traffic safe-
9 ty of the use of electronic devices while driving.

10 “(3) MAINTENANCE OF EFFORT.—No grant

11 may be made to a State under this section in any
12 fiscal year unless the State enters into such agree-
13 ments with the Secretary as the Secretary may re-
14 quire to ensure that the State will maintain its ag-
15 gregate expenditures from all other sources for high-
16 way safety data programs at or above the average
17 level of such expenditures maintained by such State
18 in the 2 fiscal years preceding the date of enactment
19 of the Highway Safety Grant Program Reauthoriza-
20 tion Act of 2003.

21 “(4) FEDERAL SHARE.—The Federal share of

22 the cost of adopting and implementing in a fiscal
23 year a State program described in subsection (a)
24 may not exceed 80 percent.

1 “(5) LIMITATION ON USE OF GRANT PRO-
 2 CEEDS.—A State may use the proceeds of a grant
 3 received under this section only to implement the
 4 program described in subsection (a) for which the
 5 grant is made.

6 “(e) APPLICABILITY OF CHAPTER 1.—Section 402(d)
 7 of this title shall apply in the administration of this sec-
 8 tion.”.

9 (b) CLERICAL AMENDMENT.—The chapter analysis
 10 for chapter 4 is amended by adding at the end the fol-
 11 lowing:

 “412. State traffic safety information system improvements.”.

12 **SEC. 4112. NHTSA ACCOUNTABILITY.**

13 (a) IN GENERAL.—Chapter 4, as amended by section
 14 4111, is amended by adding at the end the following:

15 **“§ 413. Agency accountability**

16 “(a) TRIENNIAL STATE MANAGEMENT REVIEWS.—
 17 At least once every 3 years the National Highway Traffic
 18 Safety Administration shall conduct a review of each State
 19 highway safety program. The review shall include a man-
 20 agement evaluation of all grant programs partially or fully
 21 funded under this title. The Administrator shall provide
 22 review-based recommendations on how each State may im-
 23 prove the management and oversight of its grant activities
 24 and may provide a management and oversight plan.

1 “(b) RECOMMENDATIONS BEFORE SUBMISSION.—In
2 order to provide guidance to State highway safety agencies
3 on matters that should be addressed in the State highway
4 safety program goals and initiatives as part of its highway
5 safety plan before the plan is submitted for review, the
6 Administrator shall provide non-binding data-based rec-
7 ommendations to each State at least 90 days before the
8 date on which the plan is to be submitted for approval.

9 “(c) STATE PROGRAM REVIEW.—The Administrator
10 shall—

11 “(1) conduct a program improvement review of
12 any State that does not make substantial progress
13 over a 3-year period in meeting its priority program
14 goals; and

15 “(2) provide technical assistance and safety
16 program recommendations to the State for any goal
17 not achieved.

18 “(d) REGIONAL HARMONIZATION.—The Administra-
19 tion and the Inspector General of the Department of
20 Transportation shall undertake a State grant administra-
21 tive review of the practices and procedures of the manage-
22 ment reviews and program reviews conducted by Adminis-
23 tration regional offices and formulate a report of best
24 practices to be completed within 180 days after the date

1 of enactment of the Highway Safety Grant Program Reau-
2 thorization Act of 2004.

3 “(e) BEST PRACTICES GUIDELINES.—

4 “(1) UNIFORM GUIDELINES.—The Administra-
5 tion shall issue uniform management review and
6 program review guidelines based on the report under
7 subsection (d). Each regional office shall use the
8 guidelines in executing its State administrative re-
9 view duties.

10 “(2) PUBLICATION.—The Administration shall
11 make the following documents available via the
12 Internet upon their completion:

13 “(A) The Administration’s management re-
14 view and program review guidelines.

15 “(B) State highway safety plans.

16 “(C) State annual accomplishment reports.

17 “(D) The Administration’s State manage-
18 ment reviews.

19 “(E) The Administration’s State program
20 improvement plans.

21 “(3) REPORTS TO STATE HIGHWAY SAFETY
22 AGENCIES.—The Administrator may not make a
23 plan, report, or review available under paragraph (2)
24 that is directed to a State highway safety agency
25 until after it has been submitted to that agency.

1 “(f) GENERAL ACCOUNTING OFFICE REVIEW.—The
2 General Accounting Office shall analyze the effectiveness
3 of the National Highway Traffic Safety Administration’s
4 oversight of traffic safety grants by seeking to determine
5 the usefulness of the Administration’s advice to the States
6 regarding grants administration and State activities, the
7 extent to which the States incorporate the Administra-
8 tion’s recommendation into their highway safety plans and
9 programs, and improvements that result in a State’s high-
10 way safety program that may be attributable to the Ad-
11 ministration’s recommendations. Based on this analysis,
12 the General Accounting Office shall submit a report by
13 not later than the end of fiscal year 2008 to the House
14 of Representatives Committee on Transportation and In-
15 frastructure and the Senate Committee on Commerce,
16 Science, and Transportation.”.

17 (b) CONFORMING AMENDMENT.—The chapter anal-
18 ysis for chapter 4, as amended by section 4111, is amend-
19 ed by inserting after the item relating to section 412 the
20 following:

“413. Agency accountability.”.

1 **PART II—SPECIFIC VEHICLE SAFETY-RELATED**
2 **RULINGS**

3 **SEC. 4151. AMENDMENT OF TITLE 49, UNITED STATES**
4 **CODE.**

5 Except as otherwise specifically provided, whenever in
6 this subpart an amendment is expressed in terms of an
7 amendment to a section or other provision of law, the ref-
8 erence shall be considered to be made to a section or other
9 provision of title 49, United States Code.

10 **SEC. 4152. VEHICLE CRASH EJECTION PREVENTION.**

11 (a) IN GENERAL.—Subchapter II of chapter 301 is
12 amended by adding at the end the following:

13 **“§ 30128. Vehicle accident ejection protection**

14 “(a) IN GENERAL.—The Secretary of Transportation
15 shall prescribe a safety standard under this chapter or up-
16 grade existing Federal motor vehicle safety standards to
17 reduce complete and partial occupant ejection from motor
18 vehicles with a gross vehicle weight rating of not more
19 than 10,000 pounds that are involved in accidents that
20 present a risk of occupant ejection. In formulating the
21 safety standard, the Secretary shall consider the ejection-
22 mitigation capabilities of safety technologies, such as ad-
23 vanced side glazing, side curtains, and side impact air
24 bags.

25 “(b) DOOR LOCK AND RETENTION STANDARD.—The
26 Secretary shall upgrade Federal Motor Vehicle Safety

1 Standard No. 206 to require manufacturers of new motor
2 vehicles with a gross vehicle weight rating of not more
3 than 10,000 pounds that are distributed in commerce for
4 sale in the United States to make such modifications to
5 door locks, door latches, and retention components of
6 doors in such vehicles as the Secretary determines to be
7 necessary to reduce occupant ejection from such vehicles
8 in motor vehicle accidents.”.

9 (b) RULEMAKING DEADLINES.—

10 (1) RULEMAKING.—The Secretary of Transpor-
11 tation shall issue—

12 (A) a notice of a proposed rulemaking
13 under section 30128 of title 49, United States
14 Code, not later than June 30, 2006; and

15 (B) a final rule under that section not
16 later than 18 months after the publication of
17 the notice of proposed rulemaking.

18 (2) EFFECTIVE DATE OF REQUIREMENTS.—In
19 the final rule, the Secretary shall set forth effective
20 dates for the requirements contained in the rule.

21 (c) AUTHORIZATION OF APPROPRIATIONS.—There
22 are authorized to be appropriated to the Secretary of
23 Transportation \$500,000 for each of fiscal years 2004 and
24 2005 to promulgate rules under section 30128 of title 49,
25 United States Code.

1 (d) CONFORMING AMENDMENT.—The chapter anal-
 2 ysis for chapter 301 is amended by inserting after the item
 3 relating to section 30127 the following:

“30128. Vehicle accident ejection protection.”.

4 **SEC. 4153. VEHICLE BACKOVER AVOIDANCE TECHNOLOGY**
 5 **STUDY.**

6 (a) IN GENERAL.—The Administrator of the Na-
 7 tional Highway Traffic Safety Administration shall con-
 8 duct a study of effective methods for reducing the inci-
 9 dence of injury and death outside of parked passenger
 10 motor vehicles with a gross vehicle weight rating of not
 11 more than 10,000 pounds attributable to movement of
 12 such vehicles. The Administrator shall complete the study
 13 within 1 year after the date of enactment of this Act and
 14 report its findings to the Senate Committee on Commerce,
 15 Science, and Transportation and the House of Represent-
 16 atives Committee on Energy and Commerce not later than
 17 5 months after the date of enactment of this Act.

18 (b) SPECIFIC ISSUES TO BE COVERED.—The study
 19 required by subsection (a) shall—

20 (1) include an analysis of backover prevention
 21 technology;

22 (2) identify, evaluate, and compare the available
 23 technologies for detecting people or objects behind a
 24 motor vehicle with a gross vehicle weight rating of

1 not more than 10,000 pounds for their accuracy, ef-
2 fectiveness, cost, and feasibility for installation; and

3 (3) provide an estimate of cost savings that
4 would result from widespread use of backover pre-
5 vention devices and technologies in motor vehicles
6 with a gross vehicle weight rating of not more than
7 10,000 pounds, including savings attributable to the
8 prevention of—

9 (A) injuries and fatalities; and

10 (B) damage to bumpers and other motor
11 vehicle parts and damage to other objects.

12 **SEC. 4154. VEHICLE BACKOVER DATA COLLECTION.**

13 In conjunction with the study required in section
14 4153, the National Highway Traffic Safety Administra-
15 tion may establish a method to collect and maintain data
16 on the number and types of injuries and deaths involving
17 motor vehicles with a gross vehicle weight rating of not
18 more than 10,000 pounds in non-traffic, non-accident inci-
19 dents to assist in the analysis required in section 4153
20 of this Act regarding the inclusion of backover prevention
21 technologies in motor vehicles with a gross vehicle weight
22 rating of not more than 10,000 pounds.

1 **SEC. 4155. AGGRESSIVITY AND INCOMPATIBILITY REDUC-**
2 **TION STANDARD.**

3 (a) IN GENERAL.—Subchapter II of chapter 301, as
4 amended by section 4152, is amended by adding at the
5 end the following:

6 **“§ 30129. Vehicle incompatibility and aggressivity re-**
7 **duction standard**

8 “(a) IN GENERAL.—The Secretary of Transportation
9 shall issue motor vehicle safety standards to reduce vehicle
10 incompatibility and aggressivity for motor vehicles with a
11 gross vehicle weight rating of not more than 10,000
12 pounds. In formulating the standards, the Secretary shall
13 consider factors such as bumper height, weight, and any
14 other design characteristics necessary to ensure better
15 management of crash forces in frontal and side impact
16 crashes among different types, sizes, and weights of motor
17 vehicles with a gross vehicle weight rating of not more
18 than 10,000 pounds in order to reduce occupant deaths
19 and injuries.

20 “(b) STANDARDS.—The Secretary shall develop a
21 standard rating metric to evaluate compatibility and
22 aggressivity among motor vehicles with a gross vehicle
23 weight rating of not more than 10,000 pounds.

24 “(c) PUBLIC INFORMATION.—The Secretary shall
25 create a public information program that includes vehicle
26 ratings based on risks posed by vehicle incompatibility and

1 aggressivity to occupants, risks posed by vehicle incom-
 2 patibility and aggressivity to other motorists, and combined
 3 risks posed by vehicle incompatibility and aggressivity by
 4 vehicle make and model.”.

5 (b) RULEMAKING DEADLINES.—

6 (1) RULEMAKING.—The Secretary of Transpor-
 7 tation shall issue—

8 (A) a notice of a proposed rulemaking
 9 under section 30129 of title 49, United States
 10 Code, not later than January 31, 2007; and

11 (B) a final rule under that section not
 12 later than 18 months after the publication of
 13 the notice of proposed rulemaking.

14 (2) EFFECTIVE DATE OF REQUIREMENTS.—In
 15 the final rule, the Secretary shall set forth effective
 16 dates for the requirements contained in the rule.

17 (c) CONFORMING AMENDMENT.—The chapter anal-
 18 ysis for chapter 301 is amended by inserting after the item
 19 relating to section 30128 the following:

“30129. Vehicle incompatibility and aggressivity reduction standard.”.

20 **SEC. 4156. IMPROVED CRASHWORTHINESS.**

21 (a) IMPROVED CRASHWORTHINESS.—Subchapter II
 22 of chapter 301, as amended by section 4155, is amended
 23 by adding at the end the following:

24 **“§ 30130. Improved crashworthiness of motor vehicles**

25 **“(a) ROLLOVERS.—**

1 “(1) IN GENERAL.—The Secretary of Transpor-
2 tation shall prescribe a motor vehicle safety standard
3 under this chapter for rollover crashworthiness
4 standards for motor vehicles with a gross weight rat-
5 ing of not more than 10,000 pounds. In formulating
6 the safety standard, the Secretary shall consider the
7 prescription of a roof strength standard based on
8 dynamic tests that realistically duplicate the actual
9 forces transmitted to a passenger motor vehicle dur-
10 ing an on-roof rollover crash, and shall consider
11 safety technologies and design improvements such
12 as—

13 “(A) improved seat structure and safety
14 belt design, including seat belt pretensioners;

15 “(B) side impact head protection airbags;
16 and

17 “(C) roof injury protection measures.

18 “(2) ROLLOVER RESISTANCE STANDARD.—The
19 Secretary shall prescribe a motor vehicle safety
20 standard under this chapter to improve on the basic
21 design characteristics of motor vehicles with a gross
22 vehicle weight rating of not more than 10,000
23 pounds to increase their resistance to rollover. The
24 Secretary shall also consider additional technologies
25 to improve the handling of motor vehicles with a

1 gross vehicle weight rating of not more than 10,000
2 pounds and thereby reduce the likelihood of vehicle
3 instability and rollovers.

4 “(3) STUDY.—The Secretary shall conduct a
5 study on electronic stability control systems and
6 other technologies designed to improve the handling
7 of motor vehicles with a gross vehicle weight rating
8 of not more than 10,000 pounds and shall report the
9 results of that study to the Senate Committee on
10 Commerce, Science, and Transportation and the
11 House of Representatives Committee on Transpor-
12 tation and Infrastructure by December 31, 2005.

13 “(b) FRONTAL IMPACT STANDARDS AND CRASH
14 TESTS.—

15 “(1) IN GENERAL.—The Secretary shall pre-
16 scribe a motor vehicle safety standard under this
17 chapter or upgrade existing Federal motor vehicle
18 safety standards to improve the protection of occu-
19 pants in frontal impact crashes involving motor vehi-
20 cles with a gross vehicle weight rating of not more
21 than 10,000 pounds.

22 “(2) TEST METHODOLOGY.—In determining the
23 standard under paragraph (1), the Secretary shall—

1 “(A) evaluate additional test barriers and
2 measurements of occupant head impact and
3 neck injuries; and

4 “(B) review frontal impact criteria, includ-
5 ing consideration of criteria established by the
6 Insurance Institute for Highway Safety.

7 “(c) SIDE IMPACT STANDARDS AND CRASH TESTS.—

8 “(1) IN GENERAL.—The Secretary shall pre-
9 scribe a motor vehicle safety standard under this
10 chapter or upgrade existing Federal motor vehicle
11 safety standards to improve the protection afforded
12 to occupants in side impact crashes involving motor
13 vehicles with a gross vehicle weight rating of not
14 more than 10,000 pounds.

15 “(2) TEST METHODOLOGY.—In prescribing the
16 standard under paragraph (1), the Secretary shall—

17 “(A) evaluate additional test barriers and
18 measurements of occupant head impact and
19 neck injuries;

20 “(C) consider the need for additional and
21 new crash test dummies that represent the full
22 range of occupant sizes and weights; and

23 “(D) review side impact criteria, including
24 consideration of criteria established by the In-
25 surance Institute for Highway Safety.”.

1 (b) RULEMAKING DEADLINES.—

2 (1) RULEMAKING.—The Secretary of Transpor-
3 tation shall—

4 (A) issue a notice of a proposed rule-
5 making under section 30130 of title 49, United
6 States Code, not later than June 30, 2006; and

7 (B) issue a final rule not later than 18
8 months after publication of the notice of pro-
9 posed rulemaking.

10 (2) EFFECTIVE DATE OF REQUIREMENTS.—In
11 the final rule, the Secretary shall set forth effective
12 dates for the requirements contained in this rule.

13 (c) CONFORMING AMENDMENT.—The chapter anal-
14 ysis for chapter 301 is amended by inserting after the item
15 relating to section 30129 the following:

“30130. Improved crashworthiness of passenger motor vehicles.”.

16 **SEC. 4157. 15-PASSENGER VANS.**

17 (a) IN GENERAL.—The Secretary of Transportation
18 shall initiate a rulemaking and issue a final regulation not
19 later than September 31, 2005, to include all 15-passenger
20 vans with a gross vehicle weight rating of not more than
21 10,000 pounds in the National Highway Traffic Safety
22 Administration’s dynamic rollover testing program and re-
23 quire such vans to comply with all existing and prospective
24 Federal Motor Vehicle Safety Standards for occupant pro-

1 tection and vehicle crash avoidance that are relevant to
2 such vehicles.

3 (b) NEW CAR ASSESSMENT PROGRAM.—The Sec-
4 retary shall initiate a rulemaking and issue a final regula-
5 tion not later than September 31, 2005, to include all 15-
6 passenger vans with a gross vehicle weight of not more
7 than 10,000 pounds in the Administration’s New Car As-
8 sessment Program rollover resistance program.

9 (c) VEHICLE CONTROL TECHNOLOGY FOR 15-PAS-
10 Senger Vans.—The National Highway Traffic Safety
11 Administration shall evaluate and test the potential of
12 technological systems, particularly electronic stability con-
13 trol systems and rollover warning systems, to assist driv-
14 ers in maintaining control of 15-passenger vans with a
15 gross vehicle weight rating of not more than 10,000
16 pounds.

17 (d) CERTAIN SPECIALIZED VEHICLES EXCLUDED.—
18 In this section, the term “15-passenger van” does not in-
19 clude an ambulance, tow truck, or other vehicle designed
20 primarily for the transportation of property or special pur-
21 pose equipment.

22 **SEC. 4158. ADDITIONAL SAFETY PERFORMANCE CRITERIA**
23 **FOR TIRES.**

24 (a) STRENGTH AND ROAD HAZARD PROTECTION.—
25 The Secretary of Transportation shall issue a final rule

1 to upgrade Federal Motor Vehicle Safety Standard No.
2 139 to include strength and road hazard protection safety
3 performance criteria for light vehicle tires, which are cri-
4 teria that were not addressed in the June 2003 final rule
5 mandated by the Transportation Recall Enhancement, Ac-
6 countability, and Documentation Act of 2000.

7 (b) RESISTANCE TO BEAD UNSEATING AND
8 AGING.—The Secretary of Transportation shall issue a
9 final rule to upgrade Federal Motor Vehicle Safety Stand-
10 ard No. 139 to include resistance to bead unseating and
11 aging safety performance criteria for passenger motor ve-
12 hicle tires, which are criteria that were not addressed in
13 the June, 2003, final rule mandated by the Transpor-
14 tation Recall Enhancement, Accountability, and Docu-
15 mentation Act of 2000.

16 (c) RULEMAKING DEADLINES.—The Secretary of
17 Transportation shall—

18 (1) issue a notice of proposed rulemaking under
19 subsection (a) not later than June 30, 2005, and
20 under subsection(b) not later than December 31,
21 2005; and

22 (2) issue a final rule relating to subsection (a)
23 not later than 18 months after June 30, 2005, and
24 a final rule under subsection (b) not later than 18
25 months after December 31, 2005.

1 (d) **TECHNOLOGY USE AND REPORT.**—The Secretary
2 shall reconsider the use of shearography analysis, on a
3 sampling basis, for regulatory compliance and the Admin-
4 istrator of the National Highway Traffic Safety Adminis-
5 tration shall report to the Senate Committee on Com-
6 merce, Science, and Transportation and the House of Rep-
7 resentatives Committee on Transportation and Infrastruc-
8 ture on the most cost effective methods of using such tech-
9 nology within 2 years after the date of enactment of the
10 Highway Safety Grant Program Reauthorization Act of
11 2004.

12 **SEC. 4159. SAFETY BELT USE REMINDERS.**

13 (a) **NOTICE OF PROPOSED RULES TO ENCOURAGE**
14 **MORE SEAT BELT USE.**—Not later than 12 months after
15 the date of enactment of this Act, the Secretary of Trans-
16 portation shall issue a Notice of Proposed Rulemaking to
17 amend the Federal Motor Vehicle Safety Standard No.
18 208 for motor vehicles with a gross vehicle weight rating
19 of not more than 10,000 pounds to encourage increased
20 seat belt usage by drivers and passengers. The proposed
21 rulemaking shall take into account the potential safety
22 benefits and public acceptability of alternative means to
23 encourage increased seat belt usage, including intermit-
24 tent or continuous audible or visual reminders when a
25 driver or passenger is not wearing a seat belt, features

1 to prevent operation of convenience or entertainment fea-
2 tures of the vehicle when a driver or passenger is not wear-
3 ing a seat belt, and shall consider technology, including
4 but not limited to technology identified by the National
5 Academy of Sciences in its study of the potential benefits
6 of seat belt usage reminder technologies.

7 (b) FINAL RULE.—Not later than 24 months after
8 the date of enactment of this Act, the Secretary shall issue
9 the final rule required by subsection (a).

10 (c) BUZZER LAW.—

11 (1) IN GENERAL.—Section 30124 is amended—

12 (A) by striking “not” the first place it ap-
13 pears; and

14 (B) by striking “except” and inserting “in-
15 cluding”.

16 (2) CONFORMING AMENDMENT.—Section 30122
17 is amended by striking subsection (d).

18 **SEC. 4160. MISSED DEADLINES REPORTS.**

19 (a) IN GENERAL.—If the Secretary of Transportation
20 fails to meet any rulemaking deadline established in this
21 subtitle, the Secretary shall transmit a report to the Sen-
22 ate Committee on Commerce, Science, and Transportation
23 and the House of Representatives Committee on Trans-
24 portation and Infrastructure within 90 days after missing
25 the deadline—

1 (1) explaining why the Secretary failed to meet
2 the deadline; and

3 (2) setting forth a date by which the Secretary
4 anticipates that the rulemaking will be made.

5 (b) CONSIDERATION OF EFFECTS.—The Secretary of
6 Transportation shall consider and report the potential con-
7 sequences, in terms of the number of deaths and the num-
8 ber and severity of injuries, that may result from not
9 meeting any such deadline.

10 **SEC. 4161. GRANTS FOR IMPROVING CHILD PASSENGER**
11 **SAFETY PROGRAMS.**

12 (a) IN GENERAL.—Chapter 4 of title 23, United
13 States Code, as amended by section 4112 of this Act, is
14 amended by adding at the end the following:

15 **“§ 414. Booster seat incentive grants**

16 “(a) IN GENERAL.—The Secretary of Transportation
17 shall make a grant under this section to any eligible State.

18 “(b) ELIGIBILITY REQUIREMENTS.—

19 “(1) IN GENERAL.—The Secretary shall make a
20 grant to each State that, as determined by the Sec-
21 retary, enacts or has enacted, and is enforcing a law
22 requiring that children riding in passenger motor ve-
23 hicles (as defined in section 405(d)(4)) who are too
24 large to be secured in a child safety seat be secured
25 in a child restraint (as defined in section 7(1) of

1 Anton’s Law (49 U.S.C. 30127 note)) that meets re-
2 quirements prescribed by the Secretary under sec-
3 tion 3 of Anton’s Law.

4 “(2) YEAR IN WHICH FIRST ELIGIBLE.—

5 “(A) EARLY QUALIFICATION.—A State
6 that has enacted a law described in paragraph
7 (1) that is in effect before October 1, 2005, is
8 first eligible to receive a grant under subsection
9 (a) in fiscal year 2006.

10 “(B) SUBSEQUENT QUALIFICATION.—A

11 State that enacts a law described in paragraph
12 (1) that takes effect after September 30, 2005,
13 is first eligible to receive a grant under sub-
14 section (a) in the first fiscal year beginning
15 after the date on which the law is enacted.

16 “(3) CONTINUING ELIGIBILITY.—A State that

17 is eligible under paragraph (1) to receive a grant
18 may receive a grant during each fiscal year listed in
19 subsection (f) in which it is eligible.

20 “(4) MAXIMUM NUMBER OF GRANTS.—A State

21 may not receive more than 4 grants under this sec-
22 tion.

23 “(c) GRANT AMOUNT.—Amounts available for grants

24 under this section in any fiscal year shall be apportioned
25 among the eligible States on the basis of population.

1 “(d) USE OF GRANT AMOUNTS.—

2 “(1) IN GENERAL.—Of the amounts received by
3 a State under this section for any fiscal year—

4 “(A) 50 percent shall be used for the en-
5 forcement of, and education to promote public
6 awareness of, State child passenger protection
7 laws; and

8 “(B) 50 percent shall be used to fund pro-
9 grams that purchase and distribute child boost-
10 er seats, child safety seats, and other appro-
11 priate passenger motor vehicle child restraints
12 to indigent families without charge.

13 “(2) REPORT.—Within 60 days after the State
14 fiscal year in which a State receives a grant under
15 this section, the State shall transmit to the Sec-
16 retary a report documenting the manner in which
17 grant amounts were obligated or expended and iden-
18 tifying the specific programs supported by grant
19 funds. The report shall be in a form prescribed by
20 the Secretary and may be combined with other State
21 grant reporting requirements under this chapter.

22 “(e) DEFINITION OF CHILD SAFETY SEAT.—The
23 term ‘child safety seat’ means any device (except safety
24 belts (as such term is defined in section 405(d)(5)), de-
25 signed for use in a motor vehicle (as such term is defined

1 in section 405(d)(1)) to restrain, seat, or position a child
 2 who weighs 50 pounds or less.

3 “(f) AUTHORIZATION OF APPROPRIATIONS.—There
 4 are authorized to be appropriated to the Secretary of
 5 Transportation, out of the Highway Trust Fund—

6 “(1) \$18,000,000 for fiscal year 2006;

7 “(2) \$20,000,000 for fiscal year 2007;

8 “(3) \$25,000,000 for fiscal year 2008; and

9 “(4) \$30,000,000 for fiscal year 2009.”.

10 (b) CLERICAL AMENDMENT.—The chapter analysis
 11 for chapter 4 of title 23, United States Code, is amended
 12 by inserting after the item relating to section 411 the fol-
 13 lowing:

“414. Booster seat incentive grants.”.

14 **SEC. 4162. AUTHORIZATION OF APPROPRIATIONS.**

15 There are authorized to be appropriated to the Sec-
 16 retary of Transportation to carry out this subtitle and
 17 chapter 301 of title 49, United States Code—

18 (1) \$130,500,000 for fiscal year 2004;

19 (2) \$133,500,000 for fiscal year 2005;

20 (3) \$133,600,000 for fiscal year 2006;

21 (4) \$134,500,000 for fiscal year 2007;

22 (5) \$138,000,000 for fiscal year 2008; and

23 (6) \$141,000,000 for fiscal year 2009.

1 **PART III—MISCELLANEOUS PROVISIONS**

2 **SEC. 4171. DRIVER LICENSING AND EDUCATION.**

3 (a) NATIONAL OFFICE OF DRIVER LICENSING AND
4 EDUCATION.—Section 105 of title 49, United States
5 Code, is amended by adding at the end the following new
6 subsection:

7 “(f)(1) There is a National Office of Driver Licensing
8 and Education in the National Highway Traffic Safety
9 Administration.

10 “(2) The head of the National Office of Driver Li-
11 censing and Education is the Director.

12 “(3) The functions of the National Office of Driver
13 Licensing and Education are as follows:

14 “(A) To provide States with services for coordi-
15 nating the motor vehicle driver training and licens-
16 ing programs of the States.

17 “(B) To develop and make available to the
18 States a recommended comprehensive model for
19 motor vehicle driver education and graduated licens-
20 ing that incorporates the best practices in driver
21 education and graduated licensing, including best
22 practices with respect to—

23 “(i) vehicle handling and crash avoidance;

24 “(ii) driver behavior and risk reduction;

25 “(iii) roadway features and associated safe-
26 ty implications;

1 “(iv) roadway interactions involving all
2 types of vehicles and road users, such as car-
3 truck and pedestrian-car interactions;

4 “(v) parent education; and

5 “(vi) other issues identified by the Direc-
6 tor.

7 “(C) To carry out such research (pursuant to
8 cooperative agreements or otherwise) and undertake
9 such other activities as the Director determines ap-
10 propriate to develop and, on an ongoing basis, im-
11 prove the recommended comprehensive model.

12 “(D) To provide States with technical assist-
13 ance for the implementation and deployment of the
14 motor vehicle driver education and licensing com-
15 prehensive model recommended under subparagraph
16 (B).

17 “(E) To develop and recommend to the States
18 methods for harmonizing the presentation of motor
19 vehicle driver education and licensing with the re-
20 quirements of multistage graduated licensing sys-
21 tems, including systems described in section
22 410(c)(4) of title 23, and to demonstrate and evalu-
23 ate the effectiveness of those methods in selected
24 States.

1 “(F) To assist States with the development and
2 implementation of programs to certify driver edu-
3 cation instructors, including the development and
4 implementation of proposed uniform certification
5 standards.

6 “(G) To provide States with financial assistance
7 under section 412 of title 23 for—

8 “(i) the implementation of the motor vehi-
9 cle driver education and licensing comprehen-
10 sive model recommended under subparagraph
11 (B);

12 “(ii) the establishment or improved admin-
13 istration of multistage graduated licensing sys-
14 tems; and

15 “(iii) the support of other improvements in
16 motor vehicle driver education and licensing
17 programs.

18 “(H) To evaluate the effectiveness of the com-
19 prehensive model recommended under subparagraph
20 (B).

21 “(I) To examine different options for delivering
22 driver education in the States.

23 “(J) To perform such other functions relating
24 to motor vehicle driver education or licensing as the
25 Secretary may require.

1 “(4) Not later than 42 months after the date of the
2 enactment of the Safe, Accountable, Flexible, and Effi-
3 cient Transportation Equity Act of 2004, the Director
4 shall submit to Congress a report on the progress made
5 by the National Office of Driver Licensing and Education
6 with respect to the functions under paragraph (3).”.

7 (b) GRANT PROGRAM FOR IMPROVEMENT OF DRIVER
8 EDUCATION AND LICENSING.—

9 (1) AUTHORITY.—

10 (A) IN GENERAL.—Chapter 4 of title 23,
11 United States Code, is amended by adding at
12 the end the following new section:

13 **“SEC. 412. DRIVER EDUCATION AND LICENSING.**

14 “(a) AUTHORITY.—

15 “(1) IN GENERAL.—The Secretary shall carry
16 out a program to provide States, by grant, with fi-
17 nancial assistance to support the improvement of
18 motor vehicle driver education programs and the es-
19 tablishment and improved administration of grad-
20 uated licensing systems, including systems described
21 in section 410(c)(4) of this title.

22 “(2) ADMINISTRATIVE OFFICE.—The Secretary
23 shall administer the program under this section
24 through the Director of the National Office of Driv-
25 er Licensing and Education.

1 “(b) ELIGIBILITY REQUIREMENTS.—

2 “(1) REGULATIONS.—The Secretary shall pre-
3 scribe in regulations the eligibility requirements, ap-
4 plication and approval procedures and standards,
5 and authorized uses of grant proceeds for the grant
6 program under this section. The regulations shall, at
7 a minimum, authorize use of grant proceeds for the
8 following activities:

9 “(A) Quality assurance testing, including
10 follow-up testing to monitor the effectiveness
11 of—

12 “(i) driver licensing and education
13 programs;

14 “(ii) instructor certification testing;
15 and

16 “(iii) other statistical research de-
17 signed to evaluate the performance of driv-
18 er education and licensing programs.

19 “(B) Improvement of motor vehicle driver
20 education curricula.

21 “(C) Training of instructors for motor ve-
22 hicle driver education programs.

23 “(D) Testing and evaluation of motor vehi-
24 cle driver performance.

1 “(E) Public education and outreach re-
2 garding motor vehicle driver education and li-
3 censing.

4 “(F) Improvements with respect to State
5 graduated licensing programs, as well as related
6 enforcement activities.

7 “(2) CONSULTATION REQUIREMENT.—In pre-
8 scribing the regulations, the Secretary shall consult
9 with the following:

10 “(A) The Administrator of the National
11 Highway Traffic Safety Administration.

12 “(B) The heads of such other departments
13 and agencies of the United States as the Sec-
14 retary considers appropriate on the basis of rel-
15 evant interests or expertise.

16 “(C) Appropriate officials of the govern-
17 ments of States and political subdivisions of
18 States.

19 “(D) Other relevant experts.

20 “(c) MAXIMUM AMOUNT OF GRANT.—The maximum
21 amount of a grant of financial assistance for a program,
22 project, or activity under this section may not exceed 75
23 percent of the total cost of such program, project, or activ-
24 ity.”.

1 (B) CLERICAL AMENDMENT.—The table of
 2 sections at the beginning of such chapter is
 3 amended by adding at the end the following
 4 new item:

“412. Driver education and licensing.”.

5 (2) TIME FOR PROMULGATION OF REGULA-
 6 TIONS.—The Secretary of Transportation shall pro-
 7 mulgate the regulations under section 412(b) of title
 8 23, United States Code (as added by paragraph
 9 (1)), not later than October 1, 2005.

10 (c) GRANT PROGRAM FOR PUBLIC AWARENESS OF
 11 ORGAN DONATION THROUGH DRIVER LICENSING PRO-
 12 GRAMS.—

13 (1) AUTHORITY.—

14 (A) IN GENERAL.—Chapter 4 of title 23,
 15 United States Code (as amended by subsection
 16 (b)), is further amended by adding at the end
 17 the following new section:

18 **“SEC. 413. ORGAN DONATION THROUGH DRIVER LICENS-**
 19 **ING.**

20 “(a) AUTHORITY.—

21 “(1) IN GENERAL.—The Secretary shall carry
 22 out a program to provide eligible recipients, by
 23 grant, with financial assistance to carry out cam-
 24 paigns to increase public awareness of, and training
 25 on, authority and procedures under State law to pro-

1 vide for the donation of organs through a declara-
2 tion recorded on a motor vehicle driver license.

3 “(2) ADMINISTRATIVE OFFICE.—The Secretary
4 shall administer the program under this section
5 through the Director of the National Office of Driv-
6 er Licensing and Education.

7 “(b) ELIGIBILITY REQUIREMENTS.—

8 “(1) REGULATIONS.—The Secretary shall pre-
9 scribe in regulations the eligibility requirements, ap-
10 plication and approval procedures and standards,
11 and authorized uses of grant proceeds for the grant
12 program under this section.

13 “(2) CONSULTATION REQUIREMENT.—In pre-
14 scribing the regulations, the Secretary shall consult
15 with the following:

16 “(A) The Administrator of the National
17 Highway Traffic Safety Administration.

18 “(B) The heads of such other departments
19 and agencies of the United States as the Sec-
20 retary considers appropriate on the basis of rel-
21 evant interests or expertise.

22 “(C) Appropriate officials of the govern-
23 ments of States and political subdivisions of
24 States.

1 “(D) Representatives of private sector or-
2 ganizations recognized for relevant expertise.”.

3 (B) CLERICAL AMENDMENT.—The table of
4 sections at the beginning of such chapter is
5 amended by adding at the end the following
6 new item:

“413. Organ donation through driver licensing.”.

7 (2) TIME FOR PROMULGATION OF REGULA-
8 TIONS.—The Secretary of Transportation shall pro-
9 mulgate the regulations under section 413(b) of title
10 23, United States Code (as added by paragraph
11 (1)), not later than October 1, 2005.

12 (d) STUDY OF NATIONAL DRIVER EDUCATION
13 STANDARDS.—

14 (1) REQUIREMENT FOR STUDY.—The Secretary
15 of Transportation shall carry out a study to deter-
16 mine whether the establishment and imposition of
17 nationwide minimum standards of motor vehicle
18 driver education would improve national highway
19 traffic safety or the performance and legal compli-
20 ance of novice drivers.

21 (2) TIME FOR COMPLETION OF STUDY.—The
22 Secretary shall complete the study not later than 2
23 years after the date of the enactment of this Act.

1 (3) REPORT.—The Secretary shall publish a re-
2 port on the results of the study under this section
3 not later than 2 years after the study is completed.

4 (e) AUTHORIZATION OF APPROPRIATIONS.—Of the
5 amounts available to carry out section 403 of title 23,
6 United States Code, for each of the fiscal years 2005
7 through 2010, \$5,000,000 may be made available for each
8 such fiscal year to carry out sections 412 and 413 of title
9 23, United States Code (as added by subsections (b) and
10 (c), respectively).

11 **SEC. 4172. AMENDMENT OF AUTOMOBILE INFORMATION**
12 **DISCLOSURE ACT.**

13 (a) SAFETY LABELING REQUIREMENT.—Section 3 of
14 the Automobile Information Disclosure Act (15 U.S.C.
15 1232) is amended by adding at the end the following:

16 “(g) if one or more safety ratings for such automobile
17 have been assigned and formally published or released by
18 the National Highway Traffic Safety Administration
19 under the New Car Assessment Program, information
20 about safety ratings that—

21 “(1) includes a graphic depiction of the number
22 of stars that corresponds to each such assigned safe-
23 ty rating displayed in a clearly differentiated fashion
24 from stars indicating the unattained safety rating;

1 “(2) refers to frontal impact crash tests, side
2 impact crash tests, and rollover resistance tests
3 (whether or not such automobile has been assigned
4 a safety rating for such tests), including statements
5 that—

6 “(A) frontal impact crash test ratings are
7 based on risk of head and chest injury;

8 “(B) side impact crash test ratings are
9 based on risk of chest injury; and

10 “(C) rollover resistance ratings are based
11 on risk of rollover in the event of a single auto-
12 mobile crash;

13 “(3) is presented in a legible, visible, and
14 prominent fashion and covers at least—

15 “(A) 8 percent of the total area of the
16 label; or

17 “(B) an area with a minimum length of 4
18 ½ inches and a minimum height of 3 ½ inches;
19 and

20 “(4) contains a heading titled ‘Government
21 Safety Information’ and a disclaimer including the
22 following text: ‘Star ratings for frontal impact crash
23 tests can only be compared to other vehicles in the
24 same weight class and those plus or minus 250
25 pounds. Side impact and rollover ratings can be

1 compared across all vehicle weights and classes. For
2 more information on safety and testing, please visit
3 <http://www.nhtsa.dot.gov>; and

4 “(h) if an automobile has not been tested by the Na-
5 tional Highway Traffic Safety Administration under the
6 New Car Assessment Program, or safety ratings for such
7 automobile have not been assigned in one or more rating
8 categories, a statement to that effect.”.

9 (b) REGULATIONS.—Not later than January 1, 2005,
10 the Secretary of Transportation shall prescribe regulations
11 to implement the labeling requirements under subsections
12 (g) and (h) of section 3 of such Act (as added by sub-
13 section (a)).

14 (c) CONFORMING AND TECHNICAL AMENDMENTS.—
15 Section 3 of such Act is further amended—

16 (1) in subsection (e), by striking “and” after
17 the semicolon; and

18 (2) in subsection (f)—

19 (A) by adding “and” at the end of para-
20 graph (3); and

21 (B) by striking the period at the end and
22 inserting a semicolon.

23 (d) APPLICABILITY.—The labeling requirements
24 under subsections (g) and (h) of section 3 of such Act
25 (as added by subsection (a)), and the regulations pre-

1 scribed under subsection (b), shall apply to new auto-
2 mobiles delivered on or after—

3 (1) September 1, 2005, if the regulations under
4 subsection (b) are prescribed not later than August
5 31, 2004; or

6 (2) September 1, 2006, if the regulations under
7 subsection (b) are prescribed after August 31, 2004.

8 **SEC. 4173. CHILD SAFETY.**

9 (a) INCORPORATION OF CHILD DUMMIES IN SAFETY
10 TESTS.—

11 (1) RULEMAKING REQUIRED.—Not later than 2
12 years after the date of the enactment of this Act, the
13 Administrator of the National Highway Traffic Safe-
14 ty Administration shall conduct a rulemaking to in-
15 crease utilization of child dummies, including Hy-
16 brid-III child dummies, in motor vehicle safety tests,
17 including crash tests, conducted by the Administra-
18 tion.

19 (2) CRITERIA.—In conducting the rulemaking
20 under subsection (a), the Administrator shall select
21 motor vehicle safety tests in which the inclusion of
22 child dummies will lead to—

23 (A) increased understanding of crash dy-
24 namics with respect to children; and

25 (B) measurably improved child safety.

1 (3) REPORT.—Not later than one year after the
2 date of the enactment of this Act, the Secretary of
3 Transportation shall publish a report regarding the
4 implementation of this section.

5 (b) CHILD SAFETY IN ROLLOVER CRASHES.—

6 (1) CONSUMER INFORMATION PROGRAM.—Not
7 later than 2 years after the date of the enactment
8 of this Act, the Secretary of Transportation shall
9 implement a consumer information program relating
10 to child safety in rollover crashes. The Secretary
11 shall make information related to the program avail-
12 able to the public following completion of the pro-
13 gram.

14 (2) CHILD DUMMY DEVELOPMENT.—

15 (A) IN GENERAL.—The Administrator of
16 the National Highway Traffic Safety Adminis-
17 tration shall initiate the development of a
18 biofidelic child crash test dummy capable of
19 measuring injury forces in a simulated rollover
20 crash.

21 (B) REPORTS.—The Secretary shall sub-
22 mit to Congress a report on progress related to
23 such development—

24 (i) not later than 1 year after the date
25 of the enactment of this Act; and

1 (ii) not later than 3 years after the
2 date of the enactment of this Act.

3 (c) REPORT ON ENHANCED VEHICLE SAFETY TECH-
4 NOLOGIES.—Not later than 2 years after the date of the
5 enactment of this Act, the Secretary of Transportation
6 shall submit to Congress a report that describes, evalu-
7 ates, and determines the relative effectiveness of—

8 (1) currently available and emerging tech-
9 nologies, including auto-reverse functions and child-
10 safe window switches, that are designed to prevent
11 and reduce the number of injuries and deaths to
12 children left unattended inside parked motor vehi-
13 cles, including injuries and deaths that result from
14 hyperthermia or are related to power windows or
15 power sunroofs; and

16 (2) currently available and emerging tech-
17 nologies that are designed to improve the perform-
18 ance of safety belts with respect to the safety of oc-
19 cupants aged between 4 and 8 years old.

20 (d) COMPLETION OF RULEMAKING REGARDING
21 POWER WINDOWS.—Not later than 180 days after the
22 date of the enactment of this Act, the Secretary of Trans-
23 portation shall—

24 (1) complete the rulemaking initiated by the
25 National Highway Traffic Safety Administration

1 that is ongoing on the date of the enactment of this
2 Act and relates to a requirement that window
3 switches be designed to reduce the accidental closing
4 by children of power windows; and

5 (2) issue performance-based regulations to take
6 effect not later than September 1, 2006, requiring
7 that window switches or related technologies be de-
8 signed to prevent the accidental closing by children
9 of power windows.

10 (e) DATABASE ON INJURIES AND DEATHS IN NON-
11 TRAFFIC, NONCRASH EVENTS.—

12 (1) IN GENERAL.—The Secretary of Transpor-
13 tation shall establish a new database of, and collect
14 data regarding, injuries and deaths in nontraffic,
15 noncrash events involving motor vehicles. The data-
16 base shall include information regarding—

17 (A) the number, types, and proximate
18 causes of injuries and deaths resulting from
19 such events;

20 (B) the characteristics of motor vehicles
21 involved in such events;

22 (C) the characteristics of the motor vehicle
23 operators and victims involved in such events;
24 and

1 (D) the presence or absence in motor vehi-
2 cles involved in such events of advanced tech-
3 nologies designed to prevent such injuries and
4 deaths.

5 (2) RULEMAKING.—The Secretary shall conduct
6 a rulemaking regarding how to structure and com-
7 pile the database.

8 (3) AVAILABILITY.—The Secretary shall make
9 the database available to the public.

10 **SEC. 4174. SAFE INTERSECTIONS.**

11 (a) IN GENERAL.—Chapter 2 of title 18, United
12 States Code, is amended by adding at the end the fol-
13 lowing:

14 **“§ 39. Traffic signal preemption transmitters**

15 “(a) OFFENSES.—

16 “(1) SALE.—A person who provides for sale to
17 unauthorized users a traffic signal preemption trans-
18 mitter in or affecting interstate or foreign commerce
19 shall be fined not more than \$10,000, imprisoned
20 not more than 1 year, or both.

21 “(2) POSSESSION.—A person who is an unau-
22 thorized user in possession of a traffic signal pre-
23 emption transmitter in or affecting interstate or for-
24 eign commerce shall be fined not more than

1 \$10,000, imprisoned not more than 6 months, or
2 both.

3 “(b) DEFINITIONS.—In this section, the following
4 definitions apply:

5 “(1) TRAFFIC SIGNAL PREEMPTION TRANS-
6 MITTER.—The term ‘traffic signal preemption trans-
7 mitter’ means any device or mechanism that can
8 change a traffic signal’s phase.

9 “(2) UNAUTHORIZED USER.—The term ‘unau-
10 thORIZED user’ means a user of a traffic signal pre-
11 emption transmitter who is not a government ap-
12 proved user.”.

13 (b) CHAPTER ANALYSIS.—The chapter analysis for
14 chapter 2 of title 18, United States Code, is amended by
15 adding at the end the following:

“39. Traffic signal preemption transmitters.”.

16 **SEC. 4175. STUDY ON INCREASED SPEED LIMITS.**

17 (a) STUDY.—

18 (1) IN GENERAL.—Not later than 2 years after
19 the date of enactment of this Act, the Secretary
20 shall conduct a study to examine the effects of in-
21 creased speed limits enacted by States after 1995.

22 (2) REQUIREMENTS.—The study shall collect
23 empirical data regarding—

24 (A) increases or decreases in driving
25 speeds on Interstate highways since 1995;

1 (B) correlations between changes in driv-
 2 ing speeds and accident, injury, and fatality
 3 rates;

4 (C) correlations between posted speed lim-
 5 its and observed driving speeds;

6 (D) the overall impact on motor vehicle
 7 safety resulting from the repeal of the national
 8 maximum speed limit in 1995; and

9 (E) such other matters as the Secretary
 10 determines to be appropriate.

11 (b) REPORT.—Not later than 1 year after the date
 12 of completion of the study under subsection (a), the Sec-
 13 retary shall submit to Congress a report that describes
 14 the results of the study.

15 **Subtitle B—Motor Carrier Safety**
 16 **and Unified Carrier Registration**

17 **PART I—ADMINISTRATIVE MATTERS**

18 **SEC. 4201. SHORT TITLE; AMENDMENT OF TITLE 49, UNITED**
 19 **STATES CODE.**

20 (a) SHORT TITLE.—This subtitle may be cited as the
 21 “Motor Carrier Safety Reauthorization Act of 2004”.

22 (b) AMENDMENT OF TITLE 49, UNITED STATES
 23 CODE.—Except as otherwise specifically provided, when-
 24 ever in this subtitle an amendment is expressed in terms
 25 of an amendment to a section or other provision of law,

1 the reference shall be considered to be made to a section
2 or other provision of title 49, United States Code.

3 **SEC. 4202. REQUIRED COMPLETION OF OVERDUE REPORTS,**
4 **STUDIES, AND RULEMAKINGS.**

5 (a) REQUIREMENT FOR COMPLETION.—By no later
6 than 36 months after the date of enactment of this Act,
7 the Secretary of Transportation shall complete all reports,
8 studies, and rulemaking proceedings to issue regulations
9 which Congress directed the Secretary to complete in pre-
10 vious laws and which are not yet completed, including the
11 following:

12 (1) Commercial Vehicle Driver Biometric Iden-
13 tifier, section 9105, Truck and Bus Safety and Reg-
14 ulatory Reform Act of 1988.

15 (2) General Transportation of HAZMAT, sec-
16 tion 8(b), Hazardous Materials Transportation Uni-
17 form Safety Act of 1990.

18 (3) Nationally Uniform System of Permits for
19 Interstate Motor Carrier Transport of HAZMAT,
20 section 22, Hazardous Materials Transportation
21 Uniform Safety Act of 1990.

22 (4) Training for Entry-Level Drivers of Com-
23 mercial Motor Vehicles, section 4007 (a), Intermodal
24 Surface Transportation Efficiency Act of 1991.

1 (5) Minimum Training Requirements for Oper-
2 ators and for Training Instructors of Multiple Trail-
3 er Combination Vehicles, section 4007(b)(2), Inter-
4 modal Surface Transportation Efficiency Act of
5 1991.

6 (6) Railroad-Highway Grade Crossing Safety,
7 section 112, Hazardous Materials Transportation
8 Authorization Act of 1994.

9 (7) Safety Performance History of New Driv-
10 ers, section 114, Hazardous Materials Transpor-
11 tation Authorization Act of 1994.

12 (8) Motor Carrier Replacement Information
13 and Registration System, section 103, ICC Termi-
14 nation Act of 1995.

15 (9) General Jurisdiction Over Freight For-
16 warder Service, section 13531, ICC Termination Act
17 of 1995.

18 (10) Waivers, Exemptions, and Pilot Programs,
19 section 4007, Transportation Equity Act for the
20 Twenty-First Century.

21 (11) Safety Performance History of New Driv-
22 ers, section 4014, Transportation Equity Act for the
23 Twenty-First Century.

1 (12) Performance-based CDL Testing, section
2 4019, Transportation Equity Act for the Twenty-
3 First Century.

4 (13) Improved Flow of Driver History Pilot
5 Program, section 4022, Transportation Equity Act
6 for the Twenty-First Century.

7 (14) Employee Protections, section 4023,
8 Transportation Equity Act for the Twenty-First
9 Century.

10 (15) Improved Interstate School Bus Safety,
11 section 4024, Transportation Equity Act for the
12 Twenty-First Century.

13 (16) Federal Motor Carrier Safety Administra-
14 tion 2010 Strategy, section 104, Motor Carrier Safe-
15 ty Improvement Act of 1999.

16 (17) New Motor Carrier Entrant Requirements,
17 section 210, Motor Carrier Safety Improvement Act
18 of 1999.

19 (18) Certified Motor Carrier Safety Auditors,
20 section 211, Motor Carrier Safety Improvement Act
21 of 1999.

22 (19) Medical Certificate, section 215, Motor
23 Carrier Safety Improvement Act of 1999.

24 (20) Report on Any Pilots Undertaken to De-
25 velop Innovative Methods of Improving Motor Car-

1 rier Compliance with Traffic Laws, section 220,
2 Motor Carrier Safety Improvement Act of 1999.

3 (21) Status Report on the Implementation of
4 Electronic Transmission of Data State-to-State on
5 Convictions for All Motor Vehicle Control Law Vio-
6 lations for CDL Holders, section 221, Motor Carrier
7 Safety Improvement Act of 1999.

8 (22) Assessment of Civil Penalties, section 222,
9 Motor Carrier Safety Improvement Act of 1999.

10 (23) Truck Crash Causation Study, section
11 224, Motor Carrier Safety Improvement Act of
12 1999.

13 (24) Drug Test Results Study, section 226,
14 Motor Carrier Safety Improvement Act of 1999.

15 (b) FINAL RULE REQUIRED.—Unless specifically
16 permitted by law, rulemaking proceedings shall be consid-
17 ered completed for purposes of this section only when the
18 Secretary has issued a final rule and the docket for the
19 rulemaking proceeding is closed.

20 (c) SCHEDULE FOR COMPLETION.—No fewer than
21 one-third of the reports, studies, and rulemaking pro-
22 ceedings in subsection (a) shall be completed every 12
23 months after the date of enactment of this Act. The In-
24 spector General of the Department of Transportation shall

1 make an annual determination as to whether this schedule
2 has been met.

3 (d) FAILURE TO COMPLY.—If the Secretary fails to
4 complete the required number of reports, studies, and
5 rulemaking proceedings according to the schedule set forth
6 in subsection (c) during any fiscal year, the Secretary shall
7 allocate to the States \$3,000,000 from the amount author-
8 ized by section 31104(i)(1) of title 49, United States Code,
9 for administrative expenses of the Federal Motor Carrier
10 Safety Administration to conduct additional compliance
11 reviews under section 31102 of that title instead of obli-
12 gating or expending such amount for those administrative
13 expenses.

14 (e) AMENDMENTS TO THE LISTED REPORTS, STUD-
15 IES, AND RULEMAKING PROCEEDINGS.—In addition to
16 completing the reports, studies and rulemaking pro-
17 ceedings listed in subsection (c), the Secretary shall—

18 (1) amend the Interim Final Rule addressing
19 New Motor Carrier Entrant Requirements to require
20 that a safety audit be immediately converted to a
21 compliance review and appropriate enforcement ac-
22 tions be taken if the safety audit discloses acute
23 safety violations by the new entrant; and

24 (2) eliminate a proposed provision in the rule-
25 making proceeding addressing Commercial Van Op-

1 erations Transporting Nine to Fifteen Passengers
2 which exempts commercial van operations that oper-
3 ate within a 75-mile radius.

4 (f) COMPLETION OF NEW RULEMAKING PRO-
5 CEEDINGS.—Nothing in this section delays or changes the
6 deadlines specified for new reports, studies, or rulemaking
7 mandates contained in this title.

8 (g) REPORT OF OTHER AGENCY ACTIONS.—Within
9 12 months after the date of enactment of this Act, the
10 Secretary shall submit to the Senate Committee on Com-
11 merce, Science, and Transportation and to the House
12 Committee on Transportation and Infrastructure a report
13 on the status of the following projects:

14 (1) Rescinding the current regulation which
15 prohibits truck and bus drivers from viewing tele-
16 vision and monitor screens while operating commer-
17 cial vehicles.

18 (2) Incorporating Out-Of-Service Criteria regu-
19 lations enforced by the Federal Motor Carrier Safety
20 Administration.

21 (3) Revision of the safety fitness rating system
22 of motor carriers.

23 (4) Amendment of Federal Motor Carrier Safe-
24 ty Administration rules of practice for conducting

1 motor carrier administrative proceedings, investiga-
2 tions, disqualifications, and for issuing penalties.

3 (5) Requiring commercial drivers to have a suf-
4 ficient functional speaking and reading comprehen-
5 sion of the English language.

6 (6) Inspection, repair and maintenance of inter-
7 modal container chassis and trailers.

8 **SEC. 4203. CONTRACT AUTHORITY.**

9 Authorizations from the Highway Trust Fund (other
10 than the Mass Transit Account) to carry out this subtitle
11 shall be available for obligation on the date of their appor-
12 tionment or allocation or on October 1 of the fiscal year
13 for which they are authorized, whichever occurs first. Ap-
14 proval by the Secretary of a grant with funds made avail-
15 able under this title imposes upon the United States Gov-
16 ernment a contractual obligation for payment of the Gov-
17 ernment's share of costs incurred in carrying out the ob-
18 jectives of the grant.

19 **PART II—MOTOR CARRIER SAFETY**

20 **SEC. 4221. MINIMUM GUARANTEE.**

21 There are authorized to be appropriated from the
22 Highway Trust Fund (other than the Mass Transit Ac-
23 count) not less than 1.21 percent of the total amounts
24 made available in any fiscal year from the Highway Trust
25 Fund for purposes of this part.

1 **SEC. 4222. AUTHORIZATION OF APPROPRIATIONS.**

2 (a) ADMINISTRATIVE EXPENSES.—Section 31104 is
3 amended by adding at the end the following:

4 “(i) ADMINISTRATIVE EXPENSES.—

5 “(1) There are authorized to be appropriated
6 from the Highway Trust Fund (other than the Mass
7 Transit Account) for the Secretary of Transpor-
8 tation to pay administrative expenses of the Federal
9 Motor Carrier Safety Administration—

10 “(A) \$202,900,000 for fiscal year 2004;

11 “(B) \$206,200,000 for fiscal year 2005;

12 “(C) \$211,400,000 for fiscal year 2006;

13 “(D) \$217,500,000 for fiscal year 2007;

14 “(E) \$222,600,000 for fiscal year 2008;

15 and

16 “(F) \$228,500,000 for fiscal year 2009.

17 “(2) The funds authorized by this subsection
18 shall be used for personnel costs; administrative in-
19 frastructure; rent; information technology; programs
20 for research and technology, information manage-
21 ment, regulatory development (including a medical
22 review board and rules for medical examiners), per-
23 formance and registration information system man-
24 agement, and outreach and education; other oper-
25 ating expenses and similar matters; and such other
26 expenses as may from time to time become necessary

1 to implement statutory mandates not funded from
2 other sources.

3 “(3) From the funds authorized by this section,
4 the Secretary shall ensure that compliance reviews
5 are completed on the motor carriers that have dem-
6 onstrated through performance data that they pose
7 the highest safety risk. At a minimum, compliance
8 reviews shall be conducted within 6 months after
9 whenever a carrier is rated as category A or B.

10 “(4) The amounts made available under this
11 section shall remain available until expended.

12 “(5) Of the funds authorized by paragraph (1),
13 \$6,750,000 in each of fiscal years 2004 through
14 2009 shall be used to carry out the medical program
15 under section 31149.”.

16 (b) AMENDMENT TO APPORTIONMENT PROVISION OF
17 TITLE 23.—Section 104(a) of title 23, United States
18 Code, is amended—

19 (1) by striking “exceed—” and so much of sub-
20 paragraph (A) as precedes clause (i) and inserting
21 “exceed 1 $\frac{1}{6}$ percent of all sums so made available,
22 as the Secretary determines necessary—”;

23 (2) by redesignating clause (i) and (ii) of sub-
24 paragraph (A) as subparagraphs (A) and (B), and

1 indenting such clauses, as so redesignated, 2 em
2 spaces; and

3 (3) by striking “system; and” in subparagraph
4 (B) as so redesignated, and all that follows through
5 “research.” and inserting “system.”.

6 (c) GRANT PROGRAMS.—There are authorized to be
7 appropriated from the Highway Trust Fund (other than
8 the Mass Transit Account) for the following Federal
9 Motor Carrier Safety Administration programs:

10 (1) Border enforcement grants under section
11 31107 of title 49, United States Code—

12 (A) \$32,000,000 for fiscal year 2004;

13 (B) \$33,000,000 for fiscal year 2005;

14 (C) \$33,000,000 for fiscal year 2006;

15 (D) \$34,000,000 for fiscal year 2007;

16 (E) \$35,000,000 for fiscal year 2008; and

17 (F) \$36,000,000 for fiscal year 2009.

18 (2) Performance and registration information
19 system management grant program under 31109 of
20 title 49, United States Code—

21 (A) \$4,000,000 for fiscal year 2004;

22 (B) \$4,000,000 for fiscal year 2005;

23 (C) \$4,000,000 for fiscal year 2006;

24 (D) \$4,000,000 for fiscal year 2007;

25 (E) \$4,000,000 for fiscal year 2008; and

1 (F) \$4,000,000 for fiscal year 2009.

2 (3) Commercial driver's license and driver im-
3 provement program grants under section 31318 of
4 title 49, United States Code—

5 (A) \$22,000,000 for fiscal year 2004;

6 (B) \$22,000,000 for fiscal year 2005;

7 (C) \$23,000,000 for fiscal year 2006;

8 (D) \$23,000,000 for fiscal year 2007;

9 (E) \$24,000,000 for fiscal year 2008; and

10 (F) \$25,000,000 for fiscal year 2009.

11 (4) Deployment of the Commercial Vehicle In-
12 formations Systems and Networks established under
13 section 4241 of this title, \$25,000,000 for each of
14 fiscal years 2004 through 2009.

15 (d) MOTOR CARRIER SAFETY ACCOUNT.—Funds
16 made available under subsection (c) shall be administered
17 in the account established in the Treasury entitled “Motor
18 Carrier Safety 69–8055–0–7–401”.

19 (e) PERIOD OF AVAILABILITY.—The amounts made
20 available under subsection (c) of this section shall remain
21 available until expended.

22 **SEC. 4223. MOTOR CARRIER SAFETY GRANTS.**

23 (a) MOTOR CARRIER SAFETY ASSISTANCE PRO-
24 GRAM.—

25 (1) Section 31102 is amended—

1 (A) by striking “activities by fiscal year
2 2000;” in subsection (b)(1)(A) and inserting
3 “activities for commercial motor vehicles of pas-
4 sengers and freight;”;

5 (B) by striking “years before December
6 18, 1991;” in subsection (b)(1)(E) and insert-
7 ing “years”;

8 (C) by striking “and” after the semicolon
9 in subsection (b)(1)(S);

10 (D) by striking “personnel.” in subsection
11 (b)(1)(T) and inserting “personnel;”;

12 (E) adding at the end of subsection (b)(1)
13 the following:

14 “(U) ensures that inspections of motor carriers
15 of passengers are conducted at stations, terminals,
16 border crossings, or maintenance facilities, except in
17 the case of an imminent or obvious safety hazard;

18 “(V) provides that the State will include in the
19 training manual for the licensing examination to
20 drive a non-commercial motor vehicle and a commer-
21 cial motor vehicle, information on best practices for
22 driving safely in the vicinity of commercial motor ve-
23 hicles and in the vicinity of non-commercial vehicles,
24 respectively; and

1 “(W) provides that the State will enforce the
2 registration requirements of section 13902 by sus-
3 pending the operation of any vehicle discovered to be
4 operating without registration or beyond the scope of
5 its registration.”; and

6 (F) by striking subsection (c) and inserting
7 the following:

8 “(c) USE OF GRANTS TO ENFORCE OTHER LAWS.—
9 A State may use amounts received under a grant under
10 subsection (a) of this section for the following activities:

11 “(1) If the activities are carried out in conjunc-
12 tion with an appropriate inspection of the commer-
13 cial motor vehicle to enforce Government or State
14 commercial motor vehicle safety regulations—

15 “(A) enforcement of commercial motor ve-
16 hicle size and weight limitations at locations
17 other than fixed weight facilities, at specific lo-
18 cations such as steep grades or mountainous
19 terrains where the weight of a commercial
20 motor vehicle can significantly affect the safe
21 operation of the vehicle, or at ports where inter-
22 modal shipping containers enter and leave the
23 United States; and

24 “(B) detection of the unlawful presence of
25 a controlled substance (as defined under section

1 102 of the Comprehensive Drug Abuse Preven-
2 tion and Control Act of 1970 (21 U.S.C. 802))
3 in a commercial motor vehicle or on the person
4 of any occupant (including the operator) of the
5 vehicle.

6 “(2) Documented enforcement of State traffic
7 laws and regulations designed to promote the safe
8 operation of commercial motor vehicles, including
9 documented enforcement of such laws and regula-
10 tions against non-commercial motor vehicles when
11 necessary to promote the safe operation of commer-
12 cial motor vehicles.”.

13 (2) Section 31103(b) is amended—

14 (A) by inserting “(1)” after “ACTIVI-
15 TIES.—”; and

16 (B) by adding at the end the following:

17 “(2) NEW ENTRANT MOTOR CARRIER AUDIT
18 FUNDS.—From the amounts designated under sec-
19 tion 31104(f)(4), the Secretary may allocate new en-
20 trant motor carrier audit funds to States and local
21 governments without requiring a matching contribu-
22 tion from such States or local governments.”.

23 (3) Section 31104(a) is amended to read as fol-
24 lows:

1 “(a) IN GENERAL.—There are authorized to be ap-
2 propriated from the Highway Trust Fund (other than the
3 Mass Transit Account) to carry out section 31102:

4 “(1) Not more than \$186,100,000 for fiscal
5 year 2004.

6 “(2) Not more than \$189,800,000 for fiscal
7 year 2005.

8 “(3) Not more than \$193,600,000 for fiscal
9 year 2006.

10 “(4) Not more than \$197,500,000 for fiscal
11 year 2007.

12 “(5) Not more than \$201,400,000 for fiscal
13 year 2008.

14 “(6) Not more than \$205,500,000 for fiscal
15 year 2009.”.

16 (4) Section 31104(f) is amended by striking
17 paragraph (2) and inserting the following:

18 “(2) HIGH-PRIORITY ACTIVITIES.—The Sec-
19 retary may designate up to 5 percent of amounts
20 available for allocation under paragraph (1) for
21 States, local governments, and organizations rep-
22 resenting government agencies or officials for car-
23 rying out high priority activities and projects that
24 improve commercial motor vehicle safety and compli-
25 ance with commercial motor vehicle safety regula-

1 tions, including activities and projects that are na-
2 tional in scope, increase public awareness and edu-
3 cation, or demonstrate new technologies. The
4 amounts designated under this paragraph shall be
5 allocated by the Secretary to State agencies, local
6 governments, and organizations representing govern-
7 ment agencies or officials that use and train quali-
8 fied officers and employees in coordination with
9 State motor vehicle safety agencies. At least 80 per-
10 cent of the amounts designated under this para-
11 graph shall be awarded to State agencies and local
12 government agencies.

13 “(3) SAFETY-PERFORMANCE INCENTIVE PRO-
14 GRAMS.—The Secretary may designate up to 10 per-
15 cent of the amounts available for allocation under
16 paragraph (1) for safety performance incentive pro-
17 grams for States. The Secretary shall establish safe-
18 ty performance criteria to be used to distribute in-
19 centive program funds. Such criteria shall include,
20 at a minimum, reduction in the number and rate of
21 fatal accidents involving commercial motor vehicles.
22 Allocations under this paragraph do not require a
23 matching contribution from a State.

24 “(4) NEW ENTRANT AUDITS.—The Secretary
25 shall designate up to \$29,000,000 of the amounts

1 available for allocation under paragraph (1) for au-
2 dits of new entrant motor carriers conducted pursu-
3 ant to 31144(f). The Secretary may withhold such
4 funds from a State or local government that is un-
5 able to use government employees to conduct new
6 entrant motor carrier audits, and may instead utilize
7 the funds to conduct audits in those jurisdictions.”.

8 (b) GRANTS TO STATES FOR BORDER ENFORCE-
9 MENT.—Section 31107 is amended to read as follows:

10 **“§ 31107. Border enforcement grants**

11 “(a) GENERAL AUTHORITY.—From the funds au-
12 thorized by section 4222(c)(1) of the Motor Carrier Safety
13 Reauthorization Act of 2004, the Secretary may make a
14 grant in a fiscal year to a State that shares a border with
15 another country for carrying out border commercial motor
16 vehicle safety programs and related enforcement activities
17 and projects.

18 “(b) MAINTENANCE OF EXPENDITURES.—The Sec-
19 retary may make a grant to a State under this section
20 only if the State agrees that the total expenditure of
21 amounts of the State and political subdivisions of the
22 State, exclusive of United States Government amounts, for
23 carrying out border commercial motor vehicle safety pro-
24 grams and related enforcement activities and projects will
25 be maintained at a level at least equal to the average level

1 of that expenditure by the State and political subdivisions
2 of the State for the last 2 State or Federal fiscal years
3 before October 1, 2003.”.

4 (c) GRANTS TO STATES FOR COMMERCIAL DRIVER’S
5 LICENSE IMPROVEMENTS.—Chapter 313 is amended by
6 adding at the end the following:

7 **“§ 31318. Grants for commercial driver’s license pro-**
8 **gram improvements**

9 “(a) GENERAL AUTHORITY.—From the funds au-
10 thorized by section 4222(c)(3) of the Motor Carrier Safety
11 Reauthorization Act of 2004, the Secretary may make a
12 grant to a State, except as otherwise provided in sub-
13 section (e), in a fiscal year to improve its implementation
14 of the commercial driver’s license program, providing the
15 State is in substantial compliance with the requirements
16 of section 31311 and this section. The Secretary shall es-
17 tablish criteria for the distribution of grants and notify
18 the States annually of such criteria.

19 “(b) CONDITIONS.—Except as otherwise provided in
20 subsection (e), a State may use a grant under this section
21 only for expenses directly related to its commercial driver’s
22 license program, including, but not limited to, computer
23 hardware and software, publications, testing, personnel,
24 training, and quality control. The grant may not be used
25 to rent, lease, or buy land or buildings. The Secretary shall

1 give priority to grants that will be used to achieve compli-
2 ance with the requirements of the Motor Carrier Safety
3 Improvement Act of 1999. The Secretary may allocate the
4 funds appropriated for such grants in a fiscal year among
5 the eligible States whose applications for grants have been
6 approved, under criteria established by the Secretary.

7 “(c) MAINTENANCE OF EXPENDITURES.—Except as
8 otherwise provided in subsection (e), the Secretary may
9 make a grant to a State under this section only if the
10 State agrees that the total expenditure of amounts of the
11 State and political subdivisions of the State, exclusive of
12 United States Government amounts, for the operation of
13 the commercial driver’s license program will be maintained
14 at a level at least equal to the average level of that expend-
15 iture by the State and political subdivisions of the State
16 for the last 2 fiscal years before October 1, 2003.

17 “(d) GOVERNMENT SHARE.—Except as otherwise
18 provided in subsection (e), the Secretary shall reimburse
19 a State, from a grant made under this section, an amount
20 that is not more than 80 percent of the costs incurred
21 by the State in a fiscal year in implementing the commer-
22 cial driver’s license improvements described in subsection
23 (b). In determining those costs, the Secretary shall include
24 in-kind contributions by the State.

25 “(e) HIGH-PRIORITY ACTIVITIES.—

1 “(1) The Secretary may make a grant to a
2 State agency, local government, or organization rep-
3 resenting government agencies or officials for the
4 full cost of research, development, demonstration
5 projects, public education, or other special activities
6 and projects relating to commercial driver licensing
7 and motor vehicle safety that are of benefit to all ju-
8 risdictions or designed to address national safety
9 concerns and circumstances.

10 “(2) The Secretary may designate up to 10 per-
11 cent of the amounts made available under section
12 4222(e)(3) of the Motor Carrier Safety Reauthoriza-
13 tion Act of 2004 in a fiscal year for high-priority ac-
14 tivities under subsection (e)(1).

15 “(f) EMERGING ISSUES.—The Secretary may des-
16 ignate up to 10 percent of the amounts made available
17 under section 4222(e)(3) of the Motor Carrier Safety Re-
18 authorization Act of 2004 in a fiscal year for allocation
19 to a State agency, local government, or other person at
20 the discretion of the Secretary to address emerging issues
21 relating to commercial driver’s license improvements.

22 “(g) APPORTIONMENT.—Except as otherwise pro-
23 vided in subsections (e) and (f), all amounts available in
24 a fiscal year to carry out this section shall be apportioned

1 to States according to a formula prescribed by the Sec-
2 retary.

3 “(h) DEDUCTION FOR ADMINISTRATIVE EX-
4 PENSES.—On October 1 of each fiscal year or as soon
5 after that date as practicable, the Secretary may deduct,
6 from amounts made available under section 4222(c)(3) of
7 the Motor Carrier Safety Reauthorization Act of 2004 for
8 that fiscal year, up to 0.75 percent of those amounts for
9 administrative expenses incurred in carrying out this sec-
10 tion in that fiscal year.”.

11 (d) NONCOMPLIANCE WITH CDL REQUIREMENTS.—
12 Section 31314 is amended by striking subsections (a) and
13 (b) and inserting the following:

14 “(a) FIRST FISCAL YEAR.—The Secretary of Trans-
15 portation shall withhold up to 5 percent of the amount
16 required to be apportioned to a State under section
17 104(b)(1), (3), and (4) of title 23 on the first day of the
18 fiscal year after the first fiscal year beginning after Sep-
19 tember 30, 1992, throughout which the State does not
20 comply substantially with a requirement of section
21 31311(a) of this title.

22 “(b) SECOND FISCAL YEAR.—The Secretary shall
23 withhold up to 10 percent of the amount required to be
24 apportioned to a State under section 104(b)(1), (3), and
25 (4) of title 23 on the first day of each fiscal year after

1 the second fiscal year beginning after September 30, 1992,
 2 throughout which the State does not comply substantially
 3 with a requirement of section 31311(a) of this title.”.

4 (e) CONFORMING AMENDMENTS.—(1) The chapter
 5 analysis for chapter 311 is amended—

6 (A) by striking the item relating to Subchapter
 7 I, and inserting the following:

“SUBCHAPTER I—GENERAL AUTHORITY AND STATE GRANTS”;

8 and

9 (B) by striking the item relating to section
 10 31107, and inserting the following:

“31107. Border enforcement grants.”.

11 (2) Subchapter I of chapter 311 is amended by strik-
 12 ing the subchapter heading and inserting the following:

“SUBCHAPTER I—GENERAL AUTHORITY AND STATE GRANTS”

13 (3) The chapter analysis for chapter 313 is amended
 14 by inserting the following after the item relating to section
 15 31317:

“31318. Grants for commercial driver’s license program improvements.”.

16 **SEC. 4224. CDL WORKING GROUP.**

17 (a) IN GENERAL.—The Secretary of Transportation
 18 shall convene a working group to study and address cur-
 19 rent impediments and foreseeable challenges to the com-
 20 mercial driver’s license program’s effectiveness and meas-
 21 ures needed to realize the full safety potential of the com-
 22 mercial driver’s license program. The working group shall

1 address such issues as State enforcement practices, oper-
2 ational procedures to detect and deter fraud, needed im-
3 provements for seamless information sharing between
4 States, effective methods for accurately sharing electronic
5 data between States, updated technology, and timely noti-
6 fication from judicial bodies concerning traffic and crimi-
7 nal convictions of commercial driver's license holders.

8 (b) MEMBERSHIP.—Members of the working group
9 should include State motor vehicle administrators, organi-
10 zations representing government agencies or officials,
11 members of the Judicial Conference, representatives of the
12 trucking industry, representatives of labor organizations,
13 safety advocates, and other significant stakeholders.

14 (c) REPORT.—Within 2 years after the date of enact-
15 ment of this Act, the Secretary, on behalf of the working
16 group, shall complete a report of the working group's find-
17 ings and recommendations for legislative, regulatory, and
18 enforcement changes to improve the commercial driver's
19 license program. The Secretary shall promptly transmit
20 the report to the Senate Committee on Commerce,
21 Science, and Transportation and the House of Represent-
22 atives Committee on Transportation and Infrastructure.

23 (d) FUNDING.—From the funds authorized by section
24 4222(c)(3) of this title, \$200,000 shall be made available

1 for each of fiscal years 2004 and 2005 to carry out this
2 section.

3 **SEC. 4225. CDL LEARNER'S PERMIT PROGRAM.**

4 (a) IN GENERAL.—Chapter 313 is amended—

5 (1) by striking “time.” in section 31302 and in-
6 serting “license, and may have only 1 learner’s per-
7 mit at any time.”;

8 (2) by inserting “and learners’ permits” after
9 “licenses” the first place it appears in section
10 31308;

11 (3) by striking “licenses.” in section 31308 and
12 inserting “licenses and permits.”;

13 (4) by redesignating paragraphs (2) and (3) of
14 section 31308 as paragraphs (3) and (4), respec-
15 tively, and inserting after paragraph (1) the fol-
16 lowing:

17 “(2) before a commercial driver’s license learn-
18 er’s permit can be issued to an individual, the indi-
19 vidual must pass a written test on the operation of
20 a commercial motor vehicle that complies with the
21 minimum standards prescribed by the Secretary
22 under section 31305(a) of this title;”;

23 (5) by inserting “or learner’s permit” after “li-
24 cense” each place it appears in paragraphs (3) and
25 (4), as redesignated, of section 31308; and

1 (6) by inserting “or learner’s permit” after “li-
2 cense” each place it appears in section 31309(b).

3 (b) CONFORMING AMENDMENTS.—

4 (1) Section 31302 is amended by inserting
5 “**and learner’s permits**” in the section caption.

6 (2) Sections 31308 and 31309 are each amend-
7 ed by inserting “**and learner’s permit**” after
8 “**license**” in the section captions.

9 (3) The chapter analysis for chapter 313 is
10 amended by striking the item relating to section
11 31302 and inserting the following:

“31302. Limitation on the number of driver’s licenses and learner’s permits.”.

12 (4) The chapter analysis for chapter 313 is
13 amended by striking the items relating to sections
14 31308 and 31309 and inserting the following:

“31308. Commercial driver’s license and learner’s permit.

“31309. Commercial driver’s license and learner’s permit information system.”.

15 **SEC. 4226. HOBBS ACT.**

16 (a) Section 2342(3)(A) of title 28, United States
17 Code, is amended to read as follows:

18 “(A) the Secretary of Transportation
19 issued pursuant to section 2, 9, 37, or 41 of the
20 Shipping Act, 1916 (46 U.S.C. App. 802, 803,
21 808, 835, 839, and 841a) or pursuant to Part
22 B or C of subtitle IV of title 49 or pursuant to
23 subchapter III of chapter 311, chapter 313, and

1 chapter 315 of Part B of subtitle VI of title 49;
2 and”.

3 (b) Section 351(a) is amended to read as follows:

4 “(a) JUDICIAL REVIEW.—An action of the Secretary
5 of Transportation in carrying out a duty or power trans-
6 ferred under the Department of Transportation Act (Pub-
7 lic Law 89–670; 80 Stat. 931), or an action of the Admin-
8 istrator of the Federal Railroad Administration, Federal
9 Motor Carrier Safety Administration, or the Federal Avia-
10 tion Administration in carrying out a duty or power spe-
11 cifically assigned to the Administrator by that Act, may
12 be reviewed judicially to the same extent and in the same
13 way as if the action had been an action by the department,
14 agency, or instrumentality of the United States Govern-
15 ment carrying out the duty or power immediately before
16 the transfer or assignment.”.

17 (c) Section 352 is amended to read as follows:

18 **“§ 352. Authority to carry out certain transferred du-**
19 **ties and powers**

20 “In carrying out a duty or power transferred under
21 the Department of Transportation Act (Public Law 89–
22 670; 80 Stat. 931), the Secretary of Transportation and
23 the Administrators of the Federal Railroad Administra-
24 tion, the Federal Motor Carrier Safety Administration,
25 and the Federal Aviation Administration have the same

1 authority that was vested in the department, agency, or
2 instrumentality of the United States Government carrying
3 out the duty or power immediately before the transfer. An
4 action of the Secretary or Administrator in carrying out
5 the duty or power has the same effect as when carried
6 out by the department, agency, or instrumentality.”.

7 **SEC. 4227. PENALTY FOR DENIAL OF ACCESS TO RECORDS.**

8 Section 521(b)(2) is amended by adding at the end
9 the following:

10 “(E) COPYING OF RECORDS AND ACCESS TO EQUIP-
11 MENT, LANDS, AND BUILDINGS.—A motor carrier subject
12 to chapter 51 of subtitle III, a motor carrier, broker, or
13 freight forwarder subject to part B of subtitle IV, or the
14 owner or operator of a commercial motor vehicle subject
15 to part B of subtitle VI of this title who fails to allow
16 the Secretary, or an employee designated by the Secretary,
17 promptly upon demand to inspect and copy any record or
18 inspect and examine equipment, lands, buildings and other
19 property in accordance with sections 504(c), 5121(c), and
20 14122(b) of this title shall be liable to the United States
21 for a civil penalty not to exceed \$500 for each offense,
22 and each day the Secretary is denied the right to inspect
23 and copy any record or inspect and examine equipment,
24 lands, buildings and other property shall constitute a sepa-
25 rate offense, except that the total of all civil penalties

1 against any violator for all offenses related to a single vio-
2 lation shall not exceed \$5,000. It shall be a defense to
3 such penalty that the records did not exist at the time
4 of the Secretary's request or could not be timely produced
5 without unreasonable expense or effort. Nothing herein
6 amends or supersedes any remedy available to the Sec-
7 retary under sections 502(d), 507(c), or other provision
8 of this title.”.

9 **SEC. 4228. MEDICAL PROGRAM.**

10 (a) IN GENERAL.—Subchapter III of chapter 311 is
11 amended by adding at the end the following:

12 **“§ 31149. Medical program**

13 “(a) MEDICAL REVIEW BOARD.—

14 “(1) ESTABLISHMENT AND FUNCTION.—The
15 Secretary of Transportation shall establish a Medical
16 Review Board to serve as an advisory committee to
17 provide the Federal Motor Carrier Safety Adminis-
18 tration with medical advice and recommendations on
19 driver qualification medical standards and guide-
20 lines, medical examiner education, and medical re-
21 search.

22 “(2) COMPOSITION.—The Medical Review
23 Board shall be appointed by the Secretary and shall
24 consist of 5 members selected from medical institu-
25 tions and private practice. The membership shall re-

1 flect expertise in a variety of specialties relevant to
2 the functions of the Federal Motor Carrier Safety
3 Administration.

4 “(b) CHIEF MEDICAL EXAMINER.—The Secretary
5 shall appoint a chief medical examiner for the Federal
6 Motor Carrier Safety Administration.

7 “(c) MEDICAL STANDARDS AND REQUIREMENTS.—
8 The Secretary, with the advice of the Medical Review
9 Board and the chief medical examiner, shall—

10 “(1) establish, review, and revise—

11 “(A) medical standards for applicants for
12 and holders of commercial driver’s licenses that
13 will ensure that the physical condition of opera-
14 tors of commercial motor vehicles is adequate to
15 enable them to operate the vehicles safely;

16 “(B) requirements for periodic physical ex-
17 aminations of such operators performed by
18 medical examiners who have received training in
19 physical and medical examination standards
20 and are listed on a national registry maintained
21 by the Department of Transportation; and

22 “(C) requirements for notification of the
23 chief medical examiner if such an applicant or
24 holder—

1 “(i) fails to meet the applicable stand-
2 ards; or

3 “(ii) is found to have a physical or
4 mental disability or impairment that would
5 interfere with the individual’s ability to op-
6 erate a commercial motor vehicle safely;

7 “(2) require each holder of a commercial driv-
8 er’s license or learner’s permit to have a current
9 valid medical certificate;

10 “(3) issue such certificates to such holders and
11 applicants who are found, upon examination, to be
12 physically qualified to operate a commercial motor
13 vehicle and to meet applicable medical standards;
14 and

15 “(4) develop, as appropriate, specific courses
16 and materials for medical examiners listed in the na-
17 tional registry established under this section, and re-
18 quire those medical examiners to complete specific
19 training, including refresher courses, to be listed in
20 the registry.

21 “(d) NATIONAL REGISTRY OF MEDICAL EXAM-
22 INERS.—The Secretary, through the Federal Motor Car-
23 rier Safety Administration—

24 “(1) shall establish and maintain a current na-
25 tional registry of medical examiners who are quali-

1 fied to perform examination, testing, inspection, and
2 issuance of a medical certificate;

3 “(2) shall delegate to those examiners the au-
4 thority to issue such certificates if the Medical Re-
5 view Board develops a system to identify the medical
6 examination forms uniquely and track them; and

7 “(3) shall remove from the registry the name of
8 any medical examiner that fails to meet the quali-
9 fications established by the Secretary for being listed
10 in the registry.

11 “(e) CONSULTATION AND COOPERATION WITH
12 FAA.—

13 “(1) IN GENERAL.—The Administrator of the
14 Federal Motor Carrier Safety Administration shall
15 consult the Administrator of the Federal Aviation
16 Administration with respect to examinations, the
17 issuance of certificates, standards, and procedures
18 under this section in order to take advantage of such
19 aspects of the Federal Aviation Administration’s air-
20 man certificate program under chapter 447 of this
21 title as the Administrator deems appropriate for car-
22 rying out this section.

