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SURFACE TRANSPORTATION SAFETY REAUTHORIZATION ACT OF 2003

R E P O R T

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ON

S. 1978

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SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED EIGHTH CONGRESS

FIRST SESSION

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SURFACE TRANSPORTATION SAFETY REAUTHORIZATION ACT OF 2003

NOVEMBER 25, 2003.—Ordered to be printed

Mr. MCCAIN, from the Committee on Commerce, Science, and Transportation, submitted the following

REPORT

[To accompany S. 1978]

The Committee on Commerce, Science, and Transportation reports favorably an original bill to authorize funds for highway safety programs, motor carrier safety programs, hazardous materials transportation safety programs, boating safety programs, and for other purposes, and recommends that the bill do pass.

PURPOSE OF THE BILL

The purpose of the bill is to authorize funds for fiscal years 2004 through 2009 for highway safety programs, motor carrier safety programs, oversight of household goods movers, hazardous materials transportation safety programs, boating safety programs, rail transportation, and for other purposes.

BACKGROUND AND NEEDS

The Transportation Equity Act for the 21st Century (TEA-21) (P.L. 105-178) expired on September 30, 2003. The Senate Committee on Commerce, Science, and Transportation (the Committee) has jurisdiction over many surface transportation safety programs under TEA-21, including the National Highway Traffic Safety Administration (NHTSA) and its programs, the Federal Motor Carrier Safety Administration (FMCSA), and boating safety. In addition, the Committee bill addresses the transportation of hazardous materials and oversight of the interstate transportation of household goods.

The Committee bill incorporates a number of provisions from the Administration's reauthorization proposal, the Safe, Accountable,

Flexible and Efficient Transportation Equity Act of 2003 (SAFETEA), along with many additional provisions. Overall, the Committee's proposal is designed to improve safety on our nation's roads and waterways, strengthen Federal passenger, truck, and bus safety programs, provide greater consumer protections for household goods movements, and promote the safe shipment of hazardous materials. The bill also includes amendments adopted during Committee deliberations addressing Federal funding for intercity rail passenger service and rail freight assistance, and establishing a railroad infrastructure financing corporation.

SUMMARY OF MAJOR PROVISIONS

TITLE I — HIGHWAY SAFETY

TEA-21 authorizes the following NHTSA programs: safety belt incentive grants (23 U.S.C. 157); safety incentives to prevent operation of motor vehicles by intoxicated persons (section 163); State highway safety programs (section 402); highway safety research, development, and demonstration programs (section 403); occupant protection incentive grants (section 405); alcohol-impaired driving countermeasures (section 410); and highway safety data improvement incentive grants (section 411). TEA-21 also includes a number of motor vehicle safety and information provisions including rulemaking directives for improving air bag crash protection systems.

Title I of the Committee bill generally would authorize various grant programs administered by NHTSA, the Federal agency responsible for administering Federal motor vehicle and highway safety programs. Under its mandate, NHTSA is responsible for reducing deaths, injuries, and economic losses resulting from motor vehicle crashes. The bill would authorize the NHTSA grant programs at a total level of over $3.5 billion from fiscal years 2004 through 2009. The bill also would authorize approximately $800 million for the vehicle safety-related rulemakings it requires.

In addition to reauthorizing several of the programs administered by NHTSA, title I would consolidate a number of these programs in order to streamline the agency's grant program process. This title would focus particular attention to behavioral aspects of driver safety, such as safety belt use, by providing funding to States that have already adopted primary safety belt laws and additional incentive funding to States that, in the future, adopt primary safety belt laws or otherwise increase significantly their safety belt use rates. Title I also would direct NHTSA to promulgate a number of rules relating to vehicle safety. Finally, this title would authorize new programs and initiatives such as the incentive grant program provided for in section 111, which is designed to improve States' highway and safety data, and the NHTSA accountability program in section 112, which would, among other things, require NHTSA to conduct a review of each State highway safety program it funds and to issue uniform management review and program review guidelines.

The legislation would reauthorize section 403, but it would amend that section in its entirety. The new section 403 would provide NHTSA with the authority to use funds to conduct research on highway safety and traffic conditions, driver behavior and its ef-

fect on traffic safety, fatigued driving, the effects that electronic devices have on driving, and other general highway safety research matters. The section 403 grant reauthorization also would direct NHTSA to conduct three specific research programs: (1) a study on the effects of the use of controlled substances on driving; (2) a study to collect on-scene motor vehicle collision data and to determine crash causation; and (3) a study on the safety of highway toll collection facilities. In addition, under the section 403 grant reauthorization, the Committee bill would require NHTSA to establish and administer a program under which three high-visibility traffic safety law enforcement campaigns would be carried out in each of fiscal years 2004 through 2009. The purpose of the campaigns would be to reduce alcohol-impaired or drug-impaired driving and to increase the use of seat belts by motor vehicle occupants.

The bill also would amend section 405 significantly to implement a program that would provide grants to States that have adopted and are enforcing primary safety belt laws for all passenger motor vehicles as of December 31, 2002. In addition, the new section 405 program would provide significant one-time incentive grants to States that have not enacted such laws as of December 31, 2002, but either: (1) adopt primary safety belt laws for all passenger motor vehicles after December 31, 2002, or (2) have achieved a safety belt use rate of at least 90 percent, as measured under criteria set by the Secretary of Transportation (Secretary). Qualifying States would be eligible for such one-time grants until FY 2009. In the event that additional funds remain after the above grants have been made, section 405 would provide that States that further increase their safety belt use rates by specified percentages would receive such additional funds.

The Committee bill also would create a new section 407A to require the Secretary and the Secretary of Homeland Security to establish a Federal Interagency Committee on Emergency Medical Services (Interagency Committee). The purposes of the Interagency Committee would be, among other things, to ensure coordination among the Federal agencies involved with State, local, tribal, or other emergency services and 9-1-1 systems and to identify State, local, tribal, or regional emergency medical services and 9-1-1 needs.

In addition, this new section 407A would require the Secretary to coordinate with officials of other Federal departments and agencies, and other interested parties, to ensure the development and implementation of a coordinated nationwide emergency medical services program. Such a program would be designed to strengthen transportation safety and public health and to implement emergency medical services communications systems, including 9-1-1.

The Committee bill also includes new provisions to assist States' efforts to deter impaired driving by reauthorizing funding for section 410 impaired driving programs, which would, in part, replace the existing section 408 programs, which would be repealed. This program would allocate funds to States that, among other things, implement the following programs and activities: (1) check-point and saturation patrol programs for determining whether drivers are driving under the influence of alcohol or controlled substances; (2) programs to monitor and enhance the prosecution and adjudication by States of impaired driving offenses; and (3) an impaired op-

eration information system that, among other things, tracks drivers who are arrested or convicted for violation of laws prohibiting impaired driving.

In addition, each State would be required to do the following in order to receive section 410 grants: (1) coordinate its check-point and saturation patrol programs and activities with related national campaigns organized by NHTSA; (2) demonstrate to the Secretary that the State has increased the total number of impaired driving law enforcement activities it conducts; and (3) make certain improvements to the system used by the State for tracking drivers who are arrested or convicted for violating laws prohibiting the impaired operation of motor vehicles. Finally, section 410 would provide additional grant funds to each of the 10 States with the highest impaired driving-related fatality rates for the fiscal year preceding the fiscal year of such allocation.

This title also would create a new incentive grant program designed to improve States' highway and traffic safety data. This new program, to be administered under new section 412, would require NHTSA to make grants of financial assistance to eligible States to support their development and implementation of programs designed to, among other things, improve the timeliness, accuracy, completeness, uniformity, integration, and accessibility of the States' highway traffic safety data.

This title also would provide a new framework for advancing NHTSA's management of its grant programs and its regional offices' interactions with the States. For example, this title directs NHTSA to undertake a State grant administrative review of the practices and procedures of NHTSA's regional offices to formulate a report on best practices for such offices' administration of NHTSA grant programs.

Subtitle B of this title would generally require NHTSA to promulgate specific vehicle safety-related rules and engage in other rulemaking and study activities. For example, section 153 would amend chapter 301 of title 49 U.S.C. by adding section 30128. This new section would require NHTSA to issue a safety standard to reduce complete and partial ejection after accidents from passenger motor vehicles with a gross vehicle weight rating of up to 10,000 pounds. Section 30128 would require that NHTSA base the safety standard on ejection-mitigation technologies such as side impact airbags. Section 30128 also would direct the Secretary to issue by June 30, 2006, a rule to require manufacturers of new passenger motor vehicles to make modifications to door mechanisms in such vehicles to prevent occupant ejection. In addition, section 162 of subtitle B would authorize grants to States if they meet certain criteria regarding child safety seats.

TITLE II — MOTOR CARRIER SAFETY AND UNIFIED CARRIER REGISTRATION

FMCSA was established within the Department of Transportation (DOT) on January 1, 2000, by the Motor Carrier Safety Improvement Act of 1999 (MCSIA) (P.L. 106-159). At the time, truck-related crashes and fatalities had been growing at an alarming rate, and it was determined that creation of a separate modal ad-

ministration apart from the Federal Highway Administration (FHWA) would help promote truck and bus safety improvements. According to statistics compiled by FHWA, large trucks represent four percent of the nation's registered vehicles, seven percent of traffic volume, and approximately 13 percent of all fatal crashes.

FMCSA's principal duty is to enforce motor carrier safety regulations, including requirements which will govern the operation of Mexico-domiciled motor carriers beyond the U.S. commercial zones. The FMCSA also administers the Commercial Driver's License (CDL) program, oversees the interstate transportation of household goods, and regulates hours-of-service rules governing commercial operators.

FMCSA has set a goal of reducing the rate of fatalities in large truck crashes by 39 percent between 1999, the year prior to the agency's creation, and 2008, from a rate of 2.7 fatalities per 100 million vehicle miles traveled (VMT) to a rate of 1.65.[1] By 2001, the rate of fatalities had declined to 2.4 per 100 million VMT. In 2002, preliminary statistics show that the number of fatalities in accidents involving large trucks declined 3.5 percent from 2001, while highway fatalities for all vehicles increased slightly. Of the 4,902 fatalities in truck crashes, 3,816 fatalities were occupants of the other vehicle(s).

Title II of the bill would authorize funding for FMCSA and its programs at the level requested in the Administration's SAFETEA proposal, starting at $472 million in FY 2004 (including $25 million for deployment of the Commercial Vehicle Information Systems and Networks (CVISN)), and rising to $524 million in FY 2009. However, the legislation allocates a larger share of total program funding for State grant programs and a smaller share for Federal administrative expenses than proposed by the Administration. Further, the bill would provide that of the overall amounts made available from the Highway Trust Fund for all programs including highway, transit, and other transportation programs, not less than 1.21 percent of the total amount be set aside for motor carrier safety programs. This percentage represents the proportionate share allocated to motor carrier safety programs under the Administration's proposal, i.e. $2.98 billion is authorized for motor carrier safety programs out of the $247 billion total authorized in SAFETEA. The Senate is expected to consider legislation to reauthorize TEA-21 with an overall funding level of $255 billion and the House authorizing committee has introduced a bill reauthorizing TEA-21 at $375 billion. It is the Committee's intention to ensure that safety programs receive a proportional share of any increase to the overall surface transportation programs.

The bill would authorize FMCSA and its programs to be funded through contract authority, which is consistent with the Administration's SAFETEA proposal. Under TEA-21, which was enacted 18 months before FMCSA was created, the agency's administrative expenses were funded through a take-down of one-third of 1 percent from FHWA's administrative expenses. However, FMCSA's appropriations have consistently exceeded the administrative take-down

[1] A large truck is defined as a truck with a gross vehicle weight rating greater than 10,000 pounds.

and it is appropriate to create contract authority for FMCSA expenses.

One of FMCSA's primary responsibilities is to manage the Motor Carrier Safety Assistance Program (MCSAP), which provides grants to States for the enforcement of safety regulations governing commercial motor vehicles (CMVs), motor coaches, and CMV transportation of hazardous materials. Safety enforcement is accomplished primarily through roadside inspections and safety compliance reviews. MCSAP grants are authorized to provide up to 80 percent of State program costs. The MCSAP program originated in the early 1980s. The annual authorization for the program has grown from $78.2 million in FY 1997 to $190 million in FY 2003. In calendar year 2001, 2.7 million truck inspections and nearly 12,000 compliance reviews were performed nationwide, with 7.6 percent of drivers and 23.3 percent of vehicles taken out of service for equipment, hours of service, and other violations. MCSAP inspectors are permitted to perform traffic enforcement in conjunction with a vehicle inspection, and, in 2002, over 25 percent of all inspections had a traffic enforcement component, according to FMCSA.

FMCSA also is responsible for implementing safety audits for "new entrants" as required by MCSIA and the FY 2002 DOT Appropriations Act (P.L. 107-87). MCSIA directed FMCSA to require that all new motor carriers undergo a safety audit within the first 18 months after beginning operations. The purpose is to ensure that new carriers understand Federal motor carrier regulations and have programs in place to comply. Historically, between 40,000 and 50,000 new entrant trucking companies apply annually for interstate operating registration. FMCSA estimates that the cost to administer the new entrant program will be about $33 million annually.

The bill would authorize funding for the MCSAP program at $186.1 million in FY 2004, rising to $205.5 million in FY 2009, including funds for the core grant program and for safety performance incentive grants, high-priority grants, and the new entrant program. The bill would fund the new entrant program at $33 million, the level requested by the Administration, but would allocate $29 million of the total to the States through MCSAP. When the Administration submitted its FY 2004 budget request, it assumed that 30 percent of the States would not be able to participate in the new entrant program. On that basis, the Administration proposed that only $17 million in funding be provided through MCSAP. However, to date, 46 States have agreed to participate in the new entrant program and the Committee has adjusted the allocation of funds accordingly. FMCSA would still have the authority to withhold funds to conduct new entrant audits in States that do not participate in the new entrant program and provide general oversight of the program. New entrant funds would not require a State match.

The bill would allow up to 5 percent of available MCSAP funds to be designated by the Secretary for high priority activities and projects, and up to another 10 percent to be designated for safety performance incentive grants. The bill would eliminate the current match requirement for performance incentive grants since these grants are intended to reward States for improving their safety

record, but it would retain the existing match required for high-priority grants. The bill would stipulate that at least 80 percent of high-priority funds must be used to make grants to State and local governments and not be diverted for other purposes.

State plans for MCSAP, in addition to existing qualification requirements, would have to: (1) include in training manuals for the license exams for non-commercial vehicle and CMV drivers, information on best practices for trucks and cars to share the road safely; (2) provide that the State will place out of service any vehicle discovered to be operating without a registration or beyond the scope of its registration; and (3) ensure that inspections of intercity buses are conducted at stations, terminals, border crossings, or maintenance facilities, except in the case of an imminent hazard. States would be authorized to use MCSAP funds to enforce traffic laws and regulations against CMVs and against non-commercial vehicles when the behavior of drivers of smaller vehicles increases the risk of CMV accidents. This type of enforcement would not have to be combined with a CMV inspection. The Committee bill also would give FMCSA authority to suspend the registration of a motor carrier that fails to comply with Federal safety regulations, poses an imminent hazard to public health or property, or engages in a pattern of avoiding or concealing non-compliance with Federal safety regulations.

The Committee is concerned about delays in implementing Congressional mandates as well as the general disregard of Congressional intent when rules have been issued. To address the many overdue rulemakings pending at FMCSA, the bill would require FMCSA to complete all outstanding reports, studies, and rulemaking within 36 months of enactment. Under the Committee bill, at least one-third of all outstanding reports, studies, and rulemakings would have to be completed in each 12-month period following enactment. For each 12-month period in which the Secretary fails to complete the required number of reports, studies, and rulemakings, the bill would require that $3 million be reallocated annually from FMCSA administrative expenses to the States to conduct additional compliance reviews (of which the Committee generally believes more are needed, for far too many carriers do not have safety ratings). The Committee has taken this approach because many of the Congressionally-mandated rulemakings are more than four years overdue, with some even 10 years past due. While the Committee realizes that some of these rules have been carried forward from the time when the Office of Motor Carriers was located in FHWA, this track record is unacceptable. The Committee has included more funding for the FMCSA to address regulatory issues per the Administration's request; therefore, the backlog of overdue rulemakings should be reduced or eliminated as rapidly as possible.

Regulations to implement the new entrant program (as well as several other provisions of MCSIA) were addressed only when sanctions were imposed by an appropriations bill and the agency was permitted to forego the normal rulemaking process and issue an expeditious Interim Final Rule (IFR). Even with these actions, however, the program has still not been fully implemented, although all but four States have elected to participate in the program to review new entrants. The agency's New Entrant IFR was published

May 13, 2002, and was scheduled to go into effect January 1, 2003. Further, MCSIA required FMCSA to complete a rulemaking to improve training and provide for the certification of motor carrier safety auditors for the purpose of augmenting existing State and Federal motor carrier safety officers with additional resources to meet the expected demand associated with auditing each new entrant. But when FMCSA finally issued the IFR in the proceeding three years after MCSIA's enactment, the rule stated only that "FMCSA seeks comments on the advisability of certifying non-government employees that meet all training and experience criteria to conduct safety reviews as provided in the IFR." It is unclear why a rule which only seeks public comment on what is required by statute would take three years to publish.

It is the Committee's understanding that FMCSA plans to revise the new entrant program to revoke the operating authority of new entrant motor carriers that lack such basic safety programs as drug and alcohol testing. The Committee hopes the agency will move expeditiously to modify the program to reflect Congress' original intent.

FMCSA oversees the CDL Program, established in 1986, to develop standards for testing and licensing of commercial drivers and ensure that commercial drivers do not hold more than one license. While the CDL program is largely viewed as a success, there are ongoing concerns about the fraudulent issuance of licenses. Since 1998, suspected fraud in the testing and licensing of commercial drivers has been identified in 16 States. There are also concerns that the information system supporting the CDL program (the Commercial Driver's License Information System or CDLIS) is outdated and difficult to maintain and that despite annual CDL grants to the States, many States have not achieved compliance with existing CDL mandates.

Title II would amend the penalty provisions of the CDL statute to require the withholding of *up to* 5 percent of Federal highway funds for the first year of State noncompliance with the requirements of the CDL program and *up to* 10 percent for the second and subsequent years of noncompliance. Currently, the penalties are 5 percent the first year of noncompliance and 10 percent thereafter. The change is intended to give the Secretary more flexibility to assess a penalty and encourage compliance. In addition, it would establish a working group comprised of the Secretary, State motor vehicle administrators, and other significant stakeholders to determine, within two years following enactment, how best to improve the program's overall effectiveness. Based on recommendations by the DOT Inspector General, the bill would ensure that learners' permits for CDLs are included in the CDL information system and that an individual must pass a written test before being granted a CDL learner's permit.

The Committee remains concerned about the lack of attention and resources devoted to the medical program at FMCSA. In hearings in 1999, 2001, and 2003, members of the Committee have highlighted their concerns over the medical fitness of drivers of commercial motor vehicles. In addition, the National Transportation Safety Board (NTSB) has emphasized in several recent accident investigation reports (New Orleans, 1999; Loraine, Texas, 2002) the inadequacy of the current medical review program and

the role the Federal government should play in ensuring that motor carrier drivers are medically fit to do the job safely. The FMCSA is responsible for 9 million commercial drivers, but has no chief medical officer and only 6 permanent staff.

Although Congress directed that the CDL and the medical certificate be integrated into one document, FMCSA has not yet accomplished this integration. In addition, under the FCMSA program, any licensed medical professional, including a medical doctor, nurse practitioner, or chiropractor may perform medical exams. According to the NTSB, medical professional are not familiar with occupational issues for drivers, the requirements of the medical exam, or their responsibilities under the regulations. Another major area of concern is the ability of drivers who have failed exams to "doctor shop" until they find a doctor who will "pass" them. There is no record of the failed exams and no tracking of medical professionals who may not be performing adequate exams. The program should include a review process to prevent the inappropriate issuance of medical certificates, including the issuance of forged documents, and should permit enforcement authorities to identify invalid medical certificates during safety inspections and routine stops.

While the Committee included the Administration's proposal to establish a five-member Medical Review Board to make recommendations on medical standards for commercial drivers, medical examiner education, and medical research, the Committee also included provisions for a Chief Medical Officer and additional permanent staff to work with the Medical Review Board to establish standards for the physical examinations long required of commercial drivers and require that medical examiners who perform the exams have received training in such standards. The legislation also would create a national registry of medical examiners trained to perform CMV physical examinations and then would require that all CMV physical exams would have to be performed by physicians listed on the national registry. The intent of this provision is to ensure that medical professionals know about driver qualification standards and guidelines, understand the physical and mental demands involved in driving a commercial vehicle, and perform physical examinations with full awareness of the conditions in which the individual will be working.

Title II also would direct the Secretary to issue a final rule to allow individuals who use insulin to treat their diabetes to operate commercial vehicles in interstate commerce. The provision would require that FMCSA's rule be consistent with the findings of an expert medical panel report issued in July 2000, that concluded that persons could be qualified to drive a CMV after a one- or two-month period of adjustment to insulin use. The intent of this provision was to preempt FMCSA's proposed rule that would require an individual to have three years of experience driving a CMV in *intrastate* commerce while using insulin for treatment of diabetes before the individual could qualify to drive in *interstate* commerce. According to the American Diabetes Association, approximately 20 States do not have an intrastate exemption program. Drivers in these States, therefore, would never be able to qualify to drive under FMCSA's proposed rule. Subsequent to the Committee's executive session, on September 3, 2003, FMCSA adopted a final rule that includes the three-year intrastate driving requirement. The

Committee remains concerned about the rule adopted by the agency and believes FMCSA should have relied on the conclusions of its own expert medical panel in designing the exemption program.

Additionally, the legislation would establish a State grant program to complete the core deployment of the CVISN program to allow certain safety and commercial information to be exchanged electronically. It would amend current financial responsibility requirements to specify that the Secretary's regulations for minimum levels of financial responsibility also will apply to private motor carriers of property and passengers. It also would require that the "Share the Road Safely Program" be jointly managed by FMCSA and NHTSA. Finally, FMCSA officials would be granted authority to order trucks to stop for inspection; currently Federal inspectors only perform inspections at fixed facilities. When the U.S. border with Mexico is opened to permit Mexico-domiciled truckers to operate beyond the commercial zones, FMCSA officers will play an expanded role and should be authorized to stop trucks for inspection. The bill also would allow FMCSA funds to be used to participate and cooperate in international activities to enhance motor carrier, driver, and highway safety.

TITLE III — HOUSEHOLD GOODS

Oversight of the interstate household goods moving industry had been the responsibility of the Interstate Commerce Commission (ICC) prior to being dismantled by the ICC Termination Act of 1995. Such Federal oversight responsibilities were transferred to the FHWA (from 1996 through 1999) and were later transferred to the FMCSA upon enactment of MCSIA in 1999.

First FHWA and then FMCSA, was expected to assume the regulatory duties of the household goods moving industry previously carried out by the ICC, including issuing regulations, conducting oversight activities, and taking enforcement actions. However, neither FHWA nor FMCSA has fulfilled its responsibilities in this area. While FMCSA has received nearly 20,000 consumer complaints since January 2001, it has taken little action in this area. FMCSA contends that its limited resources are spent on its primary safety mission, rather than on consumer protection.

Title III of the bill is intended to provide greater protections to consumers entrusting their belongings to a moving company. The legislation would codify existing regulations that require a carrier to give up possession of a household goods shipment provided the shipper pays the mover 100 percent of a binding estimate of the charges or 110 percent of a non-binding estimate of the charges. It also ensures that a mover may only charge a prorated share of charges for the partial delivery of a shipment. Currently, movers can require a customer to pay all charges, even if part of the shipment is lost or destroyed. Further, a moving company would not be able to refuse to release a customer's goods on the basis of unforeseen charges at the point of delivery. The mover would be required to deliver the goods and bill the customer for such charges, payable within 30 days of delivery. The Committee believes it is unfair to require a consumer to pay unforeseen charges as a condition of delivery; a 30-day payment period is a reasonable alternative.

Title III also would require that a mover provide the customer a written estimate of charges and a written inventory. If the written estimate is non-binding and not based on a visual inspection, the carrier would be required to provide a revised estimate based on a visual inspection prior to the execution of a contract for service. Inaccurate estimates based on an inventory provided by a prospective customer over the telephone or the internet are the source of many complaints and disputes. The intent of this portion of the bill is to significantly reduce the number of such disputes by requiring an estimate to be based on a visual inspection of the goods prior to the execution of a contract.

If the final charges for a shipment exceed 100 percent of a binding estimate or 110 percent of a non-binding estimate, the carrier would be required to provide the customer an itemized statement of charges at least 24 hours prior to delivery, unless such notice is waived by the customer. The carrier would be required to disclose that the carrier is required to deliver the shipment if the customer pays the mover 100 percent of the charges in a binding estimate or 110 percent of the charges in a non-binding estimate.

The bill also would change the standard liability for loss and damage to the replacement cost of the goods up to the pre-declared total value of the shipment, unless the customer specifically opts for less protection. Today, the standard liability offered by movers is 60 cents per pound, a level that may be less than 10 percent of the replacement value of the goods being shipped.

Finally, and perhaps most important, the legislation would allow a State authority that regulates the intrastate movement of household goods to enforce Federal laws and regulations with respect to the transportation of household goods in interstate commerce. The Committee believes this step is needed to help protect consumers from "rogue movers", known for providing low-cost estimates and then holding a customer's goods hostage until the customer agrees to pay much higher charges.

TITLE IV — HAZARDOUS MATERIALS TRANSPORTATION

The authorization of the hazardous materials transportation safety program expired September 30, 1998. While the 1998 Senate-passed bill to reauthorize the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) (P.L. 102-240) included provisions to reauthorize the hazardous materials transportation program, an agreement could not be reached with the House of Representatives during the conference on the multi-year highway funding programs, which resulted in enactment of TEA-21.

As of 1998, (the most recent data available) the Research and Special Program Administration (RSPA) estimated that more than four billion tons of hazardous materials -- about 800,000 shipments daily -- are transported annually by land, sea, and air in the United States. Among these materials are flammable liquids, combustible solids, gases, and corrosive materials. In 2000, over 17,000 hazardous material incidents were reported to DOT's Hazardous Materials Information System (HMIS). The incidents resulted in 13 deaths and 244 injuries directly attributable to the materials being

transported. More than 85 percent of reported incidents occurred in the nation's highways. Concerns about the safety and security in transporting hazardous materials have increased since the September 11, 2001, terrorist attacks and transportation industry security plans have identified hazardous materials as a critical security issue.

The Federal government has four roles related to hazardous materials transportation: regulation, enforcement, emergency response, and data collection and analysis. Within DOT, responsibility for hazardous materials transportation rests with the RSPA. RSPA is responsible for the regulation and identification of hazardous materials including hazardous materials handling and shipments, the development of container standards and testing procedures, the inspection and enforcement of multimodal shippers and container manufacturers, and for data collection.

Title IV would authorize funding and strengthen and improve programs to ensure the safe transportation of hazardous materials. The provisions under title IV are comprised of proposals that were recommended by the Administration, labor, industry, and other interested parties.

Specifically, title IV would authorize $24.9 million for the Federal hazardous materials transportation programs for FY 2004, $27 million for FY 2005, $29 million for FY 2006 and $30 million for each of fiscal years 2007 through 2009. As requested by the Administration, the title would modify the definition of "commerce" to provide jurisdiction over hazardous materials activities being conducted on a U.S.-registered aircraft anywhere in the world. Currently, DOT does not have clear authority over U.S.-registered aircraft carrying hazardous materials between two foreign points. Such jurisdiction would parallel U.S. and DOT jurisdiction over other safety aspects of those same flights. Assertion and exercise of that jurisdiction over U.S.-registered aircraft is necessary for the United States to carry out its obligations under the Chicago Convention, which governs international aviation.

Title IV also would make clear that application of the hazardous materials regulations apply to persons who prepare or accept hazardous materials for transportation in commerce. This change is necessary to clarify that non-shipper personnel who prepare hazardous materials for transportation on behalf of a shipper and non-carrier personnel who accept hazardous materials fall under the regulations, including training. Title IV also would allow training grants currently available only for "train the trainer" programs to be made to train hazardous materials employees to the extent determined appropriate by the Secretary. The authorization for these training grants would be $4 million in each of fiscal years 2004 through 2009. The authorization for grants to States for training would be $13.6 million annually in each fiscal year of the authorization period, and grants to States for hazmat planning would be $8 million annually in each of fiscal years 2004 through 2009. Additional training was one of the recommendations made in DOT's March 2000 report entitled "Department-wide Program Evaluation of the Hazardous Material Transportation Programs.

This title would direct the Secretary to reinstate the registration fees which were set through an administrative rulemaking and were in effect for registration years 2000 to 2003. RSPA originally

began collecting fees pursuant to the Hazardous Materials Transportation Act (HMTA) of 1993 (P.L. 103-311) which established fees of not less than $250 per registrant and not more than $5,000 per registrant. RSPA's original goal was to collect between $14.3 million and $19 million to match the appropriations authorized in the Act for planning and training grants. The fee was set at the minimum amount, $250, for all registrants plus a $50 processing fee. Actual collections between 1992 and 1999 averaged about $8 million annually, and state planning and training grants were scaled back accordingly.

In 2000, RSPA undertook a rulemaking to raise the fees to a level that would fully fund the training and planning grants at the authorized levels. The rulemaking expanded the number of covered entities to include all shippers and carriers of placarded loads. Fees for registrants meeting the Small Business Administration definition of "small business" were set at $275 plus a $25 filing fee; fees for other, larger companies were set at $1,975 plus a $25 filing fee. Once the rulemaking went into effect, collections increased from approximately $8 million annually to between $22 million and $23 million. RSPA then began expending the maximum amount to be spent for state planning and training activities ($14.3 million annually), but the other authorized program elements could not be fully funded on a regular basis because the appropriations committees included language in annual funding bills capping RSPA's use of dollars from the fund at $14.3 million. While RSPA maintains that its original goal was to collect $14.3 million to $19 million annually under the new fee schedule, it underestimated the number of large companies paying into the fund by about 10 percent. This, combined with the limits imposed by the appropriators, resulted in a growing balance in the account. As the balance in the fund grew, the companies subject to the registration fee pushed for a reduction of fees and ultimately sued RSPA to adjust the fees so that amounts collected were in line with the amounts spent on the authorized grant programs. RSPA ultimately reduced the fees to $150 for small companies and $300 for large companies, until the balance is spent down. RSPA's rulemaking to lower the fees stipulated that in 2006 the fees would be re-set at $250 and $975.

The Committee recognizes that the fee collection and grant system envisioned in the HMTA has never been fully reconciled. To address overall planning and training needs, the Committee has increased the authorization levels for grants. At the same time, the Committee has capped the maximum fee under the statute at $2000. The Committee also has directed that RSPA re-instate the fee structure established in 2000 and, coupled with spending down the current balance in the fund, expects RSPA to fully fund the planning and training grants authorized in this legislation.

Title IV also would retain the current two-year term for exemptions but would allow exemptions to be renewed for successive periods of up to four years each. It also would provide for enhanced authority to discover hidden shipments of hazardous materials by clarifying the inspection and enforcement authority of DOT officials and inspection personnel. The title also would authorize the Secretary to issue emergency orders when it is determined, by inspection, investigation, testing, or research that a violation of hazmat regulations or an unsafe condition is causing an imminent hazard.

Emergency restrictions, prohibitions, recalls, or out-of-service orders could be issued without notice or the opportunity for a hearing, but only to the extent necessary to abate the imminent hazard.

Further, title IV would authorize the Secretary to immediately waive Federal preemption to allow State, local, and tribal governments to regulate hazardous material transportation to ensure public safety in the event of a terrorist threat. An emergency waiver could remain in effect for no more than six months unless the Secretary determines in writing that the threat continues to exist.

Title IV would require that every three years, the Secretary, through the Bureau of Transportation Statistics, submit a report on the transportation of hazardous materials during the preceding three years, including a summary of hazmat shipments, deliveries, and movements during the period. Better, more up-to-date information on hazmat movements was another of the recommendations made in DOT's 2000 evaluation of the hazmat program.

Further, title IV would prohibit hazardous materials in the mail unless specifically authorized by law or Postal Service regulation. It also would allow the Postal Service to collect civil penalties, and to recover clean-up costs and damages, for violations of this provision and regulations issued under it.

Sanitary Food Transportation

This subtitle was requested by the Administration in its SAFETEA proposal and would streamline Federal responsibilities for ensuring the safety of food shipments. Primary responsibility would be transferred from DOT to the Department of Health and Human Services (HHS), which would set practices to be followed by shippers, carriers, and others. Highway and railroad safety inspectors would be trained to spot threats to food safety and to report possible contamination.

Specifically, this subtitle would: reallocate responsibilities for food transportation safety among the HHS, DOT, and the Department of Agriculture; require the Secretary of HHS to establish sanitary transportation practices to be followed by shippers, carriers, and others engaged in food transport; allow the Secretary of HHS to prescribe practices relating to matters such as sanitation, packaging, and protective measures, limitations on the use of vehicles, information sharing between shippers and carriers, and record keeping, reporting, and compliance with inspections; and require the Secretary of Transportation to train DOT personnel who perform motor vehicle and railroad related safety inspections to identify practices and conditions that could pose a threat to food safety and to notify the Secretary of HHS and the Secretary of Agriculture of any instances of potential food contamination identified during those inspections.

Some members of the Committee have expressed concern about this subtitle.

TITLE V — SPORTFISHING AND BOATING SAFETY

In conjunction with the Finance Committee extensions of the motorboat fuel, fishing equipment excise, and other tax and trust fund

authorizations, this title would reauthorize the Boating Safety and Sport Fish restoration programs of the Aquatic Resources Trust Fund (commonly called the Wallop-Breaux Trust Fund) which are directly funded from these revenues.

The Sport Fishing and Boating Safety accounts are the two primary components of the Wallop-Breaux Trust Fund which were brought together in 1984, under the Wallop-Breaux Amendments to the Deficit Reduction Act of 1984, and most recently reauthorized in 1998 under TEA-21. This fund also funds other smaller programs including the Coastal Wetlands and Boating Access accounts.

Under current law, the Sport Fishing account, along with the Coastal Wetlands and Boating Access accounts, is funded on a percentage basis of incoming tax revenues, while the Boating Safety account receives a fixed annual amount. This legislative construct has effectively capped the amount authorized for Boating Safety while the overall fund continues to grow with gas tax revenue increases. This, in turn, has created a funding disparity between the Trust Fund accounts which increases annually.

Under the reported title, all of the Wallop-Breaux Trust Fund programs would annually receive a set percentage of the total revenues. Sport Fish would be set at 55.3 percent, Boating Safety at 18 percent, Coastal Wetlands at 18 percent, Clean Vessel Act programs at 1.9 percent, Boating Infrastructure at 1.9 percent, National Outreach and Communications at 1.9 percent, multi-State grants at 0.9 percent, and fund management at 2.1 percent. Under this new formula, Boating Safety funding would increase from $64 million in FY 2003 to an estimated $95 million in FY 2004. Anticipated gas tax revenues increases and a dissolution of the current boating safety account would prevent the other programs from receiving any funding reductions.

This title also would correct the funding inequities that exist under the current authorization, allow all the Wallop-Breaux programs to share in future revenue growth, and provide a permanent appropriation and a significant increase in Boating Safety funding.

LEGISLATIVE HISTORY

The Committee held three hearings relating to the development of the Committee's TEA-21 reauthorization safety title. On May 21, 2003, the full Committee held a hearing on the Administration's SAFETEA proposal. On May 22, 2003, the Subcommittee on Competition, Foreign Commerce, and Infrastructure held a hearing on the reauthorization of NHTSA programs, and, on June 10, 2003, the full Committee held a hearing on reauthorization of FMCSA programs and responsibilities.

On June 26, 2003, the Committee considered an original bill and reported it favorably.

During consideration of the measure, the Committee adopted a manager's amendment offered by Senators McCain and Hollings, the major provisions of which would: (1) add an occupant protection grant program to the bill; (2) reduce the annual funding from the emergency medical services program by $5 million; (3) add to the safety research and standard-setting provisions with which NHTSA must comply; (4) direct NHTSA to issue a rule that addresses safety belt use reminder technologies; (5) establish a program under

FMCSA to establish medical standards for commercial drivers and a national register of medical examiners authorized to perform the medical exams required of commercial drivers; (6) modify title III to make certain modifications requested by the Administration with respect to a study of the effectiveness arbitration; and (7) strike the portions of title V that fall under the Finance Committee's jurisdiction.

The Committee also adopted an amendment offered by Senator Lautenberg that would require NHTSA to conduct a study of the frequency with which persons arrested for the offense of operating a motor vehicle under the influence of alcohol refuse to take blood alcohol tests, and the effect such refusals have on the States' ability to prosecute such persons.

Further, an amendment offered by Senator Fitzgerald was adopted that would direct NHTSA to make a grant to each State that enacts or has enacted and is enforcing a child safety seat law. The allocation of funds would begin in FY 2006, and States would only be eligible for four annual grants.

The Committee adopted two amendments offered by Senator Burns regarding Federal hours-of-service regulations for motor carriers. One amendment would expand the existing exemption from the hours-of-service regulations for agricultural vehicles to include "any agricultural commodity, food, feed, fiber, or livestock, and any product thereof". The other would exempt utility vehicles from both Federal and State hours-of-service regulations.

The Committee adopted an amendment to title II of the bill offered by Senator Breaux to replace the Single State Registration System (SSRS) with a new Unified Carrier Registration System (UCRS) for filing proof of insurance. The amendment would establish a fee schedule that sets fees based on the number of commercial motor vehicles owned and operated by a carrier. The new program would be expanded to include private carriers. States currently participating in the SSRS would be guaranteed the revenues they currently derive under SSRS. Non-SSRS States that participate in UCRS would be entitled to an annual allotment of up to $500,000. The amendment clarifies that any revenues derived by a State from UCRS may be used to meet a State's required match under MCSAP. The expanded scope of the program provided by the amendment is intended to ensure that all carriers, private and for-hire, regulated and exempt, have adequate insurance and are properly registered.

The Committee accepted two amendments offered by Senator Dorgan. The first amendment requires that motor carriers registered in Mexico and Canada transporting hazardous material in the U.S. be subject to a background records check similar to that which will apply to U.S.-licensed motor carriers. The second amendment requires that Mexican and Canadian trucks and buses operating in the U.S. be certified as in compliance with U.S. safety regulations.

By roll call vote, the Committee approved an amendment offered by Senator Lautenberg regarding truck lengths permissible on the National Highway System (NHS). The amendment would establish a maximum trailer length limit on the NHS of 53 feet, but allow existing legal operations of trailers that exceed 53 feet in length as of June 1, 2003, to continue. The amendment also would extend to

the NHS the existing freeze on the operation of longer combination vehicles (LCVs) on the Interstate System. The NHS consists of approximately 150,000 miles of Federal-aid highways and includes the Interstate System.

The Committee also accepted two amendments offered by Senator Boxer to title IV of the bill. The first would eliminate the authority of the DOT to indefinitely extend an emergency waiver of Federal preemption of a State or local law. The second amendment would make mandatory the requirement for notice and an opportunity for a hearing before hazardous materials regulations are issued.

During the executive session, a number of rail-related amendments also were offered and adopted to the reauthorization legislation, establishing an additional title (title VI) to the Committee-reported bill. Senator Hutchison offered an amendment which had two provisions. The first provision of the amendment would authorize funding of $2 billion annually for Amtrak for fiscal years 2004 through 2009. The second provision of the Hutchison amendment would establish a Railroad Infrastructure Financing Corporation. The Committee also adopted an amendment offered by Senator Wyden that would allow any bond funds made available for passenger rail projects to be used for highway, transit, rail, port, or inland waterway projects if the Secretary of Transportation determines that another project is a more cost-effective alternative for efficiently maximizing the mobility of individuals and goods.

However, during consideration of the Hutchison amendment, the proponents clarified that the provision is designed as a placeholder only, and that their intent was to develop a more comprehensive bill to address both Amtrak as well as the establishment of a financing mechanism for rail infrastructure for both freight and passenger needs. They made clear their intention to replace the Committee-adopted provision during consideration by the full Senate.

Title VI also includes several additional railroad provisions which were adopted at the executive session. Senator Breaux offered an amendment on behalf of himself and Senator Smith that would establish a grant program to assist smaller railroads in upgrading their tracks and roadbed, including for the purpose of accommodating newer, heavier freight cars along their lines. The maximum Federal share would be 80 percent of the cost of a project and the program would be authorized at $350 million from the general fund in each of fiscal years 2004 through 2006. Additionally, Senator Lott offered an amendment that would establish a grant program to provide financial assistance to States to relocate rail lines or construct grade separations to mitigate traffic congestion. The Federal share would be 90 percent of the shared costs of a project and the program would be authorized at $350 million from the general fund in each of each of fiscal years 2004 through 2008.

ESTIMATED COSTS

In compliance with subsection (a)(3) of paragraph 11 of rule XXVI of the Standing Rules of the Senate, the Committee states that, in its opinion, it is necessary to dispense with the requirements of paragraphs (1) and (2) of that subsection in order to expedite the business of the Senate.

REGULATORY IMPACT STATEMENT

In accordance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee provides the following evaluation of the regulatory impact of the legislation, as reported:

Title I, subtitle A, of the Committee bill would generally make several conditional grants pursuant to which the Federal government would provide specific funds to a State if that State were to implement a program set forth in the Committee bill. For example, section 106 of the bill would grant significant incentive funds to States that have not enacted primary safety belt laws for all passenger motor vehicles as of December 31, 2002, but that either: (1) adopt such laws after December 31, 2002, or (2) have achieved a safety belt use rate of at least 90 percent, as measured under criteria set by the Secretary. Such conditional grants, which may result in additional State regulation of individuals, are designed to increase highway safety and lower the overall costs resulting from the expected reduction in the number and seriousness of highway accidents in this country. Subtitle A also would streamline the safety program grant system and require NHTSA to establish a process by which a State may apply for all NHTSA safety program funds through a single annual application, which would likely reduce the paperwork involved in the program funds application process. Finally, section 110 of subtitle A would require NHTSA to allocate funds to States that implement an impaired operation information system that, among other things, tracks drivers who are arrested or convicted for violation of laws prohibiting impaired driving. Such an information system could have personal privacy implications, but it is intended only to permit States to maintain information on drivers who are arrested or convicted for violations of laws prohibiting the impaired operation of motor vehicles, which could result in greater highway safety.

Subtitle B of title I generally would require NHTSA to promulgate several safety-related vehicle rules that, once implemented, would result in additional regulatory requirements for affected motor vehicle and tire manufacturers but would also likely result in a reduction in the number and seriousness of highway accidents in the United States. For example, section 156 contains provisions that would direct NHTSA to issue safety regulations to reduce vehicle incompatibility and aggressivity for passenger vehicles and non-passenger vehicles. Though these requirements would probably have an economic impact on vehicle manufacturers, such regulations would also likely ameliorate the growing problem of vehicle incompatibility and aggressivity in the United States and thus reduce the number and seriousness of, as well as the overall costs associated with, highway accidents in this country.

Title II of the Committee bill would require that applicants for a CMV learner's permit pass a written test. Further, CDLIS would be expanded to include learner's permits to ensure that individuals holding CMV learner's permits may not hold more than one permit. Because issuance of CMV learner's permits is currently not tracked, it is unclear how many permits are issued annually. However, the American Association of Motor Vehicle Administrators estimates that approximately 500,000 CDL's are issued annually. To the extent that holders of CMV learner's permits currently hold

permits from multiple States, this requirement would tend to reduce administrative expenses for State departments of motor vehicles. The additional paperwork associated with the learner's permit program is expected to be minimal.

Title II also would establish a registry of medical examiners qualified to perform physical examinations for CMV drivers. The size of the registry, and hence the number of physicians covered, would be determined by FMCSA. Because only physicians listed on the registry could perform the physicals required of CMV drivers, drivers and their companies could experience some inconvenience compared to the existing regulations, which allow any licensed medical professional to perform the exams. While these requirements may reduce the overall number of medical providers due to more rigorous training and oversight and may ultimately result in the disqualification of some drivers who do not meet the medical qualifications for professional drivers, it is expected that this provision will enhance the overall safety of the motoring public as well as create consistency and improved quality in the medical program on a national level.

Section 230 of title II would establish a program to permit individuals who are treated with insulin for diabetes to operate a CMV in interstate commerce. The American Diabetes Association estimates that approximately 17 million people in the United States, or 6.2 percent of the population, have diabetes. FMCSA has estimated that, under its restrictive rule requiring three years of intrastate driving experience to be eligible for an interstate driving exemption, 700 applications would be submitted annually. This number could be expected to rise under the Committee proposal, since eligibility could be established after a shorter period of adjustment to treatment with insulin. The exemption program is expected to have a positive economic impact for drivers who qualify for the new exemption.

Subtitle B of title II would extend to private motor carriers operated by manufacturers, distributors, and retailers the requirement to file proof of insurance. Thousands of private carriers exist nationwide, ranging in size from family-owned small businesses to Fortune 500 companies. These carriers would be subject to a new filing fee, based on the number of commercial motor vehicles owned and operated by the carrier. However, the fees are expected to produce the same total revenue even with the inclusion of private carriers, as existing fees assessed for-hire truckers would decline.

The provisions of title III of the Committee bill would increase oversight of interstate household goods movers by Federal and State regulators. The Committee bill would impose additional requirements on movers, including requirements that: 1) movers provide customers written estimates of moving charges; 2) supply customers with two DOT publications, "Ready to Move?" and "Your Rights and Responsibilities When You Move;" and 3) provide written notification of charges prior to shipment delivery (in certain cases) unless such notification is waived by the customer. According to the General Accounting Office (GAO), approximately 2,900 motor carriers are registered with DOT to transport household goods in interstate commerce. These requirements will increase paperwork and administrative costs for movers, but they will protect

consumers from fraudulent, excessive, and/or unexpected moving charges.

Title IV would allow DOT to initiate a program to randomly inspect cargo shipments at U.S. Customs ports of entry to determine the extent to which undeclared hazardous material is being offered for transportation. The economic impact of this provision would primarily be the cost of delaying shipments for inspection.

Additionally, title IV would authorize appropriations of $27.6 million for fiscal years 2004 through 2009 for State emergency response planning and training grants and related activities funded through a registration fee on shippers of hazardous materials. The bill would reinstate fees that had been reduced through regulatory action. The maximum fee would be $2,000. In recent years, RSPA has employed a two-tier fee structure, charging small businesses a fee of $300 and all other registrants a fee of $2,000. The Committee assumes RSPA will retain a tiered fee structure.

Subtitle C of title IV would authorize HHS to establish new practices to be followed by shippers, carriers, and others engaged in the transportation of food. Manufacturers, distributors, motor carriers, and others could be subject to new regulations.

The number of persons covered by the rail relocation and shortline grant programs in title VI would be the States and the 500-plus shortline and regional railroads, at the States' and carriers' election to participate in the program. The provision, by providing grants for infrastructure rehabilitation and improvement, is expected to promote economic growth and development and should prevent disruptions in rail service along Class II and III railroads where capital costs would otherwise drive carriers out of business.

The Committee foresees no further specific impact on the number of people covered, the economy, privacy, or paperwork.

SECTION-BY-SECTION ANALYSIS

Section 1. Short Title.

This section states that the Act may be cited as the "Surface Transportation Safety Reauthorization Act of 2003".

Sec. 2. Table of Contents.

This section provides a table of contents for the Surface Transportation Safety Reauthorization Act of 2003.

TITLE I — HIGHWAY SAFETY

SUBTITLE A — HIGHWAY SAFETY GRANT PROGRAM

Sec. 101. Short Title; Amendment of Title 23, United States Code.

The subtitle is entitled the "Highway Safety Grant Program Reauthorization Act of 2003".

Sec. 102. Authorization of Appropriations.

This section would authorize amounts from the Highway Trust Fund for safety programs administered by NHTSA. The aggregate proposed authorization is approximately $539 million for FY 2004, $551 million for FY 2005, $564 million for FY 2006, $591 million for FY 2007, $630 million for FY 2008, and $641 million for FY

2009. In addition, this section provides that, if revenue to the Highway Trust Fund for a given fiscal year is lower than the amounts authorized in subtitle A, such a reduction would not affect the highway safety programs provided for in this bill. Finally, this section would provide for a proportional increase for NHTSA's grant programs if revenue to the Highway Trust Fund increases above currently authorized amounts.

Sec. 103. Highway Safety Programs.

This section would make minor modifications to section 402 of title 23 U.S.C. including the requirement that NHTSA promulgate uniform guidelines designed to reduce aggressive driving and to educate drivers about defensive driving. In addition, this section would increase minimum funding for tribal governments under section 402 from three-quarters of one percent to two percent.

This section also would prohibit any State from receiving NHTSA safety program funds after FY 2004 if that State has not actively encouraged law enforcement agencies in that State to follow guidelines for police chases issued by the International Association of Chiefs of Police (IACP). It would permit NHTSA to make section 402 funds available for making grants to States under sections 405 (occupant protection incentive grants) and 410 (impaired driving program grants).

This section also would require that NHTSA establish a process by which a State may apply for all NHTSA safety program funds through a single annual application.

Sec. 104. Highway Safety Research and Outreach Programs.

This section would amend section 403 of title 23 U.S.C. in its entirety. It would give NHTSA the authority to use section 403 funds to conduct research on highway safety and traffic conditions, driver behavior and its effect on traffic safety, fatigued driving, the effects that electronic devices have on driving, and other general highway safety research matters. This section also would direct NHTSA to conduct three specific research programs: (1) a study on the effects of the use of controlled substances on driving; (2) a study to collect on-scene motor vehicle collision data and to determine crash causation; and (3) a study on the safety of highway toll collection facilities.

In addition, this section would require NHTSA to establish and administer a program under which 3 high-visibility traffic safety law enforcement campaigns would be carried out in each of FYs 2004 through 2009. The purpose of the campaigns would be to reduce alcohol-impaired or drug-impaired driving and to increase the use of seat belts by motor vehicle occupants.

Also, section 403 would require NHTSA to carry out a program to conduct a comprehensive research and demonstration program to improve traffic safety pertaining to older drivers. In addition, it would require NHTSA to carry out a program to train law enforcement officers in police chase techniques that are consistent with the guidelines issued by the IACP. Finally, section 403 would give NHTSA the authority to participate and cooperate in international activities to enhance highway safety.

Sec. 105. National Highway Safety Advisory Committee Technical Correction.

This section would make a minor technical correction to section 404(d) of title 23 U.S.C.

Sec. 106. Occupant Protection Grants.

This section would amend section 405 of title 23 U.S.C. to implement a program that would provide grants to States that have enacted and enforced primary seat belt laws or otherwise increase their seat belt use rates significantly. Specifically, under section 405, States that have adopted and are enforcing primary safety belt laws for all passenger motor vehicles as of December 31, 2002, would receive grant funds. In addition, section 405 would provide significant one-time incentive grants to states that have not enacted such laws as of December 31, 2002, but either: (1) adopt such laws after December 31, 2002, or (2) have achieved a safety belt use rate of at least 90 percent, as measured under criteria set by the Secretary. Qualifyig States woule be eligible for such one-time grants until FY 2009. In the event that additional funds remain after the above grants have been made, section 405 would provide that States that further increase their safety belt use rates by specified percentages would recieve such additional funds. This section also sets forth the permitted uses of such grants.

Sec. 107. School Bus Driver Training.

This section would delete certain obsolete provisions of section 406(c) of title 23 U.S.C.

Sec. 108. Emergency Medical Services.

This section would create a new section 407(a) of title 23 U.S.C. directing the Secretary and the Secretary of Homeland Security to establish jointly a Federal Interagency Committee on Emergency Medical Services (Interagency Committee). The purposes of the Interagency Committee would be to, among other things, ensure coordination among the Federal agencies involved with State, local, tribal, or regional emergency medical services and 9-1-1 systems. This section also would provide funding to aid the States in conducting coordinated emergency medical services and 9-1-1 programs as described in this section.

Sec. 109. Repeal of Authority for Alcohol Traffic Safety Programs.

This section would eliminate section 408 of title 23 U.S.C., which would be replaced largely by a rewritten section 410.

Sec. 110. Impaired Driving Program.

Under section 110, the language in the existing section 410 would largely be replaced. Among other things, revised section 410 would allocate funds to States that implement, among other things, the following programs and activities: (1) check-point and saturation patrol programs for determining whether drivers are driving under the influence of alcohol or controlled substances; (2) programs to monitor and enhance the adjudication by States of impaired driving offenses; and (3) an impaired operation information system that, among other things, tracks drivers who are arrested or convicted for violation of laws prohibiting impaired driving.

Section 410 also would require States to coordinate high-visibility law enforcement campaign of check-points and saturation patrols to identify impaired drivers with NHTSA's national advertising campaigns. In addition, section 410 would require extra funding for each of the 10 states that have the highest impaired driving-related fatality rates.

Sec. 111. State Traffic Safety Information System Improvements.

This section would create a new section 412 of title 23 U.S.C. that would require NHTSA to make grants of financial assistance to eligible States to support the development and implementation of programs that would, among other things, improve the timeliness, accuracy, completeness, uniformity, integration, and accessibility of the States' safety data, which is needed to identify priorities for highway traffic safety programs.

Sec. 112. NHTSA Accountability.

This section would amend chapter 301 of title 49 U.S.C. by adding section 30106, which would create a framework for advancing NHTSA's management of its grant programs and its regional offices' interactions with the States. For example, this section would direct NHTSA to undertake a State grant administrative review of the practices and procedures of NHTSA's regional offices to formulate best practices for such offices' administration of NHTSA grant programs.

In addition, this section would increase NHTSA's accountability to the public by requiring the agency to post for public review on its website documents such as the NHTSA *management review and program review guidelines*.

Sec. 113. Effective Dates.

This section would make the legislation effective on October 1, 2003, except for section 112, which would become effective on the date of the enactment of the subtitle.

SUBTITLE B — SPECIFIC VEHICLE SAFETY-RELATED RULINGS

Sec. 151. Amendment of Title 49, United States Code.

This section would clarify that, unless otherwise stated, all references in this subtitle are to provisions of title 49 U.S.C.

Sec. 152. Load Capacity of Labeling for Trucks.

This section would require the Secretary to promulgate by June 30, 2005, a final rule that would require each manufacturer of a new light duty truck manufactured after September 30, 2005, to establish and cause to be attached on each such truck at least one label containing a statement of the vehicle's maximum weight carrying capacity.

Sec. 153. Vehicle Crash Ejection Prevention.

This section would require that NHTSA issue a rule to require manufacturers of new motor vehicles to modify door locks, latches, and other retention components to prevent occupant ejection in ve-

hicle accidents. In addition, this section would require the issuance of a final rule on this matter by no later than June 30, 2006.

Sec. 154. Vehicle Backover Avoidance Technology Study.

This section would require that NHTSA conduct a study of effective methods for reducing the incidence of injury and death outside of parked vehicles attributable to movement of the parked vehicle. In addition, this section would require the issuance by NHTSA of a report of its findings on this matter no later than December 31, 2005.

Sec. 155. Vehicle Backover Data Collection.

This section would grant permission to NHTSA to establish methods of collection and maintenance of data on injuries and deaths involving motor vehicles in non-traffic, non-accident situations to assist in the analysis regarding the inclusion of backover prevention technologies in vehicles.

Sec. 156. Aggressivity and Incompatibility Reduction Standard.

This section would require that NHTSA issue safety regulations to reduce vehicle incompatibility and aggressivity for passenger vehicles and non-passenger vehicles. This section also would require NHTSA to develop a standard rating metric to evaluate compatibility and aggressivity among passenger motor vehicles. In addition, this section would require the issuance of final rules on these vehicle incompatibility and aggressivity matters by no later than December 31, 2007.

Sec.157. Improved Crashworthiness.

This section would require that NHTSA prescribe the following motor vehicle safety standards for passenger motor vehicles with a gross vehicle weight rating of not more than 10,000 pounds: (1) rollover crashworthiness standards using a roof-strengths standard based on tests that realistically duplicate the forces transmitted to a vehicle in an on-roof rollover crash; (2) a safety standard to improve the protection afforded to occupants of all sizes in frontal impact crashes; and (3) a safety standard to improve the protection of occupants of all sizes in side impact crashes. In addition, this section would require the issuance of a final rule on these matters by no later than March 31, 2006.

Sec. 158. 15-Passenger Vans.

This section would require NHTSA to initiate a rulemaking to: (1) include 15-passenger vans and vehicles with a gross vehicle weight rating of up to 10,000 pounds in NHTSA's dynamic rollover testing program, and (2) require such vans and vehicles to comply with all existing and prospective Federal Motor Vehicle Safety Standards (FMVSS) for occupant protection and vehicle crash avoidance. This section would require the issuance of a final rule on these matters by no later than September 31, 2004.

This section also would require NHTSA to include passenger motor vehicles with a gross vehicle weight rating of up to 10,000 pounds in NHTSA's New Car Assessment Program rollover resistance program. Further, this section would require NHTSA to issue and implement a final rule requiring the application of Federal

motor carrier safety regulation to 15-passenger vans used for commercial purposes. It also would require NHTSA to evaluate and test the potential of technological systems to assist drivers in maintaining control of 15-passenger vans with gross vehicle weight ratings of up to 10,000 pounds.

Sec. 159. Tires.

This section would require every tire manufacturer to reimburse owners or purchasers of their defective tires for the replacement cost of such tires incurred by owners or purchasers prior to the time they received the manufacturer's defect notice regarding such defective tires. Such reimbursement responsibility would last for up to six months after the last defect notice is mailed to owners. This section also would require the Secretary to issue by not later than June 1, 2005, a final rule to upgrade FMVSS 139 to include certain safety performance criteria not addressed in the June 2003 final rule mandated by the Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act. Finally, section 159 requires the Secretary to reconsider the use of shearography analysis, on a sampling basis, for regulatory compliance and requires NHTSA to report to Congress on the most cost-effective methods of using such technology.

Sec. 160. Safety Belt Use Reminders.

This section would direct the Secretary to issue a rule not later than 24 months after the date of enactment of this bill to encourage increased seat belt usage by drivers and right outboard front seat passengers of passenger cars, multipurpose passenger vehicles, and trucks with a gross vehicle weight rating of less than 10,000 pounds. Section 160 would require that the proposed rule address, among other things, the potential safety benefits and public acceptability of alternative means of encouraging seat belt usage.

Sec. 161. Missed Deadlines Reports.

This section would promulgate certain actions to be carried out if the Secretary fails to meet any rulemaking deadline as specified.

Sec. 162. Grants for Improving Child Passenger Safety Programs.

This section would authorize grants to States if they meet certain criteria regarding child safety seats. This section also details the allocations of the grants and requires a report from each State that receives a grant.

Sec. 163. Bus Crash Testing.

This section would require the Secretary to issue a rule by not later than December 31, 2009, to create test methodology for motorcoach crash testing and to conduct such testing.

Sec. 164. Authorization of Appropriations.

This section would authorize the following amounts for NHTSA to carry out the above rulemakings: $130.5 million for FY 2004, $133.5 million for FY 2005, $133.6 million for FY 2006, $134.5 million for FY 2007, $138 million for FY 2008, and $141 million for FY 2009.

TITLE II — MOTOR CARRIER SAFETY AND UNIFIED CARRIER REGISTRATION

Sec. 201. Short Title; Amendment of Title 49, United States Code.

This section establishes that this title may be referred to as the Motor Carrier Safety Reauthorization Act of 2003. Unless otherwise stated, amendments made by this title are to title 49, United States Code.

Sec. 202. Required Completion of Overdue Reports, Studies, and Rulemakings.

The section would require the Secretary to complete, within 36 months of enactment, all outstanding reports, studies, and rulemaking proceedings mandated by Congress in previous legislation, including TEA-21, MCSIA, and other acts dating from 1988. At least one-third of the overdue reports, studies and proceedings would have to be completed during each 12-month period for three years. If in any year FMCSA fails to achieve this goal, the bill directs the Secretary of Transportation to reallocate $3 million from FMCSA's appropriation for administrative expenses to the States to conduct additional compliance reviews. The section also would require FMCSA to issue a report on the status of six other projects to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure within 12 months following enactment.

Sec. 203. Contract Authority.

The section would create contract authority to fund the motor carrier safety programs, including the administrative expenses of FMCSA.

SUBTITLE A — MOTOR CARRIER SAFETY

Sec. 221. Minimum Guarantee.

This section would provide that the appropriation from the Highway Trust Fund, other than the Mass Transit Account, shall be a minimum of 1.21 percent of the total amounts made available in any fiscal year for the motor carrier safety programs.

Sec. 222. Authorization of Appropriations.

This section would authorize the following appropriations for FMCSA safety programs (excluding MCSAP) for fiscal years 2004 through 2009. Because the legislation creates contract authority to fund the entire program, this section would repeal funding for FMCSA through an administrative take-down.

Sec. 223. Motor Carrier Safety Grants.

The following sums would be authorized for the MCSAP program for fiscal years 2004 through 2009:

	($ millions)
FY2004	$186.10
FY2005	$189.82
FY2006	$193.62
FY2007	$197.49

FY2008	$201.44
FY2009	$205.47

Included in these authorizations is $29 million for the States to administer the new entrant program. New entrant grants would not require a State match. It is expected that the States would normally use government employees, not contractors, to carry out the audits. Should they be unable to do so, the Secretary would be authorized, but not be required, to expend the funds directly to carry out new entrant audits in those jurisdictions.

Federal Motor Carrier Safety Program Funding Committee Recommendation

[In Millions of $]

	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
Total Federal Administration	202.90	206.20	211.40	217.50	222.60	228.50
Federal Administration	196.15	199.45	204.65	210.75	215.85	221.75
Medical Program	6.75	6.75	6.75	6.75	6.75	6.75
Grant Programs	83.00	84.00	85.00	86.00	88.00	90.00
CVISN	25.00	25.00	25.00	25.00	25.00	25.00
CDL Improvement	22.00	22.00	23.00	23.00	24.00	25.00
Border Enforcement	32.00	33.00	33.00	34.00	35.00	36.00
PRISM	4.00	4.00	4.00	4.00	4.00	4.00

As under current law, up to 5 percent of MCSAP grant funds could be set aside for high priority activities that improve commercial motor vehicle safety and are national in scope. The section would require that a least 80 percent of funds set aside for high priority projects be awarded to State and local agencies.

The Secretary also would be authorized to designate up to 10 percent of MCSAP funds for a safety performance incentive program to reward States that showed improved vehicle safety. Although DOT has broad discretion to determine the details of the program, the Secretary would be required, at a minimum, to focus on reductions in the number and rate of fatal accidents involving CMVs. These grants would not require a matching contribution from State or local governments.

State plans for MCSAP, in addition to existing qualification requirements, would have to (1) include in training manuals for the license exams for non-commercial vehicle and CMV drivers, information on best practices for sharing the road safely with trucks and cars; (2) provide that the State will place out of service any vehicle discovered to be operating without registration or beyond the scope of its registration; and (3) ensure that inspections of intercity buses are conducted at stations, terminals, border crossings, or maintenance facilities, except in the case of an imminent hazard. States would be authorized to use MCSAP funds to enforce traffic laws and regulations against CMVs and against non-commercial vehicles when the behavior of drivers of smaller vehicles increases the risk of CMV accidents. This type of enforcement would no longer have to be combined with a CMV inspection.

Subsection (b) would clarify that funds provided for border enforcement grants are to go to States that share a border with another country. Grant recipients could not use Federal funds to replace State funds. As a condition of receiving a border enforcement grant, States would be required to maintain their own expenditures

at a level at least equal to the average level of expenditure by the State for the two years before October 1, 2003.

Subsection (c) would replace the existing "emergency grant" program for the CDL program with a permanent grant program to help States improve their CDL programs. As noted in the description of section 222 of the bill, $22 million would be authorized for CDL grants in FY 2002, rising to $25 million in FY 2009. FMCSA would be directed to give priority to grants that will be used to achieve compliance with Federal laws and regulations governing the CDL program. The Secretary would reimburse a State for no more than 80 percent of the cost of the improvements and each State would be required to maintain its previous level of CDL expenditures. In addition to the matching grants, the Secretary would be authorized to make grants to States and other parties for 100 percent of the cost of high-priority CDL activities. The Secretary could designate up to 10 percent of the funds available under this subsection for high-priority grants. The Secretary could also designate up to 10 percent of the CDL grant funds for discretionary allocations to State agencies, local governments, or other persons to deal with emerging problems. Up to 0.75 percent of the funds available for CDL grants could be deducted for administrative expenses.

The section also would amend the penalty provisions of the CDL statute to require the withholding of up to 5 percent of Federal highway funds for the first year of State noncompliance with the requirements of the CDL program and up to 10 percent for the second and subsequent years of noncompliance. Currently, the penalties are 5 percent for the first year of noncompliance and 10 percent thereafter. The change is intended to give the Secretary more flexibility to assess a penalty for noncompliance.

Sec. 224. CDL Working Group.

This section would require the Secretary to convene a working group to study and report on the need for improvements to the CDL program in order to improve safety. The working group would be required to address such issues as State enforcement practices, operational procedures to detect and deter fraud, needed improvements for seamless information-sharing between States, updated technology, and timely notification from judicial bodies of traffic and criminal convictions involving CDL holders. The group would be required to submit a report to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure within two years following enactment.

Sec. 225. CDL Learner's Permit Program.

Pursuant to recommendations made by the DOT Inspector General, this section would require that individuals pass a written test to obtain a CMV license learner's permit. Learner's permits would be incorporated into the CDLIS database.

Sec. 226. HOBBS Act.

Subsection (a) would amend the Hobbs Act to make clear that all safety statutes are subject to exclusive review by the U.S. Courts of Appeal.

Sec. 227. Penalty for Denial of Access to Records.

FMCSA investigators have broad authority to inspect and copy motor carrier and shipper records and most carriers and shippers readily grant access to requested records. Some, however, deliberately impede the investigative process by refusing to set an audit date, or, after setting a date, by ordering investigators off the premises, occasionally with a show of force. Others take a more subtle approach, feigning illness or declaring an "emergency" during the audit, pleading inability to produce records because of the absence of key personnel, or delivering documents at a pace designed to prolong the audit beyond the time available to the investigator.

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

This section would create a financial penalty to dissuade uncooperative carriers and shippers from denying or impeding FMCSA's legitimate access to records.

Sec. 228. Medical Review Board and Medical Examiners.

Section 228 would create a five-member Medical Review Board to provide FMCSA medical advice and recommendations on driver qualification medical standards and guidelines, medical examiner education, and medical research. The Secretary, with the advice of the Medical Review Board, would be required to develop medical standards for CMV drivers, requirements for periodic physical examinations, and courses for medical examiners. Every CMV driver would be required to have a current valid medical certificate.

A national registry of medical examiners would be established and only physicians listed on the registry could perform CMV driver physical exams and issue medical certificates.

Sec. 229. Insulin Treated Diabetes Mellitus.

This section would require the Secretary to issue a final rule that will allow individuals who use insulin to treat their diabetes to operate CMV in interstate commerce. The final rule may not require that an individual have experience operating a CMV while using insulin. However, the Secretary may require a minimum period of insulin use, consistent with the findings of FMCSA's expert medical panel in July 2000.

Sec. 230. Financial Responsibility for Private Motor Carriers.

The section would extend to private motor carriers the existing requirement for for-hire motor carriers to maintain minimum levels of financial responsibility to cover public liability and property damage for the transportation of passengers or goods. The Secretary may require private carriers to file the same evidence of financial responsibility that is required of for-hire carriers.

Sec. 231. Increased Penalties for Out-of-service Violations and False Records.

The civil penalties for recordkeeping violations are $500 for each day the offense continues, up to a maximum of $5,000, or $5,000 for each recordkeeping violation that can be shown to have misrepresented a fact constituting a non-recordkeeping violation. Subsection (a) would double these penalties to up to $1,000 for each day the offense continues, or up to $10,000 for an offense that misrepresents a non-recordkeeping violation. Recordkeeping violations frequently have no other purpose than to conceal a safety violation, and they often succeed. Higher penalties should reduce both the number of recordkeeping violations and, indirectly, the number of safety violations as well.

The current penalties for a driver who violates an out-of-service (OOS) order are, for a first offense, a 90-day disqualification from operating a CMV and a civil penalty of at least $1,000 and for a second offense, disqualification for one to five years and a civil penalty of at least $1,000. An employer who knowingly allows or requires a driver to violate an OOS order is subject to a civil penalty of up to $10,000. OOS orders can be issued for a variety of reasons: for failure to pay civil penalties on schedule; for having an unsatisfactory safety rating; for violating the agency's hours-of-service or equipment regulations; or because the motor carrier constitutes an imminent hazard. Enforcement officers cannot afford to spend hours monitoring a single OOS vehicle, and tracking possible movements of an entire OOS fleet is even more difficult. As a result, many OOS orders are violated. One effective deterrent to violating an OOS order is to raise the cost to violators.

Subsection (b) would increase to a maximum of $25,000 the civil penalty for a motor carrier that knowingly orders a driver to proceed despite an OOS order. An employer who knowingly and willfully ignores OOS orders is liable to imprisonment for up to a year or a fine of up to $100,000 if the violation did not result in death, or up to $250,000 if it did result in death, or both. The section also would increase penalties for drivers who decide on their own to ignore an OOS order. Subsection (b) would increase a driver's penalty for a first offense to a 180-day disqualification and a civil penalty of at least $2,500, and, for a second offense, to a two to five year disqualification and a civil penalty of up to $5,000.

Sec. 232. Elimination of Commodity and Service Exemptions.

The section would repeal a number of obsolete and unjustified exemptions for certain operations or commodities from DOT and the Surface Transportation Board (STB) regulation under title 49 U.S.C. chapters 131-149.

The section would delete the exemptions for transportation by motor vehicle of a number of commodities, including ordinary livestock, agricultural or horticultural commodities, commodities on a 1958 ICC list, fish and shellfish, livestock and poultry feed, and agricultural seeds and plants. Exemptions also would be repealed for used pallets, used empty shipping containers, natural, crushed or vesicular rock to be used for decorative purposes, wood chips, and broken, crushed or powdered glass. Most of these exemptions were enacted at a time when ICC economic regulations protected existing motor carriers that specialized in transporting certain commod-

ities, making it difficult, expensive, and time-consuming for potential competitors to enter the industry. That regulatory system has largely disappeared. FMCSA, which administers most of the remaining commercial statutes, is principally a safety agency. The repeal of these provisions would require for-hire carriers of these commodities to register with FMCSA and may require some of them to file tariffs with and comply with the regulations of the STB. In general, however, the effect of the repeal would simply be to give FMCSA jurisdiction over motor carriers under the commercial statutes comparable to the jurisdiction it already has over these carriers through the safety statutes.

Sec. 233. Intrastate Operations of Interstate Motor Carriers.

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

For safety purposes, it is artificial and counterproductive to create two classes of accidents and safety inspection data — one subject to Federal jurisdiction, the other not — when both (typically) involve the same vehicles, drivers, dispatchers, mechanics, and safety management controls, and may cause the same kind of death, injury, or physical damage. In examining a motor carrier's accident and inspection data, it is often difficult, and sometimes impossible, to determine whether the vehicle involved was making an interstate or intrastate trip. This has produced significant variation and potential for inaccuracy in the accident rates and Motor Carrier Safety Status Measurement System scores calculated for motor carriers, and thus in DOT's ability to hold all carriers to the same standard.

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

In addition, owners and operators of CMVs who are determined to be unfit and prohibited from operating in interstate commerce, also would be prohibited from operating CMVs in intrastate commerce until they are able to demonstrate their fitness. There is no good reason to allow an unfit interstate carrier to narrow its operations to a single State, and thus visit its safety deficiencies upon the residents of that State alone.

Finally, the Secretary would be directed to place all interstate operations of a motor carrier out of service if a State has placed out of service the intrastate operations of a carrier that has its principal place of business in that State. A Federal safety determination that an interstate motor carrier is unfit would thus halt both its interstate and intrastate operations, while a State safety determination that an intrastate carrier is unfit will halt both its intrastate and any interstate operations. An unfit carrier should not be allowed to operate anywhere.

Sec. 234. Authority to Stop Commercial Motor Vehicles.

The section would authorize FMCSA officials to order trucks on the road to stop for inspection. Today, State MCSAP officers, but not FMCSA officials, have such authority. With the opening of the Mexican border, however, Federal inspectors will play an expanded role in roadside enforcement. In addition, there is no guarantee that State or local police officers will always be available at border facilities or at other vehicle inspection facilities throughout the nation to order trucks to stop for an FMCSA inspection.

Sec. 235. Revocation of Operating Authority

This section would authorize the Secretary to suspend the registration of a motor carrier, a freight forwarder, or a broker for failing to comply with safety regulations established by the Secretary. In addition, the Secretary would be required to revoke the registration of a motor carrier that has failed to comply with Federal safety fitness requirements. The Secretary also would be required to revoke the registration of a motor carrier whose operations are an imminent hazard to public health or property. In order to suspend or revoke a registration, the Secretary must give prior notice to the registrant.

Sec. 236. Pattern of Safety Violations by Motor Carrier Management.

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

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

This provision would not apply to all motor carrier officers whose companies are found to be in violation of the Federal safety rules. Rather, it is intended to authorize the Secretary to force out of the industry those few motor carrier officers who have shown unusual and repeated disregard for safety compliance. It is expected that the Secretary would use this authority only in the most serious cases.

Sec. 237. Motor Carrier Research and Technology Program.

This section would establish a motor carrier research and technology program. The goal is to support — through contracts, cooperative agreements, and grants — research designed to produce in-

novative advances in motor carrier, driver, and passenger safety. Equally critical, however, would be the transfer of promising results — whether technical or operational — to potential users and rapid deployment of the fruits of research and development. Improvements in safety require more than good will and good intentions. This section would invest in the intellectual resources that can find solutions to perennial problems and new challenges.

The Federal share of the cost of activities carried out under a cooperative research and development agreement could not exceed 50 percent, except that if there is substantial public interest or benefit, the Secretary could approve a greater Federal share. Research, development, or use of a technology under a cooperative research and development agreement, including the terms under which the technology may be licensed and the resulting royalties may be distributed, would be subject to the Stevenson-Wydler Technology Innovation Act of 1980.

Sec. 238. Review of Commercial Zones Exemption Provisions.

This section would require the Secretary of Transportation to review commercial zone exemptions from DOT and STB regulations governing interstate commerce and report to the Senate Committee on Commerce, Science, and Transportation and to the House of Representatives Committee on Transportation and Infrastructure on the findings of the review within 14 months of enactment of the bill.

Sec. 239. International Cooperation.

Section 239 would authorize the Secretary to participate in international activities to enhance motor carrier safety. FMCSA needs this authority to aid in implementing the North American Free Trade Agreement (NAFTA) and to carry on discussions with U.S. trading partners concerning a variety of safety issues.

Sec. 240. Performance and Registration Information System Management.

The Performance and Registration Information System Management Program (PRISM) is a voluntary program in which States can participate to identify motor carriers and hold them responsible for the safety of their operations. The program includes two major processes: a commercial vehicle registration process, through which States ensure that no vehicle is plated without identifying the carrier responsible for the vehicle's safety during the registration year, and a motor carrier safety improvement process, designed to improve the safety performance of motor carriers with demonstrated poor safety performance. As of June 2003, 26 States participated in the PRISM program.

PRISM is an effective enforcement tool that enables the States to deny, suspend, or revoke a motor carrier's commercial motor vehicle registrations when FMCSA determines that the carrier has become unfit to operate CMVs safely. By itself, an OOS order from FMCSA sometimes has little effect. However, when the State simultaneously confiscates the motor carrier's CMV license plates, the carrier's ability to continue operating without detection is greatly reduced. Grants to implement PRISM are authorized by section 222 of the bill.

This section would establish in statute certain requirements for participation in the program. In order to participate, States would have to comply with uniform standards set by the Secretary and have the legal authority to impose CMV registration sanctions on the basis of a Federal safety fitness determination. Another condition for participation in the program would be that States cancel the motor vehicle registration, and seize the plates, of an employer who knowingly allows an employee to operate a CMV in violation of an OOS order.

Sec. 241. Commercial Vehicle Information Systems and Networks Deployment.

This section would provide State grants to complete core deployment of the CVISN. The purpose of this program is to provide technological advances in commercial vehicle operations. "Core deployment" means the deployment of systems necessary to provide safety information exchange to electronically collect and transmit commercial vehicle and driver inspection data at a majority of inspection sites; to connect to the Safety and Fitness Electronic Records (SAFER) system for access to interstate carrier and commercial vehicle data, summaries of past safety performance, and commercial vehicle credentials information; and to exchange carrier data and commercial vehicle safety and credentials information within the State and connect to SAFER for access to interstate carrier and commercial vehicle data.

Sec. 242. Outreach and Education.

The section would authorize FMCSA and NHTSA to undertake outreach and education initiatives. The "Share the Road Safely" program would be jointly managed by the agencies and a total of $1 million would be authorized for the program for FY 2004. The bill would prohibit the use of funds authorized for the motor carrier safety programs to be used for the "Safety is Good Business" program.

Sec. 243. Technical Correction.

This section would make a technical correction to 49 U.S.C. 31144.

Sec. 244. Operation of Restricted Property-Carrying Units on National Highway System.

Current Federal law establishes minimum trailer length limits on the Interstate System. No State may prohibit trailers of less than 48 feet in length when operated in a tractor-semitrailer combination or trailers of less than 28 feet in length when operated in a double trailer combination. This section would establish a maximum trailer length limit of 53 feet on the National Highway System, effective 270 days following enactment. (The National Highway System consists of approximately 150,000 miles of Federal-aid highways and includes the Interstate System.) Existing legal operations of trailers that exceed 53 feet in length as of June 1, 2003, would be allowed to continue.

Sec. 245. Operation of Longer Combination vehicles on National Highway System.

States are prohibited from permitting longer combination vehicles (LCVs) from operating on interstates and certain other highway segments designated by DOT unless such combinations were permitted to operate as of June 2, 1991. LCVs include "long doubles" consisting of a truck tractor and two 48-foot trailers and "triples" consisting of three 28-foot trailers. This section would extend the existing freeze on the operation of LCVs from the Interstate System to the National Highway System, effective 270 days following enactment. Existing legal operations of LCVs as of June 1, 2003, on non-interstate highways that are part of the National Highway System would be allowed to continue.

Sec. 246. Application of Safety Standards to Certain Foreign Motor Carriers.

Section 246 would require that Mexican and Canadian trucks and buses operating in the U.S. be certified as in compliance with U.S. safety regulations.

Sec. 247. Background Checks for Mexican And Canadian Drivers Hauling Hazardous Materials.

Section 247 would require that motor carriers registered in Mexico and Canada and transporting hazardous material in the U.S. be subject to a background records check similar to that which will apply to U.S.-licensed motor carriers.

Sec. 248. Exemption of Drivers of Utility Service Vehicles.

The section would exempt drivers of utility service vehicles from Federal, State and local laws, rules, regulations, or standards that limit the hours a CMV driver may remain on duty or impose specific rest requirements for drivers.

Sec. 249. Operation of Commercial Motor Vehicles Transporting Agricultural Commodities and Farm Supplies.

The section would expand the existing exemption from Federal hours-of-service regulations for agricultural vehicles to include "any agricultural commodity, food, feed, fiber, or livestock, and any product thereof".

SUBTITLE B — UNIFIED CARRIER REGISTRATION

Sec. 261. Short Title.

The subtitle may be cited as the "Unified Carrier Registration Act of 2003".

Sec. 262. Relationship to Other Laws.

The section would clarify that the subtitle is not intended to prohibit a State from enacting or enforcing any law or regulation with respect to motor carriers that is not otherwise prohibited by law.

Sec. 263. Inclusion of Motor Private and Exempt Carriers.

This section would amend 49 U.S.C. 13905 to define "registration" for purposes of the UCRS and the UCRS Plan and Agreement as the filing by a carrier of a MCS Form 150 to obtain a DOT iden-

tification number. Registration includes those carriers who have obtained operating authority from the FMCSA, as well as those carriers exempt from the provisions of that chapter, such as intermodal carriers, transporters of agricultural products, private carriers, freight forwarders, brokers, and leasing companies.

Although not affecting the levels or types of insurance required by private or for-hire carriers, the section extends the requirement to file evidence of financial responsibility in the amounts currently required by 49 U.S.C. 31138 and 31139 to all "registered" carriers. It does not affect the levels or types of insurance required by registered carriers. The section also would require the Secretary to prescribe the form of evidence that will be required of motor private carriers.

Sec. 264. Unified Carrier Registration System.

This section would direct the Secretary, in cooperation with States and industry representatives, to develop a single, on-line system, within one year following enactment, containing all records of motor carriers registered with DOT, including their safety data, DOT identification number, (which will be replacing the MC number for all motor carriers), evidence of financial responsibility, and the service of process agents. Federal and State agencies, carriers, shippers and the public would have access to the system. The UCRS would replace the SSRS.

The section also would require the Secretary to adopt procedures enabling a carrier to correct any erroneous data contained anywhere in the UCRS and sets the parameters for a fee system with respect to the filing and retrieval of information from the UCRS. The fee for a new registrant would be required as nearly as possible to cover the costs of processing the registration and conducting the safety audit or examination, if required, but could not exceed $300. The fee for filing evidence of financial responsibility could not exceed $10 per filing.

Sec. 265. Registration of Motor Carriers by States.

The section would make it an unreasonable burden on interstate commerce for any State or political subdivision to impose, enact, or enforce any requirement or levy any fee on for-hire and private interstate motor carriers for: (1) registering the carrier's interstate operations with a State, (2) filing evidence of financial responsibility with a State, (3) filing the name of the local agent for service of process with a State, or (4) renewing intrastate authority, insurance filings, or other filing requirements if the carrier is registered with FMCSA and in compliance with other applicable State laws. Item (4) would not apply to certain carrier operations that are specifically exempted from preemption provisions, such as purely intrastate bus operations, intrastate transportation of household goods, non-consensual towing, and the transportation of waste and recycables. The section would preserve the exemption for interstate carriers from State sales taxes and other fees if a State provides such an exemption to intrastate carriers. The section would not limit State fuel taxes or vehicle registration fees.

The section also would establish a 15-member Board of Directors comprised of the Secretary of Transportation, representatives of participating States, and representatives of the trucking industry

to govern the new program. The Board would be required to develop the rules and regulations that will govern UCRS and submit the rules and regulations to the Secretary for approval.

States wishing to participate in UCRS would be required to submit a plan to the Secretary, within three years following enactment, identifying the State agency that will administer UCRS and containing assurances that an amount at least equal to the revenue derived from UCRS will be devoted to motor carrier safety. States declining to participate would lose the right to share in UCRS revenues.

UCRS fees would be determined by the UCRS Board of Directors with the approval of the Secretary and be based on the size of a carrier's commercial vehicle fleet. At least four, but no more than six, ranges of fleet size could be established by the Board for purposes of the fee structure. Brokers, non-vehicle operating freight forwarders, and leasing companies would pay the fee established for smallest carrier fleet. The level of fees could be adjusted if the revenues are deficient or exceed those needed to cover the systems cost and the revenues to which the States are entitled. Fees would be paid to the carrier's base-State, generally the State in which the carrier maintains its principal place of business.

States that currently participate in the SSRS and choose to participate in UCRS would be guaranteed the revenues they derived from SSRS during the last fiscal year ending prior to enactment of this Act. States that did not participate in SSRS but opt to join UCRS would be entitled to annual revenues of not more than $500,000. The UCRS Board of Directors would determine the amount of UCRS revenues to which a State is entitled, with the approval of the Secretary.

Each participating State would be entitled to retain funds equivalent to the revenues to which it is entitled. Excess funds would be deposited in a designated repository for distribution on a pro rata basis to those States which do not collect the full amount of the revenues to which they are entitled. Remaining funds would be used to offset the cost of the operation of UCRS. Any remaining funds after distribution to the States and payment of costs would be held in the repository and the next year's fees would be reduced accordingly.

The section would allow the Secretary to request the Attorney General to bring a civil action to enforce the terms of the Plan and Agreement, including injunctive relief. States could impose fines and other penalties against any party that does not submit the required information or pay the required fees. States would be prohibited from requiring a carrier from having any indicia or other document as evidence of compliance.

Finally, the section would allow a State to elect to apply the provision of UCRS to carriers that operate solely in intrastate commerce.

Sec. 266. Identification of Vehicles.

Section 266 would prohibit a State or political subdivision from requiring a motor carrier, motor private carrier, or freight forwarder to display any additional form of identification on or in a commercial vehicle. The prohibition would not apply to credentials required under the International Registration Plan or the Inter-

national Fuel Tax Agreement, or in connection with Federal hazardous materials regulations or Federal vehicle inspection standards.

Sec. 267. Use of UCR Agreement Revenues as Matching Funds.

UCRS revenues may be used to meet a State's match for MCSAP funds.

Sec. 268. Clerical Amendments.

The section would make technical revisions to section 13906 of Title 49 and the chapter analysis for chapter 139 of Title 49.

Title III — HOUSEHOLD GOODS TRANSPORTATION REFORMS

Sec. 301. Short title; amendment of title 49, United States Code.

This section establishes that this title may be referred to as the "Household Goods Mover Oversight Enforcement and Reform Act of 2003."

Sec. 302. Findings; sense of Congress.

The section describes the findings on which the legislative changes proposed by the title are based.

Sec. 303. Definitions.

This section provides that the terms "carrier", "household goods", "motor carrier", "Secretary", and "transportation" have the meaning specified in section 13102 of title 49, United States Code.

Sec. 304. Payment of rates.

Under current law, a carrier must give up possession of the property being transported upon receipt of payment (49 U.S.C. 13707(a)). This section would codify existing regulations that require a carrier to give up possession of the household goods so long as the shipper pays the mover 100 percent of a binding estimate of the charges or 110 percent of a non-binding estimate of the charges. Shippers would not be required under this provision to pay unforeseen additional charges not included in a binding or non-binding estimate (as a condition of delivery) that are subsequently requested by the shipper and/or necessary to complete the move.

This section also would provide that a mover may only charge a prorated share of charges (based on either a binding or non-binding estimate) for the partial delivery of a shipment. Under current law, movers may require a shipper to pay 100 percent of the charges in a binding estimate or 110 percent of the charges of a non-binding estimate at the time of delivery even if part of the shipment is lost or destroyed.

Sec. 305. Household Goods Carrier Operations.

This section would require that a mover must provide the customer a written estimate of charges and ancillary services. At the time the written estimate is provided, the carrier must also provide the shipper a copy of DOT's pamphlet "Ready to Move?". Further, before a contract for service is executed, the carrier must provide

the shipper a copy of DOT's booklet "Your Rights and Responsibilities When You Move".

If the written estimate is non-binding and not based on a visual inspection, the carrier would be required to provide a revised estimate based on a visual inspection prior to the execution of a contract for service. Inaccurate estimates based on an inventory provided by a prospective customer over the telephone or the internet are the source of many complaints and disputes. It is hoped that requiring an estimate be based on a visual inspection of the goods to be moved prior to the execution of a contract will significantly reduce such disputes. If the final charges for a shipment exceed 100 percent of a binding estimate or 110 percent of a non-binding estimate, the carrier would be required to provide the customer an itemized statement of charges at least 24 hours prior to delivery, unless waived by the customer. The carrier would be required to disclose to the customer that the carrier is required to deliver the shipment if the customer pays the mover 100 percent of the charges in a binding estimate or 110 percent of the charges in a non-binding estimate. Finally, the carrier would be required to prepare a written inventory of the goods being moved.

Sec. 306. Liability of Carriers Under Receipts and Bills of Lading.

This section would change the standard liability for loss and damage to full value protection, defined as the replacement cost in the event of loss or damage up to the pre-declared total value of the shipment. Movers would be allowed to offer "released rates" only if the shipper opts out, in writing, of full value protection.

Sec.307. Dispute Settlement for Shipments of Household Goods.

This section would require movers to offer shippers arbitration on all matters, including price disputes. The current statute is limited to disputes concerning loss and damage claims. Experience has shown that disagreements on matters other than loss and damage claims, such as delays and inconvenience for the customer, are numerous.

The Secretary would be required to establish a system for certifying persons authorized to act as arbitrators. The purpose is to ensure that arbitrators are truly independent of both parties to a dispute. Today, arbitrators are selected by the mover and there is concern that the process may favor the mover.

The section also would allow carriers to be awarded attorney's fees in a court proceeding to enforce an arbitration decision rendered in favor of the carrier.

Within 18 months following enactment, the Secretary would be required to complete a review of the results and effectiveness of arbitration programs and submit a report to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure. In preparing the review, the Secretary would be required to provide an opportunity for public comment.

Sec. 308. Enforcement of Regulations Related to Transportation of Household Goods.

This section would allow a State authority that regulates the intrastate movement of household goods to enforce Federal laws

and regulations with respect to the transportation of household goods in interstate commerce. The laws the States would be authorized to enforce are chapters 137, 147, and 149; subchapter I of chapter 141; section 13907; and section 14124 of title 49 United States Code. Fines or penalties imposed as a result of State enforcement of Federal law would accrue to the State.

A State attorney general would be authorized to bring a civil action in Federal court when the attorney general believes the interests of the residents of the State are being threatened by a carrier or broker. This provision is based on similar authority in section 4 of the Telemarketing and Consumer Fraud Abuse Prevention Act of 1994. The State would be required to give the DOT or the STB written notice when an action is about to be filed. DOT or the STB could intervene in the action and file petitions for appeal. The venue for a civil action would be the judicial district where the carrier or broker operates, or where the carrier or broker is authorized to provide transportation, or where the defendant is found. States would be permitted to prosecute for violations of a State criminal statute.

Sec. 309. Working Group for Development of Practices and Procedures to Enhance Federal-State Relations.

This section would require the Secretary to establish a working group of State attorneys general, State regulators of household goods carriage, and local law enforcement officials to develop practices and procedures to enhance the Federal-State partnership in enforcement efforts, exchange of information, and coordination of enforcement efforts, as well as to make recommendations for legislative and regulatory changes. The working group would be required to consult with household goods movers, consumer groups, and other interested parties.

Sec. 310. Consumer Handbook on the Dot Web Site.

The Secretary would be required to post on DOT's website the publication entitled "Your Rights and Responsibilities When You Move".

Sec. 311. Display of Information on Household Goods Transportation Related Websites.

Within one year after the date of enactment, the Secretary would be required to modify regulations to require household goods carriers and brokers to maintain a website that displays their DOT-assigned number and the DOT publication entitled "Your Rights and Responsibilities When You Move". Brokers also would have to provide a list of all household goods carriers used by the broker and a statement that the broker is not a motor carrier.

Sec. 312. Consumer Complaints.

This section would require the Secretary to establish a publicly accessible database of complaints related to motor carrier transportation of household goods. Complaints would have to be forwarded to the carrier involved, and the carrier would be afforded an opportunity to challenge the information in the database. Household goods carriers would be required to submit an annual report detailing the number of shipments carried, the number and category of

complaints made by shippers, the number of shipments that resulted in a claim for loss or damage in excess of $500, and the number of claims settled, declined, and pending during the period.

Sec. 313. Review of Liability of Carriers.

Within one year after the date of enactment, the STB would be required to complete a review of the Federal regulations regarding the level of liability protection provided by carriers to determine if current regulations provide adequate protection; whether shippers benefit from purchasing supplemental insurance coverage; and whether shippers are sometimes left unprotected. The STB also would be required to make recommendations as to whether the current limitations on liability, known as the "Carmack Amendment", should be modified or repealed with respect to household goods movers.

Sec. 314. Civil Penalties Relating to Household Goods Brokers.

This section would make a broker liable for a civil penalty of at least $10,000 if found to have made a cost estimate for a carrier to transport household goods without first entering into an agreement with the carrier to provide the service. Any person found to have provided transportation of household goods or broker services without being registered to provide these services would be liable for a civil penalty of at least $25,000.

Sec. 315. Civil and Criminal Penalty for Failing to Give up Possession of Household Goods.

The section would define the term "failed to give up possession of household goods" as willfully refusing to relinquish possession of a shipment of household goods for which the shipper has tendered payment described in 49 U.S.C. 13707. A carrier violating this provision would be subject to a civil penalty of at least $10,000, with every day the shipment is held hostage constituting a separate violation, as well as a six-month suspension of the carrier's DOT registration. A carrier convicted of holding household goods hostage by falsifying documents or demanding payment for charges not performed would be subject to a fine under Title 18 or imprisonment of up to two years, or both.

Sec. 316. Progress Report.

Not later than one year after the date of enactment, the Secretary would be required to report to Congress on the progress made in implementing the provisions of this title.

TITLE IV — HAZARDOUS MATERIALS TRANSPORTATION SAFETY AND SECURITY

Sec. 401. Short title.

This section contains the short title and table of contents.

Sec. 402. Amendment of Title 49, United States Code.

Unless otherwise stated, amendments made by this title are to title 49, United States Code.

SUBTITLE A — GENERAL AUTHORITIES ON TRANSPORTATION OF HAZARDOUS MATERIALS

Sec. 421. Purpose.

This section would update and clarify the purpose of chapter 51 of title 49, United States Code.

Sec. 422. Definitions.

This section would modify definitions as indicated below.

The definition of "commerce" would be amended to provide jurisdiction over hazardous materials activities being conducted on a U.S.-registered aircraft anywhere in the world. The purpose of this proposed provision is to clarify that DOT has the authority, under Federal hazardous materials transportation law (49 U.S.C. 5101-5127), to regulate hazardous materials transportation conducted on all U.S.-registered aircraft.

The definitions of "hazmat employee" and "hazmat employer" would be amended to clarify the applicability of the training requirements in section 5107.

The definition of "motor carrier" would be amended by clarifying that it includes a freight forwarder, as defined in 49 U.S.C. 13102, only if the freight forwarder is performing a function related to highway transportation.

Finally, the definition of "person" would be amended so that the requirements of chapter 51 apply to additional activities of government agencies and Indian tribes.

Sec. 423. General regulatory authority.

This section would amend subsection 5103(a) to update the terminology used to describe materials the Secretary is required, under that subsection, to designate as hazardous.

This section would amend subsection 5103(b)(1)(A) to add that persons who prepare or accept hazardous materials for transportation in commerce, persons who are responsible for the safety of transporting hazardous materials in commerce, persons who certify compliance with any requirement issued under chapter 51, and persons who misrepresent whether they are engaged in a function listed under 5103(b)(1)(A), are subject to Federal hazardous materials regulations.

Sec. 424. Limitation on issuance of hazmat licenses.

This section would require the Secretary of HHS to recommend to the Secretary of Transportation any chemical or biological material or agent to be regulated as a hazardous material in transportation.

Sec. 425. Representation and tampering.

This section would make minor editorial changes to section 5104 for purposes of clarity.

Sec. 426. Transporting certain highly radioactive material.

This section would amend section 5105 by deleting subsections (d) and (e). Subsection (d) requires the Secretary to conduct a study to decide which factors, if any, shippers and carriers should consider when selecting routes and modes that would enhance overall public safety related to the transportation of high-level radioactive waste and spent nuclear fuel. Subsection (d) would be deleted because the study was completed and submitted to Congress.

Subsection (e) states that the Secretary shall require, by regulation, that before each use of a motor vehicle to transport a highway-route-controlled quantity of radioactive material in commerce, the vehicle must be inspected and certified as complying with chapter 51 and applicable U.S. motor carrier safety laws and regulations. DOT already oversees the inspection of trucks transporting highway-route-controlled quantity (HRCQ) shipments of radioactive materials at their points of origin, so this provision is unnecessary.

Sec. 427. Hazmat employee training requirements and grants.

This section would allow training grants for the "Train the Trainer" program to also be made to instructors to train hazmat employees, to the extent determined appropriate by the Secretary.

Sec. 428. Registration.

This section would make several changes to the registration provisions in section 5108.

The Secretary would be allowed to require a registration statement from persons who design and inspect a packaging or packaging component that is represented as qualified for use in transporting hazardous materials in commerce. This proposed change is consistent with the proposed changes to section 5103(b)(1) regarding persons subject to the hazardous materials regulations.

To reduce registrants' reporting requirements, registrants would no longer have to identify each registration-requiring activity that it conducts in each State. Rather, the registrant would only have to list each State in which it transports or causes to be transported a hazardous material in a quantity and manner requiring registration.

Section 5108(g)(1) would be amended by replacing "may" with "shall" in order to establish explicitly that the Secretary must impose a registration fee sufficient to cover administrative processing costs. Indian tribes and States would be excepted from the requirements to register and pay registration fees.

This section also would reduce the maximum fee that would be assessed under section 5108(g)(2)(A) from $5,000 to $2,000. The Secretary would be directed to reinstate the fees that were suspended due to regulatory action.

Sec. 429. Shipping papers and disclosure.

This section would require that each person who prepares a shipping paper must make the disclosures that the Secretary prescribes by regulation. Subsection 5110(b) would be deleted as unnecessary because the informational elements set forth in that subsection are already required by the Secretary under the hazardous material regulations.

This section would require that shippers and carriers retain shipping papers for three years after the shipping paper is provided to the carrier. Currently, shippers and carriers are required to retain shipping papers for one year after the hazardous material is no longer in transportation. Because many shippers do not know whether or when the transportation ends, they do not know how long they are required to retain the shipping paper. In addition, the one-year retention period is inadequate for law enforcement purposes.

Sec. 430. Rail tank cars.

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

Sec. 431. Highway routing of hazardous material.

This section is amended by striking "of Transportation" after Secretary.

Sec. 432. Unsatisfactory safety ratings.

This section would provide that an unfit owner or operator transporting hazardous material in commerce more than 45 days after being found unfit is subject to the civil penalties in section 5123 and the criminal penalties in section 5124.

Sec. 433. Air transportation of ionizing radiation material.