23 “(2) USE OF FAA-QUALIFIED EXAMINERS.—
24 The Administrator of the Federal Motor Carrier
25 Safety Administration and the Administrator of the

1 Federal Aviation Administration are authorized and
2 encouraged to execute a memorandum of under-
3 standing under which individuals holding or applying
4 for a commercial driver’s license or learner’s permit
5 may be examined, for purposes of this section, by
6 medical examiners who are qualified to administer
7 medical examinations for airman certificates under
8 chapter 447 of this title and the regulations
9 thereunder—

10 “(A) until the national registry required by
11 subsection (d) is fully established; and

12 “(B) to the extent that the Administrators
13 determine appropriate, after that registry is es-
14 tablished.

15 “(f) REGULATIONS.—The Secretary is authorized to
16 promulgate such regulations as may be necessary to carry
17 out this section.”.

18 (b) MEDICAL EXAMINERS.—Section 31136(a)(3) is
19 amended to read as follows:

20 “(3) the physical condition of operators of com-
21 mercial motor vehicles is adequate to enable them to
22 operate the vehicles safely, and the periodic physical
23 examinations required of such operators are per-
24 formed by medical examiners who have received
25 training in physical and medical examination stand-

1 ards and are listed on a national registry maintained
2 by the Department of Transportation; and”.

3 (c) DEFINITION OF MEDICAL EXAMINER.—Section
4 31132 is amended—

5 (1) by redesignating paragraphs (6) through
6 (10) as paragraphs (7) through (11), respectively;
7 and

8 (2) by inserting after paragraph (5) the fol-
9 lowing:

10 “(6) ‘medical examiner’ means an individual li-
11 censed, certified, or registered in accordance with
12 regulations issued by the Federal Motor Carrier
13 Safety Administration as a medical examiner.”.

14 (d) CONFORMING AMENDMENT.—The chapter anal-
15 ysis for chapter 311 is amended by inserting after the item
16 relating to section 31148 the following:

“31149. Medical program.”.

17 (e) EFFECTIVE DATE.—The amendment made by
18 subsection (a) shall take effect 1 year after the date of
19 enactment of this Act.

20 **SEC. 4229. OPERATION OF COMMERCIAL MOTOR VEHICLES**
21 **BY INDIVIDUALS WHO USE INSULIN TO**
22 **TREAT DIABETES MELLITUS.**

23 (a) REVISION OF FINAL RULE.—Not later than 90
24 days after the date of the enactment of this Act, the Sec-
25 retary shall revise the final rule to allow individuals who

1 use insulin to treat their diabetes to operate commercial
2 motor vehicles in interstate commerce. The revised final
3 rule shall provide for the individual assessment of appli-
4 cants who use insulin to treat their diabetes and who are,
5 except for their use of insulin, otherwise qualified under
6 the Federal Motor Carrier Safety Regulations. The revised
7 final rule shall be consistent with the criteria described
8 in section 4018 of the Transportation Equity Act for the
9 21st Century (49 U.S.C. 31305 note) and shall conclude
10 the rulemaking process in the Federal Motor Carrier Safe-
11 ty Administration docket relating to qualifications of driv-
12 ers with diabetes.

13 (b) NO HISTORY OF DRIVING WHILE USING INSULIN
14 REQUIRED FOR QUALIFICATION.—The Secretary may not
15 require individuals to have experience operating commer-
16 cial motor vehicles while using insulin in order to qualify
17 to operate a commercial motor vehicle in interstate com-
18 merce.

19 (c) HISTORY OF DIABETES CONTROL.—The Sec-
20 retary may require an individual to have used insulin for
21 a minimum period of time and demonstrated stable control
22 of diabetes in order to qualify to operate a commercial
23 motor vehicle in interstate commerce. Any such require-
24 ment, including any requirement with respect to the dura-
25 tion of such insulin use, shall be consistent with the find-

1 ings of the expert medical panel reported in July 2000
2 in “A Report to Congress on the Feasibility of a Program
3 to Qualify Individuals with Insulin-Treated Diabetes
4 Mellitus to Operate Commercial Motor Vehicles in Inter-
5 state Commerce as Directed by the Transportation Equity
6 Act for the 21st Century”.

7 (d) **APPLICABLE STANDARD.**—The Secretary shall
8 ensure that individuals who use insulin to treat their dia-
9 betes are not held to a higher standard than other quali-
10 fied commercial drivers, except to the extent that limited
11 operating, monitoring, or medical requirements are
12 deemed medically necessary by experts in the field of dia-
13 betes medicine.

14 **SEC. 4230. FINANCIAL RESPONSIBILITY FOR PRIVATE**
15 **MOTOR CARRIERS.**

16 (a) **TRANSPORTATION OF PASSENGERS.**—

17 (1) Section 31138(a) is amended to read as fol-
18 lows:

19 “(a) **GENERAL REQUIREMENT.**—The Secretary of
20 Transportation shall prescribe regulations to require min-
21 imum levels of financial responsibility sufficient to satisfy
22 liability amounts established by the Secretary covering
23 public liability and property damage for the transportation
24 of passengers by motor vehicle in the United States be-
25 tween a place in a State and—

1 “(1) a place in another State;

2 “(2) another place in the same State through a
3 place outside of that State; or

4 “(3) a place outside the United States.”.

5 (2) Section 31138(c) is amended by adding at
6 the end the following:

7 “(4) The Secretary may require a person, other
8 than a motor carrier as defined in section 13102(12)
9 of this title, transporting passengers by motor vehi-
10 cle to file with the Secretary the evidence of finan-
11 cial responsibility specified in subsection (c)(1) of
12 this section in an amount not less than that required
13 by this section, and the laws of the State or States
14 in which the person is operating, to the extent appli-
15 cable. The extent of the financial responsibility must
16 be sufficient to pay, not more than the amount of
17 the financial responsibility, for each final judgment
18 against the person for bodily injury to, or death of,
19 an individual resulting from the negligent operation,
20 maintenance, or use of motor vehicles, or for loss or
21 damage to property, or both.”.

22 (b) TRANSPORTATION OF PROPERTY.—Section
23 31139 is amended—

24 (1) by striking so much of subsection (b) as
25 precedes paragraph (2) and inserting the following:

1 “(b) GENERAL REQUIREMENTS AND MINIMUM
2 AMOUNT.—

3 “(1) The Secretary of Transportation shall pre-
4 scribe regulations to require minimum levels of fi-
5 nancial responsibility sufficient to satisfy liability
6 amounts established by the Secretary covering public
7 liability, property damage, and environmental res-
8 toration for the transportation of property by motor
9 vehicle in the United States between a place in a
10 State and—

11 “(A) a place in another State;

12 “(B) another place in the same State
13 through a place outside of that State; or

14 “(C) a place outside the United States.”;

15 (2) by aligning the left margin of paragraph (2)
16 of subsection (b) with the left margin of paragraph
17 (1) of that subsection (as amended by paragraph (1)
18 of this subsection); and

19 (3) by redesignating subsection (c) through (g)
20 as subsections (d) through (h), respectively, and in-
21 serting after subsection (b) the following:

22 “(c) FILING OF EVIDENCE OF FINANCIAL RESPONSI-
23 BILITY.—The Secretary may require a motor private car-
24 rier, as defined in section 13102 of this title, to file with
25 the Secretary the evidence of financial responsibility speci-

1 fied in subsection (b) of this section in an amount not
 2 less than that required by this section, and the laws of
 3 the State or States in which the motor private carrier is
 4 operating, to the extent applicable. The amount of the fi-
 5 nancial responsibility must be sufficient to pay, not more
 6 than the amount of the financial responsibility, for each
 7 final judgment against the motor private carrier for bodily
 8 injury to, or death of, an individual resulting from neg-
 9 ligent operation, maintenance, or use of motor vehicles,
 10 or for loss or damage to property, or both.”.

11 **SEC. 4231. INCREASED PENALTIES FOR OUT-OF-SERVICE**
 12 **VIOLATIONS AND FALSE RECORDS.**

13 (a) Section 521(b)(2)(B) is amended to read as fol-
 14 lows:

15 “(B) RECORDKEEPING AND REPORTING VIOLA-
 16 TIONS.—A person required to make a report to the
 17 Secretary, answer a question, or make, prepare, or
 18 preserve a record under section 504 of this title or
 19 under any regulation issued by the Secretary pursu-
 20 ant to subchapter III of chapter 311 (except sections
 21 31138 and 31139) or section 31502 of this title
 22 about transportation by motor carrier, motor carrier
 23 of migrant workers, or motor private carrier, or an
 24 officer, agent, or employee of that person—

1 “(i) who does not make that report, does
2 not specifically, completely, and truthfully an-
3 swer that question in 30 days from the date the
4 Secretary requires the question to be answered,
5 or does not make, prepare, or preserve that
6 record in the form and manner prescribed by
7 the Secretary, shall be liable to the United
8 States for a civil penalty in an amount not to
9 exceed \$1,000 for each offense, and each day of
10 the violation shall constitute a separate offense,
11 except that the total of all civil penalties as-
12 sessed against any violator for all offenses re-
13 lated to any single violation shall not exceed
14 \$10,000; or

15 “(ii) who knowingly falsifies, destroys, mu-
16 tilates, or changes a required report or record,
17 knowingly files a false report with the Sec-
18 retary, knowingly makes or causes or permits to
19 be made a false or incomplete entry in that
20 record about an operation or business fact or
21 transaction, or knowingly makes, prepares, or
22 preserves a record in violation of a regulation or
23 order of the Secretary, shall be liable to the
24 United States for a civil penalty in an amount
25 not to exceed \$10,000 for each violation, if any

1 such action can be shown to have misrepre-
2 sented a fact that constitutes a violation other
3 than a reporting or recordkeeping violation.”.

4 (b) Section 31310(i)(2) is amended to read as fol-
5 lows:

6 “(2) The Secretary shall prescribe regulations
7 establishing sanctions and penalties related to viola-
8 tions of out-of-service orders by individuals oper-
9 ating commercial motor vehicles. The regulations
10 shall require at least that—

11 “(A) an operator of a commercial motor
12 vehicle found to have committed a first violation
13 of an out-of-service order shall be disqualified
14 from operating such a vehicle for at least 180
15 days and liable for a civil penalty of at least
16 \$2,500;

17 “(B) an operator of a commercial motor
18 vehicle found to have committed a second viola-
19 tion of an out-of-service order shall be disquali-
20 fied from operating such a vehicle for at least
21 2 years and not more than 5 years and liable
22 for a civil penalty of at least \$5,000;

23 “(C) an employer that knowingly allows or
24 requires an employee to operate a commercial
25 motor vehicle in violation of an out-of-service

1 order shall be liable for a civil penalty of not
2 more than \$25,000; and

3 “(D) an employer that knowingly and will-
4 fully allows or requires an employee to operate
5 a commercial motor vehicle in violation of an
6 out-of-service order shall, upon conviction, be
7 subject for each offense to imprisonment for a
8 term not to exceed 1 year or a fine under title
9 18, United States Code, or both.”.

10 **SEC. 4232. ELIMINATION OF COMMODITY AND SERVICE EX-**
11 **EMPTIONS.**

12 (a) Section 13506(a) is amended—

13 (1) by striking paragraphs (6), (11), (12), (13),
14 and (15);

15 (2) by redesignating paragraphs (7), (8), (9),
16 (10), and (14) as paragraphs (6), (7), (8), (9) and
17 (10), respectively;

18 (3) by inserting “or” after the semicolon in
19 paragraph (9), as redesignated; and

20 (4) striking “13904(d); or” in paragraph (1),
21 as redesignated, and inserting “14904(d).”.

22 (b) Section 13507 is amended by striking “(6), (8),
23 (11), (12), or (13)” and inserting “(6)”.

1 **SEC. 4233. INTRASTATE OPERATIONS OF INTERSTATE**
2 **MOTOR CARRIERS.**

3 (a) Subsection (a) of section 31144 is amended to
4 read as follows:

5 “(a) IN GENERAL.—The Secretary shall—

6 “(1) determine whether an owner or operator is
7 fit to operate safely commercial motor vehicles, uti-
8 lizing among other things the accident record of an
9 owner or operator operating in interstate commerce
10 and the accident record and safety inspection record
11 of such owner or operator in operations that affect
12 interstate commerce;

13 “(2) periodically update such safety fitness de-
14 terminations;

15 “(3) make such final safety fitness determina-
16 tions readily available to the public; and

17 “(4) prescribe by regulation penalties for viola-
18 tions of this section consistent with section 521.”.

19 (b) Subsection (c) of section 31144 is amended by
20 adding at the end the following:

21 “(5) TRANSPORTATION AFFECTING INTER-
22 STATE COMMERCE.—Owners or operators of com-
23 mercial motor vehicles prohibited from operating in
24 interstate commerce pursuant to paragraphs (1)
25 through (3) of this section may not operate any
26 commercial motor vehicle that affects interstate

1 commerce until the Secretary determines that such
2 owner or operator is fit.”.

3 (c) Section 31144 is amended by redesignating sub-
4 sections (d), (e), and the second subsection (c) as sub-
5 sections (e), (f), and (g), respectively, and inserting after
6 subsection (c) the following:

7 “(d) DETERMINATION OF UNFITNESS BY A STATE.—
8 If a State that receives Motor Carrier Safety Assistance
9 Program funds pursuant to section 31102 of this title de-
10 termines, by applying the standards prescribed by the Sec-
11 retary under subsection (b) of this section, that an owner
12 or operator of commercial motor vehicles that has its prin-
13 cipal place of business in that State and operates in intra-
14 state commerce is unfit under such standards and pro-
15 hibits the owner or operator from operating such vehicles
16 in the State, the Secretary shall prohibit the owner or op-
17 erator from operating such vehicles in interstate commerce
18 until the State determines that the owner or operator is
19 fit.”.

20 **SEC. 4234. AUTHORITY TO STOP COMMERCIAL MOTOR VE-**
21 **HICLES.**

22 (a) IN GENERAL.—Chapter 2 of title 18, United
23 States Code, is amended by adding at the end the fol-
24 lowing:

1 **“§ 38. Commercial motor vehicles required to stop for**
 2 **inspections**

3 “(a) A driver of a commercial motor vehicle, as de-
 4 fined in section 31132(1) of title 49, shall stop and submit
 5 to inspection of the vehicle, driver, cargo, and required
 6 records when directed to do so by an authorized employee
 7 of the Federal Motor Carrier Safety Administration, De-
 8 partment of Transportation, at or in the vicinity of an in-
 9 spection site. The driver shall not leave the inspection site
 10 until authorized to do so by an authorized employee.

11 “(b) A driver of a commercial motor vehicle, as de-
 12 fined in subsection (a), who knowingly fails to stop for
 13 inspection when directed to do so by an authorized em-
 14 ployee of the Federal Motor Carrier Safety Administration
 15 at or in the vicinity of an inspection site, or leaves the
 16 inspection site without authorization, shall be fined under
 17 this title or imprisoned not more than 1 year, or both.”.

18 (b) AUTHORITY OF FMCSA.—Chapter 203 of title
 19 18, United States Code, is amended by adding at the end
 20 the following:

21 **“§ 3064. Powers of Federal Motor Carrier Safety Ad-**
 22 **ministration**

23 “Authorized employees of the Federal Motor Carrier
 24 Safety Administration may direct a driver of a commercial
 25 motor vehicle, as defined in 49 U.S.C. 31132(1), to stop

1 for inspection of the vehicle, driver, cargo, and required
2 records at or in the vicinity of an inspection site.”.

3 (c) CONFORMING AMENDMENTS.—

4 (1) The chapter analysis for chapter 2 of title
5 18, United States Code, is amended by inserting
6 after the item relating to section 37 the following:

“38. Commercial motor vehicles required to stop for inspections.”.

7 (2) The chapter analysis for chapter 203 of title
8 18, United States Code, is amended by inserting
9 after the item relating to section 3063 the following:

“3064. Powers of Federal Motor Carrier Safety Administration.”.

10 **SEC. 4235. REVOCATION OF OPERATING AUTHORITY.**

11 Section 13905(e) is amended—

12 (1) by striking paragraph (1) and inserting the
13 following:

14 “(1) PROTECTION OF SAFETY.—Notwith-
15 standing subchapter II of chapter 5 of title 5, the
16 Secretary—

17 “(A) may suspend the registration of a
18 motor carrier, a freight forwarder, or a broker
19 for failure to comply with requirements of the
20 Secretary pursuant to section 13904(c) or
21 13906 of this title, or an order or regulation of
22 the Secretary prescribed under those sections;
23 and

1 “(B) shall revoke the registration of a
2 motor carrier that has been prohibited from op-
3 erating in interstate commerce for failure to
4 comply with the safety fitness requirements of
5 section 31144 of this title.”;

6 (2) by striking “may suspend a registration” in
7 paragraph (2) and inserting “shall revoke the reg-
8 istration”; and

9 (3) by striking paragraph (3) and inserting the
10 following:

11 “(3) NOTICE; PERIOD OF SUSPENSION.—The
12 Secretary may suspend or revoke under this sub-
13 section the registration only after giving notice of
14 the suspension or revocation to the registrant. A
15 suspension remains in effect until the registrant
16 complies with the applicable sections or, in the case
17 of a suspension under paragraph (2), until the Sec-
18 retary revokes the suspension.”.

19 **SEC. 4236. PATTERN OF SAFETY VIOLATIONS BY MOTOR**
20 **CARRIER MANAGEMENT.**

21 (a) IN GENERAL.—Section 31135 is amended—

22 (1) by inserting “(a) IN GENERAL.—” before
23 “Each”; and

24 (2) by adding at the end the following:

1 “(b) PATTERN OF NON-COMPLIANCE.—If an officer
2 of a motor carrier engages in a pattern or practice of
3 avoiding compliance, or masking or otherwise concealing
4 non-compliance, with regulations on commercial motor ve-
5 hicle safety prescribed under this subchapter, the Sec-
6 retary may suspend, amend, or revoke any part of the
7 motor carrier’s registration under section 13905 of this
8 title.

9 “(c) LIST OF PROPOSED OFFICERS.—Each person
10 seeking registration as a motor carrier under section
11 13902 of this title shall submit a list of the proposed offi-
12 cers of the motor carrier. If the Secretary determines that
13 any of the proposed officers has previously engaged in a
14 pattern or practice of avoiding compliance, or masking or
15 otherwise concealing non-compliance, with regulations on
16 commercial motor vehicle safety prescribed under this
17 chapter, the Secretary may deny the person’s application
18 for registration as a motor carrier under section
19 13902(a)(3).

20 “(d) REGULATIONS.—The Secretary shall by regula-
21 tion establish standards to implement subsections (b) and
22 (c).

23 “(e) DEFINITIONS.—In this section:

1 “(1) MOTOR CARRIER.—The term motor carrier
2 has the meaning given the term in section
3 13102(12) of this title; and

4 “(2) OFFICER.—The term officer means an
5 owner, chief executive officer, chief operating officer,
6 chief financial officer, safety director, vehicle mainte-
7 nance supervisor and driver supervisor of a motor
8 carrier, regardless of the title attached to those
9 functions.”.

10 (b) REGISTRATION OF CARRIERS.—Section
11 13902(a)(1)(B) is amended to read as follows:

12 “(B) any safety regulations imposed by the Sec-
13 retary, the duties of employers and employees estab-
14 lished by the Secretary under section 31135, and the
15 safety fitness requirements established by the Sec-
16 retary under section 31144; and”.

17 **SEC. 4237. MOTOR CARRIER RESEARCH AND TECHNOLOGY**
18 **PROGRAM.**

19 (a) IN GENERAL.—Section 31108 is amended to read
20 as follows:

21 **“§ 31108. Motor carrier research and technology pro-**
22 **gram**

23 “(a) RESEARCH, TECHNOLOGY, AND TECHNOLOGY
24 TRANSFER ACTIVITIES.—

1 “(1) The Secretary of Transportation shall es-
2 tablish and carry out a motor carrier and motor
3 coach research and technology program. The Sec-
4 retary may carry out research, development, tech-
5 nology, and technology transfer activities with re-
6 spect to—

7 “(A) the causes of accidents, injuries and
8 fatalities involving commercial motor vehicles;
9 and

10 “(B) means of reducing the number and
11 severity of accidents, injuries and fatalities in-
12 volving commercial motor vehicles.

13 “(2) The Secretary may test, develop, or assist
14 in testing and developing any material, invention,
15 patented article, or process related to the research
16 and technology program.

17 “(3) The Secretary may use the funds appro-
18 priated to carry out this section for training or edu-
19 cation of commercial motor vehicle safety personnel,
20 including, but not limited to, training in accident re-
21 construction and detection of controlled substances
22 or other contraband, and stolen cargo or vehicles.

23 “(4) The Secretary may carry out this
24 section—

25 “(A) independently;

1 “(B) in cooperation with other Federal de-
2 partments, agencies, and instrumentalities and
3 Federal laboratories; or

4 “(C) by making grants to, or entering into
5 contracts, cooperative agreements, and other
6 transactions with, any Federal laboratory, State
7 agency, authority, association, institution, for-
8 profit or non-profit corporation, organization,
9 foreign country, or person.

10 “(5) The Secretary shall use funds made avail-
11 able to carry out this section to develop, administer,
12 communicate, and promote the use of products of re-
13 search, technology, and technology transfer pro-
14 grams under this section.

15 “(b) COLLABORATIVE RESEARCH AND DEVELOP-
16 MENT.—

17 “(1) To advance innovative solutions to prob-
18 lems involving commercial motor vehicle and motor
19 carrier safety, security, and efficiency, and to stimu-
20 late the deployment of emerging technology, the Sec-
21 retary may carry out, on a cost-shared basis, col-
22 laborative research and development with—

23 “(A) non-Federal entities, including State
24 and local governments, foreign governments,
25 colleges and universities, corporations, institu-

1 tions, partnerships, and sole proprietorships
2 that are incorporated or established under the
3 laws of any State; and

4 “(B) Federal laboratories.

5 “(2) In carrying out this subsection, the Sec-
6 retary may enter into cooperative research and de-
7 velopment agreements (as defined in section 12 of
8 the Stevenson-Wydler Technology Innovation Act of
9 1980 (15 U.S.C. 3710a)).

10 “(3)(A) The Federal share of the cost of activi-
11 ties carried out under a cooperative research and de-
12 velopment agreement entered into under this sub-
13 section shall not exceed 50 percent, except that if
14 there is substantial public interest or benefit, the
15 Secretary may approve a greater Federal share.

16 “(B) All costs directly incurred by the non-Fed-
17 eral partners, including personnel, travel, and hard-
18 ware or software development costs, shall be credited
19 toward the non-Federal share of the cost of the ac-
20 tivities described in subparagraph (A).

21 “(4) The research, development, or use of a
22 technology under a cooperative research and develop-
23 ment agreement entered into under this subsection,
24 including the terms under which the technology may
25 be licensed and the resulting royalties may be dis-

1 tributed, shall be subject to the Stevenson-Wydler
2 Technology Innovation Act of 1980 (15 U.S.C. 3701
3 et seq.).

4 “(5) Section 5 of title 41, United States Code,
5 shall not apply to a contract or agreement entered
6 into under this section.

7 “(c) AVAILABILITY OF AMOUNTS.—The amounts
8 made available under section 4222(a) of the Motor Carrier
9 Safety Reauthorization Act of 2004 to carry out this sec-
10 tion shall remain available until expended.

11 “(d) CONTRACT AUTHORITY.—Approval by the Sec-
12 retary of a grant with funds made available under section
13 4222(a) of the Motor Carrier Safety Reauthorization Act
14 of 2004 to carry out this section imposes upon the United
15 States Government a contractual obligation for payment
16 of the Government’s share of costs incurred in carrying
17 out the objectives of the grant.”.

18 (b) CONFORMING AMENDMENT.—The chapter anal-
19 ysis for chapter 311 is amended by striking the item relat-
20 ing to section 31108, and inserting the following:

“31108. Motor carrier research and technology program.”.

21 **SEC. 4238. REVIEW OF COMMERCIAL ZONE EXEMPTION**
22 **PROVISION.**

23 (a) IN GENERAL.—Not later than 1 year after the
24 date of enactment of this Act, the Secretary of Transpor-
25 tation shall complete a review of part 372 of title 49, Code

1 of Federal Regulations, as it pertains to commercial zone
2 exemptions (excluding border commercial zones) from De-
3 partment of Transportation and Surface Transportation
4 Board regulations governing interstate commerce. The
5 Secretary shall determine whether such exemptions should
6 continue to apply as written, should undergo revision, or
7 should be revoked. The Secretary shall submit to the Sen-
8 ate Committee on Commerce, Science, and Transportation
9 and the House of Representatives Committee on Trans-
10 portation and Infrastructure a report of the review not
11 later than 14 months after such date of enactment.

12 (b) NOTICE.—The Secretary shall publish notice of
13 the review required by subsection (a) and provide and op-
14 portunity for the public to submit comments on the effect
15 of continuing, revising, or revoking the commercial zone
16 exemptions in part 372 of title 49, Code of Federal Regu-
17 lations.

18 **SEC. 4239. INTERNATIONAL COOPERATION.**

19 (a) IN GENERAL.—Chapter 311 is amended by in-
20 serting at the end the following:

21 **“Subchapter IV—Miscellaneous**

22 **“§ 31161. International cooperation**

23 “The Secretary is authorized to use funds appro-
24 priated under section 31104(i) of this title to participate
25 and cooperate in international activities to enhance motor

1 carrier, commercial motor vehicle, driver, and highway
 2 safety by such means as exchanging information, con-
 3 ducting research, and examining needs, best practices, and
 4 new technology.”.

5 (b) CLERICAL AMENDMENT.—The chapter analysis
 6 for chapter 311 is amended by adding at the end the fol-
 7 lowing:

“SUBCHAPTER IV—MISCELLANEOUS

“31161. International cooperation.”.

8 **SEC. 4240. PERFORMANCE AND REGISTRATION INFORMA-**
 9 **TION SYSTEM MANAGEMENT.**

10 (a) IN GENERAL.—Section 31106(b) is amended—

11 (1) by striking paragraphs (2) and (3) and in-
 12 serting the following:

13 “(2) DESIGN.—The program shall link Federal
 14 motor carrier safety information systems with State
 15 commercial vehicle registration and licensing systems
 16 and shall be designed to enable a State to—

17 “(A) determine the safety fitness of a
 18 motor carrier or registrant when licensing or
 19 registering the registrant or motor carrier or
 20 while the license or registration is in effect; and

21 “(B) deny, suspend, or revoke the commer-
 22 cial motor vehicle registrations of a motor car-
 23 rier or registrant that has been issued an oper-
 24 ations out-of-service order by the Secretary.

1 “(3) CONDITIONS FOR PARTICIPATION.—The
2 Secretary shall require States, as a condition of par-
3 ticipation in the program, to—

4 “(A) comply with the uniform policies, pro-
5 cedures, and technical and operational stand-
6 ards prescribed by the Secretary under sub-
7 section (a)(4);

8 “(B) possess the authority to impose sanc-
9 tions relating to commercial motor vehicle reg-
10 istration on the basis of a Federal safety fitness
11 determination; and

12 “(C) cancel the motor vehicle registration
13 and seize the registration plates of an employer
14 found liable under section 31310(i)(2)(C) of
15 this title for knowingly allowing or requiring an
16 employee to operate a commercial motor vehicle
17 in violation of an out-of-service order.”; and

18 (2) by striking paragraph (4).

19 (b) PERFORMANCE AND REGISTRATION INFORMA-
20 TION SYSTEM MANAGEMENT GRANTS.—

21 (1) Subchapter I of chapter 311, as amended
22 by this title, is further amended by adding at the
23 end the following:

1 **“§ 31109. Performance and Registration Information**
2 **System Management**

3 “(a) IN GENERAL.—From the funds authorized by
4 section 4222(c)(2) of the Motor Carrier Safety Reauthor-
5 ization Act of 2004, the Secretary may make a grant in
6 a fiscal year to a State to implement the performance and
7 registration information system management require-
8 ments of section 31106(b).

9 “(b) AVAILABILITY OF AMOUNTS.—Amounts made
10 available to a State under section 4222(c)(2) of the Motor
11 Carrier Safety Reauthorization Act of 2004 to carry out
12 this section shall remain available until expended.

13 “(c) SECRETARY’S APPROVAL.—Approval by the Sec-
14 retary of a grant to a State under section 4222(c)(2) of
15 the Motor Carrier Safety Reauthorization Act of 2004 to
16 carry out this section is a contractual obligation of the
17 Government for payment of the amount of the grant.”.

18 (2) CONFORMING AMENDMENT.—The chapter
19 analysis for chapter 311 is amended by inserting
20 after the item relating to section 31108 the fol-
21 lowing:

“31109. Performance and Registration Information System Management.”.

1 **SEC. 4241. COMMERCIAL VEHICLE INFORMATION SYSTEMS**
2 **AND NETWORKS DEPLOYMENT.**

3 (a) IN GENERAL.—The Secretary shall carry out a
4 commercial vehicle information systems and networks pro-
5 gram to—

6 (1) improve the safety and productivity of com-
7 mercial vehicles; and

8 (2) reduce costs associated with commercial ve-
9 hicle operations and Federal and State commercial
10 vehicle regulatory requirements.

11 (b) PURPOSE.—The program shall advance the tech-
12 nological capability and promote the deployment of intel-
13 ligent transportation system applications for commercial
14 vehicle operations, including commercial vehicle, commer-
15 cial driver, and carrier-specific information systems and
16 networks.

17 (c) CORE DEPLOYMENT GRANTS.—

18 (1) IN GENERAL.—The Secretary shall make
19 grants to eligible States for the core deployment of
20 commercial vehicle information systems and net-
21 works.

22 (2) ELIGIBILITY.—To be eligible for a core de-
23 ployment grant under this section, a State—

24 (A) shall have a commercial vehicle infor-
25 mation systems and networks program plan and

1 a top level system design approved by the Sec-
2 retary;

3 (B) shall certify to the Secretary that its
4 commercial vehicle information systems and
5 networks deployment activities, including hard-
6 ware procurement, software and system devel-
7 opment, and infrastructure modifications, are
8 consistent with the national intelligent transpor-
9 tation systems and commercial vehicle informa-
10 tion systems and networks architectures and
11 available standards, and promote interoper-
12 ability and efficiency to the extent practicable;
13 and

14 (C) shall agree to execute interoperability
15 tests developed by the Federal Motor Carrier
16 Safety Administration to verify that its systems
17 conform with the national intelligent transpor-
18 tation systems architecture, applicable stand-
19 ards, and protocols for commercial vehicle infor-
20 mation systems and networks.

21 (3) AMOUNT OF GRANTS.—The maximum ag-
22 gregate amount a State may receive under this sec-
23 tion for the core deployment of commercial vehicle
24 information systems and networks may not exceed
25 \$2,500,000.

1 (4) USE OF FUNDS.—Funds from a grant
2 under this subsection may only be used for the core
3 deployment of commercial vehicle information sys-
4 tems and networks. Eligible States that have either
5 completed the core deployment of commercial vehicle
6 information systems and networks or completed such
7 deployment before core deployment grant funds are
8 expended may use the remaining core deployment
9 grant funds for the expanded deployment of com-
10 mercial vehicle information systems and networks in
11 their State.

12 (d) EXPANDED DEPLOYMENT GRANTS.—

13 (1) IN GENERAL.—For each fiscal year, from
14 the funds remaining after the Secretary has made
15 core deployment grants under subsection (c) of this
16 section, the Secretary may make grants to each eli-
17 gible State, upon request, for the expanded deploy-
18 ment of commercial vehicle information systems and
19 networks.

20 (2) ELIGIBILITY.—Each State that has com-
21 pleted the core deployment of commercial vehicle in-
22 formation systems and networks is eligible for an ex-
23 panded deployment grant.

24 (3) AMOUNT OF GRANTS.—Each fiscal year, the
25 Secretary may distribute funds available for ex-

1 panded deployment grants equally among the eligible
2 States, but not to exceed \$1,000,000 per State.

3 (4) USE OF FUNDS.—A State may use funds
4 from a grant under this subsection only for the ex-
5 panded deployment of commercial vehicle informa-
6 tion systems and networks.

7 (e) FEDERAL SHARE.—The Federal share of the cost
8 of a project payable from funds made available to carry
9 out this section shall not exceed 50 percent. The total Fed-
10 eral share of the cost of a project payable from all eligible
11 sources shall not exceed 80 percent.

12 (f) APPLICABILITY OF TITLE 23, UNITED STATES
13 CODE.—Funds authorized to be appropriated under sec-
14 tion 4222(c)(4) shall be available for obligation in the
15 same manner and to the same extent as if such funds were
16 apportioned under chapter 1 of title 23, United States
17 Code, except that such funds shall remain available until
18 expended.

19 (g) DEFINITIONS.—In this section:

20 (1) COMMERCIAL VEHICLE INFORMATION SYS-
21 TEMS AND NETWORKS.—The term “commercial ve-
22 hicle information systems and networks” means the
23 information systems and communications networks
24 that provide the capability to—

1 (A) improve the safety of commercial vehi-
2 cle operations;

3 (B) increase the efficiency of regulatory in-
4 spection processes to reduce administrative bur-
5 dens by advancing technology to facilitate in-
6 spections and increase the effectiveness of en-
7 forcement efforts;

8 (C) advance electronic processing of reg-
9 istration information, driver licensing informa-
10 tion, fuel tax information, inspection and crash
11 data, and other safety information;

12 (D) enhance the safe passage of commer-
13 cial vehicles across the United States and
14 across international borders; and

15 (E) promote the communication of infor-
16 mation among the States and encourage
17 multistate cooperation and corridor develop-
18 ment.

19 (2) COMMERCIAL VEHICLE OPERATIONS.—The
20 term “commercial vehicle operations”—

21 (A) means motor carrier operations and
22 motor vehicle regulatory activities associated
23 with the commercial movement of goods, includ-
24 ing hazardous materials, and passengers; and

1 (B) with respect to the public sector, in-
2 cludes the issuance of operating credentials, the
3 administration of motor vehicle and fuel taxes,
4 and roadside safety and border crossing inspec-
5 tion and regulatory compliance operations.

6 (3) CORE DEPLOYMENT.—The term “core de-
7 ployment” means the deployment of systems in a
8 State necessary to provide the State with the fol-
9 lowing capabilities:

10 (A) SAFETY INFORMATION EXCHANGE.—

11 Safety information exchange to—

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

15 (ii) connect to the Safety and Fitness
16 Electronic Records system for access to
17 interstate carrier and commercial vehicle
18 data, summaries of past safety perform-
19 ance, and commercial vehicle credentials
20 information; and

21 (iii) exchange carrier data and com-
22 mercial vehicle safety and credentials infor-
23 mation within the State and connect to
24 Safety and Fitness Electronic Records for

1 access to interstate carrier and commercial
2 vehicle data.

3 (B) INTERSTATE CREDENTIALS ADMINIS-
4 TRATION.—Interstate credentials administration
5 to—

6 (i) perform end-to-end processing, in-
7 cluding carrier application, jurisdiction ap-
8 plication processing, and credential
9 issuance, of at least the International Reg-
10 istration Plan and International Fuel Tax
11 Agreement credentials and extend this
12 processing to other credentials, including
13 intrastate, titling, oversize/overweight, car-
14 rier registration, and hazardous materials;

15 (ii) connect to the International Reg-
16 istration Plan and International Fuel Tax
17 Agreement clearinghouses; and

18 (iii) have at least 10 percent of the
19 transaction volume handled electronically,
20 and have the capability to add more car-
21 riers and to extend to branch offices where
22 applicable.

23 (C) ROADSIDE SCREENING.—Roadside
24 electronic screening to electronically screen
25 transponder-equipped commercial vehicles at a

1 minimum of 1 fixed or mobile inspection sites
2 and to replicate this screening at other sites.

3 (4) EXPANDED DEPLOYMENT.—The term “ex-
4 panded deployment” means the deployment of sys-
5 tems in a State that exceed the requirements of an
6 core deployment of commercial vehicle information
7 systems and networks, improve safety and the pro-
8 ductivity of commercial vehicle operations, and en-
9 hance transportation security.

10 **SEC. 4242. OUTREACH AND EDUCATION.**

11 (a) IN GENERAL.—The Secretary of Transportation,
12 through the National Highway Traffic Safety Administra-
13 tion and the Federal Motor Carrier Safety Administration,
14 may undertake outreach and education initiatives, includ-
15 ing the “Share the Road Safely” program, that may re-
16 duce the number of highway accidents, injuries, and fatali-
17 ties involving commercial motor vehicles. The Secretary
18 may not use funds authorized by this part for the “Safety
19 Is Good Business” program.

20 (b) AUTHORIZATION OF APPROPRIATIONS.—There
21 are authorized to be appropriated to the Secretary for fis-
22 cal year 2004 to carry out this section—

23 (1) \$250,000 for the Federal Motor Carrier
24 Safety Administration; and

1 (2) \$750,000 for the National Highway Traffic
2 Safety Administration.

3 **SEC. 4243. OPERATION OF RESTRICTED PROPERTY-CAR-**
4 **RYING UNITS ON NATIONAL HIGHWAY SYS-**
5 **TEM.**

6 (a) RESTRICTED PROPERTY-CARRYING UNIT DE-
7 FINED.—Section 31111(a) is amended—

8 (1) by redesignating paragraph (3) as para-
9 graph (4); and

10 (2) by inserting after paragraph (2) the fol-
11 lowing:

12 “(3) RESTRICTED PROPERTY-CARRYING
13 UNIT.—The term ‘restricted property-carrying unit’
14 means any trailer, semi-trailer, container, or other
15 property-carrying unit that is longer than 53 feet.”.

16 (b) PROHIBITION ON OPERATION OF RESTRICTED
17 PROPERTY-CARRYING UNITS.—

18 (1) IN GENERAL.—Section 31111(b)(1)(C) is
19 amended to read as follows:

20 “(C) allows operation on any segment of the
21 National Highway System, including the Interstate
22 System, of a restricted property-carrying unit unless
23 the operation is specified on the list published under
24 subsection (h);”.

1 (2) EFFECTIVE DATE.—The amendment made
2 by paragraph (1) shall take effect 270 days after the
3 date of enactment of this subsection.

4 (c) LIMITATIONS.—Section 31111 is amended by
5 adding at the end the following:

6 “(h) RESTRICTED PROPERTY-CARRYING UNITS.—

7 “(1) APPLICABILITY OF PROHIBITION.—

8 “(A) IN GENERAL.—Notwithstanding sub-
9 section (b)(1)(C), a restricted property-carrying
10 unit may continue to operate on a segment of
11 the National Highway System if the operation
12 of such unit is specified on the list published
13 under paragraph (2).

14 “(B) APPLICABILITY OF STATE LAWS AND
15 REGULATIONS.—All operations specified on the
16 list published under paragraph (2) shall con-
17 tinue to be subject to all State statutes, regula-
18 tions, limitations and conditions, including rout-
19 ing-specific, commodity-specific, and configura-
20 tion-specific designations and all other restric-
21 tions, in force on June 1, 2003.

22 “(C) FIRE-FIGHTING UNITS.—Subsection
23 (b)(1)(C) shall not apply to the operation of a
24 restricted property-carrying unit that is used
25 exclusively for fire-fighting.

1 “(2) LISTING OF RESTRICTED PROPERTY-CAR-
2 RYING UNITS.—

3 “(A) IN GENERAL.—Not later than 60
4 days after the date of enactment of the Motor
5 Carrier Safety Reauthorization Act of 2004, the
6 Secretary shall initiate a proceeding to deter-
7 mine and publish a list of restricted property-
8 carrying units that were authorized by State of-
9 ficials pursuant to State statute or regulation
10 on June 1, 2003, and in actual and lawful oper-
11 ation on a regular or periodic basis (including
12 seasonal operations) on or before June 1, 2003.

13 “(B) LIMITATION.—A restricted property-
14 carrying unit may not be included on the list
15 published under subparagraph (A) on the basis
16 that a State law or regulation could have au-
17 thorized the operation of the unit at some prior
18 date by permit or otherwise.

19 “(C) PUBLICATION OF FINAL LIST.—Not
20 later than 270 days after the date of enactment
21 of this subsection, the Secretary shall publish a
22 final list of restricted property-carrying units
23 described in subparagraph (A).

24 “(D) UPDATES.—The Secretary shall up-
25 date the list published under subparagraph (C)

1 as necessary to reflect new designations made
2 to the National Highway System.

3 “(3) APPLICABILITY OF PROHIBITION.—The
4 prohibition established by subsection (b)(1)(C) shall
5 apply to any new designation made to the National
6 Highway System and remain in effect on those por-
7 tions of the National Highway System that cease to
8 be designated as part of the National Highway Sys-
9 tem.

10 “(4) LIMITATION ON STATUTORY CONSTRUC-
11 TION.—This subsection does not prevent a State
12 from further restricting in any manner or prohib-
13 iting the operation of a restricted property-carrying
14 unit; except that such restrictions or prohibitions
15 shall be consistent with the requirements of this sec-
16 tion and sections 31112 through 31114.”.

17 (d) ENFORCEMENT.—The second sentence of section
18 141(a) of title 23, United States Code, is amended by
19 striking “section 31112” and inserting “sections 31111
20 and 31112”.

21 **SEC. 4244. OPERATION OF LONGER COMBINATION VEHI-**
22 **CLES ON NATIONAL HIGHWAY SYSTEM.**

23 (a) IN GENERAL.—Section 31112 is amended—

24 (1) by redesignating subsections (f) and (g) as
25 subsections (g) and (h), respectively; and

1 (2) by inserting after subsection (e) the fol-
2 lowing:

3 “(f) NATIONAL HIGHWAY SYSTEM.—

4 “(1) GENERAL RULE.—A State may not allow,
5 on a segment of the National Highway System that
6 is not covered under subsection (b) or (c), the oper-
7 ation of a commercial motor vehicle combination (ex-
8 cept a vehicle or load that cannot be dismantled eas-
9 ily or divided easily and that has been issued a spe-
10 cial permit under applicable State law) with more
11 than 1 property-carrying unit (not including the
12 truck tractor) whose property-carrying units are
13 more than—

14 “(A) the maximum combination trailer,
15 semitrailer, or other type of length limitation al-
16 lowed by law or regulation of that State on
17 June 1, 2003; or

18 “(B) the length of the property-carrying
19 units of those commercial motor vehicle com-
20 binations, by specific configuration, in actual
21 and lawful operation on a regular or periodic
22 basis (including continuing seasonal operation)
23 in that State on or before June 1, 2003.

24 “(2) ADDITIONAL LIMITATIONS.—

1 “(A) APPLICABILITY OF STATE RESTRIC-
2 TIONS.—A commercial motor vehicle combina-
3 tion whose operation in a State is not prohib-
4 ited under paragraph (1) may continue to oper-
5 ate in the State on highways described in para-
6 graph (1) only in compliance with all State
7 laws, regulations, limitations, and conditions,
8 including routing-specific and configuration-spe-
9 cific designations and all other restrictions in
10 force in the State on June 1, 2003. Subject to
11 regulations prescribed by the Secretary under
12 subsection (h), the State may make minor ad-
13 justments of a temporary and emergency nature
14 to route designations and vehicle operating re-
15 strictions in effect on June 1, 2003, for specific
16 safety purposes and road construction.

17 “(B) ADDITIONAL STATE RESTRICTIONS.—
18 This subsection does not prevent a State from
19 further restricting in any manner or prohibiting
20 the operation of a commercial motor vehicle
21 combination subject to this section, except that
22 such restrictions or prohibitions shall be con-
23 sistent with this section and sections 31113(a),
24 31113(b), and 31114.

1 “(C) MINOR ADJUSTMENTS.—A State
2 making a minor adjustment of a temporary and
3 emergency nature as authorized by subpara-
4 graph (A) or further restricting or prohibiting
5 the operation of a commercial motor vehicle
6 combination as authorized by subparagraph (B)
7 shall advise the Secretary not later than 30
8 days after the action. The Secretary shall pub-
9 lish a notice of the action in the Federal Reg-
10 ister.

11 “(3) LIST OF STATE LENGTH LIMITATIONS.—

12 “(A) STATE SUBMISSIONS.—Not later than
13 60 days after the date of enactment of the
14 Motor Carrier Safety Reauthorization Act of
15 2004, each State shall submit to the Secretary
16 for publication a complete list of State length
17 limitations applicable to commercial motor vehi-
18 cle combinations operating in the State on the
19 highways described in paragraph (1). The list
20 shall indicate the applicable State laws and reg-
21 ulations associated with the length limitations.
22 If a State does not submit the information as
23 required, the Secretary shall complete and file
24 the information for the State.

1 “(B) PUBLICATION OF INTERIM LIST.—
2 Not later than 90 days after the date of enact-
3 ment of the Motor Carrier Safety Reauthoriza-
4 tion Act of 2004, the Secretary shall publish an
5 interim list in the Federal Register consisting
6 of all information submitted under subpara-
7 graph (A). The Secretary shall review for accu-
8 racy all information submitted by a State under
9 subparagraph (A) and shall solicit and consider
10 public comment on the accuracy of the informa-
11 tion.

12 “(C) LIMITATION.—A law or regulation
13 may not be included on the list submitted by a
14 State or published by the Secretary merely be-
15 cause it authorized, or could have authorized,
16 by permit or otherwise, the operation of com-
17 mercial motor vehicle combinations not in ac-
18 tual operation on a regular or periodic basis on
19 or before June 1, 2003.

20 “(D) PUBLICATION OF FINAL LIST.—Ex-
21 cept as revised under this subparagraph or sub-
22 paragraph (E), the list shall be published as
23 final in the Federal Register not later than 270
24 days after the date of enactment of the Motor
25 Carrier Safety Reauthorization Act of 2004. In

1 publishing the final list, the Secretary shall
2 make any revisions necessary to correct inaccuracies
3 identified under subparagraph (B).
4 After publication of the final list, commercial
5 motor vehicle combinations prohibited under
6 paragraph (1) may not operate on a highway
7 described in paragraph (1) except as published
8 on the list.

9 “(E) INACCURACIES.—On the Secretary’s
10 own motion or on request by any person (in-
11 cluding a State), the Secretary shall review the
12 list published under subparagraph (D). If the
13 Secretary decides there is reason to believe a
14 mistake was made in the accuracy of the list,
15 the Secretary shall begin a proceeding to decide
16 whether a mistake was made. If the Secretary
17 decides there was a mistake, the Secretary shall
18 publish the correction.”.

19 (b) CONFORMING AMENDMENTS.—Section 31112 is
20 amended—

21 (1) by inserting “126(e) or” before “127(d)” in
22 subsection (g)(1) (as redesignated by subsection (a)
23 of this section);

24 (2) by inserting “(or June 1, 2003, with respect
25 to highways described in subsection (f)(1))” after

1 “June 2, 1991” in subsection (g)(3) (as redesignig-
 2 nated by subsection (a) of this section); and

3 (3) by striking “Not later than June 15, 1992,
 4 the Secretary” in subsection (h)(2) (as redesignated
 5 by subsection (a) of this section) and inserting “The
 6 Secretary”; and

7 (4) by inserting “or (f)” in subsection (h)(2)
 8 (as redesignated by subsection (a) of this section)
 9 after “subsection (d)”.

10 **SEC. 4245. APPLICATION OF SAFETY STANDARDS TO CER-**
 11 **TAIN FOREIGN MOTOR CARRIERS.**

12 (a) APPLICATION OF SAFETY STANDARDS.—Section
 13 30112 is amended—

14 (1) by striking “person” in subsection (a) and
 15 inserting “person, including a foreign motor car-
 16 rier,”; and

17 (2) by adding at the end the following:

18 “(c) DEFINITIONS.—In this section:

19 “(1) FOREIGN MOTOR CARRIER.—The term
 20 ‘foreign motor carrier’ has the meaning given that
 21 term in section 13102 of this title.

22 “(2) IMPORT.—The term ‘import’ means trans-
 23 port by any means into the United States, on a per-
 24 manent or temporary basis, including the transpor-
 25 tation of a motor vehicle into the United States for

1 the purpose of providing the transportation of cargo
2 or passengers.”.

3 (b) REQUIREMENT FOR CERTIFICATE OF COMPLI-
4 ANCE.—Section 30115 is amended by adding at the end
5 the following:

6 “(c) APPLICATION TO FOREIGN MOTOR CARRIERS.—

7 “(1) IN GENERAL.—The requirement for certifi-
8 cation described in subsection (a) shall apply to a
9 foreign motor carrier that imports a motor vehicle or
10 motor vehicle equipment into the United States.
11 Such certification shall be made to the Secretary of
12 Transportation prior to the import of the vehicle or
13 equipment.

14 “(2) DEFINITIONS.—In this subsection:

15 “(A) FOREIGN MOTOR CARRIER.—The
16 term ‘foreign motor carrier’ has the meaning
17 given that term in section 13102 of this title.

18 “(B) IMPORT.—The term ‘import’ has the
19 meaning given that term in section 30112 of
20 this title.”.

21 (c) TIME FOR COMPLIANCE.—The amendments made
22 by sections (a) and (b) shall take effect on September 1,
23 2004.

1 **SEC. 4246. BACKGROUND CHECKS FOR MEXICAN AND CA-**
2 **NADIAN DRIVERS HAULING HAZARDOUS MA-**
3 **TERIALS.**

4 (a) **IN GENERAL.**—No commercial motor vehicle op-
5 erator registered to operate in Mexico or Canada may op-
6 erate a commercial motor vehicle transporting a hazardous
7 material in commerce in the United States until the oper-
8 ator has undergone a background records check similar
9 to the background records check required for commercial
10 motor vehicle operators licensed in the United States to
11 transport hazardous materials in commerce.

12 (b) **DEFINITIONS.**—In this section:

13 (1) **HAZARDOUS MATERIALS.**—The term “haz-
14 arduous material” means any material determined by
15 the Secretary of Transportation to be a hazardous
16 material for purposes of this section.

17 (2) **COMMERCIAL MOTOR VEHICLE.**—The term
18 “commercial motor vehicle” has the meaning given
19 that term by section 31101 of title 49, United
20 States Code.

21 (c) **EFFECTIVE DATE.**—This section takes effect on
22 April 1, 2004.

1 **SEC. 4247. EXEMPTION OF DRIVERS OF UTILITY SERVICE**
2 **VEHICLES.**

3 Section 345 of the National Highway System Des-
4 ignation Act of 1995 (49 U.S.C. 31136 note) is
5 amended—

6 (1) by striking paragraph (4) of subsection (a)
7 and inserting the following:

8 “(4) DRIVERS OF UTILITY SERVICE VEHI-
9 CLES.—

10 “(A) INAPPLICABILITY OF FEDERAL REGU-
11 LATIONS.—Such regulations may not apply to a
12 driver of a utility service vehicle.

13 “(B) PROHIBITION ON STATE REGULA-
14 TIONS.—A State, a political subdivision of a
15 State, an interstate agency, or other entity con-
16 sisting of 2 or more States, may not enact or
17 enforce any law, rule, regulation, or standard
18 that imposes requirements on a driver of a util-
19 ity service vehicle that are similar to the re-
20 quirements contained in such regulations.”;

21 (2) by striking “Nothing” in subsection (b) and
22 inserting “Except as provided in subsection (a)(4),
23 nothing”; and

24 (3) by striking “paragraph (2)” in the first sen-
25 tence of subsection (c) and inserting “an exemption
26 under paragraph (2) or (4)”.

1 **SEC. 4248. OPERATION OF COMMERCIAL MOTOR VEHICLES**
2 **TRANSPORTING AGRICULTURAL COMMOD-**
3 **ITIES AND FARM SUPPLIES.**

4 (a) EXEMPTION FROM HOURS-OF-SERVICE RE-
5 QUIREMENTS.—

6 (1) IN GENERAL.—Section 345(c) of the Na-
7 tional Highway System Designation Act of 1995 (49
8 U.S.C. 31136 note), as amended by section 4247(3)
9 of this title, is amended by striking “paragraph (2)
10 or (4)” and inserting “paragraph (1), (2), or (4) of
11 that subsection)”.

12 (2) APPLICABILITY.—The exemption provided
13 by section 345(a)(1) of the National Highway Sys-
14 tem Designation Act of 1995 (49 U.S.C. 31136
15 note) shall apply to a person transporting agricul-
16 tural commodities or farm supplies for agricultural
17 purposes under that section on and after the date of
18 enactment of this Act regardless of any action taken
19 by the Secretary of Transportation under section
20 345(c) of that Act before the date of enactment of
21 this Act.

22 (b) DEFINITION OF AGRICULTURAL COMMODITY.—
23 Section 345(e) of the National Highway System Designa-
24 tion Act of 1995 (49 U.S.C. 31136 note) is amended—

25 (1) by redesignating paragraphs (3), (4), (5),
26 and (6) as paragraphs (5), (6), (4), and (7), respec-

1 tively, and moving the paragraphs so as to appear
2 in numerical order; and

3 (2) by inserting after paragraph (2) the fol-
4 lowing:

5 “(3) AGRICULTURAL COMMODITY.—The term
6 ‘agricultural commodity’ has the meaning given the
7 term in section 102 of the Agricultural Trade Act of
8 1978 (7 U.S.C. 5602).”.

9 **SEC. 4249. SAFETY PERFORMANCE HISTORY SCREENING.**

10 (a) IN GENERAL.—Subchapter III of chapter 311, as
11 amended by section 4228, is amended by adding at the
12 end the following:

13 **“§ 31150. Safety performance history screening**

14 “(a) IN GENERAL.—The Secretary of Transportation
15 shall provide companies conducting pre-employment
16 screening services for the motor carrier industry electronic
17 access to—

18 “(1) commercial motor vehicle accident reports,

19 “(2) inspection reports that contain no driver-
20 related safety violations, and

21 “(3) serious driver-related safety violation in-
22 spection reports that are contained in the Motor
23 Carrier Management Information System.

1 “(b) ESTABLISHMENT.—Prior to making information
2 available to such companies under subsection (a), the Sec-
3 retary shall—

4 “(1) ensure that any information released is
5 done in accordance with the Fair Credit Reporting
6 Act (15 U.S.C. 1681 et seq.) and all applicable Fed-
7 eral laws;

8 “(2) require the driver applicant’s written con-
9 sent as a condition of releasing the information;

10 “(3) ensure that the information made available
11 to companies providing pre-employment screening
12 services is not released to any other unauthorized
13 company or individual, unless expressly authorized
14 or required by law; and

15 “(4) provide a procedure for drivers to remedy
16 incorrect information in a timely manner.

17 “(c) DESIGN.—To be eligible to have access to infor-
18 mation under subsection (a), a company conducting pre-
19 employment screening services for the motor carrier indus-
20 try shall utilize a screening process—

21 “(1) that is designed to assist the motor carrier
22 industry in assessing an individual driver’s crash
23 and serious safety violation inspection history as a
24 pre-employment condition;

25 “(2) the use of which is not mandatory; and

1 “(3) which is used only during the pre-employ-
2 ment assessment of a driver-applicant.

3 “(d) SERIOUS DRIVER-RELATED SAFETY VIOLA-
4 TIONS.—In this section, the term ‘serious driver-related
5 safety violation’ means a violation listed in the North
6 American Standard Driver Out-of-service Criteria that
7 prohibits the continued operation of a commercial motor
8 vehicle.”.

9 (b) CONFORMING AMENDMENT.—The chapter anal-
10 ysis for chapter 311, as amended by section 4228, is
11 amended by inserting after the item relating to section
12 31149 the following:

“31150. Safety performance history screening.”.

13 **SEC. 4250. COMPLIANCE REVIEW AUDIT.**

14 Within 1 year after the date of enactment of this Act,
15 the Inspector General for the Department of Transpor-
16 tation shall audit the compliance reviews performed by the
17 Federal Motor Carrier Safety Administration in fiscal year
18 2003 and submit a report to the Senate Committee on
19 Commerce, Science, and Transportation and the House of
20 Representatives Committee on Transportation and Infra-
21 structure on—

22 (1) the enforcement actions taken as a result of
23 the compliance reviews, including fines, suspension
24 or revocation of operating authority, unsatisfactory

1 ratings, and follow-up actions to ensure compliance
2 with Federal motor carrier safety regulations;

3 (2) whether compliance reviews are or should be
4 performed on a corporate-wide basis for all affiliates
5 of the motor carrier selected for a compliance review
6 as a result of its Safety Status Measurement System
7 ranking or the submission of a complaint;

8 (3) whether the enforcement actions taken by
9 the Federal Motor Carrier Safety Administration are
10 adequate to assure future compliance of the motor
11 carrier with Federal safety regulations and what de-
12 terrent effect those enforcement actions may have
13 industry-wide;

14 (4) whether the methodology for calculating the
15 crash rate of commercial motor vehicles in the Safe-
16 ty Status Measurement System would be more ap-
17 propriately based on the number of vehicle miles
18 driven by a motor carrier rather than the number of
19 trucks operated by the carrier;

20 (5) whether the public access information in the
21 Safety Status Measurement System meets the agen-
22 cy's requirements under the Data Quality Act; and

23 (6) the existing information Selection System
24 Indicators criteria and weighting and whether the
25 safety evaluation area containing data on accidents

1 should receive higher priority for compliance reviews
2 and inspection selection.

3 **PART III—UNIFIED CARRIER REGISTRATION**

4 **SEC. 4261. SHORT TITLE.**

5 This part may be cited as the “Unified Carrier Reg-
6 istration Act of 2004”.

7 **SEC. 4262. RELATIONSHIP TO OTHER LAWS.**

8 Except as provided in section 14504 of title 49,
9 United States Code, and sections 14504a and 14506 of
10 title 49, United States Code, as added by this part, this
11 part is not intended to prohibit any State or any political
12 subdivision of any State from enacting, imposing, or en-
13 forcing any law or regulation with respect to a motor car-
14 rier, motor private carrier, broker, freight forwarder, or
15 leasing company that is not otherwise prohibited by law.

16 **SEC. 4263. INCLUSION OF MOTOR PRIVATE AND EXEMPT
17 CARRIERS.**

18 (a) **PERSONS REGISTERED TO PROVIDE TRANSPOR-
19 TATION OR SERVICE AS A MOTOR CARRIER OR MOTOR
20 PRIVATE CARRIER.**—Section 13905 is amended by—

21 (1) redesignating subsections (b), (c), (d), and
22 (e) as subsections (c), (d), (e), and (f), respectively;
23 and

24 (2) inserting after subsection (a) the following:

1 “(b) PERSON REGISTERED WITH SECRETARY.—Any
2 person having registered with the Secretary to provide
3 transportation or service as a motor carrier or motor pri-
4 vate carrier under this title, as in effect on January 1,
5 2002, but not having registered pursuant to section
6 13902(a) of this title, shall be deemed, for purposes of
7 this part, to be registered to provide such transportation
8 or service for purposes of sections 13908 and 14504a of
9 this title.”.

10 (b) SECURITY REQUIREMENT.—Section 13906(a) is
11 amended by—

12 (1) redesignating paragraphs (2) and (3) as
13 paragraphs (3) and (4), respectively; and

14 (2) inserting the following:

15 “(2) SECURITY REQUIREMENT.—Not later than
16 120 days after the date of enactment of the Unified
17 Carrier Registration Act of 2004, any person, other
18 than a motor private carrier, registered with the
19 Secretary to provide transportation or service as a
20 motor carrier under section 13905(b) of this title
21 shall file with the Secretary a bond, insurance policy,
22 or other type of security approved by the Secretary,
23 in an amount not less than required by sections
24 31138 and 31139 of this title.”.

1 **SEC. 4264. UNIFIED CARRIER REGISTRATION SYSTEM.**

2 (a) Section 13908 is amended to read as follows:

3 **“§ 13908. Registration and other reforms**

4 “(a) ESTABLISHMENT OF UNIFIED CARRIER REG-
5 ISTRATION SYSTEM.—The Secretary, in cooperation with
6 the States, representatives of the motor carrier, motor pri-
7 vate carrier, freight forwarder and broker industries, and
8 after notice and opportunity for public comment, shall
9 issue within 1 year after the date of enactment of the Uni-
10 fied Carrier Registration Act of 2004 regulations to estab-
11 lish, an online, Federal registration system to be named
12 the Unified Carrier Registration System to replace—

13 “(1) the current Department of Transportation
14 identification number system, the Single State Reg-
15 istration System under section 14504 of this title;

16 “(2) the registration system contained in this
17 chapter and the financial responsibility information
18 system under section 13906; and

19 “(3) the service of process agent systems under
20 sections 503 and 13304 of this title.

21 “(b) ROLE AS CLEARINGHOUSE AND DEPOSITORY OF
22 INFORMATION.—The Unified Carrier Registration System
23 shall serve as a clearinghouse and depository of informa-
24 tion on, and identification of, all foreign and domestic
25 motor carriers, motor private carriers, brokers, and freight
26 forwarders, and others required to register with the De-

1 partment, including information with respect to a carrier's
2 safety rating, compliance with required levels of financial
3 responsibility, and compliance with the provisions of sec-
4 tion 14504a of this title. The Secretary shall ensure that
5 Federal agencies, States, representatives of the motor car-
6 rier industry, and the public have access to the Unified
7 Carrier Registration System, including the records and in-
8 formation contained in the System.

9 “(c) PROCEDURES FOR CORRECTING INFORMA-
10 TION.—Not later than 60 days after the effective date of
11 this section, the Secretary shall prescribe regulations es-
12 tablishing procedures that enable a motor carrier to cor-
13 rect erroneous information contained in any part of the
14 Unified Carrier Registration System.

15 “(d) FEE SYSTEM.—The Secretary shall establish,
16 under section 9701 of title 31, a fee system for the Unified
17 Carrier Registration System according to the following
18 guidelines:

19 “(1) REGISTRATION AND FILING EVIDENCE OF
20 FINANCIAL RESPONSIBILITY.—The fee for new reg-
21 istrants shall as nearly as possible cover the costs of
22 processing the registration and conducting the safety
23 audit or examination, if required, but shall not ex-
24 ceed \$300.

1 “(2) EVIDENCE OF FINANCIAL RESPONSIBI-
2 BILITY.—The fee for filing evidence of financial re-
3 sponsibility pursuant to this section shall not exceed
4 \$10 per filing. No fee shall be charged for a filing
5 for purposes of designating an agent for service of
6 process or the filing of other information relating to
7 financial responsibility.

8 “(3) ACCESS AND RETRIEVAL FEES.—

9 “(A) IN GENERAL.—Except as provided in
10 subparagraph (B), the fee system shall include
11 a nominal fee for the access to or retrieval of
12 information from the Unified Carrier Registra-
13 tion System to cover the costs of operating and
14 upgrading the System, including the personnel
15 costs incurred by the Department and the costs
16 of administration of the Unified Carrier Reg-
17 istration Agreement.

18 “(B) EXCEPTIONS.—There shall be no fee
19 charged—

20 “(i) to any agency of the Federal Gov-
21 ernment or a State government or any po-
22 litical subdivision of any such government
23 for the access to or retrieval of information
24 and data from the Unified Carrier Reg-
25 istration System for its own use; or

1 “(ii) to any representative of a motor
 2 carrier, motor private carrier, leasing com-
 3 pany, broker, or freight forwarder (as each
 4 is defined in section 14504a of this title)
 5 for the access to or retrieval of the indi-
 6 vidual information related to such entity
 7 from the Unified Carrier Registration Sys-
 8 tem for the individual use of such entity.”.

9 **SEC. 4265. REGISTRATION OF MOTOR CARRIERS BY**
 10 **STATES.**

11 (a) **TERMINATION OF REGISTRATION PROVISIONS.—**
 12 Section 14504 is amended by adding at the end the fol-
 13 lowing:

14 “(d) **TERMINATION OF PROVISIONS.—**Subsections
 15 (b) and (c) shall cease to be effective on the first January
 16 1st occurring more than 12 months after the date of en-
 17 actment of the Unified Carrier Registration Act of 2004.”.

18 (b) **UNIFIED CARRIER REGISTRATION SYSTEM PLAN**
 19 **AND AGREEMENT.—**Chapter 145 is amended by inserting
 20 after section 14504 the following:

21 **“§ 14504a. Unified carrier registration system plan**
 22 **and agreement**

23 “(a) **DEFINITIONS.—**In this section and section
 24 14506 of this title:

25 “(1) **COMMERCIAL MOTOR VEHICLE.—**

1 “(A) IN GENERAL.—Except as provided in
2 subparagraph (B), the term ‘commercial motor
3 vehicle’ has the meaning given the term in sec-
4 tion 31101 of this title.

5 “(B) EXCEPTION.—With respect to motor
6 carriers required to make any filing or pay any
7 fee to a State with respect to the motor car-
8 rier’s authority or insurance related to oper-
9 ation within such State, the term ‘commercial
10 motor vehicle’ means any self-propelled vehicle
11 used on the highway in commerce to transport
12 passengers or property for compensation re-
13 gardless of the gross vehicle weight rating of
14 the vehicle or the number of passengers trans-
15 ported by such vehicle.

16 “(2) BASE-STATE.—

17 “(A) IN GENERAL.—The term ‘Base-State’
18 means, with respect to the Unified Carrier Reg-
19 istration Agreement, a State—

20 “(i) that is in compliance with the re-
21 quirements of subsection (e); and

22 “(ii) in which the motor carrier, motor
23 private carrier, broker, freight forwarder or
24 leasing company maintains its principal
25 place of business.

1 “(B) DESIGNATION OF BASE-STATE.—A
2 motor carrier, motor private carrier, broker,
3 freight forwarder or leasing company may des-
4 ignate another State in which it maintains an
5 office or operating facility as its Base-State in
6 the event that—

7 “(i) the State in which the motor car-
8 rier, motor private carrier, broker, freight
9 forwarder or leasing company maintains its
10 principal place of business is not in compli-
11 ance with the requirements of subsection
12 (e); or

13 “(ii) the motor carrier, motor private
14 carrier, broker, freight forwarder or leasing
15 company does not have a principal place of
16 business in the United States.

17 “(3) INTRASTATE FEE.—The term ‘intrastate
18 fee’ means any fee, tax, or other type of assessment,
19 including per vehicle fees and gross receipts taxes,
20 imposed on a motor carrier or motor private carrier
21 for the renewal of the intrastate authority or insur-
22 ance filings of such carrier with a State.

23 “(4) LEASING COMPANY.—The term ‘leasing
24 company’ means a lessor that is engaged in the busi-
25 ness of leasing or renting for compensation motor

1 vehicles without drivers to a motor carrier, motor
2 private carrier, or freight forwarder.

3 “(5) MOTOR CARRIER.—The term ‘motor car-
4 rier’ has the meaning given the term in section
5 13102(12) of this title, but shall include all carriers
6 that are otherwise exempt from the provisions of
7 part B of this title pursuant to the provisions of
8 chapter 135 of this title or exemption actions by the
9 former Interstate Commerce Commission under this
10 title.

11 “(6) PARTICIPATING STATE.—The term ‘par-
12 ticipating state’ means a State that has complied
13 with the requirements of subsection (e) of this sec-
14 tion.

15 “(7) SSRS.—The term ‘SSRS’ means the Sin-
16 gle State Registration System in effect on the date
17 of enactment of the Unified Carrier Registration Act
18 of 2004.

19 “(8) UNIFIED CARRIER REGISTRATION AGREE-
20 MENT.—The terms ‘Unified Carrier Registration
21 Agreement’ and ‘UCR Agreement’ mean the inter-
22 state agreement developed under the Unified Carrier
23 Registration Plan governing the collection and dis-
24 tribution of registration and financial responsibility
25 information provided and fees paid by motor car-

1 riers, motor private carriers, brokers, freight for-
2 warders and leasing companies pursuant to this sec-
3 tion.

4 “(9) UNIFIED CARRIER REGISTRATION PLAN.—
5 The terms ‘Unified Carrier Registration Plan’ and
6 ‘UCR Plan’ mean the organization of State, Federal
7 and industry representatives responsible for devel-
8 oping, implementing and administering the Unified
9 Carrier Registration Agreement.

10 “(10) VEHICLE REGISTRATION.—The term ‘ve-
11 hicle registration’ means the registration of any
12 commercial motor vehicle under the International
13 Registration Plan or any other registration law or
14 regulation of a jurisdiction.

15 “(b) APPLICABILITY OF PROVISIONS TO FREIGHT
16 FORWARDERS.—A Freight forwarder that operates com-
17 mercial motor vehicles and is not required to register as
18 a carrier pursuant to section 13903(b) of this title shall
19 be subject to the provisions of this section as if a motor
20 carrier.

21 “(c) UNREASONABLE BURDEN.—For purposes of
22 this section, it shall be considered an unreasonable burden
23 upon interstate commerce for any State or any political
24 subdivision of a State, or any political authority of 2 or
25 more States—

1 “(1) to enact, impose, or enforce any require-
2 ment or standards, or levy any fee or charge on any
3 interstate motor carrier or interstate motor private
4 carrier in connection with—

5 “(A) the registration with the State of the
6 interstate operations of a motor carrier or
7 motor private carrier;

8 “(B) the filing with the State of informa-
9 tion relating to the financial responsibility of a
10 motor carrier or motor private carrier pursuant
11 to sections 31138 or 31139 of this title;

12 “(C) the filing with the State of the name
13 of the local agent for service of process of a
14 motor carrier or motor private carrier pursuant
15 to sections 503 or 13304 of this title; or

16 “(D) the annual renewal of the intrastate
17 authority, or the insurance filings, of a motor
18 carrier or motor private carrier, or other intra-
19 state filing requirement necessary to operate
20 within the State, if the motor carrier or motor
21 private carrier is—

22 “(i) registered in compliance with sec-
23 tion 13902 or section 13905(b) of this
24 title; and

1 “(ii) in compliance with the laws and
2 regulations of the State authorizing the
3 carrier to operate in the State pursuant to
4 section 14501(c)(2)(A) of this title

5 except with respect to—

6 “(I) intrastate service provided
7 by motor carriers of passengers that
8 is not subject to the preemptive provi-
9 sions of section 14501(a) of this title,

10 “(II) motor carriers of property,
11 motor private carriers, brokers, or
12 freight forwarders, or their services or
13 operations, that are described in sub-
14 paragraphs (B) and (C) of section
15 14501(c)(2) and section 14506(c)(3)
16 or permitted pursuant to section
17 14506(b) of this title, and

18 “(III) the intrastate transpor-
19 tation of waste or recyclables by any
20 carrier); or

21 “(2) to require any interstate motor carrier or
22 motor private carrier to pay any fee or tax, not pro-
23 scribed by paragraph (1)(D) of this subsection, that
24 a motor carrier or motor private carrier that pays a

1 fee which is proscribed by that paragraph is not re-
2 quired to pay.

3 “(d) UNIFIED CARRIER REGISTRATION PLAN.—

4 “(1) BOARD OF DIRECTORS.—

5 “(A) GOVERNANCE OF PLAN.—The Uni-
6 fied Carrier Registration Plan shall be governed
7 by a Board of Directors consisting of represent-
8 atives of the Department of Transportation,
9 Participating States, and the motor carrier in-
10 dustry.

11 “(B) NUMBER.—The Board shall consist
12 of 15 directors.

13 “(C) COMPOSITION.—The Board shall be
14 composed of directors appointed as follows:

15 “(i) FEDERAL MOTOR CARRIER SAFE-
16 TY ADMINISTRATION.—The Secretary shall
17 appoint 1 director from each of the Fed-
18 eral Motor Carrier Safety Administration’s
19 4 Service Areas (as those areas were de-
20 fined by the Federal Motor Carrier Safety
21 Administration on January 1, 2003), from
22 among the chief administrative officers of
23 the State agencies responsible for over-
24 seeing the administration of the UCR
25 Agreement.

1 “(ii) STATE AGENCIES.—The Sec-
2 retary shall appoint 5 directors from the
3 professional staffs of State agencies re-
4 sponsible for overseeing the administration
5 of the UCR Agreement in their respective
6 States. Nominees for these 5 directorships
7 shall be submitted to the Secretary by the
8 national association of professional employ-
9 ees of the State agencies responsible for
10 overseeing the administration of the UCR
11 Agreement in their respective States.

12 “(iii) MOTOR CARRIER INDUSTRY.—
13 The Secretary shall appoint 5 directors
14 from the motor carrier industry. At least 1
15 of the appointees shall be an employee of
16 the national trade association representing
17 the general motor carrier of property in-
18 dustry.

19 “(iv) DEPARTMENT OF TRANSPOR-
20 TATION.—The Secretary shall appoint the
21 Deputy Administrator of the Federal
22 Motor Carrier Safety Administration, or
23 such other presidential appointee from the
24 United States Department of Transpor-

1 tation, as the Secretary may designate, to
2 serve as a director.

3 “(D) CHAIRPERSON AND VICE-CHAIR-
4 PERSON.—The Secretary shall designate 1 di-
5 rector as Chairperson and 1 director as Vice-
6 Chairperson of the Board. The Chairperson and
7 Vice-Chairperson shall serve in such capacity
8 for the term of their appointment as directors.

9 “(E) TERM.—In appointing the initial
10 Board, the Secretary shall designate 5 of the
11 appointed directors for initial terms of 3 years,
12 5 of the appointed directors for initial terms of
13 2 years, and 5 of the appointed directors for
14 initial terms of 1 year. Thereafter, all directors
15 shall be appointed for terms of 3 years, except
16 that the term of the Deputy Administrator or
17 other individual designated by the Secretary
18 under subparagraph (C)(iv) shall be at the dis-
19 cretion of the Secretary. A director may be ap-
20 pointed to succeed himself or herself. A director
21 may continue to serve on the Board until his or
22 her successor is appointed.

23 “(2) RULES AND REGULATIONS GOVERNING
24 THE UCR AGREEMENT.—The Board of Directors
25 shall develop the rules and regulations to govern the

1 UCR Agreement and submit such rules and regula-
2 tions to the Secretary for approval and adoption.

3 The rules and regulations shall—

4 “(A) prescribe uniform forms and formats,

5 for—

6 “(i) the annual submission of the in-
7 formation required by a Base-State of a
8 motor carrier, motor private carrier, leas-
9 ing company, broker, or freight forwarder;

10 “(ii) the transmission of information
11 by a Participating State to the Unified
12 Carrier Registration System;

13 “(iii) the payment of excess fees by a
14 State to the designated depository and the
15 distribution of fees by the depository to
16 those States so entitled; and

17 “(iv) the providing of notice by a
18 motor carrier, motor private carrier,
19 broker, freight forwarder, or leasing com-
20 pany to the Board of the intent of such en-
21 tity to change its Base-State, and the pro-
22 cedures for a State to object to such a
23 change under subparagraph (C) of this
24 paragraph;

1 “(B) provide for the administration of the
2 Unified Carrier Registration Agreement, includ-
3 ing procedures for amending the Agreement
4 and obtaining clarification of any provision of
5 the Agreement;

6 “(C) provide procedures for dispute resolu-
7 tion that provide due process for all involved
8 parties; and

9 “(D) designate a depository.

10 “(3) COMPENSATION AND EXPENSES.—Except
11 for the representative of the Department of Trans-
12 portation appointed pursuant to paragraph 1(D), no
13 director shall receive any compensation or other ben-
14 efits from the Federal Government for serving on
15 the Board or be considered a Federal employee as
16 a result of such service. All Directors shall be reim-
17 bursed for expenses they incur attending duly called
18 meetings of the Board. In addition, the Board may
19 approve the reimbursement of expenses incurred by
20 members of any subcommittee or task force ap-
21 pointed pursuant to paragraph (5). The reimburse-
22 ment of expenses to directors and subcommittee and
23 task force members shall be based on the then appli-
24 cable rules of the General Service Administration

1 governing reimbursement of expenses for travel by
2 Federal employees.

3 “(4) MEETINGS.—

4 “(A) IN GENERAL.—The Board shall meet
5 at least once per year. Additional meetings may
6 be called, as needed, by the Chairperson of the
7 Board, a majority of the directors, or the Sec-
8 retary.

9 “(B) QUORUM.—A majority of directors
10 shall constitute a quorum.

11 “(C) VOTING.—Approval of any matter be-
12 fore the Board shall require the approval of a
13 majority of all directors present at the meeting.

14 “(D) OPEN MEETINGS.—Meetings of the
15 Board and any subcommittees or task forces
16 appointed pursuant to paragraph (5) of this
17 section shall be subject to the provisions of sec-
18 tion 552b of title 5.

19 “(5) SUBCOMMITTEES.—

20 “(A) INDUSTRY ADVISORY SUB-
21 COMMITTEE.—The Chairperson shall appoint
22 an Industry Advisory Subcommittee. The In-
23 dustry Advisory Subcommittee shall consider
24 any matter before the Board and make rec-
25 ommendations to the Board.

1 “(B) OTHER SUBCOMMITTEES.—The
2 Chairperson shall appoint an Audit Sub-
3 committee, a Dispute Resolution Subcommittee,
4 and any additional subcommittees and task
5 forces that the Board determines to be nec-
6 essary.

7 “(C) MEMBERSHIP.—The chairperson of
8 each subcommittee shall be a director. The
9 other members of subcommittees and task
10 forces may be directors or non-directors.

11 “(D) REPRESENTATION ON SUBCOMMIT-
12 TEES.—Except for the Industry Advisory Sub-
13 committee (the membership of which shall con-
14 sist solely of representatives of entities subject
15 to the fee requirements of subsection (f) of this
16 section), each subcommittee and task force shall
17 include representatives of the Federal Motor
18 Carrier Safety Administration, the Partici-
19 pating States, and the motor carrier industry.

20 “(6) DELEGATION OF AUTHORITY.—The Board
21 may contract with any private commercial or non-
22 profit entity or any agency of a State to perform ad-
23 ministrative functions required under the Unified
24 Carrier Registration Agreement, but may not dele-
25 gate its decision or policy-making responsibilities.

1 “(7) DETERMINATION OF FEES.—The Board
2 shall determine the annual fees to be assessed car-
3 riers, leasing companies, brokers, and freight for-
4 warders pursuant to the Unified Carrier Registra-
5 tion Agreement. In determining the level of fees to
6 be assessed in the next Agreement year, the Board
7 shall consider—

8 “(A) the administrative costs associated
9 with the Unified Carrier Registration Plan and
10 the Agreement;

11 “(B) whether the revenues generated in
12 the previous year and any surplus or shortage
13 from that or prior years enable the Particip-
14 ating States to achieve the revenue levels set
15 by the Board; and

16 “(C) the parameters for fees set forth in
17 subsection (f)(1).

18 “(8) LIABILITY PROTECTIONS FOR DIREC-
19 TORS.—No individual appointed to serve on the
20 Board shall be liable to any other director or to any
21 other party for harm, either economic or non-eco-
22 nomic, caused by an act or omission of the indi-
23 vidual arising from the individual’s service on the
24 Board if—

1 “(A) the individual was acting within the
2 scope of his or her responsibilities as a director;
3 and

4 “(B) the harm was not caused by willful or
5 criminal misconduct, gross negligence, reckless
6 misconduct, or a conscious, flagrant indiffer-
7 ence to the right or safety of the party harmed
8 by the individual.

9 “(9) INAPPLICABILITY OF FEDERAL ADVISORY
10 COMMITTEE ACT.—The Federal Advisory Committee
11 Act (5 U.S.C. App.) shall not apply to the Unified
12 Carrier Registration Plan or its committees.

13 “(10) CERTAIN FEES NOT AFFECTED.—This
14 section does not limit the amount of money a State
15 may charge for vehicle registration or the amount of
16 any fuel use tax a State may impose pursuant to the
17 International Fuel Tax Agreement.

18 “(e) STATE PARTICIPATION.—

19 “(1) STATE PLAN.—No State shall be eligible
20 to participate in the Unified Carrier Registration
21 Plan or to receive any revenues derived under the
22 Agreement, unless the State submits to the Sec-
23 retary, not later than 3 years after the date of en-
24 actment of the Unified Carrier Registration Act of
25 2004, a plan—

1 “(A) identifying the State agency that has
2 or will have the legal authority, resources, and
3 qualified personnel necessary to administer the
4 Unified Carrier Registration Agreement in ac-
5 cordance with the rules and regulations promul-
6 gated by the Board of Directors of the Unified
7 Carrier Registration Plan; and

8 “(B) containing assurances that an
9 amount at least equal to the revenue derived by
10 the State from the Unified Carrier Registration
11 Agreement shall be used for motor carrier safe-
12 ty programs, enforcement, and financial respon-
13 sibility, or the administration of the UCR Plan
14 and UCR Agreement.

15 “(2) AMENDED PLANS.—A State may change
16 the agency designated in the plan submitted under
17 this subsection by filing an amended plan with the
18 Secretary and the Chairperson of the Unified Car-
19 rier Registration Plan.

20 “(3) WITHDRAWAL OF PLAN.—In the event a
21 State withdraws, or notifies the Secretary that it is
22 withdrawing, the plan submitted under this sub-
23 section, the State may no longer participate in the
24 Unified Carrier Registration Agreement or receive

1 any portion of the revenues derived under the Agree-
2 ment.

3 “(4) TERMINATION OF ELIGIBILITY.—If a State
4 fails to submit a plan to the Secretary as required
5 by paragraph (1) or withdraws its plan under para-
6 graph (3), the State shall be prohibited from subse-
7 quently submitting or resubmitting a plan or partici-
8 pating in the Agreement.

9 “(5) PROVISION OF PLAN TO CHAIRPERSON.—
10 The Secretary shall provide a copy of each plan sub-
11 mitted under this subsection to the initial Chair-
12 person of the Board of Directors of the Unified Car-
13 rier Registration Plan not later than 90 days of ap-
14 pointing the Chairperson.

15 “(f) CONTENTS OF UNIFIED CARRIER REGISTRA-
16 TION AGREEMENT.—The Unified Carrier Registration
17 Agreement shall provide the following:

18 “(1) DETERMINATION OF FEES.—

19 “(A) Fees charged motor carriers, motor
20 private carriers, or freight forwarders in con-
21 nection with the filing of proof of financial re-
22 sponsibility under the UCR Agreement shall be
23 based on the number of commercial motor vehi-
24 cles owned or operated by the motor carrier,
25 motor private carrier, or freight forwarder. Bro-

1 kers and leasing companies shall pay the same
2 fees as the smallest bracket of motor carriers,
3 motor private carriers, and freight forwarders.

4 “(B) The fees shall be determined by the
5 Board with the approval of the Secretary.

6 “(C) The Board shall develop no more
7 than 6 and no less than 4 ranges of carriers by
8 size of fleet.

9 “(D) The fee scale shall be progressive and
10 use different vehicle ratios for different ranges
11 of carrier fleet size.

12 “(E) The Board may adjust the fees with-
13 in a reasonable range on an annual basis if the
14 revenues derived from the fees—

15 “(i) are insufficient to provide the rev-
16 enues to which the States are entitled
17 under this section; or

18 “(ii) exceed those revenues.

19 “(2) DETERMINATION OF OWNERSHIP OR OP-
20 ERATION.—Commercial motor vehicles owned or op-
21 erated by a motor carrier, motor private carrier, or
22 freight forwarder shall mean those commercial motor
23 vehicles registered in the name of the motor carrier,
24 motor private carrier, or freight forwarder or con-
25 trolled by the motor carrier, motor private carrier,

1 or freight forwarder under a long term lease during
2 a vehicle registration year.