This section is amended by striking "of Transportation" after Secretary.

Sec. 434. Training curriculum for the public sector.

Several technical amendments would be made to reflect that the public-sector training curriculum has already been developed and to focus the statutory provisions on maintaining, not developing, the curriculum.

The training curriculum would be required to include appropriate emergency response training and planning programs for public-sector employees developed with Federal financial assistance, not just those under other Federal grant programs

Sec. 435. Planning and training grants, and emergency preparedness fund.

This section would eliminate the current requirement that the State share of planning and training grants must be above and beyond "maintenance of effort" funds. In subsection (g), the phrase "government grant programs" would be broadened to "Federal financial assistance programs" in order to provide for more complete coordination of funding sources.

This section also would amend section 5116 to provide a name for the account established under subsection 5116(i), calling it the "Emergency Preparedness Fund." Amounts collected by the Secretary under subsection 5108(g)(2)(C) would be deposited into the Emergency Preparedness Fund and could be used for emergency planning and training grants, under subsection 5116(a) and (b),

monitoring and technical assistance under subsection 5116(f), and administrative costs of carrying out sections 5116, 5108(g)(2), and section 5115. It also would clarify that these amounts may be used to publish and distribute the Emergency Response Guidebook. Information on the allocation and uses of the grants would be made available to the public on an annual basis.

Sec. 436. Special permits and exclusions.

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

In addition, this section would change the maximum initial effective period of a special permit to two years, and provide renewal of special permits for four-year successive periods. This change would eliminate a great deal of unnecessary industry application time and government processing time involved in the present two-year renewal process.

This section also would repeal a requirement that the Secretary maintain 30 hazardous materials safety inspectors more than the number of inspectors authorized at the end of fiscal year 1990. The RSPA maintains inspectors in excess of this requirement and, pursuant to recommendations resulting from a department-wide DOT review of the hazmat program, is requesting more flexibility about how inspectors should be utilized.

Sec. 437. Uniform forms and procedures.

This section would reflect the fact that the working group established to formulate uniform registration and permitting forms and procedures has completed its task and submitted a report to Congress. The section would now authorize the Secretary to prescribe regulations to establish uniform forms and regulations for States to: (1) register and issue permits for the transportation of hazmat by motor vehicle; and (2) permit the transportation of hazmat in a State. Also, States would be authorized to participate in the uniform forms and procedures program recommended by the Alliance for Uniform Hazmat Transportation Procedures.

Sec. 438. International uniformity of standards and requirements.

This section is amended by striking "of Transportation" after Secretary.

Sec. 439. Hazardous materials transportation safety and security.

This section would improve safety by clarifying and enhancing the inspection and enforcement authority of DOT officials and inspection personnel. First, section 5121(a) would be amended to expressly state that the Secretary's enforcement authority includes the authority to conduct tests.

This section also would clarify that persons subject to chapter 51 must make property, as well as records, reports, and information available to the Secretary for inspection upon the Secretary's request. The Secretary currently has the authority in 5121(a) to require the production of records and property.

This section would provide for enhanced authority for DOT officials to discover hidden shipments of hazardous materials. Section 5121(c) is amended to clarify and enhance the inspection and en-

forcement authority of DOT officials and inspection personnel, thereby enabling them to more effectively identify hazardous materials shipments and to determine whether those shipments are made in accordance with the Hazardous Materials Regulations.

However, the Secretary would be required to develop procedures for the safe resumption of transportation of a package or transport unit when an inspection or investigation does not result in the discovery of an imminent hazard. This improved inspection authority comports with Fourth Amendment principles on permissible searches by the Government.

In addition, this section would authorize the Secretary to issue an emergency order when it is determined, by inspection, investigation, testing, or research, that a violation of hazardous material transportation laws, or an unsafe condition or practice, is causing an imminent hazard. In those situations, the Secretary would be authorized to issue or impose emergency restrictions, prohibitions, recalls, or out-of-service orders, without notice or the opportunity for a hearing, but only to the extent necessary to abate the imminent hazard.

The Secretary would be required to issue regulations implementing the new provisions governing package inspection and emergency orders.

A new subsection (g) would authorize the Secretary to enter into grants, cooperative agreements, and other transactions to address security risk assessment and emergency preparedness. The objectives would include research, development, demonstration, risk assessment, emergency response planning, program support, and training activities.

This section also would require the Secretary, through the Bureau of Transportation Statistics, to submit a report at least every three years on the transportation of hazardous materials during the preceding three years, including a summary of hazmat shipments, deliveries, and movements during the period. In addition, the section would require a report every two years with, among other items, an analysis of hazmat accidents and incidents over the preceding two years, a list and summary of special permits, regulations and orders, and an evaluation of the effectiveness of enforcement activities relating to the transportation of hazmat during the period.

A new subsection 5121(i) is added to allow the Secretary to determine whether release of certain sensitive information contained in government records would be contrary to national security. Although the Freedom of Information Act (FOIA) provides for the protection from release of certain sensitive information, it does not necessarily protect all information that could be used by terrorists to plan for or to carry out terrorist acts relating to the transportation of hazardous materials.

Sec. 440. Enforcement.

This section would clarify the types of judicial relief, including civil penalties, that may be granted in an action brought by the Attorney General.

Sec. 441. Civil penalties.

This section would amend the civil penalty provisions in sections 5123 to cover violations of special permits or approvals issued by DOT to ensure that appropriate enforcement action can be taken against persons violating those special authorities. The maximum civil penalty would increase from $27,500 to $100,000 for each violation. A violator would be liable for interest that accrues on a civil penalty. In a civil action to collect a civil penalty, the validity, amount, and appropriateness of the civil penalty would not be subject to review.

Sec. 442. Criminal penalties.

Criminal penalties would be increased for a person who knowingly violates 49 U.S.C. 5104(b) or willfully violates chapter 51 or a regulation issued under that chapter, and thereby causes a release of hazardous material. Section 5104(b) concerns tampering with a package, vehicle, vessel, aircraft, or rail freight car used to transport hazardous materials. The penalty would be a fine under title 18, not more than 20 years imprisonment, or both. The section also would provide that a separate violation occurs for each day a violation continues.

Sec. 443. Preemption.

This section would include a new subsection outlining the purposes of the Secretary's current preemption authority and would clarify that a person may apply to the Secretary for a decision as to whether a fee imposed by a State, political subdivision of a State, or an Indian tribe is preempted. Further, this section would delete the requirement that the Secretary publish the reason for a delay in issuing a preemption determination in the Federal Register.

This section would add a new subsection (g) to authorize the Secretary to immediately waive Federal preemption to allow State, local, and tribal governments to regulate hazardous material transportation to ensure public safety in the event of a terrorist threat. A waiver of preemption could remain in effect for a period of not more than six months, although a waiver could be extended if the Secretary determines that the threat continues to exist.

Subsection 5125(h) would strike existing provisions regarding judicial review since judicial review is addressed by the revisions to section 5127.

A new subsection 5125(i) would be added to indicate that the preemption standard is to be applied independently to each non-Federal requirement in order to determine whether it is preempted.

Finally, new subsection 5125(j) would clarify that the Secretary's preemption authority does not apply to a procedure, penalty, required mental state, or other standard used by a State, political subdivision of a State, or Indian tribe to enforce hazardous material transportation requirements.

Sec. 444. Relationship to other laws.

This section would require that a person under contract to the United States government to design or inspect a packaging or packaging component used for transporting hazardous materials must comply with chapter 51 and the hazardous materials regulations.

Further, this section enables hazardous materials law to supercede postal laws and regulations under titles 18 or 39 only "in case of an imminent hazard."

Sec. 445. Judicial review.

This section would add a new section 5127 providing for judicial review of final actions taken by the Secretary under chapter 51. This provision establishes the appropriate judicial forum for review of final agency actions in the areas of compliance, enforcement, civil penalties, rulemaking, and preemption.

Under the proposal, the United States Court of Appeals for the District of Columbia or for the circuit in which a person seeking review resides or has his or her principal place of business would review the final action. The petition for review must be filed within 60 days after issuance of the order. The section describes judicial procedures, the authority of the court, and a requirement for prior objection -- all provisions modeled on the statute providing for judicial review of DOT and Federal Aviation Administration aviation orders (49 U.S.C. 46110).

Sec. 446. Authorization of appropriations.

This section would authorize appropriations of $24,981,000 for FY 2004, $27,000,000 for FY 2005, $29,000,000 for FY 2006, and $30,000,000 for each of FYs 2007 through 2009.

A new subsection (b) would authorize appropriations from the Emergency Preparedness Fund account to carry out certain activities:

- $4,000,000 for each of fiscal years 2004 through 2009 to carry out section 5107(e) (training grants);
- $200,000 for each of fiscal years 2004 through 2009 to carry out section 5115 (training curriculum for the public sector);
- $8,000,000 for each of fiscal years 2004 through 2009 to carry out section 5116(a) (public sector planning grants);
- $13,600,000 for each of fiscal years 2004 through 2009 to carry out section 5116(b) (public sector training grants);
- $150,000 for each of fiscal years 2004 through 2009 to carry out section 5116(f) (monitoring and technical assistance to the public sector);
- $150,000 for each of fiscal years 2004 through 2009 to carry out section 5116(i)(4) (administrative costs);
- $1,000,000 for each of fiscal years 2004 through 2009 to carry out section 5116(j) (supplemental training grants);
- $500,000 for each of fiscal years 2004 through 2009 to carry out section 5116(i)(3) (for publication and distribution of the Emergency Response Guidebook).

Sec. 447. Additional civil and criminal penalties.

This section would amend criminal penalties for violations in transporting hazardous materials by air (49 U.S.C. 46312) to clarify that the regulations referred to in that section include the Hazardous Materials Regulations issued by the Secretary under chapter 51. Consequently, violations in transporting hazardous materials by air would clearly constitute violations of both Federal hazardous material transportation laws and the Federal Aviation Act.

This section also would allow the Department of Justice to seek restitution against persons convicted of a criminal offense under 49 U.S.C. 5124.

SUBTITLE B—OTHER MATTERS

Sec. 461. Administrative authority for Research and Special Programs Administration.

This section would provide RSPA necessary administrative authority to conduct effective research on transportation service and infrastructure assurance and to prevent security-sensitive information developed in the course of that research from aiding persons who might want to disrupt the transportation system.

The purpose of this proposed provision is to provide RSPA with the authority to enter into "other transactions" agreements to conduct research into transportation service and infrastructure assurance and to carry out RSPA's research activities. "Other transactions" agreements are contractual arrangements that allow the maximum participation in research and development programs. While "other transactions" authority is not subject to the statutes and regulations specifically applicable to Federal contracts or grants programs, their use does not eliminate the applicability of all laws and regulations or other guidance provided within DOT. This authority generally encourages greater use of commercial-like practices, standards, and procedures; makes the acquisition process work better, faster, and less expensively; and provides greater flexibility and shared Government-industry responsibility for achieving desired milestones.

Sec. 462. Mailability of hazardous materials.

This section would amend chapter 30 of title 39, U.S.C., to prohibit hazardous materials in the mail unless specifically authorized by law or Postal Service regulation. It also would allow the United States Postal Service to collect civil penalties, and to recover clean-up costs and damages, for violations of this statutory provision and regulations issued under it. This language would provide the Postal Service with civil penalty authority analogous to DOT's civil penalty authority under chapter 51. It would enhance the Postal Service's authority to regulate hazardous materials in the mail and would institute a civil penalty process that would serve as a deterrent to those who unlawfully place hazardous material in the mail.

This section would require the Postal Service to demonstrate that a "knowing" violation has occurred, to give written notice of the amount of the penalty, cost or damages assessed, and to provide an opportunity for a hearing before making a finding of violation. The Postal Service would have to take into account certain penalty assessment criteria — such as prior violation history, gravity of the violation, and ability to remain in business — in determining the amount of a civil penalty. A person accused of a violation would have the right to file an administrative appeal with the Postal Service, and the Attorney General would be able to bring a civil action to collect penalties, damages, and costs. Costs, damages, and penalties under this section would be paid into the Postal Service Fund under 39 U.S.C. 2003.

Sec. 463. Criminal matters.

This section provides for a correction to title 18 of the United States Code for the transportation of explosives. It makes subject to authority explosives that are regulated by the DOT and the Department of Homeland Security (DHS).

Sec. 464. Cargo inspection program.

This section would authorize the Secretary to initiate a program to randomly inspect cargo shipments at U.S. Customs ports of entry to determine the extent to which undeclared hazardous material is being offered for transportation in commerce. DOT inspection personnel, in coordination with DHS officials, would be authorized to open and inspect containers at any U.S. Customs port of entry. The inspections would be carried out by DOT inspection personnel at U.S. Customs ports of entry where they would be similar to border inspections, and they would be based upon random selections made by supervisory personnel not present at the site of the inspections. Therefore, the proposed program represents a careful balancing of parties' privacy interests and the need to protect emergency responders, transportation workers, and the general public from the dangers inherent in the transportation of undeclared hazardous material.

Sec. 465. Information on hazmat registrations.

This section would require RSPA to transmit current hazmat registration information on motor carriers to the FMCSA so that FMCSA can cross-reference the registrant's Federal motor carrier registration number. In the future, RSPA also would be required to notify FMCSA whenever a motor carrier initially registers to handle hazmat.

Sec. 466. Report on applying hazardous materials regulations to persons who reject hazardous materials.

This section would require the Secretary to complete an assessment of the costs and benefits of subjecting to hazmat laws and regulations persons who reject hazmats for transportation in commerce. In completing the assessment, the Secretary would be required to consider the number of affected employers and employees; what actions would be required to comply with such requirements; and whether and to what extent application of Federal hazmat laws and regulations should be limited to particular modes of transportation, certain categories of employees, or certain classes or categories of hazmat.

SUBTITLE C — SANITARY FOOD TRANSPORTATION

Sec. 481. Short title.

This section sets forth the short title for the Sanitary Food Transportation Act of 2003. This title would reallocate responsibilities for food transportation safety among HHS, DOT, and the Department of Agriculture.

Sec. 482 . Responsibilities of the Secretary of Health And Human Services.

This section would amend section 402 of the Federal Food, Drug, and Cosmetic Act (the Act; 21 U.S.C. 391) to provide that food is adulterated if transported in violation of safe transportation practices prescribed in the new section 416 of the Act.

Subsection (b) would add to the Act a new section 416 requiring the Secretary of HHS to establish by regulation sanitary transportation practices to be followed by shippers, carriers, and others engaged in food transport. The Secretary of HHS could prescribe practices relating to matters such as sanitation, packaging and protective measures; limitations on the use of vehicles; information sharing between shippers and carriers; and record keeping, reporting, and compliance with inspections.

It also would authorize the Secretary of HHS to publish in the Federal Register (and amend as needed) lists of nonfood products that could render adulterated food products shipped simultaneously or subsequently in the same vehicle.

The section would authorize the Secretary of HHS to waive all or part of the requirements of section 416, in appropriate circumstances, with respect to particular classes of persons, vehicles, food, or nonfood products.

It would preempt State or local laws concerning transportation of food. Finally, it would require the heads of other Federal agencies, including the Secretaries of Transportation and the Department of Agriculture, and the Administrator of the Environmental Protection Agency, to assist the Secretary of HHS, upon request, in carrying out this section.

Paragraph (c) of this section would add to the Act a new section requiring persons subject to these provisions to cooperate with HHS inspections of records.

Subsection (d) would amend section 301 of the Act to make violations of requirements added by this section prohibited acts subject to the sanctions provided in chapter III of the Act.

Sec. 483. Department Of Transportation Requirements.

This section would require the Secretary, in consultation with the Secretaries of HHS and the Department of Agriculture, to establish inspection procedures for identifying suspected incidents of contamination or adulteration of food that might violate regulations issued under section 416 of the Federal Food, Drug, and Cosmetic Act, and of meat and poultry products subject to detention under section 402 of the Federal Meat Inspection Act (21 U.S.C. 672) and section 19 of the Poultry Products Inspection Act (21 U.S.C. 467a). In addition, it would require the Secretary to train DOT personnel who perform motor vehicle and railroad related safety inspections to identify practices and conditions that could pose a threat to food safety and to notify the secretaries of HHS and the Department of Agriculture of any instances of potential food contamination identified during those inspections.

Sec. 484. Effective Date.

This section would make the changes in law under the subtitle align with the Federal fiscal year, which is particularly important for the transfer of duties among different agencies.

TITLE V - RECREATIONAL BOATING SAFETY PROGRAMS

Sec. 501. Short Title.

The section would state the title would be entitled the "Sport Fishing and Recreational Boating Safety Act".

SUBTITLE A — FEDERAL AID IN SPORT FISH RESTORATION ACT AMENDMENTS

Sec. 521. Amendment of Federal Aid in Fish Restoration Act.

The section would state that amendments under this subsection refer to amendments to "An Act to provide that the United States shall aid the States in fish restoration and management projects, and for other purposes," enacted August 9, 1950 (64 State. 430; 16 U.S.C 777 et seq.).

Sec. 522. Authorization of appropriations.

Section 522 would continue the appropriation of funds for the accounts provided under that Act. It also would provide that unexpended State funds from the Sport Fish Restoration program would not be returned to the U.S. Fish and Wildlife Service's research program, but instead would be reapportioned to the States for fishery management and boating access.

Sec. 523. Division of annual appropriations.

Section 523 would amend that Act to authorize annual appropriations for FYs 2004-2009 for the various Wallop-Breaux programs from the Sport Fish Restoration Account into percentages, which would allow each program area to share in the benefits of revenue increases. The percentage allocations made under this section would be: (1) 53.3 percent to the Secretary of Interior for Sport Fish Restoration, to include a minimum of 15 percent of that amount for boating access; (2) 18 percent to the Secretary of Interior for Coastal Wetlands; (3) 18 percent to the Secretary of Homeland Security for State recreational boating safety programs; (4) 1.9 percent for marine sanitation devices as provided under the Clean Vessel Act; (5) 1.9 percent to the Secretary of Interior for the national outreach effort and communications program; and (6) 2.1 percent to the Secretary of Interior for program administration minus established amounts for the Sport Fish Boating Partnership Council and the four marine fisheries commissions. This section also would provide that any unexpended balances be apportioned among the States in the same proportion and manner. Finally, this section would provide that any amounts unobligated by the Secretary after three years shall be transferred to the Secretary of Homeland Security for State recreational boating safety programs.

Sec. 524. Maintenance of projects.

The section 524 would make conforming changes to that Act relating to changes made in section 522 concerning the maintenance of Fish and Wildlife Service's projects.

Sec. 525. Boating infrastructure.

Section 525 would make conforming changes to that Act for the distribution of Boating Infrastructure funds made in section 523.

Sec. 526. Requirements and restrictions concerning use of amounts for expenses for administration.

Section 526 would make conforming changes to that Act regarding the distribution of revenues for administrative purposes under section 523.

Sec. 527. 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.

The section would make conforming changes regarding changes to distribution of the funds to the Sport Fish Restoration account under section 523 for the 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 U.S. Virgin Islands.

Sec. 528. Multistate conservation grant program.

Section 528 would make conforming changes relating to distribution of funds for the multistate grant program under section 523.

SUBTITLE B — CLEAN VESSEL ACT AMENDMENTS

Sec. 541. Grant program.

Section 541 would remove the requirement that coastal States receive priority consideration for grant applications.

SUBTITLE C — RECREATIONAL BOATING SAFETY PROGRAM AMENDMENTS

Sec. 561. State matching funds requirement.

Section 561 would reduce the percentage of State matching funds required for the recreational boating safety program from one-half to one-quarter. Most States provide significantly more funds than are required; however, some States with limited matching funds are unable to use all of the Federal funds allocated to them each year. This section would permit States with limited matching funds to increase their level of services to the boating public by fully utilizing their allocated Federal funds.

Sec. 562. Availability of allocations.

The section would increase the length of time that States have to obligate Federal funds from two years to three years. This section would provide greater flexibility in the amount of time States will have to obtain matching funds. Due to lead-times needed to obtain appropriations through the State budget process, some States may not be able to obtain sufficient matching funds within the two-year period currently authorized.

Sec. 563. Authorization of appropriations for State recreational boating safety programs.

Section 563 would amend section 13106 of title 46, United States Code, to reflect the proposed mandatory appropriation of the Boat Safety Account by removing reference to the transfer of funds from the Sport Fish Restoration Account. In addition, it would remove

the limitation on the portion of the $5 million provided to the Coast Guard that is used to ensure manufacturer compliance with safety standards for recreational vessels and associated equipment. Current law prohibits the Coast Guard from using more than $2 million for manufacturer compliance. By adding the words "a minimum of", this section would provide the Coast Guard with the flexibility to use additional funds for manufacturer compliance if necessary.

Sec. 564. Maintenance of effort for State recreational boating safety programs.

Section 564 would add a "maintenance of effort" provision to ensure that the increased Federal funding will result in increased State recreational boating safety program activities. This section would provide that in order to receive the full benefit of the increased Federal recreational boating safety grant funds, a State must maintain a level of State expenditure equal to the average of that State's recreational boating safety program expenditures for the three preceding fiscal years. If a State were to reduce its recreational boating safety program expenditures below the average of the three preceding fiscal years, the amount of the Federal share of expenditures reimbursed for the next fiscal year would be reduced proportionately to the amount of the State's reduction.

Subsections (b) and (c) of the amendment would include provisions to allow adjustments if the total amount of Federal funds available for distribution to all States is less than the amount for the preceding year, and to permit the Secretary to waive the requirement if deemed appropriate due to factors beyond a State's control.

SUBTITLE D — MISCELLANEOUS

Sec. 581. Technical correction to Homeland Security Act.

Section 581 would make a technical correction to Section 1511(e)(2) of the Homeland Security Act of 2002 (PL 107-296) by striking "and to any funds provided to the Coast Guard from the Aquatic Resources Trust Fund of the Highway Trust Fund for boating safety programs" and inserting "and any funds provided to the Coast Guard from the Highway Trust Fund and transferred into the Sport Fish Restoration Account of the Aquatic Resources Trust Fund for boating safety programs."

TITLE VI — RAIL TRANSPORTATION

SUBTITLE A — AMTRAK

Sec. 601. Authorization of Appropriations.

The section would authorize $2 billion for Amtrak for each of fiscal years 2004 through 2009 for operating expenses.

Sec. 602. Establishment of Corporation

The section would establish a nonprofit Rail Infrastructure Finance Corporation, whose purpose would be to support rail transportation capital projects through the issuance of bonds.

SUBTITLE B — RAILROAD TRACK MODERNIZATION

Sec. 631. Short Title.

The subtitle may be cited as the "Railroad Track Modernization Act of 2003".

Sec. 632. Capital Grants for Railroad Track.

This section would establish a program of capital grants for railroad track infrastructure.

Subsection (a)(1) would direct the Secretary to establish the grant program, and specifies that the grants may be used for rehabilitation, preservation, or improvement of railroad track (including roadbed, bridges, and related track structures) of short lines and regional railroads. Grants may specifically be used to rehabilitate, preserve, or improve track to handle 286,000-pound rail cars. Grants may be awarded directly to a short line railroad, or, with the concurrence of the short line railroad, to a State or local government.

Subsection (a)(2) would encourage short line railroads to utilize the expertise of State transportation officials in applying for and administering grants.

Subsections (a)(3) would direct the Secretary, in developing regulations, to condition the award of a grant on reasonable assurances that the facilities to be rehabilitated and improved will be economically utilized; that the grant is justified by demand for rail services by the railroad; and that consideration is given to projects that are part of a State-sponsored rail plan, and that all grants are awarded on a competitive basis. Subsection (b) would specify the maximum Federal share of any project receiving funds under this section to be 80 percent of the total project cost. The non-Federal share may be provided by any non-Federal source, including cash, equipment, supplies, or any other in-kind contribution approved by the Secretary.

Subsection (c) would specify that for a project to be eligible to receive a grant award, it must be owned or operated by a Class II or Class III railroad as of the date of enactment of this Act.

Subsection (d) would provide that grant funds must be contractually obligated within three years after the grant is awarded.

Subsection (e) would allow grant funds to be used to supplement the existing Federal direct loan or loan guarantee program made under the Railroad Rehabilitation and Infrastructure Funding (RRIF) program under section 502(d) of the Railroad Revitalization and Regulatory Reform Act of 1976. This subsection also specifies that grants may be used for paying credit risk premiums, lowering rates of interest, or providing for a holiday on principal payments associated with a section 502(d) loan.

Subsection (f) would require that grant recipients provide for fair labor arrangements, at least as protective as the terms imposed under 49 U.S.C. 11326(a).

Subsection (g) would specify that Davis-Bacon Act requirements apply to projects using funds awarded by a grant under this section, and that wage rates in a collective bargained agreement negotiated under the Railway Labor Act are deemed to satisfy Davis-Bacon Act requirements.

Sec. 633. Regulations.

The Secretary would be required to issue interim regulations to implement the grant program by December 31, 2003, and final regulations by October 1, 2004.

Sec. 634. Study of Grant-funded Projects.

The section would require the Secretary to undertake a study of the projects carried out under the new grant program to determine the public interest benefits associated with the light density railroad networks in the States and their contribution to a multimodal transportation system. The Secretary is directed to report to Congress by March 31, 2004, any recommendations regarding the eligibility of light density rail networks for Federal infrastructure financing.

Sec. 635. Authorization of Appropriations.

Subsection (i) would authorize appropriations of $350 million for each of fiscal years 2004, 2005, and 2006.

SUBTITLE C — OTHER RAIL TRANSPORTATION-RELATED PROVISIONS

Sec. 661. Capital Grants for Rail Line Relocation Projects.

The section would add a new section 20154 to chapter 201 of title 49, United States Code, to establish a capital grant program for rail line relocation projects. The grant program is to be directed by the Secretary. The section would establish eligibility standards for States making grant applications. Proposed rail line relocation projects for the improvement of a route or structure passing through a municipality must: (1) mitigate the adverse effects of rail traffic on safety, motor vehicle traffic flow, or economic development in the municipality; (2) involve a lateral or vertical relocation of the rail line to avoid the closing of a grade crossing or the relocation of a road; and (3) meet a costs-benefits test.

For a project to be eligible for funding, the projected benefits of the project must exceed the project costs. In determining project benefits and costs, the Secretary is to consider: (1) the effects of the rail line and the rail traffic on motor vehicle and pedestrian traffic, safety, and area commerce, before and after the proposed rail line relocation; and (2) the effects of the rail line relocation on freight and rail passenger operations on the rail line.

The Secretary is to consider, in addition to benefits and costs, the following factors in making grant award decisions: (1) the capability of the State to fund the relocation project without Federal grant funding; (2) the equitable treatment of various regions of the United States; and (3) certain allocation requirements.

Allocation requirements for rail line relocation grants would be: (1) at least 50 percent of all grant funding available in a fiscal year must be provided as grant awards of not more than $20 million each; and (2) not more than 25 percent of the grant funding available in a fiscal year may be provided for any single project.

The Federal share for grants awarded under this authority would be 90 percent of the costs, while the State share for grants awarded under this authority would be 10 percent of the shared costs. The State share could be paid in the form of cash, the contribution of

real or tangible property (including property provided by a person on behalf of the State), or the services of State employees (excluding overhead and administrative costs). State in-kind costs could include certain pre-application contributions. The shared costs of a project could not include any cost that is defrayed with any funds or in-kind contribution that a source (other than the municipality) makes available unless the contribution is conditioned on the municipality using the funds only for the project and the execution of the project. The Secretary would determine which project costs are shared costs and which are not.

Two or more States would be authorized to combine grants for a common project that benefits such States, subject to State authority. The Secretary would prescribe regulations for carrying out this section. The definition of "State" would include political subdivisions of that State.

Appropriations for the grant program would be authorized at $350 million for each of fiscal years 2004 through 2008. The Secretary would issue temporary regulations to implement the grant program by October 1, 2003, and final regulations by April 1, 2004.

Sec. 662. Federal Bonds for Transportation Infrastructure.

The section provides that the proceeds from bonds issued, authorized, or guaranteed by the Federal government for passenger rail projects could be used to fund a "qualified project" if the Secretary determines that the qualified project is more cost-effective for maximizing the mobility of individuals and goods than a passenger rail project. Qualified projects would include any transportation infrastructure project of any governmental unit or person proposed by a State, including highway, transit, railroad, airport, port, and inland waterway projects.

Recipients of a grant, loan, Federal tax-credit bonds, or any other form of financial assistance provided under this title would be required to comply with the wage standards under the Davis-Bacon Act.

ROLLCALL VOTES IN COMMITTEE

Senator Smith offered an amendment to establish an incentive program to promote effective safety belt laws and increase seat belt use. By rollcall vote of 9 yeas and 12 nays as follows, the amendment was defeated:

YEAS—9	NAYS—12
Mrs. Hutchison	Mr. Stevens[1]
Mr. Smith	Mr. Burns
Mr. Fitzgerald	Mr. Lott
Mr. Inouye[1]	Ms. Snowe[1]
Mr. Kerry[1]	Mr. Brownback[1]
Mr. Breaux	Mr. Ensign[1]
Mr. Wyden[1]	Mr. Allen
Ms. Cantwell	Mr. Sununu
Mr. Inouye[1]	Mr. Hollings
	Mr. Rockefeller[1]
	Mr. Nelson[1]
	Mr. McCain

[1]By proxy

Senator Burns offered an amendment to modify Federal hours-of-service requirements for operators of commercial motor vehicles for tranporting agricultural commodities and farm supplies. By rollcall vote of 16 yeas and 6 nays as follows, the amendment was adopted:

YEAS—16	NAYS—6
Mr. Stevens	Mr. Kerry[1]
Mr. Burns	Mrs. Boxer[1]
Mr. Lott	Mr. Nelson[1]
Mrs. Hutchison	Ms. Cantwell
Ms. Snowe[1]	Mr. Lautenberg
Mr. Brownback[1]	Mr. McCain
Mr. Smith	
Mr. Fitzgerald[1]	
Mr. Ensign[1]	
Mr. Allen	
Mr. Hollings	
Mr. Inouye[1]	
Mr. Rockefeller[1]	
Mr. Breaux	
Mr. Dorgan[1]	
Mr. Wyden[1]	

[1]By proxy

Senator Lautenberg offered an amendment to amend titles 23 and 49, United States Code, concerning length limitations for vehicles operating on Federal-aid highways, and for other purposes. By rollcall vote of 12 yeas and 11 nays as follows, the amendment was adopted:

YEAS—12	NAYS—11
Mrs. Hutchison	Mr. Stevens[1]
Mr. Smith	Mr. Burns[1]
Mr. Fitzgerald[1]	Mr. Lott
Mr.Hollings	Ms. Snowe[1]
Mr. Inouye[1]	Mr. Brownback[1]
Mr. Rockefeller[1]	Mr. Ensign[1]
Mr. Kerry[1]	Mr. Allen
Mr. Wyden[1]	Mr. Sununu[1]
Mrs. Boxer[1]	Mr. Breaux
Mr. Nelson[1]	Mr. Dorgan[1]
Ms. Cantwell	Mr. McCain
Mr. Lautenberg	

[1]By proxy

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, the Committee states that, in its opinion, it is necessary to dispense with the requirements of that paragraph in order to expedite the business of the Senate.

SEC. 1511. TRANSITIONAL AUTHORITIES.

(a) PROVISION OF ASSISTANCE BY OFFICIALS.—Until the transfer of an agency to the Department, any official having authority over or functions relating to the agency immediately before the effective date of this Act shall provide to the Secretary such assistance, including the use of personnel and assets, as the Secretary may request in preparing for the transfer and integration of the agency into the Department.

(b) SERVICES AND PERSONNEL.—During the transition period, upon the request of the Secretary, the head of any executive agency may, on a reimbursable basis, provide services or detail personnel to assist with the transition.

(c) ACTING OFFICIALS.—

(1) During the transition period, pending the advice and consent of the Senate to the appointment of an officer required by this Act to be appointed by and with such advice and consent, the President may designate any officer whose appointment was required to be made by and with such advice and consent and who was such an officer immediately before the effective date of this Act (and who continues in office) or immediately before such designation, to act in such office until the same is filled as provided in this Act. While so acting, such officers shall receive compensation at the higher of—

(A) the rates provided by this Act for the respective offices in which they act; or

(B) the rates provided for the offices held at the time of designation.

(2) Nothing in this Act shall be understood to require the advice and consent of the Senate to the appointment by the President to a position in the Department of any officer whose agency is transferred to the Department pursuant to this Act and whose duties following such transfer are germane to those performed before such transfer.

(d) TRANSFER OF PERSONNEL, ASSETS, OBLIGATIONS, AND FUNCTIONS.—Upon the transfer of an agency to the Department—

(1) the personnel, assets, and obligations held by or available in connection with the agency shall be transferred to the Secretary for appropriate allocation, subject to the approval of the Director of the Office of Management and Budget and in accordance with the provisions of section 1531(a)(2) of title 31, United States Code; and

(2) the Secretary shall have all functions relating to the agency that any other official could by law exercise in relation to the agency immediately before such transfer, and shall have in addition all functions vested in the Secretary by this Act or other law.

(e) PROHIBITION ON USE OF TRANSPORTATION TRUST FUNDS.—

(1) IN GENERAL.—Notwithstanding any other provision of this Act, no funds derived from the Highway Trust Fund, Airport and Airway Trust Fund, Inland Waterway Trust Fund, or Harbor Maintenance Trust Fund, may be transferred to, made

available to, or obligated by the Secretary or any other official in the Department.

(2) LIMITATION.—This subsection shall not apply to security-related funds provided to the Federal Aviation Administration for fiscal years preceding fiscal year 2003 for (A) operations, (B) facilities and equipment, or (C) research, engineering, and development, [and to any funds provided to the Coast Guard from the Aquatic Resources Trust Fund of the Highway Trust Fund for boating safety programs.] *and any funds provided to the Coast Guard from the Highway Trust Fund and transferred into the Sport Fish Restoration Account of the Aquatic Resources Trust Fund for boating safety programs.*

* * * * * * *

SPORT FISHING ACT

[16 U.S.C. 777 ET SEQ.]

SEC. 3. AUTHORIZATION OF APPROPRIATIONS.

[16 U.S.C. 777B]

To carry out the provisions of this Act for fiscal years after September 30, 1984, there are authorized to be appropriated from the Sport Fish Restoration Account established by section 9504(a) of the Internal Revenue Code of 1954 the amounts paid, transferred, or otherwise credited to that Account. For purposes of the provision of the Act of August 31, 1951, which refers to this section, such amounts shall be treated as the amounts that are equal to the revenues described in this section. The appropriation made under the provisions of this section for each fiscal year shall continue available during [the succeeding fiscal year.] *succeeding fiscal years.* So much of such appropriation apportioned to any State for any fiscal year as remains unexpended at the close thereof is authorized to be made available for expenditure in that State until the close of the succeeding fiscal year. Any amount apportioned to any State under the provisions of this Act which is unexpended or unobligated at the end of the period during which it is available for expenditure on any project is authorized to be made available for expenditure by the Secretary of the Interior [in carrying on the research program of the Fish and Wildlife Service in respect to fish of material value for sport and recreation.] *to supplement the 55.3 percent of each annual appropriation to be apportioned among the States, as provided for in section 4(b) of this Act.*

SEC. 4. DIVISION OF ANNUAL APPROPRIATIONS.

[16 U.S.C. 777C]

[(a) INITIAL DISTRIBUTION.—The Secretary of the Interior shall distribute 18 per centum of each annual appropriation made in accordance with the provisions of section 3 of this Act as provided in the Coastal Wetlands Planning, Protection, and Restoration Act (title III, Public Law 101-646). Notwithstanding the provisions of section 3 of this Act, such sums shall remain available to carry out such Act through fiscal year 2009.

[(b) USE OF BALANCE AFTER DISTRIBUTION.—

[(1) FISCAL YEAR 1998.—In fiscal year 1998, an amount equal to $20,000,000 of the balance remaining after the distribution under subsection (a) shall be transferred to the Secretary of Transportation and shall be expended for State recreational boating safety programs under section 13106(a)(1) of title 46, United States Code.

[(2) FISCAL YEAR 1999.—For fiscal year 1999, of the balance of each annual appropriation remaining after making the distribution under subsection (a), an amount equal to $74,000,000, reduced by 82 percent of the amount appropriated for that fiscal year from the Boat Safety Account of the Aquatic Resources Trust Fund established by section 9504 of the Internal Revenue Code of 1986 to carry out the purposes of section 13106(a) of title 46, United States Code, shall be used as follows:

[(A) $10,000,000 shall be available to the Secretary of the Interior for 3 fiscal years for obligation for qualified projects under section 5604(c) of the Clean Vessel Act of 1992 (33 U.S.C. 1322 note).

[(B) The balance remaining after the application of subparagraph (A) shall be transferred to the Secretary of Transportation and shall be expended for State recreational boating safety programs under section 13106 of title 46, United States Code.

[(3) FISCAL YEARS 2000-2003.—For each of fiscal years 2000 through 2003, of the balance of each annual appropriation remaining after making the distribution under subsection (a), an amount equal to $82,000,000, reduced by 82 percent of the amount appropriated for that fiscal year from the Boat Safety Account of the Aquatic Resources Trust Fund established by section 9504 of the Internal Revenue Code of 1986 to carry out the purposes of section 13106(a) of title 46, United States Code, shall be used as follows:

[(A) $10,000,000 shall be available for each fiscal year to the Secretary of the Interior for 3 fiscal years for obligation for qualified projects under section 5604(c) of the Clean Vessel Act of 1992 (33 U.S.C. 1322 note).

[(B) $8,000,000 shall be available for each fiscal year to the Secretary of the Interior for 3 fiscal years for obligation for qualified projects under section 7404(d) of the Sportfishing and Boating Safety Act of 1998.

[(C) The balance remaining after the application of subparagraphs (A) and (B) shall be transferred for each such fiscal year to the Secretary of Transportation and shall be expended for State recreational boating safety programs under section 13106 of title 46, United States Code.

[(4) First 5 months of fiscal year 2004.—For the period of October 1, 2003, through February 29, 2004, of the balance of each annual appropriation remaining after making the distribution under subsection (a), an amount equal to $34,166,667, reduced by 82 percent of the amount appropriated for that fiscal year from the Boat Safety Account of the Aquatic Resources Trust Fund established by section 9504 of the Internal Revenue Code of 1986 to carry out the purposes of section

13106(a) of title 46, United States Code, shall be used as follows:

[(A) $4,166,667 shall be available to the Secretary of the Interior for 3 fiscal years for obligation for qualified projects under section 5604(c) of the Clean Vessel Act of 1992 (33 U.S.C. 1322 note).

[(B) $3,333,333 shall be available to the Secretary of the Interior for 3 fiscal years 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)).

[(C) The balance remaining after the application of subparagraphs (A) and (B) shall be transferred to the Secretary of Transportation and shall be expended for State recreational boating safety programs under section 13106 of title 46, United States Code.

[(5) TRANSFER OF CERTAIN FUNDS.—Amounts available under subparagraph (A) of paragraph (2) and subparagraphs (A) and (B) of paragraph (3) that are unobligated by the Secretary of the Interior after 3 fiscal years shall be transferred to the Secretary of Transportation and shall be expended for State recreational boating safety programs under section 13106(a) of title 46, United States Code.

[(c) NATIONAL OUTREACH AND COMMUNICATIONS PROGRAM.—Of the balance of each such annual appropriation remaining after making the distribution under subsections (a) and (b), respectively, an amount equal to—

[(1) $5,000,000 for fiscal year 1999;

[(2) $6,000,000 for fiscal year 2000;

[(3) $7,000,000 for fiscal year 2001;

[(4) $8,000,000 for fiscal year 2002;

[(5) $10,000,000 for fiscal year 2003; and

[(6) $4,166,667 for the period of October 1, 2003, through February 29, 2004;

shall be used for the National Outreach and Communications Program under section 8(d). Such amounts shall remain available for 3 fiscal years, after which any portion thereof that is unobligated by the Secretary of the Interior for that program may be expended by the Secretary under subsection (e).

[(d) SET-ASIDE FOR EXPENSES FOR ADMINISTRATION OF THE DINGELL-JOHNSON SPORT FISH RESTORATION ACT.—

[(1) IN GENERAL.—

[(A) SET-ASIDE.—For fiscal year 2001 and each fiscal year thereafter, of the balance of each such annual appropriation remaining after the distribution and use under subsections (a), (b), and (c) and section 14, the Secretary of the Interior may use not more than the available amount specified in subparagraph (B) for the fiscal year for expenses for administration incurred in implementation of this Act, in accordance with this subsection and section 9.

[(B) VAILABLE AMOUNTS.—The available amount referred to in subparagraph (A) is—

[(i) for each of fiscal years 2001 and 2002, $9,000,000;

[(ii) for fiscal year 2003, $8,212,000; and

[(iii) for fiscal year 2004 and each fiscal year thereafter, the sum of—

[(I) the available amount for the preceding fiscal year; and

[(II) the amount determined by multiplying—

[(aa) the available amount for the preceding fiscal year; and

[(bb) the change, relative to the preceding fiscal year, in the Consumer Price Index for All Urban Consumers published by the Department of Labor.

[(2) PERIOD OF AVAILABILITY; APPORTIONMENT OF UNOBLIGATED AMOUNTS.—

[(A) PERIOD OF AVAILABILITY.—For each fiscal year, the available amount under paragraph (1) shall remain available for obligation for use under that paragraph until the end of the fiscal year.

[(B) APPORTIONMENT OF UNOBLIGATED AMOUNTS.—Not later than 60 days after the end of a fiscal year, the Secretary of the Interior shall apportion among the States any of the available amount under paragraph (1) that remains unobligated at the end of the fiscal year, on the same basis and in the same manner as other amounts made available under this Act are apportioned among the States under subsection (e) for the fiscal year.]

(a) IN GENERAL.—For fiscal years 2004 through 2009, each annual appropriation made in accordance with the provisions of section 3 of this Act shall be distributed as follows:

(1) COASTAL WETLANDS.—18 percent to the Secretary of the Interior for distribution as provided in the Coastal Wetlands Planning, Protection, and Restoration Act (16 U.S.C. 3951 et seq.).

(2) BOATING SAFETY.—18 percent to the Secretary of Homeland Security for State recreational boating safety programs under section 13106 of title 46, United States Code.

(3) CLEAN VESSEL ACT.—1.9 percent to the Secretary of the Interior for qualified projects under section 5604(c) of the Clean Vessel Act of 1992 (33 U.S.C. 1322 note).

(4) BOATING INFRASTRUCTURE.—1.9 percent to the Secretary of the Interior for obligation for qualified projects under section 7404(d) of the Sportfishing and Boating Safety Act of 1998 (16 U.S.C. 777g-1(d)).

(5) NATIONAL OUTREACH AND COMMUNICATIONS.—1.9 percent to the Secretary of the Interior for the National Outreach and Communications Program under section 8(d) of this Act. Such amounts shall remain available for 3 fiscal years, after which any portion thereof that is unobligated by the Secretary for that program may be expended by the Secretary under subsection (b) of this section.

(6) SET-ASIDE FOR EXPENSES FOR ADMINISTRATION OF THIS CHAPTER.—

(A) IN GENERAL.—2.1 percent to the Secretary of the Interior for expenses for administration incurred in implementation of this Act, in accordance with this section, section 9, and section 14 of this Act.

(B) APPORTIONMENT OF UNOBLIGATED FUNDS.—If any portion of the amount made available to the Secretary under subparagraph (A) remains unexpended and unobligated at the end of a fiscal year, that portion shall be apportioned among the States, on the same basis and in the same manner as other amounts made available under this Act are apportioned among the States under subsection (b) of this section, within 60 days after the end of that fiscal year. Any amount apportioned among the States under this subparagraph shall be in addition to any amounts otherwise available for apportionment among the States under subsection (b) for the fiscal year.

[(e)] *(b)* APPORTIONMENT AMONG STATES.—The Secretary [of the Interior, after the distribution, transfer, use, and deduction under subsections (a), (b), (c), and (d), respectively, and after deducting amounts used for grants under section 14, shall apportion the remainder] *shall apportion 55.3 percent* of each such annual appropriation among the several States in the following manner: 40 [per centum] *percent* in the ratio which the area of each State including coastal and Great Lakes waters (as determined by the Secretary of the Interior) bears to the total area of all the States, and 60 [per centum] *percent* in the ratio which the number of persons holding paid licenses to fish for sport or recreation in the State in the second fiscal year preceding the fiscal year for which such apportionment is made, as certified to said Secretary by the State fish and game departments, bears to the number of such persons in all the States. Such apportionments shall be adjusted equitably so that no State shall receive less than 1 [per centum] *percent* nor more than 5 [per centum] *percent* of the total amount apportioned. Where the apportionment to any State under this section is less than $4,500 annually, the Secretary of the Interior may allocate not more than $4,500 of said appropriation to said State to carry out the purposes of this Act when said State certifies to the Secretary of the Interior that it has set aside not less than $1,500 from its fish-and-game funds or has made, through its legislature, an appropriation in this amount for said purposes.

[(f)] *(c)* UNALLOCATED FUNDS.—So much of any sum not allocated under the provisions of this section for any fiscal year is hereby authorized to be made available for expenditure to carry out the purposes of this Act until the close of the succeeding fiscal year. The term fiscal year as used in this section shall be a period of twelve consecutive months from October 1 through the succeeding September 30, except that the period for enumeration of persons holding licenses to fish shall be a State's fiscal or license year.

[(g)] *(d)* EXPENSES FOR ADMINISTRATION OF CERTAIN PROGRAMS.—

(1) IN GENERAL.—For each fiscal year, of the amounts appropriated under section 3, the Secretary of the Interior shall use only funds authorized for use under [subsections (a), (b)(3)(A), (b)(3)(B), and (c)] *paragraphs (1), (3), (4), and (5) of subsection (a)* to pay the expenses for administration incurred in carrying out the provisions of law referred to in those subsections, respectively.

(2) MAXIMUM AMOUNT.—For each fiscal year, the Secretary of the Interior may use not more than $900,000 in accordance with paragraph (1).

(e) TRANSFER OF CERTAIN FUNDS.—Amounts available under paragraphs (3) and (4) of subsection (a) that are unobligated by the Secretary after 3 fiscal years shall be transferred to the Secretary of Homeland Security and shall be expended for State recreational boating safety programs under section 13106(a) of title 46, United States Code.

SEC. 8. MAINTENANCE OF PROJECTS.

[16 U.S.C. 777G]

(a) DUTY OF STATES; STATUS OF PROJECTS; TITLE TO PROPERTY.—To maintain fish-restoration and management projects established under the provisions of this Act shall be the duty of the States according to their respective laws. Beginning July 1, 1953, maintenance of projects heretofore completed under the provisions of this Act may be considered as projects under this Act. Title to any real or personal property acquired by any State, and to improvements placed on State-owned lands through the use of funds paid to the State under the provisions of this Act, shall be vested in such State.

(b) FUNDING REQUIREMENTS.—

(1) Each State shall allocate 15 percent of the funds apportioned to it for each fiscal year under section 4 of this Act for the payment of up to 75 per centum of the costs of the acquisition, development, renovation, or improvement of facilities (and auxiliary facilities necessary to insure the safe use of such facilities) that create, or add to, public access to the waters of the United States to improve the suitability of such waters for recreational boating purposes. Notwithstanding this provision, States within a United States Fish and Wildlife Service Administrative Region may allocate more or less than 15 percent in a fiscal year, provided that the total regional allocation averages 15 percent over a 5 year period.

(2) So much of the funds that are allocated by a State under paragraph (1) in any fiscal year that remained unexpended or unobligated at the close of such year are authorized to be made available for the purposes described in paragraph (1) during the succeeding four fiscal years, but any portion of such funds that remain unexpended or unobligated at the close of such period are authorized to be made available for expenditure by the Secretary of the Interior [in carrying out the research program of the Fish and Wildlife Service in respect to fish of material value for sport or recreation.] *to supplement the 55.3 percent of each annual appropriation to be apportioned among the States under section 4(b) of this Act.*

(c) AQUATIC RESOURCE EDUCATION PROGRAM; FUNDING, ETC.—Each State may use not to exceed 15 percent of the funds apportioned to it under section 4 of this Act to pay up to 75 per centum of the costs of an aquatic resource education and outreach and communications program for the purpose of increasing public understanding of the Nation's water resources and associated aquatic life forms. The non-Federal share of such costs may not be derived from other Federal grant programs. The Secretary shall issue not

later than the one hundred and twentieth day after the effective date of this subsection such regulations as he deems advisable regarding the criteria for such programs.

(d) NATIONAL OUTREACH AND COMMUNICATIONS PROGRAM.—

(1) IMPLEMENTATION.—Within 1 year after the date of enactment of the Sportfishing and Boating Safety Act of 1998, the Secretary of the Interior shall develop and implement, in cooperation and consultation with the Sport Fishing and Boating Partnership Council, a national plan for outreach and communications.

(2) CONTENT.—The plan shall provide—

(A) guidance, including guidance on the development of an administrative process and funding priorities, for outreach and communications programs; and

(B) for the establishment of a national program.