3 “(3) CALCULATION OF NUMBER OF COMMERCIAL MOTOR VEHICLES OWNED OR OPERATED.—The
4 number of commercial motor vehicles owned or operated by a motor carrier, motor private carrier, or
5 freight forwarder for purposes of subsection (e)(1) shall be based either on the number of commercial
6 motor vehicles the motor carrier, motor private carrier, or freight forwarder has indicated it operates
7 on its most recently filed MCS-150 or the total number of such vehicles it owned or operated for the
8 12-month period ending on June 30 of the year immediately prior to the each registration year of the
9 Unified Carrier Registration System.
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16 “(4) PAYMENT OF FEES.—Motor carriers, motor private carriers, leasing companies, brokers,
17 and freight forwarders shall pay all fees required under this section to their Base-State pursuant to
18 the UCR Agreement.
19
20

21 “(g) PAYMENT OF FEES.—Revenues derived under
22 the UCR Agreement shall be allocated to Participating
23 States as follows:

24 “(1) A State that participated in the Single
25 State Registration System in the last calendar year

1 ending before the date of enactment of the Unified
2 Carrier Registration Act of 2004 and complies with
3 the requirements of subsection (e) of this section is
4 entitled to receive a portion of the UCR Agreement
5 revenues generated under the Agreement equivalent
6 to the revenues it received under the SSRS in the
7 last calendar year ending before the date of enact-
8 ment of the Unified Carrier Registration Act of
9 2004, as long as the State continues to comply with
10 the provisions of subsection (e).

11 “(2) A State that collected intrastate registra-
12 tion fees from interstate motor carriers, interstate
13 motor private carriers, or interstate exempt carriers
14 and complies with the requirements of subsection (e)
15 of this section is entitled to receive an additional
16 portion of the UCR Agreement revenues generated
17 under the Agreement equivalent to the revenues it
18 received from such interstate carriers in the last cal-
19 endar year ending before the date of enactment of
20 the Unified Carrier Registration Act of 2004, as
21 long as the State continues to comply with the provi-
22 sions of subsection (e).

23 “(3) States that comply with the requirements
24 of subsection (e) of this section but did not partici-
25 pate in SSRS during the last calendar year ending

1 before the date of enactment of the Unified Carrier
2 Registration Act of 2004 shall be entitled to an an-
3 nual allotment not to exceed \$500,000 from the
4 UCR Agreement revenues generated under the
5 Agreement as long as the State continues to comply
6 with the provisions of subsection (e).

7 “(4) The amount of UCR Agreement revenues
8 to which a State is entitled under this section shall
9 be calculated by the Board and approved by the Sec-
10 retary.

11 “(h) DISTRIBUTION OF UCR AGREEMENT REVE-
12 NUES.—

13 “(1) ELIGIBILITY.—Each State that is in com-
14 pliance with the provisions of subsection (e) shall be
15 entitled to a portion of the revenues derived from
16 the UCR Agreement in accordance with subsection
17 (g).

18 “(2) ENTITLEMENT TO REVENUES.—A State
19 that is in compliance with the provisions of sub-
20 section (e) may retain an amount of the gross reve-
21 nues it collects from motor carriers, motor private
22 carriers, brokers, freight forwarders and leasing
23 companies under the UCR Agreement equivalent to
24 the portion of revenues to which the State is entitled
25 under subsection (g). All revenues a Participating

1 State collects in excess of the amount to which the
2 State is so entitled shall be forwarded to the deposi-
3 tory designated by the Board under subsection
4 (d)(2)(D).

5 “(3) DISTRIBUTION OF FUNDS FROM DEPOSI-
6 TORY.—The excess funds collected in the depository
7 shall be distributed as follows:

8 “(A) Excess funds shall be distributed on
9 a pro rata basis to each Participating State
10 that did not collect revenues under the UCR
11 Agreement equivalent to the amount such State
12 is entitled under subsection (g), except that the
13 sum of the gross UCR Agreement revenues col-
14 lected by a Participating State and the amount
15 distributed to it from the depository shall not
16 exceed the amount to which the State is entitled
17 under subsection (g).

18 “(B) Any excess funds held by the deposi-
19 tory after all distributions under subparagraph
20 (A) have been made shall be used to pay the
21 administrative costs of the UCR Plan and the
22 UCR Agreement.

23 “(C) Any excess funds held by the deposi-
24 tory after distributions and payments under
25 subparagraphs (A) and (B) shall be retained in

1 the depository, and the UCR Agreement fees
2 for motor carriers, motor private carriers, leas-
3 ing companies, freight forwarders, and brokers
4 for the next fee year shall be reduced by the
5 Board accordingly.

6 “(i) ENFORCEMENT.—

7 “(1) CIVIL ACTIONS.—Upon request by the Sec-
8 retary of Transportation, the Attorney General may
9 bring a civil action in a court of competent jurisdic-
10 tion to enforce compliance with this section and with
11 the terms of the Unified Carrier Registration Agree-
12 ment.

13 “(2) VENUE.—An action under this section
14 may be brought only in the Federal court sitting in
15 the State in which an order is required to enforce
16 such compliance.

17 “(3) RELIEF.—Subject to section 1341 of title
18 28, the court, on a proper showing—

19 “(A) shall issue a temporary restraining
20 order or a preliminary or permanent injunction;
21 and

22 “(B) may issue an injunction requiring
23 that the State or any person comply with this
24 section.

1 “(4) ENFORCEMENT BY STATES.—Nothing in
2 this section—

3 “(A) prohibits a Participating State from
4 issuing citations and imposing reasonable fines
5 and penalties pursuant to applicable State laws
6 and regulations on any motor carrier, motor
7 private carrier, freight forwarder, broker, or
8 leasing company for failure to—

9 “(i) submit documents as required
10 under subsection (d)(2); or

11 “(ii) pay the fees required under sub-
12 section (f); or

13 “(B) authorizes a State to require a motor
14 carrier, motor private carrier, or freight for-
15 warder to display as evidence of compliance any
16 form of identification in excess of those per-
17 mitted under section 14506 of this title on or
18 in a commercial motor vehicle.

19 “(j) APPLICATION TO INTRASTATE CARRIERS.—Not-
20 withstanding any other provision of this section, a State
21 may elect to apply the provisions of the UCR Agreement
22 to motor carriers and motor private carriers subject to its
23 jurisdiction that operate solely in intrastate commerce
24 within the borders of the State.”.

1 **SEC. 4266. IDENTIFICATION OF VEHICLES.**

2 Chapter 145 is amended by adding at the end the
3 following:

4 **“§ 14506. Identification of vehicles**

5 “(a) RESTRICTION ON REQUIREMENTS.—No State,
6 political subdivision of a State, interstate agency, or other
7 political agency of 2 or more States may enact or enforce
8 any law, rule, regulation standard, or other provision hav-
9 ing the force and effect of law that requires a motor car-
10 rier, motor private carrier, freight forwarder, or leasing
11 company to display any form of identification on or in a
12 commercial motor vehicle, other than forms of identifica-
13 tion required by the Secretary of Transportation under
14 section 390.21 of title 49, Code of Federal Regulations.

15 “(b) EXCEPTION.—Notwithstanding paragraph (a), a
16 State may continue to require display of credentials that
17 are required—

18 “(1) under the International Registration Plan
19 under section 31704 of this title;

20 “(2) under the International Fuel Tax Agree-
21 ment under section 31705 of this title;

22 “(3) in connection with Federal requirements
23 for hazardous materials transportation under section
24 5103 of this title; or

1 “(4) in connection with the Federal vehicle in-
 2 spection standards under section 31136 of this
 3 title.”.

4 **SEC. 4267. USE OF UCR AGREEMENT REVENUES AS MATCH-**
 5 **ING FUNDS.**

6 Section 31103(a) is amended by inserting “Amounts
 7 generated by the Unified Carrier Registration Agreement,
 8 under section 14504a of this title and received by a State
 9 and used for motor carrier safety purposes may be in-
 10 cluded as part of the State’s share not provided by the
 11 United States.” after “United States Government.”.

12 **SEC. 4268. CLERICAL AMENDMENTS.**

13 (a) SECTION 13906 CAPTION.—The section caption
 14 for section 13906 is amended by inserting “**motor pri-**
 15 **vate carriers,**” after “**motor carriers,**”.

16 (b) TABLE OF CONTENTS.—The chapter analysis for
 17 chapter 139 is amended by striking the item relating to
 18 section 13906 and inserting the following:

 “13906. Security of motor carriers, motor private carriers, brokers, and freight
 forwarders.”.

1 **Subtitle C—Household Goods**
2 **Movers**

3 **SEC. 4301. SHORT TITLE; AMENDMENT OF TITLE 49, UNITED**
4 **STATES CODE.**

5 (a) **SHORT TITLE.**—This subtitle may be cited as the
6 “Household Goods Mover Oversight Enforcement and Re-
7 form Act of 2004”.

8 (b) **AMENDMENT OF TITLE 49, UNITED STATES**
9 **CODE.**—Except as otherwise specifically provided, when-
10 ever in this subtitle an amendment is expressed in terms
11 of an amendment to a section or other provision of law,
12 the reference shall be considered to be made to a section
13 or other provision of title 49, United States Code.

14 **SEC. 4302. FINDINGS; SENSE OF CONGRESS.**

15 The Congress finds the following:

16 (1) There are approximately 1,500,000 inter-
17 state household moves every year. While the vast
18 majority of these interstate moves are completed
19 successfully, consumer complaints have been increas-
20 ing since the Interstate Commerce Commission was
21 abolished in 1996 and oversight of the household
22 goods industry was transferred to the Department of
23 Transportation.

24 (2) While the overwhelming majority of house-
25 hold goods carriers are honest and operate within

1 the law, there appears to be a growing criminal ele-
2 ment that is exploiting a perceived void in Federal
3 and State enforcement efforts. The growing criminal
4 element tends to prey upon consumers.

5 (3) The movement of an individual's household
6 goods is unique and differs from the movement of a
7 commercial shipment. A consumer may utilize a
8 moving company once or twice in the consumer's
9 lifetime and entrust virtually all of the consumer's
10 worldly goods to a mover.

11 (4) Federal resources are inadequate to prop-
12 erly police or deter, on a nationwide basis, those
13 movers who willfully violate Federal regulations gov-
14 erning the household goods industry and knowingly
15 prey on consumers who are in a vulnerable position.
16 It is appropriate that a Federal-State partnership be
17 created to enhance enforcement against fraudulent
18 moving companies.

19 **SEC. 4303. DEFINITIONS.**

20 In this title, the terms "carrier", "household goods",
21 "motor carrier", "Secretary", and "transportation" have
22 the meaning given such terms in section 13102 of title
23 49, United States Code.

1 **SEC. 4304. PAYMENT OF RATES.**

2 Section 13707(b) is amended by adding at the end
3 the following:

4 “(3) SHIPMENTS OF HOUSEHOLD GOODS.—

5 “(A) IN GENERAL.—A carrier providing
6 transportation for a shipment of household
7 goods shall give up possession of the household
8 goods transported at the destination upon pay-
9 ment of—

10 “(i) 100 percent of the charges con-
11 tained in a binding estimate provided by
12 the carrier;

13 “(ii) not more than 110 percent of the
14 charges contained in a nonbinding estimate
15 provided by the carrier; or

16 “(iii) in the case of a partial delivery
17 of the shipment, the prorated percentage
18 of the charges calculated in accordance
19 with subparagraph (B).

20 “(B) CALCULATION OF PRORATED
21 CHARGES.—For purposes of subparagraph
22 (A)(iii), the prorated percentage of the charges
23 shall be the percentage of the total charges due
24 to the carrier as described in clause (i) or (ii)
25 of subparagraph (A) that is equal to the per-
26 centage of the weight of that portion of the

1 shipment delivered to the total weight of the
2 shipment.

3 “(C) POST-CONTRACT SERVICES.—Sub-
4 paragraph (A) does not apply to additional
5 services requested by a shipper after the con-
6 tract of service is executed that were not in-
7 cluded in the estimate.

8 “(D) IMPRACTICABLE OPERATIONS.—Sub-
9 paragraph (A) does apply to impracticable oper-
10 ations, as defined by the applicable carrier tar-
11 iff, if the shipper agrees to pay the charges for
12 such operations within 30 days after the goods
13 are delivered.”.

14 **SEC. 4305. HOUSEHOLD GOODS CARRIER OPERATIONS.**

15 Section 14104 is amended—

16 (1) by striking paragraph (1) of subsection (b)
17 and inserting the following:

18 “(1) REQUIREMENT FOR WRITTEN ESTI-
19 MATE.—A motor carrier providing transportation of
20 household goods subject to jurisdiction under sub-
21 chapter I of chapter 135 shall provide to a prospec-
22 tive shipper a written estimate of all charges related
23 to the transportation of the household goods, includ-
24 ing charges for—

25 “(A) packing;

1 “(B) unpacking;

2 “(C) loading;

3 “(D) unloading; and

4 “(E) handling of the shipment from the
5 point of origin to the final destination (whether
6 that destination is storage or transit).”;

7 (2) by redesignating paragraph (2) of such sub-
8 section as paragraph (4); and

9 (3) by inserting after paragraph (1), as amend-
10 ed by paragraph (1), the following:

11 “(2) OTHER INFORMATION.—At the time that a
12 motor carrier provides the written estimate required
13 by paragraph (1), the motor carrier shall provide the
14 shipper a copy of the Department of Transportation
15 publication FMCSA–ESA–03–005 (or its successor
16 edition or publication) entitled ‘Ready to Move?’. Be-
17 fore the execution of a contract for service, a motor
18 carrier shall provide the shipper a copy of the De-
19 partment of Transportation publication OCE 100,
20 entitled ‘Your Rights and Responsibilities When You
21 Move’ required by section 375.2 of title 49, Code of
22 Federal Regulations (or any corresponding similar
23 regulation).

24 “(3) BINDING AND NONBINDING ESTIMATES.—

25 The written estimate required by paragraph (1) may

1 be either binding or nonbinding. The written esti-
2 mate shall be based on a visual inspection of the
3 household goods if the household goods are located
4 within a 50-mile radius of the location of the car-
5 rier's household goods agent preparing the estimate.
6 The Secretary may not prohibit any such carrier
7 from charging a prospective shipper for providing a
8 written, binding estimate for the transportation and
9 related services.”;

10 (4) by redesignating subsection (c) as sub-
11 section (e); and

12 (5) by inserting after subsection (b), as amend-
13 ed by paragraphs (1) and (2), the following:

14 “(c) NOTIFICATION OF FINAL CHARGES.—If the
15 final charges for a shipment of household goods exceed
16 100 percent of a binding estimate or 110 percent of a non-
17 binding estimate, the motor carrier shall provide the ship-
18 per an itemized statement of the charges. The statement
19 shall be provided to the shipper within 24 hours prior to
20 the delivery of the shipment unless the shipper waives this
21 requirement or the shipper cannot be reached by fax, reg-
22 ular mail, or electronic mail. Such notification shall—

23 “(1) be delivered in writing at the motor car-
24 rier's expense; and

1 “(2) disclose the requirements of section
2 13707(b)(3) of this title regarding payment for de-
3 livery of a shipment of household goods.

4 “(d) REQUIREMENT FOR INVENTORY.—A motor car-
5 rier providing transportation of a shipment of household
6 goods, as defined in section 13102(10), that is subject to
7 jurisdiction under subchapter I of chapter 135 of this title
8 shall, before or at the time of loading the shipment, pre-
9 pare a written inventory of all articles tendered and ac-
10 cepted by the motor carrier for transportation. Such in-
11 ventory shall—

12 “(1) list or otherwise reasonably identify each
13 item tendered for transportation;

14 “(2) be signed by the shipper and the motor
15 carrier, or the agent of the shipper or carrier, at the
16 time the shipment is loaded and at the time the
17 shipment is unloaded at the final destination;

18 “(3) be attached to, and considered part of, the
19 bill of lading; and

20 “(4) be subject to the same requirements of the
21 Secretary for record inspection and preservation that
22 apply to bills of lading.”.

23 **SEC. 4306. LIABILITY OF CARRIERS UNDER RECEIPTS AND**
24 **BILLS OF LADING.**

25 Section 14706(f) is amended—

1 (1) by resetting the text as a paragraph in-
2 dented 2 ems from the left margin and inserting
3 “(1) IN GENERAL.—” before “A carrier”; and

4 (2) by adding at the end, the following:

5 “(2) FULL VALUE PROTECTION OBLIGATION.—

6 Unless the carrier receives a waiver in writing under
7 paragraph (3), a carrier’s maximum liability for
8 household goods that are lost, damaged, destroyed,
9 or otherwise not delivered to the final destination is
10 an amount equal to the replacement value of such
11 goods, subject to a maximum amount equal to the
12 declared value of the shipment, subject to rules
13 issued by the Surface Transportation Board and ap-
14 plicable tariffs.

15 “(3) APPLICATION OF RATES.—The released
16 rates established by the Board under paragraph (1)
17 (commonly known as ‘released rates’) shall not apply
18 to the transportation of household goods by a carrier
19 unless the liability of the carrier for the full value
20 of such household goods under paragraph (2) is
21 waived in writing by the shipper.”.

22 **SEC. 4307. DISPUTE SETTLEMENT FOR SHIPMENTS OF**
23 **HOUSEHOLD GOODS.**

24 (a) IN GENERAL.—Section 14708(a) is amended—

1 (1) by resetting the text as a paragraph in-
2 dented 2 ems from the left margin and inserting
3 “(1) REQUIREMENT TO OFFER.—” before “As a
4 condition”; and

5 (2) by striking “shippers of household goods
6 concerning damage or loss to the household goods
7 transported.” and inserting “shippers. The carrier
8 may not require the shipper to agree to use arbitra-
9 tion as a means to settle such a dispute.”; and

10 (3) by inserting at the end, the following:

11 “(2) REQUIREMENTS FOR CARRIERS.—If a dis-
12 pute with a carrier providing transportation of
13 household goods involves a claim that is—

14 “(A) not more than \$10,000 and the ship-
15 per requests arbitration, such arbitration shall
16 be binding on the parties; or

17 “(B) for more than \$10,000 and the ship-
18 per requests arbitration, such arbitration shall
19 be binding on the parties only if the carrier
20 agrees to arbitration.”.

21 (b) ARBITRATION REQUIREMENTS.—

22 (1) IN GENERAL.—Section 14708(b) is
23 amended—

24 (A) by striking paragraph (4) and insert-
25 ing the following:

1 “(4) INDEPENDENCE OF ARBITRATOR.—The
 2 Secretary shall establish a system for the certifi-
 3 cation of persons authorized to arbitrate or other-
 4 wise settle a dispute between a shipper of household
 5 goods and a carrier. The Secretary shall ensure that
 6 each person so certified is—

7 “(A) independent of the parties to the dis-
 8 pute;

9 “(B) capable, as determined under such
 10 regulations as the Secretary may issue, to re-
 11 solve such disputes fairly and expeditiously; and

12 “(C) authorized and able to obtain from
 13 the shipper or carrier any material and relevant
 14 information to the extent necessary to carry out
 15 a fair and expeditious decisionmaking process.”;

16 (B) by striking paragraph (6); and

17 (C) by redesignating paragraphs (7) and
 18 (8) as paragraphs (6) and (7), respectively.

19 (2) CONFORMING AMENDMENT.—Section
 20 14708(d)(3)(A) is amended by striking “(b)(8)” and
 21 inserting “(b)(7)”.

22 (c) ATTORNEY’S FEES TO CARRIERS.—Section
 23 14708(e) is further amended by striking “only if” and all
 24 that follows through the period at the end and inserting
 25 “if—

1 “(1) the court proceeding is to enforce a deci-
2 sion rendered in favor of the carrier through arbitra-
3 tion under this section and is instituted after the
4 shipper has a reasonable opportunity to pay any
5 charges required by such decision; or

6 “(2) the shipper brought such action in bad
7 faith—

8 “(A) after resolution of such dispute
9 through arbitration under this section; or

10 “(B) after institution of an arbitration
11 proceeding by the shipper to resolve such dis-
12 pute under this section but before—

13 “(i) the period provided under sub-
14 section (b)(7) for resolution of such dis-
15 pute (including, if applicable, an extension
16 of such period under such subsection)
17 ends; and

18 “(ii) a decision resolving such dispute
19 is rendered.”.

20 (d) REVIEW AND REPORT ON DISPUTE SETTLEMENT
21 PROGRAMS.—

22 (1) REVIEW AND REPORT.—Not later than 18
23 months after the date of enactment of this Act, the
24 Secretary of Transportation shall complete a review
25 of the outcomes and the effectiveness of the pro-

1 grams carried out under title 49, United States
2 Code, to settle disputes between motor carriers and
3 shippers and submit a report on the review to the
4 Senate Committee on Commerce, Science, and
5 Transportation and the House of Representatives
6 Committee on Transportation and Infrastructure.

7 The report shall describe—

8 (A) the subject of, and amounts at issue is,
9 the disputes;

10 (B) patterns in disputes or settlements;

11 (C) the prevailing party in disputes, if
12 identifiable; and

13 (D) any other matters the Secretary con-
14 siderers appropriate.

15 (2) REQUIREMENT FOR PUBLIC COMMENT.—

16 The Secretary shall publish notice of the review re-
17 quired by paragraph (1) and provide an opportunity
18 for the public to submit comments on the effective-
19 ness of such programs. Notwithstanding any con-
20 fidentiality or non-disclosure provision in a settle-
21 ment agreement between a motor carrier and a ship-
22 per, it shall not be a violation of that provision for
23 a motor carrier or shipper to submit a copy of the
24 settlement agreement, or to provide information in-
25 cluded in the agreement, to the Secretary for use in

1 evaluating dispute settlement programs under this
2 subsection. Notwithstanding anything to the con-
3 trary in section 552 of title 5, United States Code,
4 the Secretary may not post on the Department of
5 Transportation’s electronic docket system, or make
6 available to any requester in paper or electronic for-
7 mat, any information submitted to the Secretary by
8 a motor carrier or shipper under the preceding sen-
9 tence. The Secretary shall use the settlement agree-
10 ments or other information submitted by a motor
11 carrier or shipper solely to evaluate the effectiveness
12 of dispute settlement programs and shall not include
13 in the report required by this subsection the names
14 or, or other identifying information concerning,
15 motor carriers or shippers that submitted comments
16 or information under this subsection.

17 **SEC. 4308. ENFORCEMENT OF REGULATIONS RELATED TO**
18 **TRANSPORTATION OF HOUSEHOLD GOODS.**

19 (a) NONPREEMPTION OF INTRASTATE TRANSPOR-
20 TATION OF HOUSEHOLD GOODS.—Section
21 14501(c)(2)(B) is amended by inserting “intrastate” be-
22 fore “transportation”.

23 (b) ENFORCEMENT OF FEDERAL LAW WITH RE-
24 SPECT TO INTERSTATE HOUSEHOLD GOODS CARRIERS.—

1 (1) IN GENERAL.—Chapter 147 is amended by
2 adding at the end the following:

3 **“§ 14710. Enforcement of Federal laws and regula-**
4 **tions with respect to transportation of**
5 **household goods**

6 “(a) ENFORCEMENT BY STATES.—Notwithstanding
7 any other provision of this title, a State authority may
8 enforce the consumer protection provisions, as determined
9 by the Secretary of Transportation, of this title that are
10 related to the transportation of household goods in inter-
11 state commerce. Any fine or penalty imposed on a carrier
12 in a proceeding under this subsection shall, notwith-
13 standing any provision of law to the contrary, be paid to
14 and retained by the State.

15 “(b) STATE AUTHORITY DEFINED.—The term ‘State
16 authority’ means an agency of a State that has authority
17 under the laws of the State to regulate the intrastate
18 movement of household goods.

19 **“§ 14711. Enforcement by State attorneys general**

20 “(a) IN GENERAL.—A State, as *parens patriae*, may
21 bring a civil action on behalf of its residents in an appro-
22 priate district court of the United States to enforce the
23 consumer protection provisions, as determined by the Sec-
24 retary of Transportation, of this title that are related to
25 the transportation of household goods in interstate com-

1 merce, or regulations or orders of the Secretary or the
2 Board thereunder, or to impose the civil penalties author-
3 ized by this part or such regulation or order, whenever
4 the attorney general of the State has reason to believe that
5 the interests of the residents of the State have been or
6 are being threatened or adversely affected by a carrier or
7 broker providing transportation subject to jurisdiction
8 under subchapter I or III of chapter 135 of this title, or
9 a foreign motor carrier providing transportation registered
10 under section 13902 of this title, that is engaged in house-
11 hold goods transportation that violates this part or a regu-
12 lation or order of the Secretary or Board, as applicable,
13 promulgated under this part.

14 “(b) NOTICE.—The State shall serve written notice
15 to the Secretary or the Board, as the case may be, of any
16 civil action under subsection (a) prior to initiating such
17 civil action. The notice shall include a copy of the com-
18 plaint to be filed to initiate such civil action, except that
19 if it is not feasible for the State to provide such prior no-
20 tice, the State shall provide such notice immediately upon
21 instituting such civil action.

22 “(c) AUTHORITY TO INTERVENE.—Upon receiving
23 the notice required by subsection (b), the Secretary or
24 Board may intervene in such civil action and upon
25 intervening—

1 “(1) be heard on all matters arising in such
2 civil action; and

3 “(2) file petitions for appeal of a decision in
4 such civil action.

5 “(d) CONSTRUCTION.—For purposes of bringing any
6 civil action under subsection (a), nothing in this section
7 shall prevent the attorney general of a State from exer-
8 cising the powers conferred on the attorney general by the
9 laws of such State to conduct investigations or to admin-
10 ister oaths or affirmations or to compel the attendance
11 of witnesses or the production of documentary and other
12 evidence.

13 “(e) VENUE; SERVICE OF PROCESS.—In a civil action
14 brought under subsection (a)—

15 “(1) the venue shall be a judicial district in
16 which—

17 “(A) the carrier, foreign motor carrier, or
18 broker operates;

19 “(B) the carrier, foreign motor carrier, or
20 broker was authorized to provide transportation
21 at the time the complaint arose; or

22 “(C) where the defendant in the civil ac-
23 tion is found;

1 “(2) process may be served without regard to
2 the territorial limits of the district or of the State
3 in which the civil action is instituted; and

4 “(3) a person who participated with a carrier or
5 broker in an alleged violation that is being litigated
6 in the civil action may be joined in the civil action
7 without regard to the residence of the person.

8 “(f) ENFORCEMENT OF STATE LAW.—Nothing con-
9 tained in this section shall prohibit an authorized State
10 official from proceeding in State court to enforce a crimi-
11 nal statute of such State.”.

12 (2) CONFORMING AMENDMENT.—The analysis
13 for chapter 147 is amended by inserting after the
14 item relating to section 14709 the following:

“14710. Enforcement of Federal laws and regulations with respect to transpor-
tation of household goods.

“14711. Enforcement by State attorneys general.”.

15 **SEC. 4309. WORKING GROUP FOR DEVELOPMENT OF PRAC-**
16 **TICES AND PROCEDURES TO ENHANCE FED-**
17 **ERAL-STATE RELATIONS.**

18 (a) IN GENERAL.—Not later than 90 days after the
19 date of enactment of this Act, the Secretary shall establish
20 a working group of State attorneys general, State authori-
21 ties that regulate the movement of household goods, and
22 Federal and local law enforcement officials for the purpose
23 of developing practices and procedures to enhance the
24 Federal-State partnership in enforcement efforts, ex-

1 change of information, and coordination of enforcement
2 efforts with respect to interstate transportation of house-
3 hold goods and making legislative and regulatory rec-
4 ommendations to the Secretary concerning such enforce-
5 ment efforts.

6 (b) CONSULTATION.—In carrying out subsection (a),
7 the working group shall consult with industries involved
8 in the transportation of household goods, the public, and
9 other interested parties.

10 **SEC. 4310. CONSUMER HANDBOOK ON DOT WEBSITE.**

11 Within 6 months after the date of enactment of this
12 Act, the Secretary shall take such action as may be nec-
13 essary to ensure that the Department of Transportation
14 publication OCE 100, entitled “Your Rights and Respon-
15 sibilities When You Move” required by section 375.2 of
16 title 49, Code of Federal Regulations (or any cor-
17 responding similar regulation), is prominently displayed,
18 and available in language that is readily understandable
19 by the general public, on the website of the Department
20 of Transportation.

21 **SEC. 4311. INFORMATION ABOUT HOUSEHOLD GOODS**
22 **TRANSPORTATION ON CARRIERS’ WEBSITES.**

23 Not later than 1 year after the date of enactment
24 of this Act, the Secretary shall modify the regulations con-
25 tained in part 375 of title 49, Code of Federal Regula-

1 tions, to require a motor carrier or broker that is subject
 2 to such regulations and that establishes and maintains a
 3 website to prominently display on the website—

4 (1) the number assigned to the motor carrier or
 5 broker by the Department of Transportation;

6 (2) the OCE 100 publication referred to in sec-
 7 tion 4310; and

8 (3) in the case of a broker, a list of all motor
 9 carriers providing transportation of household goods
 10 used by the broker and a statement that the broker
 11 is not a motor carrier providing transportation of
 12 household goods.

13 **SEC. 4312. CONSUMER COMPLAINTS.**

14 (a) **REQUIREMENT FOR DATABASE.**—Subchapter II
 15 of chapter 141 is amended by adding at the end the fol-
 16 lowing:

17 **“§ 14124. Consumer complaints**

18 “(a) **ESTABLISHMENT OF SYSTEM AND DATABASE.**—
 19 The Secretary of Transportation shall—

20 “(1) establish a system to—

21 “(A) file and log a complaint made by a
 22 shipper that relates to motor carrier transpor-
 23 tation of household goods; and

24 “(B) to solicit information gathered by a
 25 State regarding the number and type of com-

1 plaints involving the interstate transportation of
2 household goods;

3 “(2) establish a database of such complaints;

4 and

5 “(3) develop a procedure—

6 “(A) to provide the public access to the
7 database;

8 “(B) to forward a complaint, including the
9 motor carrier bill of lading number related to
10 the complaint to a motor carrier named in such
11 complaint and to an appropriate State authority
12 (as defined in section 14710(c) in the State in
13 which the complainant resides; and

14 “(C) to permit a motor carrier to challenge
15 information in the database.

16 “(b) REQUIREMENT FOR ANNUAL REPORTS.—The
17 Secretary shall issue regulations requiring a motor carrier
18 that provides transportation of household goods to submit
19 to the Secretary, not later than March 31st of each year,
20 an annual report covering the 12-month period ending on
21 the preceding March 31st that includes—

22 “(1) the number of interstate shipments of
23 household goods that the motor carrier received from
24 shippers and that were delivered to a final destina-
25 tion during the preceding calendar year;

1 “(2) the number and general category of com-
2 plaints lodged against the motor carrier during the
3 preceding calendar year;

4 “(3) the number of shipments described in
5 paragraph (1) that resulted in the filing of a claim
6 against the motor carrier for loss or damage to the
7 shipment for an amount in excess of \$500 during
8 the preceding calendar year; and

9 “(4) the number of shipments described in
10 paragraph (3) that were—

11 “(A) resolved during the preceding cal-
12 endar year; or

13 “(B) pending on the last day of the pre-
14 ceding calendar year.

15 “(c) SUMMARY TO CONGRESS.—The Secretary shall
16 transmit a summary each year of the complaints filed and
17 logged under subsection (a) for the preceding calendar
18 year to the Senate Committee on Commerce, Science, and
19 Transportation and the House of Representatives Com-
20 mittee on Transportation and Infrastructure.”.

21 (b) CONFORMING AMENDMENT.—The analysis for
22 chapter 141 is amended by inserting after the item relat-
23 ing to section 14123 the following:

“14124. Consumer complaints.”.

1 **SEC. 4313. REVIEW OF LIABILITY OF CARRIERS.**

2 (a) REVIEW.—Not later than 1 year after the date
3 of enactment of this Act, the Surface Transportation
4 Board shall complete a review of the current Federal regu-
5 lations regarding the level of liability protection provided
6 by motor carriers that provide transportation of household
7 goods and revise such regulations, if necessary, to provide
8 enhanced protection in the case of loss or damage.

9 (b) DETERMINATIONS.—The review required by sub-
10 section (a) shall include a determination of—

11 (1) whether the current regulations provide ade-
12 quate protection;

13 (2) the benefits of purchase by a shipper of in-
14 surance to supplement the carrier's limitations on li-
15 ability;

16 (3) whether there are abuses of the current reg-
17 ulations that leave the shipper unprotected in the
18 event of loss and damage to a shipment of household
19 goods; and

20 (4) whether the section 14706 of title 49,
21 United States Code, should be modified or repealed.

22 **SEC. 4314. CIVIL PENALTIES RELATING TO HOUSEHOLD**
23 **GOODS BROKERS.**

24 Section 14901(d) is amended—

1 (1) by resetting the text as a paragraph in-
2 dented 2 ems from the left margin and inserting
3 “(1) IN GENERAL.—” before “If a carrier”; and

4 (2) by adding at the end the following:

5 “(2) ESTIMATE OF BROKER WITHOUT CARRIER
6 AGREEMENT.—If a broker for transportation of
7 household goods subject to jurisdiction under sub-
8 chapter I of chapter 135 of this title makes an esti-
9 mate of the cost of transporting any such goods be-
10 fore entering into an agreement with a carrier to
11 provide transportation of household goods subject to
12 such jurisdiction, the broker is liable to the United
13 States for a civil penalty of not less than \$10,000
14 for each violation.

15 “(3) UNAUTHORIZED TRANSPORTATION.—If a
16 person provides transportation of household goods
17 subject to jurisdiction under subchapter I of chapter
18 135 this title or provides broker services for such
19 transportation without being registered under chap-
20 ter 139 of this title to provide such transportation
21 or services as a motor carrier or broker, as the case
22 may be, such person is liable to the United States
23 for a civil penalty of not less than \$25,000 for each
24 violation.”.

1 **SEC. 4315. CIVIL AND CRIMINAL PENALTY FOR FAILING TO**
2 **GIVE UP POSSESSION OF HOUSEHOLD**
3 **GOODS.**

4 (a) IN GENERAL.—Chapter 149 is amended by add-
5 ing at the end the following:

6 **“§ 14915. Penalties for failure to give up possession of**
7 **household goods**

8 “(a) CIVIL PENALTY.—Whoever is found to have
9 failed to give up possession of household goods is liable
10 to the United States for a civil penalty of not less than
11 \$10,000. Each day a carrier is found to have failed to
12 give up possession of household goods may constitute a
13 separate violation. If such person is a carrier or broker,
14 the Secretary may suspend for a period of not less than
15 6 months the registration of such carrier or broker under
16 chapter 139 of this title.

17 “(b) CRIMINAL PENALTY.—Whoever has been con-
18 victed of having failed to give up possession of household
19 goods shall be fined under title 18 or imprisoned for not
20 more than 2 years, or both.

21 “(c) FAILURE TO GIVE UP POSSESSION OF HOUSE-
22 HOLD GOODS DEFINED.—For purposes of this section,
23 the term ‘failed to give up possession of household goods’
24 means the knowing and willful failure of a motor carrier
25 to deliver to, or unload at, the destination of a shipment
26 of household goods that is subject to jurisdiction under

1 subchapter I or III of chapter 135 of this title, for which
 2 charges have been estimated by the motor carrier pro-
 3 viding transportation of such goods, and for which the
 4 shipper has tendered a payment described in clause (i),
 5 (ii), or (iii) of section 13707(b)(3)(A) of this title.”.

6 (b) CONFORMING AMENDMENT.—The analysis for
 7 such chapter is amended by adding at the end the fol-
 8 lowing:

“14915. Penalties for failure to give up possession of household goods.”.

9 **SEC. 4316. PROGRESS REPORT.**

10 Not later than 1 year after the date of enactment
 11 of this Act, the Secretary shall transmit to Congress a
 12 report on the progress being made in implementing the
 13 provisions of this title.

14 **SEC. 4317. ADDITIONAL REGISTRATION REQUIREMENTS**
 15 **FOR MOTOR CARRIERS OF HOUSEHOLD**
 16 **GOODS.**

17 Section 13902(a) is amended—

18 (1) by striking paragraphs (2) and (3);

19 (2) by redesignating paragraph (4) as para-
 20 graph (5) and inserting after paragraph (1) the fol-
 21 lowing:

22 “(2) **ADDITIONAL REGISTRATION REQUIREMENTS**
 23 **FOR HOUSEHOLD GOODS TRANSPORTATION.**—Notwith-
 24 standing paragraph (1), the Secretary may register a per-
 25 son to provide transportation of household goods (as de-

1 fined in section 13102(10) of this title) only after that
2 person—

3 “(A) provides evidence of participation in
4 an arbitration program and provides a copy of
5 the notice of that program as required by sec-
6 tion 14708(b)(2) of this title;

7 “(B) identifies its tariff and provides a
8 copy of the notice of the availability of that tar-
9 iff for inspection as required by section
10 13702(c) of this title;

11 “(C) provides evidence that it has access
12 to, has read, is familiar with, and will observe
13 all laws relating to consumer protection, esti-
14 mating, consumers’ rights and responsibilities,
15 and options for limitations of liability for loss
16 and damage; and

17 “(D) discloses any relationship involving
18 common stock, common ownership, common
19 management, or common familial relationships
20 between that person and any other motor car-
21 rier, freight forwarder, or broker of household
22 goods within the past 3 years.

23 “(3) CONSIDERATION OF EVIDENCE; FIND-
24 INGS.—The Secretary shall consider, and, to the ex-
25 tent applicable, make findings on any evidence dem-

1 onstrating that the registrant is unable to comply
2 with any applicable requirement of paragraph (1) or,
3 in the case of a registrant to which paragraph (2)
4 applies, paragraph (1) or (2).

5 “(4) WITHHOLDING.—If the Secretary deter-
6 mines that a registrant under this section does not
7 meet, or is not able to meet, any requirement of
8 paragraph (1) or, in the case of a registrant to
9 which paragraph (2) applies, paragraph (1) or (2),
10 the Secretary shall withhold registration.”; and

11 (3) by adding at the end of paragraph (5), as
12 redesignated, “In the case of a registration for the
13 transportation of household goods (as defined in sec-
14 tion 13102(10 of this title), the Secretary may also
15 hear a complaint on the ground that the registrant
16 fails or will fail to comply with the requirements of
17 paragraph (2) of this subsection.”.

18 **Subtitle D—Hazardous Materials**
19 **Transportation Safety and Security**

20 **SEC. 4401. SHORT TITLE.**

21 This subtitle may be cited as the “Hazardous Mate-
22 rial Transportation Safety and Security Reauthorization
23 Act of 2004”.

1 **SEC. 4402. AMENDMENT OF TITLE 49, UNITED STATES**
 2 **CODE.**

3 Except as otherwise expressly provided, whenever in
 4 this subtitle an amendment or repeal is expressed in terms
 5 of an amendment to, or repeal of, a section or other provi-
 6 sion, the reference shall be considered to be made to a
 7 section or other provision of title 49, United States Code.

8 **PART I—GENERAL AUTHORITIES ON**
 9 **TRANSPORTATION OF HAZARDOUS MATERIALS**

10 **SEC. 4421. PURPOSE.**

11 The text of section 5101 is amended to read as fol-
 12 lows:

13 “The purpose of this chapter is to protect against the
 14 risks to life, property, and the environment that are inher-
 15 ent in the transportation of hazardous material in intra-
 16 state, interstate, and foreign commerce.”.

17 **SEC. 4422. DEFINITIONS.**

18 Section 5102 is amended as follows:

19 (1) **COMMERCE.**—Paragraph (1) is amended—

20 (A) by striking “or” after the semicolon in
 21 subparagraph (A);

22 (B) by striking the “State.” in subpara-
 23 graph (B) and inserting “State; or”; and

24 (C) by adding at the end the following:

25 “(C) on a United States-registered air-
 26 craft.”.

1 (2) HAZMAT EMPLOYEE.—Paragraph (3) is
2 amended to read as follows:

3 “(3) ‘hazmat employee’ means an individual—

4 “(A) who—

5 “(i) is employed or used by a hazmat
6 employer; or

7 “(ii) is self-employed, including an
8 owner-operator of a motor vehicle, vessel,
9 or aircraft, transporting hazardous mate-
10 rial in commerce; and

11 “(B) who performs a function regulated by
12 the Secretary under section 5103(b)(1) of this
13 title.”.

14 (3) HAZMAT EMPLOYER.—Paragraph (4) is
15 amended to read as follows:

16 “(4) ‘hazmat employer’ means a person—

17 “(A) who—

18 “(i) employs or uses at least 1 hazmat
19 employee; or

20 “(ii) is self-employed, including an
21 owner-operator of a motor vehicle, vessel,
22 or aircraft, transporting hazardous mate-
23 rial in commerce; and

24 “(B) who performs, or employs or uses at
25 least 1 hazmat employee to perform, a function

1 regulated by the Secretary under section
2 5103(b)(1) of this title.”.

3 (4) IMMINENT HAZARD.—Paragraph (5) is
4 amended by inserting “relating to hazardous mate-
5 rial” after “of a condition”.

6 (5) MOTOR CARRIER.—Paragraph (7) is amend-
7 ed to read as follows:

8 “(7) ‘motor carrier’—

9 “(A) means a motor carrier, motor private
10 carrier, and freight forwarder as those terms
11 are defined in section 13102 of this title; but

12 “(B) does not include a freight forwarder,
13 as so defined, if the freight forwarder is not
14 performing a function relating to highway
15 transportation.”.

16 (6) NATIONAL RESPONSE TEAM.—Paragraph
17 (8) is amended—

18 (A) by striking “national response team”
19 both places it appears and inserting “National
20 Response Team”; and

21 (B) by striking “national contingency
22 plan” and inserting “National Contingency
23 Plan”.

1 (7) PERSON.—Paragraph (9)(A) is amended by
2 striking “offering” and all that follows and inserting
3 “that—

4 “(i) offers hazardous material for
5 transportation in commerce;

6 “(ii) transports hazardous material to
7 further a commercial enterprise; or

8 “(iii) manufactures, designs, inspects,
9 tests, reconditions, marks, or repairs a
10 packaging or packaging component that is
11 represented as qualified for use in trans-
12 porting hazardous material in commerce;
13 but”.

14 (8) SECRETARY OF TRANSPORTATION.—Section
15 5101 is further amended—

16 (A) by redesignating paragraphs (11),
17 (12), and (13), as paragraphs (12), (13), and
18 (14), respectively; and

19 (B) by inserting after paragraph (10) the
20 following:

21 “(11) ‘Secretary’ means the Secretary of Trans-
22 portation except as otherwise provided.”.

1 **SEC. 4423. GENERAL REGULATORY AUTHORITY.**

2 (a) REFERENCE TO SECRETARY OF TRANSPOR-
3 TATION.—Section 5103(a) is amended by striking “of
4 Transportation”.

5 (b) DESIGNATING MATERIAL AS HAZARDOUS.—Sec-
6 tion 5103(a) is further amended—

7 (1) by striking “etiologic agent” and all that
8 follows through “corrosive material,” and inserting
9 “infectious substance, flammable or combustible liq-
10 uid, solid, or gas, toxic, oxidizing, or corrosive mate-
11 rial,”; and

12 (2) by striking “decides” and inserting “deter-
13 mines”.

14 (c) REGULATIONS FOR SAFE TRANSPORTATION.—
15 Section 5103(b)(1)(A) is amended to read as follows:

16 “(A) apply to a person who—

17 “(i) transports hazardous material in
18 commerce;

19 “(ii) causes hazardous material to be
20 transported in commerce;

21 “(iii) manufactures, designs, inspects,
22 tests, reconditions, marks, or repairs a
23 packaging or packaging component that is
24 represented as qualified for use in trans-
25 porting hazardous material in commerce;

1 “(iv) prepares or accepts hazardous
2 material for transportation in commerce;

3 “(v) is responsible for the safety of
4 transporting hazardous material in com-
5 merce;

6 “(vi) certifies compliance with any re-
7 quirement under this chapter;

8 “(vii) misrepresents whether such per-
9 son is engaged in any activity under clause
10 (i) through (vi) of this subparagraph; or

11 “(viii) performs any other act or func-
12 tion relating to the transportation of haz-
13 ardous material in commerce; and”.

14 (d) TECHNICAL AMENDMENT REGARDING CON-
15 SULTATION.—Section 5103 is amended—

16 (1) by striking subsection (b)(1)(C); and

17 (2) by adding at the end the following:

18 “(e) CONSULTATION.—When prescribing a security
19 regulation or issuing a security order that affects the safe-
20 ty of the transportation of hazardous material, the Sec-
21 retary of Homeland Security shall consult with the Sec-
22 retary of Transportation.”.

1 **SEC. 4424. LIMITATION ON ISSUANCE OF HAZMAT LI-**
2 **CENSES.**

3 (a) REFERENCE TO SECRETARY OF TRANSPOR-
4 TATION.—Section 5103a is amended by striking “of
5 Transportation” each place it appears in subsections
6 (a)(1), (c)(1)(B), and (d) and inserting “of Homeland Se-
7 curity”.

8 (b) COVERED HAZARDOUS MATERIALS.—Section
9 5103a(b) is amended by striking “with respect to—” and
10 all that follows and inserting “with respect to any material
11 defined as hazardous material by the Secretary for which
12 the Secretary requires placarding of a commercial motor
13 vehicle transporting that material in commerce.”.

14 (c) RECOMMENDATIONS ON CHEMICAL OR BIOLOGI-
15 CAL MATERIALS.—Section 5103a is further amended—

16 (1) by redesignating subsections (c), (d), and
17 (e) as subsections (d), (e), and (f), respectively; and

18 (2) by inserting after subsection (b) the fol-
19 lowing:

20 “(c) RECOMMENDATIONS ON CHEMICAL AND BIO-
21 LOGICAL MATERIALS.—The Secretary of Health and
22 Human Services shall recommend to the Secretary any
23 chemical or biological material or agent for regulation as
24 a hazardous material under section 5103(a) of this title
25 if the Secretary of Health and Human Services determines

1 that such material or agent is a threat to the national
2 security of the United States.”.

3 (d) CONFORMING AMENDMENT.—Section
4 5103a(a)(1) is amended by striking “subsection
5 (c)(1)(B),” and inserting “subsection (d)(1)(B),”.

6 **SEC. 4425. REPRESENTATION AND TAMPERING.**

7 (a) REPRESENTATION.—Section 5104(a) is
8 amended—

9 (1) by striking “a container,” and all that fol-
10 lows through “(packaging) for” and inserting “a
11 package, component of a package, or packaging
12 for”; and

13 (2) by striking “the container” and all that fol-
14 lows through “(packaging) meets” and inserting “the
15 package, component of a package, or packaging
16 meets”.

17 (b) TAMPERING.—Section 5104(b) is amended—

18 (1) by inserting “, without authorization from
19 the owner or custodian,” after “may not”;

20 (2) by striking “unlawfully”; and

21 (3) by inserting “component of a package, or
22 packaging,” after “package,” in paragraph (2).

1 **SEC. 4426. TRANSPORTING CERTAIN HIGHLY RADIOACTIVE**
2 **MATERIAL.**

3 (a) REPEAL OF ROUTES AND MODES STUDY.—Sec-
4 tion 5105 is amended by striking subsection (d).

5 (b) REPEAL OF REQUIREMENT FOR INSPECTIONS OF
6 CERTAIN MOTOR VEHICLES.—Section 5105 is amended
7 by striking subsection (e).

8 **SEC. 4427. HAZMAT EMPLOYEE TRAINING REQUIREMENTS**
9 **AND GRANTS.**

10 (a) REFERENCE TO SECRETARY OF TRANSPOR-
11 TATION.—Section 5107 is amended by striking “of Trans-
12 portation” each place it appears in subsections (a), (b),
13 (c) (other than in paragraph (1)), (d), and (f).

14 (b) TRAINING GRANTS.—Section 5107(e) is
15 amended—

16 (1) by striking “section 5127(c)(3)” and insert-
17 ing “section 5128(b)(1) of this title”;

18 (2) by inserting “and, to the extent determined
19 appropriate by the Secretary, grants for such in-
20 structors to train hazmat employees” after “employ-
21 ees” in the first sentence thereof.

22 **SEC. 4428. REGISTRATION.**

23 (a) REFERENCE TO SECRETARY OF TRANSPOR-
24 TATION.—Section 5108 is amended by striking “of Trans-
25 portation” each place it appears in subsections (a), (b)

1 (other than following “Department”), (d), (e), (f), (g), (h),
2 and (i).

3 (b) PERSONS REQUIRED TO FILE.—

4 (1) REQUIREMENT TO FILE.—Section
5 5108(a)(1)(B) is amended by striking “class A or B
6 explosive” and inserting “Division 1.1, 1.2, or 1.3
7 explosive material”.

8 (2) AUTHORITY TO REQUIRE TO FILE.—Section
9 5108(a)(2)(B) is amended to read as follows:

10 “(B) a person manufacturing, designing, in-
11 specting, testing, reconditioning, marking, or repair-
12 ing a package or packaging component that is rep-
13 resented as qualified for use in transporting haz-
14 ardous material in commerce.”.

15 (3) NO TRANSPORTATION WITHOUT FILING.—
16 Section 5108(a)(3) is amended by striking “fab-
17 ricate,” and all that follows through “package or”
18 and inserting “design, inspect, test, recondition,
19 mark, or repair a package, packaging component,
20 or”.

21 (c) FORM AND CONTENT OF FILINGS.—Section
22 5108(b)(1)(C) by striking “the activity.” and inserting
23 “any of the activities.”.

24 (d) FILING.—Section 5108(c) is amended to read as
25 follows:

1 “(c) FILING.—Each person required to file a reg-
2 istration statement under subsection (a) of this section
3 shall file the statement in accordance with regulations pre-
4 scribed by the Secretary.”.

5 (e) FEES.—Section 5108(g)(1) is amended by strik-
6 ing “may establish,” and inserting “shall establish,”.

7 (f) RELATIONSHIP TO OTHER LAWS.—Section
8 5108(i)(2)(B) is amended by inserting “an Indian tribe,”
9 after “subdivision of a State,”.

10 (g) REGISTRATION AND ANNUAL FEES.—

11 (1) REDUCTION IN CAP.—Section
12 5108(g)(2)(A) is amended by striking “\$5,000” and
13 inserting “\$2,000”.

14 (2) RULEMAKING.—Any rule, regulation, or
15 order issued by the Secretary of Transportation
16 under which the assessment, payment, or collection
17 of fees under section 5108(g) of title 49, United
18 States Code, was suspended or terminated before the
19 date of enactment of this Act is declared null and
20 void effective 30 days after such date of enactment.
21 Beginning on the 31st day after such date of enact-
22 ment, the fee schedule established by the Secretary
23 and set forth at 65 Federal Register 7297 (as modi-
24 fied by the rule set forth at 67 Federal Register

1 58343) shall take effect and apply until such time
2 as it may be modified by a rulemaking proceeding.

3 (3) PLANNING AND TRAINING GRANTS.—Not-
4 withstanding any other provision of law to the con-
5 trary, including any limitation on the amount of
6 grants authorized by section 5116 of title 49, United
7 States Code, not contained in that section, the Sec-
8 retary shall make grants under that section from the
9 account established under section 5116(i) to reduce
10 the balance in that account over the 6 fiscal year pe-
11 riod beginning with fiscal year 2004, but in no fiscal
12 year shall the grants distributed exceed the level au-
13 thorized by section 5116 of title 49, United States
14 Code.

15 **SEC. 4429. SHIPPING PAPERS AND DISCLOSURE.**

16 (a) REFERENCE TO SECRETARY OF TRANSPOR-
17 TATION.—Section 5110(a) is amended by striking “of
18 Transportation”.

19 (b) DISCLOSURE CONSIDERATIONS AND REQUIRE-
20 MENTS.—Section 5110 is amended—

21 (1) by striking “under subsection (b) of this
22 section.” in subsection (a) and inserting “in regula-
23 tions.”;

24 (2) by striking subsection (b); and

1 (3) by redesignating subsections (c), (d), and
2 (e) as subsections (b), (c), and (d), respectively.

3 (c) **RETENTION OF PAPERS.**—The first sentence of
4 section 5110(d), as redesignated by subsection (b)(3) of
5 this section, is amended to read as follows: “The person
6 who provides the shipping paper, and the carrier required
7 to keep it, under this section shall retain the paper, or
8 an electronic format of it, for a period of 3 years after
9 the date the shipping paper is provided to the carrier, with
10 the paper and format to be accessible through their re-
11 spective principal places of business.”.

12 **SEC. 4430. RAIL TANK CARS.**

13 (a) **REPEAL OF REQUIREMENTS.**—Section 5111 is
14 repealed.

15 (b) **CLERICAL AMENDMENT.**—The chapter analysis
16 for chapter 51 is amended by striking the item relating
17 to section 5111.

18 **SEC. 4431. HIGHWAY ROUTING OF HAZARDOUS MATERIAL.**

19 The second sentence of section 5112(a)(1) is amend-
20 ed by striking “However, the Secretary of Transportation”
21 and inserting “The Secretary”.

22 **SEC. 4432. UNSATISFACTORY SAFETY RATINGS.**

23 (a) **IN GENERAL.**—The text of section 5113 is
24 amended to read as follows:

1 “A violation of section 31144(c)(3) of this title shall
2 be considered a violation of this chapter, and shall be sub-
3 ject to the penalties in sections 5123 and 5124 of this
4 title.”.

5 (b) CONFORMING AMENDMENTS.—The first sub-
6 section (c) of section 31144 is amended—

7 (1) by striking “sections 521(b)(5)(A) and
8 5113” in paragraph (1) and inserting “section
9 521(b)(5)(A) of this title”; and

10 (2) by adding at the end of paragraph (3) “A
11 violation of this paragraph by an owner or operator
12 transporting hazardous material shall be considered
13 a violation of chapter 51 of this title, and shall be
14 subject to the penalties in sections 5123 and 5124
15 of this title.”.

16 **SEC. 4433. AIR TRANSPORTATION OF IONIZING RADIATION**
17 **MATERIAL.**

18 Section 5114(b) is amended by striking “of Trans-
19 portation”.

20 **SEC. 4434. TRAINING CURRICULUM FOR THE PUBLIC SEC-**
21 **TOR.**

22 (a) IN GENERAL.—Section 5115(a) is amended to
23 read as follows:

24 “(a) IN GENERAL.—In coordination with the Direc-
25 tor of the Federal Emergency Management Agency, the

1 Chairman of the Nuclear Regulatory Commission, the Ad-
2 ministrator of the Environmental Protection Agency, the
3 Secretaries of Labor, Energy, and Health and Human
4 Services, and the Director of the National Institute of En-
5 vironmental Health Sciences, and using existing coordi-
6 nating mechanisms of the National Response Team and,
7 for radioactive material, the Federal Radiological Pre-
8 paredness Coordinating Committee, the Secretary shall
9 maintain a current curriculum of lists of courses necessary
10 to train public sector emergency response and prepared-
11 ness teams in matters relating to the transportation of
12 hazardous material.”.

13 (b) REQUIREMENTS.—Section 5115(b) is amended—

14 (1) by striking “developed” in the matter pre-
15 ceding paragraph (1) and inserting “maintained”;
16 and

17 (2) by striking “under other United States Gov-
18 ernment grant programs” in paragraph (1)(C) and
19 all that follows and inserting “with Federal assist-
20 ance; and”.

21 (c) TRAINING ON COMPLIANCE WITH LEGAL RE-
22 QUIREMENTS.—Section 5115(c)(3) is amended by striking
23 “Association.” and inserting “Association or by any other
24 voluntary organization establishing consensus-based
25 standards that the Secretary considers appropriate.”.

1 (d) DISTRIBUTION AND PUBLICATION.—Section
2 5115(d) is amended—

3 (1) by striking “national response team—” and
4 inserting “National Response Team—”; and

5 (2) by striking “publish a list” in paragraph (2)
6 and all that follows and inserting “publish and dis-
7 tribute the list of courses maintained under this sec-
8 tion, and of any programs utilizing such courses.”.

9 **SEC. 4435. PLANNING AND TRAINING GRANTS; EMERGENCY**
10 **PREPAREDNESS FUND.**

11 (a) REFERENCE TO SECRETARY OF TRANSPOR-
12 TATION.—Section 5116 is amended by striking “of Trans-
13 portation” each place it appears in subsections (a), (b),
14 (c), (d), (g), and (i).

15 (b) GOVERNMENT SHARE OF COSTS.—Section
16 5116(e) is amended by striking the second sentence.

17 (c) MONITORING AND TECHNICAL ASSISTANCE.—
18 Section 5116(f) is amended by striking “national response
19 team” and inserting “National Response Team”.

20 (d) DELEGATION OF AUTHORITY.—Section 5116(g)
21 is amended by striking “Government grant programs” and
22 inserting “Federal financial assistance programs”.

23 (e) EMERGENCY PREPAREDNESS FUND.—

24 (1) NAME OF FUND.—Section 5116(i) is
25 amended by inserting after “an account” the fol-

1 lowing: “(to be known as the ‘Emergency Prepared-
2 ness Fund’)”.

3 (2) PUBLICATION OF EMERGENCY RESPONSE
4 GUIDE.—Section 5116(i) is further amended—

5 (A) by striking “collects under section
6 5108(g)(2)(A) of this title and”;

7 (B) by striking “and” after the semicolon
8 in paragraph (2);

9 (C) by redesignating paragraph (3) as
10 paragraph (4); and

11 (D) by inserting after paragraph (2) the
12 following:

13 “(3) to publish and distribute an emergency re-
14 sponse guide; and”.

15 (3) CONFORMING AMENDMENT.—Section
16 5108(g)(2)(C) is amended by striking “the account
17 the Secretary of the Treasury establishes” and in-
18 serting “the Emergency Response Fund estab-
19 lished”.

20 (f) REPORTS.—Section 5116(k) is amended—

21 (1) by striking the first sentence and inserting
22 “‘The Secretary shall make available to the public
23 annually information on the allocation and uses of
24 planning grants under subsection (a), training
25 grants under subsection (b), and grants under sub-

1 section (j) of this section and under section 5107 of
2 this title.”; and

3 (2) by striking “Such report” in the second
4 sentence and inserting “The information”.

5 **SEC. 4436. SPECIAL PERMITS AND EXCLUSIONS.**

6 (a) SPECIAL PERMITS AND EXCLUSIONS.—

7 (1) IN GENERAL.—Section 5117(a)(1) is
8 amended by striking “the Secretary of Transpor-
9 tation may issue” and all that follows through “in
10 a way” and inserting “the Secretary may issue,
11 modify, or terminate a special permit authorizing
12 variances from this chapter, or a regulation pre-
13 scribed under section 5103(b), 5104, 5110, or 5112
14 of this title, to a person performing a function regu-
15 lated by the Secretary under section 5103(b)(1) of
16 this title in a way”.

17 (2) DURATION.—Section 5117(a)(2) is amend-
18 ed to read as follows:

19 “(2) A special permit under this subsection—

20 “(A) shall be effective when first issued for
21 not more than 2 years; and

22 “(B) may be renewed for successive peri-
23 ods of not more than 4 years each.”.

24 (b) REFERENCES TO SPECIAL PERMITS.—Section
25 5117 is further amended—

1 (1) by striking “an exemption” each place it ap-
 2 pears and inserting “a special permit”; and

3 (2) by striking “the exemption” each place it
 4 appears and inserting “the special permit”.

5 (c) CONFORMING AND CLERICAL AMENDMENTS.—

6 (1) CONFORMING AMENDMENT.—The heading
 7 of section 5117 is amended to read as follows:

8 **“§ 5117. Special permits and exclusions”**

9 (2) CLERICAL AMENDMENT.—The chapter anal-
 10 ysis for chapter 51 is amended by striking the item
 11 relating to section 5117 and inserting the following:

“5117. Special permits and exclusions.”.

12 (d) REPEAL OF SECTION 5118.—

13 (1) Section 5118 is repealed.

14 (2) The chapter analysis for chapter 51 is
 15 amended by striking the item relating to section
 16 5118 and inserting the following:

“5118. Repealed.”.

17 **SEC. 4437. UNIFORM FORMS AND PROCEDURES.**

18 The text of section 5119 is amended to read as fol-
 19 lows:

20 “(a) IN GENERAL.—The Secretary may prescribe
 21 regulations to establish uniform forms and regulations for
 22 States on the following:

1 “(1) To register and issue permits to persons
2 that transport or cause to be transported hazardous
3 material by motor vehicles in a State.

4 “(2) To permit the transportation of hazardous
5 material in a State.

6 “(b) UNIFORMITY IN FORMS AND PROCEDURES.—In
7 prescribing regulations under subsection (a) of this sec-
8 tion, the Secretary shall develop procedures to eliminate
9 discrepancies among the States in carrying out the activi-
10 ties covered by the regulations.

11 “(c) LIMITATION.—The regulations prescribed under
12 subsection (a) of this section may not define or limit the
13 amount of any fees imposed or collected by a State for
14 any activities covered by the regulations.

15 “(d) EFFECTIVE DATE.—

16 “(1) IN GENERAL.—Except as provided in para-
17 graph (2) of this subsection, the regulations pre-
18 scribed under subsection (a) of this section shall
19 take effect 1 year after the date on which pre-
20 scribed.

21 “(2) EXTENSION.—The Secretary may extend
22 the 1-year period in subsection (a) for an additional
23 year for good cause.

24 “(e) STATE REGULATIONS.—After the regulations
25 prescribed under subsection (a) of this section take effect

1 under subsection (d) of this section, a State may establish,
2 maintain, or enforce a requirement relating to the same
3 subject matter only if the requirement is consistent with
4 applicable requirements with respect to such activity in the
5 regulations.

6 “(f) INTERIM STATE PROGRAMS.—Pending the pre-
7 scription of regulations under subsection (a) of this sec-
8 tion, States may participate in the program of uniform
9 forms and procedures recommended by the Alliance for
10 Uniform Hazmat Transportation Procedures.”.

11 **SEC. 4438. INTERNATIONAL UNIFORMITY OF STANDARDS**
12 **AND REQUIREMENTS.**

13 Section 5120 is amended by striking “of Transpor-
14 tation” each place it appears in subsections (a), (b), and
15 (c)(1).

16 **SEC. 4439. HAZARDOUS MATERIALS TRANSPORTATION**
17 **SAFETY AND SECURITY.**

18 The text of section 5121 is amended to read as fol-
19 lows:

20 “(a) GENERAL AUTHORITY.—

21 “(1) To carry out this chapter, the Secretary
22 may investigate, conduct tests, make reports, issue
23 subpoenas, conduct hearings, require the production
24 of records and property, take depositions, and con-

1 duct research, development, demonstration, and
2 training activities.

3 “(2) Except as provided in subsections (c) and
4 (d) of this section, the Secretary shall provide notice
5 and an opportunity for a hearing before issuing an
6 order directing compliance with this chapter, a regu-
7 lation prescribed under this chapter, or an order,
8 special permit, or approval issued under this chap-
9 ter.

10 “(b) RECORDS, REPORTS, PROPERTY, AND INFORMA-
11 TION.—A person subject to this chapter shall—

12 “(1) maintain records, make reports, and pro-
13 vide property and information that the Secretary by
14 regulation or order requires; and

15 “(2) make the records, reports, property, and
16 information available for inspection when the Sec-
17 retary undertakes an inspection or investigation.

18 “(c) INSPECTIONS AND INVESTIGATIONS.—

19 “(1) A designated officer or employee of the
20 Secretary may—

21 “(A) inspect and investigate, at a reason-
22 able time and in a reasonable way, records and
23 property relating to a function described in sec-
24 tion 5103(b)(1) of this title;

1 “(B) except for packaging immediately ad-
2 jacent to the hazardous material contents, gain
3 access to, open, and examine a package offered
4 for or in transportation when the officer or em-
5 ployees has an objectively reasonable and
6 articulable belief that the package may contain
7 hazardous material;

8 “(C) remove from transportation a pack-
9 age or related packages in a shipment offered
10 for or in transportation for which—

11 “(i) such officer or employee has an
12 objectively reasonable and articulable belief
13 that the package may pose an imminent
14 hazard; and

15 “(ii) such officer or employee contem-
16 poraneously documents such belief in ac-
17 cordance with procedures set forth in regu-
18 lations prescribed under subsection (e) of
19 this section;

20 “(D) gather information from the offeror,
21 carrier, packaging manufacturer or retester, or
22 other person responsible for a package or pack-
23 ages to ascertain the nature and hazards of the
24 contents of the package or packages;

1 “(E) as necessary under terms and condi-
2 tions prescribed by the Secretary, order the of-
3 feror, carrier, or other person responsible for a
4 package or packages to have the package or
5 packages transported to an appropriate facility,
6 opened, examined, and analyzed; and

7 “(F) when safety might otherwise be com-
8 promised, authorize properly qualified personnel
9 to assist in activities carried out under this
10 paragraph.

11 “(2) An officer or employee acting under the
12 authority of the Secretary under this subsection
13 shall display proper credentials when requested.

14 “(3) In instances when, as a result of an in-
15 spection or investigation under this subsection, an
16 imminent hazards is not found to exist, the Sec-
17 retary shall, in accordance with procedures set forth
18 in regulations prescribed under subsection (e) of this
19 section, assist the safe resumption of transportation
20 of the package, packages, or transport unit con-
21 cerned.

22 “(d) EMERGENCY ORDERS.—

23 “(1) If, upon inspection, investigation, testing,
24 or research, the Secretary determines that a viola-
25 tion of a provision of this chapter, or a regulation

1 prescribed under this chapter, or an unsafe condition
2 or practice, constitutes or is causing an imminent
3 hazard, the Secretary may issue or impose emer-
4 gency restrictions, prohibitions, recalls, or out-of-
5 service orders, without notice or an opportunity for
6 a hearing, but only to the extent necessary to abate
7 the imminent hazard.

8 “(2) The action of the Secretary under para-
9 graph (1) of this subsection shall be in a written
10 emergency order that—

11 “(A) describes the violation, condition, or
12 practice that constitutes or is causing the immi-
13 nent hazard;

14 “(B) states the restrictions, prohibitions,
15 recalls, or out-of-service orders issued or im-
16 posed; and

17 “(C) describe the standards and proce-
18 dures for obtaining relief from the order.

19 “(3) After taking action under paragraph (1) of
20 this subsection, the Secretary shall provide for re-
21 view of the action under section 554 of title 5 if a
22 petition for review is filed within 20 calendar days
23 of the issuance of the order for the action.

24 “(4) If a petition for review of an action is filed
25 under paragraph (3) of this subsection and the re-

1 view under that paragraph is not completed by the
2 end of the 30-day period beginning on the date the
3 petition is filed, the action shall cease to be effective
4 at the end of such period unless the Secretary deter-
5 mines, in writing, that the imminent hazard pro-
6 viding a basis for the action continues to exist.

7 “(5) In this subsection, the term ‘out-of-service
8 order’ means a requirement that an aircraft, vessel,
9 motor vehicle, train, railcar, locomotive, other vehi-
10 cle, transport unit, transport vehicle, freight con-
11 tainer, potable tank, or other package not be moved
12 until specified conditions have been met.

13 “(e) REGULATIONS.—The Secretary shall prescribe
14 in accordance with section 553 of title 5 regulations to
15 carry out the authority in subsections (c) and (d) of this
16 section.

17 “(f) FACILITY, STAFF, AND REPORTING SYSTEM ON
18 RISKS, EMERGENCIES, AND ACTIONS.—

19 “(1) The Secretary shall—

20 “(A) maintain a facility and technical staff
21 sufficient to provide, within the United States
22 Government, the capability of evaluating a risk
23 relating to the transportation of hazardous ma-
24 terial and material alleged to be hazardous;

1 “(B) maintain a central reporting system
2 and information center capable of providing in-
3 formation and advice to law enforcement and
4 firefighting personnel, and other interested indi-
5 viduals, and officers and employees of the
6 United States Government and State and local
7 governments on meeting an emergency relating
8 to the transportation of hazardous material;
9 and

10 “(C) conduct a continuous review on all as-
11 pects of transporting hazardous material to de-
12 cide on and take appropriate actions to ensure
13 safe transportation of hazardous material.

14 “(2) Paragraph (1) of this subsection shall not
15 prevent the Secretary from making a contract with
16 a private entity for use of a supplemental reporting
17 system and information center operated and main-
18 tained by the contractor.

19 “(g) GRANTS, COOPERATIVE AGREEMENTS, AND
20 OTHER TRANSACTIONS.—The Secretary may enter into
21 grants, cooperative agreements, and other transactions
22 with a person, agency, or instrumentality of the United
23 States, a unit of State or local government, an Indian
24 tribe, a foreign government (in coordination with the De-

1 department of State), an educational institution, or other ap-
2 propriate entity—

3 “(1) to expand risk assessment and emergency
4 response capabilities with respect to the security of
5 transportation of hazardous material;

6 “(2) to conduct research, development, dem-
7 onstration, risk assessment and emergency response
8 planning and training activities; or

9 “(3) to otherwise carry out this chapter.

10 “(h) REPORTS.—

11 “(1) The Secretary shall, once every 2 years,
12 submit to the Senate Committee on Commerce,
13 Science, and Transportation and the House of Rep-
14 resentatives Committee on Transportation and In-
15 frastructure a comprehensive report on the transpor-
16 tation of hazardous material during the preceding 2
17 calendar years. Each report shall include, for the pe-
18 riod covered by such report—

19 “(A) a statistical compilation of the acci-
20 dents, incidents, and casualties related to the
21 transportation of hazardous material during
22 such period;

23 “(B) a list and summary of applicable
24 Government regulations, criteria, orders, and
25 special permits;

1 “(C) a summary of the basis for each spe-
2 cial permit issued;

3 “(D) an evaluation of the effectiveness of
4 enforcement activities relating to the transpor-
5 tation of hazardous material during such pe-
6 riod, and of the degree of voluntary compliance
7 with regulations;

8 “(E) a summary of outstanding problems
9 in carrying out this chapter, set forth in order
10 of priority; and

11 “(F) any recommendations for legislative
12 or administrative action that the Secretary con-
13 siders appropriate.

14 “(2) Before December 31, 2005, and every 3
15 years thereafter, the Secretary, through the Bureau
16 of Transportation Statistics and in consultation with
17 other Federal departments and agencies, shall sub-
18 mit a report to the Senate Committee on Commerce,
19 Science, and Transportation and the House of Rep-
20 resentatives Committee on Transportation and In-
21 frastructure on the transportation of hazardous ma-
22 terial in all modes of transportation during the pre-
23 ceding 3 calendar years. Each report shall include,
24 for the period covered by such report—

1 “(A) a summary of the hazardous material
2 shipments, deliveries, and movements during
3 such period, set forth by hazardous materials
4 type, by tonnage and ton-miles, and by mode,
5 both domestically and across United States bor-
6 ders; and

7 “(B) a summary of shipment estimates
8 during such period as a proxy for risk.

9 “(i) SECURITY SENSITIVE INFORMATION.—

10 “(1) If the Secretary determines that particular
11 information may reveal a vulnerability of a haz-
12 ardous material to attack during transportation in
13 commerce, or may facilitate the diversion of haz-
14 ardous material during transportation in commerce
15 for use in an attack on people or property, the Sec-
16 retary may disclose such information only—

17 “(A) to the owner, custodian, offeror, or
18 carrier of such hazardous material;

19 “(B) to an officer, employee, or agent of
20 the United States Government, or a State or
21 local government, including volunteer fire de-
22 partments, concerned with carrying out trans-
23 portation safety laws, protecting hazardous ma-
24 terial in the course of transportation in com-
25 merce, protecting public safety or national secu-

1 rity, or enforcing Federal law designed to pro-
2 tect public health or the environment; or

3 “(C) in an administrative or judicial pro-
4 ceeding brought under this chapter, under other
5 Federal law intended to protect public health or
6 the environment, or under other Federal law in-
7 tended to address terrorist actions or threats of
8 terrorist actions.

9 “(2) The Secretary may make determinations
10 under paragraph (1) of this subsection with respect
11 categories of information in accordance with regula-
12 tions prescribed by the Secretary.

13 “(3) A release of information pursuant to a de-
14 termination under paragraph (1) of this subsection
15 shall not be treated as a release of such information
16 to the public for purposes of section 552 of title 5.”.

17 **SEC. 4440. ENFORCEMENT.**

18 (a) REFERENCE TO SECRETARY OF TRANSPOR-
19 TATION.—Section 5122(a) is amended by striking “of
20 Transportation”.

21 (b) GENERAL.—Section 5122(a) is further
22 amended—

23 (1) by striking “chapter or a regulation pre-
24 scribed or order” in the first sentence and inserting

1 “chapter, a regulation prescribed under this chapter,
2 or an order, special permit, or approval”; and

3 (2) by striking the second sentence and insert-
4 ing “In an action under this subsection, the court
5 may award appropriate relief, including a temporary
6 or permanent injunction, civil penalties under sec-
7 tion 5123 of this title, and punitive damages.”.

8 (c) IMMINENT HAZARDS.—Section 5122(b)(1)(B) is
9 amended by striking “ameliorate” and inserting “miti-
10 gate”.

11 **SEC. 4441. CIVIL PENALTIES.**

12 (a) REFERENCE TO SECRETARY OF TRANSPOR-
13 TATION.—Section 5123(b) is amended by striking “of
14 Transportation”.

15 (b) PENALTY.—Section 5123(a)(1) is amended—

16 (1) by striking “chapter or a regulation pre-
17 scribed or order” and inserting “chapter, a regula-
18 tion prescribed under this chapter, or an order, spe-
19 cial permit, or approval”; and

20 (2) by striking “\$25,000” and inserting
21 “\$100,000”.

22 (c) HEARING REQUIREMENT.—Section 5123(b) is
23 amended by striking “chapter or a regulation prescribed”
24 and inserting “chapter, a regulation prescribed under this
25 chapter, or an order, special permit, or approval issued”.

1 (d) CIVIL ACTIONS TO COLLECT.—Section 5123(d)
2 is amended by striking “section.” and inserting “section
3 and any accrued interest on the civil penalty as calculated
4 in accordance with section 1005 of the Oil Pollution Act
5 of 1990 (33 U.S.C. 2705). In the civil action, the amount
6 and appropriateness of the civil penalty shall not be sub-
7 ject to review.”.

8 (e) EFFECTIVE DATE.—(1) The amendments made
9 by subsections (b) and (c) of this section shall take effect
10 on the date of the enactment of this Act, and shall apply
11 with respect to violations described in section 5123(a) of
12 title 49, United States Code (as amended by this section),
13 that occur on or after that date.

14 (2) The amendment made by subsection (d) of this
15 section shall apply with respect to civil penalties imposed
16 on violations described in section 5123(a) of title 49,
17 United States Code (as amended by this section), which
18 violations occur on or after the date of the enactment of
19 this Act.

20 **SEC. 4442. CRIMINAL PENALTIES.**

21 (a) IN GENERAL.—Section 5124 is amended—

22 (1) by inserting “(a) IN GENERAL.—” before
23 “A person”; and

24 (2) by striking “chapter or a regulation pre-
25 scribed or order” and inserting “chapter, a regula-

1 tion prescribed under this chapter, or an order, spe-
2 cial permit, or approval”.

3 (b) **ADDITIONAL MATTERS.**—That section is further
4 amended by adding at the end the following:

5 “(b) **AGGRAVATED VIOLATIONS.**—A person know-
6 ingly violating section 5104(b) of this title or willfully vio-
7 lating this chapter or a regulation prescribed, or an order,
8 special permit, or approval issued, under this chapter, who
9 thereby causes the release of hazardous material shall be
10 fined under title 18, imprisoned for not more than 20
11 years, or both.

12 “(c) **SEPARATE VIOLATIONS.**—A separate violation
13 occurs for each day the violation, committed by a person
14 who transports or causes to be transported hazardous ma-
15 terial, continues.”.

16 **SEC. 4443. PREEMPTION.**

17 (a) **REFERENCE TO SECRETARY OF TRANSPOR-**
18 **TATION.**—Section 5125(b)(2) is amended by striking “of
19 Transportation”.

20 (b) **PURPOSES.**—Section 5125 is amended—

21 (1) by redesignating subsections (a), (b), (c),
22 (d), (e), (f), and (g) as subsections (b), (c), (d), (e),
23 (f), (g), and (h), respectively;

24 (2) by inserting before subsection (b), as so re-
25 designated, the following:

1 “(a) PURPOSES.—The Secretary shall exercise the
2 authority in this section—

3 “(1) to achieve uniform regulation of the trans-
4 portation of hazardous material;

5 “(2) to eliminate rules that are inconsistent
6 with the regulations prescribed under this chapter;
7 and

8 “(3) to otherwise promote the safe and efficient
9 movement of hazardous material in commerce.”;

10 (3) by striking subsection (g), as redesignated;
11 and

12 (4) by redesignating subsection (h), as redesign-
13 nated, as subsection (g).

14 (c) GENERAL PREEMPTION.—Section 5125(b), as re-
15 designated by subsection (b)(1) of this section, is further
16 amended by striking “GENERAL.—Except as provided in
17 subsection (b), (c), and (e)” and inserting “PREEMPTION
18 GENERALLY.—Except as provided in subsections (c), (d),
19 and (f)”.

20 (d) SUBSTANTIVE DIFFERENCES.—Section 5125(c),
21 as so redesignated, is further amended—

22 (1) in the matter preceding subparagraph (A)
23 of paragraph (1), by striking “subsection (c)” and
24 inserting “subsection (d)”;

1 (2) by striking subparagraph (E) of paragraph
2 (1) and inserting the following:

3 “(E) the manufacturing, designing, inspecting,
4 testing, reconditioning, or repairing of a packaging
5 or packaging component that is represented as quali-
6 fied for use in transporting hazardous material in
7 commerce.”; and

8 (3) by striking “prescribes after November 16,
9 1990. However, the” in paragraph (2) and inserting
10 “prescribes. The”.

11 (e) DECISIONS ON PREEMPTION.—Section 5125(e),
12 as so redesignated, is further amended by striking “sub-
13 section (a), (b)(1), or (c) of this section.” in the first sen-
14 tence and inserting “subsection (b), (c)(1), or (d) of this
15 section or section 5119(b) of this title.”.

16 (f) WAIVER OF PREEMPTION.—Section 5125(f), as so
17 redesignated, is further amended by striking “subsection
18 (a), (b)(1), or (c) of this section.” and inserting “sub-
19 section (b), (c)(1), or (d) of this section or section 5119(b)
20 of this title.”.

21 (g) EMERGENCY WAIVER OF PREEMPTION; ADDI-
22 TIONAL MATTERS.—Section 5125 is further amended—

23 (1) by redesignating subsection (g), as redesign-
24 ated by subsection (b)(4) of this section, as sub-
25 section (j); and

1 (2) by inserting after subsection (f), as redesignated by subsection (b)(1) of this section, the following:

2 “(g) EMERGENCY WAIVER OF PREEMPTION.—

3 “(1) The Secretary may, upon a finding of good cause, waive the preemption of a requirement of a State, political subdivision of a State, or Indian tribe under this section without prior notice or an opportunity for public comment thereon.

4 “(2) For purposes of paragraph (1) of this subsection, good cause exists when—

5 “(A) there is a potential threat that hazardous material being transported in commerce may be used in an attack on people or property; and

6 “(B) notice and an opportunity for public comment thereon are impracticable or contrary to the public interest.

7 “(3)(A) A waiver of preemption under paragraph (1) of this subsection shall be in effect for a period specified by the Secretary, but not more than 6 months.

8 “(B) If the Secretary determines before the expiration of a waiver of preemption under subparagraph (A) of this paragraph that the potential threat

1 providing the basis for the waiver continues to exist,
2 the Secretary may, after providing notice and an op-
3 portunity for public comment thereon, extend the
4 duration of the waiver for such period after the expi-
5 ration of the waiver under that subparagraph as the
6 Secretary considers appropriate.

7 “(4) An action of the Secretary under para-
8 graph (1) or (3) of this subsection shall be in writ-
9 ing and shall set forth the standards and procedures
10 for seeking reconsideration of the action.

11 “(5) After taking action under paragraph (1) or
12 (3) of this subsection, the Secretary shall provide for
13 review of the action if a petition for review of the
14 action is filed within 20 calendar days after the date
15 of the action.

16 “(6) If a petition for review of an action is filed
17 under paragraph (5) of this subsection and review of
18 the action is not completed by the end of the 30-day
19 period beginning on the date the petition is filed, the
20 waiver under this subsection shall cease to be effec-
21 tive at the end of such period unless the Secretary
22 determines, in writing, that the potential threat pro-
23 viding the basis for the waiver continues.

24 “(h) APPLICATION OF EACH PREEMPTION STAND-
25 ARD.—Each standard for preemption in subsection (b),

1 (c)(1), or (d) of this section, and in section 5119(b) of
 2 this title, is independent in its application to a require-
 3 ment of a State, political subdivision of a State, or Indian
 4 tribe.

5 “(i) NON-FEDERAL ENFORCEMENT STANDARDS.—
 6 This section does not apply to any procedure, penalty, re-
 7 quired mental state, or other standard utilized by a State,
 8 political subdivision of a State, or Indian tribe to enforce
 9 a requirement applicable to the transportation of haz-
 10 ardous material.”.

11 **SEC. 4444. RELATIONSHIP TO OTHER LAWS.**

12 Section 5126 is amended—

13 (1) by striking “or causes to be transported
 14 hazardous material,” in subsection (a) and inserting
 15 “hazardous material, or causes hazardous material
 16 to be transported,”;

17 (2) by striking “manufactures,” and all that
 18 follows through “or sells” in subsection (a) and in-
 19 serting “manufactures, designs, inspects, tests, re-
 20 conditions, marks, or repairs a packaging or pack-
 21 aging component that is represented”;

22 (3) by striking “must” in subsection (a) and in-
 23 serting “shall”;

24 (4) by striking “manufacturing,” in subsection
 25 (a) and all that follows through “testing” and in-

1 serting “manufacturing, designing, inspecting, test-
2 ing, reconditioning, marking, or repairing”; and

3 (5) by striking “39.” in subsection (b)(2) and
4 inserting “39, except in the case of an imminent
5 hazard.”.

6 **SEC. 4445. JUDICIAL REVIEW.**

7 (a) IN GENERAL.—Chapter 51 is amended—

8 (1) by redesignating section 5127 as section
9 5128; and

10 (2) by inserting after section 5126 the fol-
11 lowing:

12 **“§ 5127. Judicial review**

13 “(a) FILING AND VENUE.—Except as provided in
14 section 20114(c) of this title, a person suffering legal
15 wrong or adversely affected or aggrieved by a final action
16 of the Secretary under this chapter may petition for review
17 of the final action in the United States Court of Appeals
18 for the District of Columbia or in the court of appeals
19 of the United States for the circuit in which the person
20 or resides or has the principal place of business. The peti-
21 tion shall be filed not more than 60 days after the action
22 of the Secretary becomes final.

23 “(b) PROCEDURES.—When a petition on a final ac-
24 tion is filed under subsection (a) of this section, the clerk
25 of the court shall immediately send a copy of the petition

1 to the Secretary. The Secretary shall file with the court
2 a record of any proceeding in which the final action was
3 issued as provided in section 2112 of title 28.