(3) SECRETARY MAY MATCH OR FUND PROGRAMS.—Under the plan, the Secretary may obligate amounts available under [subsection (c) or (d) of section 4] *paragraph (5) or (6) of section 4(a)* of this Act—

(A) to make grants to any State or private entity to pay all or any portion of the cost of carrying out any outreach and communications program under the plan; or

(B) to fund contracts with States or private entities to carry out such a program.

(4) REVIEW.—The plan shall be reviewed periodically, but not less frequently than once every 3 years.

(e) STATE OUTREACH AND COMMUNICATIONS PROGRAM.—Within 12 months after the completion of the national plan under subsection (d)(1), a State shall develop a plan for an outreach and communications program and submit it to the Secretary. In developing the plan, a State shall—

(1) review the national plan developed under subsection (d);

(2) consult with anglers, boaters, the sportfishing and boating industries, and the general public; and

(3) establish priorities for the State outreach and communications program proposed for implementation.

(f) PUMPOUT STATIONS AND WASTE RECEPTION FACILITIES.—Amounts apportioned to States under section 4 of this Act may be used to pay not more than 75 percent of the costs of constructing, renovating, operating, or maintaining pumpout stations and waste reception facilities (as those terms are defined in the Clean Vessel Act of 1992).

(g) SURVEYS.—

(1) NATIONAL FRAMEWORK.—Within 6 months after the date of enactment of the Sportfishing and Boating Safety Act of 1998, the Secretary, in consultation with the States, shall adopt a national framework for a public boat access needs assessment which may be used by States to conduct surveys to determine the adequacy, number, location, and quality of facilities providing access to recreational waters for all sizes of recreational boats.

(2) STATE SURVEYS.—Within 18 months after such date of enactment, each State that agrees to conduct a public boat access needs survey following the recommended national framework shall report its findings to the Secretary for use in the develop-

ment of a comprehensive national assessment of recreational boat access needs and facilities.

(3) EXCEPTION.—Paragraph (2) does not apply to a State if, within 18 months after such date of enactment, the Secretary certifies that the State has developed and is implementing a plan that ensures there are and will be public boat access adequate to meet the needs of recreational boaters on its waters.

(4) FUNDING.—A State that conducts a public boat access needs survey under paragraph (2) may fund the costs of conducting that assessment out of amounts allocated to it as funding dedicated to motorboat access to recreational waters under subsection (b)(1) of this section.

SEC. 9. REQUIREMENTS AND RESTRICTIONS CONCERNING USE OF AMOUNTS FOR EXPENSES FOR ADMINISTRATION.

[16 U.S.C. 777H]

(a) AUTHORIZED EXPENSES FOR ADMINISTRATION.—Except as provided in subsection (b), the Secretary of the Interior may use available amounts under [section 4(d)(1)] *section 4(a)(6)* only for expenses for administration that directly support the implementation of this Act that consist of—

(1) personnel costs of employees who directly administer this Act on a full-time basis;

(2) personnel costs of employees who directly administer this Act on a part-time basis for at least 20 hours each week, not to exceed the portion of those costs incurred with respect to the work hours of the employee during which the employee directly administers this Act, as those hours are certified by the supervisor of the employee;

(3) support costs directly associated with personnel costs authorized under paragraphs (1) and (2), excluding costs associated with staffing and operation of regional offices of the United States Fish and Wildlife Service and the Department of the Interior other than for the purposes of this Act;

(4) costs of determining under section 6(a) whether State comprehensive plans and projects are substantial in character and design;

(5) overhead costs, including the costs of general administrative services, that are directly attributable to administration of this Act and are based on—

(A) actual costs, as determined by a direct cost allocation methodology approved by the Director of the Office of Management and Budget for use by Federal agencies; and

(B) in the case of costs that are not determinable under subparagraph (A), an amount per full-time equivalent employee authorized under paragraphs (1) and (2) that does not exceed the amount charged or assessed for costs per full-time equivalent employee for any other division or program of the United States Fish and Wildlife Service;

(6) costs incurred in auditing, every 5 years, the wildlife and sport fish activities of each State fish and game department and the use of funds under section 6 by each State fish and game department;

(7) costs of audits under subsection (d);

(8) costs of necessary training of Federal and State full-time personnel who administer this Act to improve administration of this Act;

(9) costs of travel to States, territories, and Canada by personnel who—

(A) administer this Act on a full-time basis for purposes directly related to administration of State programs or projects; or

(B) administer grants under section 6 or 14;

(10) costs of travel outside the United States (except travel to Canada), by personnel who administer this Act on a full-time basis, for purposes that directly relate to administration of this Act and that are approved directly by the Assistant Secretary for Fish and Wildlife and Parks;

(11) relocation expenses for personnel who, after relocation, will administer this Act on a full-time basis for at least 1 year, as certified by the Director of the United States Fish and Wildlife Service at the time at which the relocation expenses are incurred; and

(12) costs to audit, evaluate, approve, disapprove, and advise concerning grants under sections 6 and 14.

(b) REPORTING OF OTHER USES.—

(1) IN GENERAL.—Subject to paragraph (2), if the Secretary of the Interior determines that available amounts under ⟦section 4(d)(1)⟧ *section 4(a)(6)* should be used for an expense for administration other than an expense for administration described in subsection (a), the Secretary—

(A) shall submit to the Committee on Environment and Public Works of the Senate and the Committee on Resources of the House of Representatives a report describing the expense for administration and stating the amount of the expense; and

(B) may use any such available amounts for the expense for administration only after the end of the 30-day period beginning on the date of submission of the report under subparagraph (A).

(2) MAXIMUM AMOUNT.—For any fiscal year, the Secretary of the Interior may use under paragraph (1) not more than $25,000.

(c) RESTRICTION ON USE TO SUPPLEMENT GENERAL APPROPRIATIONS.—The Secretary of the Interior shall not use available amounts under subsection (b) to supplement the funding of any function for which general appropriations are made for the United States Fish and Wildlife Service or any other entity of the Department of the Interior.

(d) AUDIT REQUIREMENT.—

(1) IN GENERAL.—The Inspector General of the Department of the Interior shall procure the performance of biennial audits, in accordance with generally accepted accounting principles, of expenditures and obligations of amounts used by the Secretary of the Interior for expenses for administration incurred in implementation of this Act.

(2) AUDITOR.—

(A) IN GENERAL.—An audit under this subsection shall be performed under a contract that is awarded under com-

petitive procedures (as defined in section 4 of the Office of Federal Procurement Policy Act (41 U.S.C. 403)) by a person or entity that is not associated in any way with the Department of the Interior (except by way of a contract for the performance of an audit or other review).

(B) SUPERVISION OF AUDITOR.—The auditor selected under subparagraph (A) shall report to, and be supervised by, the Inspector General of the Department of the Interior, except that the auditor shall submit a copy of the biennial audit findings to the Secretary of the Interior at the time at which the findings are submitted to the Inspector General of the Department of the Interior.

(3) REPORT TO CONGRESS.—The Inspector General of the Department of the Interior shall promptly submit to the Committee on Resources of the House of Representatives and the Committee on Environment and Public Works of the Senate—

(A) report on the results of each audit under this subsection; and

(B) a copy of each audit under this subsection.

SEC. 12. PAYMENTS OF FUNDS TO AND COOPERATION WITH PUERTO RICO, THE DISTRICT OF COLUMBIA, GUAM, AMERICAN SAMOA, COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS, AND VIRGIN ISLANDS.

[16 U.S.C. 777K]

The Secretary of the Interior is authorized to cooperate with the Secretary of Agriculture of Puerto Rico, the Mayor of the District of Columbia, the Governor of Guam, the Governor of American Samoa, the Governor of the Commonwealth of the Northern Mariana Islands, and the Governor of the Virgin Islands, in the conduct of fish restoration and management projects, as defined in section 2 of this Act, upon such terms and conditions as he shall deem fair, just, and equitable, and is authorized to apportion to Puerto Rico, the District of Columbia, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Virgin Islands, out of money available for apportionment under this Act, such sums as he shall determine, not exceeding for Puerto Rico 1 per centum for the District of Columbia one-third of 1 per centum for Guam one-third of 1 per centum for American Samoa one-third of 1 per centum for the Commonwealth of the Northern Mariana Islands one-third of 1 per centum and for the Virgin Islands one-third of 1 per centum of the total amount apportioned in any one year, but the Secretary shall in no event require any of said cooperating agencies to pay an amount which will exceed 25 per centum of the cost of any project. Any unexpended or unobligated balance of any apportionment made pursuant to this section shall be made available for expenditure in Puerto Rico, the District of Columbia, Guam, the Commonwealth of the Northern Mariana Islands, or the Virgin Islands, as the case may be, in the succeeding year, on any approved projects, and if unexpended or unobligated at the end of such year is authorized to be made available for expenditure by the Secretary of the Interior [in carrying on the research program of the Fish and Wildlife Service in respect to fish of material value for sport or recreation.] *to supplement the 55.3 percent of each an-*

nual appropriation to be apportioned among the States under section 4(b) of this Act.

SEC. 14. MULTISTATE CONSERVATION GRANT PROGRAM.

[16 U.S.C. 777M]

[(a) IN GENERAL.—

[(1) AMOUNT FOR GRANTS.—Of the balance of each annual appropriation made under section 3 remaining after the distribution and use under subsections (a), (b), and (c) of section 4 in a fiscal year, not more than $3,000,000 shall be available to the Secretary of the Interior for making multistate conservation project grants in accordance with this section.]

(a) IN GENERAL.—

(1) AMOUNT FOR GRANTS.—For each of fiscal years 2004 through 2009, 0.9 percent of each annual appropriation made in accordance with the provisions of section 3 of this Act shall be distributed to the Secretary of the Interior for making multistate conservation project grants in accordance with this section.

(2) PERIOD OF AVAILABILITY; APPORTIONMENT.—

(A) PERIOD OF AVAILABILITY.—Amounts made available under paragraph (1) shall remain available for making grants only for the first fiscal year for which the amount is made available and the following fiscal year.

(B) APPORTIONMENT.—At the end of the period of availability under subparagraph (A), the Secretary of the Interior shall apportion any amounts that remain available among the States in the manner specified in [section 4(e)] *section 4(b)* for use by the States in the same manner as funds apportioned under [section 4(e).] *section 4(b).*

(b) SELECTION OF PROJECTS.—

(1) STATES OR ENTITIES TO BE BENEFITED.—A project shall not be eligible for a grant under this section unless the project will benefit—

(A) at least 26 States;

(B) a majority of the States in a region of the United States Fish and Wildlife Service; or

(C) a regional association of State fish and game departments.

(2) USE OF SUBMITTED PRIORITY LIST OF PROJECTS.—The Secretary of the Interior may make grants under this section only for projects identified on a priority list of sport fish restoration projects described in paragraph (3).

(3) PRIORITY LIST OF PROJECTS.—A priority list referred to in paragraph (2) is a priority list of sport fish restoration projects that the International Association of Fish and Wildlife Agencies—

(A) prepares through a committee comprised of the heads of State fish and game departments (or their designees), in consultation with—

(i) nongovernmental organizations that represent conservation organizations;

(ii) sportsmen organizations; and

(iii) industries that fund the sport fish restoration programs under this Act;

(B) approves by vote of a majority of the heads of State fish and game departments (or their designees); and

(C) not later than October 1 of each fiscal year, submits to the Assistant Director for Wildlife and Sport Fish Restoration Programs.

(4) PUBLICATION.—The Assistant Director for Wildlife and Sport Fish Restoration Programs shall publish in the Federal Register each priority list submitted under paragraph (3)(C).

(c) ELIGIBLE GRANTEES.—

(1) IN GENERAL.—The Secretary of the Interior may make a grant under this section only to—

(A) a State or group of States;

(B) the United States Fish and Wildlife Service, or a State or group of States, for the purpose of carrying out the National Survey of Fishing, Hunting, and Wildlife-Associated Recreation; and

(C) subject to paragraph (2), a nongovernmental organization.

(2) NONGOVERNMENTAL ORGANIZATIONS.—

(A) IN GENERAL.—Any nongovernmental organization that applies for a grant under this section shall submit with the application to the International Association of Fish and Wildlife Agencies a certification that the organization—

(i) will not use the grant funds to fund, in whole or in part, any activity of the organization that promotes or encourages opposition to the regulated taking of fish; and

(ii) will use the grant funds in compliance with subsection (d).

(B) PENALTIES FOR CERTAIN ACTIVITIES.—Any nongovernmental organization that is found to use grant funds in violation of subparagraph (A) shall return all funds received under this section and be subject to any other applicable penalties under law.

(d) USE OF GRANTS.—A grant under this section shall not be used, in whole or in part, for an activity, project, or program that promotes or encourages opposition to the regulated taking of fish.

(e) FUNDING FOR OTHER ACTIVITIES.—**[**Of the balance of each annual appropriation made under section 3 remaining after the distribution and use under subsections (a), (b), and (c) of section 4 for each fiscal year and after deducting amounts used for grants under subsection (a)—**]** *Of amounts made available under section 4(a)(6) for each fiscal year—*

(1) $200,000 shall be made available for each of—

(A) the Atlantic States Marine Fisheries Commission;

(B) the Gulf States Marine Fisheries Commission;

(C) the Pacific States Marine Fisheries Commission; and

(D) the Great Lakes Fisheries Commission; and

(2) $400,000 shall be made available for the Sport Fishing and Boating Partnership Council established by the United States Fish and Wildlife Service.

(f) NONAPPLICABILITY OF FEDERAL ADVISORY COMMITTEE ACT.—The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to any activity carried out under this section.

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SPORT FISHING AND BOATING SAFETY ACT OF 1998

SEC. 7404. BOATING INFRASTRUCTURE.

[16 U.S.C. 777G-1]

(a) PURPOSE.—The purpose of this section is to provide funds to States for the development and maintenance of facilities for transient nontrailerable recreational vessels.

(b) [Omitted]

(c) PLAN.—Within 6 months after submitting a survey to the Secretary under section 8(g) of the Act entitled "An Act to provide that the United States shall aid the States in fish restoration and management projects, and for other purposes," approved August 9, 1950 (16 U.S.C. 777g(g)), as added by subsection (b) of this section, a State may develop and submit to the Secretary a plan for the construction, renovation, and maintenance of facilities for transient nontrailerable recreational vessels, and access to those facilities, to meet the needs of nontrailerable recreational vessels operating on navigable waters in the State.

(d) GRANT PROGRAM.—

(1) MATCHING GRANTS.—The Secretary of the Interior shall obligate amounts made available under section [4(b)(3)(B)] *section 4(a)(4)* of the Act entitled "An Act to provide that the United States shall aid the States in fish restoration and management projects, and for other purposes," approved August 9, 1950, as amended by this Act, to make grants to any State to pay not more than 75 percent of the cost to a State of constructing, renovating, or maintaining facilities for transient nontrailerable recreational vessels.

(2) PRIORITIES.—In awarding grants under paragraph (1), the Secretary shall give priority to projects that—

(A) consist of the construction, renovation, or maintenance of facilities for transient nontrailerable recreational vessels in accordance with a plan submitted by a State under subsection (c);

(B) provide for public/private partnership efforts to develop, maintain, and operate facilities for transient nontrailerable recreational vessels; and

(C) propose innovative ways to increase the availability of facilities for transient nontrailerable recreational vessels.

(e) DEFINITIONS.—For purposes of this section, the term—

(1) "nontrailerable recreational vessel" means a recreational vessel 26 feet in length or longer—

(A) operated primarily for pleasure; or

(B) leased, rented, or chartered to another for the latter's pleasure;

(2) "facilities for transient nontrailerable recreational vessels" includes mooring buoys, day-docks, navigational aids, seasonal slips, safe harbors, or similar structures located on navigable waters, that are available to the general public (as determined by the Secretary of the Interior) and designed for temporary use by nontrailerable recreational vessels; and

(3) "State" means each of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, and the Commonwealth of the Northern Mariana Islands.

TITLE 18. CRIMES AND CRIMINAL PROCEDURE

PART I. CRIMES

CHAPTER 2. AIRCRAFT AND MOTOR VEHICLES

* * * * * * *

§ 38. Commercial motor vehicles required to stop for inspections

(a) A driver of a commercial motor vehicle, as defined in section 31132(1) of title 49, shall stop and submit to inspection of the vehicle, driver, cargo, and required records when directed to do so by an authorized employee of the Federal Motor Carrier Safety Administration, Department of Transportation, at or in the vicinity of an inspection site. The driver shall not leave the inspection site until authorized to do so by an authorized employee.

(b) A driver of a commercial motor vehicle, as defined in subsection (a), who knowingly fails to stop for inspection when directed to do so by an authorized employee of the Federal Motor Carrier Safety Administration at or in the vicinity of an inspection site, or leaves the inspection site without authorization, shall be fined under this title or imprisoned not more than 1 year, or both.

CHAPTER 40. IMPORTATION, MANUFACTURE, DISTRIBUTION AND STORAGE OF EXPLOSIVE MATERIALS

§ 845. Exceptions; relief from disabilities

(a) Except in the case of subsections (l), (m), (n), or (o) of section 842 and subsections (d), (e), (f), (g), (h), and (i) of section 844 of this title, this chapter shall not apply to:

(1) any aspect of the transportation of explosive materials via railroad, water, highway, or air [which are regulated by the United States Department of Transportation and agencies thereof, and which pertain to safety;] *that is subject to the authority of the Departments of Transportation and Home and Security;*

(2) the use of explosive materials in medicines and medicinal agents in the forms prescribed by the official United States Pharmacopeia, or the National Formulary;

(3) the transportation, shipment, receipt, or importation of explosive materials for delivery to any agency of the United States or to any State or political subdivision thereof;

(4) small arms ammunition and components thereof;

(5) commercially manufactured black powder in quantities not to exceed fifty pounds, percussion caps, safety and pyrotechnic fuses, quills, quick and slow matches, and friction primers, intended to be used solely for sporting, recreational, or cultural purposes in antique firearms as defined in section 921(a)(16) of title 18 of the United States Code, or in antique

devices as exempted from the term "destructive device" in section 921(a)(4) of title 18 of the United States Code; and

(6) the manufacture under the regulation of the military department of the United States of explosive materials for, or their distribution to or storage or possession by the military or naval services or other agencies of the United States; or to arsenals, navy yards, depots, or other establishments owned by, or operated by or on behalf of, the United States.

(b)(1) A person who is prohibited from shipping, transporting, receiving, or possessing any explosive under section 842(i) may apply to the Secretary for relief from such prohibition.

(2) The Secretary may grant the relief requested under paragraph (1) if the Secretary determines that the circumstances regarding the applicability of section 842(i), and the applicant's record and reputation, are such that the applicant will not be likely to act in a manner dangerous to public safety and that the granting of such relief is not contrary to the public interest.

(3) A licensee or permittee who applies for relief, under this subsection, from the disabilities incurred under this chapter as a result of an indictment for or conviction of a crime punishable by imprisonment for a term exceeding 1 year shall not be barred by such disability from further operations under the license or permit pending final action on an application for relief filed pursuant to this section.

(c) It is an affirmative defense against any proceeding involving subsections (l) through (o) of section 842 if the proponent proves by a preponderance of the evidence that the plastic explosive—

(1) consisted of a small amount of plastic explosive intended for and utilized solely in lawful—

(A) research, development, or testing of new or modified explosive materials;

(B) training in explosives detection or development or testing of explosives detection equipment; or

(C) forensic science purposes; or

(2) was plastic explosive that, within 3 years after the date of enactment of the Antiterrorism and Effective Death Penalty Act of 1996, will be or is incorporated in a military device within the territory of the United States and remains an integral part of such military device, or is intended to be, or is incorporated in, and remains an integral part of a military device that is intended to become, or has become, the property of any agency of the United States performing military or police functions (including any military reserve component) or the National Guard of any State, wherever such device is located.

(3) For purposes of this subsection, the term "military device" includes, but is not restricted to, shells, bombs, projectiles, mines, missiles, rockets, shaped charges, grenades, perforators, and similar devices lawfully manufactured exclusively for military or police purposes.

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PART II—CRIMINAL PROCEDURE

CHAPTER 203. ARREST AND COMMITMENT

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§ 3064. Powers of Federal Motor Carrier Safety Administration

Authorized employees of the Federal Motor Carrier Safety Administration may direct a driver of a commercial motor vehicle, as defined in 49 U.S.C. 31132(1), to stop for inspection of the vehicle, driver, cargo, and required records at or in the vicinity of an inspection site.

CHAPTER 232. MISCELLANEOUS SENTENCING PROVISIONS

§ 3663. Order of restitution

(a)(1)(A) The court, when sentencing a defendant convicted of an offense under this title, section 401, 408(a), 409, 416, 420, or 422(a) of the Controlled Substances Act (21 U.S.C. 841, 848(a), 849, 856, 861, 863)(but in no case shall a participant in an offense under such sections be considered a victim of such offense under this section), or section *5124,* 46312, 46502, or 46504 of title 49, other than an offense described in section 3663A(c), may order, in addition to or, in the case of a misdemeanor, in lieu of any other penalty authorized by law, that the defendant make restitution to any victim of such offense, or if the victim is deceased, to the victim's estate. The court may also order, if agreed to by the parties in a plea agreement, restitution to persons other than the victim of the offense.

(B)(i) The court, in determining whether to order restitution under this section, shall consider—

(I) the amount of the loss sustained by each victim as a result of the offense; and

(II) the financial resources of the defendant, the financial needs and earning ability of the defendant and the defendant's dependents, and such other factors as the court deems appropriate.

(ii) To the extent that the court determines that the complication and prolongation of the sentencing process resulting from the fashioning of an order of restitution under this section outweighs the need to provide restitution to any victims, the court may decline to make such an order.

(2) For the purposes of this section, the term "victim" means a person directly and proximately harmed as a result of the commission of an offense for which restitution may be ordered including, in the case of an offense that involves as an element a scheme, conspiracy, or pattern of criminal activity, any person directly harmed by the defendant's criminal conduct in the course of the scheme, conspiracy, or pattern. In the case of a victim who is under 18 years of age, incompetent, incapacitated, or deceased, the legal guardian of the victim or representative of the victim's estate, another family member, or

any other person appointed as suitable by the court, may assume the victim's rights under this section, but in no event shall the defendant be named as such representative or guardian.

(3) The court may also order restitution in any criminal case to the extent agreed to by the parties in a plea agreement.

(b) The order may require that such defendant—

(1) in the case of an offense resulting in damage to or loss or destruction of property of a victim of the offense—

(A) return the property to the owner of the property or someone designated by the owner; or

(B) if return of the property under subparagraph (A) is impossible, impractical, or inadequate, pay an amount equal to the greater of—

(i) the value of the property on the date of the damage, loss, or destruction, or

(ii) the value of the property on the date of sentencing, less the value (as of the date the property is returned) of any part of the property that is returned;

(2) in the case of an offense resulting in bodily injury to a victim including an offense under chapter 109A or chapter 110—

(A) pay an amount equal to the cost of necessary medical and related professional services and devices relating to physical, psychiatric, and psychological care, including nonmedical care and treatment rendered in accordance with a method of healing recognized by the law of the place of treatment;

(B) pay an amount equal to the cost of necessary physical and occupational therapy and rehabilitation; and

(C) reimburse the victim for income lost by such victim as a result of such offense;

(3) in the case of an offense resulting in bodily injury also results in the death of a victim, pay an amount equal to the cost of necessary funeral and related services;

(4) in any case, reimburse the victim for lost income and necessary child care, transportation, and other expenses related to participation in the investigation or prosecution of the offense or attendance at proceedings related to the offense; and

(5) in any case, if the victim (or if the victim is deceased, the victim's estate) consents, make restitution in services in lieu of money, or make restitution to a person or organization designated by the victim or the estate.

(c)(1) Notwithstanding any other provision of law (but subject to the provisions of subsections (a)(1)(B)(i)(II) and (ii)), when sentencing a defendant convicted of an offense described in section 401, 408(a), 409, 416, 420, or 422(a) of the Controlled Substances Act (21 U.S.C. 841, 848(a), 849, 856, 861, 863), in which there is no identifiable victim, the court may order that the defendant make restitution in accordance with this subsection.

(2)(A) An order of restitution under this subsection shall be based on the amount of public harm caused by the offense, as determined by the court in accordance with guidelines promulgated by the United States Sentencing Commission.

(B) In no case shall the amount of restitution ordered under this subsection exceed the amount of the fine which may be ordered for the offense charged in the case.

(3) Restitution under this subsection shall be distributed as follows:

(A) 65 percent of the total amount of restitution shall be paid to the State entity designated to administer crime victim assistance in the State in which the crime occurred.

(B) 35 percent of the total amount of restitution shall be paid to the State entity designated to receive Federal substance abuse block grant funds.

(4) The court shall not make an award under this subsection if it appears likely that such award would interfere with a forfeiture under chapter 46 or chapter 96 of this title or under the Controlled Substances Act (21 U.S.C. 801 et seq.).

(5) Notwithstanding section 3612(c) or any other provision of law, a penalty assessment under section 3013 or a fine under subchapter C of chapter 227 shall take precedence over an order of restitution under this subsection.

(6) Requests for community restitution under this subsection may be considered in all plea agreements negotiated by the United States.

(7)(A) The United States Sentencing Commission shall promulgate guidelines to assist courts in determining the amount of restitution that may be ordered under this subsection.

(B) No restitution shall be ordered under this subsection until such time as the Sentencing Commission promulgates guidelines pursuant to this paragraph.

(d) An order of restitution made pursuant to this section shall be issued and enforced in accordance with section 3664.

FEDERAL FOOD, DRUG, AND COSMETIC ACT

SEC. 301. PROHIBITED ACTS.

[21 U.S.C. 331]

The following acts and the causing thereof are hereby prohibited:

(a) The introduction or delivery for introduction into interstate commerce of any food, drug, device, or cosmetic that is adulterated or misbranded.

(b) The adulteration or misbranding of any food, drug, device, or cosmetic in interstate commerce.

(c) The receipt in interstate commerce of any food, drug, device, or cosmetic that is adulterated or misbranded, and the delivery or proffered delivery thereof for pay or otherwise.

(d) The introduction or delivery for introduction into interstate commerce of any article in violation of section 404 or 505.

(e) The refusal to permit access to or copying of any record as required by section 412, 414, *416,* 504, 703, or 704(a); or the failure to establish or maintain any record, or make any report, required under section 412, 414(b), *416,* 504, 505(i) or (k), 512(a)(4)(C), 512(j), (l), or (m), 515(f), or 519 or the refusal to permit access to or verification or copying of any such required record.

(f) The refusal to permit entry or inspection as authorized by section 704.

(g) The manufacture, within any Territory of any food, drug, device, or cosmetic that is adulterated or misbranded.

(h) The giving of a guaranty or undertaking referred to in section 303(c)(2), which guaranty or undertaking is false, except by a person who relied upon a guaranty or undertaking to the same effect signed by, containing the name and address of, the person residing in the United States from whom he received in good faith the food, drug, device, or cosmetic; or the giving of a guaranty or undertaking referred to in section 303(c)(3), which guaranty or undertaking is false.

(i)(1) Forging, counterfeiting, simulating, or falsely representing, or without proper authority using any mark, stamp, tag, label, or other identification device authorized or required by regulations promulgated under the provisions of section 404 or 721.

(2) Making, selling, disposing of, or keeping in possession, control, or custody, or concealing any punch, die, plate, stone, or other thing designed to print, imprint, or reproduce the trademark, trade name, or other identifying mark, imprint, or device of another or any likeness of any of the foregoing upon any drug or container or labeling thereof so as to render such drug a counterfeit drug.

(3) The doing of any act which causes a drug to be a counterfeit drug, or the sale or dispensing, or the holding for sale or dispensing, of a counterfeit drug.

(j) The using by any person to his own advantage or revealing, other than to the Secretary or officers or employees of the Department, or to the courts when relevant in any judicial proceeding under this Act, any information acquired under authority of section 404, 409, 412, 414, 505, 510, 512, 513, 514, 515, 516, 518, 519, 520, 704, 708 or 721, concerning any method or process which as a trade secret is entitled to protection; or the violating of section 408(i)(2) or any regulation issued under that section. This paragraph does not authorize the withholding of information from either House of Congress or from, to the extent of matter within its jurisdiction, any committee or subcommittee of such committee or any joint committee of Congress or any subcommittee of such joint committee.

(k) The alteration, mutilation, destruction, obliteration, or removal of the whole or any part of the labeling of, or the doing of any other act with respect to, a food, drug, device, or cosmetic, if such act is done while such article is held for sale (whether or not the first sale) after shipment in interstate commerce and results in such article being adulterated or misbranded.

(m) The sale or offering for sale of colored oleomargarine or colored margarine, or the possession or serving of colored oleomargarine or colored margarine in violation of sections 407(b), or 407(c).

(n) The using, in labeling, advertising or other sales promotion of any reference to any report or analysis furnished in compliance with section 704.

(o) In the case of a prescription drug distributed or offered for sale in interstate commerce, the failure of the manufacturer, packer, or distributor thereof to maintain for transmittal, or to transmit, to any practitioner licensed by applicable State law to administer such drug who makes written request for information as to such drug, true and correct copies of all printed matter which is required to be included in any package in which that drug is distributed or sold, or such other printed matter as is approved by the Secretary. Nothing in this paragraph shall be construed to exempt any person from any labeling requirement imposed by or under other provisions of this Act.

(p) The failure to register in accordance with section 510, the failure to provide any information required by section 510(j) or 510k,, or the failure to provide a notice required by section 510(j)(2).

(q)(1) The failure or refusal to (A) comply with any requirement prescribed under section 518 or 520(g), (B) furnish any notification or other material or information required by or under section 519 or 520(g), or (C) comply with a requirement under section 522.

(2) With respect to any device, the submission of any report that is required by or under this Act that is false or misleading in any material respect.

(r) The movement of a device in violation of an order under section 304(g) or the removal or alteration of any mark or label required by the order to identify the device as detained.

(s) The failure to provide the notice required by section 412(c) or 412(e), the failure to make the reports required by section 412(f)(1)(B), the failure to retain the records required by section 412(b)(4), or the failure to meet the requirements prescribed under section 412(f)(3).

(t) The importation of a drug in violation of section 801(d)(1), the sale, purchase, or trade of a drug or drug sample or the offer to sell, purchase, or trade a drug or drug sample in violation of section 503(c), the sale, purchase, or trade of a coupon, the offer to sell, purchase, or trade such a coupon, or the counterfeiting of such a coupon in violation of section 503(c)(2), the distribution of a drug sample in violation of section 503(d), or the failure to otherwise comply with the requirements of section 503(d), or the distribution of drugs in violation of section 503(e) or the failure to otherwise comply with the requirements of section 503(e).

(u) The failure to comply with any requirements of the provisions of, or any regulations or orders of the Secretary, under section 512(a)(4)(A), 512(a)(4)(D), or 512(a)(5).

(v) The introduction or delivery for introduction into interstate commerce of a dietary supplement that is unsafe under section 413.

(w) The making of a knowingly false statement in any statement, certificate of analysis, record, or report required or requested under section 801(d)(3); the failure to submit a certificate of analysis as required under such section; the failure to maintain records or to submit records or reports as required by such section; the release into interstate commerce of any arti-

cle or portion thereof imported into the United States under such section or any finished product made from such article or portion, except for export in accordance with section 801(e) or 802, or with section 351(h) of the Public Health Service Act; or the failure to so export or to destroy such an article or portions thereof, or such a finished product.

(x) The falsification of a declaration of conformity submitted under section 514(c) or the failure or refusal to provide data or information requested by the Secretary under paragraph (3) of such section.

(y) In the case of a drug, device, or food—

(1) the submission of a report or recommendation by a person accredited under section 523 that is false or misleading in any material respect;

(2) the disclosure by a person accredited under section 523 of confidential commercial information or any trade secret without the express written consent of the person who submitted such information or secret to such person; or

(3) the receipt by a person accredited under section 523 of a bribe in any form or the doing of any corrupt act by such person associated with a responsibility delegated to such person under this Act.

(z) The dissemination of information in violation of section 551.

(aa) The importation of a covered product in violation of section 804, the falsification of any record required to be maintained or provided to the Secretary under such section, or any other violation of regulations under such section.

(bb) The transfer of an article of food in violation of an order under section 304(h), or the removal or alteration of any mark or label required by the order to identify the article as detained.

(cc) The importing or offering for import into the United States of an article of food by, with the assistance of, or at the direction of, a person debarred under section 306(b)(3).

(dd) The failure to register in accordance with section 415.

(ee) The importing or offering for import into the United States of an article of food in violation of the requirements under section 801(m).

(ff) The importing or offering for import into the United States of a drug or device with respect to which there is a failure to comply with a request of the Secretary to submit to the Secretary a statement under section 801(o).

(gg) The knowing failure of a person accredited under paragraph (2) of section 704(g) to comply with paragraph (7)(E) of such section; the knowing inclusion by such a person of false information in an inspection report under paragraph (7)(A) of such section; or the knowing failure of such a person to include material facts in such a report.

(hh) NONCOMPLIANCE WITH SANITARY TRANSPORTATION PRACTICES.—The failure by a shipper, carrier by motor vehicle or rail vehicle, receiver, or any other person engaged in the transportation of food to comply with the sanitary transportation practices prescribed by the Secretary under section 416.

* * * * * * *

SEC. 402. ADULTERATED FOOD.

[21 U.S.C. 342]

A food shall be deemed to be adulterated—

(a) POISONOUS, INSANITARY, OR DELETERIOUS INGREDIENTS.—

(1) If it bears or contains any poisonous or deleterious substance which may render it injurious to health; but in case the substance is not an added substance such food shall not be considered adulterated under this clause if the quantity of such substance in such food does not ordinarily render it injurious to health; or

(2)(A) if it bears or contains any added poisonous or added deleterious substance (other than a substance that is a pesticide chemical residue in or on a raw agricultural commodity or processed food, a food additive, a color additive, or a new animal drug) that is unsafe within the meaning of section 406; or

(B) if it bears or contains a pesticide chemical residue that is unsafe within the meaning of section 408(a); or

(C) if it is or if it bears or contains (i) any food additive that is unsafe within the meaning of section 409; or (ii) a new animal drug (or conversion product thereof) that is unsafe within the meaning of section 512; or

(3) if it consists in whole or in part of any filthy, putrid, or decomposed substances, or if it is otherwise unfit for food; or

(4) if it has been prepared, packed, or held under insanitary conditions whereby it may have become contaminated with filth, or whereby it may have been rendered injurious to health; or

(5) if it is, in whole or in part, the product of a diseased animal or of an animal which has died otherwise than by slaughter; or

(6) if its container is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health; or

(7) if it has been intentionally subjected to radiation, unless the use of the radiation was in conformity with a regulation or exemption in effect pursuant to section 409.

(b) ABSENCE, SUBSTITUTION, OR ADDITION OF CONSTITUENTS.—

(1) If any valuable constituent has been in whole or in part omitted or abstracted therefrom; or

(2) if any substance has been substituted wholly or in part therefor; or

(3) if damage or inferiority has been concealed in any manner; or

(4) if any substance has been added thereto or mixed or packed therewith so as to increase its bulk or weight, or reduce its quality or strength, or make it appear better or of greater value than it is.

(c) COLOR ADDITIVES.—If it is, or it bears or contains, a color additive which is unsafe within the meaning of section 721(a).

(d) CONFECTIONERY CONTAINING ALCOHOL OR NONNUTRITIVE SUBSTANCE.—If it is confectionery, and—

(1) has partially or completely imbedded therein any nonnutritive object, except that this subparagraph shall not apply in the case of any nonnutritive object if, in the judgment of the Secretary as provided by regulations, such object is of practical functional value to the confectionery product and would not render the product injurious or hazardous to health;

(2) bears or contains any alcohol other than alcohol not in excess of one-half of 1 per centum by volume derived solely from the use of flavoring extracts, except that this clause shall not apply to confectionery which is introduced or delivered for introduction into, or received or held for sale in, interstate commerce if the sale of such confectionery is permitted under the laws of the State in which such confectionery is intended to be offered for sale; or

(3) bears or contains any nonnutritive substance, except that this subparagraph shall not apply to a safe nonnutritive substance which is in or on confectionery by reason of its use for some practical functional purpose in the manufacture, packaging, or storage of such confectionery if the use of the substance does not promote deception of the consumer or otherwise result in adulteration or misbranding in violation of any provision of this Act, except that the Secretary may, for the purpose of avoiding or resolving uncertainty as to the application of this subparagraph, issue regulations allowing or prohibiting the use of particular nonnutritive substances.

(e) OLEOMARGARINE CONTAINING FILTHY, PUTRID, ETC., MATTER.—If it is oleomargarine or margarine or butter and any of the raw material used therein consisted in whole or in part of any filthy, putrid, or decomposed substance, or such oleomargarine or margarine or butter is otherwise unfit for food.

(f) SAFETY OF DIETARY SUPPLEMENTS AND BURDEN OF PROOF ON FDA.—

(1) If it is a dietary supplement or contains a dietary ingredient that—

(A) presents a significant or unreasonable risk of illness or injury under—

(i) conditions of use recommended or suggested in labeling, or

(ii) if no conditions of use are suggested or recommended in the labeling, under ordinary conditions of use;

(B) is a new dietary ingredient for which there is inadequate information to provide reasonable assurance that such ingredient does not present a significant or unreasonable risk of illness or injury;

(C) the Secretary declares to pose an imminent hazard to public health or safety, except that the authority to make such declaration shall not be delegated and the Secretary shall promptly after such a declara-

tion initiate a proceeding in accordance with sections 554 and 556 of title 5, United States Code, to affirm or withdraw the declaration; or

(D) is or contains a dietary ingredient that renders it adulterated under paragraph (a)(1) under the conditions of use recommended or suggested in the labeling of such dietary supplement. In any proceeding under this subparagraph, the United States shall bear the burden of proof on each element to show that a dietary supplement is adulterated. The court shall decide any issue under this paragraph on a de novo basis.

(2) Before the Secretary may report to a United States attorney a violation of paragraph (1)(A) for a civil proceeding, the person against whom such proceeding would be initiated shall be given appropriate notice and the opportunity to present views, orally and in writing, at least 10 days before such notice, with regard to such proceeding.

(g) GOOD MANUFACTURING PRACTICES.—

(1) If it is a dietary supplement and it has been prepared, packed, or held under conditions that do not meet current good manufacturing practice regulations, including regulations requiring, when necessary, expiration date labeling, issued by the Secretary under subparagraph (2).

(2) The Secretary may by regulation prescribe good manufacturing practices for dietary supplements. Such regulations shall be modeled after current good manufacturing practice regulations for food and may not impose standards for which there is no current and generally available analytical methodology. No standard of current good manufacturing practice may be imposed unless such standard is included in a regulation promulgated after notice and opportunity for comment in accordance with chapter 5 of title 5, United States Code.

(h) If it is an article of food imported or offered for import into the United States and the article of food has previously been refused admission under section 801(a), unless the person reoffering the article affirmatively establishes, at the expense of the owner or consignee of the article, that the article complies with the applicable requirements of this Act, as determined by the Secretary.

(i) NONCOMPLIANCE WITH SANITARY TRANSPORTATION PRACTICES.—If the food is transported under conditions that are not in compliance with the sanitary transportation practices prescribed by the Secretary under section 416.

* * * * * * *

SEC. 416. SANITARY TRANSPORTATION PRACTICES.

(a) DEFINITIONS.—In this section:

(1) BULK VEHICLE.—The term "bulk vehicle" includes a tank truck, hopper truck, rail tank car, hopper car, cargo tank, portable tank, freight container, or hopper bin, and any other vehicle in which food is shipped in bulk, with the food coming into direct contact with the vehicle.

(2) TRANSPORTATION.—The term "transportation" means any movement in commerce by motor vehicle or rail vehicle.

(b) REGULATIONS.—The Secretary shall by regulation require shippers, carriers by motor vehicle or rail vehicle, receivers, and other persons engaged in the transportation of food to use sanitary transportation practices prescribed by the Secretary to ensure that food is not transported under conditions that may render the food adulterated.

(c) CONTENTS.—The regulations shall—

(1) prescribe such practices as the Secretary determines to be appropriate relating to—

(A) sanitation;

(B) packaging, isolation, and other protective measures;

(C) limitations on the use of vehicles;

(D) information to be disclosed—

(i) to a carrier by a person arranging for the transport of food; and

(ii) to a manufacturer or other person that—

(I) arranges for the transportation of food by a carrier; or

(II) furnishes a tank vehicle or bulk vehicle for the transportation of food; and

(E) recordkeeping; and

(2) include—

(A) a list of nonfood products that the Secretary determines may, if shipped in a bulk vehicle, render adulterated food that is subsequently transported in the same vehicle; and

(B) a list of nonfood products that the Secretary determines may, if shipped in a motor vehicle or rail vehicle (other than a tank vehicle or bulk vehicle), render adulterated food that is simultaneously or subsequently transported in the same vehicle.

(d) WAIVERS.—

(1) IN GENERAL.—The Secretary may waive any requirement under this section, with respect to any class of persons, vehicles, food, or nonfood products, if the Secretary determines that the waiver—

(A) will not result in the transportation of food under conditions that would be unsafe for human or animal health; and

(B) will not be contrary to the public interest.

(2) PUBLICATION.—The Secretary shall publish in the Federal Register any waiver and the reasons for the waiver.

(e) PREEMPTION.—

(1) IN GENERAL.—No State or political subdivision of a State may directly or indirectly establish or continue in effect, as to any food in interstate commerce, any authority or requirement concerning transportation of food that is not identical to an authority or requirement under this section.

(2) APPLICABILITY.—This subsection applies to transportation that occurs on or after the effective date of the regulations promulgated under subsection (b).

(f) ASSISTANCE OF OTHER AGENCIES.—The Secretary of Transportation, the Secretary of Agriculture, the Administrator of the Envi-

ronmental Protection Agency, and the heads of other Federal agencies, as appropriate, shall provide assistance on request, to the extent resources are available, to the Secretary for the purposes of carrying out this section.

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[SEC. 703. RECORDS OF INTERSTATE SHIPMENT.

[21 U.S.C. 373]

SEC. 703. RECORDS.

[For the purpose] *(a) IN GENERAL.—For the purpose* of enforcing the provisions of this Act, carriers engaged in interstate commerce, and persons receiving food, drugs, devices, or cosmetics in interstate commerce or holding such articles so received, shall, upon the request of an officer or employee duly designated by the Secretary, permit such officer or employee, at reasonable times, to have access to and to copy all records showing the movement in interstate commerce of any food, drug, device, or cosmetic, or the holding thereof during or after such movement, and the quantity, shipper, and consignee thereof; and it shall be unlawful for any such carrier or person to fail to permit such access to and copying of any such record so requested when such request is accompanied by a statement in writing specifying the nature or kind of food, drug, device, or cosmetic to which such request relates, except that evidence obtained under this section, or any evidence which is directly or indirectly derived from such evidence, shall not be used in a criminal prosecution of the person from whom obtained, and except that carriers shall not be subject to the other provisions of this Act by reason of their receipt, carriage, holding, or delivery of food, drugs, devices, or cosmetics in the usual course of business as [carriers.] *carriers, except as provided in subsection (b).*

(b) FOOD TRANSPORTATION RECORDS.—A shipper, carrier by motor vehicle or rail vehicle, receiver, or other person subject to section 416 shall, on request of an officer or employee designated by the Secretary, permit the officer or employee, at reasonable times, to have access to and to copy all records that the Secretary requires to be kept under section 416(c)(1)(E).

TITLE 23. HIGHWAYS

CHAPTER 1. FEDERAL-AID HIGHWAYS

SUBCHAPTER I. GENERAL PROVISIONS

§ 104. Apportionment

(a) ADMINISTRATIVE EXPENSES.—

(1) IN GENERAL.—Whenever an apportionment is made of the sums made available for expenditure on each of the surface transportation program under section 133, the bridge program under section 144, the congestion mitigation and air quality improvement program under section 149, the Interstate and National Highway System program, the minimum guarantee program under section 105, the Federal lands highway program under section 204, or the Appalachian development high-

way system program under section 201 of the Appalachian Regional Development Act of 1965 (40 U.S.C. App.), the Secretary shall deduct a sum, in an amount not to [exceed—

(A) 1 ⅙ percent of all sums so made available, as the Secretary determines necessary—]

exceed 1⅙ percent of all sums so made available, as the Secretary determines necessary—

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

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

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

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

(3) AVAILABILITY.—The sum deducted under paragraph (1) shall remain available until expended.

(4) LIMITATION ON TRANSFERABILITY.—Unless expressly authorized by law, the Secretary may not transfer any sums deducted under paragraph (1) to a Federal agency or entity other than the Federal Highway Administration and the Federal Motor Carrier Safety Administration.

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

(1) NATIONAL HIGHWAY SYSTEM COMPONENT.—

(A) IN GENERAL.—For the National Highway System (excluding funds apportioned under paragraph (4)), $36,400,000 for each fiscal year to the Virgin Islands, Guam, American Samoa, and the Commonwealth of Northern Mariana Islands, $18,800,000 for each of fiscal years 1998 through 2002 for the Alaska Highway, and the remainder apportioned as follows:

(i) 25 percent in the ratio that—

(I) the total lane miles of principal arterial routes (excluding Interstate System routes) in each State; bears to

(II) the total lane miles of principal arterial routes (excluding Interstate System routes) in all States.

(ii) 35 percent in the ratio that—

(I) the total vehicle miles traveled on lanes on principal arterial routes (excluding Interstate System routes) in each State; bears to

(II) the total vehicle miles traveled on lanes on principal arterial routes (excluding Interstate System routes) in all States.

(iii) 30 percent in the ratio that—

(I) the total diesel fuel used on highways in each State; bears to

(II) the total diesel fuel used on highways in all States.

(iv) 10 percent in the ratio that—

(I) the quotient obtained by dividing the total lane miles on principal arterial highways in each State by the total population of the State; bears to

(II) the quotient obtained by dividing the total lane miles on principal arterial highways in all States by the total population of all States.

(B) MINIMUM APPORTIONMENT.—Notwithstanding subparagraph (A) and paragraph (4), each State shall receive a minimum of 1/2 of 1 percent of the funds apportioned under subparagraph (A) and paragraph (4).

(2) CONGESTION MITIGATION AND AIR QUALITY IMPROVEMENT PROGRAM.—

(A) IN GENERAL.—For the congestion mitigation and air quality improvement program, in the ratio that—

(i) the total of all weighted nonattainment and maintenance area populations in each State; bears to

(ii) the total of all weighted nonattainment and maintenance area populations in all States.

(B) CALCULATION OF WEIGHTED NONATTAINMENT AND MAINTENANCE AREA POPULATION.—Subject to subparagraph (C), for the purpose of subparagraph (A), the weighted nonattainment and maintenance area population shall be calculated by multiplying the population of each area in a State that was a nonattainment area or maintenance area as described in section 149(b) for ozone or carbon monoxide by a factor of—

(i) 0.8 if—

(I) at the time of the apportionment, the area is a maintenance area; or

(II) at the time of the apportionment, the area is classified as a submarginal ozone nonattainment area under the Clean Air Act (42 U.S.C. 7401 et seq.);

(ii) 1.0 if, at the time of the apportionment, the area is classified as a marginal ozone nonattainment area under subpart 2 of part D of title I of the Clean Air Act (42 U.S.C. 7511 et seq.);

(iii) 1.1 if, at the time of the apportionment, the area is classified as a moderate ozone nonattainment area under such subpart;

(iv) 1.2 if, at the time of the apportionment, the area is classified as a serious ozone nonattainment area under such subpart;

(v) 1.3 if, at the time of the apportionment, the area is classified as a severe ozone nonattainment area under such subpart;

(vi) 1.4 if, at the time of the apportionment, the area is classified as an extreme ozone nonattainment area under such subpart; or

(vii) 1.0 if, at the time of the apportionment, the area is not a nonattainment or maintenance area as described in section 149(b) for ozone, but is classified under subpart 3 of part D of title I of such Act (42 U.S.C. 7512 et seq.) as a nonattainment area described in section 149(b) for carbon monoxide.

(C) ADDITIONAL ADJUSTMENT FOR CARBON MONOXIDE AREAS.—

(i) CARBON MONOXIDE NONATTAINMENT AREAS.—If, in addition to being classified as a nonattainment or maintenance area for ozone, the area was also classified under subpart 3 of part D of title I of such Act (42 U.S.C. 7512 et seq.) as a nonattainment area described in section 149(b) for carbon monoxide, the weighted nonattainment or maintenance area population of the area, as determined under clauses (i) through (vi) of subparagraph (B), shall be further multiplied by a factor of 1.2.

(ii) CARBON MONOXIDE MAINTENANCE AREAS.—If, in addition to being classified as a nonattainment or maintenance area for ozone, the area was at one time also classified under subpart 3 of part D of title I of such Act (42 U.S.C. 7512 et seq.) as a nonattainment area described in section 149(b) for carbon monoxide but has been redesignated as a maintenance area, the weighted nonattainment or maintenance area population of the area, as determined under clauses (i) through (vi) of subparagraph (B), shall be further multiplied by a factor of 1.1.

(D) MINIMUM APPORTIONMENT.—Notwithstanding any other provision of this paragraph, each State shall receive a minimum of 1/2 of 1 percent of the funds apportioned under this paragraph.

(E) DETERMINATIONS OF POPULATION.—In determining population figures for the purposes of this paragraph, the Secretary shall use the latest available annual estimates prepared by the Secretary of Commerce.

(3) SURFACE TRANSPORTATION PROGRAM.—

(A) IN GENERAL.—For the surface transportation program, in accordance with the following formula:

(i) 25 percent of the apportionments in the ratio that—

(I) the total lane miles of Federal-aid highways in each State; bears to

(II) the total lane miles of Federal-aid highways in all States.

(ii) 40 percent of the apportionments in the ratio that—

(I) the total vehicle miles traveled on lanes on Federal-aid highways in each State; bears to

(II) the total vehicle miles traveled on lanes on Federal-aid highways in all States.

(iii) 35 percent of the apportionments in the ratio that—

(I) the estimated tax payments attributable to highway users in each State paid into the Highway Trust Fund (other than the Mass Transit Account) in the latest fiscal year for which data are available; bears to

(II) the estimated tax payments attributable to highway users in all States paid into the Highway Trust Fund (other than the Mass Transit Account) in the latest fiscal year for which data are available.

(B) MINIMUM APPORTIONMENT.—Notwithstanding subparagraph (A), each State shall receive a minimum of 1/2 of 1 percent of the funds apportioned under this paragraph.

(4) INTERSTATE MAINTENANCE COMPONENT.—For resurfacing, restoring, rehabilitating, and reconstructing the Interstate System—

(A) 33 1/3 percent in the ratio that—

(i) the total lane miles on Interstate System routes open to traffic in each State; bears to

(ii) the total of all such lane miles in all States;

(B) 33 1/3 percent in the ratio that—

(i) the total vehicle miles traveled on Interstate System routes open to traffic in each State; bears to

(ii) the total of all such vehicle miles traveled in all States; and

(C) 33 1/3 percent in the ratio that—

(i) the total of each State's annual contributions to the Highway Trust Fund (other than the Mass Transit Account) attributable to commercial vehicles; bears to

(ii) the total of such annual contributions by all States.

(c) TRANSFERABILITY OF NHS APPORTIONMENTS.—A State may transfer not to exceed 50 percent of the State's apportionment under subsection (b)(1) to the apportionment of the State under subsection (b)(3). A State may transfer not to exceed 100 percent of the State's apportionment under subsection (b)(1) to the apportionment of the State under subsection (b)(3) if the State requests to make such transfer and the Secretary approves such transfer as being in the public interest, after providing notice and sufficient opportunity for public comment. Section 133(d) shall not apply to funds transferred under this subsection.

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

(1) OPERATION LIFESAVER.—Before making an apportionment under subsection (b)(3) of this section for a fiscal year, the Secretary shall set aside $500,000 for such fiscal year for carrying out a public information and education program to help prevent and reduce motor vehicle accidents, injuries, and fatalities

and to improve driver performance at railway-highway crossings.

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

(A) IN GENERAL.—Before making an apportionment of funds under subsection (b)(3) for a fiscal year, the Secretary shall set aside $5,250,000 of the funds made available for the surface transportation program for the fiscal year for elimination of hazards of railway-highway crossings.

(B) ELIGIBLE CORRIDORS.—Subject to subparagraph (E), funds made available under subparagraph (A) shall be expended for projects in—

(i) 5 railway corridors selected by the Secretary in accordance with this subsection (as in effect on the day before the date of enactment of this clause);

(ii) 3 railway corridors selected by the Secretary in accordance with subparagraphs (C) and (D);

(iii) a Gulf Coast high speed railway corridor (as designated by the Secretary);

(iv) a Keystone high speed railway corridor from Philadelphia to Harrisburg, Pennsylvania; and

(v) an Empire State railway corridor from New York City to Albany to Buffalo, New York.

(C) REQUIRED INCLUSION OF HIGH SPEED RAIL LINES.—A corridor selected by the Secretary under subparagraph (B) shall include rail lines where railroad speeds of 90 miles or more per hour are occurring or can reasonably be expected to occur in the future.

(D) CONSIDERATIONS IN CORRIDOR SELECTION.—In selecting corridors under subparagraph (B), the Secretary shall consider—

(i) projected rail ridership volume in each corridor;

(ii) the percentage of each corridor over which a train will be capable of operating at its maximum cruise speed taking into account such factors as topography and other traffic on the line;

(iii) projected benefits to nonriders such as congestion relief on other modes of transportation serving each corridor (including congestion in heavily traveled air passenger corridors);

(iv) the amount of State and local financial support that can reasonably be anticipated for the improvement of the line and related facilities; and

(v) the cooperation of the owner of the right-of-way that can reasonably be expected in the operation of high speed rail passenger service in each corridor.

(E) CERTAIN IMPROVEMENTS.—Not less than $250,000 of such set-aside shall be available per fiscal year for eligible improvements to the Minneapolis/St. Paul-Chicago segment of the Midwest High Speed Rail Corridor.

(F) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated $15,000,000 for each of fiscal years 1999 through 2003 to carry out this subsection.

(e) CERTIFICATION OF APPORTIONMENTS.—

(1) IN GENERAL.—On October 1 of each fiscal year the Secretary shall certify to each of the State transportation departments the sums which he has apportioned hereunder to each State for such fiscal year, and also the sums which he has deducted for administration pursuant to subsection (a) of this section. To permit the States to develop adequate plans for the utilization of apportioned sums, the Secretary shall advise each State of the amount that will be apportioned each year under this section not later than ninety days before the beginning of the fiscal year for which the sums to be apportioned are authorized, except that in the case of the Interstate System the Secretary shall advise each State ninety days prior to the apportionment of such funds.

(2) NOTICE TO STATES.—If the Secretary has not made an apportionment under section 104, 105, or 144 by the 21st day of a fiscal year beginning after September 30, 1998, the Secretary shall transmit, by such 21st day, to the Committeee on Transportation and Infrastructure of the House of Representatives and the Committeee on Environment and Public Works of the Senate a written statement of the reason for not making such apportionment in a timely manner.

(f) METROPOLITAN PLANNING.—

(1) SET-ASIDE.—On October 1 of each fiscal year, the Secretary, after making the deduction authorized by subsection (a) of this section, shall set aside not to exceed 1 percent of the remaining funds authorized to be appropriated for expenditure upon programs authorized under this title, for the purpose of carrying out the requirements of section 134 of this title, except that the amount from which such set aside is made shall not include funds authorized to be appropriated for the recreational trails program.

(2) APPORTIONMENT TO STATES OF SET-ASIDE FUNDS.—These funds shall be apportioned to the States in the ratio which the population in urbanized areas or parts thereof, in each State bears to the total population in such urbanized areas in all the States as shown by the latest available census, except that no State shall receive less than one-half per centum of the amount apportioned.

(3) USE OF FUNDS.—The funds apportioned to any State under paragraph (2) of this subsection shall be made available by the State to the metropolitan planning organizations responsible for carrying out the provisions of section 134 of this title; except that States receiving the minimum apportionment under paragraph (2) may, in addition, subject to the approval of the Secretary, use the funds apportioned to finance transportation planning outside of urbanized areas. These funds shall be matched in accordance with section 120(b) unless the Secretary determines that the interests of the Federal-aid highway program would be best served without such matching.

(4) DISTRIBUTION OF FUNDS WITHIN STATES.—The distribution within any State of the planning funds made available to agencies under paragraph (3) of this subsection shall be in accordance with a formula developed by each State and approved by the Secretary which shall consider but not necessarily be limited to, population, status of planning, attainment of air

quality standards, metropolitan area transportation needs, and other factors necessary to provide for an appropriate distribution of funds to carry out the requirements of section 134 and other applicable requirements of Federal law.

(5) DETERMINATION OF POPULATION FIGURES.—For the purposes of determining population figures under this subsection, the Secretary shall use the most recent estimate published by the Secretary of Commerce.

(g) Not more than 40 per centum of the amount apportioned in any fiscal year to each State in accordance with sections 130, 144, and 152 of this title, or section 203(d) of the Highway Safety Act of 1973, may be transferred from the apportionment under one section to the apportionment under any other of such sections if such a transfer is requested by the State transportation department and is approved by the Secretary as being in the public interest. The Secretary may approve the transfer of 100 per centum of the apportionment under one such section to the apportionment under any other of such sections if such transfer is requested by the State Highway department, and is approved by the Secretary as being in the public interest, if he has received satisfactory assurances from such State transportation department that the purposes of the program from which such funds are to be transferred have been met. A State may transfer not to exceed 50 percent of the State's apportionment under section 144 in any fiscal year to the apportionment of such State under subsection (b)(1) or subsection (b)(3) of this section. Any transfer to subsection (b)(3) shall not be subject to section 133(d). Nothing in this subsection authorizes the transfer of any amount apportioned from the Highway Trust Fund to any apportionment the funds for which were not from the Highway Trust Fund, and nothing in this subsection authorizes the transfer of any amount apportioned from funds not from the Highway Trust Fund to any apportionment the funds for which were from the Highway Trust Fund.

(h) RECREATIONAL TRAILS PROGRAM.—

(1) ADMINISTRATIVE COSTS.—Whenever an apportionment is made of the sums authorized to be appropriated to carry out the recreational trails program under section 206, the Secretary shall deduct an amount, not to exceed 1 1/2 percent of the sums authorized, to cover the cost to the Secretary for administration of and research and technical assistance under the recreational trails program and for administration of the National Recreational Trails Advisory Committeee. The Secretary may enter into contracts with for-profit organizations or contracts, partnerships, or cooperative agreements with other government agencies, institutions of higher learning, or nonprofit organizations to perform these tasks.

(2) APPORTIONMENT TO THE STATES.—After making the deduction authorized by paragraph (1) of this subsection, the Secretary shall apportion the remainder of the sums authorized to be appropriated for expenditure on the recreational trails program for each fiscal year, among the States in the following manner:

(A) 50 percent of that amount shall be apportioned equally among eligible States.

(B) 50 percent of that amount shall be apportioned among eligible States in amounts proportionate to the degree of non-highway recreational fuel use in each of those States during the preceding year.

(3) ELIGIBLE STATE DEFINED.—In this section, the term "eligible State" means a State that meets the requirements of section 206(c).

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

(j) REPORT TO CONGRESS.—The Secretary shall submit to Congress a report for each fiscal year on—

(1) the amount obligated, by each State, for Federal-aid highways and highway safety construction programs during the preceding fiscal year;

(2) the balance, as of the last day of the preceding fiscal year, of the unobligated apportionment of each State by fiscal year under this section and sections 105 and 144;

(3) the balance of unobligated sums available for expenditure at the discretion of the Secretary for such highways and programs for the fiscal year; and

(4) the rates of obligation of funds apportioned or set aside under this section and sections 105, 133, and 144, according to—

(A) program;

(B) funding category or subcategory;

(C) type of improvement;

(D) State; and

(E) sub-State geographic area, including urbanized and rural areas, on the basis of the population of each such area.

(k) TRANSFER OF HIGHWAY AND TRANSIT FUNDS.—

(1) TRANSFER OF HIGHWAY FUNDS.—Funds made available under this title and transferred for transit projects of a type described in section 133(b)(2) shall be administered by the Secretary in accordance with chapter 53 of title 49, except that the provisions of this title relating to the non-Federal share shall apply to the transferred funds.

(2) TRANSFER OF TRANSIT FUNDS.—Funds made available under chapter 53 of title 49 and transferred for highway projects shall be administered by the Secretary in accordance with this title, except that the provisions of such chapter relating to the non-Federal share shall apply to the transferred funds.

(3) TRANSFER OF OBLIGATION AUTHORITY.—Obligation authority provided for projects described in paragraphs (1) and (2) shall be transferred in the same manner and amount as the funds for the projects are transferred.

(l) EFFECT OF CERTAIN DELAY IN DEPOSITS INTO HIGHWAY TRUST FUND.—Notwithstanding any other provision of law, deposits into the Highway Trust Fund resulting from the application of section 901(e) of the Taxpayer Relief Act of 1997 (111 Stat. 872) shall not be taken into account in determining the apportionments and allo-

cations that any State shall be entitled to receive under the Transportation Equity Act for the 21st Century and this title.

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§ 141. Enforcement of requirements

(a) Each State shall certify to the Secretary before January 1 of each year that it is enforcing all State laws respecting maximum vehicle size and weights permitted on the Federal-aid primary system, the Federal-aid urban system, and the Federal-aid secondary system, including the Interstate System in accordance with section 127 of this title. Each State shall also certify that it is enforcing and complying with the provisions of section 127(d) of this title and [section 31112] *sections 31111 and 31112* of title 49.

(b)(1) Each State shall submit to the Secretary such information as the Secretary shall, by regulation, require as necessary, in his opinion, to verify the certification of such State under subsection (b) of this section.

(2) If a State fails to certify as required by subsection (b) of this section or if the Secretary determines that a State is not adequately enforcing all State laws respecting such maximum vehicle size and weights, notwithstanding such a certification, then Federal-aid highway funds apportioned to such State for such fiscal year shall be reduced by amounts equal to 10 per centum of the amount which would otherwise be apportioned to such State under section 104 of this title.

(3) If within one year from the date that the apportionment for any State is reduced in accordance with paragraph (2) of this subsection the Secretary determines that such State is enforcing all State laws respecting maximum size and weights, the apportionment of such State shall be increased by an amount equal to such reduction. If the Secretary does not make such a determination within such one-year period, the amounts so withheld shall be reapportioned to all other eligible States.

(c) The Secretary shall reduce the State's apportionment of Federal-aid highway funds under section 104(b)(4) in an amount up to 25 per centum of the amount to be apportioned in any fiscal year beginning after September 30, 1984, during which heavy vehicles, subject to the use tax imposed by section 4481 of the Internal Revenue Code of 1954, may be lawfully registered in the State without having presented proof of payment, in such form as may be prescribed by the Secretary of the Treasury, of the use tax imposed by section 4481 of such Code. Amounts withheld from apportionment to a State under this subsection shall be apportioned to the other States pursuant to the formulas of section 104(b)(4) and shall be available in the same manner and to the same extent as other Interstate funds apportioned at the same time to other States.

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§ 402. Highway safety programs

(a) Each State shall have a highway safety program approved by the Secretary, designed to reduce traffic accidents and deaths, injuries, and property damage resulting therefrom. Such programs

shall be in accordance with uniform guidelines promulgated by the Secretary. Such uniform guidelines shall be promulgated by the Secretary so as to improve driver performance (including, but not limited to, driver education, driver testing to determine proficiency to operate motor vehicles, driver examinations (both physical and mental) and driver licensing) and to improve pedestrian performance and bicycle safety. In addition, such uniform guidelines shall include programs (1) to reduce injuries and deaths resulting from motor vehicles being driven in excess of posted speed limits, (2) to encourage the proper use of occupant protection devices (including the use of safety belts and child restraint systems) by occupants of motor [vehicles and to increase public awareness of the benefit of motor vehicles equipped with airbags,] *vehicles,* (3) to reduce deaths and injuries resulting from persons driving motor vehicles while impaired by alcohol or a controlled substance, (4) to prevent accidents and reduce deaths and injuries resulting from accidents involving motor vehicles and motorcycles, (5) to reduce injuries and deaths resulting from accidents involving school buses, *(6) to reduce aggressive driving and to educate drivers about defensive driving,* and [(6)] *(7)* to improve law enforcement services in motor vehicle accident prevention, traffic supervision, and post-accident procedures. The Secretary shall establish a highway safety program for the collection and reporting of data on traffic-related deaths and injuries by the States. Under such program, the States shall collect and report such data as the Secretary may require. The purposes of the program are to ensure national uniform data on such deaths and injuries and to allow the Secretary to make determinations for use in developing programs to reduce such deaths and injuries and making recommendations to Congress concerning legislation necessary to implement such programs. The program shall provide for annual reports to the Secretary on the efforts being made by the States in reducing deaths and injuries occurring at highway construction sites and the effectiveness and results of such efforts. The Secretary shall establish minimum reporting criteria for the program. Such criteria shall include, but not be limited to, criteria on deaths and injuries resulting from police pursuits, school bus accidents, *aggressive driving,* and speeding, on traffic-related deaths and injuries at highway construction sites and on the configuration of commercial motor vehicles involved in motor vehicle accidents. In addition such uniform guidelines shall include, but not be limited to, provisions for an effective record system of accidents (including injuries and deaths resulting therefrom), accident investigations to determine the probable causes of accidents, injuries, and deaths, vehicle registration, operation, and inspection, highway design and maintenance (including lighting, markings, and surface treatment), traffic control, vehicle codes and laws, surveillance of traffic for detection and correction of high or potentially high accident locations, enforcement of light transmission standards of window glazing for passenger motor vehicles and light trucks as necessary to improve highway safety, and emergency services. Such guidelines as are applicable to State highway safety programs shall, to the extent determined appropriate by the Secretary, be applicable to federally administered areas where a Federal department or agency controls the highways or supervises traffic operations.

(b) ADMINISTRATION OF STATE PROGRAMS.—

(1) ADMINISTRATIVE REQUIREMENTS.—The Secretary may not approve a State highway safety program under this section which does not—

(A) provide that the Governor of the State shall be responsible for the administration of the program through a State highway safety agency which shall have adequate powers and be suitably equipped and organized to carry out, to the satisfaction of the Secretary, such program;

(B) authorize political subdivisions of the State to carry out local highway safety programs within their jurisdictions as a part of the State highway safety program if such local highway safety programs are approved by the Governor and are in accordance with the minimum standards established by the Secretary under this section;

(C) except as provided in paragraph (3), provide that at least 40 percent of all Federal funds apportioned under this section to the State for any fiscal year will be expended by the political subdivisions of the State, including Indian tribal governments, in carrying out local highway safety programs authorized in accordance with subparagraph (B); and

(D) provide adequate and reasonable access for the safe and convenient movement of individuals with disabilities, including those in wheelchairs, across curbs constructed or replaced on or after July 1, 1976, at all pedestrian crosswalks throughout the State.

(2) WAIVER.—The Secretary may waive the requirement of paragraph (1)(C), in whole or in part, for a fiscal year for any State whenever the Secretary determines that there is an insufficient number of local highway safety programs to justify the expenditure in the State of such percentage of Federal funds during the fiscal year.

(3) USE OF TECHNOLOGY FOR TRAFFIC ENFORCEMENT.—The Secretary may encourage States to use technologically advanced traffic enforcement devices (including the use of automatic speed detection devices such as photo-radar) by law enforcement officers.

(c) Funds authorized to be appropriated to carry out this section shall be used to aid the States to conduct the highway safety programs approved in accordance with subsection (a), including development and implementation of manpower training programs, and of demonstration programs that the Secretary determines will contribute directly to the reduction of accidents, and deaths and injuries resulting therefrom. Such funds shall be subject to a deduction not to exceed 5 per centum for the necessary costs of administering the provisions of this section, and the remainder shall be apportioned among the several States. Such funds shall be apportioned 75 per centum in the ratio which the population of each State bears to the total population of all the States, as shown by the latest available Federal census, and 25 per centum in the ratio which the public road mileage in each State bears to the total public road mileage in all States. For the purposes of this subsection, a "public road" means any road under the jurisdiction of and maintained by a public authority and open to public travel. Public road mileage

as used in this subsection shall be determined as of the end of the calendar year preceding the year in which the funds are apportioned and shall be certified to by the Governor of the State and subject to approval by the Secretary. The annual apportionment to each State shall not be less than one-half of 1 per centum of the total apportionment, except that the apportionment to the Secretary of the Interior shall not be less than [three-fourths of 1 percent] *2 percent* of the total apportionment and the apportionments to the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands shall not be less than one-quarter of 1 per centum of the total apportionment. The Secretary shall not apportion any funds under this subsection to any State which is not implementing a highway safety program approved by the Secretary in accordance with this section. For the purpose of the seventh sentence of this subsection, a highway safety program approved by the Secretary shall not include any requirement that a State implement such a program by adopting or enforcing any law, rule, or regulation based on a guideline promulgated by the Secretary under this section requiring any motorcycle operator eighteen years of age or older or passenger eighteen years of age or older to wear a safety helmet when operating or riding a motorcycle on the streets and highways of that State. Implementation of a highway safety program under this section shall not be construed to require the Secretary to require compliance with every uniform guideline, or with every element of every uniform guideline, in every State. Funds apportioned under this section to any State, that does not have a highway safety program approved by the Secretary or that is not implementing an approved program, shall be reduced by amounts equal to not less than 50 per centum of the amounts that would otherwise be apportioned to the State under this section, until such time as the Secretary approves such program or determines that the State is implementing an approved program, as appropriate. The Secretary shall consider the gravity of the State's failure to have or implement an approved program in determining the amount of the reduction. The Secretary shall promptly apportion to the State the funds withheld from its apportionment if he approves the State's highway safety program or determines that the State has begun implementing an approved program, as appropriate, prior to the end of the fiscal year for which the funds were withheld. If the Secretary determines that the State did not correct its failure within such period, the Secretary shall reapportion the withheld funds to the other States in accordance with the formula specified in this subsection not later than 30 days after such determination.

(d) All provisions of chapter 1 of this title that are applicable to National Highway System highway funds other than provisions relating to the apportionment formula and provisions limiting the expenditure of such funds to the Federal-aid systems, shall apply to the highway safety funds authorized to be appropriated to carry out this section, except as determined by the Secretary to be inconsistent with this section, and except that the aggregate of all expenditures made during any fiscal year by a State and its political subdivisions (exclusive of Federal funds) for carrying out the State highway safety program (other than planning and administration) shall be available for the purpose of crediting such State during

such fiscal year for the non-Federal share of the cost of any project under this section (other than one for planning or administration) without regard to whether such expenditures were actually made in connection with such project and except that, in the case of a local highway safety program carried out by an Indian tribe, if the Secretary is satisfied that an Indian tribe does not have sufficient funds available to meet the non-Federal share of the cost of such program, he may increase the Federal share of the cost thereof payable under this Act to the extent necessary. In applying such provisions of chapter 1 in carrying out this section the term "State transportation department" as used in such provisions shall mean the Governor of a State for the purposes of this section.

(e) Uniform guidelines promulgated by the Secretary to carry out this section shall be developed in cooperation with the States, their political subdivisions, appropriate Federal departments and agencies, and such other public and private organizations as the Secretary deems appropriate.

(f) The Secretary may make arrangements with other Federal departments and agencies for assistance in the preparation of uniform guidelines for the highway safety programs contemplated by subsection (a) and in the administration of such programs. Such departments and agencies are directed to cooperate in such preparation and administration, on a reimbursable basis.

(g) Nothing in this section authorizes the appropriation or expenditure of funds for (1) highway construction, maintenance, or design (other than design of safety features of highways to be incorporated into guidelines) or (2) any purpose for which funds are authorized by section 403 of this title.

(h) GRANTS.—Funds available to States under this section may be used for making grants of financial assistance for programs and initiatives authorized by sections 405 and 410 of this title.

(i) APPLICATION IN INDIAN COUNTRY.—

(1) USE OF TERMS.—For the purpose of application of this section in Indian country, the terms "State" and "Governor of a State" include the Secretary of the Interior and the term "political subdivision of a State" includes an Indian tribe.

(2) EXPENDITURES FOR LOCAL HIGHWAY PROGRAMS.—Notwithstanding subsection (b)(1)(C), 95 percent of the funds apportioned to the Secretary of the Interior under this section shall be expended by Indian tribes to carry out highway safety programs within their jurisdictions.

(3) ACCESS FOR INDIVIDUALS WITH DISABILITIES.—The requirements of subsection (b)(1)(D) shall be applicable to Indian tribes, except to those tribes with respect to which the Secretary determines that application of such provisions would not be practicable.

(4) INDIAN COUNTRY DEFINED.—In this subsection, the term "Indian country" means—

(A) all land within the limits of any Indian reservation under the jurisdiction of the United States, notwithstanding the issuance of any patent and including rights-of-way running through the reservation;

(B) all dependent Indian communities within the borders of the United States, whether within the original or subse-

quently acquired territory thereof and whether within or without the limits of a State; and

(C) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through such allotments.

(j) RULEMAKING PROCEEDING.—The Secretary may periodically conduct a rulemaking process to identify highway safety programs that are highly effective in reducing motor vehicle crashes, injuries, and deaths. Any such rulemaking shall take into account the major role of the States in implementing such programs. When a rule promulgated in accordance with this section takes effect, States shall consider these highly effective programs when developing their highway safety programs.

(k)(1) Subject to the provisions of this subsection, the Secretary shall make a grant to any State which includes, as part of its highway safety program under section 402 of this title, the use of a comprehensive computerized safety recordkeeping system designed to correlate data regarding traffic accidents, drivers, motor vehicles, and roadways. Any such grant may only be used by such State to establish and maintain a comprehensive computerized traffic safety recordkeeping system or to obtain and operate components to support highway safety priority programs identified by the Secretary under this section. Notwithstanding any other provision of law, if a report, list, schedule, or survey is prepared by or for a State or political subdivision thereof under this subsection, such report, list, schedule, or survey shall not be admitted as evidence or used in any suit or action for damages arising out of any matter mentioned in such report, list, schedule, or survey.

(2) No State may receive a grant under this subsection in more than two fiscal years.

(3) The amount of the grant to any State under this subsection for the first fiscal year such State is eligible for a grant under this subsection shall equal 10 per centum of the amount apportioned to such State for fiscal year 1985 under this section. The amount of a grant to any State under this subsection for the second fiscal year such State is eligible for a grant under this subsection shall equal 10 per centum of the amount apportioned to such State for fiscal year 1986 under this section.

(4) A State is eligible for a grant under this subsection if—

(A) it certifies to the Secretary that it has in operation a computerized traffic safety recordkeeping system and identifies proposed means of upgrading the system acceptable to the Secretary; or

(B) it provides to the Secretary a plan acceptable to the Secretary for establishing and maintaining a computerized traffic safety recordkeeping system.

(5) The Secretary, after making the deduction authorized by the second sentence of subsection (c) of this section for fiscal years 1985 and 1986, shall set aside 10 per centum of the remaining funds authorized to be appropriated to carry out this section for the purpose of making grants under this subsection. Funds set aside under this subsection shall remain available for the fiscal year authorized and for the succeeding fiscal year and any amounts remaining unexpended at the end of such period shall be apportioned in accordance with the provisions of subsection (c) of this section.

(l) LIMITATION RELATING TO POLICE CHASE TRAINING.—No State may receive any funds available for fiscal years after fiscal year 2004 for programs under this chapter until the State submits to the Secretary a written statement that the State has actively encouraged all relevant law enforcement agencies in that State to follow the guidelines established for police chases issued by the International Association of Chiefs of Police that are in effect on the date on enactment of the Highway Safety Grant Program Reauthorization Act of 2003.

(m) CONSOLIDATION OF GRANT APPLICATIONS.—The Secretary shall establish an approval process by which a State may apply for all grants included under this chapter through a single application with a single annual deadline. The Bureau of Indian Affairs shall establish a similarly simplified process for applications from Indian tribes.

[§ 403. Highway safety research and development

[(a) AUTHORITY OF THE SECRETARY.—

[(1) IN GENERAL.—The Secretary is authorized to use funds appropriated to carry out this section to engage in research on all phases of highway safety and traffic conditions.

[(2) ADDITIONAL AUTHORITY.—In addition, the Secretary may use the funds appropriated to carry out this section, either independently or in cooperation with other Federal departments or agencies, for—

[(A) training or education of highway safety personnel, including training in work zone safety management,

[(B) research fellowships in highway safety,

[(C) development of improved accident investigation procedures,

[(D) emergency service plans,

[(E) demonstration projects, and

[(F) related research and development activities which the Secretary deems will promote the purposes of this section.

[(3) SAFETY DEFINED.—As used in this section, the term "safety" includes highway safety and highway safety-related research and development, including research and development relating to highway and driver characteristics, crash investigations, communications, emergency medical care, and transportation of the injured.

[(b) DRUGS AND DRIVER BEHAVIOR.—In addition to the research authorized by subsection (a), the Secretary, in consultation with other Government and private agencies as may be necessary, is authorized to carry out safety research on the following:

[(1) The relationship between the consumption and use of drugs and their effect upon highway safety and drivers of motor vehicles.

[(2) Driver behavior research, including the characteristics of driver performance, the relationships of mental and physical abilities or disabilities to the driving task, and the relationship of frequency of driver crash involvement to highway safety.

[(3) Measures that may deter drugged driving.

[(4) Programs to train law enforcement officers on motor vehicle pursuits conducted by the officers.

[(c) The research authorized by subsections (a) and (b) of this section may be conducted by the Secretary through grants and contracts with public and private agencies, institutions, and individuals.

[(d) The Secretary may, where he deems it to be in furtherance of the purposes of section 402 of this title, vest in State or local agencies, on such terms and conditions as he deems appropriate, title to equipment purchased for demonstration projects with funds authorized by this section.

[(e) In addition to the research authorized by subsection (a) of this section, the Secretary shall, either independently or in cooperation with other Federal departments or agencies, conduct research into, and make grants to or contracts with State or local agencies, institutions, and individuals for projects to demonstrate the administrative adjudication of traffic infractions. Such administrative adjudication demonstration projects shall be designed to improve highway safety by developing fair, efficient, and effective processes and procedures for traffic infraction adjudication, utilizing appropriate punishment, training, and rehabilitative measures for traffic offenders. The Secretary shall report to Congress by July 1, 1975, and each year thereafter during the continuance of the program, on the research and demonstration projects authorized by this subsection, and shall include in such report a comparison of the fairness, efficiency, and effectiveness of administrative adjudication of traffic infractions with other methods of handling such infractions.

[(f) COLLABORATIVE RESEARCH AND DEVELOPMENT.

[(1) IN GENERAL.—For the purpose of encouraging innovative solutions to highway safety problems, stimulating voluntary improvements in highway safety, and stimulating the marketing of new highway safety-related technology by private industry, the Secretary is authorized to undertake, on a cost-shared basis, collaborative research and development with non-Federal entities, including State and local governments, colleges, and universities and corporations, partnerships, sole proprietorships, and trade associations that are incorporated or established under the laws of any State or the United States. This collaborative research may include crash data collection and analysis; driver and pedestrian behavior; and demonstrations of technology.

[(2) COOPERATIVE AGREEMENTS.—In carrying out this subsection, the Secretary may enter into cooperative research and development agreements, as defined in section 12 of the Stevenson-Wydler Technology Innovation Act of 1980. (15 U.S.C. 3710a); except that in entering into such agreements, the Secretary may agree to provide not more than 50 percent of the cost of any research or development project selected by the Secretary under this subsection.

[(3) PROJECT SELECTION.—In selecting projects to be conducted under this subsection, the Secretary shall establish a procedure to consider the views of experts and the public concerning the project areas.

[(4) APPLICABILITY OF STEVENSON-WYDLER TECHNOLOGY INNOVATION ACT.—The research, development, or utilization of any technology pursuant to an agreement under the provisions

of this subsection, including the terms under which technology may be licensed and the resulting royalties may be distributed, shall be subject to the provisions of the Stevenson-Wydler Technology Innovation Act of 1980.]

§ 403. Highway safety research and development

(a) AUTHORITY OF THE SECRETARY.—The Secretary is authorized to use funds appropriated to carry out this section to—

(1) conduct research on all phases of highway safety and traffic conditions, including accident causation, highway or driver characteristics, communications, and emergency care;

(2) conduct ongoing research into driver behavior and its effect on traffic safety;

(3) conduct research on, and launch initiatives to counter, fatigued driving by drivers of passenger motor vehicles and distracted driving in such vehicles, including the effect that the use of electronic devices and other factors deemed relevant by the Secretary have on driving;

(4) conduct training or education programs in cooperation with other Federal departments and agencies, States, private sector persons, highway safety personnel, and law enforcement personnel;

(5) conduct research on, and evaluate the effectiveness of, traffic safety countermeasures, including seat belts and impaired driving initiatives; and

(6) conduct demonstration projects.

(b) SPECIFIC RESEARCH PROGRAMS.—

(1) REQUIRED PROGRAMS.—The Secretary shall conduct research on the following:

(A) EFFECTS OF USE OF CONTROLLED SUBSTANCES.—A study on the effects of the use of controlled substances on driver behavior to determine—

(i) methodologies for measuring driver impairment resulting from use of the most common controlled substances (including the use of such substances in combination with alcohol); and

(ii) effective and efficient methods for training law enforcement personnel to detect or measure the level of impairment of a driver who is under the influence of a controlled substance by the use of technology or otherwise.

(B) ON-SCENE MOTOR VEHICLE COLLISION CAUSATION.—A nationally representative study to collect on-scene motor vehicle collision data, and to determine crash causation, for which the Secretary shall enter into a contract with the National Academy of Sciences to conduct a review of the research, design, methodology, and implementation of the study.

(C) TOLL FACILITIES WORKPLACE SAFETY.—A study on the safety of highway toll collection facilities, including toll booths, to determine the safety of highway toll collection facilities for the toll collectors who work in and around such facilities, including consideration of—

(i) any problems resulting from design or construction of facilities that contribute to the occurrence of vehicle collisions with the facilities;

(ii) the safety of crosswalks used by toll collectors in transit to and from toll booths;

(iii) the extent of the enforcement of speed limits at and in the vicinity of toll facilities;

(iv) the use of warning devices, such as vibration and rumble strips, to alert drivers approaching toll facilities;

(v) the use of cameras to record traffic violations in the vicinity of toll facilities;

(vi) the use of traffic control arms in the vicinity of toll facilities;

(vii) law enforcement practices and jurisdictional issues that affect safety at and in the vicinity of toll facilities; and

(viii) data (which shall be collected in conducting the research) regarding the incidence of accidents and injuries at and around toll booth facilities.

(2) TIME FOR COMPLETION OF STUDIES.—The studies conducted in subparagraphs (A), (B), and (C) of paragraph (1) may be conducted in concert with other Federal departments and agencies with relevant expertise. The Secretary shall submit an annual report to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure on the progress of each study conducted under this subsection.

(3) ONGOING STUDIES.—The studies under subparagraphs (A) and (B) of paragraph (1) shall be conducted on an ongoing basis.

(4) REPORTS.—

(A) ONE-TIME STUDY.—Not later than 2 years after the date of enactment of the Highway Safety Grant Program Reauthorization Act of 2003, the Secretary shall submit a final report on the study referred to in paragraph (1)(C) to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives.

(B) ONGOING STUDIES.—The Secretary shall submit a report on the studies referred to in paragraph (3) to the Committees of Congress referred to in subparagraph (A) not later than September 30, 2005, and shall submit additional reports on such studies to such committees each year thereafter until September 30, 2009.

(c) NATIONWIDE TRAFFIC SAFETY CAMPAIGNS.—

(1) REQUIREMENT FOR CAMPAIGNS.—The Administrator of the National Highway Traffic Safety Administration shall establish and administer a program under which 3 high-visibility traffic safety law enforcement campaigns will be carried out for the purposes specified in paragraph (2) in each of years 2004 through 2009.

(2) PURPOSE.—The purpose of each law enforcement campaign is to achieve either or both of the following objectives:

(A) Reduce alcohol-impaired or drug-impaired operation of motor vehicles.

(B) Increase use of seat belts by occupants of motor vehicles.

(3) ADVERTISING.—The Administrator may use, or authorize the use of, funds available under this section to pay for the development, production, and use of broadcast and print media advertising in carrying out traffic safety law enforcement campaigns under this subsection. Consideration shall be given to advertising directed at non-English speaking populations, including those who listen, read, or watch nontraditional media.

(4) COORDINATION WITH STATES.—The Administrator shall coordinate with the States in carrying out the traffic safety law enforcement campaigns under this subsection, including advertising funded under paragraph (3), with a view to—

(A) relying on States to provide most of the law enforcement resources for the campaigns out of funding available under this section and section 405 and 410 of this title; and

(B) providing out of National Highway Traffic Safety Administration resources most of the means necessary for national advertising and education efforts associated with the law enforcement campaigns.

(5) FUNDING.—The Secretary shall use $24,000,000 in each of fiscal years 2004 through 2009 for advertising and educational initiatives to be carried out nationwide in support of the campaigns under this section, as well as for the annual evaluation conducted under this section.

(d) IMPROVING OLDER DRIVER SAFETY.—

(1) IN GENERAL.—Of the funds made available under this section, the Secretary shall allocate $2,000,000 in each of fiscal years 2004 through 2009 to conduct a comprehensive research and demonstration program to improve traffic safety pertaining to older drivers. The program shall—

(A) provide information and guidelines to assist physicians and other related medical personnel, families, licensing agencies, enforcement officers, and various public and transit agencies in enhancing the safety and mobility of older drivers;

(B) improve the scientific basis of medical standards and screenings strategies used in the licensing of all drivers in a non-discriminatory manner;

(C) conduct field tests to assess the safety benefits and mobility impacts of different driver licensing strategies and driver assessment and rehabilitation methods;

(D) assess the value and improve the safety potential of driver retraining courses of particular benefit to older drivers; and

(E) conduct other activities to accomplish the objectives of this action.

(2) FORMULATION OF PLAN.—After consultation with affected parties, the Secretary shall formulate an older driver traffic safety plan to guide the design and implementation of this program. The plan shall be submitted to the House Committee on Transportation and Infrastructure and the Senate Committee on Commerce, Science, and Transportation.

(f) POLICE CHASE TRAINING.—

(1) REQUIREMENT FOR PROGRAM.—The Administrator of the National Highway Traffic Safety Administration shall carry out a program to train law enforcement personnel of each State and political subdivision thereof in police chase techniques that are consistent with the police chase guidelines issued by the International Association of Chiefs of Police.

(2) AMOUNT FOR PROGRAM.—Of the amount available for a fiscal year to carry out this section, $200,000 shall be available for carrying out this subsection.

(g) INTERNATIONAL COOPERATION.—

(1) AUTHORITY.—The Administrator of the National Highway Traffic Safety Administration may participate and cooperate in international activities to enhance highway safety.

(2) AMOUNT FOR ACTIVITIES.—Of the amount available for a fiscal year to carry out this section, $200,000 may be used for activities authorized under paragraph (1).

§ 404. National Highway Safety Advisory Committee

(a)(1) There is established in the Department of Transportation a National Highway Safety Advisory Committee, composed of the Secretary or an officer of the Department appointed by him, the Federal Highway Administrator, the National Highway Traffic Safety Administrator, and thirty-five members appointed by the President, no more than four of whom shall be Federal officers or employees. The Secretary shall select the Chairman of the Committee from among the Committee members. The appointed members, having due regard for the purposes of this chapter, shall be selected from among representatives of various State and local governments, including State legislatures, of public and private interests contributing to, affected by, or concerned with highway safety, including the national organizations of passenger car, bus, and truck owners, and of other public and private agencies, organizations, or groups demonstrating an active interest in highway safety, as well as research scientists and other individuals who are expert in this field.

(2)(A) Each member appointed by the President shall hold office for a term of three years, except that (i) any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term, and (ii) the terms of office of members first taking office after the date of enactment of this section shall expire as follows: Twelve at the end of one year after the date such committee members are appointed by the President, twelve at the end of two years after the date such committee members are appointed by the President, and eleven at the end of three years after the date such committee members are appointed, as designated by the President at the time of appointment, and (iii) the term of any member shall be extended until the date on which the successor's appointment is effective. None of the members appointed by the President who has served a three-year term, other than Federal officers or employees, shall be eligible for reappointment within one year following the end of his preceding term.

(B) Members of the Committee who are not officers or employees of the United States shall, while attending meetings or conferences

of such Committee or otherwise engaged in the business of such Committee, be entitled to receive compensation at a rate fixed by the Secretary, but not exceeding $100 per diem, including travel-time, and while away from their homes or regular places of business they may be allowed travel expenses, including per diem in lieu of subsistence, as authorized in section 5 of the Administrative Expenses Act of 1946 (5 U.S.C. 73b-2) for persons in the Government service employed intermittently. Payments under this section shall not render members of the Committee employees or officials of the United States for any purpose.

(b) The National Highway Safety Advisory Committee shall advise, consult with, and make recommendations to, the Secretary on matters relating to the activities and functions of the Department in the field of highway safety. The Committee is authorized (1) to review research projects or programs submitted to or recommended by it in the field of highway safety and recommended to the Secretary, for prosecution under this title, any such projects which it believes show promise of making valuable contributions to human knowledge with respect to the cause and prevention of highway accidents; and (2) to review, prior to issuance, standards proposed to be issued by order of the Secretary under the provisions of section 402(a) of this title and to make recommendations thereon. Such recommendations shall be published in connection with the Secretary's determination or order.

(c) The National Highway Safety Advisory Committee shall meet from time to time as the Secretary shall direct, but at least once each year.

(d) The Secretary shall provide to the National Highway Safety Committee from among the personnel and facilities of the Department of [Commerce] *Transportation* such staff and facilities as are necessary to carry out the functions of such Committee.

§ 405. Occupant protection incentive grants

(a) GENERAL AUTHORITY.—

(1) AUTHORITY TO MAKE GRANTS.—Subject to the requirements of this section, the Secretary shall make grants under this section to States that adopt and implement effective programs to reduce highway deaths and injuries resulting from individuals riding unrestrained or improperly restrained in motor vehicles. [Such grants may be used by recipient States only to implement and enforce, as appropriate, such programs.]

(2) MAINTENANCE OF EFFORT.—No grant may be made to a State under this section in any fiscal year unless the State enters into such agreements with the Secretary as the Secretary may require to ensure that the State will maintain its aggregate expenditures from all other sources for programs described in paragraph (1) at or above the average level of such expenditures in its 2 fiscal years preceding the date of enactment of the [Transportation Equity Act for the 21st Century.] *Highway Safety Grant Program Reauthorization Act of 2003.*

[(3) MAXIMUM PERIOD OF ELIGIBILITY.—No State may receive grants under this section in more than 6 fiscal years beginning after September 30, 1997.

[(4) FEDERAL SHARE.—The Federal share of the cost of implementing and enforcing, as appropriate, in a fiscal year a program adopted by a State pursuant to paragraph (1) shall not exceed—

[(A) in each of the first and second fiscal years in which the State receives a grant under this section, 75 percent;

[(B) in each of the third and fourth fiscal years in which the State receives a grant under this section, 50 percent; and

[(C) in each of the fifth and sixth fiscal years in which the State receives a grant under this section, 25 percent.

[(b) Grant eligibility.—A State shall become eligible for a grant under this section by adopting or demonstrating to the satisfaction of the Secretary at least 4 of the following:

[(1) SAFETY BELT USE LAW.—The State has in effect a safety belt use law that makes unlawful throughout the State the operation of a passenger motor vehicle whenever an individual (other than a child who is secured in a child restraint system) in the front seat of the vehicle (and, beginning in fiscal year 2001, in any seat in the vehicle) does not have a safety belt properly secured about the individual's body.

[(2) PRIMARY SAFETY BELT USE LAW.—The State provides for primary enforcement of the safety belt use law of the State.

[(3) MINIMUM FINE OR PENALTY POINTS.—The State imposes a minimum fine or provides for the imposition of penalty points against the driver's license of an individual—

[(A) for a violation of the safety belt use law of the State; and

[(B) for a violation of the child passenger protection law of the State.

[(4) SPECIAL TRAFFIC ENFORCEMENT PROGRAM.—The State has implemented a statewide special traffic enforcement program for occupant protection that emphasizes publicity for the program.

[(5) CHILD PASSENGER PROTECTION EDUCATION PROGRAM.—The State has implemented a statewide comprehensive child passenger protection education program that includes education programs about proper seating positions for children in air bag equipped motor vehicles and instruction on how to reduce the improper use of child restraint systems.

[(6) CHILD PASSENGER PROTECTION LAW.—The State has in effect a law that requires minors who are riding in a passenger motor vehicle to be properly secured in a child safety seat or other appropriate restraint system.

[(c) GRANT AMOUNTS.—The amount of a grant for which a State qualifies under this section for a fiscal year shall equal up to 25 percent of the amount apportioned to the State for fiscal year 1997 under section 402.

[(d) ADMINISTRATIVE EXPENSES.—Funds authorized to be appropriated to carry out this section in a fiscal year shall be subject to a deduction not to exceed 5 percent for the necessary costs of administering the provisions of this section.

[(e) APPLICABILITY OF CHAPTER 1.—The provisions contained in section 402(d) shall apply to this section.]

(b) OCCUPANT PROTECTION GRANTS.—

(1) IN GENERAL.—In addition to the grants authorized by subsection (a), the Secretary shall make grants in accordance with this subsection.

(2) SAFETY BELT PERFORMANCE GRANTS.—

(A) PRIMARY SAFETY BELT USE LAW.—

(i) For fiscal years 2004 and 2005, the Secretary shall make a grant to each State that enacted, and is enforcing, a primary safety belt use law for all passenger motor vehicles that became effective by December 31, 2002.

(ii) For each of fiscal years 2004 through 2009, the Secretary shall, after making grants under clause (i) of this subparagraph, make a one-time grant to each State that either enacts for the first time after December 31, 2002, and has in effect a primary safety belt use law for all passenger motor vehicles, or, in the case of a State that does not have such a primary safety belt use law, has a State safety belt use rate in the preceding fiscal year of at least 90 percent, as measured under criteria determined by the Secretary.

(iii) Of the funds authorized for grants under this subsection, $100,000,000 in each of fiscal years 2004 through 2009 shall be available for grants under this paragraph. The amount of a grant available to a State in each of fiscal years 2004 and 2005 under clause (i) of this subparagraph shall be equal to ½ of the amount of funds apportioned to the State under section 402(c) for fiscal year 2003. The amount of a grant available to a State in fiscal year 2004 or in a subsequent fiscal year under clause (ii) of this subparagraph shall be equal to 5 times the amount apportioned to the State for fiscal year 2003 under section 402(c). The Federal share payable for grants under this subparagraph shall be 100 percent. If the total amount of grants under clause (ii) of this subparagraph for a fiscal year exceeds the amount of funds available in the fiscal year, grants shall be made to each eligible State, in the order in which its primary safety belt use law became effective or its safety belt use rate reached 90 percent, until the funds for the fiscal year are exhausted. A State that does not receive a grant for which it is eligible in a fiscal year shall receive the grant in the succeeding fiscal year so long as its law remains in effect or its safety belt use rate remains at or above 90 percent. If the total amount of grants under this subparagraph for a fiscal year is less than the amount available in the fiscal year, the Secretary shall use any funds that exceed the total amount for grants under subparagraph (B) of this paragraph.

(B) SAFETY BELT USE RATE.—

(i) For each year from 2004 through 2009, the funds authorized for grant under this subparagraph shall be awarded to States that increase their measured seat belt use rate by—

(I) 3 percentage points above the State's average of the 2 previous years; or

(II) by the following percentage points for each fiscal year compared to the average use rates for fiscal years 2001 and 2002:

(aa) For 2004, 3 percentage points by the end of fiscal year 2004.

(bb) For 2005, 6 percentage points by the end of fiscal year 2005.

(cc) For 2006, 9 percentage points by the end of fiscal year 2006.

(dd) For 2007, 12 percentage points by the end of fiscal year 2007.

(ee) For 2008, 15 percentage points by the end of fiscal year 2008.

(ff) For 2009, 18 percentage points by the end of fiscal year 2009.

(ii) Each State that fulfills the requirement of subclause (I) or (II) of clause (i) of this subparagraph shall be apportioned an amount of funds that is equal to the amount available under this subparagraph for the relevant fiscal year multiplied by a ratio determined by dividing—

(I) the amount of funds appropriated to that State under the section 402 program for that fiscal year, by

(II) the total amount of funds appropriated to all States that fulfill the requirements of either subclause (I) or (II) of clause (i) of this subparagraph under section 402 for that fiscal year.

In each year, for each additional percentage point increase in safety belt use above the State's percentage point increase under clause (i), the amount allocated to each State under the previous sentence shall increase by 1/3 of such amount. The apportionment of funds to all States under this clause shall reflect such increase so that the total apportionment of funds under this clause does not exceed the total funds available for that year.

(iii) Of the funds authorized for grants under this subsection, $20,000,000 for fiscal year 2004, $22,000,000 for fiscal year 2005, $24,000,000 for fiscal year 2006, $26,000,000 for fiscal year 2007, $28,000,000 for fiscal year 2008, and $30,000,000 for fiscal year 2009 shall be available for safety belt use rate grants under this subparagraph.

(iv) The Federal share payable for grants under this subparagraph shall be 100 percent.

(c) USE OF GRANTS.—A State allocated an amount for a grant under subsection (b)(2)(A) of this subsection shall use the amount for activities eligible for assistance under this section, except that it may use up to 50 percent of the amount for activities eligible under section 150 of this title and consistent with the State's strategic highway safety plan under section 151 of this title that are not otherwise eligible for assistance under this section. A State allocated an

amount for a grant under subsection (b)(2)(A) of this subsection may use the amount for activities eligible for assistance under this section or for activities eligible under section 150 of this title and consistent with the State's strategic highway safety plan under section 151 of this title that are not otherwise eligible for assistance under this section. A State allocated an amount for a grant under subsection (b)(2)(B) of this section, including any amount transferred under subsection (b)(2)(A) of this section, shall use the amount for safety belt use programs eligible for assistance under subsection (b), except that it may use up to 50 percent of the amount for activities eligible under section 150 of this title and consistent with the State's strategic highway safety plan under section 151 of this title that are not otherwise eligible for assistance under this section.