4 “(c) **AUTHORITY OF COURT.**—The court in which a
5 petition on a final action is filed under subsection (a) of
6 this section has exclusive jurisdiction, as provided in sub-
7 chapter II of chapter 5 of title 5 to affirm or set aside
8 any part of the final action and may order the Secretary
9 to conduct further proceedings. Findings of fact by the
10 Secretary, if supported by substantial evidence, are conclu-
11 sive.

12 “(d) **REQUIREMENT FOR PRIOR OBJECTIONS.**—In
13 reviewing a final action under this section, the court may
14 consider an objection to the final action only if—

15 “(1) the objection was made in the course of a
16 proceeding or review conducted by the Secretary; or

17 “(2) there was a reasonable ground for not
18 making the objection in the proceeding.”

19 (b) **CLERICAL AMENDMENT.**—The chapter analysis
20 for chapter 51 is amended by striking the item relating
21 to section 5127 and inserting the following:

“5127. Judicial review.

“5128. Authorization of appropriations.”

22 **SEC. 4446. AUTHORIZATION OF APPROPRIATIONS.**

23 Section 5128, as redesignated by section 4445 of this
24 title, is amended to read as follows:

1 **“§ 5128. Authorization of appropriations**

2 “(a) GENERAL.—In order to carry out this chapter
3 (except sections 5107(e), 5108(g), 5112, 5113, 5115,
4 5116, and 5119 of this title), the following amounts are
5 authorized to be appropriated to the Secretary:

6 “(1) For fiscal year 2004, not more than
7 \$24,981,000.

8 “(2) For fiscal year 2005, not more than
9 \$27,000,000.

10 “(3) For fiscal year 2006, not more than
11 \$29,000,000.

12 “(4) For each of fiscal years 2007 through
13 2009, not more than \$30,000,000.

14 “(b) EMERGENCY PREPAREDNESS FUND.—There
15 shall be available from the Emergency Preparedness Fund
16 under section 5116(i) of this title, amounts as follows:

17 “(1) To carry out section 5107(e) of this title,
18 \$4,000,000 for each of fiscal years 2004 through
19 2009.

20 “(2) To carry out section 5115 of this title,
21 \$200,000 for each of fiscal years 2004 through
22 2009.

23 “(3) To carry out section 5116(a) of this title,
24 \$8,000,000 for each of fiscal years 2004 through
25 2009.

1 “(4) To carry out section 5116(b) of this title,
2 \$13,800,000 for each of fiscal years 2004 through
3 2009.

4 “(5) To carry out section 5116(f) of this title,
5 \$150,000 for each of fiscal years 2004 through
6 2009.

7 “(6) To carry out section 5116(i)(4) of this
8 title, \$150,000 for each of fiscal years 2004 through
9 2009.

10 “(7) To carry out section 5116(j) of this title,
11 \$1,000,000 for each of fiscal years 2004 through
12 2009.

13 “(8) To publish and distribute an emergency
14 response guidebook under section 5116(i)(3) of title
15 49, United States Code, \$500,000 for each of fiscal
16 years 2004 through 2009.

17 “(c) SECTION 5121 REPORTS.—There are authorized
18 to be appropriated to the Secretary of Transportation for
19 the use of the Bureau of Transportation Statistics such
20 sums as may be necessary to carry out section 5121(h)
21 of this title.”.

22 “(d) CREDIT TO APPROPRIATIONS.—The Secretary
23 may credit to any appropriation to carry out this chapter
24 an amount received from a State, political subdivision of
25 a State, Indian tribe, or other public authority or private

1 entity for expenses the Secretary incurs in providing train-
 2 ing to the State, political subdivision, Indian tribe, or
 3 other authority or entity.

4 “(e) AVAILABILITY OF AMOUNTS.—Amounts avail-
 5 able under subsections (a) and (b) of this section shall
 6 remain available until expended.”.

7 **SEC. 4447. ADDITIONAL CIVIL AND CRIMINAL PENALTIES.**

8 (a) TITLE 49 PENALTIES.—Section 46312 is
 9 amended—

10 (1) by striking “part—” in subsection (a) and
 11 inserting “part or chapter 51 of this title—”; and

12 (2) by inserting “or chapter 51 of this title” in
 13 subsection (b) after “under this part”.

14 (b) TITLE 18 PENALTIES.—Section 3663(a)(1)(A) of
 15 title 18, United States Code, is amended by inserting
 16 “5124,” before “46312,”.

17 **PART II—OTHER MATTERS**

18 **SEC. 4461. ADMINISTRATIVE AUTHORITY FOR RESEARCH**

19 **AND SPECIAL PROGRAMS ADMINISTRATION.**

20 Section 112 is amended—

21 (1) by redesignating subsection (e) as sub-
 22 section (f); and

23 (2) by inserting after subsection (d) the fol-
 24 lowing:

25 “(e) ADMINISTRATIVE AUTHORITIES.—

1 “(1) GRANTS, COOPERATIVE AGREEMENTS, AND
2 OTHER TRANSACTIONS.—The Administrator may
3 enter into grants, cooperative agreements, and other
4 transactions with Federal agencies, State and local
5 government agencies, other public entities, private
6 organizations, and other persons—

7 “(A) to conduct research into transpor-
8 tation service and infrastructure assurance; and

9 “(B) to carry out other research activities
10 of the Administration.

11 “(2) LIMITATION ON DISCLOSURE OF CERTAIN
12 INFORMATION.—

13 “(A) LIMITATION.—If the Administrator
14 determines that particular information devel-
15 oped in research sponsored by the Administra-
16 tion may reveal a systemic vulnerability of
17 transportation service or infrastructure, such
18 information may be disclosed only to—

19 “(i) a person responsible for the secu-
20 rity of the transportation service or infra-
21 structure; or

22 “(ii) a person responsible for pro-
23 tecting public safety; or

24 “(iii) an officer, employee, or agent of
25 the Federal Government, or a State or

1 local government, who, as determined by
2 the Administrator, has need for such infor-
3 mation in the performance of official du-
4 ties.

5 “(B) TREATMENT OF RELEASE.—The re-
6 lease of information under subparagraph (A)
7 shall not be treated as a release to the public
8 for purposes of section 552 of title 5.”

9 **SEC. 4462. MAILABILITY OF HAZARDOUS MATERIALS.**

10 (a) NONMAILABILITY GENERALLY.—Section 3001 of
11 title 39, United States Code, is amended—

12 (1) by redesignating subsection (n) as sub-
13 section (o); and

14 (2) by inserting after subsection (m) the fol-
15 lowing:

16 “(n)(1) Except as otherwise authorized by law or reg-
17 ulations of the Postal Service under section 3018 of this
18 title, hazardous material is nonmailable.

19 “(2) In this subsection, the term ‘hazardous material’
20 means a substance or material designated by the Secretary
21 of Transportation as hazardous material under section
22 5103(a) of title 49.”

23 (b) MAILABILITY.—

1 (1) IN GENERAL.—Chapter 30 of title 39,
2 United States Code, is amended by adding at the
3 end the following:

4 **“§ 3018. Hazardous material**

5 “(a) IN GENERAL.—The Postal Service shall pre-
6 scribe regulations for the safe transportation of hazardous
7 material in the mails.

8 “(b) PROHIBITIONS.—No person may—

9 “(1) mail or cause to be mailed hazardous ma-
10 terial that has been declared by statute or Postal
11 Service regulation to be nonmailable;

12 “(2) mail or cause to be mailed hazardous ma-
13 terial in violation of any statute or Postal Service
14 regulation restricting the time, place, or manner in
15 which hazardous material may be mailed; or

16 “(3) manufacture, distribute, or sell any con-
17 tainer, packaging kit, or similar device that—

18 “(A) is represented, marked, certified, or
19 sold by such person for use in the mailing of
20 hazardous material; and

21 “(B) fails to conform with any statute or
22 Postal Service regulation setting forth stand-
23 ards for a container, packaging kit, or similar
24 device used for the mailing of hazardous mate-
25 rial.

1 “(c) CIVIL PENALTY.—

2 “(1) IN GENERAL.—A person who knowingly
3 violates this section or a regulation prescribed under
4 this section shall be liable to the Postal Service
5 for—

6 “(A) a civil penalty of at least \$250, but
7 not more than \$100,000, for each violation;

8 “(B) the costs of any clean-up associated
9 with such violation; and

10 “(C) damages.

11 “(2) KNOWING ACTION.—A person acts know-
12 ingly for purposes of paragraph (1) when—

13 “(A) the person has actual knowledge of
14 the facts giving rise to the violation; or

15 “(B) a reasonable person acting in the cir-
16 cumstances and exercising reasonable care
17 would have had that knowledge.

18 “(3) KNOWLEDGE OF STATUTE OR REGULA-
19 TION NOT ELEMENT OF OFFENSE.—Knowledge of
20 the existence of a statutory provision or Postal Serv-
21 ice regulation is not an element of an offense under
22 this subsection.

23 “(4) SEPARATE VIOLATIONS.—

24 “(A) VIOLATIONS OVER TIME.—A separate
25 violation under this subsection occurs for each

1 day hazardous material, mailed or cause to be
2 mailed in noncompliance with this section, is in
3 the mail.

4 “(B) SEPARATE ITEMS.—A separate viola-
5 tion under this subsection occurs for each item
6 containing hazardous material that is mailed or
7 caused to be mailed in noncompliance with this
8 section.

9 “(d) HEARINGS.—The Postal Service may determine
10 that a person has violated this section or a regulation pre-
11 scribed under this section only after notice and an oppor-
12 tunity for a hearing.

13 “(e) PENALTY CONSIDERATIONS.—In determining
14 the amount of a civil penalty for a violation of this section,
15 the Postal Service shall consider—

16 “(1) the nature, circumstances, extent, and
17 gravity of the violation;

18 “(2) with respect to the person who committed
19 the violation, the degree of culpability, any history of
20 prior violations, the ability to pay, and any effect on
21 the ability to continue in business;

22 “(3) the impact on Postal Service operations;
23 and

24 “(4) any other matters that justice requires.

25 “(f) CIVIL ACTIONS TO COLLECT.—

1 “(1) IN GENERAL.—In accordance with section
2 4409(d) of this title, a civil action may be com-
3 menced in an appropriate district court of the
4 United States to collect a civil penalty, clean-up
5 costs, and damages assessed under subsection (c).

6 “(2) LIMITATION.—In a civil action under para-
7 graph (1), the validity, amount, and appropriateness
8 of the civil penalty, clean-up costs, and damages cov-
9 ered by the civil action shall not be subject to review.

10 “(3) COMPROMISE.—The Postal Service may
11 compromise the amount a civil penalty, clean-up
12 costs, and damages assessed under subsection (c) be-
13 fore commencing a civil action with respect to such
14 civil penalty, clean-up costs, and damages under
15 paragraph (1).

16 “(g) CIVIL JUDICIAL PENALTIES.—

17 “(1) IN GENERAL.—At the request of the Post-
18 al Service, the Attorney General may bring a civil
19 action in an appropriate district court of the United
20 States to enforce this section or a regulation pre-
21 scribed under this section.

22 “(2) RELIEF.—The court in a civil action under
23 paragraph (1) may award appropriate relief, includ-
24 ing a temporary or permanent injunction, civil pen-

1 alties as determined in accordance with this section,
2 or punitive damages.

3 “(3) CONSTRUCTION.—A civil action under this
4 subsection shall be in lieu of civil penalties for the
5 same violation under subsection (c)(1)(A).

6 “(h) DEPOSIT OF AMOUNTS COLLECTED.—Amounts
7 collected under this section shall be deposited into the
8 Postal Service Fund under section 2003 of this title.”.

9 (2) CONFORMING AMENDMENT.—The chapter
10 analysis for chapter 30 of title 39, United States
11 Code, is amended by adding at the end the fol-
12 lowing:

“3018. Hazardous material.”.

13 (c) CONFORMING AMENDMENT.—Section 2003(b) of
14 title 39, United States Code, is amended—

15 (1) by striking “and” after the semicolon in
16 paragraph (7);

17 (2) by striking “purposes.” in paragraph (8)
18 and inserting “purposes; and”; and

19 (3) by adding at the end the following:

20 “(9) any amounts collected under section 3018
21 of this title.”.

22 **SEC. 4463. CRIMINAL MATTERS.**

23 Section 845(a)(1) of title 18, United States Code, is
24 amended by striking “which are regulated” and all that
25 follows and inserting “that is subject to the authority of

1 the Departments of Transportation and Homeland Security;”.

3 **SEC. 4464. CARGO INSPECTION PROGRAM.**

4 (a) IN GENERAL.—The Secretary of Transportation
5 may establish a program of random inspections of cargo
6 at points of entry into the United States for the purpose
7 of determining the extent to which undeclared hazardous
8 material is being offered for transportation in commerce
9 through such points of entry.

10 (b) INSPECTIONS.—Under the program under sub-
11 section (a)—

12 (1) an officer of the Department of Transportation
13 who is not located at a point of entry into the
14 United States may select at random cargo shipments
15 at points of entry into the United States for inspection;
16 and

17 (2) an officer or employee of the Department
18 may open and inspect each cargo shipment so selected
19 for the purpose described in subsection (a).

20 (c) COORDINATION.—The Secretary of Transportation
21 shall coordinate any inspections under the program
22 under subsection (a) with the Secretary of Homeland Security.
23

24 (d) DISPOSITION OF HAZARDOUS MATERIALS.—The
25 Secretary of Transportation shall provide for the appro-

1 p r i a t e handling and disposition of any hazardous material
2 discovered pursuant to inspections under the program
3 under subsection (a).

4 **SEC. 4465. INFORMATION ON HAZMAT REGISTRATIONS.**

5 The Administrator of the Department of Transpor-
6 tation's Research and Special Programs Administration
7 shall—

8 (1) transmit current hazardous material reg-
9 istrant information to the Federal Motor Carrier
10 Safety Administration to cross reference the reg-
11 istrant's Federal motor carrier registration number;
12 and

13 (2) notify the Federal Motor Carrier Safety Ad-
14 ministration immediately, and provide a registrant's
15 United States Department of Transportation identi-
16 fication number to the Administration, whenever a
17 new registrant registers to transport hazardous ma-
18 terials as a motor carrier.

19 **SEC. 4466. REPORT ON APPLYING HAZARDOUS MATERIALS**
20 **REGULATIONS TO PERSONS WHO REJECT**
21 **HAZARDOUS MATERIALS.**

22 Within 6 months after the date of enactment of this
23 Act, the Secretary of Transportation shall complete an as-
24 sessment of the costs and benefits of subjecting persons
25 who reject hazardous material for transportation in com-

1 merce to the hazardous materials laws and regulations. In
2 completing this assessment, the Secretary shall—

3 (1) estimate the number of affected employers
4 and employees;

5 (2) determine what actions would be required
6 by them to comply with such laws and regulations;
7 and

8 (3) consider whether and to what extent the ap-
9 plication of Federal hazardous materials laws and
10 regulations should be limited to—

11 (A) particular modes of transportation;

12 (B) certain categories of employees; or

13 (C) certain classes or categories of haz-
14 ardous materials.

15 **PART III—SANITARY FOOD TRANSPORTATION**

16 **SEC. 4481. SHORT TITLE.**

17 This part may be cited as the “Sanitary Food Trans-
18 portation Act of 2004”.

19 **SEC. 4482. RESPONSIBILITIES OF THE SECRETARY OF** 20 **HEALTH AND HUMAN SERVICES.**

21 (a) **UNSANITARY TRANSPORT DEEMED ADULTERA-**
22 **TION.**—Section 402 of the Federal Food, Drug, and Cos-
23 metic Act (21 U.S.C. 342) is amended by adding at the
24 end the following:

1 “(i) NONCOMPLIANCE WITH SANITARY TRANSPOR-
2 TATION PRACTICES.—If the food is transported under
3 conditions that are not in compliance with the sanitary
4 transportation practices prescribed by the Secretary under
5 section 416.”.

6 (b) SANITARY TRANSPORTATION REQUIREMENTS.—
7 Chapter IV of the Federal Food, Drug, and Cosmetic Act
8 (21 U.S.C. 341 et seq.) is amended by adding at the end
9 the following:

10 **“SEC. 416. SANITARY TRANSPORTATION PRACTICES.**

11 “(a) DEFINITIONS.—In this section:

12 “(1) BULK VEHICLE.—The term ‘bulk vehicle’
13 includes a tank truck, hopper truck, rail tank car,
14 hopper car, cargo tank, portable tank, freight con-
15 tainer, or hopper bin, and any other vehicle in which
16 food is shipped in bulk, with the food coming into
17 direct contact with the vehicle.

18 “(2) TRANSPORTATION.—The term ‘transportation’ means any movement in commerce by motor
19 vehicle or rail vehicle.
20

21 “(b) REGULATIONS.—The Secretary shall by regula-
22 tion require shippers, carriers by motor vehicle or rail ve-
23 hicle, receivers, and other persons engaged in the trans-
24 portation of food to use sanitary transportation practices
25 prescribed by the Secretary to ensure that food is not

1 transported under conditions that may render the food
2 adulterated.

3 “(c) CONTENTS.—The regulations shall—

4 “(1) prescribe such practices as the Secretary
5 determines to be appropriate relating to—

6 “(A) sanitation;

7 “(B) packaging, isolation, and other pro-
8 tective measures;

9 “(C) limitations on the use of vehicles;

10 “(D) information to be disclosed—

11 “(i) to a carrier by a person arranging
12 for the transport of food; and

13 “(ii) to a manufacturer or other per-
14 son that—

15 “(I) arranges for the transpor-
16 tation of food by a carrier; or

17 “(II) furnishes a tank vehicle or
18 bulk vehicle for the transportation of
19 food; and

20 “(E) recordkeeping; and

21 “(2) include—

22 “(A) a list of nonfood products that the
23 Secretary determines may, if shipped in a bulk
24 vehicle, render adulterated food that is subse-
25 quently transported in the same vehicle; and

1 “(B) a list of nonfood products that the
2 Secretary determines may, if shipped in a
3 motor vehicle or rail vehicle (other than a tank
4 vehicle or bulk vehicle), render adulterated food
5 that is simultaneously or subsequently trans-
6 ported in the same vehicle.

7 “(d) WAIVERS.—

8 “(1) IN GENERAL.—The Secretary may waive
9 any requirement under this section, with respect to
10 any class of persons, vehicles, food, or nonfood prod-
11 ucts, if the Secretary determines that the waiver—

12 “(A) will not result in the transportation
13 of food under conditions that would be unsafe
14 for human or animal health; and

15 “(B) will not be contrary to the public in-
16 terest.

17 “(2) PUBLICATION.—The Secretary shall pub-
18 lish in the Federal Register any waiver and the rea-
19 sons for the waiver.

20 “(e) PREEMPTION.—

21 “(1) IN GENERAL.—No State or political sub-
22 division of a State may directly or indirectly estab-
23 lish or continue in effect, as to any food in interstate
24 commerce, any authority or requirement concerning

1 transportation of food that is not identical to an au-
2 thority or requirement under this section.

3 “(2) APPLICABILITY.—This subsection applies
4 to transportation that occurs on or after the effec-
5 tive date of the regulations promulgated under sub-
6 section (b).

7 “(f) ASSISTANCE OF OTHER AGENCIES.—The Sec-
8 retary of Transportation, the Secretary of Agriculture, the
9 Administrator of the Environmental Protection Agency,
10 and the heads of other Federal agencies, as appropriate,
11 shall provide assistance on request, to the extent resources
12 are available, to the Secretary for the purposes of carrying
13 out this section.”.

14 (c) INSPECTION OF TRANSPORTATION RECORDS.—

15 (1) REQUIREMENT.—Section 703 of the Fed-
16 eral Food, Drug, and Cosmetic Act (21 U.S.C. 373)
17 is amended—

18 (A) by striking the section heading and all
19 that follows through “For the purpose” and in-
20 serting the following:

21 **“SEC. 703. RECORDS.**

22 “(a) IN GENERAL.—For the purpose”; and

23 (B) by adding at the end the following:

24 “(b) FOOD TRANSPORTATION RECORDS.—A shipper,
25 carrier by motor vehicle or rail vehicle, receiver, or other

1 person subject to section 416 shall, on request of an officer
2 or employee designated by the Secretary, permit the offi-
3 cer or employee, at reasonable times, to have access to
4 and to copy all records that the Secretary requires to be
5 kept under section 416(c)(1)(E).”.

6 (2) CONFORMING AMENDMENT.—Subsection (a)
7 of section 703 of the Federal Food, Drug, and Cos-
8 metic Act (as designated by paragraph (1)(A)) is
9 amended by striking “carriers.” and inserting “car-
10 riers, except as provided in subsection (b)”.

11 (d) PROHIBITED ACTS.—

12 (1) RECORDS INSPECTION.—Section 301(e) of
13 the Federal Food, Drug, and Cosmetic Act (21
14 U.S.C. 331(e)) is amended by inserting “416,” be-
15 fore “504,” each place it appears.

16 (2) UNSAFE FOOD TRANSPORTATION.—Section
17 301 of the Federal Food, Drug, and Cosmetic Act
18 (21 U.S.C. 331) is amended by adding at the end
19 the following:

20 “(hh) NONCOMPLIANCE WITH SANITARY TRANSPOR-
21 TATION PRACTICES.—The failure by a shipper, carrier by
22 motor vehicle or rail vehicle, receiver, or any other person
23 engaged in the transportation of food to comply with the
24 sanitary transportation practices prescribed by the Sec-
25 retary under section 416.”.

1 **SEC. 4483. DEPARTMENT OF TRANSPORTATION REQUIRE-**
 2 **MENTS.**

3 Chapter 57, is amended to read as follows:

4 **“CHAPTER 57—SANITARY FOOD**
 5 **TRANSPORTATION**

“Sec.

“5701. Food transportation safety inspections.

6 **“§ 5701. Food transportation safety inspections**

7 “(a) INSPECTION PROCEDURES.—

8 “(1) IN GENERAL.—The Secretary of Transpor-
 9 tation, in consultation with the Secretary of Health
 10 and Human Services and the Secretary of Agri-
 11 culture, shall—

12 “(A) establish procedures for transpor-
 13 tation safety inspections for the purpose of
 14 identifying suspected incidents of contamination
 15 or adulteration of—

16 “(i) food in violation of regulations
 17 promulgated under section 416 of the Fed-
 18 eral Food, Drug, and Cosmetic Act; and

19 “(ii) meat subject to detention under
 20 section 402 of the Federal Meat Inspection
 21 Act (21 U.S.C. 672); and

22 “(iii) poultry products subject to de-
 23 tention under section 19 of the Poultry

1 Products Inspection Act (21 U.S.C. 467a);

2 and

3 “(B) train personnel of the Department of
4 Transportation in the appropriate use of the
5 procedures.

6 “(2) APPLICABILITY.—The procedures estab-
7 lished under paragraph (1) of this subsection shall
8 apply, at a minimum, to Department of Transpor-
9 tation personnel that perform commercial motor ve-
10 hicle or railroad safety inspections.

11 “(b) NOTIFICATION OF SECRETARY OF HEALTH AND
12 HUMAN SERVICES OR SECRETARY OF AGRICULTURE.—
13 The Secretary of Transportation shall promptly notify the
14 Secretary of Health and Human Services or the Secretary
15 of Agriculture, as applicable, of any instances of potential
16 food contamination or adulteration of a food identified
17 during transportation safety inspections.

18 “(c) USE OF STATE EMPLOYEES.—The means by
19 which the Secretary of Transportation carries out sub-
20 section (b) of this section may include inspections con-
21 ducted by State employees using funds authorized to be
22 appropriated under sections 31102 through 31104 of this
23 title.”.

24 **SEC. 4484. EFFECTIVE DATE.**

25 This part takes effect on October 1, 2003.

1 **Subtitle E—Recreational Boating**
2 **Safety Programs**

3 **SEC. 4501. SHORT TITLE.**

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

6 **PART I—FEDERAL AID IN SPORT FISH**

7 **RESTORATION ACT AMENDMENTS**

8 **SEC. 4521. AMENDMENT OF FEDERAL AID IN FISH RES-**
9 **TORATION ACT.**

10 Except as otherwise expressly provided, whenever in
11 this subtitle an amendment or repeal is expressed in terms
12 of an amendment to, or repeal of, a section or other provi-
13 sion, the reference shall be considered to be made to a
14 section or other provision of the Act entitled “An Act to
15 provide that the United States shall aid the States in fish
16 restoration and management projects, and for other pur-
17 poses,” approved August 9, 1950 (64 Stat. 430; 16 U.S.C.
18 777 et seq.).

19 **SEC. 4522. AUTHORIZATION OF APPROPRIATIONS.**

20 (a) **IN GENERAL.**—Section 3 (16 U.S.C. 777b) is
21 amended—

22 (1) by striking “the succeeding fiscal year.” in
23 the third sentence and inserting “succeeding fiscal
24 years.”; and

1 (2) by striking “in carrying on the research
2 program of the Fish and Wildlife Service in respect
3 to fish of material value for sport and recreation.”
4 and inserting “to supplement the 55.3 percent of
5 each annual appropriation to be apportioned among
6 the States, as provided for in section 4(b) of this
7 title.”.

8 (b) CONFORMING AMENDMENTS.—

9 (1) IN GENERAL.—Section 3 of the Dingell-
10 Johnson Sport Fish Restoration Act (16 U.S.C.
11 777b) is amended in the first sentence—

12 (A) by striking “Sport Fish Restoration
13 Account” and inserting “Sport Fish Restora-
14 tion Trust Fund”; and

15 (B) by striking “that Account” and insert-
16 ing “that Trust Fund, except as provided in
17 section 9504(e) of the Internal Revenue Code of
18 1986”.

19 (2) EFFECTIVE DATE.—The amendments made
20 by paragraph (1) take effect on October 1, 2004.

21 **SEC. 4523. DIVISION OF ANNUAL APPROPRIATIONS.**

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

23 (1) by striking subsections (a) through (d) and
24 redesignating subsections (e), (f), and (g) as sub-
25 sections (b), (c), and (d);

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

2 “(a) IN GENERAL.—For fiscal years 2004 through
3 2009, each annual appropriation made in accordance with
4 the provisions of section 3 of this title shall be distributed
5 as follows:

6 “(1) COASTAL WETLANDS.—18 percent to the
7 Secretary of the Interior for distribution as provided
8 in the Coastal Wetlands Planning, Protection, and
9 Restoration Act (16 U.S.C. 3951 et seq.).

10 “(2) BOATING SAFETY.—18 percent to the Secretary of Homeland Security for State recreational boating safety programs under section 13106 of title 46, United States Code.

11 “(3) CLEAN VESSEL ACT.—1.9 percent to the Secretary of the Interior for qualified projects under section 5604(c) of the Clean Vessel Act of 1992 (33 U.S.C. 1322 note).

12 “(4) BOATING INFRASTRUCTURE.—1.9 percent to the Secretary of the Interior for obligation for qualified projects under section 7404(d) of the Sportfishing and Boating Safety Act of 1998 (16 U.S.C. 777g–1(d)).

13 “(5) NATIONAL OUTREACH AND COMMUNICATIONS.—1.9 percent to the Secretary of the Interior

1 for the National Outreach and Communications Pro-
2 gram under section 8(d) of this title. Such amounts
3 shall remain available for 3 fiscal years, after which
4 any portion thereof that is unobligated by the Sec-
5 retary for that program may be expended by the
6 Secretary under subsection (b) of this section.

7 “(6) SET-ASIDE FOR EXPENSES FOR ADMINIS-
8 TRATION OF THIS CHAPTER.—

9 “(A) IN GENERAL.—2.1 percent to the
10 Secretary of the Interior for expenses for ad-
11 ministration incurred in implementation of this
12 title, in accordance with this section, section 9,
13 and section 14 of this title.

14 “(B) APPORTIONMENT OF UNOBLIGATED
15 FUNDS.—If any portion of the amount made
16 available to the Secretary under subparagraph
17 (A) remains unexpended and unobligated at the
18 end of a fiscal year, that portion shall be appor-
19 tioned among the States, on the same basis and
20 in the same manner as other amounts made
21 available under this title are apportioned among
22 the States under subsection (b) of this section,
23 within 60 days after the end of that fiscal year.
24 Any amount apportioned among the States
25 under this subparagraph shall be in addition to

1 any amounts otherwise available for apportion-
2 ment among the States under subsection (b) for
3 the fiscal year.”;

4 (3) by striking “of the Interior, after the dis-
5 tribution, transfer, use, and deduction under sub-
6 sections (a), (b), (c), and (d), respectively, and after
7 deducting amounts used for grants under section 14,
8 shall apportion the remainder” in subsection (b), as
9 redesignated, and inserting “shall apportion 55.3
10 percent”;

11 (4) by striking “per centum” each place it ap-
12 pears in subsection (b), as redesignated, and insert-
13 ing “percent”;

14 (5) by striking “subsections (a), (b)(3)(A),
15 (b)(3)(B), and (c)” in paragraph (1) of subsection
16 (d), as redesignated, and inserting “paragraphs (1),
17 (3), (4), and (5) of subsection (a)”;

18 (6) by adding at the end the following:

19 “(e) TRANSFER OF CERTAIN FUNDS.—Amounts
20 available under paragraphs (3) and (4) of subsection (a)
21 that are unobligated by the Secretary after 3 fiscal years
22 shall be transferred to the Secretary of Homeland Security
23 and shall be expended for State recreational boating safety
24 programs under section 13106(a) of title 46, United
25 States Code.”.

1 **SEC. 4524. MAINTENANCE OF PROJECTS.**

2 Section 8 (16 U.S.C. 777g) is amended—

3 (1) by striking “in carrying out the research
4 program of the Fish and Wildlife Service in respect
5 to fish of material value for sport or recreation.” in
6 subsection (b)(2) and inserting “to supplement the
7 55.3 percent of each annual appropriation to be ap-
8 portioned among the States under section 4(b) of
9 this title.”; and

10 (2) by striking “subsection (e) or (d) of section
11 4” in subsection (d)(3) and inserting “paragraph (5)
12 or (6) of section 4(a)”.

13 **SEC. 4525. BOATING INFRASTRUCTURE.**

14 Section 7404(d)(1) of the Sportfishing and Boating
15 Safety Act of 1998 (16 U.S.C. 777g-1(d)(1)) is amended
16 by striking “section 4(b)(3)(B)” and inserting “section
17 4(a)(4)”.

18 **SEC. 4526. REQUIREMENTS AND RESTRICTIONS CON-**
19 **CERNING USE OF AMOUNTS FOR EXPENSES**
20 **FOR ADMINISTRATION.**

21 Section 9 (16 U.S.C. 777h) is amended—

22 (1) by striking “section 4(d)(1)” in subsection
23 (a) and inserting “section 4(a)(6)”;

24 (2) by striking “section 4(d)(1)” in subsection
25 (b)(1) and inserting “section 4(a)(6)”.

1 **SEC. 4527. PAYMENTS OF FUNDS TO AND COOPERATION**
2 **WITH PUERTO RICO, THE DISTRICT OF CO-**
3 **LUMBIA, GUAM, AMERICAN SAMOA, THE COM-**
4 **MONWEALTH OF THE NORTHERN MARIANA**
5 **ISLANDS, AND THE VIRGIN ISLANDS.**

6 Section 12 (16 U.S.C. 777k) is amended by striking
7 “in carrying on the research program of the Fish and
8 Wildlife Service in respect to fish of material value for
9 sport or recreation.” and inserting “to supplement the
10 55.3 percent of each annual appropriation to be appor-
11 tioned among the States under section 4(b) of this title.”.

12 **SEC. 4528. MULTISTATE CONSERVATION GRANT PROGRAM.**

13 Section 14 (16 U.S.C. 777m) is amended—

14 (1) by striking so much of subsection (a) as
15 precedes paragraph (2) and inserting the following:

16 “(a) IN GENERAL.—

17 “(1) AMOUNT FOR GRANTS.—For each of fiscal
18 years 2004 through 2009, 0.9 percent of each an-
19 nual appropriation made in accordance with the pro-
20 visions of section 3 of this title shall be distributed
21 to the Secretary of the Interior for making
22 multistate conservation project grants in accordance
23 with this section.”;

24 (2) by striking “section 4(e)” each place it ap-
25 pears in subsection (a)(2)(B) and inserting “section
26 4(b)”;

1 (3) by striking “Of the balance of each annual
 2 appropriation made under section 3 remaining after
 3 the distribution and use under subsections (a), (b),
 4 and (c) of section 4 for each fiscal year and after
 5 deducting amounts used for grants under subsection
 6 (a)—” in subsection (e) and inserting “Of amounts
 7 made available under section 4(a)(6) for each fiscal
 8 year—”.

9 **PART II—CLEAN VESSEL ACT AMENDMENTS**

10 **SEC. 4541. GRANT PROGRAM.**

11 Section 5604(c)(2) of the Clean Vessel Act of 1992
 12 (33 U.S.C. 1322 note) is amended—

13 (1) by striking subparagraph (A); and
 14 (2) by redesignating subparagraphs (B) and
 15 (C) as subparagraphs (A) and (B), respectively.

16 **PART III—RECREATIONAL BOATING SAFETY**

17 **PROGRAM AMENDMENTS**

18 **SEC. 4561. STATE MATCHING FUNDS REQUIREMENT.**

19 Section 13103(b) of title 46, United States Code, is
 20 amended by striking “one-half” and inserting “75 per-
 21 cent”.

22 **SEC. 4562. AVAILABILITY OF ALLOCATIONS.**

23 Section 13104(a) of title 46, United States Code, is
 24 amended—

1 (1) by striking “2 years” in paragraph (1) and
2 inserting “3 years”; and

3 (2) by striking “2-year” in paragraph (2) and
4 inserting “3-year”.

5 **SEC. 4563. AUTHORIZATION OF APPROPRIATIONS FOR**
6 **STATE RECREATIONAL BOATING SAFETY**
7 **PROGRAMS.**

8 Section 13106(c) of title 46, United States Code, is
9 amended—

10 (1) by striking “Secretary of Transportation
11 under paragraphs (2) and (3) of section 4(b)” and
12 inserting “Secretary under subsections (a)(2) and
13 (e) of section 4”; and

14 (2) by inserting “a minimum of” before
15 “\$2,083,333”.

16 **SEC. 4564. MAINTENANCE OF EFFORT FOR STATE REC-**
17 **REATIONAL BOATING SAFETY PROGRAMS.**

18 (a) IN GENERAL.—Chapter 131 of title 46, United
19 States Code, is amended by inserting after section 13106
20 the following:

21 **“§ 13107. Maintenance of effort for State recreational**
22 **boating safety programs**

23 “(a) IN GENERAL.—The amount payable to a State
24 for a fiscal year from an allocation under section 13103
25 of this chapter shall be reduced if the usual amounts ex-

1 pended by the State for the State’s recreational boating
2 safety program, as determined under section 13105 of this
3 chapter, for the previous fiscal year is less than the aver-
4 age of the total of such expenditures for the 3 fiscal years
5 immediately preceding that previous fiscal year. The re-
6 duction shall be proportionate, as a percentage, to the
7 amount by which the level of State expenditures for such
8 previous fiscal year is less than the average of the total
9 of such expenditures for the 3 fiscal years immediately
10 preceding that previous fiscal year.

11 “(b) REDUCTION OF THRESHHOLD.—If the total
12 amount available for allocation and distribution under this
13 chapter in a fiscal year for all participating State rec-
14 reational boating safety programs is less than such
15 amount for the preceding fiscal year, the level of State
16 expenditures required under subsection (a) of this section
17 for the preceding fiscal year shall be decreased proportion-
18 ately.

19 “(c) WAIVER.—

20 “(1) IN GENERAL.—Upon the written request
21 of a State, the Secretary may waive the provisions
22 of subsection (a) of this section for 1 fiscal year if
23 the Secretary determines that a reduction in expend-
24 itures for the State’s recreational boating safety pro-
25 gram is attributable to a non- selective reduction in

1 expenditures for the programs of all Executive
 2 branch agencies of the State government, or for
 3 other reasons if the State demonstrates to the Sec-
 4 retary's satisfaction that such waiver is warranted.

5 “(2) 30-DAY DECISION.—The Secretary shall
 6 approve or deny a request for a waiver not later
 7 than 30 days after the date the request is received.”.

8 (b) CONFORMING AMENDMENT.—The chapter anal-
 9 ysis for chapter 131 of title 46, United States Code, is
 10 amended by inserting after the item relating to section
 11 13106 the following:

“13107. Maintenance of effort for State recreational boating safety programs.”.

12 **PART IV—MISCELLANEOUS**

13 **SEC. 4581. TECHNICAL CORRECTION TO HOMELAND SECU-**
 14 **RITY ACT.**

15 Section 1511(e)(2) of the Homeland Security Act of
 16 2002 (Pub. L. 107-296) is amended by striking “and to
 17 any funds provided to the Coast Guard from the Aquatic
 18 Resources Trust Fund of the Highway Trust Fund for
 19 boating safety programs.” and inserting “and any funds
 20 provided to the Coast Guard from the Highway Trust
 21 Fund and transferred into the Sport Fish Restoration Ac-
 22 count of the Aquatic Resources Trust Fund for boating
 23 safety programs.”.

1 **Subtitle F—Rail Transportation**

2 **PART I—AMTRAK**

3 **SEC. 4601. AUTHORIZATION OF APPROPRIATIONS.**

4 The text of section 24104 of title 49, United States
5 Code, is amended to read as follows:

6 “There are authorized to be appropriated to the Sec-
7 retary of Transportation \$2,000,000,000 for each of fiscal
8 years 2004, 2005, 2006, 2007, 2008, and 2009 for the
9 benefit of Amtrak for operating expenses.”.

10 **SEC. 4602. ESTABLISHMENT OF BUILD AMERICA CORPORA-**
11 **TION.**

12 There is established a nonprofit corporation, to be
13 known as the “Build America Corporation”. The Build
14 America Corporation is not an agency or establishment of
15 the United States Government. The purpose of the Cor-
16 poration is to support qualified projects described in sec-
17 tion 4603(c)(2) through the issuance of Build America
18 bonds. The Corporation shall be subject, to the extent con-
19 sistent with this section, to the laws of the State of Dela-
20 ware applicable to corporations not for profit.

21 **SEC. 4603. FEDERAL BONDS FOR TRANSPORTATION INFRA-**
22 **STRUCTURE.**

23 (a) USE OF BOND PROCEEDS.—The proceeds from
24 the sale of—

1 (1) any bonds authorized, issued, or guaranteed
2 by the Federal Government that are available to
3 fund passenger rail projects pursuant to any Federal
4 law (enacted before, on, or after the date of the en-
5 actment of this Act), and

6 (2) any Build America bonds issued by the
7 Build America Corporation as authorized by section
8 4602,

9 may be used to fund a qualified project if the Secretary
10 of Transportation determines that the qualified project is
11 a cost-effective alternative for efficiently maximizing mo-
12 bility of individuals and goods.

13 (b) COMPLIANCE OF BENEFICIARIES WITH CERTAIN
14 STANDARDS.—A recipient of proceeds of a grant, loan,
15 Federal tax-credit bonds, or any other form of financial
16 assistance provided under this title shall comply with the
17 standards described in section 24312 of title 49, United
18 States Code, as in effect on June 25, 2003, with respect
19 to any qualified project described in subsection (c)(1) in
20 the same manner that the National Passenger Railroad
21 Corporation is required to comply with such standards for
22 construction work financed under an agreement entered
23 into under section 24308(a) of such title.

24 (c) QUALIFIED PROJECT DEFINED.—In this
25 section—

1 (1) IN GENERAL.—Except as provided in para-
2 graph (2), the term “qualified project” means any
3 transportation infrastructure project of any govern-
4 mental unit or other person that is proposed by a
5 State, including a highway project, a transit system
6 project, a railroad project, an airport project, a port
7 project, and an inland waterways project.

8 (2) BUILD AMERICA CORPORATION
9 PROJECTS.—

10 (A) IN GENERAL.—With respect to any
11 Build America bonds issued by the Build Amer-
12 ica Corporation as authorized by section 4602,
13 the term “qualified project” means any—

14 (i) qualified highway project,

15 (ii) qualified public transportation
16 project, and

17 (iii) congestion relief project,

18 proposed by 1 or more States and approved by
19 the Build America Corporation, which meets
20 the requirements under clauses (i), (ii), and (iii)
21 of subparagraph (D).

22 (B) QUALIFIED HIGHWAY PROJECT.—The
23 term “qualified highway project” means a
24 project for highway facilities or other facilities

1 which are eligible for assistance under title 23,
2 United States Code.

3 (C) QUALIFIED PUBLIC TRANSPORTATION
4 PROJECT.—The term “qualified public trans-
5 portation project” means a project for public
6 transportation facilities or other facilities which
7 are eligible for assistance under chapter 53 of
8 title 49, United States Code.

9 (D) CONGESTION RELIEF PROJECT.—The
10 term “congestion relief project” means an inter-
11 modal freight transfer facility, freight rail facil-
12 ity, freight movement corridor, intercity pas-
13 senger rail or facility, intercity bus vehicle or
14 facility, border crossing facility, or other public
15 or private facility approved as a congestion re-
16 lief project by the Secretary of Transportation.
17 In making such approvals, the Secretary of
18 Transportation shall—

19 (i) consider the economic, environ-
20 mental, mobility, and national security im-
21 provements to be realized through the
22 project, and

23 (ii) give preference to projects with
24 national or regional significance, including
25 any projects sponsored by a coalition of

1 States or a combination of States and pri-
2 vate sector entities, in terms of generating
3 economic benefits, supporting international
4 commerce, or otherwise enhancing the na-
5 tional transportation system.

6 (D) ADDITIONAL REQUIREMENTS FOR
7 QUALIFIED PROJECTS.—For purposes of sub-
8 paragraph (A)—

9 (i) COSTS OF QUALIFIED PROJECTS.—

10 The requirement of this clause is met if
11 the costs of the qualified project funded by
12 Build America bonds only relate to capital
13 investments in depreciable assets and do
14 not include any costs relating to oper-
15 ations, maintenance, or rolling stock.

16 (ii) APPLICABILITY OF FEDERAL
17 LAW.—The requirement of this clause is
18 met if the requirements of any Federal
19 law, including titles 23, 40, and 49 of the
20 United States Code, which would otherwise
21 apply to projects to which the United
22 States is a party or to funds made avail-
23 able under such law and projects assisted
24 with those funds are applied to—

1 (I) funds made available under
 2 Build America bonds for similar quali-
 3 fied projects, and

4 (II) similar qualified projects as-
 5 sisted by the Build America Corpora-
 6 tion through the use of such funds.

7 (iii) UTILIZATION OF UPDATED CON-
 8 STRUCTION TECHNOLOGY FOR QUALIFIED
 9 PROJECTS.—The requirement of this
 10 clause is met if the appropriate State agen-
 11 cy relating to the qualified project has up-
 12 dated its accepted construction tech-
 13 nologies to match a list prescribed by the
 14 Secretary of Transportation and in effect
 15 on the date of the approval of the project
 16 as a qualified project.

17 **PART II—RAILROAD TRACK MODERNIZATION**

18 **SEC. 4631. SHORT TITLE.**

19 This part may be cited as the “Railroad Track Mod-
 20 ernization Act of 2004”.

21 **SEC. 4632. CAPITAL GRANTS FOR RAILROAD TRACK.**

22 (a) AUTHORITY.—Chapter 223 of title 49, United
 23 States Code, is amended to read as follows:

1 **“CHAPTER 223—CAPITAL GRANTS FOR**
 2 **RAILROAD TRACK**

“Sec.

“22301. Capital grants for railroad track.

3 **“§ 22301. Capital grants for railroad track**

4 “(a) ESTABLISHMENT OF PROGRAM.—

5 “(1) ESTABLISHMENT.—The Secretary of
 6 Transportation shall establish a program of capital
 7 grants for the rehabilitation, preservation, or im-
 8 provement of railroad track (including roadbed,
 9 bridges, and related track structures) of class II and
 10 class III railroads. Such grants shall be for rehabili-
 11 tating, preserving, or improving track used primarily
 12 for freight transportation to a standard ensuring
 13 that the track can be operated safely and efficiently,
 14 including grants for rehabilitating, preserving, or im-
 15 proving track to handle 286,000 pound rail cars.
 16 Grants may be provided under this chapter—

17 “(A) directly to the class II or class III
 18 railroad; or

19 “(B) with the concurrence of the class II
 20 or class III railroad, to a State or local govern-
 21 ment.

22 “(2) STATE COOPERATION.—Class II and class
 23 III railroad applicants for a grant under this chap-
 24 ter are encouraged to utilize the expertise and assist-

1 ance of State transportation agencies in applying for
2 and administering such grants. State transportation
3 agencies are encouraged to provide such expertise
4 and assistance to such railroads.

5 “(3) REGULATIONS.—

6 “(A) IN GENERAL.—The Secretary shall
7 prescribe regulations to carry out the program
8 under this section.

9 “(B) CRITERIA.—In developing the regula-
10 tions, the Secretary shall establish criteria
11 that—

12 “(i) condition the award of a grant to
13 a railroad on reasonable assurances by the
14 railroad that the facilities to be rehabili-
15 tated and improved will be economically
16 and efficiently utilized;

17 “(ii) ensure that the award of a grant
18 is justified by present and probable future
19 demand for rail services by the railroad to
20 which the grant is to be awarded;

21 “(iii) ensure that consideration is
22 given to projects that are part of a State-
23 sponsored rail plan; and

24 “(iv) ensure that all such grants are
25 awarded on a competitive basis.

1 “(b) MAXIMUM FEDERAL SHARE.—The maximum
2 Federal share for carrying out a project under this section
3 shall be 80 percent of the project cost. The non-Federal
4 share may be provided by any non-Federal source in cash,
5 equipment, or supplies. Other in-kind contributions may
6 be approved by the Secretary on a case by case basis con-
7 sistent with this chapter.

8 “(c) PROJECT ELIGIBILITY.—For a project to be eli-
9 gible for assistance under this section the track must have
10 been operated or owned by a class II or class III railroad
11 as of the date of the enactment of the Railroad Track
12 Modernization Act of 2004.

13 “(d) USE OF FUNDS.—Grants provided under this
14 section shall be used to implement track capital projects
15 as soon as possible. In no event shall grant funds be con-
16 tractually obligated for a project later than the end of the
17 third Federal fiscal year following the year in which the
18 grant was awarded. Any funds not so obligated by the end
19 of such fiscal year shall be returned to the Secretary for
20 reallocation.

21 “(e) ADDITIONAL PURPOSE.—In addition to making
22 grants for projects as provided in subsection (a), the Sec-
23 retary may also make grants to supplement direct loans
24 or loan guarantees made under title V of the Railroad Re-
25 vitalization and Regulatory Reform Act of 1976 (45

1 U.S.C. 822(d)), for projects described in the last sentence
2 of section 502(d) of such title. Grants made under this
3 subsection may be used, in whole or in part, for paying
4 credit risk premiums, lowering rates of interest, or pro-
5 viding for a holiday on principal payments.

6 “(f) EMPLOYEE PROTECTION.—The Secretary shall
7 require as a condition of any grant made under this sec-
8 tion that the recipient railroad provide a fair arrangement
9 at least as protective of the interests of employees who
10 are affected by the project to be funded with the grant
11 as the terms imposed under section 11326(a), as in effect
12 on the date of the enactment of the Railroad Track Mod-
13 ernization Act of 2001.

14 “(g) LABOR STANDARDS.—

15 “(1) PREVAILING WAGES.—The Secretary shall
16 ensure that laborers and mechanics employed by
17 contractors and subcontractors in construction work
18 financed by a grant made under this section will be
19 paid wages not less than those prevailing on similar
20 construction in the locality, as determined by the
21 Secretary of Labor under the Act of March 3, 1931
22 (known as the Davis-Bacon Act; 40 U.S.C. 276a et
23 seq.). The Secretary shall make a grant under this
24 section only after being assured that required labor

1 standards will be maintained on the construction
2 work.

3 “(2) WAGE RATES.—Wage rates in a collective
4 bargaining agreement negotiated under the Railway
5 Labor Act (45 U.S.C. 151 et seq.) are deemed for
6 purposes of this subsection to comply with the Act
7 of March 3, 1931 (known as the Davis-Bacon Act;
8 40 U.S.C. 276a et seq.).”

9 (b) CONFORMING AMENDMENT.—The item relating
10 to chapter 223 in the table of chapters of subtitle V of
11 title 49, United States Code, is amended to read as fol-
12 lows:

“223. CAPITAL GRANTS FOR RAILROAD TRACK 22301”.

13 **SEC. 4633. REGULATIONS.**

14 (a) REGULATIONS.—The Secretary of Transportation
15 shall prescribe under subsection (a)(3) of section 22301
16 of title 49, United States Code (as added by section 4601),
17 interim and final regulations for the administration of the
18 grant program under such section as follows:

19 (1) INTERIM REGULATIONS.—The Secretary
20 shall prescribe the interim regulations to implement
21 the program not later than December 31, 2003.

22 (2) FINAL REGULATIONS.—The Secretary shall
23 prescribe the final regulations not later than October
24 1, 2004.

1 (b) INAPPLICABILITY OF RULEMAKING PROCEDURE
2 TO INTERIM REGULATIONS.—Subchapter II of chapter 5
3 of title 5, United States Code, shall not apply to the
4 issuance of an interim regulation or to any amendment
5 of such an interim regulation.

6 (c) CRITERIA.—The requirement for the establish-
7 ment of criteria under subparagraph (B) of section
8 22301(a)(3) of title 49, United States Code, applies to the
9 interim regulations as well as to the final regulations.

10 **SEC. 4634. STUDY OF GRANT-FUNDED PROJECTS.**

11 (a) REQUIREMENT FOR STUDY.—The Secretary of
12 Transportation shall conduct a study of the projects car-
13 ried out with grant assistance under section 22301 of title
14 49, United States Code (as added by section 4601), to
15 determine the public interest benefits associated with the
16 light density railroad networks in the States and their con-
17 tribution to a multimodal transportation system.

18 (b) REPORT.—Not later than March 31, 2004, the
19 Secretary shall submit to Congress a report on the results
20 of the study under subsection (a). The report shall include
21 any recommendations that the Secretary considers appro-
22 priate regarding the eligibility of light density rail net-
23 works for Federal infrastructure financing.

1 **SEC. 4635. AUTHORIZATION OF APPROPRIATIONS.**

2 There are authorized to be appropriated to the Sec-
 3 retary of Transportation \$350,000,000 for each of fiscal
 4 years 2004, 2005, and 2006 for carrying out section
 5 22301 of title 49, United States Code (as added by section
 6 4601).

7 **PART III—OTHER RAIL TRANSPORTATION-**
 8 **RELATED PROVISIONS**

9 **SEC. 4661. CAPITAL GRANTS FOR RAIL LINE RELOCATION**
 10 **PROJECTS.**

11 (a) ESTABLISHMENT OF PROGRAM.—

12 (1) PROGRAM REQUIREMENTS.—Chapter 201 of
 13 title 49, United States Code, is amended by adding
 14 at the end of subchapter II the following:

15 **“§ 20154. Capital grants for rail line relocation**
 16 **projects**

17 “(a) ESTABLISHMENT OF PROGRAM.—The Secretary
 18 of Transportation shall carry out a grant program to pro-
 19 vide financial assistance for local rail line relocation
 20 projects.

21 “(b) ELIGIBILITY.—A State is eligible for a grant
 22 under this section for any project for the improvement of
 23 the route or structure of a rail line passing through a mu-
 24 nicipality of the State that—

25 “(1) is carried out for the purpose of mitigating
 26 the adverse effects of rail traffic on safety, motor ve-

1 hicle traffic flow, or economic development in the
2 municipality;

3 “(2) involves a lateral or vertical relocation of
4 any portion of the rail line within the municipality
5 to avoid a closing of a grade crossing or the con-
6 struction of a road underpass or overpass; and

7 “(3) meets the costs-benefits requirement set
8 forth in subsection (c).

9 “(c) COSTS-BENEFITS REQUIREMENT.—A grant may
10 be awarded under this section for a project for the reloca-
11 tion of a rail line only if the benefits of the project for
12 the period equal to the estimated economic life of the relo-
13 cated rail line exceed the costs of the project for that pe-
14 riod, as determined by the Secretary considering the fol-
15 lowing factors:

16 “(1) The effects of the rail line and the rail
17 traffic on motor vehicle and pedestrian traffic, safe-
18 ty, and area commerce if the rail line were not so
19 relocated.

20 “(2) The effects of the rail line, relocated as
21 proposed, on motor vehicle and pedestrian traffic,
22 safety, and area commerce.

23 “(3) The effects of the rail line, relocated as
24 proposed, on the freight and passenger rail oper-
25 ations on the rail line.

1 “(d) CONSIDERATIONS FOR APPROVAL OF GRANT
2 APPLICATIONS.—In addition to considering the relation-
3 ship of benefits to costs in determining whether to award
4 a grant to an eligible State under this section, the Sec-
5 retary shall consider the following factors:

6 “(1) The capability of the State to fund the rail
7 line relocation project without Federal grant fund-
8 ing.

9 “(2) The requirement and limitation relating to
10 allocation of grant funds provided in subsection (e).

11 “(3) Equitable treatment of the various regions
12 of the United States.

13 “(e) ALLOCATION REQUIREMENTS.—

14 “(1) GRANTS NOT GREATER THAN
15 \$20,000,000.—At least 50 percent of all grant funds
16 awarded under this section out of funds appro-
17 priated for a fiscal year shall be provided as grant
18 awards of not more than \$20,000,000 each.

19 “(2) LIMITATION PER PROJECT.—Not more
20 than 25 percent of the total amount available for
21 carrying out this section for a fiscal year may be
22 provided for any 1 project in that fiscal year.

23 “(f) FEDERAL SHARE.—The total amount of a grant
24 awarded under this section for a rail line relocation project

1 shall be 90 percent of the shared costs of the project, as
2 determined under subsection (g)(4).

3 “(g) STATE SHARE.—

4 “(1) PERCENTAGE.—A State shall pay 10 per-
5 cent of the shared costs of a project that is funded
6 in part by a grant awarded under this section.

7 “(2) FORMS OF CONTRIBUTIONS.—The share
8 required by paragraph (1) may be paid in cash or
9 in kind.

10 “(3) IN-KIND CONTRIBUTIONS.—The in-kind
11 contributions that are permitted to be counted under
12 paragraph (2) for a project for a State are as fol-
13 lows:

14 “(A) A contribution of real property or
15 tangible personal property (whether provided by
16 the State or a person for the State).

17 “(B) A contribution of the services of em-
18 ployees of the State, calculated on the basis of
19 costs incurred by the State for the pay and ben-
20 efits of the employees, but excluding overhead
21 and general administrative costs.

22 “(C) A payment of any costs that were in-
23 curred for the project before the filing of an ap-
24 plication for a grant for the project under this
25 section, and any in-kind contributions that were

1 made for the project before the filing of the ap-
2 plication, if and to the extent that the costs
3 were incurred or in-kind contributions were
4 made, as the case may be, to comply with a
5 provision of a statute required to be satisfied in
6 order to carry out the project.

7 “(4) COSTS NOT SHARED.—

8 “(A) IN GENERAL.—For the purposes of
9 subsection (f) and this subsection, the shared
10 costs of a project in a municipality do not in-
11 clude any cost that is defrayed with any funds
12 or in-kind contribution that a source other than
13 the municipality makes available for the use of
14 the municipality without imposing at least 1 of
15 the following conditions:

16 “(i) The condition that the munici-
17 pality use the funds or contribution only
18 for the project.

19 “(ii) The condition that the avail-
20 ability of the funds or contribution to the
21 municipality is contingent on the execution
22 of the project.

23 “(B) DETERMINATIONS OF THE SEC-
24 RETARY.—The Secretary shall determine the
25 amount of the costs, if any, that are not shared

1 costs under this paragraph and the total
 2 amount of the shared costs. A determination of
 3 the Secretary shall be final.

4 “(h) MULTISTATE AGREEMENTS TO COMBINE
 5 AMOUNTS.—Two or more States (not including po-
 6 litical subdivisions of States) may, pursuant to an
 7 agreement entered into by the States, combine any
 8 part of the amounts provided through grants for a
 9 project under this section if—

10 “(1) the project will benefit each of the
 11 States entering into the agreement; and

12 “(2) the agreement is not a violation of a
 13 law of any such State.

14 “(i) REGULATIONS.—The Secretary shall prescribe
 15 regulations for carrying out this section.

16 “(j) STATE DEFINED.—In this section, the term
 17 ‘State’ includes, except as otherwise specifically provided,
 18 a political subdivision of a State.

19 “(k) AUTHORIZATION OF APPROPRIATIONS.—There
 20 are authorized to be appropriated to the Secretary for use
 21 in carrying out this section \$350,000,000 for each of the
 22 fiscal years 2004 through 2008.”.

23 (2) CLERICAL AMENDMENT.—The chapter anal-
 24 ysis for such chapter is amended by adding at the
 25 end the following:

“20154. Capital grants for rail line relocation projects.”.

1 (b) REGULATIONS.—

2 (1) INTERIM REGULATIONS.—Not later than
3 October 1, 2003, the Secretary of Transportation
4 shall issue temporary regulations to implement the
5 grant program under section 20154 of title 49,
6 United States Code, as added by subsection (a).
7 Subchapter II of chapter 5 of title 5, United States
8 Code, shall not apply to the issuance of a temporary
9 regulation under this subsection or of any amend-
10 ment of such a temporary regulation.

11 (2) FINAL REGULATIONS.—Not later than April
12 1, 2004, the Secretary shall issue final regulations
13 implementing the program.

14 **SEC. 4662. USE OF CONGESTION MITIGATION AND AIR**
15 **QUALITY IMPROVEMENT FUNDS FOR BOSTON**
16 **TO PORTLAND PASSENGER RAIL SERVICE.**

17 Notwithstanding any other provision of law, funds
18 authorized to be appropriated under section 1101(5) that
19 are made available to the State of Maine may be used to
20 support, through December 15, 2006, the operation of
21 passenger rail service between Boston, Massachusetts, and
22 Portland, Maine.

1 **TITLE V—HIGHWAY REAUTHOR-**
 2 **IZATION AND EXCISE TAX**
 3 **SIMPLIFICATION**

4 **SEC. 5000. SHORT TITLE; AMENDMENT OF 1986 CODE.**

5 (a) **SHORT TITLE.**—This title may be cited as the
 6 “Highway Reauthorization and Excise Tax Simplification
 7 Act of 2004”.

8 (b) **AMENDMENT OF 1986 CODE.**—Except as other-
 9 wise expressly provided, whenever in this title an amend-
 10 ment or repeal is expressed in terms of an amendment
 11 to, or repeal of, a section or other provision, the reference
 12 shall be considered to be made to a section or other provi-
 13 sion of the Internal Revenue Code of 1986.

14 **Subtitle A—Trust Fund**
 15 **Reauthorization**

16 **SEC. 5001. EXTENSION OF HIGHWAY TRUST FUND AND**
 17 **AQUATIC RESOURCES TRUST FUND EXPENDI-**
 18 **TURE AUTHORITY AND RELATED TAXES.**

19 (a) **HIGHWAY TRUST FUND EXPENDITURE AUTHOR-**
 20 **ITY.**—

21 (1) **HIGHWAY ACCOUNT.**—Paragraph (1) of sec-
 22 tion 9503(c) (relating to transfers from Highway
 23 Trust Fund for certain repayments and credits) is
 24 amended—

1 (A) in the matter before subparagraph (A),
2 by striking “March 1, 2004” and inserting
3 “October 1, 2009”,

4 (B) by striking “or” at the end of subpara-
5 graph (E),

6 (C) by striking the period at the end of
7 subparagraph (F) and inserting “, or”,

8 (D) by inserting after subparagraph (F),
9 the following new subparagraph:

10 “(G) authorized to be paid out of the
11 Highway Trust Fund under the Safe, Account-
12 able, Flexible, and Efficient Transportation Eq-
13 uity Act of 2004.”, and

14 (E) in the matter after subparagraph (G),
15 as added by subparagraph (D), by striking
16 “Surface Transportation Extension Act of
17 2003” and inserting “Safe, Accountable, Flexi-
18 ble, and Efficient Transportation Equity Act of
19 2004”.

20 (2) MASS TRANSIT ACCOUNT.—Paragraph (3)
21 of section 9503(e) (relating to establishment of Mass
22 Transit Account) is amended—

23 (A) in the matter before subparagraph (A),
24 by striking “March 1, 2004” and inserting
25 “October 1, 2009”,

1 (B) by striking “or” at the end of subpara-
2 graph (C),

3 (C) by striking the period at the end of
4 subparagraph (D) and inserting “, or”,

5 (D) by inserting after subparagraph (D),
6 the following new subparagraph:

7 “(E) the Safe, Accountable, Flexible, and
8 Efficient Transportation Equity Act of 2004,”
9 and

10 (E) in the matter after subparagraph (E),
11 as added by subparagraph (D), by striking
12 “Surface Transportation Extension Act of
13 2003” and inserting “Safe, Accountable, Flexi-
14 ble, and Efficient Transportation Equity Act of
15 2004”.

16 (3) EXCEPTION TO LIMITATION ON TRANS-
17 FERS.—Subparagraph (B) of section 9503(b)(5) (re-
18 lating to limitation on transfers to Highway Trust
19 Fund) is amended by striking “March 1, 2004” and
20 inserting “October 1, 2009”.

21 (b) AQUATIC RESOURCES TRUST FUND EXPENDI-
22 TURE AUTHORITY.—

23 (1) SPORT FISH RESTORATION ACCOUNT.—
24 Paragraph (2) of section 9504(b) (relating to Sport
25 Fish Restoration Account) is amended by striking

1 “Surface Transportation Extension Act of 2003”
2 each place it appears and inserting “Safe, Account-
3 able, Flexible, and Efficient Transportation Equity
4 Act of 2004”.

5 (2) BOAT SAFETY ACCOUNT.—Section 9504(c)
6 (relating to expenditures from Boat Safety Account)
7 is amended—

8 (A) by striking “March 1, 2004” and in-
9 serting “October 1, 2009”, and

10 (B) by striking “Surface Transportation
11 Extension Act of 2003” and inserting “Safe,
12 Accountable, Flexible, and Efficient Transpor-
13 tation Equity Act of 2004”.

14 (3) EXCEPTION TO LIMITATION ON TRANS-
15 FERS.—Paragraph (2) of section 9504(d) (relating
16 to limitation on transfers to Aquatic Resources
17 Trust Fund) is amended by striking “March 1,
18 2004” and inserting “October 1, 2009”.

19 (4) TECHNICAL CORRECTION.—The last sen-
20 tence of paragraph (2) of section 9504(b) is amend-
21 ed by striking “subparagraph (B)”, and inserting
22 “subparagraph (C)”.

23 (c) EXTENSION OF TAXES.—

1 (1) IN GENERAL.—The following provisions are
2 each amended by striking “2005” each place it ap-
3 pears and inserting “2009”:

4 (A) Section 4041(a)(1)(C)(iii)(I) (relating
5 to rate of tax on certain buses).

6 (B) Section 4041(a)(2)(B) (relating to rate
7 of tax on special motor fuels).

8 (C) Section 4041(m)(1)(A) (relating to
9 certain alcohol fuels produced from natural
10 gas).

11 (D) Section 4051(e) (relating to termi-
12 nation of tax on heavy trucks and trailers).

13 (E) Section 4071(d) (relating to termi-
14 nation of tax on tires).

15 (F) Section 4081(d)(1) (relating to termi-
16 nation of tax on gasoline, diesel fuel, and ker-
17 osene).

18 (G) Section 4481(e) (relating to period tax
19 in effect).

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

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

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

4 (A) by striking “2005” each place it ap-
5 pears and inserting “2009”, and

6 (B) by striking “2006” each place it ap-
7 pears and inserting “2010”.

8 (d) EXTENSION OF CERTAIN EXEMPTIONS.—The fol-
9 lowing provisions are each amended by striking “2005”
10 and inserting “2009”:

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

13 (2) Section 4483(g) (relating to termination of
14 exemptions for highway use tax).

15 (e) EXTENSION OF DEPOSITS INTO, AND CERTAIN
16 TRANSFERS FROM, TRUST FUND.—

17 (1) IN GENERAL.—Subsections (b), (c)(2),
18 (c)(3), (c)(4)(A)(i), and (c)(5)(A) of section 9503
19 (relating to the Highway Trust Fund) are
20 amended—

21 (A) by striking “2005” each place it ap-
22 pears and inserting “2009”, and

23 (B) by striking “2006” each place it ap-
24 pears and inserting “2010”.

1 (2) CONFORMING AMENDMENTS TO LAND AND
2 WATER CONSERVATION FUND.—Section 201(b) of
3 the Land and Water Conservation Fund Act of 1965
4 (16 U.S.C. 4601–11(b)) is amended—

5 (A) by striking “2003” and inserting
6 “2007”, and

7 (B) by striking “2004” each place it ap-
8 pears and inserting “2008”.

9 (f) EXTENSION OF TAX BENEFITS FOR QUALIFIED
10 METHANOL AND ETHANOL FUEL PRODUCED FROM
11 COAL.—Section 4041(b)(2) (relating to qualified meth-
12 anol and ethanol fuel) is amended—

13 (1) by striking “2007” in subparagraph (C)(ii)
14 and inserting “2010”, and

15 (2) by striking “October 1, 2007” in subpara-
16 graph (D) and inserting “January 1, 2011”.

17 (g) PROHIBITION ON USE OF HIGHWAY ACCOUNT
18 FOR RAIL PROJECTS.—Section 9503(c) (relating to trans-
19 fers from Highway Trust Fund for certain repayments
20 and credits) is amended by adding at the end the following
21 new paragraph:

22 “(6) PROHIBITION ON USE OF HIGHWAY AC-
23 COUNT FOR CERTAIN RAIL PROJECTS.—With respect
24 to rail projects beginning after the date of the enact-
25 ment of this paragraph, no amount shall be available

1 from the Highway Account (as defined in subsection
 2 (e)(5)(B)) for any rail project, except for any rail
 3 project involving publicly owned rail facilities or any
 4 rail project yielding a public benefit.”.

5 (h) HIGHWAY TRUST FUND EXPENDITURES FOR
 6 HIGHWAY USE TAX EVASION PROJECTS.—Section
 7 9503(c), as amended by subsection (g), is amended to add
 8 at the end the following new paragraph:

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

12 “(A) for each fiscal year after 2003 to the
 13 Internal Revenue Service—

14 “(i) \$30,000,000 for enforcement of
 15 fuel tax compliance, including the per-cer-
 16 tification of tax-exempt users,

17 “(ii) \$10,000,000 for Xstars, and

18 “(iii) \$10,000,000 for xfirs, and

19 “(B) for each fiscal year after 2003 to the
 20 Federal Highway Administration, \$50,000,000
 21 to be allocated \$1,000,000 to each State to
 22 combat fuel tax evasion on the State level.”.

23 (i) EFFECTIVE DATE.—The amendments made by
 24 and provisions of this section shall take effect on the date
 25 of the enactment of this Act.

1 **SEC. 5002. FULL ACCOUNTING OF FUNDS RECEIVED BY THE**
2 **HIGHWAY TRUST FUND.**

3 (a) IN GENERAL.—Section 9503(c) (relating to
4 transfers from Highway Trust Fund for certain repay-
5 ments and credits), as amended by section 5001 of this
6 Act, is amended by striking paragraph (2) and redesi-
7 gnating paragraphs (3), (4), (5), (6), and (7) as paragraphs
8 (2), (3), (4), (5), and (6), respectively.

9 (b) INTEREST ON UNEXPENDED BALANCES CRED-
10 ITED TO TRUST FUND.—Section 9503 (relating to the
11 Highway Trust Fund) is amended by striking subsection
12 (f).

13 (c) CONFORMING AMENDMENTS.—

14 (1) Section 9503(b)(4)(D) is amended by strik-
15 ing “paragraph (4)(D) or (5)(B)” and inserting
16 “paragraph (3)(D) or (4)(B)”.

17 (2) Paragraph (2) of section 9503(c) (as redesi-
18 gnated by subsection (a)) is amended by adding at
19 the end the following new sentence: “The amounts
20 payable from the Highway Trust Fund under this
21 paragraph shall be determined by taking into ac-
22 count only the portion of the taxes which are depos-
23 ited into the Highway Trust Fund.”.

24 (3) Section 9504(a)(2) is amended by striking
25 “section 9503(c)(4), section 9503(c)(5)” and insert-
26 ing “section 9503(c)(3), section 9503(c)(4)”.

1 (4) Paragraph (2) of section 9504(b), as
 2 amended by section 5001 of this Act, is amended by
 3 striking “section 9503(c)(5)” and inserting “section
 4 9503(c)(4)”.

5 (5) Section 9504(e) is amended by striking
 6 “section 9503(c)(4)” and inserting “section
 7 9503(c)(3)”.

8 (d) EFFECTIVE DATES.—

9 (1) IN GENERAL.—Except as provided in para-
 10 graph (2), the amendments made by this section
 11 shall apply to amounts paid for which no transfer
 12 from the Highway Trust Fund has been made before
 13 April 1, 2004.

14 (2) INTEREST CREDITED.—The amendment
 15 made by subsection (b) shall take effect on the date
 16 of the enactment of this Act.

17 **SEC. 5003. MODIFICATION OF ADJUSTMENTS OF APPOR-**
 18 **TIONMENTS.**

19 (a) IN GENERAL.—Section 9503(d) (relating to ad-
 20 justments for apportionments) is amended—

21 (1) by striking “24-month” in paragraph
 22 (1)(B) and inserting “48-month”, and

23 (2) by striking “2 YEARS” in the heading for
 24 paragraph (3) and inserting “4 YEARS”.

1 (b) MEASUREMENT OF NET HIGHWAY RECEIPTS.—
2 Section 9503(d) is amended by redesignating paragraph
3 (6) as paragraph (7) and by inserting after paragraph (5)
4 the following new paragraph:

5 “(6) MEASUREMENT OF NET HIGHWAY RE-
6 CEIPTS.—For purposes of making any estimate
7 under paragraph (1) of net highway receipts for pe-
8 riods ending after the date specified in subsection
9 (b)(1), the Secretary shall treat—

10 “(A) each expiring provision of subsection
11 (b) which is related to appropriations or trans-
12 fers to the Highway Trust Fund to have been
13 extended through the end of the 48-month pe-
14 riod referred to in paragraph (1)(B), and

15 “(B) with respect to each tax imposed
16 under the sections referred to in subsection
17 (b)(1), the rate of such tax during the 48-
18 month period referred to in paragraph (1)(B)
19 to be the same as the rate of such tax as in ef-
20 fect on the date of such estimate.”.

21 (c) EFFECTIVE DATE.—The amendments made by
22 this section shall take effect on the date of the enactment
23 of this Act.

1 **Subtitle B—Volumetric Ethanol**
 2 **Excise Tax Credit**

3 **SEC. 5101. SHORT TITLE.**

4 This subtitle may be cited as the “Volumetric Eth-
 5 anol Excise Tax Credit (VEETC) Act of 2004”.

6 **SEC. 5102. ALCOHOL AND BIODIESEL EXCISE TAX CREDIT**
 7 **AND EXTENSION OF ALCOHOL FUELS IN-**
 8 **COME TAX CREDIT.**

9 (a) **IN GENERAL.**—Subchapter B of chapter 65 (re-
 10 lating to rules of special application) is amended by insert-
 11 ing after section 6425 the following new section:

12 **“SEC. 6426. CREDIT FOR ALCOHOL FUEL AND BIODIESEL**
 13 **MIXTURES.**

14 “(a) **ALLOWANCE OF CREDITS.**—There shall be al-
 15 lowed as a credit against the tax imposed by section 4081
 16 an amount equal to the sum of—

17 “(1) the alcohol fuel mixture credit, plus

18 “(2) the biodiesel mixture credit.

19 “(b) **ALCOHOL FUEL MIXTURE CREDIT.**—

20 “(1) **IN GENERAL.**—For purposes of this sec-
 21 tion, the alcohol fuel mixture credit is the product
 22 of the applicable amount and the number of gallons
 23 of alcohol used by the taxpayer in producing any al-
 24 cohol fuel mixture for sale or use in a trade or busi-
 25 ness of the taxpayer.

1 “(2) APPLICABLE AMOUNT.—For purposes of
2 this subsection—

3 “(A) IN GENERAL.—Except as provided in
4 subparagraph (B), the applicable amount is 52
5 cents (51 cents in the case of any sale or use
6 after 2004).

7 “(B) MIXTURES NOT CONTAINING ETH-
8 ANOL.—In the case of an alcohol fuel mixture
9 in which none of the alcohol consists of ethanol,
10 the applicable amount is 60 cents.

11 “(3) ALCOHOL FUEL MIXTURE.—For purposes
12 of this subsection, the term ‘alcohol fuel mixture’
13 means a mixture of alcohol and a taxable fuel
14 which—

15 “(A) is sold by the taxpayer producing
16 such mixture to any person for use as a fuel,

17 “(B) is used as a fuel by the taxpayer pro-
18 ducing such mixture, or

19 “(C) is removed from the refinery by a
20 person producing such mixture.

21 “(4) OTHER DEFINITIONS.—For purposes of
22 this subsection—

23 “(A) ALCOHOL.—The term ‘alcohol’ in-
24 cludes methanol and ethanol but does not
25 include—

1 “(i) alcohol produced from petroleum,
2 natural gas, or coal (including peat), or

3 “(ii) alcohol with a proof of less than
4 190 (determined without regard to any
5 added denaturants).

6 Such term also includes an alcohol gallon equiv-
7 alent of ethyl tertiary butyl ether or other
8 ethers produced from such alcohol.

9 “(B) TAXABLE FUEL.—The term ‘taxable
10 fuel’ has the meaning given such term by sec-
11 tion 4083(a)(1).

12 “(5) TERMINATION.—This subsection shall not
13 apply to any sale, use, or removal for any period
14 after December 31, 2010.

15 “(c) BIODIESEL MIXTURE CREDIT.—

16 “(1) IN GENERAL.—For purposes of this sec-
17 tion, the biodiesel mixture credit is the product of
18 the applicable amount and the number of gallons of
19 biodiesel used by the taxpayer in producing any bio-
20 diesel mixture for sale or use in a trade or business
21 of the taxpayer.

22 “(2) APPLICABLE AMOUNT.—For purposes of
23 this subsection—

1 “(A) IN GENERAL.—Except as provided in
2 subparagraph (B), the applicable amount is 50
3 cents.

4 “(B) AMOUNT FOR AGRI-BIODIESEL.—In
5 the case of any biodiesel which is agri-biodiesel,
6 the applicable amount is \$1.00.

7 “(3) BIODIESEL MIXTURE.—For purposes of
8 this section, the term ‘biodiesel mixture’ means a
9 mixture of biodiesel and diesel fuel (as defined in
10 section 4083(a)(3)), determined without regard to
11 any use of kerosene, which—

12 “(A) is sold by the taxpayer producing
13 such mixture to any person for use as a fuel,

14 “(B) is used as a fuel by the taxpayer pro-
15 ducing such mixture, or

16 “(C) is removed from the refinery by a
17 person producing such mixture.

18 “(4) CERTIFICATION FOR BIODIESEL.—No
19 credit shall be allowed under this section unless the
20 taxpayer obtains a certification (in such form and
21 manner as prescribed by the Secretary) from the
22 producer of the biodiesel which identifies the product
23 produced and the percentage of biodiesel and agri-
24 biodiesel in the product.

1 “(5) OTHER DEFINITIONS.—Any term used in
2 this subsection which is also used in section 40A
3 shall have the meaning given such term by section
4 40A.

5 “(6) TERMINATION.—This subsection shall not
6 apply to any sale, use, or removal for any period
7 after December 31, 2006.

8 “(d) MIXTURE NOT USED AS A FUEL, ETC.—

9 “(1) IMPOSITION OF TAX.—If—

10 “(A) any credit was determined under this
11 section with respect to alcohol or biodiesel used
12 in the production of any alcohol fuel mixture or
13 biodiesel mixture, respectively, and

14 “(B) any person—

15 “(i) separates the alcohol or biodiesel
16 from the mixture, or

17 “(ii) without separation, uses the mix-
18 ture other than as a fuel,

19 then there is hereby imposed on such person a
20 tax equal to the product of the applicable
21 amount and the number of gallons of such alco-
22 hol or biodiesel.

23 “(2) APPLICABLE LAWS.—All provisions of law,
24 including penalties, shall, insofar as applicable and
25 not inconsistent with this section, apply in respect of

1 any tax imposed under paragraph (1) as if such tax
2 were imposed by section 4081 and not by this sec-
3 tion.

4 “(e) COORDINATION WITH EXEMPTION FROM EX-
5 CISE TAX.—Rules similar to the rules under section 40(c)
6 shall apply for purposes of this section.”.

7 (b) REGISTRATION REQUIREMENT.—Section
8 4101(a)(1) (relating to registration), as amended by sec-
9 tions 5211 and 5242 of this Act, is amended by inserting
10 “and every person producing or importing biodiesel (as de-
11 fined in section 40A(d)(1)) or alcohol (as defined in sec-
12 tion 6426(b)(4)(A))” after “4081”.

13 (c) ADDITIONAL AMENDMENTS.—

14 (1) Section 40(c) is amended by striking “sub-
15 section (b)(2), (k), or (m) of section 4041, section
16 4081(c), or section 4091(c)” and inserting “section
17 4041(b)(2), section 6426, or section 6427(e)”.

18 (2) Paragraph (4) of section 40(d) is amended
19 to read as follows:

20 “(4) VOLUME OF ALCOHOL.—For purposes of
21 determining under subsection (a) the number of gal-
22 lons of alcohol with respect to which a credit is al-
23 lowable under subsection (a), the volume of alcohol
24 shall include the volume of any denaturant (includ-
25 ing gasoline) which is added under any formulas ap-

1 proved by the Secretary to the extent that such de-
2 naturants do not exceed 5 percent of the volume of
3 such alcohol (including denaturants).”.

4 (3) Section 40(e)(1) is amended—

5 (A) by striking “2007” in subparagraph

6 (A) and inserting “2010”, and

7 (B) by striking “2008” in subparagraph

8 (B) and inserting “2011”.

9 (4) Section 40(h) is amended—

10 (A) by striking “2007” in paragraph (1)

11 and inserting “2010”, and

12 (B) by striking “, 2006, or 2007” in the

13 table contained in paragraph (2) and inserting

14 “through 2010”.

15 (5) Section 4041(b)(2)(B) is amended by strik-

16 ing “a substance other than petroleum or natural

17 gas” and inserting “coal (including peat)”.

18 (6) Section 4041 is amended by striking sub-

19 section (k).

20 (7) Section 4081 is amended by striking sub-

21 section (c).

22 (8) Paragraph (2) of section 4083(a) is amend-

23 ed to read as follows:

24 “(2) GASOLINE.—The term ‘gasoline’—

1 “(A) includes any gasoline blend, other
 2 than qualified methanol or ethanol fuel (as de-
 3 fined in section 4041(b)(2)(B)), partially ex-
 4 empt methanol or ethanol fuel (as defined in
 5 section 4041(m)(2)), or a denatured alcohol,
 6 and

7 “(B) includes, to the extent prescribed in
 8 regulations—

9 “(i) any gasoline blend stock, and

10 “(ii) any product commonly used as
 11 an additive in gasoline (other than alco-
 12 hol).

13 For purposes of subparagraph (B)(i), the term ‘gas-
 14 oline blend stock’ means any petroleum product
 15 component of gasoline.”.

16 (9) Section 6427 is amended by inserting after
 17 subsection (d) the following new subsection:

18 “(e) ALCOHOL OR BIODIESEL USED TO PRODUCE
 19 ALCOHOL FUEL AND BIODIESEL MIXTURES OR USED AS
 20 FUELS.—Except as provided in subsection (k)—

21 “(1) USED TO PRODUCE A MIXTURE.—If any
 22 person produces a mixture described in section 6426
 23 in such person’s trade or business, the Secretary
 24 shall pay (without interest) to such person an
 25 amount equal to the alcohol fuel mixture credit or

1 the biodiesel mixture credit with respect to such mix-
2 ture.

3 “(2) USED AS FUEL.—If alcohol (as defined in
4 section 40(d)(1)) or biodiesel (as defined in section
5 40A(d)(1)) or agri-biodiesel (as defined in section
6 40A(d)(2)) which is not in a mixture described in
7 section 6426—

8 “(A) is used by any person as a fuel in a
9 trade or business, or

10 “(B) is sold by any person at retail to an-
11 other person and placed in the fuel tank of such
12 person’s vehicle,

13 the Secretary shall pay (without interest) to such
14 person an amount equal to the alcohol credit (as de-
15 termined under section 40(b)(2)) or the biodiesel
16 credit (as determined under section 40A(b)(2)) with
17 respect to such fuel.

18 “(3) COORDINATION WITH OTHER REPAYMENT
19 PROVISIONS.—No amount shall be payable under
20 paragraph (1) with respect to any mixture with re-
21 spect to which an amount is allowed as a credit
22 under section 6426.

23 “(4) TERMINATION.—This subsection shall not
24 apply with respect to—

1 “(A) any alcohol fuel mixture (as defined
2 in section 6426(b)(3)) or alcohol (as so defined)
3 sold or used after December 31, 2010, and

4 “(B) any biodiesel mixture (as defined in
5 section 6426(c)(3)) or biodiesel (as so defined)
6 or agri-biodiesel (as so defined) sold or used
7 after December 31, 2006.”.

8 (10) Section 6427(i)(3) is amended—

9 (A) by striking “subsection (f)” both
10 places it appears in subparagraph (A) and in-
11 serting “subsection (e)(1)”,

12 (B) by striking “gasoline, diesel fuel, or
13 kerosene used to produce a qualified alcohol
14 mixture (as defined in section 4081(c)(3))” in
15 subparagraph (A) and inserting “a mixture de-
16 scribed in section 6426”,

17 (C) by adding at the end of subparagraph
18 (A) the following new flush sentence:

19 “‘In the case of an electronic claim, this sub-
20 paragraph shall be applied without regard to
21 clause (i).’”,

22 (D) by striking “subsection (f)(1)” in sub-
23 paragraph (B) and inserting “subsection
24 (e)(1)”,

1 (E) by striking “20 days of the date of the
2 filing of such claim” in subparagraph (B) and
3 inserting “45 days of the date of the filing of
4 such claim (20 days in the case of an electronic
5 claim)”, and

6 (F) by striking “ALCOHOL MIXTURE” in
7 the heading and inserting “ALCOHOL FUEL AND
8 BIODIESEL MIXTURE”.

9 (11) Section 9503(b)(1) is amended by adding
10 at the end the following new flush sentence:

11 “For purposes of this paragraph, taxes received
12 under sections 4041 and 4081 shall be determined
13 without reduction for credits under section 6426.”.

14 (12) Section 9503(b)(4), as amended by section
15 5101 of this Act, is amended—

16 (A) by adding “or” at the end of subpara-
17 graph (C),

18 (B) by striking the comma at the end of
19 subparagraph (D)(iii) and inserting a period,
20 and

21 (C) by striking subparagraphs (E) and
22 (F).

23 (13) The table of sections for subchapter B of
24 chapter 65 is amended by inserting after the item
25 relating to section 6425 the following new item:

“Sec. 6426. Credit for alcohol fuel and biodiesel mixtures.”.

1 (14) TARIFF SCHEDULE.—Headings
2 9901.00.50 and 9901.00.52 of the Harmonized Tar-
3 iff Schedule of the United States (19 U.S.C. 3007)
4 are each amended in the effective period column by
5 striking “10/1/2007” each place it appears and in-
6 serting “1/1/2011”.