[(f)**]** *(d)* DEFINITIONS.—In this section, the following definitions apply:

[(1) CHILD SAFETY SEAT.—The term "child safety seat" means any device (except safety belts) designed for use in a motor vehicle to restrain, seat, or position a child who weighs 50 pounds or less.**]**

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

[(3) MULTIPURPOSE PASSENGER VEHICLE.—The term "multipurpose passenger vehicle" means a motor vehicle with motive power (except a trailer), designed to carry not more than 10 individuals, that is constructed either on a truck chassis or with special features for occasional off-road operation.

[(4) PASSENGER CAR.—The term "passenger car" means a motor vehicle with motive power (except a multipurpose passenger vehicle, motorcycle, or trailer) designed to carry not more than 10 individuals.**]**

[(5)**]** *(2)* PASSENGER MOTOR VEHICLE.—The term "passenger motor vehicle" means a passenger car or a multipurpose passenger motor vehicle.

[(6)**]** *(3)* SAFETY BELT.—The term "safety belt" means—

(A) with respect to open-body passenger vehicles, including convertibles, an occupant restraint system consisting of a lap belt or a lap belt and a detachable shoulder belt; and

(B) with respect to other passenger vehicles, an occupant restraint system consisting of integrated lap and shoulder belts.

§ 406. School bus driver training

(a) The Secretary is authorized to make grants to the States for the purpose of carrying out State programs approved by him of driver education and training for persons driving school buses.

(b) A State program under this section shall be approved by the Secretary if such program—

(1) provides for the establishment and enforcement of qualifications for persons driving school buses;

(2) provides for initial education and training and for refresher courses;

(3) provides for periodic reports to the Secretary on the results of such program; and

(4) includes persons driving publicly operated, and persons driving privately operated, school buses.

(c) [Not less than $7,500,000 of the sums authorized to carry out section 402 of this title for fiscal year 1976 shall be obligated to carry out this section. Not less than $7,000,000 of the sums authorized to carry out section 402 of this title for each of the fiscal years 1977 and 1978 shall be obligated to carry out this section. All sums authorized to carry out this section shall be apportioned among the States in accordance with the formula established under subsection (c) of section 402 of this title, and shall be available for obligation in the same manner and to the same extent as if such funds were apportioned under such subsection (c).] The Federal share payable on account of any project to carry out a program under this section shall not exceed 75 per centum of the cost of the project.

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§ 407A. Federal coordination and enhanced support of emergency medical services

(a) FEDERAL INTERAGENCY COMMITTEE ON EMERGENCY MEDICAL SERVICES.—

(1) ESTABLISHMENT.—The Secretary of Transportation and the Secretary of Homeland Security, jointly acting through the Under Secretary of Transportation for Emergency Preparedness and Response, shall establish a Federal Interagency Committee on Emergency Medical Services. In establishing the Interagency Committee, the Under Secretary shall consult with the Secretary of Health and Human Services.

(2) MEMBERSHIP.—The Interagency Committee shall consist of the following officials, or their designees:

(A) The Administrator, National Highway Traffic Safety Administration.

(B) The Director, Preparedness Division, Emergency Preparedness and Response Directorate, Department of Homeland Security.

(C) The Administrator, Health Resources and Services Administration, Department of Health and Human Services.

(D) The Director, Centers for Disease Control and Prevention, Department of Health and Human Services.

(E) The Administrator, United States Fire Administration, Emergency Preparedness and Response Directorate, Department of Homeland Security.

(F) The Director, Center for Medicare and Medicaid Services, Department of Health and Human Services.

(G) The Undersecretary of Defense for Personnel and Readiness.

(H) The Assistant Secretary for Public Health Emergency Preparedness, Department of Health and Human Services.

(I) The Director, Indian Health Service, Department of Health and Human Services.

(J) The Chief, Wireless Telecom Bureau, Federal Communications Commission.

(K) A representative of any other Federal agency identified by the Secretary of Transportation or the Secretary of Homeland Security through the Under Secretary for Emergency Preparedness and Response, in consultation with the Secretary of Health and Human Services, as having a significant role in relation to the purposes of the Interagency Committee.

(3) PURPOSES.—The purposes of the Interagency Committee are as follows:

(A) To ensure coordination among the Federal agencies involved with State, local, tribal, or regional emergency medical services and 9–1–1 systems.

(B) To identify State, local, tribal, or regional emergency medical services and 9–1–1 needs.

(C) To recommend new or expanded programs, including grant programs, for improving State, local, tribal, or regional emergency medical services and implementing improved emergency medical services communications technologies, including wireless 9–1–1.

(D) To identify ways to streamline the process through which Federal agencies support State, local, tribal or regional emergency medical services.

(E) To assist State, local, tribal or regional emergency medical services in setting priorities based on identified needs.

(F) To advise, consult, and make recommendations on matters relating to the implementation of the coordinated State emergency medical services programs.

(4) ADMINISTRATION.—The Administrator of the National Highway Traffic Safety Administration, in cooperation with the Director, Preparedness Division, Emergency Preparedness and Response Directorate, Department of Homeland Security, shall provide administrative support to the Interagency Committee, including scheduling meetings, setting agendas, keeping minutes and records, and producing reports.

(5) LEADERSHIP.—The members of the Interagency Committee shall select a chairperson of the Committee annually.

(6) MEETINGS.—The Interagency Committee shall meet as frequently as is determined necessary by the chairperson of the Committee.

(7) ANNUAL REPORTS.—The Interagency Committee shall prepare an annual report to Congress on the Committee's activities, actions, and recommendations.

(b) COORDINATED NATIONWIDE EMERGENCY MEDICAL SERVICES PROGRAM.—

(1) PROGRAM REQUIREMENT.—The Secretary of Transportation, acting through the Administrator of the National Highway Traffic Safety Administration, shall coordinate with officials of other Federal departments and agencies, and may assist State and local governments and emergency medical services organizations (whether or not a firefighter organization), private industry, and other interested parties, to ensure the development and implementation of a coordinated nationwide emergency medical services program that is designed to strengthen transportation safety and public health and to implement im-

proved emergency medical services communication systems, including 9–1–1.

(2) COORDINATED STATE EMERGENCY MEDICAL SERVICES PROGRAM.—Each State shall establish a program, to be approved by the Secretary, to coordinate the emergency medical services and resources deployed throughout the State, so as to ensure—

(A) improved emergency medical services communication systems, including 9–1–1;

(B) utilization of established best practices in system design and operations;

(C) implementation of quality assurance programs; and

(D) incorporation of data collection and analysis programs that facilitate system development and data linkages with other systems and programs useful to emergency medical services.

(3) ADMINISTRATION OF STATE PROGRAMS.—The Secretary may not approve a coordinated State emergency medical services program under this subsection unless the program—

(A) provides that the Governor of the State is responsible for its administration through a State office of emergency medical services that has adequate powers and is suitably equipped and organized to carry out such program and coordinates such program with the highway safety office of the State; and

(B) authorizes political subdivisions of the State to participate in and receive funds under such program, consistent with a goal of achieving statewide coordination of emergency medical services and 9–1–1 activities.

(4) FUNDING.—

(A) USE OF FUNDS.—Funds authorized to be appropriated to carry out this subsection shall be used to aid the States in conducting coordinated emergency medical services and 9–1–1 programs as described in paragraph (2).

(B) ADMINISTRATIVE EXPENSES.—The total amount of the funds authorized to be appropriated for a fiscal year to carry out this subsection shall be subject to a deduction of an amount not in excess of 5 percent for the necessary costs of administering the provisions of this subsection.

(C) APPORTIONMENT.—

(i) APPORTIONMENT FORMULA.—The funds remaining after deduction of the amount under subparagraph (B) shall be apportioned as follows: 75 percent in the ratio that the population of each State bears to the total population of all the States, as shown by the latest available Federal census, and 25 percent in the ratio that the public road mileage in each State bears to the total public road mileage in all States. For the purpose of this subparagraph, a "public road" means any road under the jurisdiction of and maintained by a public authority and open to public travel. Public road mileage as used in this subsection shall be determined as of the end of the calendar year prior to the year in which the funds are apportioned and shall be certified by the Governor of the State and subject to approval by the Secretary.

(ii) MINIMUM APPORTIONMENT.—The annual apportionment to each State shall not be less than ½ of 1 percent of the total apportionment, except that the apportionment to the Secretary of the Interior on behalf of Indian tribes shall not be less than ¾ of 1 percent of the total apportionment, and the apportionments to the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands shall not be less than ¼ of 1 percent of the total apportionment.

(5) APPLICABILITY OF CHAPTER 1.—Section 402(d) of this title shall apply in the administration of this subsection.

(6) FEDERAL SHARE.—The Federal share of the cost of a project or program funded under this subsection shall be 80 percent.

(7) APPLICATION IN INDIAN COUNTRY.—

(A) USE OF TERMS.—For the purpose of application of this subsection in Indian country, the terms "State" and "Governor of the State" include the Secretary of the Interior and the term "political subdivisions of the State" includes an Indian tribe.

(B) INDIAN COUNTRY DEFINED.—In this subsection, the term "Indian country" means—

(i) all land within the limits of any Indian reservation under the jurisdiction of the United States, notwithstanding the issuance of any patent and including rights-of-way running through the reservation;

(ii) all dependent Indian communities within the borders of the United States, whether within the original or subsequently acquired territory thereof and whether within or without the limits of a State; and

(iii) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through such allotments.

(c) STATE DEFINED.—In this section, the term "State" means each of the 50 States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Secretary of the Interior on behalf of Indian tribes.

(d) CONSTRUCTION WITH RESPECT TO DISTRICT OF COLUMBIA.—In the administration of this section with respect to the District of Columbia, a reference in this section to the Governor of a State shall refer to the Mayor of the District of Columbia.

[§ 408. Alcohol traffic safety programs

[(a) Subject to the provisions of this section, the Secretary shall make grants to those States which adopt and implement effective programs to reduce traffic safety problems resulting from persons driving while under the influence of alcohol or a controlled substance. Such grants may only be used by recipient States to implement and enforce such programs.

[(b) No grant may be made to a State under this section in any fiscal year unless such State enters into such agreements with the Secretary as the Secretary may require to ensure that such State will maintain its aggregate expenditures from all other sources for

alcohol traffic safety programs at or above the average level of such expenditures in its two fiscal years preceding the date of enactment of this section.

[(c) No State may receive grants under this section in more than 5 fiscal years. The Federal share payable for any grant under this section shall not exceed—

[(1) in the first fiscal year the State receives a grant under this section, 75 per centum of the cost of implementing and enforcing in such fiscal year the alcohol traffic safety program adopted by the State pursuant to subsection (a);

[(2) in the second fiscal year the State receives a grant under this section, 50 per centum of the cost of implementing and enforcing in such fiscal year such program; and

[(3) in the third, fourth, and fifth fiscal years the State receives a grant under this section, 25 per centum of the cost of implementing and enforcing in such fiscal year such program.

[(d)(1) Subject to subsection (c), the amount of a basic grant made under this section for any fiscal year to any State which is eligible for such a grant under subsection (e)(1) shall equal 30 per centum of the amount apportioned to such State for fiscal year 1983 under section 402 of this title.

[(2) Subject to subsection (c), the amount of a supplemental grant made under this section for any fiscal year to any State which is eligible for such a grant under subsection (e)(2) shall not exceed 20 per centum of the amount apportioned to such State for fiscal year 1983 under section 402 of this title. Such supplemental grant shall be in addition to any basic grant received by such State.

[(3) Subject to subsection (c), the amount of a special grant made under this section for any fiscal year to any State which is eligible for such a grant under subsection (e)(3) shall not exceed 5 per centum of the amount apportioned to such State for fiscal year 1984 under sections 402 and 408 of this title. Such grant shall be in addition to any basic or supplemental grant received by such State.

[(e)(1) For purposes of this section, a State is eligible for a basic grant if such State provides—

[(A) for the prompt suspension, for a period not less than ninety days in the case of a first offender and not less than one year in the case of any repeat offender, of the driver's license of any individual who a law enforcement officer has probable cause under State law to believe has committed an alcohol-related traffic offense, and (i) to whom is administered one or more chemical tests to determine whether the individual was intoxicated while operating the motor vehicle and who is determined, as a result of such tests, to be intoxicated, or (ii) who refuses to submit to such a test as proposed by the officer;

[(B) for a mandatory sentence, which shall not be subject to suspension or probation, of (i) imprisonment for not less than forty-eight consecutive hours, or (ii) not less than ten days of community service, of any person convicted of driving while intoxicated more than once in any five-year period;

[(C) that any person with a blood alcohol concentration of 0.10 percent or greater when driving a motor vehicle shall be deemed to be driving while intoxicated; and

[(D) for increased efforts or resources dedicated to the enforcement of alcohol-related traffic laws and increased efforts to inform the public of such enforcement.

[(2) For purposes of this section, a State is eligible for a supplemental grant if such State is eligible for a basic grant and in addition provides for some or all of the criteria established by the Secretary under subsection (f).

[(3) For the purposes of this section, a State is eligible for a special grant if the State enacts a statute which provides that—

[(A) any person convicted of a first violation of driving under the influence of alcohol shall receive—

[(i) a mandatory license suspension for a period of not less than ninety days; and either

[(ii)(I) an assignment of one hundred hours of community service; or

[(II) a minimum sentence of imprisonment for forty-eight consecutive hours;

[(B) any person convicted of a second violation of driving under the influence of alcohol within five years after a conviction for the same offense, shall receive a mandatory minimum sentence of imprisonment for ten days and license revocation for not less than one year;

[(C) any person convicted of a third or subsequent violation of driving under the influence of alcohol within five years after a prior conviction for the same offense shall—

[(i) receive a mandatory minimum sentence of imprisonment for one hundred and twenty days; and

[(ii) have his license revoked for not less than three years; and

[(D) any person convicted of driving with a suspended or revoked license or in violation of a restriction due to driving under the influence of alcohol conviction shall receive a mandatory sentence of imprisonment for at least thirty days, and shall upon release from imprisonment, receive an additional period of license suspension or revocation of not less than the period of suspension or revocation remaining in effect at the time of commission of the offense of driving with a suspended or revoked license.

[(f) The Secretary shall, by rule, establish criteria for effective programs to reduce traffic safety problems resulting from persons driving while under the influence of alcohol, which criteria shall be in addition to those required for a basic grant under subsection (e)(1). The Secretary shall establish such criteria in cooperation with the States and political subdivisions thereof, appropriate Federal departments and agencies, and such other public and nonprofit organizations as the Secretary may deem appropriate. Such criteria may include, but need not be limited to, requirements—

[(1) for the establishment and maintenance of a statewide driver recordkeeping system from which repeat offenders may be identified and which is accessible in a prompt and timely manner to the courts and to the public;

[(2) for the creation and operation of rehabilitation and treatment programs for those arrested and convicted of driving while intoxicated;

[(3) for the impoundment of any vehicle operated on a State road by any individual whose driver's license is suspended or revoked for an alcohol-related driving offense;

[(4) for the establishment in each major political subdivision of a State of locally coordinated alcohol traffic safety programs which are administered by local officials and are financially self-sufficient;

[(5) for the grant of presentence screening authority to the courts;

[(6) for the setting of the minimum drinking age in such State at twenty-one years of age;

[(7) for the consideration of and, where consistent with other provisions of State law and constitution the adoption of, recommendations that the Presidential Commission on Drunk Driving may issue during the period in which rules are being made to carry out this section; and

[(8) for the creation and operation of rehabilitation and treatment programs for those arrested and convicted of driving while under the influence of a controlled substance or for the establishment of research programs to develop effective means of detecting use of controlled substances by drivers.

[(g) There is hereby authorized to be appropriated to carry out this section, out of the Highway Trust Fund, $25,000,000 for the fiscal year ending September 30, 1983, and $50,000,000 per fiscal year for each of the fiscal years ending September 30, 1984, and September 30, 1985. All provisions of chapter 1 of this title that are applicable to Federal-aid primary highway funds, other than provisions relating to the apportionment formula and provisions limiting the expenditures of such funds to Federal-aid systems, shall apply to the funds authorized to be appropriated to carry out this section, except as determined by the Secretary to be inconsistent with this section and except that sums authorized by this subsection shall remain available until expended. Sums authorized by this subsection shall not be subject to any obligation limitation for State and community highway safety programs.]

* * * * * * *

§ 410. Alcohol-impaired driving countermeasures

(a) GENERAL AUTHORITY.—

(1) AUTHORITY TO MAKE GRANTS.—Subject to the requirements of this section, the Secretary shall make grants to States that adopt and implement effective programs to reduce traffic safety problems resulting from individuals driving while under the influence of alcohol. Such grants may only be used by recipient States to implement and enforce such programs.

(2) MAINTENANCE OF EFFORT.—No grant may be made to a State under this section in any fiscal year unless the State enters into such agreements with the Secretary as the Secretary may require to ensure that the State will maintain its aggregate expenditures from all other sources for alcohol traffic safety programs at or above the average level of such expenditures in its 2 fiscal years preceding the date of enactment of the

[Transportation Equity Act for the 21st Century.] *Highway Safety Grant Program Reauthorization Act of 2003.*

[(3) MAXIMUM PERIOD OF ELIGIBILITY.—No State may receive grants under this section in more than 7 fiscal years beginning after September 30, 1997.]

[(4)] *(3)* FEDERAL SHARE.—The Federal share of the cost of implementing and enforcing in a fiscal year a program adopted by a State pursuant to paragraph (1) shall not exceed—

(A) in each of the first and second fiscal years in which the State receives a grant under this section, 75 percent;

(B) in each of the third and fourth fiscal years in which the State receives a grant under this section, 50 percent; and

(C) in each of the fifth, sixth, and seventh fiscal years in which the State receives a grant under this section, 25 percent.

[(b) BASIC GRANT ELIGIBILITY.—

[(1) BASIC GRANT A.—A State shall become eligible for a grant under this paragraph by adopting or demonstrating to the satisfaction of the Secretary at least 5 of the following:

[(A) ADMINISTRATIVE LICENSE REVOCATION.—An administrative driver's license suspension or revocation system for individuals who operate motor vehicles while under the influence of alcohol that requires that—

[(i) in the case of an individual who, in any 5-year period beginning after the date of enactment of the Transportation Equity Act for the 21st Century, is determined on the basis of a chemical test to have been operating a motor vehicle while under the influence of alcohol or is determined to have refused to submit to such a test as proposed by a law enforcement officer, the State agency responsible for administering drivers' licenses, upon receipt of the report of the law enforcement officer—

[(I) shall suspend the driver's license of such individual for a period of not less than 90 days if such individual is a first offender in such 5-year period; and

[(II) shall suspend the driver's license of such individual for a period of not less than 1 year, or revoke such license, if such individual is a repeat offender in such 5-year period; and

[(ii) the suspension and revocation referred to under clause (i) shall take effect not later than 30 days after the day on which the individual refused to submit to a chemical test or received notice of having been determined to be driving under the influence of alcohol, in accordance with the procedures of the State.

[(B) UNDERAGE DRINKING PROGRAM.—An effective system, as determined by the Secretary, for preventing operators of motor vehicles under age 21 from obtaining alcoholic beverages and for preventing persons from making alcoholic beverages available to individuals under age 21. Such system may include the issuance of drivers' licenses to individuals under age 21 that are easily distinguishable

in appearance from drivers' licenses issued to individuals age 21 or older and the issuance of drivers' licenses that are tamper resistant.

[(C) ENFORCEMENT PROGRAM.—Either—

[(i) a statewide program for stopping motor vehicles on a nondiscriminatory, lawful basis for the purpose of determining whether the operators of such motor vehicles are driving while under the influence of alcohol; or

[(ii) a statewide special traffic enforcement program for impaired driving that emphasizes publicity for the program.

[(D) GRADUATED LICENSING SYSTEM.—A 3-stage graduated licensing system for young drivers that includes nighttime driving restrictions during the first 2 stages, requires all vehicle occupants to be properly restrained, and makes it unlawful for a person under age 21 to operate a motor vehicle with a blood alcohol concentration of .02 percent or greater.

[(E) DRIVERS WITH HIGH BAC.—Programs to target individuals with high blood alcohol concentrations who operate a motor vehicle. Such programs may include implementation of a system of graduated penalties and assessment of individuals convicted of driving under the influence of alcohol.

[(F) YOUNG ADULT DRINKING PROGRAMS.—Programs to reduce driving while under the influence of alcohol by individuals age 21 through 34. Such programs may include awareness campaigns; traffic safety partnerships with employers, colleges, and the hospitality industry; assessments of first-time offenders; and incorporation of treatment into judicial sentencing.

[(G) TESTING FOR BAC.—An effective system for increasing the rate of testing of the blood alcohol concentrations of motor vehicle drivers involved in fatal accidents and, in fiscal year 2001 and each fiscal year thereafter, a rate of such testing that is equal to or greater than the national average.

[(2) BASIC GRANT B.—A State shall become eligible for a grant under this paragraph by adopting or demonstrating to the satisfaction of the Secretary each of the following:

[(A) FATAL IMPAIRED DRIVER PERCENTAGE REDUCTION.—The percentage of fatally injured drivers with 0.10 percent or greater blood alcohol concentration in the State has decreased in each of the 3 most recent calendar years for which statistics for determining such percentages are available.

[(B) FATAL IMPAIRED DRIVER PERCENTAGE COMPARISON.—The percentage of fatally injured drivers with 0.10 percent or greater blood alcohol concentration in the State has been lower than the average percentage for all States in each of the calendar years referred to in subparagraph (A).

[(3) BASIC GRANT AMOUNT.—The amount of a basic grant made to a State for a fiscal year under this subsection shall

equal up to 25 percent of the amount apportioned to the State for fiscal year 1997 under section 402.

[(c) SUPPLEMENTAL GRANTS.—

[(1) IN GENERAL.—Upon receiving an application from a State, the Secretary may make supplemental grants to the State for meeting 1 or more of the following criteria:

[(A) VIDEO EQUIPMENT FOR DETECTION OF DRUNK DRIVERS.—The State provides for a program to acquire video equipment to be used in detecting persons who operate motor vehicles while under the influence of alcohol and in prosecuting those persons, and to train personnel in the use of that equipment.

[(B) SELF-SUSTAINING DRUNK DRIVING PREVENTION PROGRAM.—The State provides for a self-sustaining drunk driving prevention program under which a significant portion of the fines or surcharges collected from individuals apprehended and fined for operating a motor vehicle while under the influence of alcohol are returned to those communities which have comprehensive programs for the prevention of such operations of motor vehicles.

[(C) REDUCING DRIVING WITH A SUSPENDED LICENSE.—The State enacts and enforces a law to reduce driving with a suspended license. Such law, as determined by the Secretary, may require a "zebra" stripe that is clearly visible on the license plate of any motor vehicle owned and operated by a driver with a suspended license.

[(D) USE OF PASSIVE ALCOHOL SENSORS.—The State provides for a program to acquire passive alcohol sensors to be used by police officers in detecting persons who operate motor vehicles while under the influence of alcohol, and to train police officers in the use of that equipment.

[(E) EFFECTIVE DWI TRACKING SYSTEM.—The State demonstrates an effective driving while intoxicated (DWI) tracking system. Such a system, as determined by the Secretary, may include data covering arrests, case prosecutions, court dispositions and sanctions, and provide for the linkage of such data and traffic records systems to appropriate jurisdictions and offices within the State.

[(F) OTHER PROGRAMS.—The State provides for other innovative programs to reduce traffic safety problems resulting from individuals driving while under the influence of alcohol or controlled substances, including programs that seek to achieve such a reduction through legal, judicial, enforcement, educational, technological, or other approaches.

[(2) ELIGIBILITY.—A State shall be eligible to receive a grant under this subsection in a fiscal year only if the State is eligible to receive a grant under subsection (b) in such fiscal year.

[(3) FUNDING.—Of the amounts made available to carry out this section in a fiscal year, not to exceed 10 percent shall be available for making grants under this subsection.

[(d) ADMINISTRATIVE EXPENSES.—Funds authorized to be appropriated to carry out this section in a fiscal year shall be subject to a deduction not to exceed 5 percent for the necessary costs of administering the provisions of this section.

[(e) APPLICABILITY OF CHAPTER 1.—The provisions contained in section 402(d) shall apply to this section.

[(f) DEFINITIONS.—In this section, the following definitions apply:

[(1) ALCOHOLIC BEVERAGE. THE TERM "ALCOHOLIC BEVERAGE" HAS THE MEANING GIVEN SUCH TERM IN SECTION 158(C).

[(2) CONTROLLED SUBSTANCES.—The term "controlled substances" has the meaning given such term in section 102(6) of the Controlled Substances Act (21 U.S.C. 802(6)).

[(3) MOTOR VEHICLE.—The term "motor vehicle" has the meaning given such term in section 405.]

(b) PROGRAM-RELATED ELIGIBILITY REQUIREMENTS.—To be eligible for a grant under this section, a State shall—

(1) carry out each of the programs and activities required under subsection (c);

(2) comply with the additional requirements set forth in subsection (d) with respect to such programs and activities; and

(3) comply with any additional requirements of the Secretary.

(c) REQUIRED STATE PROGRAMS AND ACTIVITIES.—For the purpose of subsection (b)(1), the required State program and activities are as follows:

(1) CHECK-POINT, SATURATION PATROL PROGRAM.—A State program to conduct of a series of high-visibility, Statewide law enforcement campaigns in which law enforcement personnel monitor for impaired driving, either through use of check-points or saturation patrols, on a nondiscriminatory, lawful basis for the purpose of determining whether the operators of the motor vehicles are driving while under the influence of alcohol or controlled substances.

(2) PROSECUTION AND ADJUDICATION PROGRAM.—For grants made during fiscal years after fiscal year 2004, a State prosecution and adjudication program under which—

(A) judges and prosecutors are actively encouraged to prosecute and adjudicate cases of repeated commission of impaired driving offenses by reducing the use of State diversion programs, plea negotiation, or other means that have the effect of avoiding or expunging a permanent record of impaired driving in such cases; or

(B) the courts in a majority of the judicial jurisdictions of the State are monitored on the courts' adjudication of cases of impaired driving offenses; and

(C) annual Statewide outreach is provided for judges and prosecutors on innovative approaches to the prosecution and adjudication of cases of impaired driving offenses that have the potential for significantly improving the prosecution and adjudication of such cases.

(3) IMPAIRED OPERATION INFORMATION SYSTEM.—A State impaired operation information system that—

(A) tracks drivers who are arrested or convicted for violation of laws prohibiting impaired operation of motor vehicles;

(B) includes information about each case of an impaired driver beginning at the time of arrest through case disposition, including information about any trial, plea, plea agreement, conviction or other disposition, sentencing or

other imposition of sanctions, and substance abuse treatment;

(C) provides—

(i) accessibility to the information for law enforcement personnel Statewide and for United States law enforcement personnel; and

(ii) linkage for the sharing of the information and of the information in State traffic record systems among jurisdictions and appropriate agencies and offices of the States; and

(D) shares information with the National Highway Traffic Safety Administration for compilation and use for the tracking of impaired operators of motor vehicles who move from State to State.

(d) ADDITIONAL REQUIREMENTS.—For the purposes of subsection (b)(2), the additional requirements that are applicable to States with respect to programs and activities described in subsection (c) are as follows:

(1) CHECK-POINT, SATURATION PATROL PROGRAM.—

(A) COOPERATION WITH NATIONAL CAMPAIGNS.—Under the program for the conduct of a series of high-visibility, Statewide law enforcement campaigns under subsection (c)(1), a State shall organize the campaigns in cooperation with related national campaigns organized by the National Highway Traffic Safety Administration, but may also initiate high-visibility, Statewide law enforcement campaigns independently of the cooperative efforts.

(B) DEMONSTRATED IMPROVEMENT.—For each fiscal year, a State shall demonstrate to the Secretary that the State and the political subdivisions of the State that receive funds under this section have increased, in the aggregate, the total number of impaired driving law enforcement activities, as described in subsection (c)(1) (or any other similar activity approved by the Secretary), initiated in such State during the preceding fiscal year by a factor (not less than 5 percent) that the Secretary determines meaningful for the State over the number of such activities initiated in such State during the next preceding fiscal year.

(2) IMPAIRED OPERATION INFORMATION SYSTEM.—

(A) IN GENERAL.—By not later than June 30, 2004, the National Highway Traffic Safety Administration shall issue guidelines to the States specifying the types and formats of data that States should collect relating to drivers who are arrested or convicted for violation of laws prohibiting the impaired operation of motor vehicles.

(B) REQUIREMENT FOR FISCAL YEARS 2004 AND 2005.—During fiscal years 2004 and 2005, each State shall—

(i) assess the system used by the State for tracking drivers who are arrested or convicted for violation of laws prohibiting impaired operation of motor vehicles;

(ii) identify ways to improve the system, as well as to enhance the capability of the system to provide information in coordination with impaired operation information systems of other States; and

(iii) develop a strategic plan that sets forth the actions to be taken and the resources necessary to achieve the identified improvements and to enhance the capability for coordination with the systems of other States.

(C) REQUIREMENT FOR FISCAL YEARS 2006, 2007, AND 2008.—In each of fiscal years 2006, 2007, and 2008, each State shall demonstrate to the Secretary that the State has made substantial and meaningful progress in improving the State's impaired operation information system, and shall make public a report on the progress of the information system.

(D) REQUIREMENT FOR FISCAL YEAR 2009.—In fiscal year 2009, each State shall demonstrate to the Secretary that the State's impaired operation information system—

(i) meets National Highway Traffic Safety Administration standards for such systems; and

(ii) is fully operational.

(e) USES OF GRANTS.—Grants made under this section may be used for programs and activities described in subsection (c) and to defray the following costs:

(1) Labor costs, management costs, and equipment procurement costs for the high-visibility, Statewide law enforcement campaigns under subsection (c)(1).

(2) The costs of the training of law enforcement personnel and the procurement of technology and equipment, including video equipment and passive alcohol sensors, to counter directly impaired operation of motor vehicles.

(3) The costs of public awareness, advertising, and educational campaigns that publicize use of sobriety check points or increased law enforcement efforts to counter impaired operation of motor vehicles.

(4) The costs of public awareness, advertising, and educational campaigns that target impaired operation of motor vehicles by persons under 34 years of age.

(5) The costs of the development and implementation of a State impaired operation information system described in subsection (c)(3).

(f) ADDITIONAL AUTHORITIES FOR CERTAIN AUTHORIZED USES.—

(1) COMBINATION OF GRANT PROCEEDS.—Grant funds used for a campaign under subsection (e)(3) may be combined, or expended in coordination, with proceeds of grants under section 402 of this title.

(2) COORDINATION OF USES.—Grant funds used for a campaign under paragraph (3) or (4) of subsection (e) may be expended—

(A) in coordination with employers, colleges, entities in the hospitality industry, and nonprofit traffic safety groups; and

(B) in coordination with sporting events and concerts and other entertainment events.

(g) FUNDING.—

(1) IN GENERAL.—Except as provided in paragraph (2), grant funding under this section shall be allocated among eligible States on the basis of the apportionment formula that applies for apportionments under section 402(c) of this title.

(2) HIGH FATALITY-RATE STATES.—The amount of the grant funds allocated under this subsection to each of the 10 States with the highest impaired driving-related fatality rate for the fiscal year preceding the fiscal year of the allocation shall be twice the amount that, except for this subparagraph, would otherwise be allocated to the State under paragraph (1).

(h) USE OF FUNDS BY HIGH FATALITY-RATE STATES.—

(1) REQUIRED USES.—At least ½ of the amounts allocated to States under subsection (g)(2) shall be used for the program described in subsection (c)(1).

(2) REQUIREMENT FOR PLAN.—A State receiving an allocation of grant funds under subsection (g)(2) shall expend those funds only after consulting with the Administrator of the National Highway Traffic Safety Administration regarding such expenditures.

(i) DEFINITIONS.—In this section:

(1) IMPAIRED DRIVER.—The term "impaired driver" means a person who, while operating a motor vehicle—

(A) has a blood alcohol content of 0.08 percent or higher; or

(B) is under the influence of a controlled substance.

(2) IMPAIRED OPERATION.—The term "impaired operation", with respect to a motor vehicle, means the operation of a motor vehicle by an impaired driver.

(3) IMPAIRED DRIVING-RELATED FATALITY RATE.—The term "impaired driving-related fatality rate" means the rate of the fatal accidents that involve impaired drivers while operating motor vehicles, as calculated in accordance with regulations which the Administrator of the National Highway Traffic Safety Administration shall prescribe.

* * * * * * *

§ 412. State traffic safety information system improvements

(a) GRANT AUTHORITY.—Subject to the requirements of this section, the Secretary shall make grants of financial assistance to eligible States to support the development and implementation of effective programs by such States to—

(1) improve the timeliness, accuracy, completeness, uniformity, integration, and accessibility of the safety data of the State that is needed to identify priorities for national, State, and local highway and traffic safety programs;

(2) evaluate the effectiveness of efforts to make such improvements;

(3) link the State data systems, including traffic records, with other data systems within the State, such as systems that contain medical, roadway, and economic data; and

(4) improve the compatibility and interoperability of the data systems of the State with national data systems and data systems of other States and enhance the ability of the Secretary to observe and analyze national trends in crash occurrences, rates, outcomes, and circumstances.

(b) FIRST-YEAR GRANTS.—

(1) ELIGIBILITY.—To be eligible for a first-year grant under this section in a fiscal year, a State shall demonstrate to the satisfaction of the Secretary that the State has—

(A) established a highway safety data and traffic records coordinating committee with a multidisciplinary membership that includes, among others, managers, collectors, and users of traffic records and public health and injury control data systems; and

(B) developed a multiyear highway safety data and traffic records system strategic plan that addresses existing deficiencies in the State's highway safety data and traffic records system, is approved by the highway safety data and traffic records coordinating committee, and—

(i) specifies how existing deficiencies in the State's highway safety data and traffic records system were identified;

(ii) prioritizes, on the basis of the identified highway safety data and traffic records system deficiencies, the highway safety data and traffic records system needs and goals of the State, including the activities under subsection (a);

(iii) identifies performance-based measures by which progress toward those goals will be determined; and

(iv) specifies how the grant funds and any other funds of the State are to be used to address needs and goals identified in the multiyear plan.

(2) GRANT AMOUNT.—Subject to subsection (d)(3), the amount of a first-year grant to a State for a fiscal year shall the higher of—

(A) the amount determined by multiplying—

(i) the amount appropriated to carry out this section for such fiscal year, by

(ii) the ratio that the funds apportioned to the State under section 402 of this title for fiscal year 2003 bears to the funds apportioned to all States under such section for fiscal year 2003; or

(B) $300,000.

(c) SUCCESSIVE YEAR GRANTS.—

(1) ELIGIBILITY.—A State shall be eligible for a grant under this subsection in a fiscal year succeeding the first fiscal year in which the State receives a grant under subsection (b) if the State, to the satisfaction of the Secretary—

(A) submits an updated multiyear plan that meets the requirements of subsection (b)(1)(B);

(B) certifies that its highway safety data and traffic records coordinating committee continues to operate and supports the multiyear plan;

(C) specifies how the grant funds and any other funds of the State are to be used to address needs and goals identified in the multiyear plan;

(D) demonstrates measurable progress toward achieving the goals and objectives identified in the multiyear plan; and

(E) includes a current report on the progress in implementing the multiyear plan.

(2) GRANT AMOUNT.—Subject to subsection (d)(3), the amount of a year grant made to a State for a fiscal year under this subsection shall equal the higher of—

(A) the amount determined by multiplying—

(i) the amount appropriated to carry out this section for such fiscal year, by

(ii) the ratio that the funds apportioned to the State under section 402 of this title for fiscal year 2003 bears to the funds apportioned to all States under such section for fiscal year 2003; or

(B) $500,000.

(d) ADDITIONAL REQUIREMENTS AND LIMITATIONS.—

(1) MODEL DATA ELEMENTS.—The Secretary, in consultation with States and other appropriate parties, shall determine the model data elements that are necessary for the observation and analysis of State and national trends in occurrences, rates, outcomes, and circumstances of motor vehicle traffic accidents. In order to be eligible for a grant under this section, a State shall submit to the Secretary a certification that the State has adopted and uses such model data elements.

(2) MAINTENANCE OF EFFORT.—No grant may be made to a State under this section in any fiscal year unless the State enters into such agreements with the Secretary as the Secretary may require to ensure that the State will maintain its aggregate expenditures from all other sources for highway safety data programs at or above the average level of such expenditures maintained by such State in the 2 fiscal years preceding the date of enactment of the Highway Safety Grant Program Reauthorization Act of 2003.

(3) FEDERAL SHARE.—The Federal share of the cost of adopting and implementing in a fiscal year a State program described in subsection (a) may not exceed 80 percent.

(4) LIMITATION ON USE OF GRANT PROCEEDS.—A State may use the proceeds of a grant received under this section only to implement the program described in subsection (a) for which the grant is made.

(e) APPLICABILITY OF CHAPTER 1.—Section 402(d) of this title shall apply in the administration of this section.

§ 412. Booster seat incentive grants

(a) IN GENERAL.—The Secretary of Transportation shall make a grant under this section to any eligible State.

(b) ELIGIBILITY REQUIREMENTS.—

(1) IN GENERAL.—The Secretary shall make a grant to each State that, as determined by the Secretary, enacts or has enacted, and is enforcing a law requiring that children riding in passenger motor vehicles (as defined in section 405(f)(5)) who are too large to be secured in a child safety seat (as defined in section 405(f)(1)) be secured in a child restraint (as defined in section 7(1) of Anton's Law (49 U.S.C. 30127 note)) that meets requirements prescribed by the Secretary under section 3 of Anton's Law.

(2) YEAR IN WHICH FIRST ELIGIBLE.—

(A) EARLY QUALIFICATION.—A State that has enacted a law described in paragraph (1) that is in effect before Octo-

ber 1, 2005, is first eligible to receive a grant under subsection (a) in fiscal year 2006.

(B) SUBSEQUENT QUALIFICATION.—A State that enacts a law described in paragraph (1) that takes effect after September 30, 2005, is first eligible to receive a grant under subsection (a) in the first fiscal year beginning after the date on which the law is enacted.

(3) CONTINUING ELIGIBILITY.—A State that is eligible under paragraph (1) to receive a grant may receive a grant during each fiscal year listed in subsection (f) in which it is eligible.

(4) MAXIMUM NUMBER OF GRANTS.—A State may not receive more than 4 grants under this section.

(c) GRANT AMOUNT.—Amounts available for grants under this section in any fiscal year shall be apportioned among the eligible States on the basis of population.

(d) USE OF GRANT AMOUNTS.—

(1) IN GENERAL.—Of the amounts received by a State under this section for any fiscal year—

(A) 50 percent shall be used for the enforcement of, and education to promote public awareness of, State child passenger protection laws; and

(B) 50 percent shall be used to fund programs that purchase and distribute child booster seats, child safety seats, and other appropriate passenger motor vehicle child restraints to indigent families without charge.

(2) REPORT.—Within 60 days after the State fiscal year in which a State receives a grant under this section, the State shall transmit to the Secretary a report documenting the manner in which grant amounts were obligated or expended and identifying the specific programs supports by grant funds. The report shall be in a form prescribed by the Secretary and may be combined with other State grant reporting requirements under this chapter.

(e) ADMINISTRATIVE EXPENSES.—Not more than 2.5 percent of the amount appropriated to carry out this section for any fiscal year may be obligated or expended for administrative expenses.

(f) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary of Transportation, out of the Highway Trust Fund—

(1) $18,000,000 for fiscal year 2006;

(2) $20,000,000 for fiscal year 2007;

(3) $25,000,000 for fiscal year 2008; and

(4) $30,000,000 for fiscal year 2009.

TITLE 28. JUDICIARY AND JUDICIAL PROCEDURE

PART VI. PARTICULAR PROCEEDINGS

CHAPTER 158. ORDERS OF FEDERAL AGENCIES; REVIEW

§ 2342. Jurisdiction of court of appeals

The court of appeals (other than the United States Court of Appeals for the Federal Circuit) has exclusive jurisdiction to enjoin, set aside, suspend in whole or in part), or to determine the validity of—

(1) all final orders of the Federal Communications Commission made reviewable by section 402(a) of title 47;

(2) all final orders of the Secretary of Agriculture made under chapters 9 and 20A of title 7, except orders issued under sections 210(e), 217a, and 499g(a) of title 7;

(3) all rules, regulations, or final orders of—

[(A) the Secretary of Transportation issued pursuant to section 2, 9, 37, or 41 of the Shipping Act, 1916 (46 U.S.C. App. 802, 803, 808, 835, 839) or pursuant to part B or C of subtitle IV of title 49; and]

(A) the Secretary of Transportation issued pursuant to section 2, 9, 37, or 41 of the Shipping Act, 1916 (46 U.S.C. App. 802, 803, 808, 835, 839, and 841a) or pursuant to Part B or C of subtitle IV of title 49 or pursuant to subchapter III of chapter 311, chapter 313, and chapter 315 of Part B of subtitle VI of title 49; and

(B) the Federal Maritime Commission issued pursuant to—

(i) section 19 of the Merchant Marine Act, 1920 (46 U.S.C. App. 876);

(ii) section 14 or 17 of the Shipping Act of 1984 (46 U.S.C. App. 1713 or 1716); or

(iii) section 2(d) or 3(d) of the Act of November 6, 1966 (46 U.S.C. App. 817d(d) or 817e(d));

(4) all final orders of the Atomic Energy Commission made reviewable by section 2239 of title 42;

(5) all rules, regulations, or final orders of the Surface Transportation Board made reviewable by section 2321 of this title;

(6) all final orders under section 812 of the Fair Housing Act; and

(7) all final agency actions described in section 20114(c) of title 49. Jurisdiction is invoked by filing a petition as provided by section 2344 of this title.

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CLEAN VESSEL ACT OF 1992

SEC. 5604. FUNDING.

[33 U.S.C. 1322 NOTE]

* * * * * * *

(c) GRANT PROGRAM.—

(1) MATCHING GRANTS.—The Secretary of the Interior may obligate an amount not to exceed the amount made available under section 4(b)(2) of the Act of August 9, 1950 (16 U.S.C. 777c(b)(2), as amended by this Act), to make grants to—

(A) coastal States to pay not more than 75 percent of the cost to a coastal State of—

(i) conducting a survey under section 5603(a);

(ii) developing and submitting a plan and accompanying list under section 5603(b);

(iii) constructing and renovating pumpout stations and waste reception facilities; and

(iv) conducting a program to educate recreational boaters about the problem of human body waste discharges from vessels and inform them of the location of pumpout stations and waste reception facilities.

(B) inland States, which can demonstrate to the Secretary of the Interior that there are an inadequate number of pumpout stations and waste reception facilities to meet the needs of recreational vessels in the waters of that State, to pay 75 percent of the cost to that State of—

(i) constructing and renovating pumpout stations and waste reception facilities in the inland State; and

(ii) conducting a program to educate recreational boaters about the problem of human body waste discharges from vessels and inform them of the location of pumpout stations and waste reception facilities.

(2) PRIORITY.—In awarding grants under this subsection, the Secretary of the Interior shall give priority consideration to grant applications that—

[(A) in coastal States, propose constructing and renovating pumpout stations and waste reception facilities in accordance with a coastal State's plan approved under section 5603(c);]

[(B)] *(A)* provide for public/private partnership efforts to develop and operate pumpout stations and waste receptions facilities; and

[(C)] *(B)* propose innovative ways to increase the availability and use of pumpout stations and waste reception facilities.

(d) DISCLAIMER.—Nothing in this subtitle shall be interpreted to preclude a State from carrying out the provisions of this subtitle with funds other than those described in this section.

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TITLE 39. POSTAL SERVICE

PART III. MODERNIZATION AND FISCAL ADMINISTRATION

CHAPTER 20. FINANCE

§ 2003. The Postal Service Fund

(a) There is established in the Treasury of the United States a revolving fund to be called the Postal Service Fund which shall be available to the Postal Service without fiscal-year limitation to carry out the purposes, functions, and powers authorized by this title.

(b) There shall be deposited in the Fund, subject to withdrawal by check by the Postal Service—

(1) revenues from postal and nonpostal services rendered by the Postal Service;

(2) amounts received from obligations issued by the Postal Service;

(3) amounts appropriated for the use of the Postal Service;

(4) interest which may be earned on investments of the Fund;

(5) any other receipts of the Postal Service;

(6) the balance in the Post Office Department Fund established under former section 2202 of title 39 as of the commencement of operations of the Postal Service;

(7) amounts (including proceeds from the sale of forfeited items) from any civil forfeiture conducted by the Postal Service; [and]

(8) any transfers from the Secretary of the Treasury from the Department of the Treasury Forfeiture Fund which shall be available to the Postmaster General only for Federal law enforcement related [purposes.] *purposes; and*

(9) any amounts collected under section 3018 of this title.

(c) If the Postal Service determines that the moneys of the Fund are in excess of current needs, it may request the investment of such amounts as it deems advisable by the Secretary of the Treasury in obligations of, or obligations guaranteed by, the Government of the United States, and, with the approval of the Secretary, in such other obligations or securities as it deems appropriate.

(d) With the approval of the Secretary of the Treasury, the Postal Service may deposit moneys of the Fund in any Federal Reserve bank, any depository for public funds, or in such other places and in such manner as the Postal Service and the Secretary may mutually agree.

(e)(1) The Fund shall be available for the payment of all expenses incurred by the Postal Service in carrying out its functions as provided by law and, subject to the provisions of section 3604 of this title, all of the expenses of the Postal Rate Commission. The Postmaster General shall transfer from the Fund to the Secretary of the Treasury for deposit in the Department of the Treasury Forfeiture Fund amounts appropriate to reflect the degree of participation of Department of the Treasury law enforcement organizations (described in section 9703(p) of title 31) in the law enforcement effort resulting in the forfeiture pursuant to laws enforced or administered by the Postal Service. Neither the Fund nor any of the funds credited to it shall be subject to apportionment under the provisions of subchapter II of chapter 15 of title 31.

(2) Funds appropriated to the Postal Service under section 2401 of this title shall be apportioned as provided in this paragraph. From the total amounts appropriated to the Postal Service for any fiscal year under the authorizations contained in section 2401 of this title, the Secretary of the Treasury shall make available to the Postal Service 25 percent of such amount at the beginning of each quarter of such fiscal year.

(f) Notwithstanding any other provision of this section, any amounts appropriated to the Postal Service under subsection (d) of section 2401 of this title and deposited into the Fund shall be expended by the Postal Service only for the purposes provided in such subsection.

(g) Notwithstanding any provision of section 8147 of title 5, whenever the Secretary of Labor furnishes a statement to the Postal Service indicating an amount due from the Postal Service under subsection (b) of that section, the Postal Service shall make the deposit required pursuant to that statement (and any additional pay-

ment under subsection (c) of that section, to the extent that it relates to the period covered by such statement) not later than 30 days after the date on which such statement is so furnished. Any deposit (and any additional payment) which is subject to the preceding sentence shall, once made, remain available without fiscal year limitation.

(h) Liabilities of the former Post Office Department to the Employees' Compensation Fund (appropriations for which were authorized by former section 2004, as in effect before the effective date of this subsection) shall be liabilities of the Postal Service payable out of the Fund.

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PART IV. MAIL MATTER

CHAPTER 30. NONMAILABLE MATTER

§ 3001. Nonmailable matter

(a) Matter the deposit of which in the mails is punishable under section 1302, 1341, 1342, 1461, 1463, 1715, 1716, 1717, or 1738 of title 18, or section 26 of the Animal Welfare Act is nonmailable.

(b) Except as provided in subsection (c) of this section, nonmailable matter which reaches the office of delivery, or which may be seized or detained for violation of law, shall be disposed of as the Postal Service shall direct.

(c)(1) Matter which—

(A) exceeds the size and weight limits prescribed for the particular class of mail; or

(B) is of a character perishable within the period required for transportation and delivery; is nonmailable.

(2) Matter made nonmailable by this subsection which reaches the office of destination may be delivered in accordance with its address, if the party addressed furnishes the name and address of the sender.

(d) Matter otherwise legally acceptable in the mails which—

(1) is in the form of, and reasonably could be interpreted or construed as, a bill, invoice, or statement of account due; but

(2) constitutes, in fact, a solicitation for the order by the addressee of goods or services, or both; is nonmailable matter, shall not be carried or delivered by mail, and shall be disposed of as the Postal Service directs, unless such matter bears on its face, in conspicuous and legible type in contrast by typography, layout, or color with other printing on its face, in accordance with regulations which the Postal Service shall prescribe—

(A) the following notice: "This is a solicitation for the order of goods or services, or both, and not a bill, invoice, or statement of account due. You are under no obligation to make any payments on account of this offer unless you accept this offer."; or

(B) in lieu thereof, a notice to the same effect in words which the Postal Service may prescribe.

(e)(1) Any matter which is unsolicited by the addressee and which is designed, adapted, or intended for preventing conception

(except unsolicited samples thereof mailed to a manufacturer thereof, a dealer therein, a licensed physician or surgeon, or a nurse, pharmacist, druggist, hospital, or clinic) is nonmailable matter, shall not be carried or delivered by mail, and shall be disposed of as the Postal Service directs.

(2) Any unsolicited advertisement of matter which is designed, adapted, or intended for preventing conception is nonmailable matter, shall not be carried or delivered by mail, and shall be disposed of as the Postal Service directs unless the advertisement—

(A) is mailed to a manufacturer of such matter, a dealer therein, a licensed physician or surgeon, or a nurse, pharmacist, druggist, hospital, or clinic; or

(B) accompanies in the same parcel any unsolicited sample excepted by paragraph (1) of this subsection. An advertisement shall not be deemed to be unsolicited for the purposes of this paragraph if it is contained in a publication for which the addressee has paid or promised to pay a consideration or which he has otherwise indicated he desires to receive.

(f) Any matter which is unsolicited by the addressee, which contains a "household substance" (as defined by section 2 of the Poison Prevention Packaging Act of 1970), and which does not comply with the requirements for special child-resistant packaging established for that substance by the Consumer Product Safety Commission, is nonmailable matter, shall not be carried or delivered by mail, and shall be disposed of as the Postal Service directs.

(g)(1) Matter otherwise legally acceptable in the mails which contains or includes a fragrance advertising sample is nonmailable matter, shall not be carried or delivered by mail, and shall be disposed of as the Postal Service directs, unless the sample is sealed, wrapped, treated, or otherwise prepared in a manner reasonably designed to prevent individuals from being unknowingly or involuntarily exposed to the sample.

(2) The Postal Service shall by regulation establish the standards or requirements which a fragrance advertising sample must satisfy in order for the mail matter involved not to be considered nonmailable under this subsection.

(h) Matter otherwise legally acceptable in the mails which constitutes a solicitation by a nongovernmental entity for the purchase of or payment for a product or service; and which reasonably could be interpreted or construed as implying any Federal Government connection, approval, or endorsement through the use of a seal, insignia, reference to the Postmaster General, citation to a Federal statute, name of a Federal agency, department, commission, or program, trade or brand name, or any other term or symbol; or contains any reference to the Postmaster General or a citation to a Federal statute that misrepresents either the identity of the mailer or the protection or status afforded such matter by the Federal Government is nonmailable matter and shall not be carried or delivered by mail, and shall be disposed of as the Postal Service directs, unless—

(1) such nongovernmental entity has such expressed connection, approval or endorsement;

(2)(A) such matter bears on its face, in conspicuous and legible type in contrast by typography, layout, or color with other printing on its face, in accordance with regulations which the

Postal Service shall prescribe, the following notice: "THIS PRODUCT OR SERVICE HAS NOT BEEN APPROVED OR ENDORSED BY THE FEDERAL GOVERNMENT, AND THIS OFFER IS NOT BEING MADE BY AN AGENCY OF THE FEDERAL GOVERNMENT.", or a notice to the same effect in words which the Postal Service may prescribe;

(B) the envelope or outside cover or wrapper in which such matter is mailed bears on its face in capital letters and in conspicuous and legible type, in accordance with regulations which the Postal Service shall prescribe, the following notice: "THIS IS NOT A GOVERNMENT DOCUMENT.", or a notice to the same effect in words which the Postal Service may prescribe; and

(C) such matter does not contain a false representation stating or implying that Federal Government benefits or services will be affected by any purchase or nonpurchase; or

(3) such matter is contained in a publication for which the addressee has paid or promised to pay a consideration or which he has otherwise indicated he desires to receive, except that this paragraph shall not apply if the solicitation is on behalf of the publisher of the publication.

(i) Matter otherwise legally acceptable in the mails which constitutes a solicitation by a nongovernmental entity for information or the contribution of funds or membership fees and which reasonably could be interpreted or construed as implying any Federal Government connection, approval, or endorsement through the use of a seal, insignia, reference to the Postmaster General, citation to a Federal statute, name of a Federal agency, department, commission, or program, trade or brand name, or any other term or symbol; or contains any reference to the Postmaster General or a citation to a Federal statute that misrepresents either the identity of the mailer or the protection or status afforded such matter by the Federal Government is nonmailable matter and shall not be carried or delivered by mail, and shall be disposed of as the Postal Service directs, unless—

(1) such nongovernmental entity has such expressed connection, approval or endorsement;

(2)(A) such matter bears on its face, in conspicuous and legible type in contrast by typography, layout, or color with other printing on its face, in accordance with regulations which the Postal Service shall prescribe, the following notice: "THIS ORGANIZATION HAS NOT BEEN APPROVED OR ENDORSED BY THE FEDERAL GOVERNMENT, AND THIS OFFER IS NOT BEING MADE BY AN AGENCY OF THE FEDERAL GOVERNMENT.", or a notice to the same effect in words which the Postal Service may prescribe;

(B) the envelope or outside cover or wrapper in which such matter is mailed bears on its face in capital letters and in conspicuous and legible type, in accordance with regulations which the Postal Service shall prescribe, the following notice: "THIS IS NOT A GOVERNMENT DOCUMENT.", or a notice to the same effect in words which the Postal Service may prescribe; and

(C) such matter does not contain a false representation stating or implying that Federal Government benefits or services will be affected by any contribution or noncontribution; or

(3) such matter is contained in a publication for which the addressee has paid or promised to pay a consideration or which he has otherwise indicated he desires to receive, except that this paragraph shall not apply if the solicitation is on behalf of the publisher of the publication.

(j)(1) Any matter otherwise legally acceptable in the mails which is described in paragraph (2) is nonmailable matter, shall not be carried or delivered by mail, and shall be disposed of as the Postal Service directs.

(2) Matter described in this paragraph is any matter that—

(A) constitutes a solicitation for the purchase of or payment for any product or service that—

(i) is provided by the Federal Government; and

(ii) may be obtained without cost from the Federal Government; and

(B) does not contain a clear and conspicuous statement giving notice of the information set forth in clauses (i) and (ii) of subparagraph (A).

(k)(1) In this subsection—

(A) the term "clearly and conspicuously displayed" means presented in a manner that is readily noticeable, readable, and understandable to the group to whom the applicable matter is disseminated;

(B) the term "facsimile check" means any matter that—

(i) is designed to resemble a check or other negotiable instrument; but

(ii) is not negotiable;

(C) the term "skill contest" means a puzzle, game, competition, or other contest in which—

(i) a prize is awarded or offered;

(ii) the outcome depends predominately on the skill of the contestant; and

(iii) a purchase, payment, or donation is required or implied to be required to enter the contest; and

(D) the term "sweepstakes" means a game of chance for which no consideration is required to enter.

(2) Except as provided in paragraph (4), any matter otherwise legally acceptable in the mails which is described in paragraph (3) is nonmailable matter, shall not be carried or delivered by mail, and shall be disposed of as the Postal Service directs.

(3) Matter described in this paragraph is any matter that—

(A)(i) includes entry materials for a sweepstakes or a promotion that purports to be a sweepstakes; and

(ii)(I) does not contain a statement that discloses in the mailing, in the rules, and on the order or entry form, that no purchase is necessary to enter such sweepstakes;

(II) does not contain a statement that discloses in the mailing, in the rules, and on the order or entry form, that a purchase will not improve an individual's chances of winning with such entry;

(III) does not state all terms and conditions of the sweepstakes promotion, including the rules and entry procedures for the sweepstakes;

(IV) does not disclose the sponsor or mailer of such matter and the principal place of business or an address at which the sponsor or mailer may be contacted;

(V) does not contain sweepstakes rules that state—

(aa) the estimated odds of winning each prize;

(bb) the quantity, estimated retail value, and nature of each prize; and

(cc) the schedule of any payments made over time;

(VI) represents that individuals not purchasing products or services may be disqualified from receiving future sweepstakes mailings;

(VII) requires that a sweepstakes entry be accompanied by an order or payment for a product or service previously ordered;

(VIII) represents that an individual is a winner of a prize unless that individual has won such prize; or

(IX) contains a representation that contradicts, or is inconsistent with sweepstakes rules or any other disclosure required to be made under this subsection, including any statement qualifying, limiting, or explaining the rules or disclosures in a manner inconsistent with such rules or disclosures;

(B)(i) includes entry materials for a skill contest or a promotion that purports to be a skill contest; and

(ii)(I) does not state all terms and conditions of the skill contest, including the rules and entry procedures for the skill contest;

(II) does not disclose the sponsor or mailer of the skill contest and the principal place of business or an address at which the sponsor or mailer may be contacted; or

(III) does not contain skill contest rules that state, as applicable—

(aa) the number of rounds or levels of the contest and the cost to enter each round or level;

(bb) that subsequent rounds or levels will be more difficult to solve;

(cc) the maximum cost to enter all rounds or levels;

(dd) the estimated number or percentage of entrants who may correctly solve the skill contest or the approximate number or percentage of entrants correctly solving the past 3 skill contests conducted by the sponsor;

(ee) the identity or description of the qualifications of the judges if the contest is judged by other than the sponsor;

(ff) the method used in judging;

(gg) the date by which the winner or winners will be determined and the date or process by which prizes will be awarded;

(hh) the quantity, estimated retail value, and nature of each prize; and

(ii) the schedule of any payments made over time; or

(C) includes any facsimile check that does not contain a statement on the check itself that such check is not a negotiable instrument and has no cash value.

(4) Matter that appears in a magazine, newspaper, or other periodical shall be exempt from paragraph (2) if such matter—

(A) is not directed to a named individual; or

(B) does not include an opportunity to make a payment or order a product or service.

(5) Any statement, notice, or disclaimer required under paragraph (3) shall be clearly and conspicuously displayed. Any statement, notice, or disclaimer required under subclause (I) or (II) of paragraph (3)(A)(ii) shall be displayed more conspicuously than would otherwise be required under the preceding sentence.

(6) In the enforcement of paragraph (3), the Postal Service shall consider all of the materials included in the mailing and the material and language on and visible through the envelope or outside cover or wrapper in which those materials are mailed.

(l)(1) Any person who uses the mails for any matter to which subsection (h), (i), (j), or (k) applies shall adopt reasonable practices and procedures to prevent the mailing of such matter to any person who, personally or through a conservator, guardian, or individual with power of attorney—

(A) submits to the mailer of such matter a written request that such matter should not be mailed to such person; or

(B)(i) submits such a written request to the attorney general of the appropriate State (or any State government officer who transmits the request to that attorney general); and

(ii) that attorney general transmits such request to the mailer.

(2) Any person who mails matter to which subsection (h), (i), (j), or (k) applies shall maintain or cause to be maintained a record of all requests made under paragraph (1). The records shall be maintained in a form to permit the suppression of an applicable name at the applicable address for a 5-year period beginning on the date the written request under paragraph (1) is submitted to the mailer.

(m) Except as otherwise provided by law, proceedings concerning the mailability of matter under this chapter and chapters 71 and 83 of title 18 shall be conducted in accordance with chapters 5 and 7 of title 5.

(n)(1) Except as otherwise authorized by law or regulations of the Postal Service under section 3018 of this title, hazardous material is nonmailable.

(2) In this subsection, the term "hazardous material" means a substance or material designated by the Secretary of Transportation as hazardous material under section 5103(a) of title 49.

[(n)**]** *(o)* The district courts, together with the District Court of the Virgin Islands and the District Court of Guam, shall have jurisdiction, upon cause shown, to enjoin violations of section 1716 of title 18.

* * * * * * *

§ 3018. Hazardous material

(a) IN GENERAL.—The Postal Service shall prescribe regulations for the safe transportation of hazardous material in the mails.

(b) PROHIBITIONS.—No person may—

(1) mail or cause to be mailed hazardous material that has been declared by statute or Postal Service regulation to be nonmailable;

(2) mail or cause to be mailed hazardous material in violation of any statute or Postal Service regulation restricting the time, place, or manner in which hazardous material may be mailed; or

(3) manufacture, distribute, or sell any container, packaging kit, or similar device that—

(A) is represented, marked, certified, or sold by such person for use in the mailing of hazardous material; and

(B) fails to conform with any statute or Postal Service regulation setting forth standards for a container, packaging kit, or similar device used for the mailing of hazardous material.

(c) CIVIL PENALTY.—

(1) IN GENERAL.—A person who knowingly violates this section or a regulation prescribed under this section shall be liable to the Postal Service for—

(A) a civil penalty of at least $250, but not more than $100,000, for each violation;

(B) the costs of any clean-up associated with such violation; and

(C) damages.

(2) KNOWING ACTION.—A person acts knowingly for purposes of paragraph (1) when—

(A) the person has actual knowledge of the facts giving rise to the violation; or

(B) a reasonable person acting in the circumstances and exercising reasonable care would have had that knowledge.

(3) KNOWLEDGE OF STATUTE OR REGULATION NOT ELEMENT OF OFFENSE.—Knowledge of the existence of a statutory provision or Postal Service regulation is not an element of an offense under this subsection.

(4) SEPARATE VIOLATIONS.—

(A) VIOLATIONS OVER TIME.—A separate violation under this subsection occurs for each day hazardous material, mailed or cause to be mailed in noncompliance with this section, is in the mail.

(B) SEPARATE ITEMS.—A separate violation under this subsection occurs for each item containing hazardous material that is mailed or caused to be mailed in noncompliance with this section.

(d) HEARINGS.—The Postal Service may determine that a person has violated this section or a regulation prescribed under this section only after notice and an opportunity for a hearing.

(e) PENALTY CONSIDERATIONS.—In determining the amount of a civil penalty for a violation of this section, the Postal Service shall consider—

(1) the nature, circumstances, extent, and gravity of the violation;

(2) with respect to the person who committed the violation, the degree of culpability, any history of prior violations, the ability to pay, and any effect on the ability to continue in business;

(3) the impact on Postal Service operations; and

(4) any other matters that justice requires.

(f) CIVIL ACTIONS TO COLLECT.—

(1) IN GENERAL.—In accordance with section 409(d) of this title, a civil action may be commenced in an appropriate district court of the United States to collect a civil penalty, clean-up costs, and damages assessed under subsection (c).

(2) LIMITATION.—In a civil action under paragraph (1), the validity, amount, and appropriateness of the civil penalty, clean-up costs, and damages covered by the civil action shall not be subject to review.

(3) COMPROMISE.—The Postal Service may compromise the amount a civil penalty, clean-up costs, and damages assessed under subsection (c) before commencing a civil action with respect to such civil penalty, clean-up costs, and damages under paragraph (1).

(g) CIVIL JUDICIAL PENALTIES.—

(1) IN GENERAL.—At the request of the Postal Service, the Attorney General may bring a civil action in an appropriate district court of the United States to enforce this section or a regulation prescribed under this section.

(2) RELIEF.—The court in a civil action under paragraph (1) may award appropriate relief, including a temporary or permanent injunction, civil penalties as determined in accordance with this section, or punitive damages.

(3) CONSTRUCTION.—A civil action under this subsection shall be in lieu of civil penalties for the same violation under subsection (c)(1)(A).

(h) DEPOSIT OF AMOUNTS COLLECTED.—Amounts collected under this section shall be deposited into the Postal Service Fund under section 2003 of this title.

TITLE 46. SHIPPING

SUBTITLE II. VESSELS AND SEAMEN

PART I. STATE BOATING SAFETY PROGRAMS

CHAPTER 131. RECREATIONAL BOATING SAFETY

§ 13103. Allocations

(a) The Secretary shall allocate amounts available for allocation and distribution under this chapter for State recreational boating safety programs as follows:

(1) One-third shall be allocated equally each fiscal year among eligible States.

(2) One-third shall be allocated among eligible States that maintain a State vessel numbering system approved under chapter 123 of this title and a marine casualty reporting system approved under this chapter so that the amount allocated each fiscal year to each eligible State will be in the same ratio as the number of vessels numbered in that State bears to the number of vessels numbered in all eligible States.

(3) One-third shall be allocated so that the amount allocated each fiscal year to each eligible State will be in the same ratio as the amount of State amounts expended by the State for the State recreational boating safety program during the prior fiscal year bears to the total State amounts expended during that fiscal year by all eligible States for State recreational boating safety programs.

(b) The amount received by a State under this section in a fiscal year may be not more than [one-half] *75 percent* of the total cost incurred by that State in developing, carrying out, and financing that State's recreational boating safety program in that fiscal year.

(c) The Secretary may allocate not more than 5 percent of the amounts available for allocation and distribution in a fiscal year for national boating safety activities of national nonprofit public service organizations.

§ 13104. Availability of allocations

(a)(1) Amounts allocated to a State shall be available for obligation by that State for a period of [2 years] *3 years* after the date of allocation.

(2) Amounts allocated to a State that are not obligated at the end of the [2-year] *3-year* period referred to in paragraph (1) shall be withdrawn and allocated by the Secretary in addition to any other amounts available for allocation in the fiscal year in which they are withdrawn or the following fiscal year.

(b) Amounts available to the Secretary for State recreational boating safety programs for a fiscal year that have not been allocated at the end of the fiscal year shall be allocated among States in the next fiscal year in addition to amounts otherwise available for allocation to States for that next fiscal year.

* * * * * * *

§ 13106. Authorization of appropriations

(a)(1) Subject to paragraph (2) and subsection (c), the Secretary shall expend in each fiscal year for State recreational boating safety programs, under contracts with States under this chapter, an amount equal to the sum of

(A) the amount appropriated from the Boat Safety Account for that fiscal year and

(B) the amount transferred to the Secretary under section 4(b) of the Act of August 9, 1950 (16 U.S.C. 777c(b)).The amount shall be allocated as provided under section 13103 of this title and shall be available for State recreational boating safety programs as provided under the guidelines established under subsection (b) of this section. Amounts authorized to be expended for State recreational boating safety programs shall

remain available until expended and are deemed to have been expended only if an amount equal to the total amounts authorized to be expended under this section for the fiscal year in question and all prior fiscal years have been obligated. Amounts previously obligated but released by payment of a final voucher or modification of a program acceptance shall be credited to the balance of unobligated amounts and are immediately available for expenditure.

(2) The Secretary shall use not less than one percent and not more than two percent of the amount available each fiscal year for State recreational boating safety programs under this chapter to pay the costs of investigations, personnel, and activities related to administering those programs.

(b) The Secretary shall establish guidelines prescribing the purposes for which amounts available under this chapter for State recreational boating safety programs may be used. Those purposes shall include—

(1) providing facilities, equipment, and supplies for boating safety education and law enforcement, including purchase, operation, maintenance, and repair;

(2) training personnel in skills related to boating safety and to the enforcement of boating safety laws and regulations;

(3) providing public boating safety education, including educational programs and lectures, to the boating community and the public school system;

(4) acquiring, constructing, or repairing public access sites used primarily by recreational boaters;

(5) conducting boating safety inspections and marine casualty investigations;

(6) establishing and maintaining emergency or search and rescue facilities, and providing emergency or search and rescue assistance;

(7) establishing and maintaining waterway markers and other appropriate aids to navigation; and

(8) providing State recreational vessel numbering and titling programs.

(c) Of the amount transferred to the [Secretary of Transportation under paragraph (4) of section 4(b)] *Secretary under subsections (a)(2) and (e) of section 4* of the Dingell-Johnson Sport Fish Restoration Act (16 U.S.C. 777c(b)), *a minimum of* $2,083,333 is available to the Secretary for payment of expenses of the Coast Guard for personnel and activities directly related to coordinating and carrying out the national recreational boating safety program under this title, of which $833,333 shall be available to the Secretary only to ensure compliance with chapter 43 of this title. No funds available to the Secretary under this subsection may be used to replace funding traditionally provided through general appropriations, nor for any purposes except those purposes authorized by this section. Amounts made available by this subsection shall remain available until expended. The Secretary shall publish annually in the Federal Register a detailed accounting of the projects, programs, and activities funded under this subsection.

§ 13107. Maintenance of effort for State recreational boating safety programs

(a) IN GENERAL.—The amount payable to a State for a fiscal year from an allocation under section 13103 of this chapter shall be reduced if the usual amounts expended by the State for the State's recreational boating safety program, as determined under section 13105 of this chapter, for the previous fiscal year is less than the average of the total of such expenditures for the 3 fiscal years immediately preceding that previous fiscal year. The reduction shall be proportionate, as a percentage, to the amount by which the level of State expenditures for such previous fiscal year is less than the average of the total of such expenditures for the 3 fiscal years immediately preceding that previous fiscal year.

(b) REDUCTION OF THRESHHOLD.—If the total amount available for allocation and distribution under this chapter in a fiscal year for all participating State recreational boating safety programs is less than such amount for the preceding fiscal year, the level of State expenditures required under subsection (a) of this section for the preceding fiscal year shall be decreased proportionately.

(c) WAIVER.—

(1) IN GENERAL.—Upon the written request of a State, the Secretary may waive the provisions of subsection (a) of this section for 1 fiscal year if the Secretary determines that a reduction in expenditures for the State's recreational boating safety program is attributable to a non- selective reduction in expenditures for the programs of all Executive branch agencies of the State government, or for other reasons if the State demonstrates to the Secretary's satisfaction that such waiver is warranted.

(2) 30-DAY DECISION.—The Secretary shall approve or deny a request for a waiver not later than 30 days after the date the request is received.

TITLE 49. TRANSPORTATION

SUBTITLE I. DEPARTMENT OF TRANSPORTATION

CHAPTER 1. ORGANIZATION

§ 112. Research and Special Programs Administration

(a) ESTABLISHMENT.—There is established in the Department of Transportation a Research and Special Programs Administration.

(b) ADMINISTRATOR.—

(1) APPOINTMENT.—The Administration shall be headed by an Administrator who shall be appointed by the President, by and with the advice and consent of the Senate.

(2) REPORTING.—The Administrator shall report directly to the Secretary.

(c) DEPUTY ADMINISTRATOR.—The Administration shall have a Deputy Administrator who shall be appointed by the Secretary of Transportation. The Deputy Administrator shall carry out duties and powers prescribed by the Administrator.

(d) RESPONSIBILITIES OF ADMINISTRATOR.—The Administrator of the Administration shall be responsible for carrying out the following:

(1) HAZMAT TRANSPORTATION SAFETY.—Duties and powers vested in the Secretary of Transportation with respect to haz-

ardous materials transportation safety, except as otherwise delegated by the Secretary.

(2) PIPELINE SAFETY.—Duties and powers vested in the Secretary with respect to pipeline safety.

(3) ACTIVITIES OF VOLPE NATIONAL TRANSPORTATION SYSTEMS CENTER.—Duties and powers vested in the Secretary with respect to activities of the Volpe National Transportation Systems Center.

(4) OTHER.—Such other duties and powers as the Secretary shall prescribe, including such multimodal and intermodal duties as are appropriate.

(e) ADMINISTRATIVE AUTHORITIES.—

(1) GRANTS, COOPERATIVE AGREEMENTS, AND OTHER TRANSACTIONS.—The Administrator may enter into grants, cooperative agreements, and other transactions with Federal agencies, State and local government agencies, other public entities, private organizations, and other persons—

(A) to conduct research into transportation service and infrastructure assurance; and

(B) to carry out other research activities of the Administration.

(2) LIMITATION ON DISCLOSURE OF CERTAIN INFORMATION.—

(A) LIMITATION.—If the Administrator determines that particular information developed in research sponsored by the Administration may reveal a systemic vulnerability of transportation service or infrastructure, such information may be disclosed only to—

(i) a person responsible for the security of the transportation service or infrastructure; or

(ii) a person responsible for protecting public safety; or

(iii) an officer, employee, or agent of the Federal Government, or a State or local government, who, as determined by the Administrator, has need for such information in the performance of official duties.

(B) TREATMENT OF RELEASE.—The release of information under subparagraph (A) shall not be treated as a release to the public for purposes of section 552 of title 5.

[(e)] *(i)* LIMITATION ON STATUTORY CONSTRUCTION.—Nothing in this section shall affect any delegation of authority, regulation, order, approval, exemption, waiver, contract, or other administrative act of the Secretary with respect to laws administered through the Research and Special Programs Administration of the Department of Transportation on October 24, 1992.

CHAPTER 3. GENERAL DUTIES AND POWERS

SUBCHAPTER III. MISCELLANEOUS

§ 351. Judicial review of actions in carrying out certain transferred duties and powers

[(a) JUDICIAL REVIEW.—An action of the Secretary of Transportation in carrying out a duty or power transferred under the Department of Transportation Act (Public Law 89-670, 80 Stat. 931), or an action of the Administrator of the Federal Railroad Administration, the Federal Highway Administration, or the Federal Avia-

tion Administration in carrying out a duty or power specifically assigned to the Administrator by that Act, may be reviewed judicially to the same extent and in the same way as if the action had been an action by the department, agency, or instrumentality of the United States Government carrying out the duty or power immediately before the transfer or assignment.]

(a) JUDICIAL REVIEW.—An action of the Secretary of Transportation in carrying out a duty or power transferred under the Department of Transportation Act (Public Law 89–670; 80 Stat. 931), or an action of the Administrator of the Federal Railroad Administration, Federal Motor Carrier Safety Administration, or the Federal Aviation Administration in carrying out a duty or power specifically assigned to the Administrator by that Act, may be reviewed judicially to the same extent and in the same way as if the action had been an action by the department, agency, or instrumentality of the United States Government carrying out the duty or power immediately before the transfer or assignment.

(b) APPLICATION OF PROCEDURAL REQUIREMENTS.—A statutory requirement related to notice, an opportunity for a hearing, action on the record, or administrative review that applied to a duty or power transferred by the Act applies to the Secretary or Administrator when carrying out the duty or power.

(c) NONAPPLICATION.—This section does not apply to a duty or power transferred from the Interstate Commerce Commission to the Secretary under section 6(e)(1)-(4) and (6)(A) of the Act.

[§ 352. Authority to carry out certain transferred duties and powers

[In carrying out a duty or power transferred under the Department of Transportation Act (Public Law 89-670, 80 Stat. 931), the Secretary of Transportation and the Administrators of the Federal Railroad Administration, the Federal Highway Administration, and the Federal Aviation Administration have the same authority that was vested in the department, agency, or instrumentality of the United States Government carrying out the duty or power immediately before the transfer. An action of the Secretary or Administrator in carrying out the duty or power has the same effect as when carried out by the department, agency, or instrumentality.]

§ 352. Authority to carry out certain transferred duties and powers

In carrying out a duty or power transferred under the Department of Transportation Act (Public Law 89–670; 80 Stat. 931), the Secretary of Transportation and the Administrators of the Federal Railroad Administration, the Federal Motor Carrier Safety Administration, and the Federal Aviation Administration have the same authority that was vested in the department, agency, or instrumentality of the United States Government carrying out the duty or power immediately before the transfer. An action of the Secretary or Administrator in carrying out the duty or power has the same effect as when carried out by the department, agency, or instrumentality.

§ 521. Civil penalties

(a)(1) A person required under section 504 of this title to make, prepare, preserve, or submit to the Secretary of Transportation a record about rail carrier transportation, that does not make, prepare, preserve, or submit that record as required under that section, is liable to the United States Government for a civil penalty of $500 for each violation.

(2) A rail carrier, and a lessor, receiver, or trustee of that carrier, violating section 504(c)(1) of this title is liable to the Government for a civil penalty of $100 for each violation.

(3) A rail carrier, a lessor, receiver, or trustee of that carrier, a person furnishing cars or protective service against heat or cold, and an officer, agent, or employee of one of them, required to make a report to the Secretary or answer a question, that does not make a report to the Secretary or does not specifically, completely, and truthfully answer the question, is liable to the Government for a civil penalty of $100 for each violation.

(4) A separate violation occurs for each day a violation under this subsection continues.

(5) Trial in a civil action under this subsection is in the judicial district in which the rail carrier has its principal operating office or in a district through which the railroad of the rail carrier runs.

(b)(1)(A) If the Secretary finds that a violation of a provision of subchapter III of chapter 311 (except sections 31138 and 31139) or section 31302, 31303, 31304, 31305(b), 31310(g)(1)(A), or 31502 of this title, or a violation of a regulation issued under any of those provisions, has occurred, the Secretary shall issue a written notice to the violator. Such notice shall describe with reasonable particularity the nature of the violation found and the provision which has been violated. The notice shall specify the proposed civil penalty, if any, and suggest actions which might be taken in order to abate the violation. The notice shall indicate that the violator may, within 15 days of service, notify the Secretary of the violator's intention to contest the matter. In the event of a contested notice, the Secretary shall afford such violator an opportunity for a hearing, pursuant to section 554 of title 5 following which the Secretary shall issue an order affirming, modifying, or vacating the notice of violation.

(B) NONAPPLICABILITY TO REPORTING AND RECORDKEEPING VIOLATIONS.—Subparagraph (A) shall not apply to reporting and recordkeeping violations.

(2) CIVIL PENALTY.—

(A) IN GENERAL.—Except as otherwise provided in this subsection, any person who is determined by the Secretary, after notice and opportunity for a hearing, to have committed an act that is a violation of regulations issued by the Secretary under subchapter III of chapter 311 (except sections 31138 and 31139) or section 31502 of this title shall be liable to the United States for a civil penalty in an amount not to exceed $10,000 for each offense. Notwithstanding any other provision of this section (except subparagraph (C)), no civil penalty shall

be assessed under this section against an employee for a violation in an amount exceeding $2,500.

[(B) RECORDKEEPING AND REPORTING VIOLATIONS.—A person required to make a report to the Secretary, answer a question, or make, prepare, or preserve a record under section 504 of this title or under any regulation issued by the Secretary pursuant to subchapter III of chapter 311 (except sections 31138 and 31139) or section 31502 of this title about transportation by motor carrier, motor carrier of migrant workers, or motor private carrier, or an officer, agent, or employee of that person—

[(i) who does not make that report, does not specifically, completely, and truthfully answer that question in 30 days from the date the Secretary requires the question to be answered, or does not make, prepare, or preserve that record in the form and manner prescribed by the Secretary, shall be liable to the United States for a civil penalty in an amount not to exceed $500 for each offense, and each day of the violation shall constitute a separate offense, except that the total of all civil penalties assessed against any violator for all offenses related to any single violation shall not exceed $5,000; or

[(ii) who knowingly falsifies, destroys, mutilates, or changes a required report or record, knowingly files a false report with the Secretary, knowingly makes or causes or permits to be made a false or incomplete entry in that record about an operation or business fact or transaction, or knowingly makes, prepares, or preserves a record in violation of a regulation or order of the Secretary, shall be liable to the United States for a civil penalty in an amount not to exceed $5,000 for each violation, if any such action can be shown to have misrepresented a fact that constitutes a violation other than a reporting or recordkeeping violation.]

(B) RECORDKEEPING AND REPORTING VIOLATIONS.—A person required to make a report to the Secretary, answer a question, or make, prepare, or preserve a record under section 504 of this title or under any regulation issued by the Secretary pursuant to subchapter III of chapter 311 (except sections 31138 and 31139) or section 31502 of this title about transportation by motor carrier, motor carrier of migrant workers, or motor private carrier, or an officer, agent, or employee of that person—

(i) who does not make that report, does not specifically, completely, and truthfully answer that question in 30 days from the date the Secretary requires the question to be answered, or does not make, prepare, or preserve that record in the form and manner prescribed by the Secretary, shall be liable to the United States for a civil penalty in an amount not to exceed $1,000 for each offense, and each day of the violation shall constitute a separate offense, except that the total of all civil penalties assessed against any violator for all offenses related to any single violation shall not exceed $10,000; or

(ii) who knowingly falsifies, destroys, mutilates, or changes a required report or record, knowingly files a false

report with the Secretary, knowingly makes or causes or permits to be made a false or incomplete entry in that record about an operation or business fact or transaction, or knowingly makes, prepares, or preserves a record in violation of a regulation or order of the Secretary, shall be liable to the United States for a civil penalty in an amount not to exceed $10,000 for each violation, if any such action can be shown to have misrepresented a fact that constitutes a violation other than a reporting or recordkeeping violation.

(C) VIOLATIONS PERTAINING TO CDLS.—Any person who is determined by the Secretary, after notice and opportunity for a hearing, to have committed an act which is a violation of section 31302, 31303, 31304, 31305(b), or 31310(g)(1)(A) of this title shall be liable to the United States for a civil penalty not to exceed $2,500 for each offense.

(D) DETERMINATION OF AMOUNT.—The amount of any civil penalty, and a reasonable time for abatement of the violation, shall by written order be determined by the Secretary, taking into account the nature, circumstances, extent, and gravity of the violation committed and, with respect to the violator, the degree of culpability, history of prior offenses, ability to pay, effect on ability to continue to do business, and such other matters as justice and public safety may require. In each case, the assessment shall be calculated to induce further compliance.

(E) COPYING OF RECORDS AND ACCESS TO EQUIPMENT, LANDS, AND BUILDINGS.—A motor carrier subject to chapter 51 of subtitle III, a motor carrier, broker, or freight forwarder subject to part B of subtitle IV, or the owner or operator of a commercial motor vehicle subject to part B of subtitle VI of this title who fails to allow the Secretary, or an employee designated by the Secretary, promptly upon demand to inspect and copy any record or inspect and examine equipment, lands, buildings and other property in accordance with sections 504(c), 5121(c), and 14122(b) of this title shall be liable to the United States for a civil penalty not to exceed $500 for each offense, and each day the Secretary is denied the right to inspect and copy any record or inspect and examine equipment, lands, buildings and other property shall constitute a separate offense, except that the total of all civil penalties against any violator for all offenses related to a single violation shall not exceed $5,000. It shall be a defense to such penalty that the records did not exist at the time of the Secretary's request or could not be timely produced without unreasonable expense or effort. Nothing herein amends or supersedes any remedy available to the Secretary under sections 502(d), 507(c), or other provision of this title.

(3) The Secretary may require any violator served with a notice of violation to post a copy of such notice or statement of such notice in such place or places and for such duration as the Secretary may determine appropriate to aid in the enforcement of subchapter III of chapter 311 (except sections 31138 and 31139) or section 31302, 31303, 31304, 31305(b), or 31502 of this title, as the case may be.

(4) Such civil penalty may be recovered in an action brought by the Attorney General on behalf of the United States in the appropriate district court of the United States or, before referral to the

Attorney General, such civil penalty may be compromised by the Secretary.

(5)(A) If, upon inspection or investigtion, the Secretary determines that a violation of a provision of subchapter III of chapter 311 (except sections 31138 and 31139) or section 31302, 31303, 31304, 31305(b), or 31502 of this title or a regulation issued under any of those provisions, or combination of such violations, poses an imminent hazard to safety, the Secretary shall order a vehicle or employee operating such vehicle out of service, or order an employer to cease all or part of the employer's commercial motor vehicle operations. In making any such order, the Secretary shall impose no restriction on any employee or employer beyond that required to abate the hazard. Subsequent to the issuance of the order, opportunity for review shall be provided in accordance with section 554 of title 5, except that such review shall occur not later than 10 days after issuance of such order.

(B) In this paragraph, "imminent hazard" means any condition of vehicle, employee, or commercial motor vehicle operations which substantially increases the likelihood of serious injury or death if not discontinued immediately.

(6) CRIMINAL PENALTIES.—

(A) IN GENERAL.—Any person who knowingly and willfully violates any provision of subchapter III of chapter 311 (except sections 31138 and 31139) or section 31502 of this title, or a regulation issued under any of those provisions shall, upon conviction, be subject for each offense to a fine not to exceed $25,000 or imprisonment for a term not to exceed one year, or both, except that, if such violator is an employee, the violator shall only be subject to penalty if, while operating a commercial motor vehicle, the violator's activities have led or could have led to death or serious injury, in which case the violator shall be subject, upon conviction, for a fine not to exceed $2,500.

(B) VIOLATIONS PERTAINING TO CDLS.—Any person who knowingly and willfully violates—

(i) any provision of section 31302, 31303(b) or (c), 31304, 31305(b), or 31310(g)(1)(A) of this title or a regulation issued under such section, or

(ii) with respect to notification of a serious traffic violation as defined under section 31301 of this title, any provision of section 31303(a) of this title or a regulation issued under section 31303(a), shall, upon conviction, be subject for each offense to a fine not to exceed $5,000 or imprisonment for a term not to exceed 90 days, or both.

(7) The Secretary shall issue regulations establishing penalty schedules designed to induce timely compliance for persons failing to comply promptly with the requirements set forth in any notices and orders under this subsection.

(8) PROHIBITION ON OPERATION IN INTERSTATE COMMERCE AFTER NONPAYMENT OF PENALTIES.—

(A) IN GENERAL.—An owner or operator of a commercial motor vehicle against whom a civil penalty is assessed under this chapter or chapter 51, 149, or 311 of this title and who does not pay such penalty or fails to arrange and abide by an acceptable payment plan for such civil penalty may not operate

in interstate commerce beginning on the 91st day after the date specified by order of the Secretary for payment of such penalty. This paragraph shall not apply to any person who is unable to pay a civil penalty because such person is a debtor in a case under chapter 11 of title 11, United States Code.

(B) REGULATIONS.—Not later than 12 months after the date of the enactment of this paragraph, the Secretary, after notice and an opportunity for public comment, shall issue regulations setting forth procedures for ordering commercial motor vehicle owners and operators delinquent in paying civil penalties to cease operations until payment has been made.

(9) Any aggrieved person who, after a hearing, is adversely affected by a final order issued under this section may, within 30 days, petition for review of the order in the United States Court of Appeals in the circuit wherein the violation is alleged to have occurred or where the violator has his principal place of business or residence, or in the United States Court of Appeals for the District of Columbia Circuit. Review of the order shall be based on a determination of whether the Secretary's findings and conclusions were supported by substantial evidence, or were otherwise not in accordance with law. No objection that has not been urged before the Secretary shall be considered by the court, unless reasonable grounds existed for failure or neglect to do so. The commencement of proceedings under this subsection shall not, unless ordered by the court, operate as a stay of the order of the Secretary.

(10) All penalties and fines collected under this section shall be deposited into the Highway Trust Fund (other than the Mass Transit Account).

(11) In any action brought under this section, process may be served without regard to the territorial limits of the district of the State in which the action is brought.

(12) In any proceeding for criminal contempt for violation of an injunction or restraining order issued under this section, trial shall be by the court, or, upon demand of the accused, by a jury, conducted in accordance with the provisions of rule 42(b) of the Federal Rules of Criminal Procedure.

(13) The provisions of this subsection shall not affect chapter 51 of this title or any regulation promulgated by the Secretary under chapter 51.

(14) As used in this subsection, the terms "commercial motor vehicle", "employee", "employer", and "State" have the meaning such terms have under section 31132 of this title.

SUBTITLE III. GENERAL AND INTERMODAL PROGRAMS

CHAPTER 51. TRANSPORTATION OF HAZARDOUS MATERIAL

§ 5101. Purpose

[The purpose of this chapter is to provide adequate protection against the risks to life and property inherent in the transportation of hazardous material in commerce by improving the regulatory and enforcement authority of the Secretary of Transportation.**]**

The purpose of this chapter is to protect against the risks to life, property, and the environment that are inherent in the transportation of hazardous material in intrastate, interstate, and foreign commerce.

§ 5102. Definitions

In this chapter—

(1) "commerce" means trade or transportation in the jurisdiction of the United States—

(A) between a place in a State and a place outside of the State; [or]

(B) that affects trade or transportation between a place in a State and a place outside of the [State.] *State; or*

(C) on a United States-registered aircraft.

(2) "hazardous material" means a substance or material the Secretary of Transportation designates under section 5103(a) of this title.

[(3) "hazmat employee"—

[(A) means an individual—

[(i) employed by a hazmat employer; and

[(ii) who during the course of employment directly affects hazardous material transportation safety as the Secretary decides by regulation;

[(B) includes an owner-operator of a motor vehicle transporting hazardous material in commerce; and

[(C) includes an individual, employed by a hazmat employer, who during the course of employment—

[(i) loads, unloads, or handles hazardous material;

[(ii) manufactures, reconditions, or tests containers, drums, and packagings represented as qualified for use in transporting hazardous material;

[(iii) prepares hazardous material for transportation;

[(iv) is responsible for the safety of transporting hazardous material; or

[(v) operates a vehicle used to transport hazardous material.]

(3) "hazmat employee" means an individual—

(A) who—

(i) is employed or used by a hazmat employer; or

(ii) is self-employed, including an owner-operator of a motor vehicle, vessel, or aircraft, transporting hazardous material in commerce; and

(B) who performs a function regulated by the Secretary under section 5103(b)(1) of this title.

[(4) "hazmat employer"—

[(A) means a person using at least one employee of that person in connection with—

[(i) transporting hazardous material in commerce;

[(ii) causing hazardous material to be transported in commerce; or

[(iii) manufacturing, reconditioning, or testing containers, drums, and packagings represented as qualified for use in transporting hazardous material;

[(B) includes an owner-operator of a motor vehicle transporting hazardous material in commerce; and

[(C) includes a department, agency, or instrumentality of the United States Government, or an authority of a State, political subdivision of a State, or Indian tribe, car-

rying out an activity described in subclause (A)(i), (ii), or (iii) of this clause (4).]

(4) "hazmat employer" means a person—

(A) who—

(i) employs or uses at least 1 hazmat employee; or

(ii) is self-employed, including an owner-operator of a motor vehicle, vessel, or aircraft, transporting hazardous material in commerce; and

(B) who performs, or employs or uses at least 1 hazmat employee to perform, a function regulated by the Secretary under section 5103(b)(1) of this title.

(5) "imminent hazard" means the existence of a condition *relating to hazardous material* that presents a substantial likelihood that death, serious illness, severe personal injury, or a substantial endangerment to health, property, or the environment may occur before the reasonably foreseeable completion date of a formal proceeding begun to lessen the risk of that death, illness, injury, or endangerment.

(6) "Indian tribe" has the same meaning given that term in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b).

[(7) "motor carrier" means a motor carrier, motor private carrier, and freight forwarder as those terms are defined in section 13102 of this title.]

(7) "motor carrier"—

(A) means a motor carrier, motor private carrier, and freight forwarder as those terms are defined in section 13102 of this title; but

(B) does not include a freight forwarder, as so defined, if the freight forwarder is not performing a function relating to highway transportation.

(8) ["national response team"] *"National Response Team"* means the [national response team] *"National Response Team"* established under the [national contingency plan] *National Contingency Plan* established under section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9605).

(9) "person", in addition to its meaning under section 1 of title 1—

(A) includes a government, Indian tribe, or authority of a government or tribe [offering hazardous material for transportation in commerce or transporting hazardous material to further a commercial enterprise; but]

that—

(i) offers hazardous material for transportation in commerce;

(ii) transports hazardous material to further a commercial enterprise; or

(iii) manufactures, designs, inspects, tests, reconditions, marks, or repairs a packaging or packaging component that is represented as qualified for use in transporting hazardous material in commerce; but

(B) does not include—

(i) the United States Postal Service; and

(ii) in sections 5123 and 5124 of this title, a department, agency, or instrumentality of the Government.

(10) "public sector employee"—

(A) means an individual employed by a State, political subdivision of a State, or Indian tribe and who during the course of employment has responsibilities related to responding to an accident or incident involving the transportation of hazardous material;

(B) includes an individual employed by a State, political subdivision of a State, or Indian tribe as a firefighter or law enforcement officer; and

(C) includes an individual who volunteers to serve as a firefighter for a State, political subdivision of a State, or Indian tribe.

(11) "Secretary" means the Secretary of Transportation except as otherwise provided.

[(11)] *(12)* "State" means—

(A) except in section 5119 of this title, a State of the United States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, the Virgin Islands, American Samoa, Guam, and any other territory or possession of the United States designated by the Secretary; and

(B) in section 5119 of this title, a State of the United States and the District of Columbia.

[(12)] *(13)* "transports" or "transportation" means the movement of property and loading, unloading, or storage incidental to the movement.

[(13)] *(14)* "United States" means all of the States.

§ 5103. General regulatory authority

(a) DESIGNATING MATERIAL AS HAZARDOUS.—The Secretary [of Transportation] shall designate material (including an explosive, radioactive material, [etiologic agent, flammable or combustible liquid or solid, poison, oxidizing or corrosive material,] *infectious substance, flammable or combustible liquid, solid, or gas, toxic, oxidizing, or corrosive material,* and compressed gas) or a group or class of material as hazardous when the Secretary [decides] *determines* that transporting the material in commerce in a particular amount and form may pose an unreasonable risk to health and safety or property.

(b) REGULATIONS FOR SAFE TRANSPORTATION.—

(1) The Secretary shall prescribe regulations for the safe transportation, including security, of hazardous material in intrastate, interstate, and foreign commerce. The regulations—

[(A) apply to a person—

[(i) transporting hazardous material in commerce;

[(ii) causing hazardous material to be transported in commerce; or

[(iii) manufacturing, fabricating, marking, maintaining, reconditioning, repairing, or testing a packaging or a container that is represented, marked, certified, or sold by that person as qualified for use in transporting hazardous material in commerce; and]

(A) apply to a person who—

(i) transports hazardous material in commerce;

(ii) causes hazardous material to be transported in commerce;

(iii) manufactures, designs, inspects, tests, reconditions, marks, or repairs a packaging or packaging component that is represented as qualified for use in transporting hazardous material in commerce;

(iv) prepares or accepts hazardous material for transportation in commerce;

(v) is responsible for the safety of transporting hazardous material in commerce;

(vi) certifies compliance with any requirement under this chapter;

(vii) misrepresents whether such person is engaged in any activity under clause (i) through (vi) of this subparagraph; or

(viii) performs any other act or function relating to the transportation of hazardous material in commerce; and

(B) shall govern safety aspects, including security, of the transportation of hazardous material the Secretary considers appropriate.

[(C) CONSULTATION.—When prescribing a security regulation or issuing a security order that affects the safety of the transportation of hazardous material, the Secretary of Homeland Security shall consult with the Secretary.]

(2) A proceeding to prescribe the regulations must be conducted under section 553 of title 5, including an opportunity for informal oral presentation.

(c) CONSULTATION.—When prescribing a security regulation or issuing a security order that affects the safety of the transportation of hazardous material, the Secretary of Homeland Security shall consult with the Secretary of Transportation.

§ 5103a. Limitation on issuance of hazmat licenses

(a) LIMITATION.—

(1) ISSUANCE OF LICENSES.—A State may not issue to any individual a license to operate a motor vehicle transporting in commerce a hazardous material unless the Secretary [of Transportation] *of Homeland Security* has first determined, upon receipt of a notification under [subsection (c)(1)(B),] *subsection (d)(1)(B),* that the individual does not pose a security risk warranting denial of the license.

(2) RENEWALS INCLUDED.—For the purposes of this section, the term "issue", with respect to a license, includes renewal of the license.

(b) Hazardous materials described. The limitation in subsection (a) shall apply [with respect to—

[(1) any material defined as a hazardous material by the Secretary of Transportation; and

[(2) any chemical or biological material or agent determined by the Secretary of Health and Human Services or the Attorney General as being a threat to the national security of the United States.] *with respect to any material defined as hazardous material by the Secretary for which the Secretary re-*

quires placarding of a commercial motor vehicle transporting that material in commerce.

(c) RECOMMENDATIONS ON CHEMICAL AND BIOLOGICAL MATERIALS.—The Secretary of Health and Human Services shall recommend to the Secretary any chemical or biological material or agent for regulation as a hazardous material under section 5103(a) of this title if the Secretary of Health and Human Services determines that such material or agent is a threat to the national security of the United States.

[(c)] *(d)* BACKGROUND RECORDS CHECK.—

(1) IN GENERAL.—Upon the request of a State regarding issuance of a license described in subsection (a)(1) to an individual, the Attorney General—

(A) shall carry out a background records check regarding the individual; and

(B) upon completing the background records check, shall notify the Secretary [of Transportation] *of Homeland Security* of the completion and results of the background records check.

(2) SCOPE.—A background records check regarding an individual under this subsection shall consist of the following:

(A) A check of the relevant criminal history data bases.

(B) In the case of an alien, a check of the relevant data bases to determine the status of the alien under the immigration laws of the United States.

(C) As appropriate, a check of the relevant international data bases through Interpol-U.S. National Central Bureau or other appropriate means.

[(d)] *(e)* REPORTING REQUIREMENT.—Each State shall submit to the Secretary [of Transportation] *of Homeland Security*, at such time and in such manner as the Secretary may prescribe, the name, address, and such other information as the Secretary may require, concerning—

(1) each alien to whom the State issues a license described in subsection (a); and

(2) each other individual to whom such a license is issued, as the Secretary may require.

[(e)] *(f)* ALIEN DEFINED.—In this section, the term "alien" has the meaning given the term in section 101(a)(3) of the Immigration and Nationality Act.