7 (d) EFFECTIVE DATES.—

8 (1) IN GENERAL.—Except as otherwise pro-
9 vided in this subsection, the amendments made by
10 this section shall apply to fuel sold or used after
11 September 30, 2004.

12 (2) REGISTRATION REQUIREMENT.—The
13 amendment made by subsection (b) shall take effect
14 on April 1, 2005.

15 (3) EXTENSION OF ALCOHOL FUELS CREDIT.—
16 The amendments made by paragraphs (3), (4), and
17 (14) of subsection (c) shall take effect on the date
18 of the enactment of this Act.

19 (4) REPEAL OF GENERAL FUND RETENTION OF
20 CERTAIN ALCOHOL FUELS TAXES.—The amend-
21 ments made by subsection (c)(12) shall apply to fuel
22 sold or used after September 30, 2003.

23 (e) FORMAT FOR FILING.—The Secretary of the
24 Treasury shall describe the electronic format for filing
25 claims described in section 6427(i)(3)(B) of the Internal

1 Revenue Code of 1986 (as amended by subsection
2 (c)(10)(C)) not later than September 30, 2004.

3 **SEC. 5103. BIODIESEL INCOME TAX CREDIT.**

4 (a) IN GENERAL.—Subpart D of part IV of sub-
5 chapter A of chapter 1 (relating to business related cred-
6 its) is amended by inserting after section 40 the following
7 new section:

8 **“SEC. 40A. BIODIESEL USED AS FUEL.**

9 “(a) GENERAL RULE.—For purposes of section 38,
10 the biodiesel fuels credit determined under this section for
11 the taxable year is an amount equal to the sum of—

12 “(1) the biodiesel mixture credit, plus

13 “(2) the biodiesel credit.

14 “(b) DEFINITION OF BIODIESEL MIXTURE CREDIT
15 AND BIODIESEL CREDIT.—For purposes of this section—

16 “(1) BIODIESEL MIXTURE CREDIT.—

17 “(A) IN GENERAL.—The biodiesel mixture
18 credit of any taxpayer for any taxable year is
19 50 cents for each gallon of biodiesel used by the
20 taxpayer in the production of a qualified bio-
21 diesel mixture.

22 “(B) QUALIFIED BIODIESEL MIXTURE.—

23 The term ‘qualified biodiesel mixture’ means a
24 mixture of biodiesel and diesel fuel (as defined

1 in section 4083(a)(3)), determined without re-
2 gard to any use of kerosene, which—

3 “(i) is sold by the taxpayer producing
4 such mixture to any person for use as a
5 fuel, or

6 “(ii) is used as a fuel by the taxpayer
7 producing such mixture.

8 “(C) SALE OR USE MUST BE IN TRADE OR
9 BUSINESS, ETC.—Biodiesel used in the produc-
10 tion of a qualified biodiesel mixture shall be
11 taken into account—

12 “(i) only if the sale or use described
13 in subparagraph (B) is in a trade or busi-
14 ness of the taxpayer, and

15 “(ii) for the taxable year in which
16 such sale or use occurs.

17 “(D) CASUAL OFF-FARM PRODUCTION NOT
18 ELIGIBLE.—No credit shall be allowed under
19 this section with respect to any casual off-farm
20 production of a qualified biodiesel mixture.

21 “(2) BIODIESEL CREDIT.—

22 “(A) IN GENERAL.—The biodiesel credit of
23 any taxpayer for any taxable year is 50 cents
24 for each gallon of biodiesel which is not in a

1 mixture with diesel fuel and which during the
2 taxable year—

3 “(i) is used by the taxpayer as a fuel
4 in a trade or business, or

5 “(ii) is sold by the taxpayer at retail
6 to a person and placed in the fuel tank of
7 such person’s vehicle.

8 “(B) USER CREDIT NOT TO APPLY TO BIO-
9 DIESEL SOLD AT RETAIL.—No credit shall be
10 allowed under subparagraph (A)(i) with respect
11 to any biodiesel which was sold in a retail sale
12 described in subparagraph (A)(ii).

13 “(3) CREDIT FOR AGRI-BIODIESEL.—In the
14 case of any biodiesel which is agri-biodiesel, para-
15 graphs (1)(A) and (2)(A) shall be applied by sub-
16 stituting ‘\$1.00’ for ‘50 cents’.

17 “(4) CERTIFICATION FOR BIODIESEL.—No
18 credit shall be allowed under this section unless the
19 taxpayer obtains a certification (in such form and
20 manner as prescribed by the Secretary) from the
21 producer or importer of the biodiesel which identifies
22 the product produced and the percentage of biodiesel
23 and agri-biodiesel in the product.

24 “(c) COORDINATION WITH CREDIT AGAINST EXCISE
25 TAX.—The amount of the credit determined under this

1 section with respect to any biodiesel shall be properly re-
2 duced to take into account any benefit provided with re-
3 spect to such biodiesel solely by reason of the application
4 of section 6426 or 6427(e).

5 “(d) DEFINITIONS AND SPECIAL RULES.—For pur-
6 poses of this section—

7 “(1) BIODIESEL.—The term ‘biodiesel’ means
8 the monoalkyl esters of long chain fatty acids de-
9 rived from plant or animal matter which meet—

10 “(A) the registration requirements for
11 fuels and fuel additives established by the Envi-
12 ronmental Protection Agency under section 211
13 of the Clean Air Act (42 U.S.C. 7545), and

14 “(B) the requirements of the American So-
15 ciety of Testing and Materials D6751.

16 “(2) AGRI-BIODIESEL.—The term ‘agri-bio-
17 diesel’ means biodiesel derived solely from virgin oils,
18 including esters derived from virgin vegetable oils
19 from corn, soybeans, sunflower seeds, cottonseeds,
20 canola, crambe, rapeseeds, safflowers, flaxseeds, rice
21 bran, and mustard seeds, and from animal fats.

22 “(3) MIXTURE OR BIODIESEL NOT USED AS A
23 FUEL, ETC.—

24 “(A) MIXTURES.—If—

1 “(i) any credit was determined under
2 this section with respect to biodiesel used
3 in the production of any qualified biodiesel
4 mixture, and

5 “(ii) any person—

6 “(I) separates the biodiesel from
7 the mixture, or

8 “(II) without separation, uses the
9 mixture other than as a fuel,

10 then there is hereby imposed on such person a
11 tax equal to the product of the rate applicable
12 under subsection (b)(1)(A) and the number of
13 gallons of such biodiesel in such mixture.

14 “(B) BIODIESEL.—If—

15 “(i) any credit was determined under
16 this section with respect to the retail sale
17 of any biodiesel, and

18 “(ii) any person mixes such biodiesel
19 or uses such biodiesel other than as a fuel,

20 then there is hereby imposed on such person a
21 tax equal to the product of the rate applicable
22 under subsection (b)(2)(A) and the number of
23 gallons of such biodiesel.

24 “(C) APPLICABLE LAWS.—All provisions of
25 law, including penalties, shall, insofar as appli-

1 cable and not inconsistent with this section,
2 apply in respect of any tax imposed under sub-
3 paragraph (A) or (B) as if such tax were im-
4 posed by section 4081 and not by this chapter.

5 “(4) PASS-THRU IN THE CASE OF ESTATES AND
6 TRUSTS.—Under regulations prescribed by the Sec-
7 retary, rules similar to the rules of subsection (d) of
8 section 52 shall apply.

9 “(e) TERMINATION.—This section shall not apply to
10 any sale or use after December 31, 2006.”.

11 (b) CREDIT TREATED AS PART OF GENERAL BUSI-
12 NESS CREDIT.—Section 38(b) (relating to current year
13 business credit) is amended by striking “plus” at the end
14 of paragraph (14), by striking the period at the end of
15 paragraph (15) and inserting “, plus”, and by adding at
16 the end the following new paragraph:

17 “(16) the biodiesel fuels credit determined
18 under section 40A(a).”.

19 (c) CONFORMING AMENDMENTS.—

20 (1) Section 39(d) is amended by adding at the
21 end the following new paragraph:

22 “(11) NO CARRYBACK OF BIODIESEL FUELS
23 CREDIT BEFORE EFFECTIVE DATE.—No portion of
24 the unused business credit for any taxable year
25 which is attributable to the biodiesel fuels credit de-

1 terminated under section 40A may be carried back to
2 a taxable year ending on or before September 30,
3 2004.”.

4 (2)(A) Section 87 is amended to read as fol-
5 lows:

6 **“SEC. 87. ALCOHOL AND BIODIESEL FUELS CREDITS.**

7 “Gross income includes—

8 “(1) the amount of the alcohol fuels credit de-
9 termined with respect to the taxpayer for the taxable
10 year under section 40(a), and

11 “(2) the biodiesel fuels credit determined with
12 respect to the taxpayer for the taxable year under
13 section 40A(a).”.

14 (B) The item relating to section 87 in the table
15 of sections for part II of subchapter B of chapter 1
16 is amended by striking “fuel credit” and inserting
17 “and biodiesel fuels credits”.

18 (3) Section 196(c) is amended by striking
19 “and” at the end of paragraph (9), by striking the
20 period at the end of paragraph (10) and inserting “,
21 and”, and by adding at the end the following new
22 paragraph:

23 “(11) the biodiesel fuels credit determined
24 under section 40A(a).”.

1 (4) The table of sections for subpart D of part
 2 IV of subchapter A of chapter 1 is amended by add-
 3 ing after the item relating to section 40 the fol-
 4 lowing new item:

“Sec. 40A. Biodiesel used as fuel.”.

5 (d) EFFECTIVE DATE.—The amendments made by
 6 this section shall apply to fuel produced, and sold or used,
 7 after September 30, 2004, in taxable years ending after
 8 such date.

9 **Subtitle C—Fuel Fraud Prevention**

10 **SEC. 5200. SHORT TITLE.**

11 This subtitle may be cited as the “Fuel Fraud Pre-
 12 vention Act of 2004”.

13 **PART I—AVIATION JET FUEL**

14 **SEC. 5211. TAXATION OF AVIATION-GRADE KEROSENE.**

15 (a) RATE OF TAX.—

16 (1) IN GENERAL.—Subparagraph (A) of section
 17 4081(a)(2) is amended by striking “and” at the end
 18 of clause (ii), by striking the period at the end of
 19 clause (iii) and inserting “, and”, and by adding at
 20 the end the following new clause:

21 “(iv) in the case of aviation-grade ker-
 22 osene, 21.8 cents per gallon.”.

23 (2) COMMERCIAL AVIATION.—Paragraph (2) of
 24 section 4081(a) is amended by adding at the end the
 25 following new subparagraph:

1 “(C) TAXES IMPOSED ON FUEL USED IN
2 COMMERCIAL AVIATION.—In the case of avia-
3 tion-grade kerosene which is removed from any
4 refinery or terminal directly into the fuel tank
5 of an aircraft for use in commercial aviation,
6 the rate of tax under subparagraph (A)(iv) shall
7 be 4.3 cents per gallon.”.

8 (3) NONTAXABLE USES.—

9 (A) IN GENERAL.—Section 4082 is amend-
10 ed by redesignating subsections (e) and (f) as
11 subsections (f) and (g), respectively, and by in-
12 serting after subsection (d) the following new
13 subsection:

14 “(e) AVIATION-GRADE KEROSENE.—In the case of
15 aviation-grade kerosene which is exempt from the tax im-
16 posed by section 4041(c) (other than by reason of a prior
17 imposition of tax) and which is removed from any refinery
18 or terminal directly into the fuel tank of an aircraft, the
19 rate of tax under section 4081(a)(2)(A)(iv) shall be zero.”.

20 (B) CONFORMING AMENDMENTS.—

21 (i) Subsection (b) of section 4082 is
22 amended by adding at the end the fol-
23 lowing new flush sentence: “The term
24 ‘nontaxable use’ does not include the use
25 of aviation-grade kerosene in an aircraft.”.

1 (ii) Section 4082(d) is amended by
2 striking paragraph (1) and by redesignig-
3 nating paragraphs (2) and (3) as para-
4 graphs (1) and (2), respectively.

5 (4) NONAIRCRAFT USE OF AVIATION-GRADE
6 KEROSENE.—

7 (A) IN GENERAL.—Subparagraph (B) of
8 section 4041(a)(1) is amended by adding at the
9 end the following new sentence: “This subpara-
10 graph shall not apply to aviation-grade ker-
11 osene.”.

12 (B) CONFORMING AMENDMENT.—The
13 heading for paragraph (1) of section 4041(a) is
14 amended by inserting “AND KEROSENE” after
15 “DIESEL FUEL”.

16 (b) COMMERCIAL AVIATION.—Section 4083 is
17 amended redesignating subsections (b) and (c) as sub-
18 sections (c) and (d), respectively, and by inserting after
19 subsection (a) the following new subsection:

20 “(b) COMMERCIAL AVIATION.—For purposes of this
21 subpart, the term ‘commercial aviation’ means any use of
22 an aircraft in a business of transporting persons or prop-
23 erty for compensation or hire by air, unless properly allo-
24 cable to any transportation exempt from the taxes imposed

1 by section 4261 and 4271 by reason of section 4281 or
2 4282 or by reason of section 4261(h).”.

3 (c) REFUNDS.—

4 (1) IN GENERAL.—Paragraph (4) of section
5 6427(l) is amended to read as follows:

6 “(4) REFUNDS FOR AVIATION-GRADE KER-
7 OSENE.—

8 “(A) NO REFUND OF CERTAIN TAXES ON
9 FUEL USED IN COMMERCIAL AVIATION.—In the
10 case of aviation-grade kerosene used in com-
11 mercial aviation (as defined in section 4083(b))
12 (other than supplies for vessels or aircraft with-
13 in the meaning of section 4221(d)(3)), para-
14 graph (1) shall not apply to so much of the tax
15 imposed by section 4081 as is attributable to—

16 “(i) the Leaking Underground Stor-
17 age Tank Trust Fund financing rate im-
18 posed by such section, and

19 “(ii) so much of the rate of tax speci-
20 fied in section 4081(a)(2)(A)(iv) as does
21 not exceed 4.3 cents per gallon.

22 “(B) PAYMENT TO ULTIMATE, REG-
23 ISTERED VENDOR.—With respect to aviation-
24 grade kerosene, if the ultimate purchaser of
25 such kerosene waives (at such time and in such

1 form and manner as the Secretary shall pre-
2 scribe) the right to payment under paragraph
3 (1) and assigns such right to the ultimate ven-
4 dor, then the Secretary shall pay the amount
5 which would be paid under paragraph (1) to
6 such ultimate vendor, but only if such ultimate
7 vendor—

8 “(i) is registered under section 4101,

9 and

10 “(ii) meets the requirements of sub-
11 paragraph (A), (B), or (D) of section
12 6416(a)(1).”.

13 (2) TIME FOR FILING CLAIMS.—Paragraph (4)
14 of section 6427(i) is amended by striking “sub-
15 section (l)(5)” and inserting “paragraph (4)(B) or
16 (5) of subsection (l)”.

17 (3) CONFORMING AMENDMENT.—Subparagraph
18 (B) of section 6427(l)(2) is amended to read as fol-
19 lows:

20 “(B) in the case of aviation-grade
21 kerosene—

22 “(i) any use which is exempt from the
23 tax imposed by section 4041(c) other than
24 by reason of a prior imposition of tax, or

1 “(ii) any use in commercial aviation
2 (within the meaning of section 4083(b)).”.

3 (d) REPEAL OF PRIOR TAXATION OF AVIATION
4 FUEL.—

5 (1) IN GENERAL.—Part III of subchapter A of
6 chapter 32 is amended by striking subpart B and by
7 redesignating subpart C as subpart B.

8 (2) CONFORMING AMENDMENTS.—

9 (A) Section 4041(c) is amended to read as
10 follows:

11 “(c) AVIATION-GRADE KEROSENE.—

12 “(1) IN GENERAL.—There is hereby imposed a
13 tax upon aviation-grade kerosene—

14 “(A) sold by any person to an owner, les-
15 see, or other operator of an aircraft for use in
16 such aircraft, or

17 “(B) used by any person in an aircraft un-
18 less there was a taxable sale of such fuel under
19 subparagraph (A).

20 “(2) EXEMPTION FOR PREVIOUSLY TAXED
21 FUEL.—No tax shall be imposed by this subsection
22 on the sale or use of any aviation-grade kerosene if
23 tax was imposed on such liquid under section 4081
24 and the tax thereon was not credited or refunded.

1 “(3) RATE OF TAX.—The rate of tax imposed
2 by this subsection shall be the rate of tax specified
3 in section 4081(a)(2)(A)(iv) which is in effect at the
4 time of such sale or use.”.

5 (B) Section 4041(d)(2) is amended by
6 striking “section 4091” and inserting “section
7 4081”.

8 (C) Section 4041 is amended by striking
9 subsection (e).

10 (D) Section 4041 is amended by striking
11 subsection (i).

12 (E) Section 4041(m)(1) is amended to
13 read as follows:

14 “(1) IN GENERAL.—In the case of the sale or
15 use of any partially exempt methanol or ethanol fuel,
16 the rate of the tax imposed by subsection (a)(2)
17 shall be—

18 “(A) after September 30, 1997, and before
19 September 30, 2009—

20 “(i) in the case of fuel none of the al-
21 cohol in which consists of ethanol, 9.15
22 cents per gallon, and

23 “(ii) in any other case, 11.3 cents per
24 gallon, and

25 “(B) after September 30, 2009—

1 “(i) in the case of fuel none of the al-
2 cohol in which consists of ethanol, 2.15
3 cents per gallon, and

4 “(ii) in any other case, 4.3 cents per
5 gallon.”.

6 (F) Sections 4101(a), 4103, 4221(a), and
7 6206 are each amended by striking “, 4081, or
8 4091” and inserting “or 4081”.

9 (G) Section 6416(b)(2) is amended by
10 striking “4091 or”.

11 (H) Section 6416(b)(3) is amended by
12 striking “or 4091” each place it appears.

13 (I) Section 6416(d) is amended by striking
14 “or to the tax imposed by section 4091 in the
15 case of refunds described in section 4091(d)”.

16 (J) Section 6427 is amended by striking
17 subsection (f).

18 (K) Section 6427(j)(1) is amended by
19 striking “, 4081, and 4091” and inserting “and
20 4081”.

21 (L)(i) Section 6427(l)(1) is amended to
22 read as follows:

23 “(1) IN GENERAL.—Except as otherwise pro-
24 vided in this subsection and in subsection (k), if any
25 diesel fuel or kerosene on which tax has been im-

1 posed by section 4041 or 4081 is used by any person
2 in a nontaxable use, the Secretary shall pay (without
3 interest) to the ultimate purchaser of such fuel an
4 amount equal to the aggregate amount of tax im-
5 posed on such fuel under section 4041 or 4081, as
6 the case may be, reduced by any refund paid to the
7 ultimate vendor under paragraph (4)(B).”.

8 (ii) Paragraph (5)(B) of section 6427(l) is
9 amended by striking “Paragraph (1)(A) shall
10 not apply to kerosene” and inserting “Para-
11 graph (1) shall not apply to kerosene (other
12 than aviation-grade kerosene)”.

13 (M) Subparagraph (B) of section
14 6724(d)(1) is amended by striking clause (xv)
15 and by redesignating the succeeding clauses ac-
16 cordingly.

17 (N) Paragraph (2) of section 6724(d) is
18 amended by striking subparagraph (W) and by
19 redesignating the succeeding subparagraphs ac-
20 cordingly.

21 (O) Paragraph (1) of section 9502(b) is
22 amended by adding “and” at the end of sub-
23 paragraph (B) and by striking subparagraphs
24 (C) and (D) and inserting the following new
25 subparagraph:

1 “(C) section 4081 with respect to aviation
2 gasoline and aviation-grade kerosene, and”.

3 (P) The last sentence of section 9502(b) is
4 amended to read as follows:

5 “There shall not be taken into account under paragraph
6 (1) so much of the taxes imposed by section 4081 as are
7 determined at the rate specified in section
8 4081(a)(2)(B).”.

9 (Q) Subsection (b) of section 9508 is
10 amended by striking paragraph (3) and by re-
11 designating paragraphs (4) and (5) as para-
12 graphs (3) and (4), respectively.

13 (R) Section 9508(e)(2)(A) is amended by
14 striking “sections 4081 and 4091” and insert-
15 ing “section 4081”.

16 (S) The table of subparts for part III of
17 subchapter A of chapter 32 is amended to read
18 as follows:

“Subpart A. Motor and aviation fuels.

“Subpart B. Special provisions applicable to fuels tax.”.

19 (T) The heading for subpart A of part III
20 of subchapter A of chapter 32 is amended to
21 read as follows:

1 **“Subpart A—Motor and Aviation Fuels”.**

2 (U) The heading for subpart B of part III
3 of subchapter A of chapter 32 is amended to
4 read as follows:

5 **“Subpart B—Special Provisions Applicable to Fuels**
6 **Tax”.**

7 (e) EFFECTIVE DATE.—The amendments made by
8 this section shall apply to aviation-grade kerosene re-
9 moved, entered, or sold after September 30, 2004.

10 (f) FLOOR STOCKS TAX.—

11 (1) IN GENERAL.—There is hereby imposed on
12 aviation-grade kerosene held on October 1, 2004, by
13 any person a tax equal to—

14 (A) the tax which would have been imposed
15 before such date on such kerosene had the
16 amendments made by this section been in effect
17 at all times before such date, reduced by

18 (B) the tax imposed before such date
19 under section 4091 of the Internal Revenue
20 Code of 1986, as in effect on the day before the
21 date of the enactment of this Act.

22 (2) LIABILITY FOR TAX AND METHOD OF PAY-
23 MENT.—

24 (A) LIABILITY FOR TAX.—The person
25 holding the kerosene on October 1, 2004, to

1 which the tax imposed by paragraph (1) applies
2 shall be liable for such tax.

3 (B) METHOD AND TIME FOR PAYMENT.—

4 The tax imposed by paragraph (1) shall be paid
5 at such time and in such manner as the Sec-
6 retary of the Treasury shall prescribe, including
7 the nonapplication of such tax on de minimis
8 amounts of kerosene.

9 (3) TRANSFER OF FLOOR STOCK TAX REVE-
10 NUES TO TRUST FUNDS.—For purposes of deter-
11 mining the amount transferred to any trust fund,
12 the tax imposed by this subsection shall be treated
13 as imposed by section 4081 of the Internal Revenue
14 Code of 1986—

15 (A) at the Leaking Underground Storage
16 Tank Trust Fund financing rate under such
17 section to the extent of 0.1 cents per gallon,
18 and

19 (B) at the rate under section
20 4081(a)(2)(A)(iv) to the extent of the remain-
21 der.

22 (4) HELD BY A PERSON.—For purposes of this
23 section, kerosene shall be considered as held by a
24 person if title thereto has passed to such person

1 (whether or not delivery to the person has been
2 made).

3 (5) OTHER LAWS APPLICABLE.—All provisions
4 of law, including penalties, applicable with respect to
5 the tax imposed by section 4081 of such Code shall,
6 insofar as applicable and not inconsistent with the
7 provisions of this subsection, apply with respect to
8 the floor stock tax imposed by paragraph (1) to the
9 same extent as if such tax were imposed by such
10 section.

11 **SEC. 5212. TRANSFER OF CERTAIN AMOUNTS FROM THE**
12 **AIRPORT AND AIRWAY TRUST FUND TO THE**
13 **HIGHWAY TRUST FUND TO REFLECT HIGH-**
14 **WAY USE OF JET FUEL.**

15 (a) IN GENERAL.—Section 9502(d) is amended by
16 adding at the end the following new paragraph:

17 “(7) TRANSFERS FROM THE TRUST FUND TO
18 THE HIGHWAY TRUST FUND.—

19 “(A) IN GENERAL.—The Secretary shall
20 pay annually from the Airport and Airway
21 Trust Fund into the Highway Trust Fund an
22 amount (as determined by him) equivalent to
23 amounts received in the Airport and Airway
24 Trust Fund which are attributable to fuel that

1 is used primarily for highway transportation
2 purposes.

3 “(B) AMOUNTS TRANSFERRED TO MASS
4 TRANSIT ACCOUNT.—The Secretary shall trans-
5 fer 11 percent of the amounts paid into the
6 Highway Trust Fund under subparagraph (A)
7 to the Mass Transit Account established under
8 section 9503(e).”.

9 (b) CONFORMING AMENDMENTS.—

10 (1) Subsection (a) of section 9503 is
11 amended—

12 (A) by striking “appropriated or credited”
13 and inserting “paid, appropriated, or credited”,
14 and

15 (B) by striking “or section 9602(b)” and
16 inserting “, section 9502(d)(7), or section
17 9602(b)”.

18 (2) Subsection (e)(1) of section 9503 is amend-
19 ed by striking “or section 9602(b)” and inserting “,
20 section 9502(d)(7), or section 9602(b)”.

21 (c) EFFECTIVE DATE.—The amendments made by
22 this section shall take effect on October 1, 2004.

PART II—DYED FUEL**2 SEC. 5221. DYE INJECTION EQUIPMENT.**

3 (a) IN GENERAL.—Section 4082(a)(2) (relating to
4 exemptions for diesel fuel and kerosene) is amended by
5 inserting “by mechanical injection” after “indelibly dyed”.

6 (b) DYE INJECTOR SECURITY.—Not later than June
7 30, 2004, the Secretary of the Treasury shall issue regula-
8 tions regarding mechanical dye injection systems described
9 in the amendment made by subsection (a), and such regu-
10 lations shall include standards for making such systems
11 tamper resistant.

12 (c) PENALTY FOR TAMPERING WITH OR FAILING TO
13 MAINTAIN SECURITY REQUIREMENTS FOR MECHANICAL
14 DYE INJECTION SYSTEMS.—

15 (1) IN GENERAL.—Part I of subchapter B of
16 chapter 68 (relating to assessable penalties) is
17 amended by adding after section 6715 the following
18 new section:

19 **“SEC. 6715A. TAMPERING WITH OR FAILING TO MAINTAIN**
20 **SECURITY REQUIREMENTS FOR MECHAN-**
21 **ICAL DYE INJECTION SYSTEMS.**

22 “(a) IMPOSITION OF PENALTY—

23 “(1) TAMPERING.—If any person tampers with
24 a mechanical dye injection system used to indelibly
25 dye fuel for purposes of section 4082, then such per-

1 son shall pay a penalty in addition to the tax (if
2 any).

3 “(2) FAILURE TO MAINTAIN SECURITY RE-
4 QUIREMENTS.—If any operator of a mechanical dye
5 injection system used to indelibly dye fuel for pur-
6 poses of section 4082 fails to maintain the security
7 standards for such system as established by the Sec-
8 retary, then such operator shall pay a penalty.

9 “(b) AMOUNT OF PENALTY.—The amount of the
10 penalty under subsection (a) shall be—

11 “(1) for each violation described in paragraph
12 (1), the greater of—

13 “(A) \$25,000, or

14 “(B) \$10 for each gallon of fuel involved,
15 and

16 “(2) for each—

17 “(A) failure to maintain security standards
18 described in paragraph (2), \$1,000, and

19 “(B) failure to correct a violation described
20 in paragraph (2), \$1,000 per day for each day
21 after which such violation was discovered or
22 such person should have reasonably known of
23 such violation.

24 “(c) JOINT AND SEVERAL LIABILITY.—

1 “(1) IN GENERAL.—If a penalty is imposed
2 under this section on any business entity, each offi-
3 cer, employee, or agent of such entity or other con-
4 tracting party who willfully participated in any act
5 giving rise to such penalty shall be jointly and sever-
6 ally liable with such entity for such penalty.

7 “(2) AFFILIATED GROUPS.—If a business entity
8 described in paragraph (1) is part of an affiliated
9 group (as defined in section 1504(a)), the parent
10 corporation of such entity shall be jointly and sever-
11 ally liable with such entity for the penalty imposed
12 under this section.”.

13 (2) CLERICAL AMENDMENT.—The table of sec-
14 tions for part I of subchapter B of chapter 68 is
15 amended by adding after the item related to section
16 6715 the following new item:

 “Sec. 6715A. Tampering with or failing to maintain security requirements for
 mechanical dye injection systems.”.

17 (d) EFFECTIVE DATE.—The amendments made by
18 subsections (a) and (c) shall take effect 180 days after
19 the date on which the Secretary issues the regulations de-
20 scribed in subsection (b).

21 **SEC. 5222. ELIMINATION OF ADMINISTRATIVE REVIEW FOR**
22 **TAXABLE USE OF DYED FUEL.**

23 (a) IN GENERAL.—Section 6715 is amended by in-
24 serting at the end the following new subsection:

1 “(e) NO ADMINISTRATIVE APPEAL FOR THIRD AND
2 SUBSEQUENT VIOLATIONS.—In the case of any person
3 who is found to be subject to the penalty under this section
4 after a chemical analysis of such fuel and who has been
5 penalized under this section at least twice after the date
6 of the enactment of this subsection, no administrative ap-
7 peal or review shall be allowed with respect to such finding
8 except in the case of a claim regarding—

9 “(1) fraud or mistake in the chemical analysis,
10 or
11 “(2) mathematical calculation of the amount of
12 the penalty.”.

13 (b) EFFECTIVE DATE.—The amendment made by
14 this section shall apply to penalties assessed after the date
15 of the enactment of this Act.

16 **SEC. 5223. PENALTY ON UNTAXED CHEMICALLY ALTERED**
17 **DYED FUEL MIXTURES.**

18 (a) IN GENERAL.—Section 6715(a) (relating to dyed
19 fuel sold for use or used in taxable use, etc.) is amended
20 by striking “or” in paragraph (2), by inserting “or” at
21 the end of paragraph (3), and by inserting after paragraph
22 (3) the following new paragraph:

23 “(4) any person who has knowledge that a dyed
24 fuel which has been altered as described in para-
25 graph (3) sells or holds for sale such fuel for any

1 use which the person knows or has reason to know
2 is not a nontaxable use of such fuel,”.

3 (b) CONFORMING AMENDMENT.—Section 6715(a)(3)
4 is amended by striking “alters, or attempts to alter,” and
5 inserting “alters, chemically or otherwise, or attempts to
6 so alter,”.

7 (c) EFFECTIVE DATE.—The amendments made by
8 this section shall take effect on the date of the enactment
9 of this Act.

10 **SEC. 5224. TERMINATION OF DYED DIESEL USE BY INTER-**
11 **CITY BUSES.**

12 (a) IN GENERAL.—Paragraph (3) of section 4082(b)
13 (relating to nontaxable use) is amended to read as follows:

14 “(3) any use described in section
15 4041(a)(1)(C)(iii)(II).”.

16 (b) ULTIMATE VENDOR REFUND.—Subsection (b) of
17 section 6427 is amended by adding at the end the fol-
18 lowing new paragraph:

19 “(4) REFUNDS FOR USE OF DIESEL FUEL IN
20 CERTAIN INTERCITY BUSES.—

21 “(A) IN GENERAL.—With respect to any
22 fuel to which paragraph (2)(A) applies, if the
23 ultimate purchaser of such fuel waives (at such
24 time and in such form and manner as the Sec-
25 retary shall prescribe) the right to payment

1 under paragraph (1) and assigns such right to
2 the ultimate vendor, then the Secretary shall
3 pay the amount which would be paid under
4 paragraph (1) to such ultimate vendor, but only
5 if such ultimate vendor—

6 “(i) is registered under section 4101,

7 and

8 “(ii) meets the requirements of sub-
9 paragraph (A), (B), or (D) of section
10 6416(a)(1).

11 “(B) CREDIT CARDS.—For purposes of
12 this paragraph, if the sale of such fuel is made
13 by means of a credit card, the person extending
14 credit to the ultimate purchaser shall be
15 deemed to be the ultimate vendor.”.

16 (c) PAYMENT OF REFUNDS.—Subparagraph (A) of
17 section 6427(i)(4), as amended by section 5211 of this
18 Act, is amended by inserting “subsections (b)(4) and”
19 after “filed under”.

20 (b) EFFECTIVE DATE.—The amendments made by
21 this section shall apply to fuel sold after September 30,
22 2004.

1 **PART III—MODIFICATION OF INSPECTION OF**
2 **RECORDS PROVISIONS**

3 **SEC. 5231. AUTHORITY TO INSPECT ON-SITE RECORDS.**

4 (a) IN GENERAL.—Section 4083(d)(1)(A) (relating
5 to administrative authority), as amended by section 5211
6 of this Act, is amended by striking “and” at the end of
7 clause (i) and by inserting after clause (ii) the following
8 new clause:

9 “(iii) inspecting any books and
10 records and any shipping papers pertaining
11 to such fuel, and”.

12 (b) EFFECTIVE DATE.—The amendments made by
13 this section shall take effect on the date of the enactment
14 of this Act.

15 **SEC. 5232. ASSESSABLE PENALTY FOR REFUSAL OF ENTRY.**

16 (a) IN GENERAL.—Part I of subchapter B of chapter
17 68 (relating to assessable penalties), as amended by sec-
18 tion 5221 of this Act, is amended by adding at the end
19 the following new section:

20 **“SEC. 6717. REFUSAL OF ENTRY.**

21 “(a) IN GENERAL.—In addition to any other penalty
22 provided by law, any person who refuses to admit entry
23 or refuses to permit any other action by the Secretary au-
24 thorized by section 4083(d)(1) shall pay a penalty of
25 \$1,000 for such refusal.

26 “(b) JOINT AND SEVERAL LIABILITY.—

1 “(1) IN GENERAL.—If a penalty is imposed
 2 under this section on any business entity, each offi-
 3 cer, employee, or agent of such entity or other con-
 4 tracting party who willfully participated in any act
 5 giving rise to such penalty shall be jointly and sever-
 6 ally liable with such entity for such penalty.

7 “(2) AFFILIATED GROUPS.—If a business entity
 8 described in paragraph (1) is part of an affiliated
 9 group (as defined in section 1504(a)), the parent
 10 corporation of such entity shall be jointly and sever-
 11 ally liable with such entity for the penalty imposed
 12 under this section.

13 “(c) REASONABLE CAUSE EXCEPTION.—No penalty
 14 shall be imposed under this section with respect to any
 15 failure if it is shown that such failure is due to reasonable
 16 cause.”.

17 (b) CONFORMING AMENDMENTS.—

18 (1) Section 4083(d)(3), as amended by section
 19 5211 of this Act, is amended—

20 (A) by striking “ENTRY.—The penalty”
 21 and inserting: “ENTRY.—

22 “(A) FORFEITURE.—The penalty”, and

23 (B) by adding at the end the following new
 24 subparagraph:

1 “(B) ASSESSABLE PENALTY.—For addi-
 2 tional assessable penalty for the refusal to
 3 admit entry or other refusal to permit an action
 4 by the Secretary authorized by paragraph (1),
 5 see section 6717.”.

6 (2) The table of sections for part I of sub-
 7 chapter B of chapter 68, as amended by section
 8 5221 of this Act, is amended by adding at the end
 9 the following new item:

“Sec. 6717. Refusal of entry.”.

10 (c) EFFECTIVE DATE.—The amendments made by
 11 this section shall take effect on October 1, 2004.

12 **PART IV—REGISTRATION AND REPORTING**
 13 **REQUIREMENTS**

14 **SEC. 5241. REGISTRATION OF PIPELINE OR VESSEL OPERA-**
 15 **TORS REQUIRED FOR EXEMPTION OF BULK**
 16 **TRANSFERS TO REGISTERED TERMINALS OR**
 17 **REFINERIES.**

18 (a) IN GENERAL.—Section 4081(a)(1)(B) (relating
 19 to exemption for bulk transfers to registered terminals or
 20 refineries) is amended—

21 (1) by inserting “by pipeline or vessel” after
 22 “transferred in bulk”, and

23 (2) by inserting “, the operator of such pipeline
 24 or vessel,” after “the taxable fuel”.

1 (b) CIVIL PENALTY FOR CARRYING TAXABLE FUELS
2 BY NONREGISTERED PIPELINES OR VESSELS.—

3 (1) IN GENERAL.—Part I of subchapter B of
4 chapter 68 (relating to assessable penalties), as
5 amended by section 5232 of this Act, is amended by
6 adding at the end the following new section:

7 **“SEC. 6718. CARRYING TAXABLE FUELS BY NONREG-**
8 **ISTERED PIPELINES OR VESSELS.**

9 “(a) IMPOSITION OF PENALTY.—If any person know-
10 ingly transfers any taxable fuel (as defined in section
11 4083(a)(1)) in bulk pursuant to section 4081(a)(1)(B) to
12 an unregistered, such person shall pay a penalty in addi-
13 tion to the tax (if any).

14 “(b) AMOUNT OF PENALTY.—

15 “(1) IN GENERAL.—Except as provided in para-
16 graph (2), the amount of the penalty under sub-
17 section (a) on each act shall be an amount equal to
18 the greater of—

19 “(A) \$10,000, or

20 “(B) \$1 per gallon.

21 “(2) MULTIPLE VIOLATIONS.—In determining
22 the penalty under subsection (a) on any person,
23 paragraph (1) shall be applied by increasing the
24 amount in paragraph (1) by the product of such
25 amount and the number of prior penalties (if any)

1 imposed by this section on such person (or a related
2 person or any predecessor of such person or related
3 person).

4 “(c) JOINT AND SEVERAL LIABILITY.—

5 “(1) IN GENERAL.—If a penalty is imposed
6 under this section on any business entity, each offi-
7 cer, employee, or agent of such entity or other con-
8 tracting party who willfully participated in any act
9 giving rise to such penalty shall be jointly and sever-
10 ally liable with such entity for such penalty.

11 “(2) AFFILIATED GROUPS.—If a business entity
12 described in paragraph (1) is part of an affiliated
13 group (as defined in section 1504(a)), the parent
14 corporation of such entity shall be jointly and sever-
15 ally liable with such entity for the penalty imposed
16 under this section.

17 “(d) REASONABLE CAUSE EXCEPTION.—No penalty
18 shall be imposed under this section with respect to any
19 failure if it is shown that such failure is due to reasonable
20 cause.”.

21 (2) CLERICAL AMENDMENT.—The table of sec-
22 tions for part I of subchapter B of chapter 68, as
23 amended by section 5232 of this Act, is amended by
24 adding at the end the following new item:

“Sec. 6718. Carrying taxable fuels by nonregistered pipelines or vessels.”.

1 (c) PUBLICATION OF REGISTERED PERSONS.—Not
2 later than June 30, 2004, the Secretary of the Treasury
3 shall publish a list of persons required to be registered
4 under section 4101 of the Internal Revenue Code of 1986.

5 (d) EFFECTIVE DATE.—The amendments made by
6 subsections (a) and (b) shall take effect on October 1,
7 2004.

8 **SEC. 5242. DISPLAY OF REGISTRATION.**

9 (a) IN GENERAL.—Subsection (a) of section 4101
10 (relating to registration) is amended—

11 (1) by striking “Every” and inserting the fol-
12 lowing:

13 “(1) IN GENERAL.—Every”, and

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

16 “(2) DISPLAY OF REGISTRATION.—Every oper-
17 ator of a vessel required by the Secretary to register
18 under this section shall display proof of registration
19 through an electronic identification device prescribed
20 by the Secretary on each vessel used by such oper-
21 ator to transport any taxable fuel.”.

22 (b) CIVIL PENALTY FOR FAILURE TO DISPLAY REG-
23 ISTRATION.—

24 (1) IN GENERAL.—Part I of subchapter B of
25 chapter 68 (relating to assessable penalties), as

1 amended by section 5241 of this Act, is amended by
 2 adding at the end the following new section:

3 **“SEC. 6719. FAILURE TO DISPLAY REGISTRATION OF VES-**
 4 **SEL.**

5 “(a) FAILURE TO DISPLAY REGISTRATION.—Every
 6 operator of a vessel who fails to display proof of registra-
 7 tion pursuant to section 4101(a)(2) shall pay a penalty
 8 of \$500 for each such failure. With respect to any vessel,
 9 only one penalty shall be imposed by this section during
 10 any calendar month.

11 “(b) MULTIPLE VIOLATIONS.—In determining the
 12 penalty under subsection (a) on any person, subsection (a)
 13 shall be applied by increasing the amount in subsection
 14 (a) by the product of such amount and the number of
 15 prior penalties (if any) imposed by this section on such
 16 person (or a related person or any predecessor of such per-
 17 son or related person).

18 “(c) REASONABLE CAUSE EXCEPTION.—No penalty
 19 shall be imposed under this section with respect to any
 20 failure if it is shown that such failure is due to reasonable
 21 cause.”.

22 (2) CLERICAL AMENDMENT.—The table of sec-
 23 tions for part I of subchapter B of chapter 68, as
 24 amended by section 5241 of this Act, is amended by
 25 adding at the end the following new item:

“Sec. 6719. Failure to display registration of vessel.”.

1 (c) EFFECTIVE DATE.—The amendments made by
2 this section shall take effect on October 1, 2004.

3 **SEC. 5243. REGISTRATION OF PERSONS WITHIN FOREIGN**
4 **TRADE ZONES, ETC.**

5 (a) IN GENERAL.—Section 4101(a), as amended by
6 section 5242 of this Act, is amended by redesignating
7 paragraph (2) as paragraph (3), and by inserting after
8 paragraph (1) the following new paragraph:

9 “(2) REGISTRATION OF PERSONS WITHIN FOR-
10 EIGN TRADE ZONES, ETC.—The Secretary shall re-
11 quire registration by any person which—

12 “(A) operates a terminal or refinery within
13 a foreign trade zone or within a customs bond-
14 ed storage facility, or

15 “(B) holds an inventory position with re-
16 spect to a taxable fuel in such a terminal.”.

17 (b) EFFECTIVE DATE.—The amendments made by
18 this section shall take effect on October 1, 2004.

19 **SEC. 5244. PENALTIES FOR FAILURE TO REGISTER AND**
20 **FAILURE TO REPORT.**

21 (a) INCREASED PENALTY.—Subsection (a) of section
22 7272 (relating to penalty for failure to register) is amend-
23 ed by inserting “(\$10,000 in the case of a failure to reg-
24 ister under section 4101)” after “\$50”.

1 (b) INCREASED CRIMINAL PENALTY.—Section 7232
2 (relating to failure to register under section 4101, false
3 representations of registration status, etc.) is amended by
4 striking “\$5,000” and inserting “\$10,000”.

5 (c) ASSESSABLE PENALTY FOR FAILURE TO REG-
6 ISTER.—

7 (1) IN GENERAL.—Part I of subchapter B of
8 chapter 68 (relating to assessable penalties), as
9 amended by section 5242 of this Act, is amended by
10 adding at the end the following new section:

11 **“SEC. 6720. FAILURE TO REGISTER.**

12 “(a) FAILURE TO REGISTER.—Every person who is
13 required to register under section 4101 and fails to do
14 so shall pay a penalty in addition to the tax (if any).

15 “(b) AMOUNT OF PENALTY.—The amount of the
16 penalty under subsection (a) shall be—

17 “(1) \$10,000 for each initial failure to register,
18 and

19 “(2) \$1,000 for each day thereafter such person
20 fails to register.

21 “(c) REASONABLE CAUSE EXCEPTION.—No penalty
22 shall be imposed under this section with respect to any
23 failure if it is shown that such failure is due to reasonable
24 cause.”.

1 (2) CLERICAL AMENDMENT.—The table of sec-
 2 tions for part I of subchapter B of chapter 68, as
 3 amended by section 5242 of this Act, is amended by
 4 adding at the end the following new item:

“Sec. 6720. Failure to register.”.

5 (d) ASSESSABLE PENALTY FOR FAILURE TO RE-
 6 PORT.—

7 (1) IN GENERAL.—Part II of subchapter B of
 8 chapter 68 (relating to assessable penalties) is
 9 amended by adding at the end the following new sec-
 10 tion:

11 **“SEC. 6725. FAILURE TO REPORT INFORMATION UNDER**
 12 **SECTION 4101.**

13 “(a) IN GENERAL.—In the case of each failure de-
 14 scribed in subsection (b) by any person with respect to
 15 a vessel or facility, such person shall pay a penalty of
 16 \$10,000 in addition to the tax (if any).

17 “(b) FAILURES SUBJECT TO PENALTY.—For pur-
 18 poses of subsection (a), the failures described in this sub-
 19 section are—

20 “(1) any failure to make a report under section
 21 4101(d) on or before the date prescribed therefor,
 22 and

23 “(2) any failure to include all of the informa-
 24 tion required to be shown on such report or the in-
 25 clusion of incorrect information.

1 “(c) REASONABLE CAUSE EXCEPTION.—No penalty
2 shall be imposed under this section with respect to any
3 failure if it is shown that such failure is due to reasonable
4 cause.”.

5 (2) CLERICAL AMENDMENT.—The table of sec-
6 tions for part II of subchapter B of chapter 68 is
7 amended by adding at the end the following new
8 item:

“Sec. 6725. Failure to report information under section 4101.”.

9 (e) EFFECTIVE DATE.—The amendments made by
10 this section shall apply to failures pending or occurring
11 after September 30, 2004.

12 **SEC. 5245. INFORMATION REPORTING FOR PERSONS**
13 **CLAIMING CERTAIN TAX BENEFITS.**

14 (a) IN GENERAL.—Subpart C of part III of sub-
15 chapter A of chapter 32 is amended by adding at the end
16 the following new section:

17 **“SEC. 4104. INFORMATION REPORTING FOR PERSONS**
18 **CLAIMING CERTAIN TAX BENEFITS.**

19 “(a) IN GENERAL.—The Secretary shall require any
20 person claiming tax benefits—

21 “(1) under the provisions of section 34, 40, and
22 40A to file a return at the time such person claims
23 such benefits (in such manner as the Secretary may
24 prescribe), and

1 “(2) under the provisions of section 4041(b)(2),
2 6426, or 6427(e) to file a monthly return (in such
3 manner as the Secretary may prescribe).

4 “(b) CONTENTS OF RETURN.—Any return filed
5 under this section shall provide such information relating
6 to such benefits and the coordination of such benefits as
7 the Secretary may require to ensure the proper adminis-
8 tration and use of such benefits.

9 “(c) ENFORCEMENT.—With respect to any person
10 described in subsection (a) and subject to registration re-
11 quirements under this title, rules similar to rules of section
12 4222(c) shall apply with respect to any requirement under
13 this section.”.

14 (b) CONFORMING AMENDMENT.—The table of sec-
15 tions for subpart C of part III of subchapter A of chapter
16 32 is amended by adding at the end the following new
17 item:

 “Sec. 4104. Information reporting for persons claiming certain tax benefits.”.

18 (c) EFFECTIVE DATE.—The amendments made by
19 this section shall take effect on October 1, 2004.

20 **SEC. 5246. ELECTRONIC REPORTING.**

21 (a) IN GENERAL.—Section 4101(d), as amended by
22 section 5273 of this Act, is amended by adding at the end
23 the following new sentence: “Any person who is required
24 to report under this subsection and who has 25 or more

1 reportable transactions in a month shall file such report
2 in electronic format.”.

3 (b) EFFECTIVE DATE.—The amendments made by
4 this section shall apply on October 1, 2004.

5 **PART V—IMPORTS**

6 **SEC. 5251. TAX AT POINT OF ENTRY WHERE IMPORTER NOT**
7 **REGISTERED.**

8 (a) TAX AT POINT OF ENTRY WHERE IMPORTER
9 NOT REGISTERED.—

10 (1) IN GENERAL.—Subpart C of part III of
11 subchapter A of chapter 31, as amended by section
12 5245 of this Act, is amended by adding at the end
13 the following new section:

14 **“SEC. 4105. TAX AT ENTRY WHERE IMPORTER NOT REG-**
15 **ISTERED.**

16 “(a) IN GENERAL.—Any tax imposed under this part
17 on any person not registered under section 4101 for the
18 entry of a fuel into the United States shall be imposed
19 at the time and point of entry.

20 “(b) ENFORCEMENT OF ASSESSMENT.—If any per-
21 son liable for any tax described under subsection (a) has
22 not paid the tax or posted a bond, the Secretary may—
23 “(1) seize the fuel on which the tax is due, or
24 “(2) detain any vehicle transporting such fuel,
25 until such tax is paid or such bond is filed.

1 “(c) LEVY OF FUEL.—If no tax has been paid or no
2 bond has been filed within 5 days from the date the Sec-
3 retary seized fuel pursuant to subsection (b), the Secretary
4 may sell such fuel as provided under section 6336.”.

5 (2) CONFORMING AMENDMENT.—The table of
6 sections for subpart C of part III of subchapter A
7 of chapter 31 of the Internal Revenue Code of 1986,
8 as amended by section 5245 of this Act, is amended
9 by adding after the last item the following new item:

“Sec. 4105. Tax at entry where importer not registered.”.

10 (b) DENIAL OF ENTRY WHERE TAX NOT PAID.—
11 The Secretary of Homeland Security is authorized to deny
12 entry into the United States of any shipment of a fuel
13 which is taxable under section 4081 of the Internal Rev-
14 enue Code of 1986 if the person entering such shipment
15 fails to pay the tax imposed under such section or post
16 a bond in accordance with the provisions of section 4105
17 of such Code.

18 (c) EFFECTIVE DATE.—The amendments made by
19 this section shall take effect on the date of the enactment
20 of this Act.

21 **SEC. 5252. RECONCILIATION OF ON-LOADED CARGO TO EN-**
22 **TERED CARGO.**

23 (a) IN GENERAL.—Subsection (a) of section 343 of
24 the Trade Act of 2002 is amended by inserting at the end
25 the following new paragraph:

1 “(4) IN GENERAL.—Subject to paragraphs (2)
 2 and (3), not later than 1 year after the enactment
 3 of this paragraph, the Secretary of Homeland Secu-
 4 rity, together with the Secretary of the Treasury,
 5 shall promulgate regulations providing for the trans-
 6 mission to the Internal Revenue Service, through an
 7 electronic data interchange system, of information
 8 pertaining to cargo of taxable fuels (as defined in
 9 section 4083 of the Internal Revenue Code of 1986)
 10 destined for importation into the United States prior
 11 to such importation.”.

12 (b) EFFECTIVE DATE.—The amendment made by
 13 this section shall take effect on the date of the enactment
 14 of this Act.

15 **PART VI—MISCELLANEOUS PROVISIONS**

16 **SEC. 5261. TAX ON SALE OF DIESEL FUEL WHETHER SUIT-**
 17 **ABLE FOR USE OR NOT IN A DIESEL-POW-**
 18 **ERED VEHICLE OR TRAIN.**

19 (a) IN GENERAL.—Section 4083(a)(3) is amended—

20 (1) by striking “The term” and inserting the
 21 following:

22 “(A) IN GENERAL.—The term”, and

23 (2) by inserting at the end the following new
 24 subparagraph:

1 “(B) LIQUID SOLD AS DIESEL FUEL.—The
 2 term ‘diesel fuel’ includes any liquid which is
 3 sold as or offered for sale as a fuel in a diesel-
 4 powered highway vehicle or a diesel-powered
 5 train.”.

6 (b) CONFORMING AMENDMENTS.—

7 (1) Section 40A(b)(1)(B), as amended by sec-
 8 tion 5103 of this Act, is amended by striking
 9 “4083(a)(3)” and inserting “4083(a)(3)(A)”.

10 (2) Section 6426(c)(3), as added by section
 11 5102 of this Act, is amended by striking
 12 “4083(a)(3)” and inserting “4083(a)(3)(A)”.

13 (c) EFFECTIVE DATE.—The amendments made by
 14 this section shall take effect on the date of the enactment
 15 of this Act.

16 **SEC. 5262. MODIFICATION OF ULTIMATE VENDOR REFUND**
 17 **CLAIMS WITH RESPECT TO FARMING.**

18 (a) IN GENERAL.—

19 (1) REFUNDS.—Section 6427(l) is amended by
 20 adding at the end the following new paragraph:

21 “(6) REGISTERED VENDORS PERMITTED TO AD-
 22 MINISTER CERTAIN CLAIMS FOR REFUND OF DIESEL
 23 FUEL AND KEROSENE SOLD TO FARMERS.—

24 “(A) IN GENERAL.—In the case of diesel
 25 fuel or kerosene used on a farm for farming

1 purposes (within the meaning of section
 2 6420(c)), paragraph (1) shall not apply to the
 3 aggregate amount of such diesel fuel or ker-
 4 osene if such amount does not exceed 500 gal-
 5 lons (as determined under subsection
 6 (i)(5)(A)(iii)).

7 “(B) PAYMENT TO ULTIMATE VENDOR.—

8 The amount which would (but for subparagraph
 9 (A)) have been paid under paragraph (1) with
 10 respect to any fuel shall be paid to the ultimate
 11 vendor of such fuel, if such vendor—

12 “(i) is registered under section 4101,

13 and

14 “(ii) meets the requirements of sub-
 15 paragraph (A), (B), or (D) of section
 16 6416(a)(1).”.

17 (2) FILING OF CLAIMS.—Section 6427(i) is
 18 amended by inserting at the end the following new
 19 paragraph:

20 “(5) SPECIAL RULE FOR VENDOR REFUNDS
 21 WITH RESPECT TO FARMERS.—

22 “(A) IN GENERAL.—A claim may be filed
 23 under subsection (1)(6) by any person with re-
 24 spect to fuel sold by such person for any
 25 period—

1 “(i) for which \$200 or more (\$100 or
2 more in the case of kerosene) is payable
3 under subsection (l)(6),

4 “(ii) which is not less than 1 week,
5 and

6 “(iii) which is for not more than 500
7 gallons for each farmer for which there is
8 a claim.

9 Notwithstanding subsection (l)(1), paragraph
10 (3)(B) shall apply to claims filed under the pre-
11 ceding sentence.

12 “(B) TIME FOR FILING CLAIM.—No claim
13 filed under this paragraph shall be allowed un-
14 less filed on or before the last day of the first
15 quarter following the earliest quarter included
16 in the claim.”.

17 (3) CONFORMING AMENDMENTS.—

18 (A) Section 6427(l)(5)(A) is amended to
19 read as follows:

20 “(A) IN GENERAL.—Paragraph (1) shall
21 not apply to diesel fuel or kerosene used by a
22 State or local government.”.

23 (B) The heading for section 6427(l)(5) is
24 amended by striking “FARMERS AND”.

1 (b) EFFECTIVE DATE.—The amendment made by
 2 this section shall apply to fuels sold for nontaxable use
 3 after the date of the enactment of this Act.

4 **SEC. 5263. TAXABLE FUEL REFUNDS FOR CERTAIN ULTI-**
 5 **MATE VENDORS.**

6 (a) IN GENERAL.—Paragraph (4) of section 6416(a)
 7 (relating to abatements, credits, and refunds) is amended
 8 to read as follows:

9 “(4) REGISTERED ULTIMATE VENDOR TO AD-
 10 MINISTER CREDITS AND REFUNDS OF GASOLINE
 11 TAX.—

12 “(A) IN GENERAL.—For purposes of this
 13 subsection, if an ultimate vendor purchases any
 14 gasoline on which tax imposed by section 4081
 15 has been paid and sells such gasoline to an ulti-
 16 mate purchaser described in subparagraph (C)
 17 or (D) of subsection (b)(2) (and such gasoline
 18 is for a use described in such subparagraph),
 19 such ultimate vendor shall be treated as the
 20 person (and the only person) who paid such tax,
 21 but only if such ultimate vendor is registered
 22 under section 4101. For purposes of this sub-
 23 paragraph, if the sale of gasoline is made by
 24 means of a credit card, the person extending

1 the credit to the ultimate purchaser shall be
2 deemed to be the ultimate vendor.

3 “(B) TIMING OF CLAIMS.—The procedure
4 and timing of any claim under subparagraph
5 (A) shall be the same as for claims under sec-
6 tion 6427(i)(4), except that the rules of section
7 6427(i)(3)(B) regarding electronic claims shall
8 not apply unless the ultimate vendor has cer-
9 tified to the Secretary for the most recent quar-
10 ter of the taxable year that all ultimate pur-
11 chasers of the vendor are certified and entitled
12 to a refund under subparagraph (C) or (D) of
13 subsection (b)(2).”.

14 (b) CREDIT CARD PURCHASES OF DIESEL FUEL OR
15 KEROSENE BY STATE AND LOCAL GOVERNMENTS.—Sec-
16 tion 6427(l)(5)(C) (relating to nontaxable uses of diesel
17 fuel, kerosene, and aviation fuel), as amended by section
18 5252 of this Act, is amended by adding at the end the
19 following new sentence: “For purposes of this subpara-
20 graph, if the sale of diesel fuel or kerosene is made by
21 means of a credit card, the person extending the credit
22 to the ultimate purchaser shall be deemed to be the ulti-
23 mate vendor.”.

24 (c) EFFECTIVE DATE.—The amendments made by
25 this section shall take effect on October 1, 2004.

1 **SEC. 5264. TWO-PARTY EXCHANGES.**

2 (a) IN GENERAL.—Subpart C of part III of sub-
3 chapter A of chapter 32, as amended by section 5251 of
4 this Act, is amended by adding at the end the following
5 new section:

6 **“SEC. 4106. TWO-PARTY EXCHANGES.**

7 “(a) IN GENERAL.—In a two-party exchange, the de-
8 livering person shall not be liable for the tax imposed
9 under of section 4081(a)(1)(A)(ii).

10 “(b) TWO-PARTY EXCHANGE.—The term ‘two-party
11 exchange’ means a transaction, other than a sale, in which
12 taxable fuel is transferred from a delivering person reg-
13 istered under section 4101 as a taxable fuel registrant to
14 a receiving person who is so registered where all of the
15 following occur:

16 “(1) The transaction includes a transfer from
17 the delivering person, who holds the inventory posi-
18 tion for taxable fuel in the terminal as reflected in
19 the records of the terminal operator.

20 “(2) The exchange transaction occurs before or
21 contemporaneous with completion of removal across
22 the rack from the terminal by the receiving person.

23 “(3) The terminal operator in its books and
24 records treats the receiving person as the person
25 that removes the product across the terminal rack

1 for purposes of reporting the transaction to the Sec-
 2 retary.

3 “(4) The transaction is the subject of a written
 4 contract.”.

5 (b) CONFORMING AMENDMENT.—The table of sec-
 6 tions for subpart C of part III of subchapter A of chapter
 7 32, as amended by section 5251 of this Act, is amended
 8 by adding after the last item the following new item:

“Sec. 4106. Two-party exchanges.”.

9 (c) EFFECTIVE DATE.—The amendment made by
 10 this section shall take effect on the date of the enactment
 11 of this Act.

12 **SEC. 5265. MODIFICATIONS OF TAX ON USE OF CERTAIN VE-**
 13 **HICLES.**

14 (a) NO PRORATION OF TAX UNLESS VEHICLE IS DE-
 15 STROYED OR STOLEN.—

16 (1) IN GENERAL.—Section 4481(c) (relating to
 17 proration of tax) is amended to read as follows:

18 “(c) PRORATION OF TAX WHERE VEHICLE SOLD,
 19 DESTROYED, OR STOLEN.—

20 “(1) IN GENERAL.—If in any taxable period a
 21 highway motor vehicle is sold, destroyed, or stolen
 22 before the first day of the last month in such period
 23 and not subsequently used during such taxable pe-
 24 riod, the tax shall be reckoned proportionately from
 25 the first day of the month in such period in which

1 the first use of such highway motor vehicle occurs
2 to and including the last day of the month in which
3 such highway motor vehicle was sold, destroyed, or
4 stolen.

5 “(2) DESTROYED.—For purposes of paragraph
6 (1), a highway motor vehicle is destroyed if such ve-
7 hicle is damaged by reason of an accident or other
8 casualty to such an extent that it is not economic to
9 rebuild.”.

10 (2) CONFORMING AMENDMENTS.—

11 (A) Section 6156 (relating to installment
12 payment of tax on use of highway motor vehi-
13 cles) is repealed.

14 (B) The table of sections for subchapter A
15 of chapter 62 is amended by striking the item
16 relating to section 6156.

17 (b) DISPLAY OF TAX CERTIFICATE.—Paragraph (2)
18 of section 4481(d) (relating to one tax liability for period)
19 is amended to read as follows:

20 “(2) DISPLAY OF TAX CERTIFICATE.—Every
21 taxpayer which pays the tax imposed under this sec-
22 tion with respect to a highway motor vehicle shall,
23 not later than 1 month after the due date of the re-
24 turn of tax with respect to each taxable period, re-

1 ceive and display on such vehicle an electronic iden-
2 tification device prescribed by the Secretary.”.

3 (c) ELECTRONIC FILING.—Section 4481, as amended
4 by section 5001 of this Act, is amended by redesignating
5 subsection (e) as subsection (f) and by inserting after sub-
6 section (d) the following new subsection:

7 “(e) ELECTRONIC FILING.—Any taxpayer who files
8 a return under this section with respect to 25 or more
9 vehicles for any taxable period shall file such return elec-
10 tronically.”.

11 (d) REPEAL OF REDUCTION IN TAX FOR CERTAIN
12 TRUCKS.—Section 4483 of the Internal Revenue Code of
13 1986 is amended by striking subsection (f).

14 (e) EFFECTIVE DATES.—

15 (1) IN GENERAL.—Except as provided in para-
16 graph (2), the amendments made by this section
17 shall apply to taxable periods beginning after the
18 date of the enactment of this Act.

19 (2) SUBSECTION (b).—The amendment made
20 by subsection (b) shall take effect on October 1,
21 2005.

22 **SEC. 5266. DEDICATION OF REVENUES FROM CERTAIN PEN-**
23 **ALTIES TO THE HIGHWAY TRUST FUND.**

24 (a) IN GENERAL.—Subsection (b) of section 9503
25 (relating to transfer to Highway Trust Fund of amounts

1 equivalent to certain taxes), as amended by section 5001
2 of this Act, is amended by redesignating paragraph (5)
3 as paragraph (6) and inserting after paragraph (4) the
4 following new paragraph:

5 “(5) CERTAIN PENALTIES.—There are hereby
6 appropriated to the Highway Trust Fund amounts
7 equivalent to the penalties assessed under sections
8 6715, 6715A, 6717, 6718, 6719, 6720, 6725, 7232,
9 and 7272 (but only with regard to penalties under
10 such section related to failure to register under sec-
11 tion 4101).”.

12 (b) CONFORMING AMENDMENTS.—

13 (1) The heading of subsection (b) of section
14 9503 is amended by inserting “AND PENALTIES”
15 after “TAXES”.

16 (2) The heading of paragraph (1) of section
17 9503(b) is amended by striking “IN GENERAL” and
18 inserting “CERTAIN TAXES”.

19 (c) EFFECTIVE DATE.—The amendments made by
20 this section shall apply to penalties assessed after October
21 1, 2004.

1 **SEC. 5267. NONAPPLICATION OF EXPORT EXEMPTION TO**
2 **DELIVERY OF FUEL TO MOTOR VEHICLES RE-**
3 **MOVED FROM UNITED STATES.**

4 (a) IN GENERAL.—Section 4221(d)(2) (defining ex-
5 port) is amended by adding at the end the following new
6 sentence: “Such term does not include the delivery of a
7 taxable fuel (as defined in section 4083(a)(1)) into a fuel
8 tank of a motor vehicle which is shipped or driven out
9 of the United States.”.

10 (b) CONFORMING AMENDMENTS.—

11 (1) Section 4041(g) (relating to other exemp-
12 tions) is amended by adding at the end the following
13 new sentence: “Paragraph (3) shall not apply to the
14 sale for delivery of a liquid into a fuel tank of a
15 motor vehicle which is shipped or driven out of the
16 United States.”.

17 (2) Clause (iv) of section 4081(a)(1)(A) (relat-
18 ing to tax on removal, entry, or sale) is amended by
19 inserting “or at a duty-free sales enterprise (as de-
20 fined in section 555(b)(8) of the Tariff Act of
21 1930)” after “section 4101”.

22 (c) EFFECTIVE DATE.—The amendments made by
23 this section shall apply to sales or deliveries made after
24 the date of the enactment of this Act.

1 **PART VII—TOTAL ACCOUNTABILITY**

2 **SEC. 5271. TOTAL ACCOUNTABILITY.**

3 (a) TAXATION OF REPORTABLE LIQUIDS.—

4 (1) IN GENERAL.—Section 4081(a), as amend-
5 ed by this Act, is amended—

6 (A) by inserting “or reportable liquid”
7 after “taxable fuel” each place it appears, and

8 (B) by inserting “such liquid” after “such
9 fuel” in paragraph (1)(A)(iv).

10 (2) RATE OF TAX.—Subparagraph (A) of sec-
11 tion 4081(a)(2), as amended by section 5211 of this
12 Act, is amended by striking “and” at the end of
13 clause (iii), by striking the period at the end of
14 clause (iv) and inserting “, and”, and by adding at
15 the end the following new clause:

16 “(v) in the case of reportable liquids,
17 the rate determined under section
18 4083(c)(2).”.

19 (3) EXEMPTION.—Section 4081(a)(1) is amend-
20 ed by adding at the end the following new subpara-
21 graph:

22 “(C) EXEMPTION FOR REGISTERED
23 TRANSFERS OF REPORTABLE LIQUIDS.—The
24 tax imposed by this paragraph shall not apply
25 to any removal, entry, or sale of a reportable
26 liquid if—

1 “(i) such removal, entry, or sale is to
2 a registered person who certifies that such
3 liquid will not be used as a fuel or in the
4 production of a fuel, or

5 “(ii) the sale is to the ultimate pur-
6 chaser of such liquid.”.

7 (4) REPORTABLE LIQUIDS.—Section 4083, as
8 amended by this Act, is amended by redesignating
9 subsections (c) and (d) (as redesignated by section
10 5211 of this Act) as subsections (d) and (e), respec-
11 tively, and by inserting after subsection (b) the fol-
12 lowing new section:

13 “(c) REPORTABLE LIQUID.—For purposes of this
14 subpart—

15 “(1) IN GENERAL.—The term ‘reportable liq-
16 uid’ means any petroleum-based liquid other than a
17 taxable fuel.

18 “(2) TAXATION.—

19 “(A) GASOLINE BLEND STOCKS AND ADDI-
20 TIVES.—Gasoline blend stocks and additives
21 which are reportable liquids (as defined in para-
22 graph (1)) shall be subject to the rate of tax
23 under clause (i) of section 4081(a)(2)(A).

24 “(B) OTHER REPORTABLE LIQUIDS.—Any
25 reportable liquid (as defined in paragraph (1))

1 not described in subparagraph (A) shall be sub-
2 ject to the rate of tax under clause (iii) of sec-
3 tion 4081(a)(2)(A).”.

4 (5) CONFORMING AMENDMENTS.—

5 (A) Section 4081(e) is amended by insert-
6 ing “or reportable liquid” after “taxable fuel”.

7 (B) Section 4083(d) (relating to certain
8 use defined as removal), as redesignated by
9 paragraph (4), is amended by inserting “or re-
10 reportable liquid” after “taxable fuel”.

11 (C) Section 4083(e)(1) (relating to admin-
12 istrative authority), as redesignated by para-
13 graph (4), is amended—

14 (i) in subparagraph (A)—

15 (I) by inserting “or reportable
16 liquid” after “taxable fuel”, and

17 (II) by inserting “or such liquid”
18 after “such fuel” each place it ap-
19 pears, and

20 (ii) in subparagraph (B), by inserting
21 “or any reportable liquid” after “any tax-
22 able fuel”.

23 (D) Section 4101(a)(2), as added by sec-
24 tion 5243 of this Act, is amended by inserting
25 “or a reportable liquid” after “taxable fuel”.

1 (E) Section 4101(a)(3), as added by sec-
2 tion 5242 of this Act and redesignated by sec-
3 tion 5243 of this Act, is amended by inserting
4 “or any reportable liquid” before the period at
5 the end.

6 (F) Section 4102 is amended by inserting
7 “or any reportable liquid” before the period at
8 the end.

9 (G)(i) Section 6718, as added by section
10 5241 of this Act, is amended—

11 (I) in subsection (a), by inserting “or
12 any reportable liquid (as defined in section
13 4083(c)(1))” after “ section 4083(a)(1))”,
14 and

15 (II) in the heading, by inserting “or
16 reportable liquids” after “taxable fuel”.

17 (ii) The item relating to section 6718 in
18 table of sections for part I of subchapter B of
19 chapter 68, as added by section 5241 of this
20 Act, is amended by inserting “or reportable liq-
21 uids” after “taxable fuels”.

22 (H) Section 6427(h) is amended to read as
23 follows:

1 “(h) GASOLINE BLEND STOCKS OR ADDITIVES AND
2 REPORTABLE LIQUIDS.—Except as provided in subsection
3 (k)—

4 “(1) if any gasoline blend stock or additive
5 (within the meaning of section 4083(a)(2)) is not
6 used by any person to produce gasoline and such
7 person establishes that the ultimate use of such gaso-
8 line blend stock or additive is not to produce gaso-
9 line, or

10 “(2) if any reportable liquid (within the mean-
11 ing of section 4083(e)(1)) is not used by any person
12 to produce a taxable fuel and such person estab-
13 lishes that the ultimate use of such reportable liquid
14 is not to produce a taxable fuel,

15 then the Secretary shall pay (without interest) to such per-
16 son an amount equal to the aggregate amount of the tax
17 imposed on such person with respect to such gasoline
18 blend stock or additive or such reportable fuel.”.

19 (I) Section 7232, as amended by this Act,
20 is amended by inserting “or reportable liquid
21 (within the meaning of section 4083(e)(1))”
22 after “section 4083”.

23 (J) Section 343 of the Trade Act of 2002,
24 as amended by section 5252 of this Act, is
25 amended by inserting “and reportable liquids

1 (as defined in section 4083(c)(1) of such
2 Code)” after “Internal Revenue Code of
3 1986”).

4 (b) DYED DIESEL.—Section 4082(a) is amended by
5 striking “and” at the end of paragraph (2), by striking
6 the period at the end of paragraph (3) and inserting
7 “and”, and by inserting after paragraph (3) the following
8 new paragraph:

9 “(4) which is removed, entered, or sold by a
10 person registered under section 4101.”.

11 (c) EFFECTIVE DATE.—The amendments made by
12 this section shall apply to reportable liquids (as defined
13 in section 4083(c) of the Internal Revenue Code) and fuel
14 sold or used after September 30, 2004.

15 **SEC. 5272. EXCISE TAX REPORTING.**

16 (a) IN GENERAL.—Part II of subchapter A of chap-
17 ter 61 is amended by adding at the end the following new
18 subpart:

19 **“Subpart E—Excise Tax Reporting**

20 **“SEC. 6025. RETURNS RELATING TO FUEL TAXES.**

21 “(a) IN GENERAL.—The Secretary shall require any
22 person liable for the tax imposed under Part III of sub-
23 chapter A of chapter 32 to file a return of such tax on
24 a monthly basis.

1 “(b) INFORMATION INCLUDED WITH RETURN.—The
2 Secretary shall require any person filing a return under
3 subsection (a) to provide information regarding any re-
4 fined product (whether or not such product is taxable
5 under this title) removed from a terminal during the pe-
6 riod for which such return applies.”.

7 (b) CONFORMING AMENDMENT.—The table of parts
8 for subchapter A of chapter 61 is amended by adding at
9 the end the following new item:

“Subpart E—Excise Tax Reporting”.

10 (c) EFFECTIVE DATE.—The amendments made by
11 this section shall apply to fuel sold or used after Sep-
12 tember 30, 2004.

13 **SEC. 5273. INFORMATION REPORTING.**

14 (a) IN GENERAL.—Section 4101(d) is amended by
15 adding at the end the following new flush sentence:

16 “The Secretary shall require reporting under the previous
17 sentence with respect to taxable fuels removed, entered,
18 or transferred from any refinery, pipeline, or vessel which
19 is registered under this section.”.

20 (b) EFFECTIVE DATE.—The amendment made by
21 this section shall apply on October 1, 2004.

1 **Subtitle D—Definition of Highway**
 2 **Vehicle**

3 **SEC. 5301. EXEMPTION FROM CERTAIN EXCISE TAXES FOR**
 4 **MOBILE MACHINERY.**

5 (a) EXEMPTION FROM TAX ON HEAVY TRUCKS AND
 6 TRAILERS SOLD AT RETAIL.—

7 (1) IN GENERAL.—Section 4053 (relating to ex-
 8 emptions) is amended by adding at the end the fol-
 9 lowing new paragraph:

10 “(8) MOBILE MACHINERY.—Any vehicle which
 11 consists of a chassis—

12 “(A) to which there has been permanently
 13 mounted (by welding, bolting, riveting, or other
 14 means) machinery or equipment to perform a
 15 construction, manufacturing, processing, farm-
 16 ing, mining, drilling, timbering, or similar oper-
 17 ation if the operation of the machinery or
 18 equipment is unrelated to transportation on or
 19 off the public highways,

20 “(B) which has been specially designed to
 21 serve only as a mobile carriage and mount (and
 22 a power source, where applicable) for the par-
 23 ticular machinery or equipment involved, wheth-
 24 er or not such machinery or equipment is in op-
 25 eration, and

1 “(C) which, by reason of such special de-
2 sign, could not, without substantial structural
3 modification, be used as a component of a vehi-
4 cle designed to perform a function of trans-
5 porting any load other than that particular ma-
6 chinery or equipment or similar machinery or
7 equipment requiring such a specially designed
8 chassis.”.

9 (2) EFFECTIVE DATE.—The amendment made
10 by this subsection shall take effect on the day after
11 the date of the enactment of this Act.

12 (b) EXEMPTION FROM TAX ON USE OF CERTAIN VE-
13 HICLES.—

14 (1) IN GENERAL.—Section 4483 (relating to ex-
15 emptions) is amended by redesignating subsection
16 (g) as subsection (h) and by inserting after sub-
17 section (f) the following new subsection:

18 “(g) EXEMPTION FOR MOBILE MACHINERY.—No tax
19 shall be imposed by section 4481 on the use of any vehicle
20 described in section 4053(8).”.

21 (2) EFFECTIVE DATE.—The amendments made
22 by this subsection shall take effect on the day after
23 the date of the enactment of this Act.

24 (d) EXEMPTION FROM FUEL TAXES.—

1 (1) IN GENERAL.—Section 6421(e)(2) (defining
2 off-highway business use) is amended by adding at
3 the end the following new subparagraph:

4 “(C) USES IN MOBILE MACHINERY.—

5 “(i) IN GENERAL.—The term ‘off-
6 highway business use’ shall include any use
7 in a vehicle which meets the requirements
8 described in clause (ii).

9 “(ii) REQUIREMENTS FOR MOBILE
10 MACHINERY.—The requirements described
11 in this clause are—

12 “(I) the design-based test, and

13 “(II) the use-based test.

14 “(iii) DESIGN-BASED TEST.—For pur-
15 poses of clause (ii)(I), the design-based
16 test is met if the vehicle consists of a
17 chassis—

18 “(I) to which there has been per-
19 manently mounted (by welding, bolt-
20 ing, riveting, or other means) machin-
21 ery or equipment to perform a con-
22 struction, manufacturing, processing,
23 farming, mining, drilling, timbering,
24 or similar operation if the operation of
25 the machinery or equipment is unre-

1 lated to transportation on or off the
2 public highways,

3 “(II) which has been specially de-
4 signed to serve only as a mobile car-
5 riage and mount (and a power source,
6 where applicable) for the particular
7 machinery or equipment involved,
8 whether or not such machinery or
9 equipment is in operation, and

10 “(III) which, by reason of such
11 special design, could not, without sub-
12 stantial structural modification, be
13 used as a component of a vehicle de-
14 signed to perform a function of trans-
15 porting any load other than that par-
16 ticular machinery or equipment or
17 similar machinery or equipment re-
18 quiring such a specially designed chas-
19 sis.

20 “(iv) USE-BASED TEST.—For pur-
21 poses of clause (ii)(II), the use-based test
22 is met if the use of the vehicle on public
23 highways was less than 5,000 miles during
24 the taxpayer’s taxable year.

1 “(v) SPECIAL RULE FOR USE BY CER-
 2 TAIN TAX-EXEMPT ORGANIZATIONS.—In
 3 the case of any use in a vehicle by an orga-
 4 nization which is described in section
 5 501(e) and exempt from tax under section
 6 501(a), clause (ii) shall be applied without
 7 regard to subclause (II) thereof.”.

8 (2) ANNUAL REFUND OF TAX PAID.—Section
 9 6427(i)(2) (relating to exceptions) is amended by
 10 adding at the end the following new subparagraph:

11 “(C) NONAPPLICATION OF PARAGRAPH.—
 12 This paragraph shall not apply to any fuel used
 13 in any off-highway business use described in
 14 section 6421(e)(2)(C).”.

15 (3) EFFECTIVE DATE.—The amendments made
 16 by this subsection shall apply to taxable years begin-
 17 ning after the date of the enactment of this Act.

18 **SEC. 5302. MODIFICATION OF DEFINITION OF OFF-HIGH-**
 19 **WAY VEHICLE.**

20 (a) IN GENERAL.—Section 7701(a) (relating to defi-
 21 nitions) is amended by adding at the end the following
 22 new paragraph:

23 “(48) OFF-HIGHWAY VEHICLES.—

24 “(A) OFF-HIGHWAY TRANSPORTATION VE-
 25 HICLES.—

1 “(i) IN GENERAL.—A vehicle shall not
2 be treated as a highway vehicle if such ve-
3 hicle is specially designed for the primary
4 function of transporting a particular type
5 of load other than over the public highway
6 and because of this special design such ve-
7 hicle’s capability to transport a load over
8 the public highway is substantially limited
9 or impaired.

10 “(ii) DETERMINATION OF VEHICLE’S
11 DESIGN.—For purposes of clause (i), a ve-
12 hicle’s design is determined solely on the
13 basis of its physical characteristics.

14 “(iii) DETERMINATION OF SUBSTAN-
15 TIAL LIMITATION OR IMPAIRMENT.—For
16 purposes of clause (i), in determining
17 whether substantial limitation or impair-
18 ment exists, account may be taken of fac-
19 tors such as the size of the vehicle, wheth-
20 er such vehicle is subject to the licensing,
21 safety, and other requirements applicable
22 to highway vehicles, and whether such ve-
23 hicle can transport a load at a sustained
24 speed of at least 25 miles per hour. It is
25 immaterial that a vehicle can transport a

1 greater load off the public highway than
2 such vehicle is permitted to transport over
3 the public highway.

4 “(B) NONTRANSPORTATION TRAILERS AND
5 SEMITRAILERS.—A trailer or semitrailer shall
6 not be treated as a highway vehicle if it is spe-
7 cially designed to function only as an enclosed
8 stationary shelter for the carrying on of an off-
9 highway function at an off-highway site.”.

10 (c) EFFECTIVE DATES.—

11 (1) IN GENERAL.—Except as provided in para-
12 graph (2), the amendment made by this section shall
13 take effect on the date of the enactment of this Act.

14 (2) FUEL TAXES.—With respect to taxes im-
15 posed under subchapter B of chapter 31 and part
16 III of subchapter A of chapter 32, the amendment
17 made by this section shall apply to taxable periods
18 beginning after the date of the enactment of this
19 Act.

1 **Subtitle E—Excise Tax Reform and**
2 **Simplification**

3 **PART I—HIGHWAY EXCISE TAXES**

4 **SEC. 5401. DEDICATION OF GAS GUZZLER TAX TO HIGHWAY**
5 **TRUST FUND.**

6 (a) IN GENERAL.—Section 9503(b)(1) (relating to
7 transfer to Highway Trust Fund of amounts equivalent
8 to certain taxes), as amended by section 5101 of this Act,
9 is amended by redesignating subparagraphs (C), (D), and
10 (E) as subparagraphs (D), (E), and (F), respectively, and
11 by inserting after subparagraph (B) the following new
12 subparagraph:

13 “(C) section 4064 (relating to gas guzzler
14 tax),”.

15 (b) UNIFORM APPLICATION OF TAX.—Subparagraph
16 (A) of section 4064(b)(1) (defining automobile) is amend-
17 ed by striking the second sentence.

18 (c) EFFECTIVE DATE.—The amendments made by
19 this section shall take effect on the date of the enactment
20 of this Act.

21 **SEC. 5402. REPEAL CERTAIN EXCISE TAXES ON RAIL DIE-**
22 **SEL FUEL AND INLAND WATERWAY BARGE**
23 **FUELS.**

24 (a) TAXES ON TRAINS.—

1 (1) IN GENERAL.—Subparagraph (A) of section
2 4041(a)(1) is amended by striking “or a diesel-pow-
3 ered train” each place it appears and by striking “or
4 train”.

5 (2) CONFORMING AMENDMENTS.—

6 (A) Subparagraph (C) of section
7 4041(a)(1), as amended by section 5001 of this
8 Act, is amended by striking clause (ii) and by
9 redesignating clause (iii) as clause (ii).

10 (B) Subparagraph (C) of section
11 4041(b)(1) is amended by striking all that fol-
12 lows “section 6421(e)(2)” and inserting a pe-
13 riod.

14 (C) Subsection (d) of section 4041 is
15 amended by redesignating paragraph (3) as
16 paragraph (4) and by inserting after paragraph
17 (2) the following new paragraph:

18 “(3) DIESEL FUEL USED IN TRAINS.—There is
19 hereby imposed a tax of 0.1 cent per gallon on any
20 liquid other than gasoline (as defined in section
21 4083)—

22 “(A) sold by any person to an owner, les-
23 see, or other operator of a diesel-powered train
24 for use as a fuel in such train, or

1 “(B) used by any person as a fuel in a die-
2 sel-powered train unless there was a taxable
3 sale of such fuel under subparagraph (A).

4 No tax shall be imposed by this paragraph on the
5 sale or use of any liquid if tax was imposed on such
6 liquid under section 4081.”.

7 (D) Subsection (f) of section 4082 is
8 amended by striking “section 4041(a)(1)” and
9 inserting “subsections (d)(3) and (a)(1) of sec-
10 tion 4041, respectively”.

11 (E) Subparagraphs (A) and (B) of section
12 4083(a)(3), as amended by section 5261 of this
13 Act, are amended by striking “or a diesel-pow-
14 ered train”.

15 (F) Paragraph (3) of section 6421(f) is
16 amended to read as follows:

17 “(3) GASOLINE USED IN TRAINS.—In the case
18 of gasoline used as a fuel in a train, this section
19 shall not apply with respect to the Leaking Under-
20 ground Storage Tank Trust Fund financing rate
21 under section 4081.”.

22 (G) Paragraph (3) of section 6427(l) is
23 amended to read as follows:

24 “(3) REFUND OF CERTAIN TAXES ON FUEL
25 USED IN DIESEL-POWERED TRAINS.—For purposes

1 of this subsection, the term ‘nontaxable use’ includes
 2 fuel used in a diesel-powered train. The preceding
 3 sentence shall not apply to the tax imposed by sec-
 4 tion 4041(d) and the Leaking Underground Storage
 5 Tank Trust Fund financing rate under section 4081
 6 except with respect to fuel sold for exclusive use by
 7 a State or any political subdivision thereof.”.

8 (b) FUEL USED ON INLAND WATERWAYS.—

9 (1) IN GENERAL.—Paragraph (1) of section
 10 4042(b) is amended by adding “and” at the end of
 11 subparagraph (A), by striking “, and” at the end of
 12 subparagraph (B) and inserting a period, and by
 13 striking subparagraph (C).

14 (2) CONFORMING AMENDMENT.—Paragraph (2)
 15 of section 4042(b) is amended by striking subpara-
 16 graph (C).

17 (c) EFFECTIVE DATE.—The amendments made by
 18 this section shall take effect on October 1, 2004.

19 **PART II—AQUATIC EXCISE TAXES**

20 **SEC. 5411. ELIMINATION OF AQUATIC RESOURCES TRUST**
 21 **FUND AND TRANSFORMATION OF SPORT**
 22 **FISH RESTORATION ACCOUNT.**

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

1 (1) IN GENERAL.—Section 9503(c)(3) (relating
2 to transfers from Trust Fund for motorboat fuel
3 taxes), as redesignated by section 5002 of this Act,
4 is amended—

5 (A) by striking “Fund—” and all that fol-
6 lows through “shall be transferred” in subpara-
7 graph (B) and inserting “Fund which is attrib-
8 utable to motorboat fuel taxes shall be trans-
9 ferred”, and

10 (B) by striking subparagraph (A), and

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

14 (2) CONFORMING AMENDMENTS.—

15 (A) Section 9503(b)(4), as amended by
16 section 5102 of this Act, is amended—

17 (i) by adding “or” at the end of sub-
18 paragraph (B),

19 (ii) by striking the comma at the end
20 of subparagraph (C) and inserting a pe-
21 riod, and

22 (iii) by striking subparagraph (D).

23 (B) Subparagraph (B) of section
24 9503(c)(3), as redesignated by section 5002 of
25 this Act and subsection (a)(3), is amended—

1 (i) by striking “ACCOUNT” in the
2 heading and inserting “TRUST FUND”,

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

5 (iii) by striking “Account in the
6 Aquatic Resources”.

7 (C) Subparagraph (C) of section
8 9503(c)(3), as redesignated by section 5002 of
9 this Act and subsection (a)(3), is amended by
10 striking “, but only to the extent such taxes are
11 deposited into the Highway Trust Fund”.

12 (D) Paragraph (4) of section 9503(c), as
13 redesignated by section 5002 of this Act, is
14 amended—

15 (i) by striking “Account in the Aquat-
16 ic Resources” in subparagraph (A), and

17 (ii) by striking “, but only to the ex-
18 tent such taxes are deposited into the
19 Highway Trust Fund” in subparagraph
20 (B).

21 (b) MERGING OF ACCOUNTS.—

22 (1) IN GENERAL.—Subsection (a) of section
23 9504 is amended to read as follows:

24 “(a) CREATION OF TRUST FUND.—There is hereby
25 established in the Treasury of the United States a trust

1 fund to be known as the ‘Sport Fish Restoration Trust
2 Fund’. Such Trust Fund shall consist of such amounts
3 as may be appropriated, credited, or paid to it as provided
4 in this section, section 9503(c)(3), section 9503(c)(4), or
5 section 9602(b).”.

6 (2) CONFORMING AMENDMENTS.—

7 (A) Subsection (b) of section 9504 is
8 amended—

9 (i) by striking “ACCOUNT” in the
10 heading and inserting “TRUST FUND”,

11 (ii) by striking “Account” both places
12 it appears in paragraphs (1) and (2) and
13 inserting “Trust Fund”, and

14 (iii) by striking “ACCOUNT” both
15 places it appears in the headings for para-
16 graphs (1) and (2) and inserting “TRUST
17 FUND”.

18 (B) Subsection (d) of section 9504, as
19 amended by section 5001 of this Act, is
20 amended—

21 (i) by striking “AQUATIC RE-
22 SOURCES” in the heading,

23 (ii) by striking “any Account in the
24 Aquatic Resources” in paragraph (1) and

1 inserting “the Sports Fish Restoration”,
2 and

3 (iii) by striking “any such Account”
4 in paragraph (1) and inserting “such
5 Trust Fund”.

6 (C) Subsection (e) of section 9504, as
7 amended by section 5002 of this Act, is amend-
8 ed by striking “Boat Safety Account and Sport
9 Fish Restoration Account” and inserting
10 “Sport Fish Restoration Trust Fund”.

11 (D) Section 9504 is amended by striking
12 “**AQUATIC RESOURCES**” in the heading and
13 inserting “**SPORT FISH RESTORATION**”.

14 (E) The item relating to section 9504 in
15 the table of sections for subchapter A of chap-
16 ter 98 is amended by striking “aquatic re-
17 sources” and inserting “sport fish restoration”.

18 (c) PHASEOUT OF BOAT SAFETY ACCOUNT.—Sub-
19 section (c) of section 9504 is amended to read as follows:

20 “(c) EXPENDITURES FROM BOAT SAFETY AC-
21 COUNT.—Amounts remaining in the Boat Safety Account
22 on October 1, 2004, and amounts thereafter credited to
23 the Account under section 9602(b), shall be available, as
24 provided by appropriation Acts, for making expenditures
25 before October 1, 2009, to carry out the purposes of sec-

1 tion 13106 of title 46, United States Code (as in effect
2 on the date of the enactment of the Safe, Accountable,
3 Flexible, and Efficient Transportation Equity Act of
4 2004).”.

5 (d) EFFECTIVE DATE.—The amendments made by
6 this section shall take effect on October 1, 2004.

7 **SEC. 5412. EXEMPTION OF LED DEVICES FROM SONAR DE-**
8 **VICES SUITABLE FOR FINDING FISH.**

9 (a) IN GENERAL.—Section 4162(b) (defining sonar
10 device suitable for finding fish) is amended by striking
11 “or” at the end of paragraph (3), by striking the period
12 at the end of paragraph (4) and inserting “, or”, and by
13 adding at the end the following new paragraph:

14 “(5) an LED display.”.

15 (b) EFFECTIVE DATE.—The amendments made by
16 this section shall apply to articles sold by the manufac-
17 turer, producer, or importer after September 30, 2004.

18 **SEC. 5413. REPEAL OF HARBOR MAINTENANCE TAX ON EX-**
19 **PORTS.**

20 (a) IN GENERAL.—Subsection (d) of section 4462
21 (relating to definitions and special rules) is amended to
22 read as follows:

23 “(d) NONAPPLICABILITY OF TAX TO EXPORTS.—The
24 tax imposed by section 4461(a) shall not apply to any port

1 use with respect to any commercial cargo to be exported
2 from the United States.”.

3 (b) CONFORMING AMENDMENTS.—

4 (1) Section 4461(c)(1) is amended by adding
5 “or” at the end of subparagraph (A), by striking
6 subparagraph (B), and by redesignating subpara-
7 graph (C) as subparagraph (B).

8 (2) Section 4461(c)(2) is amended by striking
9 “imposed—” and all that follows through “in any
10 other case,” and inserting “imposed”.

11 (c) EFFECTIVE DATE.—The amendments made by
12 this section shall take effect before, on, and after the date
13 of the enactment of this Act.

14 **SEC. 5414. CAP ON EXCISE TAX ON CERTAIN FISHING**
15 **EQUIPMENT.**

16 (a) IN GENERAL.—Paragraph (1) of section 4161(a)
17 (relating to sport fishing equipment) is amended to read
18 as follows:

19 “(1) IMPOSITION OF TAX.—

20 “(A) IN GENERAL.—There is hereby im-
21 posed on the sale of any article of sport fishing
22 equipment by the manufacturer, producer, or
23 importer a tax equal to 10 percent of the price
24 for which so sold.

1 “(B) LIMITATION ON TAX IMPOSED ON
2 FISHING RODS AND POLES.—The tax imposed
3 by subparagraph (A) on any fishing rod or pole
4 shall not exceed \$10.”.

5 (b) CONFORMING AMENDMENTS.—Section
6 4161(a)(2) is amended by striking “paragraph (1)” both
7 places it appears and inserting “paragraph (1)(A)”.

8 (c) EFFECTIVE DATE.—The amendments made by
9 this section shall apply to articles sold by the manufac-
10 turer, producer, or importer after September 30, 2004.

11 **SEC. 5415. REDUCTION IN RATE OF TAX ON PORTABLE AER-**
12 **ATED BAIT CONTAINERS.**

13 (a) IN GENERAL.—Section 4161(a)(2)(A) (relating
14 to 3 percent rate of tax for electric outboard motors and
15 sonar devices suitable for finding fish) is amended by in-
16 serting “or a portable aerated bait container” after “fish”.

17 (b) CONFORMING AMENDMENT.—The heading of sec-
18 tion 4161(a)(2) is amended by striking “ELECTRIC OUT-
19 BOARD MOTORS AND SONAR DEVICES SUITABLE FOR
20 FINDING FISH” and inserting “CERTAIN SPORT FISHING
21 EQUIPMENT”.

22 (c) EFFECTIVE DATE.—The amendments made by
23 this section shall apply to articles sold by the manufac-
24 turer, producer, or importer after September 30, 2004.

PART III—AERIAL EXCISE TAXES**SEC. 5421. CLARIFICATION OF EXCISE TAX EXEMPTIONS
FOR AGRICULTURAL AERIAL APPLICATORS
AND EXEMPTION FOR FIXED-WING AIRCRAFT
ENGAGED IN FORESTRY OPERATIONS.**

(a) NO WAIVER BY FARM OWNER, TENANT, OR OPERATOR NECESSARY.—Subparagraph (B) of section 6420(c)(4) (relating to certain farming use other than by owner, etc.) is amended to read as follows:

“(B) if the person so using the gasoline is an aerial or other applicator of fertilizers or other substances and is the ultimate purchaser of the gasoline, then subparagraph (A) of this paragraph shall not apply and the aerial or other applicator shall be treated as having used such gasoline on a farm for farming purposes.”.

(b) EXEMPTION INCLUDES FUEL USED BETWEEN AIRFIELD AND FARM.—Section 6420(c)(4), as amended by subsection (a), is amended by adding at the end the following new flush sentence:

“For purposes of this paragraph, in the case of an aerial applicator, gasoline shall be treated as used on a farm for farming purposes if the gasoline is used for the direct flight between the airfield and 1 or more farms.”.

1 (c) EXEMPTION FROM TAX ON AIR TRANSPORTATION
2 OF PERSONS FOR FORESTRY PURPOSES EXTENDED TO
3 FIXED-WING AIRCRAFT.—Subsection (f) of section 4261
4 (relating to tax on air transportation of persons) is amend-
5 ed to read as follows:

6 “(f) EXEMPTION FOR CERTAIN USES.—No tax shall
7 be imposed under subsection (a) or (b) on air
8 transportation—

9 “(1) by helicopter for the purpose of trans-
10 porting individuals, equipment, or supplies in the ex-
11 ploration for, or the development or removal of, hard
12 minerals, oil, or gas, or

13 “(2) by helicopter or by fixed-wing aircraft for
14 the purpose of the planting, cultivation, cutting, or
15 transportation of, or caring for, trees (including log-
16 ging operations),

17 but only if the helicopter or fixed-wing aircraft does not
18 take off from, or land at, a facility eligible for assistance
19 under the Airport and Airway Development Act of 1970,
20 or otherwise use services provided pursuant to section
21 44509 or 44913(b) or subchapter I of chapter 471 of title
22 49, United States Code, during such use. In the case of
23 helicopter transportation described in paragraph (1), this
24 subsection shall be applied by treating each flight segment
25 as a distinct flight.”.

1 (d) EFFECTIVE DATE.—The amendments made by
 2 this section shall apply to fuel use or air transportation
 3 after the date of the enactment of this Act.

4 **SEC. 5422. MODIFICATION OF RURAL AIRPORT DEFINITION.**

5 (a) IN GENERAL.—Section 4261(e)(1)(B) (defining
 6 rural airport) is amended—

7 (1) by inserting “(in the case of any airport de-
 8 scribed in clause (ii)(III), on flight segments of at
 9 least 100 miles)” after “by air” in clause (i), and

10 (2) by striking the period at the end of sub-
 11 clause (II) of clause (ii) and inserting “, or”, and by
 12 adding at the end of clause (ii) the following new
 13 subclause:

14 “(III) is not connected by paved
 15 roads to another airport.”.

16 (b) EFFECTIVE DATE.—The amendments made by
 17 this section shall take effect on April 1, 2004.

18 **SEC. 5423. EXEMPTION FROM TICKET TAXES FOR TRANS-**
 19 **PORTATION PROVIDED BY SEAPLANES.**

20 (a) IN GENERAL.—Section 4261 (relating to imposi-
 21 tion of tax) is amended by redesignating subsection (i) as
 22 subsection (j) and by inserting after subsection (h) the fol-
 23 lowing new subsection:

24 “(i) EXEMPTION FOR SEAPLANES.—No tax shall be
 25 imposed by this section or section 4271 on any air trans-

1 portation by a seaplane with respect to any segment con-
2 sisting of a takeoff from, and a landing on, water, but
3 only if the places at which such takeoff and landing occur
4 have not received and are not receiving financial assist-
5 ance from the Airport and Airways Trust Fund.”.

6 (b) EFFECTIVE DATE.—The amendments made by
7 this section shall apply to transportation beginning after
8 March 31, 2004.

9 **SEC. 5424. CERTAIN SIGHTSEEING FLIGHTS EXEMPT FROM**
10 **TAXES ON AIR TRANSPORTATION.**

11 (a) IN GENERAL.—Section 4281 (relating to small
12 aircraft on nonestablished lines) is amended by adding at
13 the end the following new sentence: “For purposes of this
14 section, an aircraft shall not be considered as operated on
15 an established line if such aircraft is operated on a flight
16 the sole purpose of which is sightseeing.”.

17 (b) EFFECTIVE DATE.—The amendment made by
18 this section shall apply with respect to transportation be-
19 ginning on or after the date of the enactment of this Act,
20 but shall not apply to any amount paid before such date
21 for such transportation.

1 **PART IV—ALCOHOLIC BEVERAGE EXCISE TAXES**
2 **SEC. 5431. REPEAL OF SPECIAL OCCUPATIONAL TAXES ON**
3 **PRODUCERS AND MARKETERS OF ALCO-**
4 **HOLIC BEVERAGES.**

5 (a) REPEAL OF OCCUPATIONAL TAXES.—

6 (1) IN GENERAL.—The following provisions of
7 part II of subchapter A of chapter 51 (relating to
8 occupational taxes) are hereby repealed:

9 (A) Subpart A (relating to proprietors of
10 distilled spirits plants, bonded wine cellars,
11 etc.).

12 (B) Subpart B (relating to brewer).

13 (C) Subpart D (relating to wholesale deal-
14 ers) (other than sections 5114 and 5116).

15 (D) Subpart E (relating to retail dealers)
16 (other than section 5124).

17 (E) Subpart G (relating to general provi-
18 sions) (other than sections 5142, 5143, 5145,
19 and 5146).

20 (2) NONBEVERAGE DOMESTIC DRAWBACK.—
21 Section 5131 is amended by striking “, on payment
22 of a special tax per annum,”.

23 (3) INDUSTRIAL USE OF DISTILLED SPIRITS.—
24 Section 5276 is hereby repealed.

25 (b) CONFORMING AMENDMENTS.—

1 (1)(A) The heading for part II of subchapter A
2 of chapter 51 and the table of subparts for such
3 part are amended to read as follows:

4 **“PART II—MISCELLANEOUS PROVISIONS**

 “Subpart A. Manufacturers of stills.

 “Subpart B. Nonbeverage domestic drawback claimants.

 “Subpart C. Recordkeeping by dealers.

 “Subpart D. Other provisions.”.

5 (B) The table of parts for such subchapter A
6 is amended by striking the item relating to part II
7 and inserting the following new item:

 “Part II. Miscellaneous provisions.”.

8 (2) Subpart C of part II of such subchapter
9 (relating to manufacturers of stills) is redesignated
10 as subpart A.

11 (3)(A) Subpart F of such part II (relating to
12 nonbeverage domestic drawback claimants) is redesi-
13 gnated as subpart B and sections 5131 through
14 5134 are redesignated as sections 5111 through
15 5114, respectively.

16 (B) The table of sections for such subpart B,
17 as so redesignated, is amended—

18 (i) by redesignating the items relating to
19 sections 5131 through 5134 as relating to sec-
20 tions 5111 through 5114, respectively, and

1 (ii) by striking “and rate of tax” in the
 2 item relating to section 5111, as so redesign-
 3 nated.

4 (C) Section 5111, as redesignated by subpara-
 5 graph (A), is amended—

6 (i) by striking “**AND RATE OF TAX**” in
 7 the section heading,

8 (ii) by striking the subsection heading for
 9 subsection (a), and

10 (iii) by striking subsection (b).

11 (4) Part II of subchapter A of chapter 51 is
 12 amended by adding after subpart B, as redesignated
 13 by paragraph (3), the following new subpart:

14 **“Subpart C—Recordkeeping by Dealers**

“Sec. 5121. Recordkeeping by wholesale dealers.

“Sec. 5122. Recordkeeping by retail dealers.

“Sec. 5123. Preservation and inspection of records, and entry of premises for
 inspection.”.

15 (5)(A) Section 5114 (relating to records) is
 16 moved to subpart C of such part II and inserted
 17 after the table of sections for such subpart.

18 (B) Section 5114 is amended—

19 (i) by striking the section heading and in-
 20 serting the following new heading:

21 **“SEC. 5121. RECORDKEEPING BY WHOLESALE DEALERS.”,**

22 and

1 (ii) by redesignating subsection (c) as sub-
2 section (d) and by inserting after subsection (b)
3 the following new subsection:

4 “(c) WHOLESAL DEALERS.—For purposes of this
5 part—

6 “(1) WHOLESAL DEALER IN LIQUORS.—The
7 term ‘wholesale dealer in liquors’ means any dealer
8 (other than a wholesale dealer in beer) who sells, or
9 offers for sale, distilled spirits, wines, or beer, to an-
10 other dealer.

11 “(2) WHOLESAL DEALER IN BEER.—The term
12 ‘wholesale dealer in beer’ means any dealer who
13 sells, or offers for sale, beer, but not distilled spirits
14 or wines, to another dealer.

15 “(3) DEALER.—The term ‘dealer’ means any
16 person who sells, or offers for sale, any distilled spir-
17 its, wines, or beer.

18 “(4) PRESUMPTION IN CASE OF SALE OF 20
19 WINE GALLONS OR MORE.—The sale, or offer for
20 sale, of distilled spirits, wines, or beer, in quantities
21 of 20 wine gallons or more to the same person at
22 the same time, shall be presumptive evidence that
23 the person making such sale, or offer for sale, is en-
24 gaged in or carrying on the business of a wholesale
25 dealer in liquors or a wholesale dealer in beer, as the

1 case may be. Such presumption may be overcome by
 2 evidence satisfactorily showing that such sale, or
 3 offer for sale, was made to a person other than a
 4 dealer.”.

5 (C) Paragraph (3) of section 5121(d), as so re-
 6 designated, is amended by striking “section 5146”
 7 and inserting “section 5123”.

8 (6)(A) Section 5124 (relating to records) is
 9 moved to subpart C of part II of subchapter A of
 10 chapter 51 and inserted after section 5121.

11 (B) Section 5124 is amended—

12 (i) by striking the section heading and in-
 13 serting the following new heading:

14 **“SEC. 5122. RECORDKEEPING BY RETAIL DEALERS.”,**

15 (ii) by striking “section 5146” in sub-
 16 section (c) and inserting “section 5123”, and

17 (iii) by redesignating subsection (c) as sub-
 18 section (d) and inserting after subsection (b)
 19 the following new subsection:

20 “(c) RETAIL DEALERS.—For purposes of this
 21 section—

22 “(1) RETAIL DEALER IN LIQUORS.—The term
 23 ‘retail dealer in liquors’ means any dealer (other
 24 than a retail dealer in beer or a limited retail dealer)

1 who sells, or offers for sale, distilled spirits, wines,
2 or beer, to any person other than a dealer.

3 “(2) RETAIL DEALER IN BEER.—The term ‘re-
4 tail dealer in beer’ means any dealer (other than a
5 limited retail dealer) who sells, or offers for sale,
6 beer, but not distilled spirits or wines, to any person
7 other than a dealer.

8 “(3) LIMITED RETAIL DEALER.—The term ‘lim-
9 ited retail dealer’ means any fraternal, civic, church,
10 labor, charitable, benevolent, or ex-servicemen’s or-
11 ganization making sales of distilled spirits, wine or
12 beer on the occasion of any kind of entertainment,
13 dance, picnic, bazaar, or festival held by it, or any
14 person making sales of distilled spirits, wine or beer
15 to the members, guests, or patrons of bona fide
16 fairs, reunions, picnics, carnivals, or other similar
17 outings, if such organization or person is not other-
18 wise engaged in business as a dealer.

19 “(4) DEALER.—The term ‘dealer’ has the
20 meaning given such term by section 5121(c)(3).”.

21 (7) Section 5146 is moved to subpart C of part
22 II of subchapter A of chapter 51, inserted after sec-
23 tion 5122, and redesignated as section 5123.

1 (8) Part II of subchapter A of chapter 51 is
 2 amended by inserting after subpart C the following
 3 new subpart:

4 **“Subpart D—Other Provisions**

 “Sec. 5131. Packaging distilled spirits for industrial uses.

 “Sec. 5132. Prohibited purchases by dealers.”.

5 (9) Section 5116 is moved to subpart D of part
 6 II of subchapter A of chapter 51, inserted after the
 7 table of sections, redesignated as section 5131, and
 8 amended by inserting “(as defined in section
 9 5121(e))” after “dealer” in subsection (a).

10 (10) Subpart D of part II of subchapter A of
 11 chapter 51 is amended by adding at the end thereof
 12 the following new section:

13 **“SEC. 5132. PROHIBITED PURCHASES BY DEALERS.**

14 “(a) IN GENERAL.—Except as provided in regula-
 15 tions prescribed by the Secretary, it shall be unlawful for
 16 a dealer to purchase distilled spirits for resale from any
 17 person other than a wholesale dealer in liquors who is re-
 18 quired to keep the records prescribed by section 5121.

19 “(b) LIMITED RETAIL DEALERS.—A limited retail
 20 dealer may lawfully purchase distilled spirits for resale
 21 from a retail dealer in liquors.

1 “(c) PENALTY AND FORFEITURE.—

“For penalty and forfeiture provisions applicable to violations of subsection (a), see sections 5687 and 7302.”.

2 (11) Subsection (b) of section 5002 is
3 amended—

4 (A) by striking “section 5112(a)” and in-
5 serting “section 5121(c)(3)”,

6 (B) by striking “section 5112” and insert-
7 ing “section 5121(c)”,

8 (C) by striking “section 5122” and insert-
9 ing “section 5122(e)”.

10 (12) Subparagraph (A) of section 5010(c)(2) is
11 amended by striking “section 5134” and inserting
12 “section 5114”.

13 (13) Subsection (d) of section 5052 is amended
14 to read as follows:

15 “(d) BREWER.—For purposes of this chapter, the
16 term ‘brewer’ means any person who brews beer or pro-
17 duces beer for sale. Such term shall not include any person
18 who produces only beer exempt from tax under section
19 5053(e).”.

20 (14) The text of section 5182 is amended to
21 read as follows:

22 “For provisions requiring recordkeeping by
23 wholesale liquor dealers, see section 5121, and by re-
24 tail liquor dealers, see section 5122.”.

1 (15) Subsection (b) of section 5402 is amended
2 by striking “section 5092” and inserting “section
3 5052(d)”.

4 (16) Section 5671 is amended by striking “or
5 5091”.

6 (17)(A) Part V of subchapter J of chapter 51
7 is hereby repealed.

8 (B) The table of parts for such subchapter J is
9 amended by striking the item relating to part V.

10 (18)(A) Sections 5142, 5143, and 5145 are
11 moved to subchapter D of chapter 52, inserted after
12 section 5731, redesignated as sections 5732, 5733,
13 and 5734, respectively, and amended by striking
14 “this part” each place it appears and inserting “this
15 subchapter”.

16 (B) Section 5732, as redesignated by subpara-
17 graph (A), is amended by striking “(except the tax
18 imposed by section 5131)” each place it appears.

19 (C) Paragraph (2) of section 5733(c), as redesi-
20 gnated by subparagraph (A), is amended by striking
21 “liquors” both places it appears and inserting “to-
22 bacco products and cigarette papers and tubes”.

23 (D) The table of sections for subchapter D of
24 chapter 52 is amended by adding at the end thereof
25 the following:

“Sec. 5732. Payment of tax.

“Sec. 5733. Provisions relating to liability for occupational taxes.

“Sec. 5734. Application of State laws.”.

1 (E) Section 5731 is amended by striking sub-
2 section (e) and by redesignating subsection (d) as
3 subsection (e).

4 (19) Subsection (c) of section 6071 is amended
5 by striking “section 5142” and inserting “section
6 5732”.

7 (20) Paragraph (1) of section 7652(g) is
8 amended—

9 (A) by striking “subpart F” and inserting
10 “subpart B”, and

11 (B) by striking “section 5131(a)” and in-
12 serting “section 5111”.

13 (c) EFFECTIVE DATE.—The amendments made by
14 this section shall take effect on July 1, 2004, but shall
15 not apply to taxes imposed for periods before such date.

16 **SEC. 5432. SUSPENSION OF LIMITATION ON RATE OF RUM**
17 **EXCISE TAX COVER OVER TO PUERTO RICO**
18 **AND VIRGIN ISLANDS.**

19 (a) IN GENERAL.—Section 7652(f)(1) (relating to
20 limitation on cover over of tax on distilled spirits) is
21 amended by striking “January 1, 2004” and inserting
22 “October 1, 2004, and \$13.50 in the case of distilled spir-
23 its brought into the United States after September 30,
24 2004, and before January 1, 2006”.

1 (b) EFFECTIVE DATE.—

2 (1) IN GENERAL.—The amendment made by
3 subsection (a) shall apply to articles containing dis-
4 tilled spirits brought into the United States after
5 December 31, 2003.

6 (2) SPECIAL RULE.—

7 (A) IN GENERAL.—After September 30,
8 2004, the treasury of Puerto Rico shall make a
9 Conservation Trust Fund transfer within 30
10 days from the date of each cover over payment
11 to such treasury under section 7652(e) of the
12 Internal Revenue Code of 1986.

13 (B) CONSERVATION TRUST FUND TRANS-
14 FER.—

15 (i) IN GENERAL.—For purposes of
16 this paragraph, the term “Conservation
17 Trust Fund transfer” means a transfer to
18 the Puerto Rico Conservation Trust Fund
19 of an amount equal to 50 cents per proof
20 gallon of the taxes imposed under section
21 5001 or section 7652 of such Code on dis-
22 tilled spirits that are covered over to the
23 treasury of Puerto Rico under section
24 7652(e) of such Code.

1 (ii) TREATMENT OF TRANSFER.—

2 Each Conservation Trust Fund transfer
3 shall be treated as principal for an endow-
4 ment, the income from which to be avail-
5 able for use by the Puerto Rico Conserva-
6 tion Trust Fund for the purposes for
7 which the Trust Fund was established.

8 (iii) RESULT OF NONTRANSFER.—

9 (I) IN GENERAL.—Upon notifica-
10 tion by the Secretary of the Interior
11 that a Conservation Trust Fund
12 transfer has not been made by the
13 treasury of Puerto Rico, the Secretary
14 of the Treasury shall, except as pro-
15 vided in subclause (II), deduct and
16 withhold from the next cover over
17 payment to be made to the treasury of
18 Puerto Rico under section 7652(e) of
19 such Code an amount equal to the ap-
20 propriate Conservation Trust Fund
21 transfer and interest thereon at the
22 underpayment rate established under
23 section 6621 of such Code as of the
24 due date of such transfer. The Sec-
25 retary of the Treasury shall transfer

1 such amount deducted and withheld,
2 and the interest thereon, directly to
3 the Puerto Rico Conservation Trust
4 Fund.

5 (II) GOOD CAUSE EXCEPTION.—

6 If the Secretary of the Interior finds,
7 after consultation with the Governor
8 of Puerto Rico, that the failure by the
9 treasury of Puerto Rico to make a re-
10 quired transfer was for good cause,
11 and notifies the Secretary of the
12 Treasury of the finding of such good
13 cause before the due date of the next
14 cover over payment following the noti-
15 fication of nontransfer, then the Sec-
16 retary of the Treasury shall not de-
17 duct the amount of such nontransfer
18 from any cover over payment.

19 (C) PUERTO RICO CONSERVATION TRUST
20 FUND.—For purposes of this paragraph, the
21 term “Puerto Rico Conservation Trust Fund”
22 means the fund established pursuant to a
23 Memorandum of Understanding between the
24 United States Department of the Interior and

1 the Commonwealth of Puerto Rico, dated De-
2 cember 24, 1968.

3 **PART V—SPORT EXCISE TAXES**

4 **SEC. 5441. CUSTOM GUNSMITHS.**

5 (a) SMALL MANUFACTURERS EXEMPT FROM FIRE-
6 ARMS EXCISE TAX.—Section 4182 (relating to exemp-
7 tions) is amended by redesignating subsection (c) as sub-
8 section (d) and by inserting after subsection (b) the fol-
9 lowing new subsection:

10 “(c) SMALL MANUFACTURERS, ETC.—

11 “(1) IN GENERAL.—The tax imposed by section
12 4181 shall not apply to any article described in such
13 section if manufactured, produced, or imported by a
14 person who manufactures, produces, and imports
15 less than 50 of such articles during the calendar
16 year.

17 “(2) CONTROLLED GROUPS.—All persons treat-
18 ed as a single employer for purposes of subsection
19 (a) or (b) of section 52 shall be treated as one per-
20 son for purposes of paragraph (1).”.

21 (b) EFFECTIVE DATE.—

22 (1) IN GENERAL.—The amendments made by
23 this section shall apply to articles sold by the manu-
24 facturer, producer, or importer on or after the date
25 which is the first day of the month beginning at

1 least 2 weeks after the date of the enactment of this
2 Act.

3 (2) NO INFERENCE.—Nothing in the amend-
4 ments made by this section shall be construed to
5 create any inference with respect to the proper tax
6 treatment of any sales before the effective date of
7 such amendments.

8 **SEC. 5442. MODIFIED TAXATION OF IMPORTED ARCHERY**
9 **PRODUCTS.**

10 (a) BOWS.—Paragraph (1) of section 4161(b) (relat-
11 ing to bows) is amended to read as follows:

12 “(1) BOWS.—

13 “(A) IN GENERAL.—There is hereby im-
14 posed on the sale by the manufacturer, pro-
15 ducer, or importer of any bow which has a peak
16 draw weight of 30 pounds or more, a tax equal
17 to 11 percent of the price for which so sold.

18 “(B) ARCHERY EQUIPMENT.—There is
19 hereby imposed on the sale by the manufac-
20 turer, producer, or importer—

21 “(i) of any part or accessory suitable
22 for inclusion in or attachment to a bow de-
23 scribed in subparagraph (A), and

1 “(ii) of any quiver or broadhead suit-
2 able for use with an arrow described in
3 paragraph (2),
4 a tax equal to 11 percent of the price for which
5 so sold.”.

6 (b) ARROWS.—Subsection (b) of section 4161 (relat-
7 ing to bows and arrows, etc.) is amended by redesignating
8 paragraph (3) as paragraph (4) and inserting after para-
9 graph (2) the following:

10 “(3) ARROWS.—

11 “(A) IN GENERAL.—There is hereby im-
12 posed on the sale by the manufacturer, pro-
13 ducer, or importer of any arrow, a tax equal to
14 12 percent of the price for which so sold.

15 “(B) EXCEPTION.—In the case of any
16 arrow of which the shaft or any other compo-
17 nent has been previously taxed under paragraph
18 (1) or (2)—

19 “(i) section 6416(b)(3) shall not
20 apply, and

21 “(ii) the tax imposed by subparagraph
22 (A) shall be an amount equal to the excess
23 (if any) of—

1 “(I) the amount of tax imposed
2 by this paragraph (determined with-
3 out regard to this subparagraph), over

4 “(II) the amount of tax paid with
5 respect to the tax imposed under
6 paragraph (1) or (2) on such shaft or
7 component.

8 “(C) ARROW.—For purposes of this para-
9 graph, the term ‘arrow’ means any shaft de-
10 scribed in paragraph (2) to which additional
11 components are attached.”.

12 (c) CONFORMING AMENDMENTS.—Section
13 4161(b)(2) is amended—

14 (1) by inserting “(other than broadheads)”
15 after “point”, and

16 (2) by striking “ARROWS.—” in the heading
17 and inserting “ARROW COMPONENTS.—”.

18 (d) EFFECTIVE DATE.—The amendments made by
19 this section shall apply to articles sold by the manufac-
20 turer, producer, or importer after the date of the enact-
21 ment of this Act.

1 **SEC. 5443. TREATMENT OF TRIBAL GOVERNMENTS FOR**
2 **PURPOSES OF FEDERAL WAGERING EXCISE**
3 **AND OCCUPATIONAL TAXES.**

4 (a) IN GENERAL.—Subsection (a) of section 7871
5 (relating to Indian tribal governments treated as States
6 for certain purposes) is amended by striking “and” at the
7 end of paragraph (6), by striking the period at the end
8 of paragraph (7) and inserting “; and”, and by adding
9 at the end the following new paragraph:

10 “(8) for purposes of chapter 35 (relating to
11 taxes on wagering).”.

12 (b) EFFECTIVE DATE.—The amendments made by
13 this section shall take effect on July 1, 2004, but shall
14 not apply to taxes imposed for periods before such date.

15 **PART VI—OTHER PROVISIONS**

16 **SEC. 5451. INCOME TAX CREDIT FOR DISTILLED SPIRITS**
17 **WHOLESALE AND FOR DISTILLED SPIRITS**
18 **IN CONTROL STATE BAILMENT WAREHOUSES**
19 **FOR COSTS OF CARRYING FEDERAL EXCISE**
20 **TAXES ON BOTTLED DISTILLED SPIRITS.**

21 (a) IN GENERAL.—Subpart A of part I of subchapter
22 A of chapter 51 (relating to gallonage and occupational
23 taxes) is amended by adding at the end the following new
24 section:

1 **“SEC. 5011. INCOME TAX CREDIT FOR AVERAGE COST OF**
2 **CARRYING EXCISE TAX.**

3 “(a) IN GENERAL.—For purposes of section 38, the
4 amount of the distilled spirits credit for any taxable year
5 is the amount equal to the product of—

6 “(1) in the case of—

7 “(A) any eligible wholesaler—

8 “(i) the number of cases of bottled
9 distilled spirits—

10 “(I) which were bottled in the
11 United States, and

12 “(II) which are purchased by
13 such wholesaler during the taxable
14 year directly from the bottler of such
15 spirits, or

16 “(B) any person which is subject to section
17 5005 and which is not an eligible wholesaler,
18 the number of cases of bottled distilled spirits
19 which are stored in a warehouse operated by, or
20 on behalf of, a State, or agency or political sub-
21 division thereof, on which title has not passed
22 on an unconditional sale basis, and

23 “(2) the average tax-financing cost per case for
24 the most recent calendar year ending before the be-
25 ginning of such taxable year.

1 “(b) ELIGIBLE WHOLESALER.—For purposes of this
2 section, the term ‘eligible wholesaler’ means any person
3 which holds a permit under the Federal Alcohol Adminis-
4 tration Act as a wholesaler of distilled spirits which is not
5 a State, or agency or political subdivision thereof.

6 “(c) AVERAGE TAX-FINANCING COST.—

7 “(1) IN GENERAL.—For purposes of this sec-
8 tion, the average tax-financing cost per case for any
9 calendar year is the amount of interest which would
10 accrue at the deemed financing rate during a 60-day
11 period on an amount equal to the deemed Federal
12 excise tax per case.

13 “(2) DEEMED FINANCING RATE.—For purposes
14 of paragraph (1), the deemed financing rate for any
15 calendar year is the average of the corporate over-
16 payment rates under paragraph (1) of section
17 6621(a) (determined without regard to the last sen-
18 tence of such paragraph) for calendar quarters of
19 such year.

20 “(3) DEEMED FEDERAL EXCISE TAX PER
21 CASE.—For purposes of paragraph (1), the deemed
22 Federal excise tax per case is \$25.68.

23 “(d) OTHER DEFINITIONS AND SPECIAL RULES.—
24 For purposes of this section—

1 “(1) CASE.—The term ‘case’ means 12 80-
2 proof 750 milliliter bottles.

3 “(2) NUMBER OF CASES IN LOT.—The number
4 of cases in any lot of distilled spirits shall be deter-
5 mined by dividing the number of liters in such lot
6 by 9.”.

7 (b) CREDIT TREATED AS PART OF GENERAL BUSI-
8 NESS CREDIT.—Section 38(b) (relating to current year
9 business credit), as amended by section 5103 of this Act,
10 is amended by striking “plus” at the end of paragraph
11 (15), by striking the period at the end of paragraph (16)
12 and inserting “, plus”, and by adding at the end the fol-
13 lowing new paragraph:

14 “(17) the distilled spirits credit determined
15 under section 5011(a).”.

16 (c) CONFORMING AMENDMENTS.—

17 (1) Section 39(d), as amended by section 5103
18 of this Act, is amended by adding at the end the fol-
19 lowing new paragraph:

20 “(12) NO CARRYBACK OF SECTION 5011 CREDIT
21 BEFORE EFFECTIVE DATE.—No portion of the un-
22 used business credit for any taxable year which is
23 attributable to the credit determined under section
24 5011(a) may be carried back to a taxable year be-

1 ginning before the date of the enactment of section
2 5011.”.

3 (2) The table of sections for subpart A of part
4 I of subchapter A of chapter 51 is amended by add-
5 ing at the end the following new item:

“Sec. 5011. Income tax credit for average cost of carrying excise tax.”.

6 (d) **EFFECTIVE DATE.**—The amendments made by
7 this section shall apply to taxable years beginning after
8 the date of the enactment of this Act.

9 **SEC. 5452. CREDIT FOR TAXPAYERS OWNING COMMERCIAL**
10 **POWER TAKEOFF VEHICLES.**

11 (a) **IN GENERAL.**—Subpart D of part IV of sub-
12 chapter A of chapter 1 (relating to business-related cred-
13 its) is amended by adding at the end the following new
14 section:

15 **“SEC. 45G. COMMERCIAL POWER TAKEOFF VEHICLES**
16 **CREDIT.**

17 “(a) **GENERAL RULE.**—For purposes of section 38,
18 the amount of the commercial power takeoff vehicles credit
19 determined under this section for the taxable year is \$250
20 for each qualified commercial power takeoff vehicle owned
21 by the taxpayer as of the close of the calendar year in
22 which or with which the taxable year of the taxpayer ends.

23 “(b) **DEFINITIONS.**—For purposes of this section—

24 “(1) **QUALIFIED COMMERCIAL POWER TAKEOFF**
25 **VEHICLE.**—The term ‘qualified commercial power

1 takeoff vehicle' means any highway vehicle described
2 in paragraph (2) which is propelled by any fuel sub-
3 ject to tax under section 4041 or 4081 if such vehi-
4 cle is used in a trade or business or for the produc-
5 tion of income (and is licensed and insured for such
6 use).

7 “(2) HIGHWAY VEHICLE DESCRIBED.—A high-
8 way vehicle is described in this paragraph if such ve-
9 hicle is—

10 “(A) designed to engage in the daily collec-
11 tion of refuse or recyclables from homes or
12 businesses and is equipped with a mechanism
13 under which the vehicle's propulsion engine pro-
14 vides the power to operate a load compactor, or

15 “(B) designed to deliver ready mixed con-
16 crete on a daily basis and is equipped with a
17 mechanism under which the vehicle's propulsion
18 engine provides the power to operate a mixer
19 drum to agitate and mix the product en route
20 to the delivery site.

21 “(c) EXCEPTION FOR VEHICLES USED BY GOVERN-
22 MENTS, ETC.—No credit shall be allowed under this sec-
23 tion for any vehicle owned by any person at the close of
24 a calendar year if such vehicle is used at any time during
25 such year by—

1 “(1) the United States or an agency or instru-
2 mentality thereof, a State, a political subdivision of
3 a State, or an agency or instrumentality of one or
4 more States or political subdivisions, or

5 “(2) an organization exempt from tax under
6 section 501(a).

7 “(d) TERMINATION.—This section shall not apply
8 with respect to any calendar year after 2006.”.

9 (b) CREDIT TREATED AS PART OF GENERAL BUSI-
10 NESS CREDIT.—Section 38(b) (relating to current year
11 business credit), as amended by section 5451 of this Act,
12 is amended by striking “plus” at the end of paragraph
13 (16), by striking the period at the end of paragraph (17)
14 and inserting “, plus”, and by adding at the end the fol-
15 lowing new paragraph:

16 “(18) the commercial power takeoff vehicles
17 credit under section 45G(a).”.

18 (c) CONFORMING AMENDMENTS.—

19 (1) Section 39(d), as amended by section 5451
20 of this Act, is amended by adding at the end the fol-
21 lowing new paragraph:

22 “(13) NO CARRYBACK OF SECTION 45G CREDIT
23 BEFORE EFFECTIVE DATE.—No portion of the un-
24 used business credit for any taxable year which is
25 attributable to the credit determined under section

1 45G(a) may be carried back to a taxable year begin-
 2 ning on or before the date of the enactment of sec-
 3 tion 45G.”.

4 (2) The table of sections for subpart D of part
 5 IV of subchapter A of chapter 1 is amended by add-
 6 ing at the end the following new item:

“Sec. 45G. Commercial power takeoff vehicles credit.”.

7 (d) EFFECTIVE DATE.—The amendments made by
 8 this section shall apply to taxable years beginning after
 9 the date of the enactment of this Act.

10 **SEC. 5453. CREDIT FOR AUXILIARY POWER UNITS IN-**
 11 **STALLED ON DIESEL-POWERED TRUCKS.**

12 (a) IN GENERAL.—Subpart D of part IV of sub-
 13 chapter A of chapter 1 (relating to business-related cred-
 14 its), as amended by section 5452 of this Act, is amended
 15 by adding at the end the following new section:

16 **“SEC. 45H. AUXILIARY POWER UNIT CREDIT.**

17 “(a) GENERAL RULE.—For purposes of section 38,
 18 the amount of the auxiliary power unit credit determined
 19 under this section for the taxable year is \$250 for each
 20 qualified auxiliary power unit—

21 “(1) purchased by the taxpayer, and

22 “(2) installed or caused to be installed by the
 23 taxpayer on a qualified heavy-duty highway vehicle
 24 during such taxable year.

25 “(b) DEFINITIONS.—For purposes of this section—

1 “(1) QUALIFIED AUXILIARY POWER UNIT.—The
2 term ‘qualified auxiliary power unit’ means any inte-
3 grated system which—

4 “(A) provides heat, air conditioning, engine
5 warming, and electricity to the factory installed
6 components on a qualified heavy-duty highway
7 vehicle as if the main drive engine of such vehi-
8 cle was in operation,

9 “(B) is employed to reduce long-term
10 idling of the diesel engine on such a vehicle,
11 and

12 “(C) is certified by the Environmental Pro-
13 tection Agency as meeting emission standards
14 in regulations in effect on the date of the enact-
15 ment of this section.

16 “(2) QUALIFIED HEAVY-DUTY HIGHWAY VEHI-
17 CLE.—The term ‘qualified heavy-duty highway vehi-
18 cle’ means any highway vehicle weighing more than
19 12,500 pounds and powered by a diesel engine.

20 “(c) TERMINATION.—This section shall not apply
21 with respect to any installation occurring after December
22 31, 2006.”.

23 (b) CREDIT TREATED AS PART OF GENERAL BUSI-
24 NESS CREDIT.—Section 38(b) (relating to current year
25 business credit), as amended by section 5452 of this Act,

1 is amended by striking “plus” at the end of paragraph
2 (17), by striking the period at the end of paragraph (18)
3 and inserting “, plus”, and by adding at the end the fol-
4 lowing new paragraph:

5 “(19) the auxiliary power unit credit under sec-
6 tion 45H(a).”.

7 (c) CONFORMING AMENDMENTS.—

8 (1) Section 39(d), as amended by section 5452
9 of this Act, is amended by adding at the end the fol-
10 lowing new paragraph:

11 “(14) NO CARRYBACK OF SECTION 45H CREDIT
12 BEFORE EFFECTIVE DATE.—No portion of the un-
13 used business credit for any taxable year which is
14 attributable to the credit determined under section
15 45H(a) may be carried back to a taxable year begin-
16 ning on or before the date of the enactment of sec-
17 tion 45H.”.

18 (2) The table of sections for subpart D of part
19 IV of subchapter A of chapter 1, as amended by sec-
20 tion 5452 of this Act, is amended by adding at the
21 end the following new item:

“Sec. 45H. Auxiliary power unit credit.”.

22 (d) EFFECTIVE DATE.—The amendments made by
23 this section shall apply to auxiliary power units purchased
24 and installed for taxable years beginning after the date
25 of the enactment of this Act.

1 **Subtitle F—Miscellaneous**
2 **Provisions**

3 **SEC. 5501. MOTOR FUEL TAX ENFORCEMENT ADVISORY**
4 **COMMISSION.**

5 (a) **ESTABLISHMENT.**—There is established a Motor
6 Fuel Tax Enforcement Advisory Commission (in this sec-
7 tion referred to as the “Commission”).

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

9 (1) review motor fuel revenue collections, histor-
10 ical and current;

11 (2) review the progress of investigations;

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

14 (4) monitor the progress of administrative regu-
15 lation projects relating to motor fuel taxes;

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

19 (6) review the results of Federal interagency co-
20 operative efforts regarding motor fuel taxes; and

21 (7) evaluate and make recommendations
22 regarding—

23 (A) the effectiveness of existing Federal
24 enforcement programs regarding motor fuel
25 taxes,

- 1 (B) enforcement personnel allocation, and
2 (C) proposals for regulatory projects, legis-
3 lation, and funding.

4 (c) MEMBERSHIP.—

5 (1) APPOINTMENT.—The Commission shall be
6 composed of the following representatives appointed
7 by the Chairmen and the Ranking Members of the
8 Committee on Finance of the Senate and the Com-
9 mittee on Ways and Means of the House of Rep-
10 resentatives:

11 (A) At least 1 representative from each of
12 the following Federal entities: the Department
13 of Homeland Security, the Department of
14 Transportation—Office of Inspector General,
15 the Federal Highway Administration, the De-
16 partment of Defense, and the Department of
17 Justice.

18 (B) At least 1 representative from the
19 Federation of State Tax Administrators.

20 (C) At least 1 representative from any
21 State department of transportation.

22 (D) 2 representatives from the highway
23 construction industry.

24 (E) 5 representatives from industries relat-
25 ing to fuel distribution — refiners (2 represent-

1 atives), distributors (1 representative), pipelines
2 (1 representative), and terminal operators (2
3 representatives).

4 (F) 1 representative from the retail fuel in-
5 dustry.

6 (G) 2 representatives from the staff of the
7 Committee on Finance of the Senate and 2 rep-
8 resentatives from the staff of the Committee on
9 Ways and Means of the House of Representa-
10 tives.

11 (2) TERMS.—Members shall be appointed for
12 the life of the Commission.

13 (3) VACANCIES.—A vacancy in the Commission
14 shall be filled in the manner in which the original
15 appointment was made.

16 (4) TRAVEL EXPENSES.—Members shall serve
17 without pay but shall receive travel expenses, includ-
18 ing per diem in lieu of subsistence, in accordance
19 with sections 5702 and 5703 of title 5, United
20 States Code.

21 (5) CHAIRMAN.—The Chairman of the Commis-
22 sion shall be elected by the members.

23 (d) FUNDING.—Such sums as are necessary shall be
24 available from the Highway Trust fund for the expenses
25 of the Commission.

1 (e) CONSULTATION.—Upon request of the Commis-
2 sion, representatives of the Department of the Treasury
3 and the Internal Revenue Service shall be available for
4 consultation to assist the Commission in carrying out its
5 duties under this section.

6 (f) OBTAINING DATA.—The Commission may secure
7 directly from any department or agency of the United
8 States, information (other than information required by
9 any law to be kept confidential by such department or
10 agency) necessary for the Commission to carry out its du-
11 ties under this section. Upon request of the Commission,
12 the head of that department or agency shall furnish such
13 nonconfidential information to the Commission. The Com-
14 mission shall also gather evidence through such means as
15 it may deem appropriate, including through holding hear-
16 ings and soliciting comments by means of Federal Reg-
17 ister notices.

18 (g) TERMINATION.—The Commission shall terminate
19 after September 30, 2009.

20 **SEC. 5502. NATIONAL SURFACE TRANSPORTATION INFRA-**
21 **STRUCTURE FINANCING COMMISSION.**

22 (a) ESTABLISHMENT.—There is established a Na-
23 tional Surface Transportation Infrastructure Financing
24 Commission (in this section referred to as the “Commis-
25 sion”). The Commission shall hold its first meeting within

1 90 days of the appointment of the eighth individual to be
2 named to the Commission.

3 (b) FUNCTION.—

4 (1) IN GENERAL.—The Commission shall—

5 (A) make a thorough investigation and
6 study of revenues flowing into the Highway
7 Trust Fund under current law, including the in-
8 dividual components of the overall flow of such
9 revenues;

10 (B) consider whether the amount of such
11 revenues is likely to increase, decline, or remain
12 unchanged, absent changes in the law, particu-
13 larly by taking into account the impact of pos-
14 sible changes in public vehicular choice, fuel
15 use, or travel alternatives that could be ex-
16 pected to reduce or increase revenues into the
17 Highway Trust Fund;

18 (C) consider alternative approaches to gen-
19 erating revenues for the Highway Trust Fund,
20 and the level of revenues that such alternatives
21 would yield;

22 (D) consider highway and transit needs
23 and whether additional revenues into the High-
24 way Trust Fund, or other Federal revenues
25 dedicated to highway and transit infrastructure,

1 would be required in order to meet such needs;
2 and

3 (E) study such other matters closely re-
4 lated to the subjects described in the preceding
5 subparagraphs as it may deem appropriate.

6 (2) TIME FRAME OF INVESTIGATION AND
7 STUDY.—The time frame to be considered by the
8 Commission shall extend through the year 2015.

9 (3) PREPARATION OF REPORT.—Based on such
10 investigation and study, the Commission shall de-
11 velop a final report, with recommendations and the
12 bases for those recommendations, indicating policies
13 that should be adopted, or not adopted, to achieve
14 various levels of annual revenue for the Highway
15 Trust Fund and to enable the Highway Trust Fund
16 to receive revenues sufficient to meet highway and
17 transit needs. Such recommendations shall address,
18 among other matters as the Commission may deem
19 appropriate—

20 (A) what levels of revenue are required by
21 the Federal Highway Trust Fund in order for
22 it to meet needs to—

23 (i) maintain, and

1 (ii) improve the condition and per-
2 formance of the Nation's highway and
3 transit systems;

4 (B) what levels of revenue are required by
5 the Federal Highway Trust Fund in order to
6 ensure that Federal levels of investment in
7 highways and transit do not decline in real
8 terms; and

9 (C) the extent, if any, to which the High-
10 way Trust Fund should be augmented by other
11 mechanisms or funds as a Federal means of fi-
12 nancing highway and transit infrastructure in-
13 vestments.

14 (c) MEMBERSHIP.—

15 (1) APPOINTMENT.—The Commission shall be
16 composed of 15 members, appointed as follows:

17 (A) 7 members appointed by the Secretary
18 of Transportation, in consultation with the Sec-
19 retary of the Treasury.

20 (B) 2 members appointed by the Chairman
21 of the Committee on Ways and Means of the
22 House of Representatives.

23 (C) 2 members appointed by the Ranking
24 Minority Member of the Committee on Ways
25 and Means of the House of Representatives.

1 (D) 2 members appointed by the Chairman
2 of the Committee on Finance of the Senate.

3 (E) 2 members appointed by the Ranking
4 Minority Member of the Committee on Finance
5 of the Senate.

6 (2) QUALIFICATIONS.—Members appointed pur-
7 suant to paragraph (1) shall be appointed from
8 among individuals knowledgeable in the fields of
9 public transportation finance or highway and transit
10 programs, policy, and needs, and may include rep-
11 resentatives of interested parties, such as State and
12 local governments or other public transportation au-
13 thorities or agencies, representatives of the transpor-
14 tation construction industry (including suppliers of
15 technology, machinery and materials), transportation
16 labor (including construction and providers), trans-
17 portation providers, the financial community, and
18 users of highway and transit systems.

19 (3) TERMS.—Members shall be appointed for
20 the life of the Commission.

21 (4) VACANCIES.—A vacancy in the Commission
22 shall be filled in the manner in which the original
23 appointment was made.

24 (5) TRAVEL EXPENSES.—Members shall serve
25 without pay but shall receive travel expenses, includ-

1 ing per diem in lieu of subsistence, in accordance
2 with sections 5702 and 5703 of title 5, United
3 States Code.

4 (6) CHAIRMAN.—The Chairman of the Commis-
5 sion shall be elected by the members.

6 (d) STAFF.—The Commission may appoint and fix
7 the pay of such personnel as it considers appropriate.

8 (e) FUNDING.—Funding for the Commission shall be
9 provided by the Secretary of the Treasury and by the Sec-
10 retary of Transportation, out of funds available to those
11 agencies for administrative and policy functions.

12 (f) STAFF OF FEDERAL AGENCIES.—Upon request
13 of the Commission, the head of any department or agency
14 of the United States may detail any of the personnel of
15 that department or agency to the Commission to assist
16 in carrying out its duties under this section.

17 (g) OBTAINING DATA.—The Commission may secure
18 directly from any department or agency of the United
19 States, information (other than information required by
20 any law to be kept confidential by such department or
21 agency) necessary for the Commission to carry out its du-
22 ties under this section. Upon request of the Commission,
23 the head of that department or agency shall furnish such
24 nonconfidential information to the Commission. The Com-
25 mission shall also gather evidence through such means as

1 it may deem appropriate, including through holding hear-
2 ings and soliciting comments by means of Federal Reg-
3 ister notices.

4 (h) REPORT.—Not later than 2 years after the date
5 of its first meeting, the Commission shall transmit its final
6 report, including recommendations, to the Secretary of
7 Transportation, the Secretary of the Treasury, and the
8 Committee on Ways and Means of the House of Rep-
9 resentatives, the Committee on Finance of the Senate, the
10 Committee on Transportation and Infrastructure of the
11 House of Representatives, the Committee on Environment
12 and Public Works of the Senate, and the Committee on
13 Banking, Housing, and Urban Affairs of the Senate.

14 (i) TERMINATION.—The Commission shall terminate
15 on the 180th day following the date of transmittal of the
16 report under subsection (h). All records and papers of the
17 Commission shall thereupon be delivered to the Adminis-
18 trator of General Services for deposit in the National Ar-
19 chives.

20 **SEC. 5503. TREASURY STUDY OF FUEL TAX COMPLIANCE**
21 **AND INTERAGENCY COOPERATION.**

22 (a) IN GENERAL.—Not later than January 31, 2006,
23 the Secretary of the Treasury shall submit to the Com-
24 mittee on Finance of the Senate and the Committee on
25 Ways and Means of the House of Representatives a report

1 regarding fuel tax enforcement which shall include the in-
2 formation and analysis specified in subsections (b) and (c)
3 and any other information and recommendations the Sec-
4 retary of the Treasury may deem appropriate.

5 (b) AUDITS.—With respect to audits conducted by
6 the Internal Revenue Service, the report required under
7 subsection (a) shall include—

8 (1) the number and geographic distribution of
9 audits conducted annually, by fiscal year, between
10 October 1, 2001, and September 30, 2005;

11 (2) the total volume involved for each of the
12 taxable fuels covered by such audits and a compari-
13 son to the annual production of such fuels;

14 (3) the staff hours and number of personnel de-
15 voted to the audits per year; and

16 (4) the results of such audits by year, including
17 total tax collected, total penalties collected, and
18 number of referrals for criminal prosecution.

19 (c) ENFORCEMENT ACTIVITIES.—With respect to en-
20 forcement activities, the report required under subsection
21 (a) shall include—

22 (1) the number and geographic distribution of
23 criminal investigations and prosecutions annually, by
24 fiscal year, between October 1, 2001, and September

1 30, 2005, and the results of such investigations and
2 prosecutions;

3 (2) to the extent such investigations and pros-
4 ecutions involved other agencies, State or Federal, a
5 breakdown by agency of the number of joint inves-
6 tigations involved;

7 (3) an assessment of the effectiveness of joint
8 action and cooperation between the Department of
9 the Treasury and other Federal and State agencies,
10 including a discussion of the ability and need to
11 share information across agencies for both civil and
12 criminal Federal tax enforcement and enforcement
13 of State or Federal laws relating to fuels;

14 (4) the staff hours and number of personnel de-
15 voted to criminal investigations and prosecutions per
16 year;

17 (5) the staff hours and number of personnel de-
18 voted to administrative collection of fuel taxes; and

19 (6) the results of administrative collection ef-
20 forts annually, by fiscal year, between October 1,
21 2001, and September 30, 2005.

1 **SEC. 5504. EXPANSION OF HIGHWAY TRUST FUND EXPENDI-**
2 **TURE PURPOSES TO INCLUDE FUNDING FOR**
3 **STUDIES OF SUPPLEMENTAL OR ALTER-**
4 **NATIVE FINANCING FOR THE HIGHWAY**
5 **TRUST FUND.**

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

10 (1) \$1,000,000 to the Western Transportation
11 Institute of the College of Engineering at Montana
12 State University for the study and report described
13 in subsection (b), and

14 (2) \$16,500,000 to the Public Policy Center of
15 the University of Iowa for the study and report de-
16 scribed in subsection (c).

17 (b) STUDY OF FUNDING MECHANISMS.—Not later
18 than December 31, 2006, the Western Transportation In-
19 stitute of the College of Engineering at Montana State
20 University shall report to the Secretary of the Treasury
21 and the Secretary of Transportation on a study of highway
22 funding mechanisms of other industrialized nations, an ex-
23 amination of the viability of alternative funding proposals,
24 including congestion pricing, greater reliance on tolls, pri-
25 vatization of facilities, and bonding for construction of
26 added capacity, and an examination of increasing the rates

1 of motor fuels taxes in effect on the date of the enactment
2 of this Act, including the indexation of such rates.

3 (c) STUDY ON FIELD TEST OF ON-BOARD COM-
4 PUTER ASSESSMENT OF HIGHWAY USE TAXES.—Not
5 later than December 31, 2011, the Public Policy Center
6 of the University of Iowa shall direct, analyze, and report
7 to the Secretary of the Treasury and the Secretary of
8 Transportation on a long-term field test of an approach
9 to assessing highway use taxes based upon actual mileage
10 driven by a specific vehicle on specific types of highways
11 by use of an on-board computer—

12 (1) which is linked to satellites to calculate
13 highway mileage traversed,

14 (2) which computes the appropriate highway
15 use tax for each of the Federal, State, and local gov-
16 ernments as the vehicle makes use of the highways,
17 and

18 (3) the data from which is periodically
19 downloaded by the vehicle owner to a collection cen-
20 ter for an assessment of highway use taxes due in
21 each jurisdiction traversed. The components of the
22 field test shall include 2 years for preparation, in-
23 cluding selection of vendors and test participants,
24 and 3-year testing period.

1 **SEC. 5505. TREASURY STUDY OF HIGHWAY FUELS USED BY**
2 **TRUCKS FOR NON-TRANSPORTATION PUR-**
3 **POSES.**

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

7 As part of such study—

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

11 (A) the Secretary of the Treasury, in con-
12 sultation with the Secretary of Transportation,
13 and with public notice and comment, shall de-
14 termine the average annual amount of tax paid
15 fuel consumed per vehicle, by type of vehicle,
16 used by the propulsion engine to provide the
17 power to operate the equipment attached to the
18 highway vehicle, and

19 (B) the Secretary of the Treasury shall re-
20 view the technical and administrative feasibility
21 of exempting such nonpropulsive use of highway
22 fuels for the highway motor fuels excise taxes,

23 (2) in the case where non-transportation equip-
24 ment is run by a separate motor—

25 (A) the Secretary of the Treasury shall de-
26 termine the annual average amount of fuel ex-

1 empted from tax in the use of such equipment
2 by equipment type, and

3 (B) the Secretary of the Treasury shall re-
4 view issues of administration and compliance
5 related to the present-law exemption provided
6 for such fuel use, and

7 (3) the Secretary of the Treasury shall—

8 (A) estimate the amount of taxable fuel
9 consumed by trucks and the emissions of var-
10 ious pollutants due to the long-term idling of
11 diesel engines, and

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

16 (b) REPORT.—Not later than January 1, 2006, the
17 Secretary of the Treasury shall report the findings of the
18 study required under subsection (a) to the Committee on
19 Finance of the Senate and the Committee on Ways and
20 Means of the House of Representatives.

21 **SEC. 5506. DELTA REGIONAL TRANSPORTATION PLAN.**

22 (a) STUDY.—The Delta Regional Authority shall con-
23 duct a study of the transportation assets and needs in the
24 States of Alabama, Arkansas, Illinois, Kentucky, Lou-

1 isiana, Mississippi, Missouri, and Tennessee which com-
2 prise the Delta region.

3 (b) REGIONAL STRATEGIC TRANSPORTATION
4 PLAN.—Upon completion of the study required under sub-
5 section (a), the Delta Regional Authority shall establish
6 a regional strategic transportation plan to achieve efficient
7 transportation systems in the Delta region. In developing
8 the regional strategic transportation plan, the Delta Re-
9 gional Authority shall consult with local planning and de-
10 velopment districts, local and regional governments, met-
11 ropolitan planning organizations, State transportation en-
12 tities, and Federal transportation agencies.

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

17 (d) AUTHORIZATION OF APPROPRIATIONS.—There is
18 authorized to be appropriated to the Delta Regional Au-
19 thority \$1,000,000 to carry out the purposes of this sec-
20 tion, to remain available until expended.

21 **SEC. 5507. TREATMENT OF EMPLOYER-PROVIDED TRANSIT**
22 **AND VAN POOLING BENEFITS.**

23 (a) IN GENERAL.—Subparagraph (A) of section
24 132(f)(2) (relating to limitation on exclusion) is amended
25 by striking “\$100” and inserting “\$120”.

1 (b) INFLATION ADJUSTMENT CONFORMING AMEND-
2 MENTS.—The last sentence of section 132(f)(6)(A) (relat-
3 ing to inflation adjustment) is amended—

4 (1) by striking “2002” and inserting “2005”,
5 and

6 (2) by striking “2001” and inserting “2004”.

7 (c) EFFECTIVE DATE.—The amendments made by
8 this section shall apply to taxable years beginning after
9 December 31, 2004.

10 **SEC. 5508. STUDY OF INCENTIVES FOR PRODUCTION OF**
11 **BIODIESEL.**

12 (a) STUDY.—The General Comptroller of the United
13 States shall conduct a study related to biodiesel fuels and
14 the tax credit for biodiesel fuels established under this Act.
15 Such study shall include—

16 (1) an assessment on whether such credit pro-
17 vides sufficient assistance to the producers of bio-
18 diesel fuel to establish the fuel as a viable energy al-
19 ternative in the current market place,

20 (2) an assessment on how long such credit or
21 similar subsidy would have to remain in effect before
22 biodiesel fuel can compete in the market place with-
23 out such assistance,

24 (3) a cost-benefit analysis of such credit, com-
25 paring the cost of the credit in forgone revenue to

1 the benefits of lower fuel costs for consumers, in-
 2 creased profitability for the biodiesel industry, in-
 3 creased farm income, reduced program outlays from
 4 the Department of Agriculture, and the improved
 5 environmental conditions through the use of bio-
 6 diesel fuel, and

7 (4) an assessment on whether such credit re-
 8 sults in any unintended consequences for unrelated
 9 industries, including the impact, if any, on the glyce-
 10 rin market.

11 (b) REPORT.—Not later than 2 years after the date
 12 of the enactment of this Act, the Comptroller General of
 13 the United States shall report the findings of the study
 14 required under subsection (a) to the Committee on Fi-
 15 nance of the Senate and the Committee on Ways and
 16 Means of the House of Representatives.

17 **Subtitle G—Revenue Offsets**

18 **PART I—LIMITATION ON EXPENSING CERTAIN**

19 **PASSENGER AUTOMOBILES**

20 **SEC. 5601. EXPANSION OF LIMITATION ON DEPRECIATION** 21 **OF CERTAIN PASSENGER AUTOMOBILES.**

22 (a) IN GENERAL.—Section 179(b) (relating to limita-
 23 tions) is amended by adding at the end the following new
 24 paragraph:

1 “(6) LIMITATION ON COST TAKEN INTO AC-
2 COUNT FOR CERTAIN PASSENGER VEHICLES.—

3 “(A) IN GENERAL.—The cost of any sport
4 utility vehicle for any taxable year which may
5 be taken into account under this section shall
6 not exceed \$25,000.

7 “(B) SPORT UTILITY VEHICLE.—For pur-
8 poses of subparagraph (A)—

9 “(i) IN GENERAL.—The term ‘sport
10 utility vehicle’ means any 4-wheeled vehicle
11 which—

12 “(I) is manufactured primarily
13 for use on public streets, roads, and
14 highways,

15 “(II) is not subject to section
16 280F, and

17 “(III) is rated at not more than
18 14,000 pounds gross vehicle weight.

19 “(ii) CERTAIN VEHICLES EX-
20 CLUDED.—Such term does not include any
21 vehicle which—

22 “(I) does not have the primary
23 load carrying device or container at-
24 tached,

1 “(II) has a seating capacity of
2 more than 12 individuals,

3 “(III) is designed for more than
4 9 individuals in seating rearward of
5 the driver’s seat,

6 “(IV) is equipped with an open
7 cargo area, or a covered box not read-
8 ily accessible from the passenger com-
9 partment, of at least 72.0 inches in
10 interior length, or

11 “(V) has an integral enclosure,
12 fully enclosing the driver compartment
13 and load carrying device, does not
14 have seating rearward of the driver’s
15 seat, and has no body section pro-
16 truding more than 30 inches ahead of
17 the leading edge of the windshield.”.

18 (c) EFFECTIVE DATE.—The amendments made by
19 this section shall apply to property placed in service after
20 February 2, 2004.

1 **PART II—PROVISIONS DESIGNED TO CURTAIL**2 **TAX SHELTERS**3 **SEC. 5611. CLARIFICATION OF ECONOMIC SUBSTANCE DOC-**4 **TRINE.**

5 (a) IN GENERAL.—Section 7701 is amended by re-
6 designating subsection (n) as subsection (o) and by insert-
7 ing after subsection (m) the following new subsection:

8 “(n) CLARIFICATION OF ECONOMIC SUBSTANCE
9 DOCTRINE; ETC.—

10 “(1) GENERAL RULES.—

11 “(A) IN GENERAL.—In any case in which
12 a court determines that the economic substance
13 doctrine is relevant for purposes of this title to
14 a transaction (or series of transactions), such
15 transaction (or series of transactions) shall have
16 economic substance only if the requirements of
17 this paragraph are met.

18 “(B) DEFINITION OF ECONOMIC SUB-
19 STANCE.—For purposes of subparagraph (A)—

20 “(i) IN GENERAL.—A transaction has
21 economic substance only if—

22 “(I) the transaction changes in a
23 meaningful way (apart from Federal
24 tax effects) the taxpayer’s economic
25 position, and

1 “(II) the taxpayer has a substan-
2 tial nontax purpose for entering into
3 such transaction and the transaction
4 is a reasonable means of accom-
5 plishing such purpose.

6 In applying subclause (II), a purpose of
7 achieving a financial accounting benefit
8 shall not be taken into account in deter-
9 mining whether a transaction has a sub-
10 stantial nontax purpose if the origin of
11 such financial accounting benefit is a re-
12 duction of income tax.

13 “(ii) SPECIAL RULE WHERE TAX-
14 PAYER RELIES ON PROFIT POTENTIAL.—A
15 transaction shall not be treated as having
16 economic substance by reason of having a
17 potential for profit unless—

18 “(I) the present value of the rea-
19 sonably expected pre-tax profit from
20 the transaction is substantial in rela-
21 tion to the present value of the ex-
22 pected net tax benefits that would be
23 allowed if the transaction were re-
24 spected, and

1 “(II) the reasonably expected
2 pre-tax profit from the transaction ex-
3 ceeds a risk-free rate of return.

4 “(C) TREATMENT OF FEES AND FOREIGN
5 TAXES.—Fees and other transaction expenses
6 and foreign taxes shall be taken into account as
7 expenses in determining pre-tax profit under
8 subparagraph (B)(ii).

9 “(2) SPECIAL RULES FOR TRANSACTIONS WITH
10 TAX-INDIFFERENT PARTIES.—

11 “(A) SPECIAL RULES FOR FINANCING
12 TRANSACTIONS.—The form of a transaction
13 which is in substance the borrowing of money
14 or the acquisition of financial capital directly or
15 indirectly from a tax-indifferent party shall not
16 be respected if the present value of the deduc-
17 tions to be claimed with respect to the trans-
18 action is substantially in excess of the present
19 value of the anticipated economic returns of the
20 person lending the money or providing the fi-
21 nancial capital. A public offering shall be treat-
22 ed as a borrowing, or an acquisition of financial
23 capital, from a tax-indifferent party if it is rea-
24 sonably expected that at least 50 percent of the

1 offering will be placed with tax-indifferent par-
2 ties.

3 “(B) ARTIFICIAL INCOME SHIFTING AND
4 BASIS ADJUSTMENTS.—The form of a trans-
5 action with a tax-indifferent party shall not be
6 respected if—

7 “(i) it results in an allocation of in-
8 come or gain to the tax-indifferent party in
9 excess of such party’s economic income or
10 gain, or

11 “(ii) it results in a basis adjustment
12 or shifting of basis on account of over-
13 stating the income or gain of the tax-indif-
14 ferent party.

15 “(3) DEFINITIONS AND SPECIAL RULES.—For
16 purposes of this subsection—

17 “(A) ECONOMIC SUBSTANCE DOCTRINE.—
18 The term ‘economic substance doctrine’ means
19 the common law doctrine under which tax bene-
20 fits under subtitle A with respect to a trans-
21 action are not allowable if the transaction does
22 not have economic substance or lacks a business
23 purpose.

24 “(B) TAX-INDIFFERENT PARTY.—The
25 term ‘tax-indifferent party’ means any person

1 or entity not subject to tax imposed by subtitle
2 A. A person shall be treated as a tax-indifferent
3 party with respect to a transaction if the items
4 taken into account with respect to the trans-
5 action have no substantial impact on such per-
6 son's liability under subtitle A.

7 “(C) EXCEPTION FOR PERSONAL TRANS-
8 ACTIONS OF INDIVIDUALS.—In the case of an
9 individual, this subsection shall apply only to
10 transactions entered into in connection with a
11 trade or business or an activity engaged in for
12 the production of income.

13 “(D) TREATMENT OF LESSORS.—In apply-
14 ing paragraph (1)(B)(ii) to the lessor of tan-
15 gible property subject to a lease—

16 “(i) the expected net tax benefits with
17 respect to the leased property shall not in-
18 clude the benefits of—

19 “(I) depreciation,

20 “(II) any tax credit, or

21 “(III) any other deduction as
22 provided in guidance by the Secretary,
23 and

24 “(ii) subclause (II) of paragraph
25 (1)(B)(ii) shall be disregarded in deter-

1 mining whether any of such benefits are al-
2 lowable.

3 “(4) OTHER COMMON LAW DOCTRINES NOT AF-
4 FECTED.—Except as specifically provided in this
5 subsection, the provisions of this subsection shall not
6 be construed as altering or supplanting any other
7 rule of law, and the requirements of this subsection
8 shall be construed as being in addition to any such
9 other rule of law.

10 “(5) REGULATIONS.—The Secretary shall pre-
11 scribe such regulations as may be necessary or ap-
12 propriate to carry out the purposes of this sub-
13 section. Such regulations may include exemptions
14 from the application of this subsection.”.

15 (b) EFFECTIVE DATE.—The amendments made by
16 this section shall apply to transactions entered into after
17 February 2, 2004.

18 **SEC. 5612. PENALTY FOR FAILING TO DISCLOSE REPORT-**
19 **ABLE TRANSACTION.**

20 (a) IN GENERAL.—Part I of subchapter B of chapter
21 68 (relating to assessable penalties) is amended by insert-
22 ing after section 6707 the following new section:

1 **“SEC. 6707A. PENALTY FOR FAILURE TO INCLUDE REPORT-**
2 **ABLE TRANSACTION INFORMATION WITH RE-**
3 **TURN OR STATEMENT.**

4 “(a) IMPOSITION OF PENALTY.—Any person who
5 fails to include on any return or statement any informa-
6 tion with respect to a reportable transaction which is re-
7 quired under section 6011 to be included with such return
8 or statement shall pay a penalty in the amount determined
9 under subsection (b).

10 “(b) AMOUNT OF PENALTY.—

11 “(1) IN GENERAL.—Except as provided in para-
12 graphs (2) and (3), the amount of the penalty under
13 subsection (a) shall be \$50,000.

14 “(2) LISTED TRANSACTION.—The amount of
15 the penalty under subsection (a) with respect to a
16 listed transaction shall be \$100,000.

17 “(3) INCREASE IN PENALTY FOR LARGE ENTI-
18 TIES AND HIGH NET WORTH INDIVIDUALS.—

19 “(A) IN GENERAL.—In the case of a fail-
20 ure under subsection (a) by—

21 “(i) a large entity, or

22 “(ii) a high net worth individual,
23 the penalty under paragraph (1) or (2) shall be
24 twice the amount determined without regard to
25 this paragraph.

1 “(B) LARGE ENTITY.—For purposes of
2 subparagraph (A), the term ‘large entity’
3 means, with respect to any taxable year, a per-
4 son (other than a natural person) with gross re-
5 ceipts in excess of \$10,000,000 for the taxable
6 year in which the reportable transaction occurs
7 or the preceding taxable year. Rules similar to
8 the rules of paragraph (2) and subparagraphs
9 (B), (C), and (D) of paragraph (3) of section
10 448(c) shall apply for purposes of this subpara-
11 graph.

12 “(C) HIGH NET WORTH INDIVIDUAL.—For
13 purposes of subparagraph (A), the term ‘high
14 net worth individual’ means, with respect to a
15 reportable transaction, a natural person whose
16 net worth exceeds \$2,000,000 immediately be-
17 fore the transaction.

18 “(c) DEFINITIONS.—For purposes of this section—

19 “(1) REPORTABLE TRANSACTION.—The term
20 ‘reportable transaction’ means any transaction with
21 respect to which information is required to be in-
22 cluded with a return or statement because, as deter-
23 mined under regulations prescribed under section
24 6011, such transaction is of a type which the Sec-

1 retary determines as having a potential for tax
2 avoidance or evasion.

3 “(2) LISTED TRANSACTION.—Except as pro-
4 vided in regulations, the term ‘listed transaction’
5 means a reportable transaction which is the same as,
6 or substantially similar to, a transaction specifically
7 identified by the Secretary as a tax avoidance trans-
8 action for purposes of section 6011.

9 “(d) AUTHORITY TO RESCIND PENALTY.—

10 “(1) IN GENERAL.—The Commissioner of In-
11 ternal Revenue may rescind all or any portion of any
12 penalty imposed by this section with respect to any
13 violation if—

14 “(A) the violation is with respect to a re-
15 portable transaction other than a listed trans-
16 action,

17 “(B) the person on whom the penalty is
18 imposed has a history of complying with the re-
19 quirements of this title,

20 “(C) it is shown that the violation is due
21 to an unintentional mistake of fact;

22 “(D) imposing the penalty would be
23 against equity and good conscience, and

1 “(E) rescinding the penalty would promote
2 compliance with the requirements of this title
3 and effective tax administration.

4 “(2) DISCRETION.—The exercise of authority
5 under paragraph (1) shall be at the sole discretion
6 of the Commissioner and may be delegated only to
7 the head of the Office of Tax Shelter Analysis. The
8 Commissioner, in the Commissioner’s sole discretion,
9 may establish a procedure to determine if a penalty
10 should be referred to the Commissioner or the head
11 of such Office for a determination under paragraph
12 (1).

13 “(3) NO APPEAL.—Notwithstanding any other
14 provision of law, any determination under this sub-
15 section may not be reviewed in any administrative or
16 judicial proceeding.

17 “(4) RECORDS.—If a penalty is rescinded under
18 paragraph (1), the Commissioner shall place in the
19 file in the Office of the Commissioner the opinion of
20 the Commissioner or the head of the Office of Tax
21 Shelter Analysis with respect to the determination,
22 including—

23 “(A) the facts and circumstances of the
24 transaction,

25 “(B) the reasons for the rescission, and

1 “(C) the amount of the penalty rescinded.

2 “(5) REPORT.—The Commissioner shall each
3 year report to the Committee on Ways and Means
4 of the House of Representatives and the Committee
5 on Finance of the Senate—

6 “(A) a summary of the total number and
7 aggregate amount of penalties imposed, and re-
8 scinded, under this section, and

9 “(B) a description of each penalty re-
10 scinded under this subsection and the reasons
11 therefor.

12 “(e) PENALTY REPORTED TO SEC.—In the case of
13 a person—

14 “(1) which is required to file periodic reports
15 under section 13 or 15(d) of the Securities Ex-
16 change Act of 1934 or is required to be consolidated
17 with another person for purposes of such reports,
18 and

19 “(2) which—

20 “(A) is required to pay a penalty under
21 this section with respect to a listed transaction,

22 “(B) is required to pay a penalty under
23 section 6662A with respect to any reportable
24 transaction at a rate prescribed under section
25 6662A(c), or

1 “(C) is required to pay a penalty under
2 section 6662B with respect to any noneconomic
3 substance transaction,
4 the requirement to pay such penalty shall be disclosed in
5 such reports filed by such person for such periods as the
6 Secretary shall specify. Failure to make a disclosure in
7 accordance with the preceding sentence shall be treated
8 as a failure to which the penalty under subsection (b)(2)
9 applies.

10 “(f) COORDINATION WITH OTHER PENALTIES.—The
11 penalty imposed by this section is in addition to any pen-
12 alty imposed under this title.”.

13 (b) CONFORMING AMENDMENT.—The table of sec-
14 tions for part I of subchapter B of chapter 68 is amended
15 by inserting after the item relating to section 6707 the
16 following:

“Sec. 6707A. Penalty for failure to include reportable transaction information
with return or statement.”.

17 (c) EFFECTIVE DATE.—The amendments made by
18 this section shall apply to returns and statements the due
19 date for which is after the date of the enactment of this
20 Act.

1 **SEC. 5613. ACCURACY-RELATED PENALTY FOR LISTED**
2 **TRANSACTIONS AND OTHER REPORTABLE**
3 **TRANSACTIONS HAVING A SIGNIFICANT TAX**
4 **AVOIDANCE PURPOSE.**

5 (a) IN GENERAL.—Subchapter A of chapter 68 is
6 amended by inserting after section 6662 the following new
7 section:

8 **“SEC. 6662A. IMPOSITION OF ACCURACY-RELATED PEN-**
9 **ALTY ON UNDERSTATEMENTS WITH RESPECT**
10 **TO REPORTABLE TRANSACTIONS.**

11 “(a) IMPOSITION OF PENALTY.—If a taxpayer has a
12 reportable transaction understatement for any taxable
13 year, there shall be added to the tax an amount equal to
14 20 percent of the amount of such understatement.

15 “(b) REPORTABLE TRANSACTION UNDERSTATE-
16 MENT.—For purposes of this section—

17 “(1) IN GENERAL.—The term ‘reportable trans-
18 action understatement’ means the sum of—

19 “(A) the product of—

20 “(i) the amount of the increase (if
21 any) in taxable income which results from
22 a difference between the proper tax treat-
23 ment of an item to which this section ap-
24 plies and the taxpayer’s treatment of such
25 item (as shown on the taxpayer’s return of
26 tax), and

1 “(ii) the highest rate of tax imposed
2 by section 1 (section 11 in the case of a
3 taxpayer which is a corporation), and

4 “(B) the amount of the decrease (if any)
5 in the aggregate amount of credits determined
6 under subtitle A which results from a difference
7 between the taxpayer’s treatment of an item to
8 which this section applies (as shown on the tax-
9 payer’s return of tax) and the proper tax treat-
10 ment of such item.

11 For purposes of subparagraph (A), any reduction of
12 the excess of deductions allowed for the taxable year
13 over gross income for such year, and any reduction
14 in the amount of capital losses which would (without
15 regard to section 1211) be allowed for such year,
16 shall be treated as an increase in taxable income.

17 “(2) ITEMS TO WHICH SECTION APPLIES.—This
18 section shall apply to any item which is attributable
19 to—

20 “(A) any listed transaction, and

21 “(B) any reportable transaction (other
22 than a listed transaction) if a significant pur-
23 pose of such transaction is the avoidance or
24 evasion of Federal income tax.

1 “(c) HIGHER PENALTY FOR NONDISCLOSED LISTED
2 AND OTHER AVOIDANCE TRANSACTIONS.—

3 “(1) IN GENERAL.—Subsection (a) shall be ap-
4 plied by substituting ‘30 percent’ for ‘20 percent’
5 with respect to the portion of any reportable trans-
6 action understatement with respect to which the re-
7 quirement of section 6664(d)(2)(A) is not met.

8 “(2) RULES APPLICABLE TO ASSERTION AND
9 COMPROMISE OF PENALTY.—

10 “(A) IN GENERAL.—Only upon the ap-
11 proval by the Chief Counsel for the Internal
12 Revenue Service or the Chief Counsel’s delegate
13 at the national office of the Internal Revenue
14 Service may a penalty to which paragraph (1)
15 applies be included in a 1st letter of proposed
16 deficiency which allows the taxpayer an oppor-
17 tunity for administrative review in the Internal
18 Revenue Service Office of Appeals. If such a
19 letter is provided to the taxpayer, only the Com-
20 missioner of Internal Revenue may compromise
21 all or any portion of such penalty.

22 “(B) APPLICABLE RULES.—The rules of
23 paragraphs (2), (3), (4), and (5) of section
24 6707A(d) shall apply for purposes of subpara-
25 graph (A).

1 “(d) DEFINITIONS OF REPORTABLE AND LISTED
2 TRANSACTIONS.—For purposes of this section, the terms
3 ‘reportable transaction’ and ‘listed transaction’ have the
4 respective meanings given to such terms by section
5 6707A(c).

6 “(e) SPECIAL RULES.—

7 “(1) COORDINATION WITH PENALTIES, ETC.,
8 ON OTHER UNDERSTATEMENTS.—In the case of an
9 understatement (as defined in section 6662(d)(2))—

10 “(A) the amount of such understatement
11 (determined without regard to this paragraph)
12 shall be increased by the aggregate amount of
13 reportable transaction understatements and
14 noneconomic substance transaction understate-
15 ments for purposes of determining whether
16 such understatement is a substantial under-
17 statement under section 6662(d)(1), and

18 “(B) the addition to tax under section
19 6662(a) shall apply only to the excess of the
20 amount of the substantial understatement (if
21 any) after the application of subparagraph (A)
22 over the aggregate amount of reportable trans-
23 action understatements and noneconomic sub-
24 stance transaction understatements.

1 “(2) COORDINATION WITH OTHER PEN-
2 ALTIES.—

3 “(A) APPLICATION OF FRAUD PENALTY.—
4 References to an underpayment in section 6663
5 shall be treated as including references to a re-
6 portable transaction understatement and a non-
7 economic substance transaction understatement.

8 “(B) NO DOUBLE PENALTY.—This section
9 shall not apply to any portion of an understate-
10 ment on which a penalty is imposed under sec-
11 tion 6662B or 6663.

12 “(3) SPECIAL RULE FOR AMENDED RE-
13 TURNS.—Except as provided in regulations, in no
14 event shall any tax treatment included with an
15 amendment or supplement to a return of tax be
16 taken into account in determining the amount of any
17 reportable transaction understatement or non-
18 economic substance transaction understatement if
19 the amendment or supplement is filed after the ear-
20 lier of the date the taxpayer is first contacted by the
21 Secretary regarding the examination of the return or
22 such other date as is specified by the Secretary.

23 “(4) NONECONOMIC SUBSTANCE TRANS-
24 ACTION UNDERSTATEMENT.—For purposes of
25 this subsection, the term ‘noneconomic sub-

1 stance transaction understatement' has the
2 meaning given such term by section 6662B(c).

3 “(5) CROSS REFERENCE.—

**“For reporting of section 6662A(c) penalty to the
Securities and Exchange Commission, see section
6707A(e).”**

4 (b) DETERMINATION OF OTHER UNDERSTATE-
5 MENTS.—Subparagraph (A) of section 6662(d)(2) is
6 amended by adding at the end the following flush sen-
7 tence:

8 “The excess under the preceding sentence shall
9 be determined without regard to items to which
10 section 6662A applies and without regard to
11 items with respect to which a penalty is im-
12 posed by section 6662B.”.

13 (c) REASONABLE CAUSE EXCEPTION.—

14 (1) IN GENERAL.—Section 6664 is amended by
15 adding at the end the following new subsection:

16 “(d) REASONABLE CAUSE EXCEPTION FOR REPORT-
17 ABLE TRANSACTION UNDERSTATEMENTS.—

18 “(1) IN GENERAL.—No penalty shall be im-
19 posed under section 6662A with respect to any por-
20 tion of a reportable transaction understatement if it
21 is shown that there was a reasonable cause for such
22 portion and that the taxpayer acted in good faith
23 with respect to such portion.

1 “(2) SPECIAL RULES.—Paragraph (1) shall not
2 apply to any reportable transaction understatement
3 unless—

4 “(A) the relevant facts affecting the tax
5 treatment of the item are adequately disclosed
6 in accordance with the regulations prescribed
7 under section 6011,

8 “(B) there is or was substantial authority
9 for such treatment, and

10 “(C) the taxpayer reasonably believed that
11 such treatment was more likely than not the
12 proper treatment.

13 A taxpayer failing to adequately disclose in accord-
14 ance with section 6011 shall be treated as meeting
15 the requirements of subparagraph (A) if the penalty
16 for such failure was rescinded under section
17 6707A(d).

18 “(3) RULES RELATING TO REASONABLE BE-
19 LIEF.—For purposes of paragraph (2)(C)—

20 “(A) IN GENERAL.—A taxpayer shall be
21 treated as having a reasonable belief with re-
22 spect to the tax treatment of an item only if
23 such belief—

1 “(i) is based on the facts and law that
2 exist at the time the return of tax which
3 includes such tax treatment is filed, and

4 “(ii) relates solely to the taxpayer’s
5 chances of success on the merits of such
6 treatment and does not take into account
7 the possibility that a return will not be au-
8 dited, such treatment will not be raised on
9 audit, or such treatment will be resolved
10 through settlement if it is raised.

11 “(B) CERTAIN OPINIONS MAY NOT BE RE-
12 LIED UPON.—

13 “(i) IN GENERAL.—An opinion of a
14 tax advisor may not be relied upon to es-
15 tablish the reasonable belief of a taxpayer
16 if—

17 “(I) the tax advisor is described
18 in clause (ii), or

19 “(II) the opinion is described in
20 clause (iii).

21 “(ii) DISQUALIFIED TAX ADVISORS.—
22 A tax advisor is described in this clause if
23 the tax advisor—

24 “(I) is a material advisor (within
25 the meaning of section 6111(b)(1))

1 who participates in the organization,
2 management, promotion, or sale of
3 the transaction or who is related
4 (within the meaning of section 267(b)
5 or 707(b)(1)) to any person who so
6 participates,

7 “(II) is compensated directly or
8 indirectly by a material advisor with
9 respect to the transaction,

10 “(III) has a fee arrangement
11 with respect to the transaction which
12 is contingent on all or part of the in-
13 tended tax benefits from the trans-
14 action being sustained, or

15 “(IV) as determined under regu-
16 lations prescribed by the Secretary,
17 has a disqualifying financial interest
18 with respect to the transaction.

19 “(iii) DISQUALIFIED OPINIONS.—For
20 purposes of clause (i), an opinion is dis-
21 qualified if the opinion—

22 “(I) is based on unreasonable
23 factual or legal assumptions (includ-
24 ing assumptions as to future events),

1 “(II) unreasonably relies on rep-
2 resentations, statements, findings, or
3 agreements of the taxpayer or any
4 other person,

5 “(III) does not identify and con-
6 sider all relevant facts, or

7 “(IV) fails to meet any other re-
8 quirement as the Secretary may pre-
9 scribe.”.

10 (2) CONFORMING AMENDMENT.—The heading
11 for subsection (c) of section 6664 is amended by in-
12 sserting “FOR UNDERPAYMENTS” after “EXCEP-
13 TION”.

14 (d) CONFORMING AMENDMENTS.—

15 (1) Subparagraph (C) of section 461(i)(3) is
16 amended by striking “section 6662(d)(2)(C)(iii)”
17 and inserting “section 1274(b)(3)(C)”.

18 (2) Paragraph (3) of section 1274(b) is
19 amended—

20 (A) by striking “(as defined in section
21 6662(d)(2)(C)(iii))” in subparagraph (B)(i),
22 and

23 (B) by adding at the end the following new
24 subparagraph:

1 “(C) TAX SHELTER.—For purposes of sub-
2 paragraph (B), the term ‘tax shelter’ means—
3 “(i) a partnership or other entity,
4 “(ii) any investment plan or arrange-
5 ment, or
6 “(iii) any other plan or arrangement,
7 if a significant purpose of such partnership, en-
8 tity, plan, or arrangement is the avoidance or
9 evasion of Federal income tax.”.

10 (3) Section 6662(d)(2) is amended by striking
11 subparagraphs (C) and (D).

12 (4) Section 6664(c)(1) is amended by striking
13 “this part” and inserting “section 6662 or 6663”.

14 (5) Subsection (b) of section 7525 is amended
15 by striking “section 6662(d)(2)(C)(iii)” and insert-
16 ing “section 1274(b)(3)(C)”.

17 (6)(A) The heading for section 6662 is amend-
18 ed to read as follows:

19 **“SEC. 6662. IMPOSITION OF ACCURACY-RELATED PENALTY**
20 **ON UNDERPAYMENTS.”.**

21 (B) The table of sections for part II of sub-
22 chapter A of chapter 68 is amended by striking the
23 item relating to section 6662 and inserting the fol-
24 lowing new items:

“Sec. 6662. Imposition of accuracy-related penalty on underpayments.

“Sec. 6662A. Imposition of accuracy-related penalty on understatements with respect to reportable transactions.”.

1 (e) EFFECTIVE DATE.—The amendments made by
2 this section shall apply to taxable years ending after the
3 date of the enactment of this Act.

4 **SEC. 5614. PENALTY FOR UNDERSTATEMENTS ATTRIB-**
5 **UTABLE TO TRANSACTIONS LACKING ECO-**
6 **NOMIC SUBSTANCE, ETC.**

7 (a) IN GENERAL.—Subchapter A of chapter 68 is
8 amended by inserting after section 6662A the following
9 new section:

10 **“SEC. 6662B. PENALTY FOR UNDERSTATEMENTS ATTRIB-**
11 **UTABLE TO TRANSACTIONS LACKING ECO-**
12 **NOMIC SUBSTANCE, ETC.**

13 “(a) IMPOSITION OF PENALTY.—If a taxpayer has an
14 noneconomic substance transaction understatement for
15 any taxable year, there shall be added to the tax an
16 amount equal to 40 percent of the amount of such under-
17 statement.

18 “(b) REDUCTION OF PENALTY FOR DISCLOSED
19 TRANSACTIONS.—Subsection (a) shall be applied by sub-
20 stituting ‘20 percent’ for ‘40 percent’ with respect to the
21 portion of any noneconomic substance transaction under-
22 statement with respect to which the relevant facts affect-
23 ing the tax treatment of the item are adequately disclosed
24 in the return or a statement attached to the return.

1 “(c) NONECONOMIC SUBSTANCE TRANSACTION UN-
2 DERSTATEMENT.—For purposes of this section—

3 “(1) IN GENERAL.—The term ‘noneconomic
4 substance transaction understatement’ means any
5 amount which would be an understatement under
6 section 6662A(b)(1) if section 6662A were applied
7 by taking into account items attributable to non-
8 economic substance transactions rather than items
9 to which section 6662A would apply without regard
10 to this paragraph.

11 “(2) NONECONOMIC SUBSTANCE TRANS-
12 ACTION.—The term ‘noneconomic substance trans-
13 action’ means any transaction if—

14 “(A) there is a lack of economic substance
15 (within the meaning of section 7701(n)(1)) for
16 the transaction giving rise to the claimed ben-
17 efit or the transaction was not respected under
18 section 7701(n)(2), or

19 “(B) the transaction fails to meet the re-
20 quirements of any similar rule of law.

21 “(d) RULES APPLICABLE TO COMPROMISE OF PEN-
22 ALTY.—

23 “(1) IN GENERAL.—If the 1st letter of pro-
24 posed deficiency which allows the taxpayer an oppor-
25 tunity for administrative review in the Internal Rev-

1 enue Service Office of Appeals has been sent with
 2 respect to a penalty to which this section applies,
 3 only the Commissioner of Internal Revenue may
 4 compromise all or any portion of such penalty.

5 “(2) APPLICABLE RULES.—The rules of para-
 6 graphs (2), (3), (4), and (5) of section 6707A(d)
 7 shall apply for purposes of paragraph (1).

8 “(e) COORDINATION WITH OTHER PENALTIES.—Ex-
 9 cept as otherwise provided in this part, the penalty im-
 10 posed by this section shall be in addition to any other pen-
 11 alty imposed by this title.

12 “(f) CROSS REFERENCES.—

**“(1) For coordination of penalty with understate-
 ments 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).”**

13 (b) CLERICAL AMENDMENT.—The table of sections
 14 for part II of subchapter A of chapter 68 is amended by
 15 inserting after the item relating to section 6662A the fol-
 16 lowing new item:

 “Sec. 6662B. Penalty for understatements attributable to transactions lacking
 economic substance, etc.”.

17 (c) EFFECTIVE DATE.—The amendments made by
 18 this section shall apply to transactions entered into after
 19 February 2, 2004.

1 **SEC. 5615. MODIFICATIONS OF SUBSTANTIAL UNDERSTATE-**
2 **MENT PENALTY FOR NONREPORTABLE**
3 **TRANSACTIONS.**

4 (a) SUBSTANTIAL UNDERSTATEMENT OF CORPORA-
5 TIONS.—Section 6662(d)(1)(B) (relating to special rule
6 for corporations) is amended to read as follows:

7 “(B) SPECIAL RULE FOR CORPORA-
8 TIONS.—In the case of a corporation other than
9 an S corporation or a personal holding company
10 (as defined in section 542), there is a substan-
11 tial understatement of income tax for any tax-
12 able year if the amount of the understatement
13 for the taxable year exceeds the lesser of—

14 “(i) 10 percent of the tax required to
15 be shown on the return for the taxable
16 year (or, if greater, \$10,000), or

17 “(ii) \$10,000,000.”

18 (b) REDUCTION FOR UNDERSTATEMENT OF TAX-
19 PAYER DUE TO POSITION OF TAXPAYER OR DISCLOSED
20 ITEM.—

21 (1) IN GENERAL.—Section 6662(d)(2)(B)(i)
22 (relating to substantial authority) is amended to
23 read as follows:

24 “(i) the tax treatment of any item by
25 the taxpayer if the taxpayer had reason-

1 able belief that the tax treatment was more
2 likely than not the proper treatment, or”.

3 (2) CONFORMING AMENDMENT.—Section
4 6662(d) is amended by adding at the end the fol-
5 lowing new paragraph:

6 “(3) SECRETARIAL LIST.—For purposes of this
7 subsection, section 6664(d)(2), and section
8 6694(a)(1), the Secretary may prescribe a list of po-
9 sitions for which the Secretary believes there is not
10 substantial authority or there is no reasonable belief
11 that the tax treatment is more likely than not the
12 proper tax treatment. Such list (and any revisions
13 thereof) shall be published in the Federal Register
14 or the Internal Revenue Bulletin.”.

15 (c) EFFECTIVE DATE.—The amendments made by
16 this section shall apply to taxable years beginning after
17 the date of the enactment of this Act.

18 **SEC. 5616. TAX SHELTER EXCEPTION TO CONFIDENTIALITY**
19 **PRIVILEGES RELATING TO TAXPAYER COM-**
20 **MUNICATIONS.**

21 (a) IN GENERAL.—Section 7525(b) (relating to sec-
22 tion not to apply to communications regarding corporate
23 tax shelters) is amended to read as follows:

24 “(b) SECTION NOT TO APPLY TO COMMUNICATIONS
25 REGARDING TAX SHELTERS.—The privilege under sub-

1 section (a) shall not apply to any written communication
2 which is—

3 “(1) between a federally authorized tax practi-
4 tioner and—

5 “(A) any person,

6 “(B) any director, officer, employee, agent,
7 or representative of the person, or

8 “(C) any other person holding a capital or
9 profits interest in the person, and

10 “(2) in connection with the promotion of the di-
11 rect or indirect participation of the person in any
12 tax shelter (as defined in section 1274(b)(3)(C)).”.

13 (b) EFFECTIVE DATE.—The amendment made by
14 this section shall apply to communications made on or
15 after the date of the enactment of this Act.

16 **SEC. 5617. DISCLOSURE OF REPORTABLE TRANSACTIONS.**

17 (a) IN GENERAL.—Section 6111 (relating to registra-
18 tion of tax shelters) is amended to read as follows:

19 **“SEC. 6111. DISCLOSURE OF REPORTABLE TRANSACTIONS.**

20 “(a) IN GENERAL.—Each material advisor with re-
21 spect to any reportable transaction shall make a return
22 (in such form as the Secretary may prescribe) setting
23 forth—

24 “(1) information identifying and describing the
25 transaction,

1 “(2) information describing any potential tax
2 benefits expected to result from the transaction, and

3 “(3) such other information as the Secretary
4 may prescribe.

5 Such return shall be filed not later than the date specified
6 by the Secretary.

7 “(b) DEFINITIONS.—For purposes of this section—

8 “(1) MATERIAL ADVISOR.—

9 “(A) IN GENERAL.—The term ‘material
10 advisor’ means any person—

11 “(i) who provides any material aid,
12 assistance, or advice with respect to orga-
13 nizing, managing, promoting, selling, im-
14 plementing, or carrying out any reportable
15 transaction, and

16 “(ii) who directly or indirectly derives
17 gross income in excess of the threshold
18 amount for such aid, assistance, or advice.

19 “(B) THRESHOLD AMOUNT.—For purposes
20 of subparagraph (A), the threshold amount is—

21 “(i) \$50,000 in the case of a report-
22 able transaction substantially all of the tax
23 benefits from which are provided to nat-
24 ural persons, and

25 “(ii) \$250,000 in any other case.

1 “(2) REPORTABLE TRANSACTION.—The term
2 ‘reportable transaction’ has the meaning given to
3 such term by section 6707A(e).

4 “(c) REGULATIONS.—The Secretary may prescribe
5 regulations which provide—

6 “(1) that only 1 person shall be required to
7 meet the requirements of subsection (a) in cases in
8 which 2 or more persons would otherwise be re-
9 quired to meet such requirements,

10 “(2) exemptions from the requirements of this
11 section, and

12 “(3) such rules as may be necessary or appro-
13 priate to carry out the purposes of this section.”.

14 (b) CONFORMING AMENDMENTS.—

15 (1) The item relating to section 6111 in the
16 table of sections for subchapter B of chapter 61 is
17 amended to read as follows:

“Sec. 6111. Disclosure of reportable transactions.”.

18 (2)(A) So much of section 6112 as precedes
19 subsection (c) thereof is amended to read as follows:

20 **“SEC. 6112. MATERIAL ADVISORS OF REPORTABLE TRANS-**
21 **ACTIONS MUST KEEP LISTS OF ADVISEES.**

22 “(a) IN GENERAL.—Each material advisor (as de-
23 fined in section 6111) with respect to any reportable
24 transaction (as defined in section 6707A(e)) shall main-

1 tain, in such manner as the Secretary may by regulations
2 prescribe, a list—

3 “(1) identifying each person with respect to
4 whom such advisor acted as such a material advisor
5 with respect to such transaction, and

6 “(2) containing such other information as the
7 Secretary may by regulations require.

8 This section shall apply without regard to whether a mate-
9 rial advisor is required to file a return under section 6111
10 with respect to such transaction.”.

11 (B) Section 6112 is amended by redesignating
12 subsection (c) as subsection (b).

13 (C) Section 6112(b), as redesignated by sub-
14 paragraph (B), is amended—

15 (i) by inserting “written” before “request”
16 in paragraph (1)(A), and

17 (ii) by striking “shall prescribe” in para-
18 graph (2) and inserting “may prescribe”.

19 (D) The item relating to section 6112 in the
20 table of sections for subchapter B of chapter 61 is
21 amended to read as follows:

“Sec. 6112. Material advisors of reportable transactions must keep lists of
advisees.”.

22 (3)(A) The heading for section 6708 is amend-
23 ed to read as follows:

1 **“SEC. 6708. FAILURE TO MAINTAIN LISTS OF ADVISEES**
2 **WITH RESPECT TO REPORTABLE TRANS-**
3 **ACTIONS.”**

4 (B) The item relating to section 6708 in the
5 table of sections for part I of subchapter B of chap-
6 ter 68 is amended to read as follows:

“Sec. 6708. Failure to maintain lists of advisees with respect to reportable transactions.”

7 (c) **REQUIRED DISCLOSURE NOT SUBJECT TO CLAIM**
8 **OF CONFIDENTIALITY.**—Subparagraph (A) of section
9 6112(b)(1), as redesignated by subsection (b)(2)(B), is
10 amended by adding at the end the following new flush sen-
11 tence:

12 “For purposes of this section, the identity of any
13 person on such list shall not be privileged.”

14 (d) **EFFECTIVE DATE.**—

15 (1) **IN GENERAL.**—Except as provided in para-
16 graph (2), the amendments made by this section
17 shall apply to transactions with respect to which ma-
18 terial aid, assistance, or advice referred to in section
19 6111(b)(1)(A)(i) of the Internal Revenue Code of
20 1986 (as added by this section) is provided after the
21 date of the enactment of this Act.

22 (2) **NO CLAIM OF CONFIDENTIALITY AGAINST**
23 **DISCLOSURE.**—The amendment made by subsection
24 (c) shall take effect as if included in the amend-

1 ments made by section 142 of the Deficit Reduction
2 Act of 1984.

3 **SEC. 5618. MODIFICATIONS TO PENALTY FOR FAILURE TO**
4 **REGISTER TAX SHELTERS.**

5 (a) IN GENERAL.—Section 6707 (relating to failure
6 to furnish information regarding tax shelters) is amended
7 to read as follows:

8 **“SEC. 6707. FAILURE TO FURNISH INFORMATION REGARD-**
9 **ING REPORTABLE TRANSACTIONS.**

10 “(a) IN GENERAL.—If a person who is required to
11 file a return under section 6111(a) with respect to any
12 reportable transaction—

13 “(1) fails to file such return on or before the
14 date prescribed therefor, or

15 “(2) files false or incomplete information with
16 the Secretary with respect to such transaction,
17 such person shall pay a penalty with respect to such return
18 in the amount determined under subsection (b).

19 “(b) AMOUNT OF PENALTY.—

20 “(1) IN GENERAL.—Except as provided in para-
21 graph (2), the penalty imposed under subsection (a)
22 with respect to any failure shall be \$50,000.

23 “(2) LISTED TRANSACTIONS.—The penalty im-
24 posed under subsection (a) with respect to any listed

1 transaction shall be an amount equal to the greater
2 of—

3 “(A) \$200,000, or

4 “(B) 50 percent of the gross income de-
5 rived by such person with respect to aid, assist-
6 ance, or advice which is provided with respect
7 to the listed transaction before the date the re-
8 turn including the transaction is filed under
9 section 6111.

10 Subparagraph (B) shall be applied by substituting
11 ‘75 percent’ for ‘50 percent’ in the case of an inten-
12 tional failure or act described in subsection (a).

13 “(c) CERTAIN RULES TO APPLY.—The provisions of
14 section 6707A(d) shall apply to any penalty imposed under
15 this section.

16 “(d) REPORTABLE AND LISTED TRANSACTIONS.—
17 The terms ‘reportable transaction’ and ‘listed transaction’
18 have the respective meanings given to such terms by sec-
19 tion 6707A(c).”.

20 (b) CLERICAL AMENDMENT.—The item relating to
21 section 6707 in the table of sections for part I of sub-
22 chapter B of chapter 68 is amended by striking “tax shel-
23 ters” and inserting “reportable transactions”.

1 (c) EFFECTIVE DATE.—The amendments made by
2 this section shall apply to returns the due date for which
3 is after the date of the enactment of this Act.

4 **SEC. 5619. MODIFICATION OF PENALTY FOR FAILURE TO**
5 **MAINTAIN LISTS OF INVESTORS.**

6 (a) IN GENERAL.—Subsection (a) of section 6708 is
7 amended to read as follows:

8 “(a) IMPOSITION OF PENALTY.—

9 “(1) IN GENERAL.—If any person who is re-
10 quired to maintain a list under section 6112(a) fails
11 to make such list available upon written request to
12 the Secretary in accordance with section
13 6112(b)(1)(A) within 20 business days after the
14 date of the Secretary’s request, such person shall
15 pay a penalty of \$10,000 for each day of such fail-
16 ure after such 20th day.

17 “(2) REASONABLE CAUSE EXCEPTION.—No
18 penalty shall be imposed by paragraph (1) with re-
19 spect to the failure on any day if such failure is due
20 to reasonable cause.”.

21 (b) EFFECTIVE DATE.—The amendment made by
22 this section shall apply to requests made after the date
23 of the enactment of this Act.

1 **SEC. 5620. MODIFICATION OF ACTIONS TO ENJOIN CERTAIN**
2 **CONDUCT RELATED TO TAX SHELTERS AND**
3 **REPORTABLE TRANSACTIONS.**

4 (a) IN GENERAL.—Section 7408 (relating to action
5 to enjoin promoters of abusive tax shelters, etc.) is amend-
6 ed by redesignating subsection (c) as subsection (d) and
7 by striking subsections (a) and (b) and inserting the fol-
8 lowing new subsections:

9 “(a) AUTHORITY TO SEEK INJUNCTION.—A civil ac-
10 tion in the name of the United States to enjoin any person
11 from further engaging in specified conduct may be com-
12 menced at the request of the Secretary. Any action under
13 this section shall be brought in the district court of the
14 United States for the district in which such person resides,
15 has his principal place of business, or has engaged in spec-
16 ified conduct. The court may exercise its jurisdiction over
17 such action (as provided in section 7402(a)) separate and
18 apart from any other action brought by the United States
19 against such person.

20 “(b) ADJUDICATION AND DECREE.—In any action
21 under subsection (a), if the court finds—

22 “(1) that the person has engaged in any speci-
23 fied conduct, and

24 “(2) that injunctive relief is appropriate to pre-
25 vent recurrence of such conduct,

1 the court may enjoin such person from engaging in such
2 conduct or in any other activity subject to penalty under
3 this title.

4 “(c) SPECIFIED CONDUCT.—For purposes of this
5 section, the term ‘specified conduct’ means any action, or
6 failure to take action, subject to penalty under section
7 6700, 6701, 6707, or 6708.”.

8 (b) CONFORMING AMENDMENTS.—

9 (1) The heading for section 7408 is amended to
10 read as follows:

11 **“SEC. 7408. ACTIONS TO ENJOIN SPECIFIED CONDUCT RE-**
12 **LATED TO TAX SHELTERS AND REPORTABLE**
13 **TRANSACTIONS.”.**

14 (2) The table of sections for subchapter A of
15 chapter 67 is amended by striking the item relating
16 to section 7408 and inserting the following new
17 item:

“Sec. 7408. Actions to enjoin specified conduct related to tax shelters and re-
portable transactions.”.

18 (c) EFFECTIVE DATE.—The amendment made by
19 this section shall take effect on the day after the date of
20 the enactment of this Act.

1 **SEC. 5621. UNDERSTATEMENT OF TAXPAYER'S LIABILITY**
2 **BY INCOME TAX RETURN PREPARER.**

3 (a) STANDARDS CONFORMED TO TAXPAYER STAND-
4 ARDS.—Section 6694(a) (relating to understatements due
5 to unrealistic positions) is amended—

6 (1) by striking “realistic possibility of being
7 sustained on its merits” in paragraph (1) and in-
8 serting “reasonable belief that the tax treatment in
9 such position was more likely than not the proper
10 treatment”,

11 (2) by striking “or was frivolous” in paragraph
12 (3) and inserting “or there was no reasonable basis
13 for the tax treatment of such position”, and

14 (3) by striking “UNREALISTIC” in the heading
15 and inserting “IMPROPER”.

16 (b) AMOUNT OF PENALTY.—Section 6694 is
17 amended—

18 (1) by striking “\$250” in subsection (a) and in-
19 serting “\$1,000”, and

20 (2) by striking “\$1,000” in subsection (b) and
21 inserting “\$5,000”.

22 (c) EFFECTIVE DATE.—The amendments made by
23 this section shall apply to documents prepared after the
24 date of the enactment of this Act.

1 **SEC. 5622. PENALTY ON FAILURE TO REPORT INTERESTS**
2 **IN FOREIGN FINANCIAL ACCOUNTS.**

3 (a) **IN GENERAL.**—Section 5321(a)(5) of title 31,
4 United States Code, is amended to read as follows:

5 “(5) **FOREIGN FINANCIAL AGENCY TRANS-**
6 **ACTION VIOLATION.**—

7 “(A) **PENALTY AUTHORIZED.**—The Sec-
8 retary of the Treasury may impose a civil
9 money penalty on any person who violates, or
10 causes any violation of, any provision of section
11 5314.

12 “(B) **AMOUNT OF PENALTY.**—

13 “(i) **IN GENERAL.**—Except as pro-
14 vided in subparagraph (C), the amount of
15 any civil penalty imposed under subpara-
16 graph (A) shall not exceed \$5,000.

17 “(ii) **REASONABLE CAUSE EXCEP-**
18 **TION.**—No penalty shall be imposed under
19 subparagraph (A) with respect to any vio-
20 lation if—

21 “(I) such violation was due to
22 reasonable cause, and

23 “(II) the amount of the trans-
24 action or the balance in the account
25 at the time of the transaction was
26 properly reported.

1 “(C) WILLFUL VIOLATIONS.—In the case
2 of any person willfully violating, or willfully
3 causing any violation of, any provision of sec-
4 tion 5314—

5 “(i) the maximum penalty under sub-
6 paragraph (B)(i) shall be increased to the
7 greater of—

8 “(I) \$25,000, or

9 “(II) the amount (not exceeding
10 \$100,000) determined under subpara-
11 graph (D), and

12 “(ii) subparagraph (B)(ii) shall not
13 apply.

14 “(D) AMOUNT.—The amount determined
15 under this subparagraph is—

16 “(i) in the case of a violation involving
17 a transaction, the amount of the trans-
18 action, or

19 “(ii) in the case of a violation involv-
20 ing a failure to report the existence of an
21 account or any identifying information re-
22 quired to be provided with respect to an
23 account, the balance in the account at the
24 time of the violation.”.

1 (b) EFFECTIVE DATE.—The amendment made by
2 this section shall apply to violations occurring after the
3 date of the enactment of this Act.

4 **SEC. 5623. FRIVOLOUS TAX SUBMISSIONS.**

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

7 **“SEC. 6702. FRIVOLOUS TAX SUBMISSIONS.**

8 “(a) CIVIL PENALTY FOR FRIVOLOUS TAX RE-
9 TURNS.—A person shall pay a penalty of \$5,000 if—

10 “(1) such person files what purports to be a re-
11 turn of a tax imposed by this title but which—

12 “(A) does not contain information on
13 which the substantial correctness of the self-as-
14 sessment may be judged, or

15 “(B) contains information that on its face
16 indicates that the self-assessment is substan-
17 tially incorrect; and

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

19 “(A) is based on a position which the Sec-
20 retary has identified as frivolous under sub-
21 section (c), or

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

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

1 “(1) IMPOSITION OF PENALTY.—Except as pro-
2 vided in paragraph (3), any person who submits a
3 specified frivolous submission shall pay a penalty of
4 \$5,000.

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

7 “(A) SPECIFIED FRIVOLOUS SUBMIS-
8 SION.—The term ‘specified frivolous submis-
9 sion’ means a specified submission if any por-
10 tion of such submission—

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

14 “(ii) reflects a desire to delay or im-
15 pede the administration of Federal tax
16 laws.

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

19 “(i) a request for a hearing under—

20 “(I) section 6320 (relating to no-
21 tice and opportunity for hearing upon
22 filing of notice of lien), or

23 “(II) section 6330 (relating to
24 notice and opportunity for hearing be-
25 fore levy), and

1 “(ii) an application under—

2 “(I) section 6159 (relating to
3 agreements for payment of tax liabil-
4 ity in installments),

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

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

9 “(3) OPPORTUNITY TO WITHDRAW SUBMIS-
10 SION.—If the Secretary provides a person with no-
11 tice that a submission is a specified frivolous sub-
12 mission and such person withdraws such submission
13 within 30 days after such notice, the penalty im-
14 posed under paragraph (1) shall not apply with re-
15 spect to such submission.

16 “(c) LISTING OF FRIVOLOUS POSITIONS.—The Sec-
17 retary shall prescribe (and periodically revise) a list of po-
18 sitions which the Secretary has identified as being frivo-
19 lous for purposes of this subsection. The Secretary shall
20 not include in such list any position that the Secretary
21 determines meets the requirement of section
22 6662(d)(2)(B)(ii)(II).

23 “(d) REDUCTION OF PENALTY.—The Secretary may
24 reduce the amount of any penalty imposed under this sec-
25 tion if the Secretary determines that such reduction would

1 promote compliance with and administration of the Fed-
2 eral tax laws.

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

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

8 (1) FRIVOLOUS REQUESTS DISREGARDED.—

9 Section 6330 (relating to notice and opportunity for
10 hearing before levy) is amended by adding at the
11 end the following new subsection:

12 “(g) FRIVOLOUS REQUESTS FOR HEARING, ETC.—

13 Notwithstanding any other provision of this section, if the
14 Secretary determines that any portion of a request for a
15 hearing under this section or section 6320 meets the re-
16 quirement of clause (i) or (ii) of section 6702(b)(2)(A),
17 then the Secretary may treat such portion as if it were
18 never submitted and such portion shall not be subject to
19 any further administrative or judicial review.”.

20 (2) PRECLUSION FROM RAISING FRIVOLOUS

21 ISSUES AT HEARING.—Section 6330(c)(4) is
22 amended—

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

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

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

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

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

7 (3) STATEMENT OF GROUNDS.—Section
8 6330(b)(1) is amended by striking “under sub-
9 section (a)(3)(B)” and inserting “in writing under
10 subsection (a)(3)(B) and states the grounds for the
11 requested hearing”.

12 (c) TREATMENT OF FRIVOLOUS REQUESTS FOR
13 HEARINGS UPON FILING OF NOTICE OF LIEN.—Section
14 6320 is amended—

15 (1) in subsection (b)(1), by striking “under sub-
16 section (a)(3)(B)” and inserting “in writing under
17 subsection (a)(3)(B) and states the grounds for the
18 requested hearing”, and

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

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

1 “(e) FRIVOLOUS SUBMISSIONS, ETC.—Notwith-
 2 standing any other provision of this section, if the Sec-
 3 retary determines that any portion of an application for
 4 an offer-in-compromise or installment agreement sub-
 5 mitted under this section or section 6159 meets the re-
 6 quirement of clause (i) or (ii) of section 6702(b)(2)(A),
 7 then the Secretary may treat such portion as if it were
 8 never submitted and such portion shall not be subject to
 9 any further administrative or judicial review.”.

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

“Sec. 6702. Frivolous tax submissions.”.

14 (f) EFFECTIVE DATE.—The amendments made by
 15 this section shall apply to submissions made and issues
 16 raised after the date on which the Secretary first pre-
 17 scribes a list under section 6702(e) of the Internal Rev-
 18 enue Code of 1986, as amended by subsection (a).

19 **SEC. 5624. REGULATION OF INDIVIDUALS PRACTICING BE-**
 20 **FORE THE DEPARTMENT OF TREASURY.**

21 (a) CENSURE; IMPOSITION OF PENALTY.—

22 (1) IN GENERAL.—Section 330(b) of title 31,
 23 United States Code, is amended—

24 (A) by inserting “, or censure,” after “De-
 25 partment”, and

1 (B) by adding at the end the following new
2 flush sentence:

3 “The Secretary may impose a monetary penalty on any
4 representative described in the preceding sentence. If the
5 representative was acting on behalf of an employer or any
6 firm or other entity in connection with the conduct giving
7 rise to such penalty, the Secretary may impose a monetary
8 penalty on such employer, firm, or entity if it knew, or
9 reasonably should have known, of such conduct. Such pen-
10 alty shall not exceed the gross income derived (or to be
11 derived) from the conduct giving rise to the penalty and
12 may be in addition to, or in lieu of, any suspension, disbar-
13 ment, or censure of the representative.”.

14 (2) EFFECTIVE DATE.—The amendments made
15 by this subsection shall apply to actions taken after
16 the date of the enactment of this Act.

17 (b) TAX SHELTER OPINIONS, ETC.—Section 330 of
18 such title 31 is amended by adding at the end the fol-
19 lowing new subsection:

20 “(d) Nothing in this section or in any other provision
21 of law shall be construed to limit the authority of the Sec-
22 retary of the Treasury to impose standards applicable to
23 the rendering of written advice with respect to any entity,
24 transaction plan or arrangement, or other plan or arrange-

1 ment, which is of a type which the Secretary determines
2 as having a potential for tax avoidance or evasion.”.

3 **SEC. 5625. PENALTY ON PROMOTERS OF TAX SHELTERS.**

4 (a) PENALTY ON PROMOTING ABUSIVE TAX SHEL-
5 TERS.—Section 6700(a) is amended by adding at the end
6 the following new sentence: “Notwithstanding the first
7 sentence, if an activity with respect to which a penalty
8 imposed under this subsection involves a statement de-
9 scribed in paragraph (2)(A), the amount of the penalty
10 shall be equal to 50 percent of the gross income derived
11 (or to be derived) from such activity by the person on
12 which the penalty is imposed.”.

13 (b) EFFECTIVE DATE.—The amendment made by
14 this section shall apply to activities after the date of the
15 enactment of this Act.

16 **SEC. 5626. STATUTE OF LIMITATIONS FOR TAXABLE YEARS**
17 **FOR WHICH REQUIRED LISTED TRANS-**
18 **ACTIONS NOT REPORTED.**

19 (a) IN GENERAL.—Section 6501(c) (relating to ex-
20 ceptions) is amended by adding at the end the following
21 new paragraph:

22 “(10) LISTED TRANSACTIONS.—If a taxpayer
23 fails to include on any return or statement for any
24 taxable year any information with respect to a listed
25 transaction (as defined in section 6707A(c)(2))

1 which is required under section 6011 to be included
2 with such return or statement, the time for assess-
3 ment of any tax imposed by this title with respect
4 to such transaction shall not expire before the date
5 which is 1 year after the earlier of—

6 “(A) the date on which the Secretary is
7 furnished the information so required; or

8 “(B) the date that a material advisor (as
9 defined in section 6111) meets the requirements
10 of section 6112 with respect to a request by the
11 Secretary under section 6112(b) relating to
12 such transaction with respect to such tax-
13 payer.”.

14 (b) EFFECTIVE DATE.—The amendment made by
15 this section shall apply to taxable years with respect to
16 which the period for assessing a deficiency did not expire
17 before the date of the enactment of this Act.

18 **SEC. 5627. DENIAL OF DEDUCTION FOR INTEREST ON UN-**
19 **DERPAYMENTS ATTRIBUTABLE TO NONDIS-**
20 **CLOSED REPORTABLE AND NONECONOMIC**
21 **SUBSTANCE TRANSACTIONS.**

22 (a) IN GENERAL.—Section 163 (relating to deduction
23 for interest) is amended by redesignating subsection (m)
24 as subsection (n) and by inserting after subsection (l) the
25 following new subsection:

1 “(m) INTEREST ON UNPAID TAXES ATTRIBUTABLE
2 TO NONDISCLOSED REPORTABLE TRANSACTIONS AND
3 NONECONOMIC SUBSTANCE TRANSACTIONS.—No deduc-
4 tion shall be allowed under this chapter for any interest
5 paid or accrued under section 6601 on any underpayment
6 of tax which is attributable to—

7 “(1) the portion of any reportable transaction
8 understatement (as defined in section 6662A(b))
9 with respect to which the requirement of section
10 6664(d)(2)(A) is not met, or

11 “(2) any noneconomic substance transaction
12 understatement (as defined in section 6662B(c)).”.

13 (b) EFFECTIVE DATE.—The amendments made by
14 this section shall apply to transactions in taxable years
15 beginning after the date of the enactment of this Act.

16 **SEC. 5628. AUTHORIZATION OF APPROPRIATIONS FOR TAX**
17 **LAW ENFORCEMENT.**

18 There is authorized to be appropriated \$300,000,000
19 for each fiscal year beginning after September 30, 2003,
20 for the purpose of carrying out tax law enforcement to
21 combat tax avoidance transactions and other tax shelters,
22 including the use of offshore financial accounts to conceal
23 taxable income.

1 **PART III—OTHER CORPORATE GOVERNANCE**
2 **PROVISIONS**

3 **SEC. 5631. AFFIRMATION OF CONSOLIDATED RETURN REG-**
4 **ULATION AUTHORITY.**

5 (a) IN GENERAL.—Section 1502 (relating to consoli-
6 dated return regulations) is amended by adding at the end
7 the following new sentence: “In prescribing such regula-
8 tions, the Secretary may prescribe rules applicable to cor-
9 porations filing consolidated returns under section 1501
10 that are different from other provisions of this title that
11 would apply if such corporations filed separate returns.”.

12 (b) RESULT NOT OVERTURNED.—Notwithstanding
13 subsection (a), the Internal Revenue Code of 1986 shall
14 be construed by treating Treasury regulation § 1.1502-
15 20(c)(1)(iii) (as in effect on January 1, 2001) as being
16 inapplicable to the type of factual situation in 255 F.3d
17 1357 (Fed. Cir. 2001).

18 (c) EFFECTIVE DATE.—The provisions of this section
19 shall apply to taxable years beginning before, on, or after
20 the date of the enactment of this Act.

21 **SEC. 5632. DECLARATION BY CHIEF EXECUTIVE OFFICER**
22 **RELATING TO FEDERAL ANNUAL CORPORATE**
23 **INCOME TAX RETURN.**

24 (a) IN GENERAL.—The Federal tax return of a cor-
25 poration with respect to income shall also include a dec-
26 laration signed by the chief executive officer of such cor-

1 poration (or other such officer of the corporation as the
2 Secretary of the Treasury may designate if the corporation
3 does not have a chief executive officer), under penalties
4 of perjury, that the chief executive officer has established
5 processes and procedures that ensure that such return
6 complies with the Internal Revenue Code of 1986 and that
7 the chief executive officer was provided reasonable assur-
8 ance of the accuracy of all material aspects of such return.
9 The preceding sentence shall not apply to any return of
10 a regulated investment company (within the meaning of
11 section 851 of such Code).

12 (b) EFFECTIVE DATE.—This section shall apply to
13 Federal tax returns filed after the date of the enactment
14 of this Act.

15 **SEC. 5633. DENIAL OF DEDUCTION FOR CERTAIN FINES,**
16 **PENALTIES, AND OTHER AMOUNTS.**

17 (a) IN GENERAL.—Subsection (f) of section 162 (re-
18 lating to trade or business expenses) is amended to read
19 as follows:

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

21 “(1) IN GENERAL.—Except as provided in para-
22 graph (2), no deduction otherwise allowable shall be
23 allowed under this chapter for any amount paid or
24 incurred (whether by suit, agreement, or otherwise)
25 to, or at the direction of, a government or entity de-

1 scribed in paragraph (4) in relation to the violation
2 of any law or the investigation or inquiry by such
3 government or entity into the potential violation of
4 any law.

5 “(2) EXCEPTION FOR AMOUNTS CONSTITUTING
6 RESTITUTION.—Paragraph (1) shall not apply to
7 any amount which the taxpayer establishes con-
8 stitutes restitution for damage or harm caused by
9 the violation of any law or the potential violation of
10 any law. This paragraph shall not apply to any
11 amount paid or incurred as reimbursement to the
12 government or entity for the costs of any investiga-
13 tion or litigation.

14 “(3) EXCEPTION FOR AMOUNTS PAID OR IN-
15 CURRED AS THE RESULT OF CERTAIN COURT OR-
16 DERS.—Paragraph (1) shall not apply to any
17 amount paid or incurred by order of a court in a
18 suit in which no government or entity described in
19 paragraph (4) is a party.

20 “(4) CERTAIN NONGOVERNMENTAL REGU-
21 LATORY ENTITIES.—An entity is described in this
22 paragraph if it is—

23 “(A) a nongovernmental entity which exer-
24 cises self-regulatory powers (including imposing
25 sanctions) in connection with a qualified board

1 or exchange (as defined in section 1256(g)(7)),
2 or

3 “(B) to the extent provided in regulations,
4 a nongovernmental entity which exercises self-
5 regulatory powers (including imposing sanc-
6 tions) as part of performing an essential gov-
7 ernmental function.”.

8 (b) EFFECTIVE DATE.—The amendment made by
9 this section shall apply to amounts paid or incurred after
10 April 27, 2003, except that such amendment shall not
11 apply to amounts paid or incurred under any binding
12 order or agreement entered into on or before April 27,
13 2003. Such exception shall not apply to an order or agree-
14 ment requiring court approval unless the approval was ob-
15 tained on or before April 27, 2003.

16 **SEC. 5634. DISALLOWANCE OF DEDUCTION FOR PUNITIVE**
17 **DAMAGES.**

18 (a) DISALLOWANCE OF DEDUCTION.—

19 (1) IN GENERAL.—Section 162(g) (relating to
20 treble damage payments under the antitrust laws) is
21 amended by adding at the end the following new
22 paragraph:

23 “(2) PUNITIVE DAMAGES.—No deduction shall
24 be allowed under this chapter for any amount paid
25 or incurred for punitive damages in connection with

1 any judgment in, or settlement of, any action. This
2 paragraph shall not apply to punitive damages de-
3 scribed in section 104(c).”.

4 (2) CONFORMING AMENDMENTS.—

5 (A) Section 162(g) is amended—

6 (i) by striking “If” and inserting:

7 “(1) TREBLE DAMAGES.—If”, and

8 (ii) by redesignating paragraphs (1)

9 and (2) as subparagraphs (A) and (B), re-
10 spectively.

11 (B) The heading for section 162(g) is

12 amended by inserting “OR PUNITIVE DAM-
13 AGES” after “LAWS”.

14 (b) INCLUSION IN INCOME OF PUNITIVE DAMAGES
15 PAID BY INSURER OR OTHERWISE.—

16 (1) IN GENERAL.—Part II of subchapter B of

17 chapter 1 (relating to items specifically included in

18 gross income) is amended by adding at the end the

19 following new section:

20 **“SEC. 91. PUNITIVE DAMAGES COMPENSATED BY INSUR-**
21 **ANCE OR OTHERWISE.**

22 “Gross income shall include any amount paid to or

23 on behalf of a taxpayer as insurance or otherwise by rea-

24 son of the taxpayer’s liability (or agreement) to pay puni-

25 tive damages.”.

1 (2) REPORTING REQUIREMENTS.—Section 6041
2 (relating to information at source) is amended by
3 adding at the end the following new subsection:

4 “(f) SECTION TO APPLY TO PUNITIVE DAMAGES
5 COMPENSATION.—This section shall apply to payments by
6 a person to or on behalf of another person as insurance
7 or otherwise by reason of the other person’s liability (or
8 agreement) to pay punitive damages.”.

9 (3) CONFORMING AMENDMENT.—The table of
10 sections for part II of subchapter B of chapter 1 is
11 amended by adding at the end the following new
12 item:

“Sec. 91. Punitive damages compensated by insurance or otherwise.”.

13 (c) EFFECTIVE DATE.—The amendments made by
14 this section shall apply to damages paid or incurred on
15 or after the date of the enactment of this Act.

16 **SEC. 5635. INCREASE IN CRIMINAL MONETARY PENALTY**
17 **LIMITATION FOR THE UNDERPAYMENT OR**
18 **OVERPAYMENT OF TAX DUE TO FRAUD.**

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

21 (1) by striking “Any person who—” and insert-
22 ing “(a) IN GENERAL.—Any person who—”, and

23 (2) by adding at the end the following new sub-
24 section:

1 “(b) INCREASE IN MONETARY LIMITATION FOR UN-
2 DERPAYMENT OR OVERPAYMENT OF TAX DUE TO
3 FRAUD.—If any portion of any underpayment (as defined
4 in section 6664(a)) or overpayment (as defined in section
5 6401(a)) of tax required to be shown on a return is attrib-
6 utable to fraudulent action described in subsection (a), the
7 applicable dollar amount under subsection (a) shall in no
8 event be less than an amount equal to such portion. A
9 rule similar to the rule under section 6663(b) shall apply
10 for purposes of determining the portion so attributable.”.

11 (b) INCREASE IN PENALTIES.—

12 (1) ATTEMPT TO EVADE OR DEFEAT TAX.—

13 Section 7201 is amended—

14 (A) by striking “\$100,000” and inserting
15 “\$250,000”,

16 (B) by striking “\$500,000” and inserting
17 “\$1,000,000”, and

18 (C) by striking “5 years” and inserting
19 “10 years”.

20 (2) WILLFUL FAILURE TO FILE RETURN, SUP-
21 PLY INFORMATION, OR PAY TAX.—Section 7203 is
22 amended—

23 (A) in the first sentence—

24 (i) by striking “misdemeanor” and in-
25 serting “felony”, and

1 (ii) by striking “1 year” and inserting
2 “10 years”, and
3 (B) by striking the third sentence.

4 (3) FRAUD AND FALSE STATEMENTS.—Section
5 7206(a) (as redesignated by subsection (a)) is
6 amended—

7 (A) by striking “\$100,000” and inserting
8 “\$250,000”,

9 (B) by striking “\$500,000” and inserting
10 “\$1,000,000”, and

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

13 (c) EFFECTIVE DATE.—The amendments made by
14 this section shall apply to underpayments and overpay-
15 ments attributable to actions occurring after the date of
16 the enactment of this Act.

17 **SEC. 5636. DOUBLING OF CERTAIN PENALTIES, FINES, AND**
18 **INTEREST ON UNDERPAYMENTS RELATED TO**
19 **CERTAIN OFFSHORE FINANCIAL ARRANGE-**
20 **MENTS.**

21 (a) GENERAL RULE.—If—

22 (1) a taxpayer eligible to participate in—

23 (A) the Department of the Treasury’s Off-
24 shore Voluntary Compliance Initiative, or

1 (B) the Department of the Treasury’s vol-
2 untary disclosure initiative which applies to the
3 taxpayer by reason of the taxpayer’s under-
4 reporting of United States income tax liability
5 through financial arrangements which rely on
6 the use of offshore arrangements which were
7 the subject of the initiative described in sub-
8 paragraph (A), and

9 (2) any interest or applicable penalty is imposed
10 with respect to any arrangement to which any initia-
11 tive described in paragraph (1) applied or to any un-
12 derpayment of Federal income tax attributable to
13 items arising in connection with any arrangement
14 described in paragraph (1),
15 then, notwithstanding any other provision of law, the
16 amount of such interest or penalty shall be equal to twice
17 that determined without regard to this section.

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

20 (1) APPLICABLE PENALTY.—The term “appli-
21 cable penalty” means any penalty, addition to tax,
22 or fine imposed under chapter 68 of the Internal
23 Revenue Code of 1986.

24 (2) VOLUNTARY OFFSHORE COMPLIANCE INI-
25 TIATIVE.—The term “Voluntary Offshore Compli-

1 ance Initiative” means the program established by
2 the Department of the Treasury in January of 2003
3 under which any taxpayer was eligible to voluntarily
4 disclose previously undisclosed income on assets
5 placed in offshore accounts and accessed through
6 credit card and other financial arrangements.

7 (3) PARTICIPATION.—A taxpayer shall be treat-
8 ed as having participated in the Voluntary Offshore
9 Compliance Initiative if the taxpayer submitted the
10 request in a timely manner and all information re-
11 quested by the Secretary of the Treasury or his dele-
12 gate within a reasonable period of time following the
13 request.

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

PART IV—ENRON-RELATED TAX SHELTER**PROVISIONS****SEC. 5641. LIMITATION ON TRANSFER OR IMPORTATION OF
BUILT-IN LOSSES.**

(a) IN GENERAL.—Section 362 (relating to basis to corporations) is amended by adding at the end the following new subsection:

“(e) LIMITATIONS ON BUILT-IN LOSSES.—

“(1) LIMITATION ON IMPORTATION OF BUILT-IN LOSSES.—

“(A) IN GENERAL.—If in any transaction described in subsection (a) or (b) there would (but for this subsection) be an importation of a net built-in loss, the basis of each property described in subparagraph (B) which is acquired in such transaction shall (notwithstanding subsections (a) and (b)) be its fair market value immediately after such transaction.

“(B) PROPERTY DESCRIBED.—For purposes of subparagraph (A), property is described in this subparagraph if—

“(i) gain or loss with respect to such property is not subject to tax under this subtitle in the hands of the transferor immediately before the transfer, and

1 “(ii) gain or loss with respect to such
2 property is subject to such tax in the
3 hands of the transferee immediately after
4 such transfer.

5 In any case in which the transferor is a part-
6 nership, the preceding sentence shall be applied
7 by treating each partner in such partnership as
8 holding such partner’s proportionate share of
9 the property of such partnership.

10 “(C) IMPORTATION OF NET BUILT-IN
11 LOSS.—For purposes of subparagraph (A),
12 there is an importation of a net built-in loss in
13 a transaction if the transferee’s aggregate ad-
14 justed bases of property described in subpara-
15 graph (B) which is transferred in such trans-
16 action would (but for this paragraph) exceed
17 the fair market value of such property imme-
18 diately after such transaction.”.

19 “(2) LIMITATION ON TRANSFER OF BUILT-IN
20 LOSSES IN SECTION 351 TRANSACTIONS.—

21 “(A) IN GENERAL.—If—

22 “(i) property is transferred by a
23 transferor in any transaction which is de-
24 scribed in subsection (a) and which is not

1 described in paragraph (1) of this sub-
2 section, and

3 “(ii) the transferee’s aggregate ad-
4 justed bases of such property so trans-
5 ferred would (but for this paragraph) ex-
6 ceed the fair market value of such property
7 immediately after such transaction,

8 then, notwithstanding subsection (a), the trans-
9 feree’s aggregate adjusted bases of the property
10 so transferred shall not exceed the fair market
11 value of such property immediately after such
12 transaction.

13 “(B) ALLOCATION OF BASIS REDUC-
14 TION.—The aggregate reduction in basis by
15 reason of subparagraph (A) shall be allocated
16 among the property so transferred in proportion
17 to their respective built-in losses immediately
18 before the transaction.

19 “(C) EXCEPTION FOR TRANSFERS WITHIN
20 AFFILIATED GROUP.—Subparagraph (A) shall
21 not apply to any transaction if the transferor
22 owns stock in the transferee meeting the re-
23 quirements of section 1504(a)(2). In the case of
24 property to which subparagraph (A) does not
25 apply by reason of the preceding sentence, the

1 transferor's basis in the stock received for such
2 property shall not exceed its fair market value
3 immediately after the transfer.”.

4 (b) COMPARABLE TREATMENT WHERE LIQUIDA-
5 TION.—Paragraph (1) of section 334(b) (relating to liq-
6 uidation of subsidiary) is amended to read as follows:

7 “(1) IN GENERAL.—If property is received by a
8 corporate distributee in a distribution in a complete
9 liquidation to which section 332 applies (or in a
10 transfer described in section 337(b)(1)), the basis of
11 such property in the hands of such distributee shall
12 be the same as it would be in the hands of the trans-
13 feror; except that the basis of such property in the
14 hands of such distributee shall be the fair market
15 value of the property at the time of the
16 distribution—

17 “(A) in any case in which gain or loss is
18 recognized by the liquidating corporation with
19 respect to such property, or

20 “(B) in any case in which the liquidating
21 corporation is a foreign corporation, the cor-
22 porate distributee is a domestic corporation,
23 and the corporate distributee's aggregate ad-
24 justed bases of property described in section
25 362(e)(1)(B) which is distributed in such liq-

1 liquidation would (but for this subparagraph) ex-
2 ceed the fair market value of such property im-
3 mediately after such liquidation.”.

4 (c) EFFECTIVE DATE.—The amendments made by
5 this section shall apply to transactions after February 13,
6 2003.

7 **SEC. 5642. NO REDUCTION OF BASIS UNDER SECTION 734 IN**
8 **STOCK HELD BY PARTNERSHIP IN COR-**
9 **PORATE PARTNER.**

10 (a) IN GENERAL.—Section 755 is amended by adding
11 at the end the following new subsection:

12 “(c) NO ALLOCATION OF BASIS DECREASE TO
13 STOCK OF CORPORATE PARTNER.—In making an alloca-
14 tion under subsection (a) of any decrease in the adjusted
15 basis of partnership property under section 734(b)—

16 “(1) no allocation may be made to stock in a
17 corporation (or any person which is related (within
18 the meaning of section 267(b) or 707(b)(1)) to such
19 corporation) which is a partner in the partnership,
20 and

21 “(2) any amount not allocable to stock by rea-
22 son of paragraph (1) shall be allocated under sub-
23 section (a) to other partnership property in such
24 manner as the Secretary may prescribe.

1 Gain shall be recognized to the partnership to the extent
2 that the amount required to be allocated under paragraph
3 (2) to other partnership property exceeds the aggregate
4 adjusted basis of such other property immediately before
5 the allocation required by paragraph (2).”.

6 (b) EFFECTIVE DATE.—The amendment made by
7 this section shall apply to distributions after February 13,
8 2003.

9 **SEC. 5643. REPEAL OF SPECIAL RULES FOR FASITS.**

10 (a) IN GENERAL.—Part V of subchapter M of chap-
11 ter 1 (relating to financial asset securitization investment
12 trusts) is hereby repealed.

13 (b) CONFORMING AMENDMENTS.—

14 (1) Paragraph (6) of section 56(g) is amended
15 by striking “REMIC, or FASIT” and inserting “or
16 REMIC”.

17 (2) Clause (ii) of section 382(l)(4)(B) is amend-
18 ed by striking “a REMIC to which part IV of sub-
19 chapter M applies, or a FASIT to which part V of
20 subchapter M applies,” and inserting “or a REMIC
21 to which part IV of subchapter M applies,”.

22 (3) Paragraph (1) of section 582(c) is amended
23 by striking “, and any regular interest in a
24 FASIT,”.

1 (4) Subparagraph (E) of section 856(c)(5) is
2 amended by striking the last sentence.

3 (5)(A) Section 860G(a)(1) is amended by add-
4 ing at the end the following new sentence: “An inter-
5 est shall not fail to qualify as a regular interest sole-
6 ly because the specified principal amount of the reg-
7 ular interest (or the amount of interest accrued on
8 the regular interest) can be reduced as a result of
9 the nonoccurrence of 1 or more contingent payments
10 with respect to any reverse mortgage loan held by
11 the REMIC if, on the startup day for the REMIC,
12 the sponsor reasonably believes that all principal and
13 interest due under the regular interest will be paid
14 at or prior to the liquidation of the REMIC.”.

15 (B) The last sentence of section 860G(a)(3) is
16 amended by inserting “, and any reverse mortgage
17 loan (and each balance increase on such loan meet-
18 ing the requirements of subparagraph (A)(iii)) shall
19 be treated as an obligation secured by an interest in
20 real property” before the period at the end.

21 (6) Paragraph (3) of section 860G(a) is amend-
22 ed by adding “and” at the end of subparagraph (B),
23 by striking “, and” at the end of subparagraph (C)
24 and inserting a period, and by striking subparagraph
25 (D).

1 (7) Section 860G(a)(3), as amended by para-
2 graph (6), is amended by adding at the end the fol-
3 lowing new sentence: “For purposes of subparagraph
4 (A), if more than 50 percent of the obligations
5 transferred to, or purchased by, the REMIC are
6 originated by the United States or any State (or any
7 political subdivision, agency, or instrumentality of
8 the United States or any State) and are principally
9 secured by an interest in real property, then each
10 obligation transferred to, or purchased by, the
11 REMIC shall be treated as secured by an interest in
12 real property.”.

13 (8)(A) Section 860G(a)(3)(A) is amended by
14 striking “or” at the end of clause (i), by inserting
15 “or” at the end of clause (ii), and by inserting after
16 clause (ii) the following new clause:

17 “(iii) represents an increase in the
18 principal amount under the original terms
19 of an obligation described in clause (i) or
20 (ii) if such increase—

21 “(I) is attributable to an advance
22 made to the obligor pursuant to the
23 original terms of the obligation,

24 “(II) occurs after the startup
25 day, and

1 “(III) is purchased by the
2 REMIC pursuant to a fixed price con-
3 tract in effect on the startup day.”.

4 (B) Section 860G(a)(7)(B) is amended to read
5 as follows:

6 “(B) QUALIFIED RESERVE FUND.—For
7 purposes of subparagraph (A), the term ‘quali-
8 fied reserve fund’ means any reasonably re-
9 quired reserve to—

10 “(i) provide for full payment of ex-
11 penses of the REMIC or amounts due on
12 regular interests in the event of defaults on
13 qualified mortgages or lower than expected
14 returns on cash flow investments, or

15 “(ii) provide a source of funds for the
16 purchase of obligations described in clause
17 (ii) or (iii) of paragraph (3)(A).

18 The aggregate fair market value of the assets
19 held in any such reserve shall not exceed 50
20 percent of the aggregate fair market value of all
21 of the assets of the REMIC on the startup day,
22 and the amount of any such reserve shall be
23 promptly and appropriately reduced to the ex-
24 tent the amount held in such reserve is no

1 longer reasonably required for purposes speci-
2 fied in clause (i) or (ii) of paragraph (3)(A).”.

3 (9) Subparagraph (C) of section 1202(e)(4) is
4 amended by striking “REMIC, or FASIT” and in-
5 serting “or REMIC”.

6 (10) Clause (xi) of section 7701(a)(19)(C) is
7 amended—

8 (A) by striking “and any regular interest
9 in a FASIT,” and

10 (B) by striking “or FASIT” each place it
11 appears.

12 (11) The table of parts for subchapter M of
13 chapter 1 is amended by striking the item relating
14 to part V.

15 (c) EFFECTIVE DATE.—

16 (1) IN GENERAL.—Except as provided in para-
17 graph (2), the amendments made by this section
18 shall take effect on February 14, 2003.

19 (2) EXCEPTION FOR EXISTING FASITS.—Para-
20 graph (1) shall not apply to any FASIT in existence
21 on the date of the enactment of this Act to the ex-
22 tent that regular interests issued by the FASIT be-
23 fore such date continue to remain outstanding in ac-
24 cordance with the original terms of issuance.

1 **SEC. 5644. EXPANDED DISALLOWANCE OF DEDUCTION FOR**
2 **INTEREST ON CONVERTIBLE DEBT.**

3 (a) **IN GENERAL.**—Paragraph (2) of section 163(l)
4 is amended by striking “or a related party” and inserting
5 “or equity held by the issuer (or any related party) in any
6 other person”.

7 (b) **CAPITALIZATION ALLOWED WITH RESPECT TO**
8 **EQUITY OF PERSONS OTHER THAN ISSUER AND RE-**
9 **LATED PARTIES.**—Section 163(l) is amended by redesi-
10 gnating paragraphs (4) and (5) as paragraphs (5) and (6)
11 and by inserting after paragraph (3) the following new
12 paragraph:

13 “(4) **CAPITALIZATION ALLOWED WITH RESPECT**
14 **TO EQUITY OF PERSONS OTHER THAN ISSUER AND**
15 **RELATED PARTIES.**—If the disqualified debt instru-
16 ment of a corporation is payable in equity held by
17 the issuer (or any related party) in any other person
18 (other than a related party), the basis of such equity
19 shall be increased by the amount not allowed as a
20 deduction by reason of paragraph (1) with respect to
21 the instrument.”.

22 (c) **EXCEPTION FOR CERTAIN INSTRUMENTS ISSUED**
23 **BY DEALERS IN SECURITIES.**—Section 163(l), as amend-
24 ed by subsection (b), is amended by redesignating para-
25 graphs (5) and (6) as paragraphs (6) and (7) and by in-
26 serting after paragraph (4) the following new paragraph:

1 “(5) EXCEPTION FOR CERTAIN INSTRUMENTS
2 ISSUED BY DEALERS IN SECURITIES.—For purposes
3 of this subsection, the term ‘disqualified debt instru-
4 ment’ does not include indebtedness issued by a
5 dealer in securities (or a related party) which is pay-
6 able in, or by reference to, equity (other than equity
7 of the issuer or a related party) held by such dealer
8 in its capacity as a dealer in securities. For purposes
9 of this paragraph, the term ‘dealer in securities’ has
10 the meaning given such term by section 475.”.

11 (c) CONFORMING AMENDMENTS.—Paragraph (3) of
12 section 163(l) is amended—

13 (1) by striking “or a related party” in the ma-
14 terial preceding subparagraph (A) and inserting “or
15 any other person”, and

16 (2) by striking “or interest” each place it ap-
17 pears.

18 (d) EFFECTIVE DATE.—The amendments made by
19 this section shall apply to debt instruments issued after
20 February 13, 2003.

21 **SEC. 5645. EXPANDED AUTHORITY TO DISALLOW TAX BENE-**
22 **FITS UNDER SECTION 269.**

23 (a) IN GENERAL.—Subsection (a) of section 269 (re-
24 lating to acquisitions made to evade or avoid income tax)
25 is amended to read as follows:

1 “(a) IN GENERAL.—If—

2 “(1)(A) any person or persons acquire, directly
3 or indirectly, control of a corporation, or

4 “(B) any corporation acquires, directly or indi-
5 rectly, property of another corporation and the basis
6 of such property, in the hands of the acquiring cor-
7 poration, is determined by reference to the basis in
8 the hands of the transferor corporation, and

9 “(2) the principal purpose for which such acqui-
10 sition was made is evasion or avoidance of Federal
11 income tax,

12 then the Secretary may disallow such deduction, credit,
13 or other allowance. For purposes of paragraph (1)(A),
14 control means the ownership of stock possessing at least
15 50 percent of the total combined voting power of all class-
16 es of stock entitled to vote or at least 50 percent of the
17 total value of all shares of all classes of stock of the cor-
18 poration.”.

19 (b) EFFECTIVE DATE.—The amendment made by
20 this section shall apply to stock and property acquired
21 after February 13, 2003.

1 **SEC. 5646. MODIFICATION OF INTERACTION BETWEEN SUB-**
2 **PART F AND PASSIVE FOREIGN INVESTMENT**
3 **COMPANY RULES.**

4 (a) **LIMITATION ON EXCEPTION FROM PFIC RULES**
5 **FOR UNITED STATES SHAREHOLDERS OF CONTROLLED**
6 **FOREIGN CORPORATIONS.**—Paragraph (2) of section
7 1297(e) (relating to passive foreign investment company)
8 is amended by adding at the end the following flush sen-
9 tence:

10 “Such term shall not include any period if the
11 earning of subpart F income by such corpora-
12 tion during such period would result in only a
13 remote likelihood of an inclusion in gross in-
14 come under section 951(a)(1)(A)(i).”.

15 (b) **EFFECTIVE DATE.**—The amendment made by
16 this section shall apply to taxable years of controlled for-
17 eign corporations beginning after February 13, 2003, and
18 to taxable years of United States shareholders with or
19 within which such taxable years of controlled foreign cor-
20 porations end.

1 **PART V—PROVISIONS TO DISCOURAGE**
2 **EXPATRIATION**

3 **SEC. 5651. TAX TREATMENT OF INVERTED CORPORATE EN-**
4 **TITIES.**

5 (a) IN GENERAL.—Subchapter C of chapter 80 (re-
6 relating to provisions affecting more than one subtitle) is
7 amended by adding at the end the following new section:

8 **“SEC. 7874. RULES RELATING TO INVERTED CORPORATE**
9 **ENTITIES.**

10 “(a) INVERTED CORPORATIONS TREATED AS DOMES-
11 TIC CORPORATIONS.—

12 “(1) IN GENERAL.—If a foreign incorporated
13 entity is treated as an inverted domestic corporation,
14 then, notwithstanding section 7701(a)(4), such enti-
15 ty shall be treated for purposes of this title as a do-
16 mestic corporation.

17 “(2) INVERTED DOMESTIC CORPORATION.—For
18 purposes of this section, a foreign incorporated enti-
19 ty shall be treated as an inverted domestic corpora-
20 tion if, pursuant to a plan (or a series of related
21 transactions)—

22 “(A) the entity completes after March 20,
23 2002, the direct or indirect acquisition of sub-
24 stantially all of the properties held directly or
25 indirectly by a domestic corporation or substan-

1 tially all of the properties constituting a trade
2 or business of a domestic partnership,

3 “(B) after the acquisition at least 80 per-
4 cent of the stock (by vote or value) of the entity
5 is held—

6 “(i) in the case of an acquisition with
7 respect to a domestic corporation, by
8 former shareholders of the domestic cor-
9 poration by reason of holding stock in the
10 domestic corporation, or

11 “(ii) in the case of an acquisition with
12 respect to a domestic partnership, by
13 former partners of the domestic partner-
14 ship by reason of holding a capital or prof-
15 its interest in the domestic partnership,
16 and

17 “(C) the expanded affiliated group which
18 after the acquisition includes the entity does
19 not have substantial business activities in the
20 foreign country in which or under the law of
21 which the entity is created or organized when
22 compared to the total business activities of such
23 expanded affiliated group.

24 Except as provided in regulations, an acquisition of
25 properties of a domestic corporation shall not be

1 treated as described in subparagraph (A) if none of
2 the corporation's stock was readily tradeable on an
3 established securities market at any time during the
4 4-year period ending on the date of the acquisition.

5 “(b) PRESERVATION OF DOMESTIC TAX BASE IN
6 CERTAIN INVERSION TRANSACTIONS TO WHICH SUB-
7 SECTION (a) DOES NOT APPLY.—

8 “(1) IN GENERAL.—If a foreign incorporated
9 entity would be treated as an inverted domestic cor-
10 poration with respect to an acquired entity if
11 either—

12 “(A) subsection (a)(2)(A) were applied by
13 substituting ‘after December 31, 1996, and on
14 or before March 20, 2002’ for ‘after March 20,
15 2002’ and subsection (a)(2)(B) were applied by
16 substituting ‘more than 50 percent’ for ‘at least
17 80 percent’, or

18 “(B) subsection (a)(2)(B) were applied by
19 substituting ‘more than 50 percent’ for ‘at least
20 80 percent’,

21 then the rules of subsection (c) shall apply to any
22 inversion gain of the acquired entity during the ap-
23 plicable period and the rules of subsection (d) shall
24 apply to any related party transaction of the ac-
25 quired entity during the applicable period. This sub-

1 section shall not apply for any taxable year if sub-
2 section (a) applies to such foreign incorporated enti-
3 ty for such taxable year.

4 “(2) ACQUIRED ENTITY.—For purposes of this
5 section—

6 “(A) IN GENERAL.—The term ‘acquired
7 entity’ means the domestic corporation or part-
8 nership substantially all of the properties of
9 which are directly or indirectly acquired in an
10 acquisition described in subsection (a)(2)(A) to
11 which this subsection applies.

12 “(B) AGGREGATION RULES.—Any domes-
13 tic person bearing a relationship described in
14 section 267(b) or 707(b) to an acquired entity
15 shall be treated as an acquired entity with re-
16 spect to the acquisition described in subpara-
17 graph (A).

18 “(3) APPLICABLE PERIOD.—For purposes of
19 this section—

20 “(A) IN GENERAL.—The term ‘applicable
21 period’ means the period—

22 “(i) beginning on the first date prop-
23 erties are acquired as part of the acquisi-
24 tion described in subsection (a)(2)(A) to
25 which this subsection applies, and

1 “(ii) ending on the date which is 10
2 years after the last date properties are ac-
3 quired as part of such acquisition.

4 “(B) SPECIAL RULE FOR INVERSIONS OC-
5 CURRING BEFORE MARCH 21, 2002.—In the case
6 of any acquired entity to which paragraph
7 (1)(A) applies, the applicable period shall be the
8 10-year period beginning on January 1, 2003.

9 “(c) TAX ON INVERSION GAINS MAY NOT BE OFF-
10 SET.—If subsection (b) applies—

11 “(1) IN GENERAL.—The taxable income of an
12 acquired entity (or any expanded affiliated group
13 which includes such entity) for any taxable year
14 which includes any portion of the applicable period
15 shall in no event be less than the inversion gain of
16 the entity for the taxable year.

17 “(2) CREDITS NOT ALLOWED AGAINST TAX ON
18 INVERSION GAIN.—Credits shall be allowed against
19 the tax imposed by this chapter on an acquired enti-
20 ty for any taxable year described in paragraph (1)
21 only to the extent such tax exceeds the product of—

22 “(A) the amount of the inversion gain for
23 the taxable year, and

24 “(B) the highest rate of tax specified in
25 section 11(b)(1).

1 For purposes of determining the credit allowed by
2 section 901 inversion gain shall be treated as from
3 sources within the United States.

4 “(3) SPECIAL RULES FOR PARTNERSHIPS.—In
5 the case of an acquired entity which is a
6 partnership—

7 “(A) the limitations of this subsection shall
8 apply at the partner rather than the partner-
9 ship level,

10 “(B) the inversion gain of any partner for
11 any taxable year shall be equal to the sum of—

12 “(i) the partner’s distributive share of
13 inversion gain of the partnership for such
14 taxable year, plus

15 “(ii) income or gain required to be
16 recognized for the taxable year by the part-
17 ner under section 367(a), 741, or 1001, or
18 under any other provision of chapter 1, by
19 reason of the transfer during the applica-
20 ble period of any partnership interest of
21 the partner in such partnership to the for-
22 eign incorporated entity, and

23 “(C) the highest rate of tax specified in
24 the rate schedule applicable to the partner

1 under chapter 1 shall be substituted for the
2 rate of tax under paragraph (2)(B).

3 “(4) INVERSION GAIN.—For purposes of this
4 section, the term ‘inversion gain’ means any income
5 or gain required to be recognized under section 304,
6 311(b), 367, 1001, or 1248, or under any other pro-
7 vision of chapter 1, by reason of the transfer during
8 the applicable period of stock or other properties by
9 an acquired entity—

10 “(A) as part of the acquisition described in
11 subsection (a)(2)(A) to which subsection (b) ap-
12 plies, or

13 “(B) after such acquisition to a foreign re-
14 lated person.

15 The Secretary may provide that income or gain from
16 the sale of inventories or other transactions in the
17 ordinary course of a trade or business shall not be
18 treated as inversion gain under subparagraph (B) to
19 the extent the Secretary determines such treatment
20 would not be inconsistent with the purposes of this
21 section.

22 “(5) COORDINATION WITH SECTION 172 AND
23 MINIMUM TAX.—Rules similar to the rules of para-
24 graphs (3) and (4) of section 860E(a) shall apply
25 for purposes of this section.

1 “(6) STATUTE OF LIMITATIONS.—

2 “(A) IN GENERAL.—The statutory period
3 for the assessment of any deficiency attrib-
4 utable to the inversion gain of any taxpayer for
5 any pre-inversion year shall not expire before
6 the expiration of 3 years from the date the Sec-
7 retary is notified by the taxpayer (in such man-
8 ner as the Secretary may prescribe) of the ac-
9 quisition described in subsection (a)(2)(A) to
10 which such gain relates and such deficiency
11 may be assessed before the expiration of such
12 3-year period notwithstanding the provisions of
13 any other law or rule of law which would other-
14 wise prevent such assessment.

15 “(B) PRE-INVERSION YEAR.—For purposes
16 of subparagraph (A), the term ‘pre-inversion
17 year’ means any taxable year if—

18 “(i) any portion of the applicable pe-
19 riod is included in such taxable year, and

20 “(ii) such year ends before the taxable
21 year in which the acquisition described in
22 subsection (a)(2)(A) is completed.

23 “(d) SPECIAL RULES APPLICABLE TO ACQUIRED EN-
24 TITIES TO WHICH SUBSECTION (B) APPLIES.—

1 “(1) INCREASES IN ACCURACY-RELATED PEN-
2 ALTIES.—In the case of any underpayment of tax of
3 an acquired entity to which subsection (b) applies—

4 “(A) section 6662(a) shall be applied with
5 respect to such underpayment by substituting
6 ‘30 percent’ for ‘20 percent’, and

7 “(B) if such underpayment is attributable
8 to one or more gross valuation understate-
9 ments, the increase in the rate of penalty under
10 section 6662(h) shall be to 50 percent rather
11 than 40 percent.

12 “(2) MODIFICATIONS OF LIMITATION ON INTER-
13 EST DEDUCTION.—In the case of an acquired entity
14 to which subsection (b) applies, section 163(j) shall
15 be applied—

16 “(A) without regard to paragraph
17 (2)(A)(ii) thereof, and

18 “(B) by substituting ‘25 percent’ for ‘50
19 percent’ each place it appears in paragraph
20 (2)(B) thereof.

21 “(e) OTHER DEFINITIONS AND SPECIAL RULES.—

22 For purposes of this section—

23 “(1) RULES FOR APPLICATION OF SUBSECTION
24 (a)(2).—In applying subsection (a)(2) for purposes

1 of subsections (a) and (b), the following rules shall
2 apply:

3 “(A) CERTAIN STOCK DISREGARDED.—

4 There shall not be taken into account in deter-
5 mining ownership for purposes of subsection
6 (a)(2)(B)—

7 “(i) stock held by members of the ex-
8 panded affiliated group which includes the
9 foreign incorporated entity, or

10 “(ii) stock of such entity which is sold
11 in a public offering or private placement
12 related to the acquisition described in sub-
13 section (a)(2)(A).

14 “(B) PLAN DEEMED IN CERTAIN CASES.—

15 If a foreign incorporated entity acquires directly
16 or indirectly substantially all of the properties
17 of a domestic corporation or partnership during
18 the 4-year period beginning on the date which
19 is 2 years before the ownership requirements of
20 subsection (a)(2)(B) are met with respect to
21 such domestic corporation or partnership, such
22 actions shall be treated as pursuant to a plan.

23 “(C) CERTAIN TRANSFERS DIS-
24 REGARDED.—The transfer of properties or li-
25 abilities (including by contribution or distribu-

1 tion) shall be disregarded if such transfers are
2 part of a plan a principal purpose of which is
3 to avoid the purposes of this section.

4 “(D) SPECIAL RULE FOR RELATED PART-
5 NERSHIPS.—For purposes of applying sub-
6 section (a)(2) to the acquisition of a domestic
7 partnership, except as provided in regulations,
8 all partnerships which are under common con-
9 trol (within the meaning of section 482) shall
10 be treated as 1 partnership.

11 “(E) TREATMENT OF CERTAIN RIGHTS.—
12 The Secretary shall prescribe such regulations
13 as may be necessary—

14 “(i) to treat warrants, options, con-
15 tracts to acquire stock, convertible debt in-
16 struments, and other similar interests as
17 stock, and

18 “(ii) to treat stock as not stock.

19 “(2) EXPANDED AFFILIATED GROUP.—The
20 term ‘expanded affiliated group’ means an affiliated
21 group as defined in section 1504(a) but without re-
22 gard to section 1504(b)(3), except that section
23 1504(a) shall be applied by substituting ‘more than
24 50 percent’ for ‘at least 80 percent’ each place it ap-
25 pears.

1 “(3) FOREIGN INCORPORATED ENTITY.—The
2 term ‘foreign incorporated entity’ means any entity
3 which is, or but for subsection (a)(1) would be,
4 treated as a foreign corporation for purposes of this
5 title.

6 “(4) FOREIGN RELATED PERSON.—The term
7 ‘foreign related person’ means, with respect to any
8 acquired entity, a foreign person which—

9 “(A) bears a relationship to such entity de-
10 scribed in section 267(b) or 707(b), or

11 “(B) is under the same common control
12 (within the meaning of section 482) as such en-
13 tity.

14 “(5) SUBSEQUENT ACQUISITIONS BY UNRE-
15 LATED DOMESTIC CORPORATIONS.—

16 “(A) IN GENERAL.—Subject to such condi-
17 tions, limitations, and exceptions as the Sec-
18 retary may prescribe, if, after an acquisition de-
19 scribed in subsection (a)(2)(A) to which sub-
20 section (b) applies, a domestic corporation stock
21 of which is traded on an established securities
22 market acquires directly or indirectly any prop-
23 erties of one or more acquired entities in a
24 transaction with respect to which the require-
25 ments of subparagraph (B) are met, this sec-

1 tion shall cease to apply to any such acquired
2 entity with respect to which such requirements
3 are met.

4 “(B) REQUIREMENTS.—The requirements
5 of the subparagraph are met with respect to a
6 transaction involving any acquisition described
7 in subparagraph (A) if—

8 “(i) before such transaction the do-
9 mestic corporation did not have a relation-
10 ship described in section 267(b) or 707(b),
11 and was not under common control (within
12 the meaning of section 482), with the ac-
13 quired entity, or any member of an ex-
14 panded affiliated group including such en-
15 tity, and

16 “(ii) after such transaction, such ac-
17 quired entity—

18 “(I) is a member of the same ex-
19 panded affiliated group which includes
20 the domestic corporation or has such
21 a relationship or is under such com-
22 mon control with any member of such
23 group, and

24 “(II) is not a member of, and
25 does not have such a relationship and

1 is not under such common control
2 with any member of, the expanded af-
3 filiated group which before such ac-
4 quisition included such entity.

5 “(f) REGULATIONS.—The Secretary shall provide
6 such regulations as are necessary to carry out this section,
7 including regulations providing for such adjustments to
8 the application of this section as are necessary to prevent
9 the avoidance of the purposes of this section, including the
10 avoidance of such purposes through—

11 “(1) the use of related persons, pass-thru or
12 other noncorporate entities, or other intermediaries,
13 or

14 “(2) transactions designed to have persons
15 cease to be (or not become) members of expanded
16 affiliated groups or related persons.”.

17 (b) INFORMATION REPORTING.—The Secretary of
18 the Treasury shall exercise the Secretary’s authority under
19 the Internal Revenue Code of 1986 to require entities in-
20 volved in transactions to which section 7874 of such Code
21 (as added by subsection (a)) applies to report to the Sec-
22 retary, shareholders, partners, and such other persons as
23 the Secretary may prescribe such information as is nec-
24 essary to ensure the proper tax treatment of such trans-
25 actions.

1 (c) CONFORMING AMENDMENT.—The table of sec-
 2 tions for subchapter C of chapter 80 is amended by adding
 3 at the end the following new item:

“Sec. 7874. Rules relating to inverted corporate entities.”.

4 (d) TRANSITION RULE FOR CERTAIN REGULATED
 5 INVESTMENT COMPANIES AND UNIT INVESTMENT
 6 TRUSTS.—Notwithstanding section 7874 of the Internal
 7 Revenue Code of 1986 (as added by subsection (a)), a reg-
 8 ulated investment company, or other pooled fund or trust
 9 specified by the Secretary of the Treasury, may elect to
 10 recognize gain by reason of section 367(a) of such Code
 11 with respect to a transaction under which a foreign incor-
 12 porated entity is treated as an inverted domestic corpora-
 13 tion under section 7874(a) of such Code by reason of an
 14 acquisition completed after March 20, 2002, and before
 15 January 1, 2004.

16 **SEC. 5652. IMPOSITION OF MARK-TO-MARKET TAX ON INDI-**
 17 **VIDUALS WHO EXPATRIATE.**

18 (a) IN GENERAL.—Subpart A of part II of sub-
 19 chapter N of chapter 1 is amended by inserting after sec-
 20 tion 877 the following new section:

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

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

24 “(1) MARK TO MARKET.—Except as provided in
 25 subsections (d) and (f), all property of a covered ex-

1 patriate to whom this section applies shall be treated
2 as sold on the day before the expatriation date for
3 its fair market value.

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

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

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

15 Proper adjustment shall be made in the amount of
16 any gain or loss subsequently realized for gain or
17 loss taken into account under the preceding sen-
18 tence.

19 “(3) EXCLUSION FOR CERTAIN GAIN.—

20 “(A) IN GENERAL.—The amount which,
21 but for this paragraph, would be includible in
22 the gross income of any individual by reason of
23 this section shall be reduced (but not below
24 zero) by \$600,000. For purposes of this para-
25 graph, allocable expatriation gain taken into ac-

1 count under subsection (f)(2) shall be treated in
2 the same manner as an amount required to be
3 includible in gross income.

4 “(B) COST-OF-LIVING ADJUSTMENT.—

5 “(i) IN GENERAL.—In the case of an
6 expatriation date occurring in any calendar
7 year after 2004, the \$600,000 amount
8 under subparagraph (A) shall be increased
9 by an amount equal to—

10 “(I) such dollar amount, multi-
11 plied by

12 “(II) the cost-of-living adjust-
13 ment determined under section 1(f)(3)
14 for such calendar year, determined by
15 substituting ‘calendar year 2003’ for
16 ‘calendar year 1992’ in subparagraph
17 (B) thereof.

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

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

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

3 “(i) this section (other than this para-
4 graph and subsection (i)) shall not apply to
5 the expatriate, but

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

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

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

17 “(ii) consents to the waiver of any
18 right of the individual under any treaty of
19 the United States which would preclude as-
20 sessment or collection of any tax which
21 may be imposed by reason of this para-
22 graph, and

23 “(iii) complies with such other re-
24 quirements as the Secretary may prescribe.

1 “(C) ELECTION.—An election under sub-
2 paragraph (A) shall apply to all property to
3 which this section would apply but for the elec-
4 tion and, once made, shall be irrevocable. Such
5 election shall also apply to property the basis of
6 which is determined in whole or in part by ref-
7 erence to the property with respect to which the
8 election was made.

9 “(b) ELECTION TO DEFER TAX.—

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

20 “(2) DETERMINATION OF TAX WITH RESPECT
21 TO PROPERTY.—For purposes of paragraph (1), the
22 additional tax attributable to any property is an
23 amount which bears the same ratio to the additional
24 tax imposed by this chapter for the taxable year
25 solely by reason of subsection (a) as the gain taken

1 into account under subsection (a) with respect to
2 such property bears to the total gain taken into ac-
3 count under subsection (a) with respect to all prop-
4 erty to which subsection (a) applies.

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

14 “(4) SECURITY.—

15 “(A) IN GENERAL.—No election may be
16 made under paragraph (1) with respect to any
17 property unless adequate security is provided to
18 the Secretary with respect to such property.

19 “(B) ADEQUATE SECURITY.—For purposes
20 of subparagraph (A), security with respect to
21 any property shall be treated as adequate secu-
22 rity if—

23 “(i) it is a bond in an amount equal
24 to the deferred tax amount under para-
25 graph (2) for the property, or

1 “(ii) the taxpayer otherwise estab-
2 lishes to the satisfaction of the Secretary
3 that the security is adequate.

4 “(5) WAIVER OF CERTAIN RIGHTS.—No elec-
5 tion may be made under paragraph (1) unless the
6 taxpayer consents to the waiver of any right under
7 any treaty of the United States which would pre-
8 clude assessment or collection of any tax imposed by
9 reason of this section.

10 “(6) ELECTIONS.—An election under paragraph
11 (1) shall only apply to property described in the elec-
12 tion and, once made, is irrevocable. An election may
13 be made under paragraph (1) with respect to an in-
14 terest in a trust with respect to which gain is re-
15 quired to be recognized under subsection (f)(1).

16 “(7) INTEREST.—For purposes of section
17 6601—

18 “(A) the last date for the payment of tax
19 shall be determined without regard to the elec-
20 tion under this subsection, and

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

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

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

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

6 “(A) the individual—

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

12 “(ii) has not been a resident of the
13 United States (as defined in section
14 7701(b)(1)(A)(ii)) during the 5 taxable
15 years ending with the taxable year during
16 which the expatriation date occurs, or

17 “(B)(i) the individual’s relinquishment of
18 United States citizenship occurs before such in-
19 dividual attains age 18½, and

20 “(ii) the individual has been a resident of
21 the United States (as so defined) for not more
22 than 5 taxable years before the date of relin-
23 quishment.

24 “(d) EXEMPT PROPERTY; SPECIAL RULES FOR PEN-
25 SION PLANS.—

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

3 “(A) UNITED STATES REAL PROPERTY IN-
4 TERESTS.—Any United States real property in-
5 terest (as defined in section 897(c)(1)), other
6 than stock of a United States real property
7 holding corporation which does not, on the day
8 before the expatriation date, meet the require-
9 ments of section 897(c)(2).

10 “(B) SPECIFIED PROPERTY.—Any prop-
11 erty or interest in property not described in
12 subparagraph (A) which the Secretary specifies
13 in regulations.

14 “(2) SPECIAL RULES FOR CERTAIN RETIRE-
15 MENT PLANS.—

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

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

23 “(ii) an amount equal to the present
24 value of the expatriate’s nonforfeitable ac-
25 crued benefit shall be treated as having

1 been received by such individual on such
2 date as a distribution under the plan.

3 “(B) TREATMENT OF SUBSEQUENT DIS-
4 TRIBUTIONS.—In the case of any distribution
5 on or after the expatriation date to or on behalf
6 of the covered expatriate from a plan from
7 which the expatriate was treated as receiving a
8 distribution under subparagraph (A), the
9 amount otherwise includible in gross income by
10 reason of the subsequent distribution shall be
11 reduced by the excess of the amount includible
12 in gross income under subparagraph (A) over
13 any portion of such amount to which this sub-
14 paragraph previously applied.

15 “(C) TREATMENT OF SUBSEQUENT DIS-
16 TRIBUTIONS BY PLAN.—For purposes of this
17 title, a retirement plan to which this paragraph
18 applies, and any person acting on the plan’s be-
19 half, shall treat any subsequent distribution de-
20 scribed in subparagraph (B) in the same man-
21 ner as such distribution would be treated with-
22 out regard to this paragraph.

23 “(D) APPLICABLE PLANS.—This para-
24 graph shall apply to—

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

3 “(ii) an eligible deferred compensation
4 plan (as defined in section 457(b)) of an
5 eligible employer described in section
6 457(e)(1)(A), and

7 “(iii) to the extent provided in regula-
8 tions, any foreign pension plan or similar
9 retirement arrangements or programs.

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

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

13 “(A) any United States citizen who relin-
14 quishes citizenship, and

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

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

20 “(ii) commences to be treated as a
21 resident of a foreign country under the
22 provisions of a tax treaty between the
23 United States and the foreign country and
24 who does not waive the benefits of such

1 treaty applicable to residents of the foreign
2 country.

3 “(2) EXPATRIATION DATE.—The term ‘expa-
4 triation date’ means—

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

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

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

13 “(A) the date the individual renounces
14 such individual’s United States nationality be-
15 fore a diplomatic or consular officer of the
16 United States pursuant to paragraph (5) of sec-
17 tion 349(a) of the Immigration and Nationality
18 Act (8 U.S.C. 1481(a)(5)),

19 “(B) the date the individual furnishes to
20 the United States Department of State a signed
21 statement of voluntary relinquishment of
22 United States nationality confirming the per-
23 formance of an act of expatriation specified in
24 paragraph (1), (2), (3), or (4) of section 349(a)

1 of the Immigration and Nationality Act (8
2 U.S.C. 1481(a)(1)–(4)),

3 “(C) the date the United States Depart-
4 ment of State issues to the individual a certifi-
5 cate of loss of nationality, or

6 “(D) the date a court of the United States
7 cancels a naturalized citizen’s certificate of nat-
8 uralization.

9 Subparagraph (A) or (B) shall not apply to any indi-
10 vidual unless the renunciation or voluntary relin-
11 quishment is subsequently approved by the issuance
12 to the individual of a certificate of loss of nationality
13 by the United States Department of State.

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

17 “(f) SPECIAL RULES APPLICABLE TO BENE-
18 FICIARIES’ INTERESTS IN TRUST.—

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

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

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

3 “(C)(i) such separate share shall be treat-
4 ed as a separate trust consisting of the assets
5 allocable to such share,

6 “(ii) the separate trust shall be treated as
7 having sold its assets on the day before the ex-
8 patriation date for their fair market value and
9 as having distributed all of its assets to the in-
10 dividual as of such time, and

11 “(iii) the individual shall be treated as hav-
12 ing recontributed the assets to the separate
13 trust.

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

20 “(2) SPECIAL RULES FOR INTERESTS IN QUALI-
21 FIED TRUSTS.—

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

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

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

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

11 “(i) the highest rate of tax imposed by
12 section 1(e) for the taxable year which in-
13 cludes the day before the expatriation date,
14 multiplied by the amount of the distribu-
15 tion, or

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

21 “(C) DEFERRED TAX ACCOUNT.—For pur-
22 poses of subparagraph (B)(ii)—

23 “(i) OPENING BALANCE.—The open-
24 ing balance in a deferred tax account with
25 respect to any trust interest is an amount

1 equal to the tax which would have been im-
2 posed on the allocable expatriation gain
3 with respect to the trust interest if such
4 gain had been included in gross income
5 under subsection (a).

6 “(ii) INCREASE FOR INTEREST.—The
7 balance in the deferred tax account shall
8 be increased by the amount of interest de-
9 termined (on the balance in the account at
10 the time the interest accrues), for periods
11 after the 90th day after the expatriation
12 date, by using the rates and method appli-
13 cable under section 6621 for underpay-
14 ments of tax for such periods, except that
15 section 6621(a)(2) shall be applied by sub-
16 stituting ‘5 percentage points’ for ‘3 per-
17 centage points’ in subparagraph (B) there-
18 of.

19 “(iii) DECREASE FOR TAXES PRE-
20 VIOUSLY PAID.—The balance in the tax de-
21 ferred account shall be reduced—

22 “(I) by the amount of taxes im-
23 posed by subparagraph (A) on any
24 distribution to the person holding the
25 trust interest, and

1 “(II) in the case of a person
2 holding a nonvested interest, to the
3 extent provided in regulations, by the
4 amount of taxes imposed by subpara-
5 graph (A) on distributions from the
6 trust with respect to nonvested inter-
7 ests not held by such person.

8 “(D) ALLOCABLE EXPATRIATION GAIN.—
9 For purposes of this paragraph, the allocable
10 expatriation gain with respect to any bene-
11 ficiary’s interest in a trust is the amount of
12 gain which would be allocable to such bene-
13 ficiary’s vested and nonvested interests in the
14 trust if the beneficiary held directly all assets
15 allocable to such interests.

16 “(E) TAX DEDUCTED AND WITHHELD.—
17 “(i) IN GENERAL.—The tax imposed
18 by subparagraph (A)(ii) shall be deducted
19 and withheld by the trustees from the dis-
20 tribution to which it relates.

21 “(ii) EXCEPTION WHERE FAILURE TO
22 WAIVE TREATY RIGHTS.—If an amount
23 may not be deducted and withheld under
24 clause (i) by reason of the distributee fail-

1 ing to waive any treaty right with respect
2 to such distribution—

3 “(I) the tax imposed by subpara-
4 graph (A)(ii) shall be imposed on the
5 trust and each trustee shall be person-
6 ally liable for the amount of such tax,
7 and

8 “(II) any other beneficiary of the
9 trust shall be entitled to recover from
10 the distributee the amount of such tax
11 imposed on the other beneficiary.

12 “(F) DISPOSITION.—If a trust ceases to be
13 a qualified trust at any time, a covered expa-
14 triate disposes of an interest in a qualified
15 trust, or a covered expatriate holding an inter-
16 est in a qualified trust dies, then, in lieu of the
17 tax imposed by subparagraph (A)(ii), there is
18 hereby imposed a tax equal to the lesser of—

19 “(i) the tax determined under para-
20 graph (1) as if the day before the expatria-
21 tion date were the date of such cessation,
22 disposition, or death, whichever is applica-
23 ble, or

24 “(ii) the balance in the tax deferred
25 account immediately before such date.

1 Such tax shall be imposed on the trust and
2 each trustee shall be personally liable for the
3 amount of such tax and any other beneficiary
4 of the trust shall be entitled to recover from the
5 covered expatriate or the estate the amount of
6 such tax imposed on the other beneficiary.

7 “(G) DEFINITIONS AND SPECIAL RULES.—

8 For purposes of this paragraph—

9 “(i) QUALIFIED TRUST.—The term
10 ‘qualified trust’ means a trust which is de-
11 scribed in section 7701(a)(30)(E).

12 “(ii) VESTED INTEREST.—The term
13 ‘vested interest’ means any interest which,
14 as of the day before the expatriation date,
15 is vested in the beneficiary.

16 “(iii) NONVESTED INTEREST.—The
17 term ‘nonvested interest’ means, with re-
18 spect to any beneficiary, any interest in a
19 trust which is not a vested interest. Such
20 interest shall be determined by assuming
21 the maximum exercise of discretion in
22 favor of the beneficiary and the occurrence
23 of all contingencies in favor of the bene-
24 ficiary.

1 “(iv) ADJUSTMENTS.—The Secretary
2 may provide for such adjustments to the
3 bases of assets in a trust or a deferred tax
4 account, and the timing of such adjust-
5 ments, in order to ensure that gain is
6 taxed only once.

7 “(v) COORDINATION WITH RETIRE-
8 MENT PLAN RULES.—This subsection shall
9 not apply to an interest in a trust which
10 is part of a retirement plan to which sub-
11 section (d)(2) applies.

12 “(3) DETERMINATION OF BENEFICIARIES’ IN-
13 TEREST IN TRUST.—

14 “(A) DETERMINATIONS UNDER PARA-
15 GRAPH (1).—For purposes of paragraph (1), a
16 beneficiary’s interest in a trust shall be based
17 upon all relevant facts and circumstances, in-
18 cluding the terms of the trust instrument and
19 any letter of wishes or similar document, histor-
20 ical patterns of trust distributions, and the ex-
21 istence of and functions performed by a trust
22 protector or any similar adviser.

23 “(B) OTHER DETERMINATIONS.—For pur-
24 poses of this section—

1 “(i) CONSTRUCTIVE OWNERSHIP.—If
2 a beneficiary of a trust is a corporation,
3 partnership, trust, or estate, the share-
4 holders, partners, or beneficiaries shall be
5 deemed to be the trust beneficiaries for
6 purposes of this section.

7 “(ii) TAXPAYER RETURN POSITION.—
8 A taxpayer shall clearly indicate on its in-
9 come tax return—

10 “(I) the methodology used to de-
11 termine that taxpayer’s trust interest
12 under this section, and

13 “(II) if the taxpayer knows (or
14 has reason to know) that any other
15 beneficiary of such trust is using a
16 different methodology to determine
17 such beneficiary’s trust interest under
18 this section.

19 “(g) TERMINATION OF DEFERRALS, ETC.—In the
20 case of any covered expatriate, notwithstanding any other
21 provision of this title—

22 “(1) any period during which recognition of in-
23 come or gain is deferred shall terminate on the day
24 before the expatriation date, and

1 “(2) any extension of time for payment of tax
2 shall cease to apply on the day before the expatria-
3 tion date and the unpaid portion of such tax shall
4 be due and payable at the time and in the manner
5 prescribed by the Secretary.

6 “(h) IMPOSITION OF TENTATIVE TAX.—

7 “(1) IN GENERAL.—If an individual is required
8 to include any amount in gross income under sub-
9 section (a) for any taxable year, there is hereby im-
10 posed, immediately before the expatriation date, a
11 tax in an amount equal to the amount of tax which
12 would be imposed if the taxable year were a short
13 taxable year ending on the expatriation date.

14 “(2) DUE DATE.—The due date for any tax im-
15 posed by paragraph (1) shall be the 90th day after
16 the expatriation date.

17 “(3) TREATMENT OF TAX.—Any tax paid under
18 paragraph (1) shall be treated as a payment of the
19 tax imposed by this chapter for the taxable year to
20 which subsection (a) applies.

21 “(4) DEFERRAL OF TAX.—The provisions of
22 subsection (b) shall apply to the tax imposed by this
23 subsection to the extent attributable to gain includ-
24 ible in gross income by reason of this section.

1 “(i) SPECIAL LIENS FOR DEFERRED TAX
2 AMOUNTS.—

3 “(1) IMPOSITION OF LIEN.—

4 “(A) IN GENERAL.—If a covered expatriate
5 makes an election under subsection (a)(4) or
6 (b) which results in the deferral of any tax im-
7 posed by reason of subsection (a), the deferred
8 amount (including any interest, additional
9 amount, addition to tax, assessable penalty, and
10 costs attributable to the deferred amount) shall
11 be a lien in favor of the United States on all
12 property of the expatriate located in the United
13 States (without regard to whether this section
14 applies to the property).

15 “(B) DEFERRED AMOUNT.—For purposes
16 of this subsection, the deferred amount is the
17 amount of the increase in the covered expatri-
18 ate’s income tax which, but for the election
19 under subsection (a)(4) or (b), would have oc-
20 curred by reason of this section for the taxable
21 year including the expatriation date.

22 “(2) PERIOD OF LIEN.—The lien imposed by
23 this subsection shall arise on the expatriation date
24 and continue until—

1 “(A) the liability for tax by reason of this
2 section is satisfied or has become unenforceable
3 by reason of lapse of time, or

4 “(B) it is established to the satisfaction of
5 the Secretary that no further tax liability may
6 arise by reason of this section.

7 “(3) CERTAIN RULES APPLY.—The rules set
8 forth in paragraphs (1), (3), and (4) of section
9 6324A(d) shall apply with respect to the lien im-
10 posed by this subsection as if it were a lien imposed
11 by section 6324A.

12 “(j) REGULATIONS.—The Secretary shall prescribe
13 such regulations as may be necessary or appropriate to
14 carry out the purposes of this section.”.

15 (b) INCLUSION IN INCOME OF GIFTS AND BEQUESTS
16 RECEIVED BY UNITED STATES CITIZENS AND RESIDENTS
17 FROM EXPATRIATES.—Section 102 (relating to gifts, etc.
18 not included in gross income) is amended by adding at
19 the end the following new subsection:

20 “(d) GIFTS AND INHERITANCES FROM COVERED EX-
21 PATRIATES.—

22 “(1) IN GENERAL.—Subsection (a) shall not ex-
23 clude from gross income the value of any property
24 acquired by gift, bequest, devise, or inheritance from
25 a covered expatriate after the expatriation date. For

1 purposes of this subsection, any term used in this
2 subsection which is also used in section 877A shall
3 have the same meaning as when used in section
4 877A.

5 “(2) EXCEPTIONS FOR TRANSFERS OTHERWISE
6 SUBJECT TO ESTATE OR GIFT TAX.—Paragraph (1)
7 shall not apply to any property if either—

8 “(A) the gift, bequest, devise, or inherit-
9 ance is—

10 “(i) shown on a timely filed return of
11 tax imposed by chapter 12 as a taxable gift
12 by the covered expatriate, or

13 “(ii) included in the gross estate of
14 the covered expatriate for purposes of
15 chapter 11 and shown on a timely filed re-
16 turn of tax imposed by chapter 11 of the
17 estate of the covered expatriate, or

18 “(B) no such return was timely filed but
19 no such return would have been required to be
20 filed even if the covered expatriate were a cit-
21 izen or long-term resident of the United
22 States.”.

23 (c) DEFINITION OF TERMINATION OF UNITED
24 STATES CITIZENSHIP.—Section 7701(a) is amended by
25 adding at the end the following new paragraph:

1 “(48) TERMINATION OF UNITED STATES CITI-
2 ZENSHIP.—

3 “(A) IN GENERAL.—An individual shall
4 not cease to be treated as a United States citi-
5 zen before the date on which the individual’s
6 citizenship is treated as relinquished under sec-
7 tion 877A(e)(3).

8 “(B) DUAL CITIZENS.—Under regulations
9 prescribed by the Secretary, subparagraph (A)
10 shall not apply to an individual who became at
11 birth a citizen of the United States and a citi-
12 zen of another country.”.

13 (d) INELIGIBILITY FOR VISA OR ADMISSION TO
14 UNITED STATES.—

15 (1) IN GENERAL.—Section 212(a)(10)(E) of the
16 Immigration and Nationality Act (8 U.S.C.
17 1182(a)(10)(E)) is amended to read as follows:

18 “(E) FORMER CITIZENS NOT IN COMPLI-
19 ANCE WITH EXPATRIATION REVENUE PROVI-
20 SIONS.—Any alien who is a former citizen of
21 the United States who relinquishes United
22 States citizenship (within the meaning of sec-
23 tion 877A(e)(3) of the Internal Revenue Code
24 of 1986) and who is not in compliance with sec-

1 tion 877A of such Code (relating to expatria-
2 tion).”.

3 (2) AVAILABILITY OF INFORMATION.—

4 (A) IN GENERAL.—Section 6103(l) (relat-
5 ing to disclosure of returns and return informa-
6 tion for purposes other than tax administration)
7 is amended by adding at the end the following
8 new paragraph:

9 “(19) DISCLOSURE TO DENY VISA OR ADMIS-
10 SION TO CERTAIN EXPATRIATES.—Upon written re-
11 quest of the Attorney General or the Attorney Gen-
12 eral’s delegate, the Secretary shall disclose whether
13 an individual is in compliance with section 877A
14 (and if not in compliance, any items of noncompli-
15 ance) to officers and employees of the Federal agen-
16 cy responsible for administering section
17 212(a)(10)(E) of the Immigration and Nationality
18 Act solely for the purpose of, and to the extent nec-
19 essary in, administering such section
20 212(a)(10)(E).”.

21 (B) SAFEGUARDS.—

22 (i) TECHNICAL AMENDMENTS.—Para-
23 graph (4) of section 6103(p) of the Inter-
24 nal Revenue Code of 1986, as amended by
25 section 202(b)(2)(B) of the Trade Act of

1 2002 (Public Law 107–210; 116 Stat.
2 961), is amended by striking “or (17)”
3 after “any other person described in sub-
4 section (l)(16)” each place it appears and
5 inserting “or (18)”.

6 (ii) CONFORMING AMENDMENTS.—
7 Section 6103(p)(4) (relating to safe-
8 guards), as amended by clause (i), is
9 amended by striking “or (18)” after “any
10 other person described in subsection
11 (l)(16)” each place it appears and insert-
12 ing “(18), or (19)”.

13 (3) EFFECTIVE DATES.—

14 (A) IN GENERAL.—Except as provided in
15 subparagraph (B), the amendments made by
16 this subsection shall apply to individuals who
17 relinquish United States citizenship on or after
18 the date of the enactment of this Act.

19 (B) TECHNICAL AMENDMENTS.—The
20 amendments made by paragraph (2)(B)(i) shall
21 take effect as if included in the amendments
22 made by section 202(b)(2)(B) of the Trade Act
23 of 2002 (Public Law 107–210; 116 Stat. 961).

24 (e) CONFORMING AMENDMENTS.—

1 (1) Section 877 is amended by adding at the
2 end the following new subsection:

3 “(g) APPLICATION.—This section shall not apply to
4 an expatriate (as defined in section 877A(e)) whose expa-
5 triation date (as so defined) occurs on or after February
6 2, 2004.”.

7 (2) Section 2107 is amended by adding at the
8 end the following new subsection:

9 “(f) APPLICATION.—This section shall not apply to
10 any expatriate subject to section 877A.”.

11 (3) Section 2501(a)(3) is amended by adding at
12 the end the following new subparagraph:

13 “(F) APPLICATION.—This paragraph shall
14 not apply to any expatriate subject to section
15 877A.”.

16 (4)(A) Paragraph (1) of section 6039G(d) is
17 amended by inserting “or 877A” after “section
18 877”.

19 (B) The second sentence of section 6039G(e) is
20 amended by inserting “or who relinquishes United
21 States citizenship (within the meaning of section
22 877A(e)(3))” after “877(a)”.

23 (C) Section 6039G(f) is amended by inserting
24 “or 877A(e)(2)(B)” after “877(e)(1)”.

1 (f) CLERICAL AMENDMENT.—The table of sections
2 for subpart A of part II of subchapter N of chapter 1
3 is amended by inserting after the item relating to section
4 877 the following new item:

“Sec. 877A. Tax responsibilities of expatriation.”.

5 (g) EFFECTIVE DATE.—

6 (1) IN GENERAL.—Except as provided in this
7 subsection, the amendments made by this section
8 shall apply to expatriates (within the meaning of
9 section 877A(e) of the Internal Revenue Code of
10 1986, as added by this section) whose expatriation
11 date (as so defined) occurs on or after February 2,
12 2004.

13 (2) GIFTS AND BEQUESTS.—Section 102(d) of
14 the Internal Revenue Code of 1986 (as added by
15 subsection (b)) shall apply to gifts and bequests re-
16 ceived on or after February 2, 2004, from an indi-
17 vidual or the estate of an individual whose expatria-
18 tion date (as so defined) occurs after such date.

19 (3) DUE DATE FOR TENTATIVE TAX.—The due
20 date under section 877A(h)(2) of the Internal Rev-
21 enue Code of 1986, as added by this section, shall
22 in no event occur before the 90th day after the date
23 of the enactment of this Act.

1 **SEC. 5653. EXCISE TAX ON STOCK COMPENSATION OF IN-**
 2 **SIDERS IN INVERTED CORPORATIONS.**

3 (a) IN GENERAL.—Subtitle D is amended by adding
 4 at the end the following new chapter:

5 **“CHAPTER 48—STOCK COMPENSATION OF**
 6 **INSIDERS IN INVERTED CORPORATIONS**

“Sec. 5000A. Stock compensation of insiders in inverted corporations entities.

7 **“SEC. 5000A. STOCK COMPENSATION OF INSIDERS IN IN-**
 8 **VERTED CORPORATIONS.**

9 “(a) IMPOSITION OF TAX.—In the case of an indi-
 10 vidual who is a disqualified individual with respect to any
 11 inverted corporation, there is hereby imposed on such per-
 12 son a tax equal to 20 percent of the value (determined
 13 under subsection (b)) of the specified stock compensation
 14 held (directly or indirectly) by or for the benefit of such
 15 individual or a member of such individual’s family (as de-
 16 fined in section 267) at any time during the 12-month
 17 period beginning on the date which is 6 months before
 18 the inversion date.

19 “(b) VALUE.—For purposes of subsection (a)—

20 “(1) IN GENERAL.—The value of specified stock
 21 compensation shall be—

22 “(A) in the case of a stock option (or other
 23 similar right) or any stock appreciation right,
 24 the fair value of such option or right, and

1 “(B) in any other case, the fair market
2 value of such compensation.

3 “(2) DATE FOR DETERMINING VALUE.—The
4 determination of value shall be made—

5 “(A) in the case of specified stock com-
6 pensation held on the inversion date, on such
7 date,

8 “(B) in the case of such compensation
9 which is canceled during the 6 months before
10 the inversion date, on the day before such can-
11 cellation, and

12 “(C) in the case of such compensation
13 which is granted after the inversion date, on the
14 date such compensation is granted.

15 “(c) TAX TO APPLY ONLY IF SHAREHOLDER GAIN
16 RECOGNIZED.—Subsection (a) shall apply to any disquali-
17 fied individual with respect to an inverted corporation only
18 if gain (if any) on any stock in such corporation is recog-
19 nized in whole or part by any shareholder by reason of
20 the acquisition referred to in section 7874(a)(2)(A) (deter-
21 mined by substituting ‘July 10, 2002’ for ‘March 20,
22 2002’) with respect to such corporation.

23 “(d) EXCEPTION WHERE GAIN RECOGNIZED ON
24 COMPENSATION.—Subsection (a) shall not apply to—

1 “(1) any stock option which is exercised on the
2 inversion date or during the 6-month period before
3 such date and to the stock acquired in such exercise,
4 if income is recognized under section 83 on or before
5 the inversion date with respect to the stock acquired
6 pursuant to such exercise, and

7 “(2) any specified stock compensation which is
8 exercised, sold, exchanged, distributed, cashed out,
9 or otherwise paid during such period in a trans-
10 action in which gain or loss is recognized in full.

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

12 “(1) DISQUALIFIED INDIVIDUAL.—The term
13 ‘disqualified individual’ means, with respect to a cor-
14 poration, any individual who, at any time during the
15 12-month period beginning on the date which is 6
16 months before the inversion date—

17 “(A) is subject to the requirements of sec-
18 tion 16(a) of the Securities Exchange Act of
19 1934 with respect to such corporation, or

20 “(B) would be subject to such require-
21 ments if such corporation were an issuer of eq-
22 uity securities referred to in such section.

23 “(2) INVERTED CORPORATION; INVERSION
24 DATE.—

1 “(A) INVERTED CORPORATION.—The term
2 ‘inverted corporation’ means any corporation to
3 which subsection (a) or (b) of section 7874 ap-
4 plies determined—

5 “(i) by substituting ‘July 10, 2002’
6 for ‘March 20, 2002’ in section
7 7874(a)(2)(A), and

8 “(ii) without regard to subsection
9 (b)(1)(A).

10 Such term includes any predecessor or suc-
11 cessor of such a corporation.

12 “(B) INVERSION DATE.—The term ‘inver-
13 sion date’ means, with respect to a corporation,
14 the date on which the corporation first becomes
15 an inverted corporation.

16 “(3) SPECIFIED STOCK COMPENSATION.—

17 “(A) IN GENERAL.—The term ‘specified
18 stock compensation’ means payment (or right
19 to payment) granted by the inverted corpora-
20 tion (or by any member of the expanded affili-
21 ated group which includes such corporation) to
22 any person in connection with the performance
23 of services by a disqualified individual for such
24 corporation or member if the value of such pay-
25 ment or right is based on (or determined by ref-

1 erence to) the value (or change in value) of
 2 stock in such corporation (or any such mem-
 3 ber).

4 “(B) EXCEPTIONS.—Such term shall not
 5 include—

6 “(i) any option to which part II of
 7 subchapter D of chapter 1 applies, or

8 “(ii) any payment or right to payment
 9 from a plan referred to in section
 10 280G(b)(6).

11 “(4) EXPANDED AFFILIATED GROUP.—The
 12 term ‘expanded affiliated group’ means an affiliated
 13 group (as defined in section 1504(a) without regard
 14 to section 1504(b)(3)); except that section 1504(a)
 15 shall be applied by substituting ‘more than 50 per-
 16 cent’ for ‘at least 80 percent’ each place it appears.

17 “(f) SPECIAL RULES.—For purposes of this
 18 section—

19 “(1) CANCELLATION OF RESTRICTION.—The
 20 cancellation of a restriction which by its terms will
 21 never lapse shall be treated as a grant.

22 “(2) PAYMENT OR REIMBURSEMENT OF TAX BY
 23 CORPORATION TREATED AS SPECIFIED STOCK COM-
 24 PENSATION.—Any payment of the tax imposed by
 25 this section directly or indirectly by the inverted cor-

1 poration or by any member of the expanded affili-
2 ated group which includes such corporation—

3 “(A) shall be treated as specified stock
4 compensation, and

5 “(B) shall not be allowed as a deduction
6 under any provision of chapter 1.

7 “(3) CERTAIN RESTRICTIONS IGNORED.—
8 Whether there is specified stock compensation, and
9 the value thereof, shall be determined without regard
10 to any restriction other than a restriction which by
11 its terms will never lapse.

12 “(4) PROPERTY TRANSFERS.—Any transfer of
13 property shall be treated as a payment and any right
14 to a transfer of property shall be treated as a right
15 to a payment.

16 “(5) OTHER ADMINISTRATIVE PROVISIONS.—
17 For purposes of subtitle F, any tax imposed by this
18 section shall be treated as a tax imposed by subtitle
19 A.

20 “(g) REGULATIONS.—The Secretary shall prescribe
21 such regulations as may be necessary or appropriate to
22 carry out the purposes of this section.”.

23 (b) DENIAL OF DEDUCTION.—

24 (1) IN GENERAL.—Paragraph (6) of section
25 275(a) is amended by inserting “48,” after “46,”.

1 (2) \$1,000,000 LIMIT ON DEDUCTIBLE COM-
2 PENSATION REDUCED BY PAYMENT OF EXCISE TAX
3 ON SPECIFIED STOCK COMPENSATION.—Paragraph
4 (4) of section 162(m) is amended by adding at the
5 end the following new subparagraph:

6 “(G) COORDINATION WITH EXCISE TAX ON
7 SPECIFIED STOCK COMPENSATION.—The dollar
8 limitation contained in paragraph (1) with re-
9 spect to any covered employee shall be reduced
10 (but not below zero) by the amount of any pay-
11 ment (with respect to such employee) of the tax
12 imposed by section 5000A directly or indirectly
13 by the inverted corporation (as defined in such
14 section) or by any member of the expanded af-
15 filiated group (as defined in such section) which
16 includes such corporation.”.

17 (c) CONFORMING AMENDMENTS.—

18 (1) The last sentence of section 3121(v)(2)(A)
19 is amended by inserting before the period “or to any
20 specified stock compensation (as defined in section
21 5000A) on which tax is imposed by section 5000A”.

22 (2) The table of chapters for subtitle D is
23 amended by adding at the end the following new
24 item:

“Chapter 48. Stock compensation of insiders in inverted corporations.”.

1 (d) **EFFECTIVE DATE.**—The amendments made by
2 this section shall take effect on July 11, 2002; except that
3 periods before such date shall not be taken into account
4 in applying the periods in subsections (a) and (e)(1) of
5 section 5000A of the Internal Revenue Code of 1986, as
6 added by this section.

7 **SEC. 5654. REINSURANCE OF UNITED STATES RISKS IN**
8 **FOREIGN JURISDICTIONS.**

9 (a) **IN GENERAL.**—Section 845(a) (relating to alloca-
10 tion in case of reinsurance agreement involving tax avoid-
11 ance or evasion) is amended by striking “source and char-
12 acter” and inserting “amount, source, or character”.

13 (b) **EFFECTIVE DATE.**—The amendments made by
14 this section shall apply to any risk reinsured after April
15 11, 2002.

16 **Subtitle H—Additional Revenue**
17 **Provisions**

18 **PART I—ADMINISTRATIVE PROVISIONS**

19 **SEC. 5671. EXTENSION OF IRS USER FEES.**

20 (a) **IN GENERAL.**—Section 7528(c) (relating to ter-
21 mination) is amended by striking “December 31, 2004”
22 and inserting “September 30, 2013”.

23 (b) **EFFECTIVE DATE.**—The amendment made by
24 this section shall apply to requests after the date of the
25 enactment of this Act.

1 **SEC. 5672. CLARIFICATION OF RULES FOR PAYMENT OF ES-**
2 **TIMATED TAX FOR CERTAIN DEEMED ASSET**
3 **SALES.**

4 (a) IN GENERAL.—Paragraph (13) of section 338(h)
5 (relating to tax on deemed sale not taken into account for
6 estimated tax purposes) is amended by adding at the end
7 the following: “The preceding sentence shall not apply
8 with respect to a qualified stock purchase for which an
9 election is made under paragraph (10).”.

10 (b) EFFECTIVE DATE.—The amendment made by
11 subsection (a) shall apply to transactions occurring after
12 the date of the enactment of this Act.

13 **SEC. 5673. PARTIAL PAYMENT OF TAX LIABILITY IN IN-**
14 **STALLMENT AGREEMENTS.**

15 (a) IN GENERAL.—

16 (1) Section 6159(a) (relating to authorization
17 of agreements) is amended—

18 (A) by striking “satisfy liability for pay-
19 ment of” and inserting “make payment on”,
20 and

21 (B) by inserting “full or partial” after “fa-
22 cilitate”.

23 (2) Section 6159(c) (relating to Secretary re-
24 quired to enter into installment agreements in cer-
25 tain cases) is amended in the matter preceding para-
26 graph (1) by inserting “full” before “payment”.

1 (b) REQUIREMENT TO REVIEW PARTIAL PAYMENT
2 AGREEMENTS EVERY TWO YEARS.—Section 6159, as
3 amended by this Act, is amended by redesignating sub-
4 sections (d), (e), and (f) as subsections (e), (f), and (g),
5 respectively, and inserting after subsection (e) the fol-
6 lowing new subsection:

7 “(d) SECRETARY REQUIRED TO REVIEW INSTALL-
8 MENT AGREEMENTS FOR PARTIAL COLLECTION EVERY
9 TWO YEARS.—In the case of an agreement entered into
10 by the Secretary under subsection (a) for partial collection
11 of a tax liability, the Secretary shall review the agreement
12 at least once every 2 years.”.

13 (c) EFFECTIVE DATE.—The amendments made by
14 this section shall apply to agreements entered into on or
15 after the date of the enactment of this Act.

16 **PART II—FINANCIAL INSTRUMENTS**

17 **SEC. 5675. TREATMENT OF STRIPPED INTERESTS IN BOND** 18 **AND PREFERRED STOCK FUNDS, ETC.**

19 (a) IN GENERAL.—Section 1286 (relating to tax
20 treatment of stripped bonds) is amended by redesignating
21 subsection (f) as subsection (g) and by inserting after sub-
22 section (e) the following new subsection:

23 “(f) TREATMENT OF STRIPPED INTERESTS IN BOND
24 AND PREFERRED STOCK FUNDS, ETC.—In the case of an
25 account or entity substantially all of the assets of which

1 consist of bonds, preferred stock, or a combination thereof,
2 the Secretary may by regulations provide that rules simi-
3 lar to the rules of this section and 305(e), as appropriate,
4 shall apply to interests in such account or entity to which
5 (but for this subsection) this section or section 305(e), as
6 the case may be, would not apply.”.

7 (b) CROSS REFERENCE.—Subsection (e) of section
8 305 is amended by adding at the end the following new
9 paragraph:

10 “(7) CROSS REFERENCE.—

“**For treatment of stripped interests in certain ac-
counts or entities holding preferred stock, see sec-
tion 1286(f).**”.

11 (c) EFFECTIVE DATE.—The amendments made by
12 this section shall apply to purchases and dispositions after
13 the date of the enactment of this Act.

14 **SEC. 5676. APPLICATION OF EARNINGS STRIPPING RULES**
15 **TO PARTNERSHIPS AND S CORPORATIONS.**

16 (a) IN GENERAL.—Section 168(j) (relating to limita-
17 tion on deduction for interest on certain indebtedness) is
18 amended by redesignating paragraph (8) as paragraph (9)
19 and by inserting after paragraph (7) the following new
20 paragraph:

21 “(8) APPLICATION TO PARTNERSHIPS AND S
22 CORPORATIONS.—

1 “(A) IN GENERAL.—This subsection shall
2 apply to partnerships and S corporations in the
3 same manner as it applies to C corporations.

4 “(B) ALLOCATIONS TO CERTAIN COR-
5 PORATE PARTNERS.—If a C corporation is a
6 partner in a partnership—

7 “(i) the corporation’s allocable share
8 of indebtedness and interest income of the
9 partnership shall be taken into account in
10 applying this subsection to the corporation,
11 and

12 “(ii) if a deduction is not disallowed
13 under this subsection with respect to any
14 interest expense of the partnership, this
15 subsection shall be applied separately in
16 determining whether a deduction is allow-
17 able to the corporation with respect to the
18 corporation’s allocable share of such inter-
19 est expense.”.

20 (b) EFFECTIVE DATE.—The amendments made by
21 this section shall apply to taxable years beginning after
22 the date of the enactment of this Act.

1 **SEC. 5677. RECOGNITION OF CANCELLATION OF INDEBTED-**
2 **NESS INCOME REALIZED ON SATISFACTION**
3 **OF DEBT WITH PARTNERSHIP INTEREST.**

4 (a) IN GENERAL.—Paragraph (8) of section 108(e)
5 (relating to general rules for discharge of indebtedness (in-
6 cluding discharges not in title 11 cases or insolvency)) is
7 amended to read as follows:

8 “(8) INDEBTEDNESS SATISFIED BY CORPORATE
9 STOCK OR PARTNERSHIP INTEREST.—For purposes
10 of determining income of a debtor from discharge of
11 indebtedness, if—

12 “(A) a debtor corporation transfers stock,
13 or

14 “(B) a debtor partnership transfers a cap-
15 ital or profits interest in such partnership,
16 to a creditor in satisfaction of its recourse or non-
17 recourse indebtedness, such corporation or partner-
18 ship shall be treated as having satisfied the indebt-
19 edness with an amount of money equal to the fair
20 market value of the stock or interest. In the case of
21 any partnership, any discharge of indebtedness in-
22 come recognized under this paragraph shall be in-
23 cluded in the distributive shares of taxpayers which
24 were the partners in the partnership immediately be-
25 fore such discharge.”.

1 (b) EFFECTIVE DATE.—The amendment made by
2 this section shall apply with respect to cancellations of in-
3 debtedness occurring on or after the date of the enactment
4 of this Act.

5 **SEC. 5678. MODIFICATION OF STRADDLE RULES.**

6 (a) RULES RELATING TO IDENTIFIED STRADDLES.—

7 (1) IN GENERAL.—Subparagraph (A) of section
8 1092(a)(2) (relating to special rule for identified
9 straddles) is amended to read as follows:

10 “(A) IN GENERAL.—In the case of any
11 straddle which is an identified straddle—

12 “(i) paragraph (1) shall not apply
13 with respect to identified positions com-
14 prising the identified straddle,

15 “(ii) if there is any loss with respect
16 to any identified position of the identified
17 straddle, the basis of each of the identified
18 offsetting positions in the identified strad-
19 dle shall be increased by an amount which
20 bears the same ratio to the loss as the un-
21 recognized gain with respect to such offset-
22 ting position bears to the aggregate unrec-
23 ognized gain with respect to all such off-
24 setting positions, and

1 “(iii) any loss described in clause (ii)
2 shall not otherwise be taken into account
3 for purposes of this title.”.

4 (2) IDENTIFIED STRADDLE.—Section
5 1092(a)(2)(B) (defining identified straddle) is
6 amended—

7 (A) by striking clause (ii) and inserting the
8 following:

9 “(ii) to the extent provided by regula-
10 tions, the value of each position of which
11 (in the hands of the taxpayer immediately
12 before the creation of the straddle) is not
13 less than the basis of such position in the
14 hands of the taxpayer at the time the
15 straddle is created, and”, and

16 (B) by adding at the end the following new
17 flush sentence:

18 “The Secretary shall prescribe regulations
19 which specify the proper methods for clearly
20 identifying a straddle as an identified straddle
21 (and the positions comprising such straddle),
22 which specify the rules for the application of
23 this section for a taxpayer which fails to prop-
24 erly identify the positions of an identified strad-
25 dle, and which specify the ordering rules in

1 cases where a taxpayer disposes of less than an
2 entire position which is part of an identified
3 straddle.”.

4 (3) UNRECOGNIZED GAIN.—Section 1092(a)(3)
5 (defining unrecognized gain) is amended by redesignig-
6 nating subparagraph (B) as subparagraph (C) and
7 by inserting after subparagraph (A) the following
8 new subparagraph:

9 “(B) SPECIAL RULE FOR IDENTIFIED
10 STRADDLES.—For purposes of paragraph
11 (2)(A)(ii), the unrecognized gain with respect to
12 any identified offsetting position shall be the ex-
13 cess of the fair market value of the position at
14 the time of the determination over the fair mar-
15 ket value of the position at the time the tax-
16 payer identified the position as a position in an
17 identified straddle.”

18 (4) CONFORMING AMENDMENT.—Section
19 1092(e)(2) is amended by striking subparagraph (B)
20 and by redesignating subparagraph (C) as subpara-
21 graph (B).

22 (b) PHYSICALLY SETTLED POSITIONS.—Section
23 1092(d) (relating to definitions and special rules) is
24 amended by adding at the end the following new para-
25 graph:

1 “(8) SPECIAL RULES FOR PHYSICALLY SET-
2 TLED POSITIONS.—For purposes of subsection (a), if
3 a taxpayer settles a position which is part of a strad-
4 dle by delivering property to which the position re-
5 lates (and such position, if terminated, would result
6 in a realization of a loss), then such taxpayer shall
7 be treated as if such taxpayer—

8 “(A) terminated the position for its fair
9 market value immediately before the settlement,
10 and

11 “(B) sold the property so delivered by the
12 taxpayer at its fair market value.”.

13 (c) REPEAL OF STOCK EXCEPTION.—

14 (1) IN GENERAL.—Section 1092(d)(3) is re-
15 pealed.

16 (2) CONFORMING AMENDMENT.—Section
17 1258(d)(1) is amended by striking “; except that the
18 term ‘personal property’ shall include stock”.

19 (d) REPEAL OF QUALIFIED COVERED CALL EXCEP-
20 TION.—Section 1092(e)(4) is amended by adding at the
21 end the following new subparagraph:

22 “(I) TERMINATION.—This paragraph shall
23 not apply to any position established on or after
24 the date of the enactment of this subpara-
25 graph.”.

1 (e) EFFECTIVE DATE.—The amendments made by
 2 this section shall apply to positions established on or after
 3 the date of the enactment of this Act.

4 **SEC. 5679. DENIAL OF INSTALLMENT SALE TREATMENT**
 5 **FOR ALL READILY TRADEABLE DEBT.**

6 (a) IN GENERAL.—Section 453(f)(4)(B) (relating to
 7 purchaser evidences of indebtedness payable on demand
 8 or readily tradeable) is amended by striking “is issued by
 9 a corporation or a government or political subdivision
 10 thereof and”.

11 (b) EFFECTIVE DATE.—The amendment made by
 12 this section shall apply to sales occurring on or after the
 13 date of the enactment of this Act.

14 **PART III—CORPORATIONS AND PARTNERSHIPS**

15 **SEC. 5680. MODIFICATION OF TREATMENT OF TRANSFERS**
 16 **TO CREDITORS IN DIVISIVE REORGANIZA-**
 17 **TIONS.**

18 (a) IN GENERAL.—Section 361(b)(3) (relating to
 19 treatment of transfers to creditors) is amended by adding
 20 at the end the following new sentence: “In the case of a
 21 reorganization described in section 368(a)(1)(D) with re-
 22 spect to which stock or securities of the corporation to
 23 which the assets are transferred are distributed in a trans-
 24 action which qualifies under section 355, this paragraph
 25 shall apply only to the extent that the sum of the money

1 and the fair market value of other property transferred
2 to such creditors does not exceed the adjusted bases of
3 such assets transferred.”.

4 (b) LIABILITIES IN EXCESS OF BASIS.—Section
5 357(c)(1)(B) is amended by inserting “with respect to
6 which stock or securities of the corporation to which the
7 assets are transferred are distributed in a transaction
8 which qualifies under section 355” after “section
9 368(a)(1)(D)”.

10 (c) EFFECTIVE DATE.—The amendments made by
11 this section shall apply to transfers of money or other
12 property, or liabilities assumed, in connection with a reor-
13 ganization occurring on or after the date of the enactment
14 of this Act.

15 **SEC. 5681. CLARIFICATION OF DEFINITION OF NON-**
16 **QUALIFIED PREFERRED STOCK.**

17 (a) IN GENERAL.—Section 351(g)(3)(A) is amended
18 by adding at the end the following: “Stock shall not be
19 treated as participating in corporate growth to any signifi-
20 cant extent unless there is a real and meaningful likeli-
21 hood of the shareholder actually participating in the earn-
22 ings and growth of the corporation.”.

23 (b) EFFECTIVE DATE.—The amendment made by
24 this section shall apply to transactions after May 14,
25 2003.

1 **SEC. 5682. MODIFICATION OF DEFINITION OF CONTROLLED**
2 **GROUP OF CORPORATIONS.**

3 (a) IN GENERAL.—Section 1563(a)(2) (relating to
4 brother-sister controlled group) is amended by striking
5 “possessing—” and all that follows through “(B)” and in-
6 serting “possessing”.

7 (b) APPLICATION OF EXISTING RULES TO OTHER
8 CODE PROVISIONS.—Section 1563(f) (relating to other
9 definitions and rules) is amended by adding at the end
10 the following new paragraph:

11 “(5) BROTHER-SISTER CONTROLLED GROUP
12 DEFINITION FOR PROVISIONS OTHER THAN THIS
13 PART.—

14 “(A) IN GENERAL.—Except as specifically
15 provided in an applicable provision, subsection
16 (a)(2) shall be applied to an applicable provi-
17 sion as if it read as follows:

18 “(2) BROTHER-SISTER CONTROLLED GROUP.—
19 Two or more corporations if 5 or fewer persons who
20 are individuals, estates, or trusts own (within the
21 meaning of subsection (d)(2) stock possessing—

22 “(A) at least 80 percent of the total com-
23 bined voting power of all classes of stock enti-
24 tled to vote, or at least 80 percent of the total
25 value of shares of all classes of stock, of each
26 corporation, and

1 ‘(B) more than 50 percent of the total
 2 combined voting power of all classes of stock
 3 entitled to vote or more than 50 percent of the
 4 total value of shares of all classes of stock of
 5 each corporation, taking into account the stock
 6 ownership of each such person only to the ex-
 7 tent such stock ownership is identical with re-
 8 spect to each such corporation.’

9 “(B) APPLICABLE PROVISION.—For pur-
 10 poses of this paragraph, an applicable provision
 11 is any provision of law (other than this part)
 12 which incorporates the definition of controlled
 13 group of corporations under subsection (a).”.

14 (c) EFFECTIVE DATE.—The amendments made by
 15 this section shall apply to taxable years beginning after
 16 the date of the enactment of this Act.

17 **SEC. 5683. MANDATORY BASIS ADJUSTMENTS IN CONNEC-**
 18 **TION WITH PARTNERSHIP DISTRIBUTIONS**
 19 **AND TRANSFERS OF PARTNERSHIP INTER-**
 20 **ESTS.**

21 (a) IN GENERAL.—Section 754 is repealed.

22 (b) ADJUSTMENT TO BASIS OF UNDISTRIBUTED
 23 PARTNERSHIP PROPERTY.—Section 734 is amended—

1 (1) by striking “, with respect to which the elec-
2 tion provided in section 754 is in effect,” in the mat-
3 ter preceding paragraph (1) of subsection (b),

4 (2) by striking “(as adjusted by section
5 732(d))” both places it appears in subsection (b),

6 (3) by striking the last sentence of subsection
7 (b),

8 (4) by striking subsection (a) and by redesign-
9 nating subsections (b) and (c) as subsections (a) and
10 (b), respectively, and

11 (5) by striking “**OPTIONAL**” in the heading.

12 (c) ADJUSTMENT TO BASIS OF PARTNERSHIP PROP-
13 erty.—Section 743 is amended—

14 (1) by striking “with respect to which the elec-
15 tion provided in section 754 is in effect” in the mat-
16 ter preceding paragraph (1) of subsection (b),

17 (2) by striking subsection (a) and by redesign-
18 nating subsections (b) and (c) as subsections (a) and
19 (b), respectively,

20 (3) by adding at the end the following new sub-
21 section:

22 “(c) ELECTION TO ADJUST BASIS FOR TRANSFERS
23 UPON DEATH OF PARTNER.—Subsection (a) shall not
24 apply and no adjustments shall be made in the case of
25 any transfer of an interest in a partnership upon the death

1 of a partner unless an election to do so is made by the
2 partnership. Such an election shall apply with respect to
3 all such transfers of interests in the partnership. Any elec-
4 tion under section 754 in effect on the date of the enact-
5 ment of this subsection shall constitute an election made
6 under this subsection. Such election may be revoked by
7 the partnership, subject to such limitations as may be pro-
8 vided by regulations prescribed by the Secretary.”, and

9 (4) by striking “**OPTIONAL**” in the heading.

10 (d) CONFORMING AMENDMENTS.—

11 (1) Subsection (d) of section 732 is repealed.

12 (2) Section 755(a) is amended—

13 (A) by striking “section 734(b) (relating to
14 the optional adjustment” and inserting “section
15 734(a) (relating to the adjustment”, and

16 (B) by striking “section 743(b) (relating to
17 the optional adjustment” and inserting “section
18 743(a) (relating to the adjustment”.

19 (3) Section 761(e)(2) is amended by striking
20 “optional”.

21 (4) Section 774(a) is amended by striking
22 “743(b)” both places it appears and inserting
23 “743(a)”.

1 (5) The item relating to section 734 in the table
2 of sections for subpart B of part II of subchapter K
3 of chapter 1 is amended by striking “Optional”.

4 (6) The item relating to section 743 in the table
5 of sections for subpart C of part II of subchapter K
6 of chapter 1 is amended by striking “Optional”.

7 (e) EFFECTIVE DATES.—

8 (1) IN GENERAL.—Except as provided in para-
9 graph (2), the amendments made by this section
10 shall apply to transfers and distributions made after
11 the date of the enactment of this Act.

12 (2) REPEAL OF SECTION 732(d).—The amend-
13 ments made by subsections (b)(2) and (d)(1) shall
14 apply to—

15 (A) except as provided in subparagraph
16 (B), transfers made after the date of the enact-
17 ment of this Act, and

18 (B) in the case of any transfer made on or
19 before such date to which section 732(d) ap-
20 plies, distributions made after the date which is
21 2 years after such date of enactment.

22 **SEC. 5684. CLASS LIVES FOR UTILITY GRADING COSTS.**

23 (a) GAS UTILITY PROPERTY.—Section 168(e)(3)(E)
24 (defining 15-year property) is amended by striking “and”
25 at the end of clause (ii), by striking the period at the end

1 of clause (iii) and inserting “, and”, and by adding at the
2 end the following new clause:

3 “(iv) initial clearing and grading land
4 improvements with respect to gas utility
5 property.”.

6 (b) ELECTRIC UTILITY PROPERTY.—Section
7 168(e)(3) is amended by adding at the end the following
8 new subparagraph:

9 “(F) 20-YEAR PROPERTY.—The term ‘20-
10 year property’ means initial clearing and grad-
11 ing land improvements with respect to any elec-
12 tric utility transmission and distribution
13 plant.”.

14 (c) CONFORMING AMENDMENTS.—The table con-
15 tained in section 168(g)(3)(B) is amended—

16 (1) by inserting “or (E)(iv)” after “(E)(iii)”,
17 and

18 (2) by adding at the end the following new
19 item:

“(F) 25”.

20 (d) EFFECTIVE DATE.—The amendments made by
21 this section shall apply to property placed in service after
22 the date of the enactment of this Act.

23 **SEC. 5685. CONSISTENT AMORTIZATION OF PERIODS FOR**
24 **INTANGIBLES.**

25 (a) START-UP EXPENDITURES.—

1 (1) ALLOWANCE OF DEDUCTION.—Paragraph
2 (1) of section 195(b) (relating to start-up expendi-
3 tures) is amended to read as follows:

4 “(1) ALLOWANCE OF DEDUCTION.—If a tax-
5 payer elects the application of this subsection with
6 respect to any start-up expenditures—

7 “(A) the taxpayer shall be allowed a deduc-
8 tion for the taxable year in which the active
9 trade or business begins in an amount equal to
10 the lesser of—

11 “(i) the amount of start-up expendi-
12 tures with respect to the active trade or
13 business, or

14 “(ii) \$5,000, reduced (but not below
15 zero) by the amount by which such start-
16 up expenditures exceed \$50,000, and

17 “(B) the remainder of such start-up ex-
18 penditures shall be allowed as a deduction rat-
19 ably over the 180-month period beginning with
20 the month in which the active trade or business
21 begins.”.

22 (2) CONFORMING AMENDMENT.—Subsection (b)
23 of section 195 is amended by striking “AMORTIZE”
24 and inserting “DEDUCT” in the heading.

1 (b) ORGANIZATIONAL EXPENDITURES.—Subsection
2 (a) of section 248 (relating to organizational expenditures)
3 is amended to read as follows:

4 “(a) ELECTION TO DEDUCT.—If a corporation elects
5 the application of this subsection (in accordance with reg-
6 ulations prescribed by the Secretary) with respect to any
7 organizational expenditures—

8 “(1) the corporation shall be allowed a deduc-
9 tion for the taxable year in which the corporation be-
10 gins business in an amount equal to the lesser of—

11 “(A) the amount of organizational expendi-
12 tures with respect to the taxpayer, or

13 “(B) \$5,000, reduced (but not below zero)
14 by the amount by which such organizational ex-
15 penditures exceed \$50,000, and

16 “(2) the remainder of such organizational ex-
17 penditures shall be allowed as a deduction ratably
18 over the 180-month period beginning with the month
19 in which the corporation begins business.”.

20 (c) TREATMENT OF ORGANIZATIONAL AND SYNDICA-
21 TION FEES OR PARTNERSHIPS.—

22 (1) IN GENERAL.—Section 709(b) (relating to
23 amortization of organization fees) is amended by re-
24 designating paragraph (2) as paragraph (3) and by
25 amending paragraph (1) to read as follows:

1 “(1) ALLOWANCE OF DEDUCTION.—If a tax-
2 payer elects the application of this subsection (in ac-
3 cordance with regulations prescribed by the Sec-
4 retary) with respect to any organizational
5 expenses—

6 “(A) the taxpayer shall be allowed a deduc-
7 tion for the taxable year in which the partner-
8 ship begins business in an amount equal to the
9 lesser of—

10 “(i) the amount of organizational ex-
11 penses with respect to the partnership, or

12 “(ii) \$5,000, reduced (but not below
13 zero) by the amount by which such organi-
14 zational expenses exceed \$50,000, and

15 “(B) the remainder of such organizational
16 expenses shall be allowed as a deduction ratably
17 over the 180-month period beginning with the
18 month in which the partnership begins busi-
19 ness.

20 “(2) DISPOSITIONS BEFORE CLOSE OF AMORTI-
21 ZATION PERIOD.—In any case in which a partner-
22 ship is liquidated before the end of the period to
23 which paragraph (1)(B) applies, any deferred ex-
24 penses attributable to the partnership which were
25 not allowed as a deduction by reason of this section

1 may be deducted to the extent allowable under sec-
2 tion 165.”.

3 (2) CONFORMING AMENDMENT.—Subsection (b)
4 of section 709 is amended by striking “AMORTIZA-
5 TION” and inserting “DEDUCTION” in the heading.

6 (d) EFFECTIVE DATE.—The amendments made by
7 this section shall apply to amounts paid or incurred after
8 the date of the enactment of this Act.

9 **Subtitle I—Tax-Exempt Financing**
10 **of Highway Projects and Rail-**
11 **Truck Transfer Facilities**

12 **SEC. 5691. TAX-EXEMPT FINANCING OF HIGHWAY**
13 **PROJECTS AND RAIL-TRUCK TRANSFER FA-**
14 **CILITIES.**

15 (a) TREATMENT AS EXEMPT FACILITY BOND.—Sub-
16 section (a) of section 142 (relating to exempt facility
17 bond) is amended by striking “or” at the end of paragraph
18 (12), by striking the period at the end of paragraph (13),
19 and by adding at the end the following:

20 “(14) qualified highway facilities, or

21 “(15) qualified surface freight transfer facili-
22 ties.”.

23 (b) QUALIFIED HIGHWAY FACILITIES AND QUALI-
24 FIED SURFACE FREIGHT TRANSFER FACILITIES.—Sec-
25 tion 142 is amended by adding at the end the following:

1 “(1) QUALIFIED HIGHWAY AND SURFACE FREIGHT
2 TRANSFER FACILITIES.—

3 “(1) QUALIFIED HIGHWAY FACILITIES.—For
4 purposes of subsection (a)(14), the term ‘qualified
5 highway facilities’ means—

6 “(A) any surface transportation project
7 which receives Federal assistance under title
8 23, United States Code (as in effect on the date
9 of the enactment of this subsection), or

10 “(B) any project for an international
11 bridge or tunnel for which an international enti-
12 ty authorized under Federal or State law is re-
13 sponsible and which receives Federal assistance
14 under such title 23.

15 “(2) QUALIFIED SURFACE FREIGHT TRANSFER
16 FACILITIES.—For purposes of subsection (a)(15),
17 the term ‘qualified surface freight transfer facilities’
18 means facilities for the transfer of freight from
19 truck to rail or rail to truck (including any tem-
20 porary storage facilities directly related to such
21 transfers) which receives Federal assistance under
22 either title 23 or title 49, United States Code (as in
23 effect on the date of the enactment of this sub-
24 section).

1 “(3) AGGREGATE FACE AMOUNT OF TAX-EX-
2 EMPT FINANCING FOR FACILITIES.—

3 “(A) IN GENERAL.—An issue shall not be
4 treated as an issue described in subsection
5 (a)(14) or (a)(15) if the aggregate face amount
6 of bonds issued by any State pursuant thereto
7 (when added to the aggregate face amount of
8 bonds previously so issued) exceeds
9 \$15,000,000,000.

10 “(B) ALLOCATION BY SECRETARY OF
11 TRANSPORTATION.—The Secretary of Transpor-
12 tation shall allocate the amount described in
13 subparagraph (A) among eligible projects de-
14 scribed in subsections (a)(14) and (a)(15) in
15 such manner as the Secretary determines ap-
16 propriate.”.

17 (c) EXEMPTION FROM GENERAL STATE VOLUME
18 CAPS.—Paragraph (3) of section 146(g) of the Internal
19 Revenue Code of 1986 (relating to exception for certain
20 bonds) is amended by striking “or (13)” and all that fol-
21 lows through the end of the paragraph and inserting
22 “(13), (14), or (15) of section 142(a), and”.

23 (d) EFFECTIVE DATE.—The amendments made by
24 this section apply to bonds issued after the date of the
25 enactment of this Act.

1 **SEC. 5692. ADDITION OF VACCINES AGAINST HEPATITIS A**
2 **TO LIST OF TAXABLE VACCINES.**

3 (a) **IN GENERAL.**—Section 4132(a)(1) (defining tax-
4 able vaccine) is amended by redesignating subparagraphs
5 (I), (J), (K), and (L) as subparagraphs (J), (K), (L), and
6 (M), respectively, and by inserting after subparagraph (H)
7 the following new subparagraph:

8 “(I) Any vaccine against hepatitis A.”

9 (b) **CONFORMING AMENDMENT.**—Section
10 9510(c)(1)(A) is amended by striking “October 18, 2000”
11 and inserting “the date of the enactment of the Safe, Ac-
12 countable, Flexible, and Efficient Transportation Equity
13 Act of 2004”.

14 (c) **EFFECTIVE DATE.**—

15 (1) **SALES, ETC.**—The amendments made by
16 this section shall apply to sales and uses on or after
17 the first day of the first month which begins more
18 than 4 weeks after the date of the enactment of this
19 Act.

20 (2) **DELIVERIES.**—For purposes of paragraph
21 (1) and section 4131 of the Internal Revenue Code
22 of 1986, in the case of sales on or before the effec-
23 tive date described in such paragraph for which de-
24 livery is made after such date, the delivery date shall
25 be considered the sale date.

1 **SEC. 5693. ADDITION OF VACCINES AGAINST INFLUENZA TO**
2 **LIST OF TAXABLE VACCINES.**

3 (a) IN GENERAL.—Section 4132(a)(1) (defining tax-
4 able vaccine), as amended by section 5692 of this Act, is
5 amended by adding at the end the following new subpara-
6 graph:

7 “(N) Any trivalent vaccine against influ-
8 enza.”.

9 (b) EFFECTIVE DATE.—

10 (1) SALES, ETC.—The amendment made by this
11 section shall apply to sales and uses on or after the
12 later of—

13 (A) the first day of the first month which
14 begins more than 4 weeks after the date of the
15 enactment of this Act, or

16 (B) the date on which the Secretary of
17 Health and Human Services lists any vaccine
18 against influenza for purposes of compensation
19 for any vaccine-related injury or death through
20 the Vaccine Injury Compensation Trust Fund.

21 (2) DELIVERIES.—For purposes of paragraph
22 (1) and section 4131 of the Internal Revenue Code
23 of 1986, in the case of sales on or before the effec-
24 tive date described in such paragraph for which de-
25 livery is made after such date, the delivery date shall
26 be considered the sale date.

1 **SEC. 5694. EXTENSION OF AMORTIZATION OF INTANGIBLES**
2 **TO SPORTS FRANCHISES.**

3 (a) IN GENERAL.—Section 197(e) (relating to excep-
4 tions to definition of section 197 intangible) is amended
5 by striking paragraph (6) and by redesignating para-
6 graphs (7) and (8) as paragraphs (6) and (7), respectively.

7 (b) CONFORMING AMENDMENTS.—

8 (1)(A) Section 1056 (relating to basis limitation
9 for player contracts transferred in connection with
10 the sale of a franchise) is repealed.

11 (B) The table of sections for part IV of sub-
12 chapter O of chapter 1 is amended by striking the
13 item relating to section 1056.

14 (2) Section 1245(a) (relating to gain from dis-
15 position of certain depreciable property) is amended
16 by striking paragraph (4).

17 (3) Section 1253 (relating to transfers of fran-
18 chises, trademarks, and trade names) is amended by
19 striking subsection (e).

20 (c) EFFECTIVE DATES.—

21 (1) IN GENERAL.—Except as provided in para-
22 graph (2), the amendments made by this section
23 shall apply to property acquired after the date of the
24 enactment of this Act.

1 (2) SECTION 1245.—The amendment made by
2 subsection (b)(2) shall apply to franchises acquired
3 after the date of the enactment of this Act.

4 **TITLE VI—TRANSPORTATION**
5 **DISCRETIONARY SPENDING**
6 **GUARANTEE AND BUDGET**
7 **OFFSETS**

8 **SEC. 6101. SENSE OF THE SENATE ON OVERALL FEDERAL**
9 **BUDGET.**

10 It is the sense of the Senate that—

11 (1) comprehensive statutory budget enforce-
12 ment measures, the jurisdiction of which lies with
13 the Senate Budget Committee and Senate Govern-
14 mental Affairs Committee, should—

15 (A) be enacted this year; and

16 (B) address all areas of the Federal budg-
17 et, including discretionary spending, direct
18 spending, and revenues; and

19 (2) special allocations for transportation or any
20 other categories of spending should be considered in
21 that context and be consistent with the rest of the
22 Federal budget.

23 **SEC. 6102. DISCRETIONARY SPENDING CATEGORIES.**

24 (a) DEFINITIONS.—

1 (1) HIGHWAY CATEGORY.—Section
 2 250(c)(4)(B) of the Balanced Budget and Emer-
 3 gency Deficit Control Act of 1985 (2 U.S.C.
 4 900(c)(4)(B)) is amended—

5 (A) by striking “Transportation Equity
 6 Act for the 21st Century” and inserting “Safe,
 7 Accountable, Flexible, and Efficient Transpor-
 8 tation Equity Act of 2004”; and

9 (B) by adding at the end the following:

10 “ (v) 69–8158–0–7–401 (Motor Car-
 11 rier Safety Grants).

12 “ (vi) 69–8159–0–7–401 (Motor Car-
 13 rier Safety Operations and Programs).”.

14 (2) MASS TRANSIT CATEGORY.—Section
 15 250(c)(4) of the Balanced Budget and Emergency
 16 Deficit Control Act of 1985 (2 U.S.C. 900(c)(4)) is
 17 amended by striking subparagraph (C) and inserting
 18 the following:

19 “(C) MASS TRANSIT CATEGORY.—The
 20 term ‘mass transit category’ means the fol-
 21 lowing budget accounts, or portions of the ac-
 22 counts, that are subject to the obligation limita-
 23 tions on contract authority provided in the
 24 Safe, Accountable, Flexible, and Efficient
 25 Transportation Equity Act of 2004 or for which

1 appropriations are provided in accordance with
2 authorizations contained in that Act:

3 “(i) 69–1120–0–1–401 (Administra-
4 tive Expenses).

5 “(ii) 69–1134–0–1–401 (Capital In-
6 vestment Grants).

7 “(iii) 69–8191–0–7–401 (Discre-
8 tionary Grants).

9 “(iv) 69–1129–0–1–401 (Formula
10 Grants).

11 “(v) 69–8303–0–7–401 (Formula
12 Grants and Research).

13 “(vi) 69–1127–0–1–401 (Interstate
14 Transfer Grants—Transit).

15 “(vii) 69–1125–0–1–401 (Job Access
16 and Reverse Commute).

17 “(viii) 69–1122–0–1–401 (Miscella-
18 neous Expired Accounts).

19 “(ix) 69–1139–0–1–401 (Major Cap-
20 ital Investment Grants).

21 “(x) 69–1121–0–1–401 (Research,
22 Training and Human Resources).

23 “(xi) 69–8350–0–7–401 (Trust Fund
24 Share of Expenses).

1 “(xii) 69–1137–0–1–401 (Transit
2 Planning and Research).

3 “(xiii) 69–1136–0–1–401 (University
4 Transportation Research).

5 “(xiv) 69–1128–0–1–401 (Washington
6 Metropolitan Area Transit Authority).”.

7 (b) HIGHWAY FUNDING REVENUE ALIGNMENT.—
8 Section 251(b)(1)(B) of the Balanced Budget and Emer-
9 gency Deficit Control Act of 1985 (2 U.S.C. 901(b)(1)(B))
10 is amended—

11 (1) in clause (i)—

12 (A) by inserting “for each of fiscal years
13 2006 through 2009” after “submits the budg-
14 et”;

15 (B) by inserting “the obligation limitation
16 and outlay limit for” after “adjustments to”;
17 and

18 (C) by striking “provided in clause
19 (ii)(I)(cc).” and inserting the following: “fol-
20 lows:

21 “(I) OMB shall take the actual
22 level of highway receipts for the year
23 before the current year and subtract
24 the sum of the estimated level of high-
25 way receipts in clause (iii), plus any

1 amount previously calculated under
2 clauses (i)(II) and (ii) for that year.

3 “(II) OMB shall take the current
4 estimate of highway receipts for the
5 current year and subtract the esti-
6 mated level of highway receipts in
7 clause (iii) for that year.

8 “(III) OMB shall—

9 “(aa) take the sum of the
10 amounts calculated under sub-
11 clauses (I) and (II) and add that
12 amount to the obligation limita-
13 tion set forth in section 6103 of
14 the Safe, Accountable, Flexible,
15 and Efficient Transportation Eq-
16 uity Act of 2004 for the highway
17 category for the budget year, and
18 calculate the outlay change re-
19 sulting from that change in obli-
20 gations relative to that amount
21 for the budget year and each out-
22 year using current estimates; and

23 “(bb) after making the cal-
24 culation under item (aa), adjust
25 the obligation limitation set forth

1 in section 6103 of the Safe, Ac-
2 countable, Flexible, and Efficient
3 Transportation Equity Act of
4 2004 for the budget year by add-
5 ing the amount calculated under
6 subclauses (I) and (II).”;

7 (2) by striking clause (ii) and inserting the fol-
8 lowing:

9 “(ii) When the President submits the
10 supplementary budget estimates for each
11 of fiscal years 2006 through 2009 under
12 section 1106 of title 31, United States
13 Code, OMB’s Mid-Session Review shall in-
14 clude adjustments to the obligation limita-
15 tion and outlay limit for the highway cat-
16 egory for the budget year and each outyear
17 as follows:

18 “(I) OMB shall take the most re-
19 cent estimate of highway receipts for
20 the current year (based on OMB’s
21 Mid-Session Review) and subtract the
22 estimated level of highway receipts in
23 clause (iii) plus any amount previously
24 calculated and included in the Presi-

1 dent’s Budget under clause (i)(II) for
2 that year.

3 “(II) OMB shall—

4 “(aa) take the amount cal-
5 culated under subclause (I) and
6 add that amount to the amount
7 of obligations set forth in section
8 6103 of the Safe, Accountable,
9 Flexible, and Efficient Transpor-
10 tation Equity Act of 2004 for the
11 highway category for the budget
12 year, and calculate the outlay
13 change resulting from that
14 change in obligations relative to
15 that amount for the budget year
16 and each outyear using current
17 estimates; and

18 “(bb) after making the cal-
19 culation under item (aa), adjust
20 the amount of obligations set
21 forth in section 6103 of the Safe,
22 Accountable, Flexible, and Effi-
23 cient Transportation Equity Act
24 of 2004 for the budget year by

1 adding the amount calculated
2 under subclause (I).”; and

3 (3) by adding at the end the following:

4 “(iii) The estimated level of highway
5 receipts for the purpose of this subpara-
6 graph are—

7 “(I) for fiscal year 2004,
8 \$29,945,938,902;

9 “(II) for fiscal year 2005,
10 \$36,294,778,392;

11 “(III) for fiscal year 2006,
12 \$37,766,517,123;

13 “(IV) for fiscal year 2007,
14 \$38,795,061,111;

15 “(V) for fiscal year 2008,
16 \$39,832,795,606; and

17 “(VI) for fiscal year 2009,
18 \$40,964,722,457.

19 “(iv) In this subparagraph, the term
20 “highway receipts” means the govern-
21 mental receipts and interest credited to the
22 highway account of the Highway Trust
23 Fund.”.

24 (c) CONTINUATION OF SEPARATE SPENDING CAT-
25 EGORIES.—For the purpose of section 251(c) of the Bal-

1 anced Budget and Emergency Deficit Control Act of 1985
2 (2 U.S.C. 901(c)), the discretionary spending limits for
3 the highway category and the mass transit category shall
4 be—

5 (1) for fiscal year 2004—

6 (A) \$28,876,732,956 for the highway cat-
7 egory; and

8 (B) \$6,262,000,000 for the mass transit
9 category;

10 (2) for fiscal year 2005—

11 (A) \$31,991,246,160 for the highway cat-
12 egory; and

13 (B) \$6,903,000,000 for the mass transit
14 category;

15 (3) for fiscal year 2006—

16 (A) \$35,598,640,776 for the highway cat-
17 egory; and

18 (B) \$7,974,000,000 for the mass transit
19 category;

20 (4) for fiscal year 2007—

21 (A) \$37,871,760,938 for the highway cat-
22 egory; and

23 (B) \$8,658,000,000 for the mass transit
24 category;

25 (5) for fiscal year 2008—

1 (A) \$38,722,907,474 for the highway cat-
2 egory; and

3 (B) \$9,222,000,000 for the mass transit
4 category; and

5 (6) for fiscal year 2009—

6 (A) \$40,537,563,667 for the highway cat-
7 egory; and

8 (B) \$9,897,000,000 for the mass transit
9 category.

10 (d) ADDITIONAL ADJUSTMENTS.—Section 251(b)(1)
11 of the Balanced Budget and Emergency Deficit Control
12 Act of 1985 (2 U.S.C. 901(b)(1)) is amended—

13 (1) in subparagraph (C)—

14 (A) in clause (i), by striking “fiscal years
15 2000, 2001, 2002, or 2003,” and inserting
16 “each of fiscal years 2006, 2007, 2008, and
17 2009,”; and

18 (B) in clause (ii), by striking “2002 and
19 2003” and inserting “2008 and 2009”; and

20 (2) in subparagraph (D)—

21 (A) in clause (i)—

22 (i) by striking “1999” and inserting
23 “2005”;

24 (ii) by striking “2000 through 2003”
25 and inserting “2006 through 2009”; and

1 (iii) by striking “section 8103 of the
 2 Transportation Equity Act for the 21st
 3 Century” and inserting “section 6102 of
 4 the Safe, Accountable, Flexible, and Effi-
 5 cient Transportation Equity Act of 2004”;
 6 and

7 (B) in clause (ii), by striking “2000, 2001,
 8 2002, or 2003” and inserting “2006, 2007,
 9 2008, and 2009”.

10 **SEC. 6103. LEVEL OF OBLIGATION LIMITATIONS.**

11 (a) HIGHWAY CATEGORY.—For the purpose of sec-
 12 tion 251(b) of the Balanced Budget and Emergency Def-
 13 icit Control Act of 1985 (2 U.S.C. 901(b)), the level of
 14 obligation limitations for the highway category is—

- 15 (1) for fiscal year 2004, \$34,651,000,000;
- 16 (2) for fiscal year 2005, \$38,927,000,000;
- 17 (3) for fiscal year 2006, \$40,186,000,000;
- 18 (4) for fiscal year 2007, \$40,229,000,000;
- 19 (5) for fiscal year 2008, \$40,563,000,000; and
- 20 (6) for fiscal year 2009, \$45,622,000,000.

21 (b) MASS TRANSIT CATEGORY.—For the purpose of
 22 section 251(b) of the Balanced Budget and Emergency
 23 Deficit Control Act of 1985 (2 U.S.C. 901(b)), the level
 24 of obligation limitations for the mass transit category is—

- 25 (1) for fiscal year 2004, \$7,265,877,000;

- 1 (2) for fiscal year 2005, \$8,650,000,000;
2 (3) for fiscal year 2006, \$9,085,123,000;
3 (4) for fiscal year 2007, \$9,600,000,000;
4 (5) for fiscal year 2008, \$10,490,000,000; and
5 (6) for fiscal year 2009, \$11,430,000,000.

6 For the purpose of this subsection, the term “obligation
7 limitations” means the sum of budget authority and obli-
8 gation limitations.

9 **TITLE VII—MISCELLANEOUS**
10 **PROVISIONS**

11 **SEC. 7001. REIMBURSEMENT OF CERTAIN TRANSPOR-**
12 **TATION COSTS INCURRED BY MEMBERS OF**
13 **THE UNITED STATES ARMED FORCES ON**
14 **REST AND RECUPERATION LEAVE.**

15 The Secretary of Defense shall reimburse a member
16 of the United States Armed Forces (out of funds available
17 for the Armed Forces for operation and maintenance for
18 the relevant fiscal year) for transportation expenses in-
19 curred by such member for 1 round trip by such member
20 between 2 locations within the United States in connection
21 with leave taken under the Central Command Rest and
22 Recuperation Leave Program during the period beginning
23 on September 25, 2003, and ending on December 18,
24 2003.

1 **TITLE VIII—SOLID WASTE**
2 **DISPOSAL**

3 **SEC. 8001. INCREASED USE OF RECOVERED MINERAL COM-**
4 **PONENT IN FEDERALLY FUNDED PROJECTS**
5 **INVOLVING PROCUREMENT OF CEMENT OR**
6 **CONCRETE.**

7 (a) IN GENERAL.—Subtitle F of the Solid Waste Dis-
8 posal Act (42 U.S.C. 6961 et seq.) is amended by adding
9 at the end the following:

10 **“SEC. 6005. INCREASED USE OF RECOVERED MINERAL**
11 **COMPONENT IN FEDERALLY FUNDED**
12 **PROJECTS INVOLVING PROCUREMENT OF**
13 **CEMENT OR CONCRETE.**

14 “(a) DEFINITIONS.—In this section:

15 “(1) AGENCY HEAD.—The term ‘agency head’
16 means—

17 “(A) the Secretary of Transportation; and

18 “(B) the head of each other Federal agen-
19 cy that on a regular basis procures, or provides
20 Federal funds to pay or assist in paying the
21 cost of procuring, material for cement or con-
22 crete projects.

23 “(2) CEMENT OR CONCRETE PROJECT.—The
24 term ‘cement or concrete project’ means a project
25 for the construction or maintenance of a highway or

1 other transportation facility or a Federal, State, or
2 local government building or other public facility
3 that—

4 “(A) involves the procurement of cement
5 or concrete; and

6 “(B) is carried out in whole or in part
7 using Federal funds.

8 “(3) RECOVERED MINERAL COMPONENT.—The
9 term ‘recovered mineral component’ means—

10 “(A) ground granulated blast furnace slag;

11 “(B) coal combustion fly ash; and

12 “(C) any other waste material or byprod-
13 uct recovered or diverted from solid waste that
14 the Administrator, in consultation with an
15 agency head, determines should be treated as
16 recovered mineral component under this section
17 for use in cement or concrete projects paid for,
18 in whole or in part, by the agency head.

19 “(b) IMPLEMENTATION OF REQUIREMENTS.—

20 “(1) IN GENERAL.—Not later than 1 year after
21 the date of enactment of this section, the Adminis-
22 trator and each agency head shall take such actions
23 as are necessary to implement fully all procurement
24 requirements and incentives in effect as of the date
25 of enactment of this section (including guidelines

1 under section 6002) that provide for the use of ce-
2 ment and concrete incorporating recovered mineral
3 component in cement or concrete projects.

4 “(2) PRIORITY.—In carrying out paragraph (1)
5 an agency head shall give priority to achieving great-
6 er use of recovered mineral component in cement or
7 concrete projects for which recovered mineral compo-
8 nents historically have not been used or have been
9 used only minimally.

10 “(3) CONFORMANCE.—The Administrator and
11 each agency head shall carry out this subsection in
12 accordance with section 6002.

13 “(c) FULL IMPLEMENTATION STUDY.—

14 “(1) IN GENERAL.—The Administrator, in co-
15 operation with the Secretary of Transportation and
16 the Secretary of Energy, shall conduct a study to de-
17 termine the extent to which current procurement re-
18 quirements, when fully implemented in accordance
19 with subsection (b), may realize energy savings and
20 environmental benefits attainable with substitution
21 of recovered mineral component in cement used in
22 cement or concrete projects.

23 “(2) MATTERS TO BE ADDRESSED.—The study
24 shall—

1 “(A) quantify the extent to which recov-
2 ered mineral components are being substituted
3 for Portland cement, particularly as a result of
4 current procurement requirements, and the en-
5 ergy savings and environmental benefits associ-
6 ated with that substitution;

7 “(B) identify all barriers in procurement
8 requirements to greater realization of energy
9 savings and environmental benefits, including
10 barriers resulting from exceptions from current
11 law; and

12 “(C)(i) identify potential mechanisms to
13 achieve greater substitution of recovered min-
14 eral component in types of cement or concrete
15 projects for which recovered mineral compo-
16 nents historically have not been used or have
17 been used only minimally;

18 “(ii) evaluate the feasibility of establishing
19 guidelines or standards for optimized substi-
20 tution rates of recovered mineral component in
21 those cement or concrete projects; and

22 “(iii) identify any potential environmental
23 or economic effects that may result from great-
24 er substitution of recovered mineral component
25 in those cement or concrete projects.

1 “(3) REPORT.—Not later than 30 months after
2 the date of enactment of this section, the Adminis-
3 trator shall submit to Congress a report on the
4 study.

5 “(d) ADDITIONAL PROCUREMENT REQUIREMENTS.—
6 Unless the study conducted under subsection (c) identifies
7 any effects or other problems described in subsection
8 (c)(2)(C)(iii) that warrant further review or delay, the Ad-
9 ministrators and each agency head shall, not later than 1
10 year after the release of the report in accordance with sub-
11 section (c)(3), take additional actions authorized under
12 this Act to establish procurement requirements and incen-
13 tives that provide for the use of cement and concrete with
14 increased substitution of recovered mineral component in
15 the construction and maintenance of cement or concrete
16 projects, so as to—

17 “(1) realize more fully the energy savings and
18 environmental benefits associated with increased
19 substitution; and

20 “(2) eliminate barriers identified under sub-
21 section (c).

22 “(e) EFFECT OF SECTION.—Nothing in this section
23 affects the requirements of section 6002 (including the
24 guidelines and specifications for implementing those re-
25 quirements).”.

1 (b) TABLE OF CONTENTS AMENDMENT.—The table
 2 of contents in section 1001 of the Solid Waste Disposal
 3 Act (42 U.S.C. prec. 6901) is amended by adding after
 4 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.”.

5 **SEC. 8002. USE OF GRANULAR MINE TAILINGS.**

6 (a) IN GENERAL.—Subtitle F of the Solid Waste Dis-
 7 posal Act (42 U.S.C. 6961 et seq.) (as amended by section
 8 8001(a)) is amended by adding at the end the following:

9 **“SEC. 6006. USE OF GRANULAR MINE TAILINGS.**

10 “(a) MINE TAILINGS.—

11 “(1) IN GENERAL.—Not later than 180 days
 12 after the date of enactment of this section, the Ad-
 13 ministrator, in consultation with the Secretary of
 14 Transportation and heads of other Federal agencies,
 15 shall establish criteria (including an evaluation of
 16 whether to establish a numerical standard for con-
 17 centration of lead and other hazardous substances)
 18 for the safe and environmentally protective use of
 19 granular mine tailings from the Tar Creek, Okla-
 20 homa Mining District, known as ‘chat’, for—

21 “(A) cement or concrete projects; and

22 “(B) transportation construction projects
 23 (including transportation construction projects

1 involving the use of asphalt) that are carried
2 out, in whole or in part, using Federal funds.

3 “(2) REQUIREMENTS.—In establishing criteria
4 under paragraph (1), the Administrator shall
5 consider—

6 “(A) the current and previous uses of
7 granular mine tailings as an aggregate for as-
8 phalt; and

9 “(B) any environmental and public health
10 risks and benefits derived from the removal,
11 transportation, and use in transportation
12 projects of granular mine tailings.

13 “(3) PUBLIC PARTICIPATION.—In establishing
14 the criteria under paragraph (1), the Administrator
15 shall solicit and consider comments from the public.

16 “(4) APPLICABILITY OF CRITERIA.—On the es-
17 tablishment of the criteria under paragraph (1), any
18 use of the granular mine tailings described in para-
19 graph (1) in a transportation project that is carried
20 out, in whole or in part, using Federal funds, shall
21 meet the criteria established under paragraph (1).

22 “(b) EFFECT OF SECTIONS.—Nothing in this section
23 or section 6005 affects any requirement of any law (in-
24 cluding a regulation) in effect on the date of enactment
25 of this section.”.

1 (b) CONFORMING AMENDMENT.—The table of con-
2 tents in section 1001 of the Solid Waste Disposal Act (42
3 U.S.C. prec. 6901) (as amended by section 8001(b)) is
4 amended by adding after the item relating to section 6005
5 the following:

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

Passed the Senate February 12, 2004.

Attest:

Secretary.

108TH CONGRESS
2D SESSION

S. 1072

AN ACT

To authorize funds for Federal-aid highways, highway safety programs, and transit programs, and for other purposes.

February 26, 2004

Ordered to be printed as passed