§ 5104. Representation and tampering

(a) REPRESENTATION.—A person may represent, by marking or otherwise, that—

(1) [a container, package, or packaging (or a component of a container, package, or packaging) for] *a package, component of a package, or packaging for* transporting hazardous material is safe, certified, or complies with this chapter only if [the container, package, or packaging (or a component of a container, package, or packaging) meets] *the package, component of a package, or packaging meets* the requirements of each applicable regulation prescribed under this chapter; or

(2) hazardous material is present in a package, container, motor vehicle, rail freight car, aircraft, or vessel only if the material is present.

(b) TAMPERING.—A person may [not] *not, without authorization from the owner or custodian,* alter, remove, destroy, or otherwise tamper [unlawfully] with—

(1) a marking, label, placard, or description on a document required under this chapter or a regulation prescribed under this chapter; or

(2) a package, *component of a package, or packaging,* container, motor vehicle, rail freight car, aircraft, or vessel used to transport hazardous material.

§ 5105. Transporting certain highly radioactive material

(a) DEFINITIONS.—In this section, "high-level radioactive waste" and "spent nuclear fuel" have the same meanings given those terms in section 2 of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10101).

(b) TRANSPORTATION SAFETY STUDY.—In consultation with the Secretary of Energy, the Nuclear Regulatory Commission, potentially affected States and Indian tribes, representatives of the rail transportation industry, and shippers of high-level radioactive waste and spent nuclear fuel, the Secretary of Transportation shall conduct a study comparing the safety of using trains operated only to transport high-level radioactive waste and spent nuclear fuel with the safety of using other methods of rail transportation for transporting that waste and fuel. The Secretary of Transportation shall submit to Congress not later than November 16, 1991, a report on the results of the study.

(c) SAFE RAIL TRANSPORTATION REGULATIONS.—Not later than November 16, 1992, after considering the results of the study conducted under subsection (b) of this section, the Secretary of Transportation shall prescribe amendments to existing regulations that the Secretary considers appropriate to provide for the safe rail transportation of high-level radioactive waste and spent nuclear fuel, including trains operated only for transporting high-level radioactive waste and spent nuclear fuel.

[(d) ROUTES AND MODES STUDY.—Not later than November 16, 1991, the Secretary of Transportation shall conduct a study to decide which factors, if any, shippers and carriers should consider when selecting routes and modes that would enhance overall public safety related to the transportation of high-level radioactive waste and spent nuclear fuel. The study shall include—

[(1) notice and opportunity for public comment; and

[(2) an assessment of the degree to which at least the following affect the overall public safety of the transportation:

[(A) population densities.

[(B) types and conditions of modal infrastructures (including highways, railbeds, and waterways).

[(C) quantities of high-level radioactive waste and spent nuclear fuel.

[(D) emergency response capabilities.

[(E) exposure and other risk factors.

[(F) terrain considerations.

[(G) continuity of routes.

[(H) available alternative routes.

[(I) environmental impact factors.

[(e) INSPECTIONS OF MOTOR VEHICLES TRANSPORTING CERTAIN MATERIAL.—

[(1) Not later than November 16, 1991, the Secretary of Transportation shall require by regulation that before each use of a motor vehicle to transport a highway-route-controlled quantity of radioactive material in commerce, the vehicle shall be inspected and certified as complying with this chapter and applicable United States motor carrier safety laws and regulations. The Secretary may require that the inspection be carried out by an authorized United States Government inspector or according to appropriate State procedures.

[(2) The Secretary of Transportation may allow a person, transporting or causing to be transported a highway-route-controlled quantity of radioactive material, to inspect the motor vehicle used to transport the material and to certify that the vehicle complies with this chapter. The inspector qualification requirements the Secretary prescribes for an individual inspecting a motor vehicle apply to an individual conducting an inspection under this paragraph.]

§ 5106. Handling criteria

The Secretary of Transportation may prescribe criteria for handling hazardous material, including—

(1) a minimum number of personnel;

(2) minimum levels of training and qualifications for personnel;

(3) the kind and frequency of inspections;

(4) equipment for detecting, warning of, and controlling risks posed by the hazardous material;

(5) specifications for the use of equipment and facilities used in handling and transporting the hazardous material; and

(6) a system of monitoring safety procedures for transporting the hazardous material.

§ 5107. Hazmat employee training requirements and grants

(a) TRAINING REQUIREMENTS.—The Secretary [of Transportation] shall prescribe by regulation requirements for training that a hazmat employer must give hazmat employees of the employer on the safe loading, unloading, handling, storing, and transporting of hazardous material and emergency preparedness for responding to an accident or incident involving the transportation of hazardous material. The regulations—

(1) shall establish the date, as provided by subsection (b) of this section, by which the training shall be completed; and

(2) may provide for different training for different classes or categories of hazardous material and hazmat employees.

(b) BEGINNING AND COMPLETING TRAINING.—A hazmat employer shall begin the training of hazmat employees of the employer not later than 6 months after the Secretary [of Transportation] prescribes the regulations under subsection (a) of this section. The training shall be completed within a reasonable period of time after—

(1) 6 months after the regulations are prescribed; or

(2) the date on which an individual is to begin carrying out a duty or power of a hazmat employee if the individual is employed as a hazmat employee after the 6-month period.

(c) CERTIFICATION OF TRAINING.—After completing the training, each hazmat employer shall certify, with documentation the Secretary [of Transportation] may require by regulation, that the hazmat employees of the employer have received training and have been tested on appropriate transportation areas of responsibility, including at least one of the following:

(1) recognizing and understanding the Department of Transportation hazardous material classification system.

(2) the use and limitations of the Department hazardous material placarding, labeling, and marking systems.

(3) general handling procedures, loading and unloading techniques, and strategies to reduce the probability of release or damage during or incidental to transporting hazardous material.

(4) health, safety, and risk factors associated with hazardous material and the transportation of hazardous material.

(5) appropriate emergency response and communication procedures for dealing with an accident or incident involving hazardous material transportation.

(6) the use of the Department Emergency Response Guidebook and recognition of its limitations or the use of equivalent documents and recognition of the limitations of those documents.

(7) applicable hazardous material transportation regulations.

(8) personal protection techniques.

(9) preparing a shipping document for transporting hazardous material.

(d) COORDINATION OF TRAINING REQUIREMENTS.—In consultation with the Administrator of the Environmental Protection Agency and the Secretary of Labor, the Secretary of Transportation shall ensure that the training requirements prescribed under this section do not conflict with or duplicate—

(1) the requirements of regulations the Secretary of Labor prescribes related to hazard communication, and hazardous waste operations, and emergency response that are contained in part 1910 of title 29, Code of Federal Regulations; and

(2) the regulations the Agency prescribes related to worker protection standards for hazardous waste operations that are contained in part 311 of title 40, Code of Federal Regulations.

(e) TRAINING GRANTS.—The Secretary shall, subject to the availability of funds under [section 5127(c)(3),] *section 5128(b)(1) of this title,* make grants for training instructors to train hazmat employees *and, to the extent determined appropriate by the Secretary, grants for such instructors to train hazmat employees* under this section. A grant under this subsection shall be made to a nonprofit hazmat employee organization that demonstrates—

(1) expertise in conducting a training program for hazmat employees; and

(2) the ability to reach and involve in a training program a target population of hazmat employees.

(f) RELATIONSHIP TO OTHER LAWS.—

(1) Chapter 35 of title 44 does not apply to an activity of the Secretary of Transportation under subsections (a)-(d) of this section.

(2) An action of the Secretary of Transportation under subsections (a)-(d) of this section and sections 5106, 5108(a)-(g)(1) and (h), and 5109 of this title is not an exercise, under section 4(b)(1) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653(b)(1)), of statutory authority to prescribe or enforce standards or regulations affecting occupational safety or health.

(g) EXISTING EFFORT.—No grant under subsection (e) shall supplant or replace existing employer-provided hazardous materials training efforts or obligations.

§ 5108. Registration

(a) PERSONS REQUIRED TO FILE.—

(1) A person shall file a registration statement with the Secretary [of Transportation] under this subsection if the person is transporting or causing to be transported in commerce any of the following:

(A) a highway-route-controlled quantity of radioactive material.

(B) more than 25 kilograms of a [class A or B explosive] *Division 1.1, 1.2, or 1.3 explosive material* in a motor vehicle, rail car, or transport container.

(C) more than one liter in each package of a hazardous material the Secretary designates as extremely toxic by inhalation.

(D) hazardous material in a bulk packaging, container, or tank, as defined by the Secretary, if the bulk packaging, container, or tank has a capacity of at least 3,500 gallons or more than 468 cubic feet.

(E) a shipment of at least 5,000 pounds (except in a bulk packaging) of a class of hazardous material for which placarding of a vehicle, rail car, or freight container is required under regulations prescribed under this chapter.

(2) The Secretary [of Transportation] may require any of the following persons to file a registration statement with the Secretary under this subsection:

(A) a person transporting or causing to be transported hazardous material in commerce and not required to file a registration statement under paragraph (1) of this subsection.

[(B) a person manufacturing, fabricating, marking, maintaining, reconditioning, repairing, or testing a package or container the person represents, marks, certifies, or sells for use in transporting in commerce hazardous material the Secretary designates.]

(B) a person manufacturing, designing, inspecting, testing, reconditioning, marking, or repairing a package or packaging component that is represented as qualified for use in transporting hazardous material in commerce.

(3) A person required to file a registration statement under this subsection may transport or cause to be transported, or manufacture, [fabricate, mark, maintain, recondition, repair,

or test a package or] *design, inspect, test, recondition, mark, or repair a package, packaging component, or* container for use in transporting, hazardous material, only if the person has a statement on file as required by this subsection.

(4) The Secretary may waive the filing of a registration statement, or the payment of a fee, required under this subsection, or both, for any person not domiciled in the United States who solely offers hazardous materials for transportation to the United States from a place outside the United States if the country of which such person is a domiciliary does not require persons domiciled in the United States who solely offer hazardous materials for transportation to the foreign country from places in the United States to file registration statements, or to pay fees, for making such an offer.

(b) FORM, CONTENTS, AND LIMITATION ON FILINGS.—

(1) A registration statement under subsection (a) of this section shall be in the form and contain information the Secretary of Transportation requires by regulation. The Secretary may use existing forms of the Department of Transportation and the Environmental Protection Agency to carry out this subsection. The statement shall include—

(A) the name and principal place of business of the registrant;

(B) a description of each activity the registrant carries out for which filing a statement under subsection (a) of this section is required; and

(C) each State in which the person carries out [the activity.] *any of the activities.*

(2) A person carrying out more than one activity, or an activity at more than one location, for which filing is required only has to file one registration statement to comply with subsection (a) of this section.

[(c) FILING DEADLINES AND AMENDMENTS.—

[(1) Each person required to file a registration statement under subsection (a) of this section must file the first statement not later than March 31, 1992. The Secretary of Transportation may extend that date to September 30, 1992, for activities referred to in subsection (a)(1) of this section. A person shall renew the statement periodically consistent with regulations the Secretary prescribes, but not more than once each year and not less than once every 5 years.

[(2) The Secretary [of Transportation] shall decide by regulation when and under what circumstances a registration statement must be amended and the procedures to follow in amending the statement.]

(c) FILING.—Each person required to file a registration statement under subsection (a) of this section shall file the statement in accordance with regulations prescribed by the Secretary.

(d) SIMPLIFYING THE REGISTRATION PROCESS.—The Secretary [of Transportation] may take necessary action to simplify the registration process under subsections (a)-(c) of this section and to minimize the number of applications, documents, and other information a person is required to file under this chapter and other laws of the United States.

(e) COOPERATION WITH ADMINISTRATOR.—The Administrator of the Environmental Protection Agency shall assist the Secretary [of Transportation] in carrying out subsections (a)-(g)(1) and (h) of this section by providing the Secretary with information the Secretary requests to carry out the objectives of subsections (a)-(g)(1) and (h).

(f) AVAILABILITY OF STATEMENTS.—The Secretary [of Transportation] shall make a registration statement filed under subsection (a) of this section available for inspection by any person for a fee the Secretary establishes. However, this subsection does not require the release of information described in section 552(b) of title 5 or otherwise protected by law from disclosure to the public.

(g) FEES.—

(1) The Secretary [of Transportation may establish,] *shall establish,* impose, and collect from a person required to file a registration statement under subsection (a) of this section a fee necessary to pay for the costs of the Secretary in processing the statement.

(2)(A) In addition to a fee established under paragraph (1) of this subsection, the Secretary [of Transportation] shall establish and impose by regulation and collect an annual fee. Subject to subparagraph (B) of this paragraph, the fee shall be at least $250 but not more than [$5,000] *$2,000* from each person required to file a registration statement under this section. The Secretary shall determine the amount of the fee under this paragraph on at least one of the following:

(i) gross revenue from transporting hazardous material.

(ii) the type of hazardous material transported or caused to be transported.

(iii) the amount of hazardous material transported or caused to be transported.

(iv) the number of shipments of hazardous material.

(v) the number of activities that the person carries out for which filing a registration statement is required under this section.

(vi) the threat to property, individuals, and the environment from an accident or incident involving the hazardous material transported or caused to be transported.

(vii) the percentage of gross revenue derived from transporting hazardous material.

(viii) the amount to be made available to carry out sections 5108(g)(2), 5115, and 5116 of this title.

(ix) other factors the Secretary considers appropriate.

(B) The Secretary [of Transportation] shall adjust the amount being collected under this paragraph to reflect any unexpended balance in the account established under section 5116(i) of this title. However, the Secretary is not required to refund any fee collected under this paragraph.

(C) The Secretary [of Transportation] shall transfer to the Secretary of the Treasury amounts the Secretary [of Transportation] collects under this paragraph for deposit in [the account the Secretary of the Treasury establishes] *the Emergency Response Fund established* under section 5116(i) of this title.

(h) MAINTAINING PROOF OF FILING AND PAYMENT OF FEES.—The Secretary [of Transportation] may prescribe regulations requiring

a person required to file a registration statement under subsection (a) of this section to maintain proof of the filing and payment of fees imposed under subsection (g) of this section.

(i) RELATIONSHIP TO OTHER LAWS.—

(1) Chapter 35 of title 44 does not apply to an activity of the Secretary [of Transportation] under subsections (a)-(g)(1) and (h) of this section.

(2)(A) This section does not apply to an employee of a hazmat employer.

(B) Subsections (a)-(h) of this section do not apply to a department, agency, or instrumentality of the United States Government, an authority of a State or political subdivision of a State, *an Indian tribe,* or an employee of a department, agency, instrumentality, or authority carrying out official duties.

* * * * * * *

§ 5110. Shipping papers and disclosure

(a) PROVIDING SHIPPING PAPERS.—Each person offering for transportation in commerce hazardous material to which the shipping paper requirements of the Secretary [of Transportation] apply shall provide to the carrier providing the transportation a shipping paper that makes the disclosures the Secretary prescribes [under subsection (b) of this section.] *in regulations.*

[(b) CONSIDERATIONS AND REQUIREMENTS.—In carrying out subsection (a) of this section, the Secretary shall consider and may require—

[(1) a description of the hazardous material, including the proper shipping name;

[(2) the hazard class of the hazardous material;

[(3) the identification number (UN/NA) of the hazardous material;

[(4) immediate first action emergency response information or a way for appropriate reference to the information (that must be available immediately); and

[(5) a telephone number for obtaining more specific handling and mitigation information about the hazardous material at any time during which the material is transported.]

[(c)] *(b)* KEEPING SHIPPING PAPERS ON THE VEHICLE.—

(1) A motor carrier, and the person offering the hazardous material for transportation if a private motor carrier, shall keep the shipping paper on the vehicle transporting the material.

(2) Except as provided in paragraph (1) of this subsection, the shipping paper shall be kept in a location the Secretary specifies in a motor vehicle, train, vessel, aircraft, or facility until—

(A) the hazardous material no longer is in transportation; or

(B) the documents are made available to a representative of a department, agency, or instrumentality of the United States Government or a State or local authority responding to an accident or incident involving the motor vehicle, train, vessel, aircraft, or facility.

[(d)] *(c)* DISCLOSURE TO EMERGENCY RESPONSE AUTHORITIES.—When an incident involving hazardous material being transported in commerce occurs, the person transporting the material, immediately on request of appropriate emergency response authorities, shall disclose to the authorities information about the material.

[(e)] *(d)* RETENTION OF PAPERS.—[After the hazardous material to which a shipping paper provided to a carrier under subsection (a) applies is no longer in transportation, the person who provided the shipping paper and the carrier required to maintain it under subsection (a) shall retain the paper or electronic image thereof for a period of 1 year to be accessible through their respective principal places of business.] *The person who provides the shipping paper, and the carrier required to keep it, under this section shall retain the paper, or an electronic format of it, for a period of 3 years after the date the shipping paper is provided to the carrier, with the paper and format to be accessible through their respective principal places of business.* Such person and carrier shall, upon request, make the shipping paper available to a Federal, State, or local government agency at reasonable times and locations.

§ [5111. Rail tank cars

[A rail tank car built before January 1, 1971, may be used to transport hazardous material in commerce only if the air brake equipment support attachments of the car comply with the standards for attachments contained in sections 179.100-16 and 179.200-19 of title 49, Code of Federal Regulations, in effect on November 16, 1990.]

§ 5112. Highway routing of hazardous material

(a) APPLICATION.—

(1) This section applies to a motor vehicle only if the vehicle is transporting hazardous material in commerce for which placarding of the vehicle is required under regulations prescribed under this chapter. [However, the Secretary of Transportation] *The Secretary* by regulation may extend application of this section or a standard prescribed under subsection (b) of this section to—

(A) any use of a vehicle under this paragraph to transport any hazardous material in commerce; and

(B) any motor vehicle used to transport hazardous material in commerce.

(2) Except as provided by subsection (d) of this section and section 5125(c) of this title, each State and Indian tribe may establish, maintain, and enforce—

(A) designations of specific highway routes over which hazardous material may and may not be transported by motor vehicle; and

(B) limitations and requirements related to highway routing.

(b) STANDARDS FOR STATES AND INDIAN TRIBES.—

(1) The Secretary, in consultation with the States, shall prescribe by regulation standards for States and Indian tribes to use in carrying out subsection (a) of this section. The standards shall include—

(A) a requirement that a highway routing designation, limitation, or requirement of a State or Indian tribe shall enhance public safety in the area subject to the jurisdiction of the State or tribe and in areas of the United States not subject to the jurisdiction of the State or tribe and directly affected by the designation, limitation, or requirement;

(B) minimum procedural requirements to ensure public participation when the State or Indian tribe is establishing a highway routing designation, limitation, or requirement;

(C) a requirement that, in establishing a highway routing designation, limitation, or requirement, a State or Indian tribe consult with appropriate State, local, and tribal officials having jurisdiction over areas of the United States not subject to the jurisdiction of that State or tribe establishing the designation, limitation, or requirement and with affected industries;

(D) a requirement that a highway routing designation, limitation, or requirement of a State or Indian tribe shall ensure through highway routing for the transportation of hazardous material between adjacent areas;

(E) a requirement that a highway routing designation, limitation, or requirement of one State or Indian tribe affecting the transportation of hazardous material in another State or tribe may be established, maintained, and enforced by the State or tribe establishing the designation, limitation, or requirement only if—

(i) the designation, limitation, or requirement is agreed to by the other State or tribe within a reasonable period or is approved by the Secretary under subsection (d) of this section; and

(ii) the designation, limitation, or requirement is not an unreasonable burden on commerce;

(F) a requirement that establishing a highway routing designation, limitation, or requirement of a State or Indian tribe be completed in a timely way;

(G) a requirement that a highway routing designation, limitation, or requirement of a State or Indian tribe provide reasonable routes for motor vehicles transporting hazardous material to reach terminals, facilities for food, fuel, repairs, and rest, and places to load and unload hazardous material;

(H) a requirement that a State be responsible—

(i) for ensuring that political subdivisions of the State comply with standards prescribed under this subsection in establishing, maintaining, and enforcing a highway routing designation, limitation, or requirement; and

(ii) for resolving a dispute between political subdivisions; and

(I) a requirement that, in carrying out subsection (a) of this section, a State or Indian tribe shall consider—

(i) population densities;

(ii) the types of highways;

(iii) the types and amounts of hazardous material;

(iv) emergency response capabilities;

(v) the results of consulting with affected persons;
(vi) exposure and other risk factors;
(vii) terrain considerations;
(viii) the continuity of routes;
(ix) alternative routes;
(x) the effects on commerce;
(xi) delays in transportation; and
(xii) other factors the Secretary considers appropriate.

(2) The Secretary may not assign a specific weight that a State or Indian tribe shall use when considering the factors under paragraph (1)(I) of this subsection.

(c) LIST OF ROUTE DESIGNATIONS.—In coordination with the States, the Secretary shall update and publish periodically a list of currently effective hazardous material highway route designations.

(d) DISPUTE RESOLUTION.—

(1) The Secretary shall prescribe regulations for resolving a dispute related to through highway routing or to an agreement with a proposed highway route designation, limitation, or requirement between or among States, political subdivisions of different States, or Indian tribes.

(2) A State or Indian tribe involved in a dispute under this subsection may petition the Secretary to resolve the dispute. The Secretary shall resolve the dispute not later than one year after receiving the petition. The resolution shall provide the greatest level of highway safety without being an unreasonable burden on commerce and shall ensure compliance with standards prescribed under subsection (b) of this section.

(3)(A) After a petition is filed under this subsection, a civil action about the subject matter of the dispute may be brought in a court only after the earlier of—

(i) the day the Secretary issues a final decision; or
(ii) the last day of the one-year period beginning on the day the Secretary receives the petition.

(B) A State or Indian tribe adversely affected by a decision of the Secretary under this subsection may bring a civil action for judicial review of the decision in an appropriate district court of the United States not later than 89 days after the day the decision becomes final.

(e) RELATIONSHIP TO OTHER LAWS.—This section and regulations prescribed under this section do not affect sections 31111 and 31113 of this title or section 127 of title 23.

(f) EXISTING RADIOACTIVE MATERIAL ROUTING REGULATIONS.—The Secretary is not required to amend or again prescribe regulations related to highway routing designations over which radioactive material may and may not be transported by motor vehicles, and limitations and requirements related to the routing, that were in effect on November 16, 1990.

§ 5113. Unsatisfactory safety rating

[See section 31144.**]** *A violation of section 31144(c)(3) of this title shall be considered a violation of this chapter, and shall be subject to the penalties in sections 5123 and 5124 of this title.*

§ 5114. Air transportation of ionizing radiation material

(a) TRANSPORTING IN AIR COMMERCE.—Material that emits ionizing radiation spontaneously may be transported on a passenger-carrying aircraft in air commerce (as defined in section 40102(a) of this title) only if the material is intended for a use in, or incident to, research or medical diagnosis or treatment and does not present an unreasonable hazard to health and safety when being prepared for, and during, transportation.

(b) PROCEDURES.—The Secretary [of Transportation] shall prescribe procedures for monitoring and enforcing regulations prescribed under this section.

(c) NONAPPLICATION.—This section does not apply to material the Secretary decides does not pose a significant hazard to health or safety when transported because of its low order of radioactivity.

§ 5115. Training curriculum for the public sector

[(a) DEVELOPMENT AND UPDATING.—Not later than November 16, 1992, in coordination with the Director of the Federal Emergency Management Agency, Chairman of the Nuclear Regulatory Commission, Administrator of the Environmental Protection Agency, Secretaries of Labor, Energy, and Health and Human Services, and Director of the National Institute of Environmental Health Sciences, and using the existing coordinating mechanisms of the national response team and, for radioactive material, the Federal Radiological Preparedness Coordinating Committee, the Secretary of Transportation shall develop and update periodically a curriculum consisting of a list of courses necessary to train public sector emergency response and preparedness teams. Only in developing the curriculum, the Secretary of Transportation shall consult with regional response teams established under the national contingency plan established under section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9605), representatives of commissions established under section 301 of the Emergency Planning and Community Right-To-Know Act of 1986 (42 U.S.C. 11001), persons (including governmental entities) that provide training for responding to accidents and incidents involving the transportation of hazardous material, and representatives of persons that respond to those accidents and incidents.]

(a) IN GENERAL.—In coordination with the Director of the Federal Emergency Management Agency, the Chairman of the Nuclear Regulatory Commission, the Administrator of the Environmental Protection Agency, the Secretaries of Labor, Energy, and Health and Human Services, and the Director of the National Institute of Environmental Health Sciences, and using existing coordinating mechanisms of the National Response Team and, for radioactive material, the Federal Radiological Preparedness Coordinating Committee, the Secretary shall maintain a current curriculum of lists of courses necessary to train public sector emergency response and preparedness teams in matters relating to the transportation of hazardous material.

(b) REQUIREMENTS.—The curriculum [developed] *maintained* under subsection (a) of this section—

(1) shall include—

(A) a recommended course of study to train public sector employees to respond to an accident or incident involving the transportation of hazardous material and to plan for those responses;

(B) recommended basic courses and minimum number of hours of instruction necessary for public sector employees to be able to respond safely and efficiently to an accident or incident involving the transportation of hazardous material and to plan those responses; and

(C) appropriate emergency response training and planning programs for public sector employees developed [under other United States Government grant programs, including those developed with grants made under section 126(g) of the Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. 9660a); and] *with Federal assistance; and*

(2) may include recommendations on material appropriate for use in a recommended basic course described in clause (1)(B) of this subsection.

(c) TRAINING ON COMPLYING WITH LEGAL REQUIREMENTS.—A recommended basic course described in subsection (b)(1)(B) of this section shall provide the training necessary for public sector employees to comply with—

(1) regulations related to hazardous waste operations and emergency response contained in part 1910 of title 29, Code of Federal Regulations, prescribed by the Secretary of Labor;

(2) regulations related to worker protection standards for hazardous waste operations contained in part 311 of title 40, Code of Federal Regulations, prescribed by the Administrator; and

(3) standards related to emergency response training prescribed by the National Fire Protection [Association.] *Assocation or by any other voluntary organization establishing consensus-based standards that the Secretary considers appropriate.*

(d) DISTRIBUTION AND PUBLICATION.—With the [national response team—] *National Response Team—*

(1) the Director of the Federal Emergency Management Agency shall distribute the curriculum and any updates to the curriculum to the regional response teams and all committees and commissions established under section 301 of the Emergency Planning and Community Right-To-Know Act of 1986 (42 U.S.C. 11001); and

(2) the Secretary of Transportation may [publish a list of programs that uses a course developed under this section for training public sector employees to respond to an accident or incident involving the transportation of hazardous material.] *publish and distribute the list of courses maintained under this section, and of any programs utilizing such courses.*

§ 5116. Planning and training grants, monitoring, and review

(a) PLANNING GRANTS.—

(1) The Secretary [of Transportation] shall make grants to States and Indian tribes—

(A) to develop, improve, and carry out emergency plans under the Emergency Planning and Community Right-To-Know Act of 1986 (42 U.S.C. 11001 et seq.), including ascertaining flow patterns of hazardous material on lands under the jurisdiction of a State or Indian tribe, and between lands under the jurisdiction of a State or Indian tribe and lands of another State or Indian tribe; and

(B) to decide on the need for a regional hazardous material emergency response team.

(2) The Secretary [of Transportation] may make a grant to a State or Indian tribe under paragraph (1) of this subsection in a fiscal year only if —

(A) the State or Indian tribe certifies that the total amount the State or Indian tribe expends (except amounts of the United States Government) to develop, improve, and carry out emergency plans under the Act will at least equal the average level of expenditure for the last 2 fiscal years; and

(B) the State agrees to make available at least 75 percent of the amount of the grant under paragraph (1) of this subsection in the fiscal year to local emergency planning committees established under section 301(c) of the Act (42 U.S.C. 11001(c)) to develop emergency plans under the Act.

(3) A State or Indian tribe receiving a grant under this subsection shall ensure that planning under the grant is coordinated with emergency planning conducted by adjacent States and Indian tribes.

(b) TRAINING GRANTS.—

(1) The Secretary [of Transportation] shall make grants to States and Indian tribes to train public sector employees to respond to accidents and incidents involving hazardous material.

(2) The Secretary [of Transportation] may make a grant under paragraph (1) of this subsection in a fiscal year—

(A) to a State or Indian tribe only if the State or tribe certifies that the total amount the State or tribe expends (except amounts of the Government) to train public sector employees to respond to an accident or incident involving hazardous material will at least equal the average level of expenditure for the last 2 fiscal years;

(B) to a State or Indian tribe only if the State or tribe makes an agreement with the Secretary that the State or tribe will use in that fiscal year, for training public sector employees to respond to an accident or incident involving hazardous material—

(i) a course developed or identified under section 5115 of this title; or

(ii) another course the Secretary decides is consistent with the objectives of this section; and

(C) to a State only if the State agrees to make available at least 75 percent of the amount of the grant under paragraph (1) of this subsection in the fiscal year for training public sector employees a political subdivision of the State employs or uses.

(3) A grant under this subsection may be used—

(A) to pay—

(i) the tuition costs of public sector employees being trained;

(ii) travel expenses of those employees to and from the training facility;

(iii) room and board of those employees when at the training facility; and

(iv) travel expenses of individuals providing the training;

(B) by the State, political subdivision, or Indian tribe to provide the training; and

(C) to make an agreement the Secretary [of Transportation] approves authorizing a person (including an authority of a State or political subdivision of a State or Indian tribe) to provide the training—

(i) if the agreement allows the Secretary and the State or tribe to conduct random examinations, inspections, and audits of the training without prior notice; and

(ii) if the State or tribe conducts at least one on-site observation of the training each year.

(4) The Secretary [of Transportation] shall allocate amounts made available for grants under this subsection for a fiscal year among eligible States and Indian tribes based on the needs of the States and tribes for emergency response training. In making a decision about those needs, the Secretary shall consider—

(A) the number of hazardous material facilities in the State or on land under the jurisdiction of the tribe;

(B) the types and amounts of hazardous material transported in the State or on that land;

(C) whether the State or tribe imposes and collects a fee on transporting hazardous material;

(D) whether the fee is used only to carry out a purpose related to transporting hazardous material; and

(E) other factors the Secretary decides are appropriate to carry out this subsection.

(c) COMPLIANCE WITH CERTAIN LAW.—The Secretary [of Transportation] may make a grant to a State under this section in a fiscal year only if the State certifies that the State complies with sections 301 and 303 of the Emergency Planning and Community Right-To-Know Act of 1986 (42 U.S.C. 11001, 11003).

(d) APPLICATIONS.—A State or Indian tribe interested in receiving a grant under this section shall submit an application to the Secretary. [of Transportation.] The application must be submitted at the time, and contain information, the Secretary requires by regulation to carry out the objectives of this section.

(e) GOVERNMENT'S SHARE OF COSTS.—A grant under this section is for 80 percent of the cost the State or Indian tribe incurs in the fiscal year to carry out the activity for which the grant is made. Amounts of the State or tribe under subsections (a)(2)(A) and (b)(2)(A) of this section are not part of the non-Government share under this subsection.

(f) MONITORING AND TECHNICAL ASSISTANCE.—In coordination with the Secretaries of Transportation and Energy, Administrator

of the Environmental Protection Agency, and Director of the National Institute of Environmental Health Sciences, the Director of the Federal Emergency Management Agency shall monitor public sector emergency response planning and training for an accident or incident involving hazardous material. Considering the results of the monitoring, the Secretaries, Administrator, and Directors each shall provide technical assistance to a State, political subdivision of a State, or Indian tribe for carrying out emergency response training and planning for an accident or incident involving hazardous material and shall coordinate the assistance using the existing coordinating mechanisms of the [national response team] *National Response Team* and, for radioactive material, the Federal Radiological Preparedness Coordinating Committee.

(g) DELEGATION OF AUTHORITY.—To minimize administrative costs and to coordinate [Government grant programs] *Federal financial assistance programs* for emergency response training and planning, the Secretary [of Transportation] may delegate to the Directors of the Federal Emergency Management Agency and National Institute of Environmental Health Sciences, Chairman of the Nuclear Regulatory Commission, Administrator of the Environmental Protection Agency, and Secretaries of Labor and Energy any of the following:

(1) authority to receive applications for grants under this section.

(2) authority to review applications for technical compliance with this section.

(3) authority to review applications to recommend approval or disapproval.

(4) any other ministerial duty associated with grants under this section.

(h) MINIMIZING DUPLICATION OF EFFORT AND EXPENSES.—The Secretaries of Transportation, Labor, and Energy, Directors of the Federal Emergency Management Agency and National Institute of Environmental Health Sciences, Chairman of the Nuclear Regulatory Commission, and Administrator of the Environmental Protection Agency shall review periodically, with the head of each department, agency, or instrumentality of the Government, all emergency response and preparedness training programs of that department, agency, or instrumentality to minimize duplication of effort and expense of the department, agency, or instrumentality in carrying out the programs and shall take necessary action to minimize duplication.

(i) ANNUAL REGISTRATION FEE ACCOUNT AND ITS USES.—The Secretary of the Treasury shall establish an account *(to be known as the "Emergency Preparedness Fund")* in the Treasury into which the Secretary of the Treasury shall deposit amounts the Secretary [of Transportation collects under section 5108(g)(2)(A) of this title and] transfers to the Secretary of the Treasury under section 5108(g)(2)(C) of this title. Without further appropriation, amounts in the account are available—

(1) to make grants under this section;

(2) to monitor and provide technical assistance under subsection (f) of this section; [and]

(3) to publish and distribute an emergency response guide; and

[(3)] *(4)* to pay administrative costs of carrying out this section and sections 5108(g)(2) and 5115 of this title, except that not more than 10 percent of the amounts made available from the account in a fiscal year may be used to pay those costs.

(j) SUPPLEMENTAL TRAINING GRANTS.—

(1) In order to further the purposes of subsection (b), the Secretary shall, subject to the availability of funds, make grants to national nonprofit employee organizations engaged solely in fighting fires for the purpose of training instructors to conduct hazardous materials response training programs for individuals with statutory responsibility to respond to hazardous materials accidents and incidents.

(2) For the purposes of this subsection the Secretary, after consultation with interested organizations, shall—

(A) identify regions or locations in which fire departments or other organizations which provide emergency response to hazardous materials transportation accidents and incidents are in need of hazardous materials training; and

(B) prioritize such needs and develop a means for identifying additional specific training needs.

(3) Funds granted to an organization under this subsection shall only be used—

(A) to train instructors to conduct hazardous materials response training programs;

(B) to purchase training equipment used exclusively to train instructors to conduct such training programs; and

(C) to disseminate such information and materials as are necessary for the conduct of such training programs.

(4) The Secretary may only make a grant to an organization under this subsection in a fiscal year if the organization enters into an agreement with the Secretary to train instructors to conduct hazardous materials response training programs in such fiscal year that will use—

(A) a course or courses developed or identified under section 5115 of this title; or

(B) other courses which the Secretary determines are consistent with the objectives of this subsection; for training individuals with statutory responsibility to respond to accidents and incidents involving hazardous materials. Such agreement also shall provide that training courses shall be open to all such individuals on a nondiscriminatory basis.

(5) The Secretary may impose such additional terms and conditions on grants to be made under this subsection as the Secretary determines are necessary to protect the interests of the United States and to carry out the objectives of this subsection.

(k) REPORTS.—[Not later than September 30, 1997, the Secretary shall submit to Congress a report on the allocation and uses of training grants authorized under subsection (b) for fiscal year 1993 through fiscal year 1996 and grants authorized under subsection (j) and section 5107 for fiscal years 1995 and 1996.] *The Secretary shall make available to the public annually information on the allocation and uses of planning grants under subsection (a), training grants under subsection (b), and grants under subsection (j) of this*

section and under section 5107 of this title. [Such report] *The information* shall identify the ultimate recipients of training grants and include a detailed accounting of all grant expenditures by grant recipients, the number of persons trained under the grant programs, and an evaluation of the efficacy of training programs carried out.

[§ 5117. Exemptions and exclusions]

§ 5117. Special permits and exclusions

(a) AUTHORITY TO EXEMPT.—

(1) As provided under procedures prescribed by regulation, [the Secretary of Transportation may issue [an exemption] *a special permit* from this chapter or a regulation prescribed under section 5103(b), 5104, 5110, or 5112 of this title to a person transporting, or causing to be transported, hazardous material in a way] *the Secretary may issue, modify, or terminate a special permit authorizing variances from this chapter, or a regulation prescribed under section 5103(b), 5104, 5110, or 5112 of this title, to a person performing a function regulated by the Secretary under section 5103(b)(1) of this title in a way* that achieves a safety level—

(A) at least equal to the safety level required under this chapter; or

(B) consistent with the public interest and this chapter, if a required safety level does not exist.

[(2) An exemption under this subsection is effective for not more than 2 years and may be renewed on application to the Secretary.]

(2) A special permit under this subsection—

(A) shall be effective when first issued for not more than 2 years; and

(B) may be renewed for successive periods of not more than 4 years each.

(b) APPLICATIONS.—When applying for [an exemption] *a special permit* or renewal of [an exemption] *a special permit* under this section, the person must provide a safety analysis prescribed by the Secretary that justifies [the exemption.] *the special permit.* The Secretary shall publish in the Federal Register notice that an application for [an exemption] *a special permit* has been filed and shall give the public an opportunity to inspect the safety analysis and comment on the application. This subsection does not require the release of information protected by law from public disclosure.

(c) APPLICATIONS TO BE DEALT WITH PROMPTLY.—The Secretary shall issue or renew [the exemption] *a special permit* for which an application was filed or deny such issuance or renewal within 180 days after the first day of the month following the date of the filing of such application, or the Secretary shall publish a statement in the Federal Register of the reason why the Secretary's decision on [the exemption] *a special permit* is delayed, along with an estimate of the additional time necessary before the decision is made.

(d) EXCLUSIONS.—

(1) The Secretary shall exclude, in any part, from this chapter and regulations prescribed under this chapter—

(A) a public vessel (as defined in section 2101 of title 46);

(B) a vessel exempted under section 3702 of title 46 from chapter 37 of title 46; and

(C) a vessel to the extent it is regulated under the Ports and Waterways Safety Act of 1972 (33 U.S.C. 1221 et seq.).

(2) This chapter and regulations prescribed under this chapter do not prohibit—

(A) or regulate transportation of a firearm (as defined in section 232 of title 18), or ammunition for a firearm, by an individual for personal use; or

(B) transportation of a firearm or ammunition in commerce.

(e) LIMITATION ON AUTHORITY.—Unless the Secretary decides that an emergency exists, [an exemption] *a special permit* or renewal granted under this section is the only way a person subject to this chapter may be exempt from this chapter.

[§ 5118. Inspectors

[(a) GENERAL REQUIREMENT.—The Secretary of Transportation shall maintain the employment of 30 hazardous material safety inspectors more than the total number of safety inspectors authorized for the fiscal year that ended September 30, 1990, for the Federal Railroad Administration, the Federal Highway Administration, and the Research and Special Programs Administration.

[(b) ALLOCATION TO PROMOTE SAFETY IN TRANSPORTING RADIOACTIVE MATERIAL.—

[(1) The Secretary shall ensure that 10 of the 30 additional inspectors focus on promoting safety in transporting radioactive material, as defined by the Secretary, including inspecting—

[(A) at the place of origin, shipments of high-level radioactive waste or nuclear spent material (as those terms are defined in section 5105(a) of this title); and

[(B) to the maximum extent practicable shipments of radioactive material that are not high-level radioactive waste or nuclear spent material.

[(2) In carrying out their duties, those 10 additional inspectors shall cooperate to the greatest extent possible with safety inspectors of the Nuclear Regulatory Commission and appropriate State and local government officials.

[(3) Those 10 additional inspectors shall be allocated as follows:

[(A) one to the Research and Special Programs Administration.

[(B) 3 to the Federal Railroad Administration.

[(C) 3 to the Federal Highway Administration.

[(D) the other 3 among the administrations referred to in clauses (A)-(C) of this paragraph as the Secretary decides.

[(c) ALLOCATION OF OTHER INSPECTORS.—The Secretary shall allocate, as the Secretary decides, the 20 additional inspectors authorized under this section and not allocated under subsection (b) of this section among the administrations referred to in subsection (b)(3)(A)-(C) of this section.]

§ 5119. Uniform forms and procedures

[(a) WORKING GROUP.—The Secretary of Transportation shall establish a working group of State and local government officials, including representatives of the National Governors' Association, the National Association of Counties, the National League of Cities, the United States Conference of Mayors, and the National Conference of State Legislatures. The purposes of the working group are—

[(1) to establish uniform forms and procedures for a State—

[(A) to register persons that transport or cause to be transported hazardous material by motor vehicle in the State; and

[(B) to allow the transportation of hazardous material in the State; and

[(2) to decide whether to limit the filing of any State registration and permit forms and collection of filing fees to the State in which the person resides or has its principal place of business.

[(b) CONSULTATION AND REPORTING.—The working group—

[(1) shall consult with persons subject to registration and permit requirements described in subsection (a) of this section; and

[(2) not later than November 16, 1993, shall submit to the Secretary, the Committee on Commerce, Science, and Transportation of the Senate, and the Committee on Transportation and Infrastructure of the House of Representatives a final report that contains—

[(A) a detailed statement of its findings and conclusions; and

[(B) its joint recommendations on the matters referred to in subsection (a) of this section.

[(c) REGULATIONS ON RECOMMENDATIONS.—

[(1) The Secretary shall prescribe regulations to carry out the recommendations contained in the report submitted under subsection (b) of this section with which the Secretary agrees. The regulations shall be prescribed by the later of the last day of the 3-year period beginning on the date the working group submitted its report or the last day of the 90-day period beginning on the date on which at least 26 States adopt all of the recommendations of the report. A regulation prescribed under this subsection may not define or limit the amount of a fee a State may impose or collect.

[(2) A regulation prescribed under this subsection takes effect one year after it is prescribed. The Secretary may extend the one-year period for an additional year for good cause. After a regulation is effective, a State may establish, maintain, or enforce a requirement related to the same subject matter only if the requirement is the same as the regulation.

[(3) In consultation with the working group, the Secretary shall develop a procedure to eliminate differences in how States carry out a regulation prescribed under this subsection.

[(d) RELATIONSHIP TO OTHER LAWS.—The Federal Advisory Committee Act (5 App. U.S.C.) does not apply to the working group.]

(a) IN GENERAL.—The Secretary may prescribe regulations to establish uniform forms and regulations for States on the following:

(1) To register and issue permits to persons that transport or cause to be transported hazardous material by motor vehicles in a State.

(2) To permit the transportation of hazardous material in a State.

(b) UNIFORMITY IN FORMS AND PROCEDURES.—In prescribing regulations under subsection (a) of this section, the Secretary shall develop procedures to eliminate discrepancies among the States in carrying out the activities covered by the regulations.

(c) LIMITATION.—The regulations prescribed under subsection (a) of this section may not define or limit the amount of any fees imposed or collected by a State for any activities covered by the regulations.

(d) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in paragraph (2) of this subsection, the regulations prescribed under subsection (a) of this section shall take effect 1 year after the date on which prescribed.

(2) EXTENSION.—The Secretary may extend the 1-year period in subsection (a) for an additional year for good cause.

(e) STATE REGULATIONS.—After the regulations prescribed under subsection (a) of this section take effect under subsection (d) of this section, a State may establish, maintain, or enforce a requirement relating to the same subject matter only if the requirement is consistent with applicable requirements with respect to such activity in the regulations.

(f) INTERIM STATE PROGRAMS.—Pending the prescription of regulations under subsection (a) of this section, States may participate in the program of uniform forms and procedures recommended by the Alliance for Uniform Hazmat Transportation Procedures.

§ 5120. International uniformity of standards and requirements

(a) PARTICIPATION IN INTERNATIONAL FORUMS.—Subject to guidance and direction from the Secretary of State, the Secretary [of Transportation] shall participate in international forums that establish or recommend mandatory standards and requirements for transporting hazardous material in international commerce.

(b) CONSULTATION.—The Secretary [of Transportation] may consult with interested authorities to ensure that, to the extent practicable, regulations the Secretary prescribes under sections 5103(b), 5104, 5110, and 5112 of this title are consistent with standards related to transporting hazardous material that international authorities adopt.

(c) DIFFERENCES WITH INTERNATIONAL STANDARDS AND REQUIREMENTS.—This section—

(1) does not require the Secretary [of Transportation] to prescribe a standard identical to a standard adopted by an international authority if the Secretary decides the standard is unnecessary or unsafe; and

(2) does not prohibit the Secretary from prescribing a safety requirement more stringent than a requirement included in a standard adopted by an international authority if the Secretary decides the requirement is necessary in the public interest.

§ 5121. Administrative

[(a) GENERAL AUTHORITY.—To carry out this chapter, the Secretary of Transportation may investigate, make reports, issue subpenas, conduct hearings, require the production of records and property, take depositions, and conduct research, development, demonstration, and training activities. After notice and an opportunity for a hearing, the Secretary may issue an order requiring compliance with this chapter or a regulation prescribed under this chapter.

[(b) RECORDS, REPORTS, AND INFORMATION.—A person subject to this chapter shall—

[(1) maintain records, make reports, and provide information the Secretary by regulation or order requires; and

[(2) make the records, reports, and information available when the Secretary requests.

[(c) INSPECTION.—

[(1) The Secretary may authorize an officer, employee, or agent to inspect, at a reasonable time and in a reasonable way, records and property related to—

[(A) manufacturing, fabricating, marking, maintaining, reconditioning, repairing, testing, or distributing a packaging or a container for use by a person in transporting hazardous material in commerce; or

[(B) the transportation of hazardous material in commerce.

[(2) An officer, employee, or agent under this subsection shall display proper credentials when requested.

[(d) FACILITY, STAFF, AND REPORTING SYSTEM ON RISKS, EMERGENCIES, AND ACTIONS.—

[(1) The Secretary shall—

[(A) maintain a facility and technical staff sufficient to provide, within the United States Government, the capability of evaluating a risk related to the transportation of hazardous material and material alleged to be hazardous;

[(B) maintain a central reporting system and information center capable of providing information and advice to law enforcement and firefighting personnel, other interested individuals, and officers and employees of the Government and State and local governments on meeting an emergency related to the transportation of hazardous material; and

[(C) conduct a continuous review on all aspects of transporting hazardous material to decide on and take appropriate actions to ensure safe transportation of hazardous material.

[(2) Paragraph (1) of this subsection does not prevent the Secretary from making a contract with a private entity for use of a supplemental reporting system and information center operated and maintained by the contractor.

[(e) REPORT.—The Secretary shall, once every 2 years, prepare and submit to the President for transmittal to the Congress a comprehensive report on the transportation of hazardous materials during the preceding 2 calendar years. The report shall include—

[(1) a statistical compilation of accidents and casualties related to the transportation of hazardous material;

[(2) a list and summary of applicable Government regulations, criteria, orders, and exemptions;

[(3) a summary of the basis for each exemption;

[(4) an evaluation of the effectiveness of enforcement activities and the degree of voluntary compliance with regulations;

[(5) a summary of outstanding problems in carrying out this chapter in order of priority; and

[(6) recommendations for appropriate legislation.]

(a) GENERAL AUTHORITY.—

(1) To carry out this chapter, the Secretary may investigate, conduct tests, make reports, issue subpoenas, conduct hearings, require the production of records and property, take depositions, and conduct research, development, demonstration, and training activities.

(2) Except as provided in subsections (c) and (d) of this section, the Secretary shall provide notice and an opportunity for a hearing before issuing an order directing compliance with this chapter, a regulation prescribed under this chapter, or an order, special permit, or approval issued under this chapter.

(b) RECORDS, REPORTS, PROPERTY, AND INFORMATION.—A person subject to this chapter shall—

(1) maintain records, make reports, and provide property and information that the Secretary by regulation or order requires; and

(2) make the records, reports, property, and information available for inspection when the Secretary undertakes an inspection or investigation.

(c) INSPECTIONS AND INVESTIGATIONS.—

(1) A designated officer or employee of the Secretary may—

(A) inspect and investigate, at a reasonable time and in a reasonable way, records and property relating to a function described in section 5103(b)(1) of this title;

(B) except for packaging immediately adjacent to the hazardous material contents, gain access to, open, and examine a package offered for or in transportation when the officer or employees has an objectively reasonable and articulable belief that the package may contain hazardous material;

(C) remove from transportation a package or related packages in a shipment offered for or in transportation for which—

(i) such officer or employee has an objectively reasonable and articulable belief that the package may pose an imminent hazard; and

(ii) such officer or employee contemporaneously documents such belief in accordance with procedures set forth in regulations prescribed under subsection (e) of this section;

(D) gather information from the offeror, carrier, packaging manufacturer or retester, or other person responsible for a package or packages to ascertain the nature and hazards of the contents of the package or packages;

(E) as necessary under terms and conditions prescribed by the Secretary, order the offeror, carrier, or other person responsible for a package or packages to have the package

or packages transported to an appropriate facility, opened, examined, and analyzed; and

(F) when safety might otherwise be compromised, authorize properly qualified personnel to assist in activities carried out under this paragraph.

(2) An officer or employee acting under the authority of the Secretary under this subsection shall display proper credentials when requested.

(3) In instances when, as a result of an inspection or investigation under this subsection, an imminent hazards is not found to exist, the Secretary shall, in accordance with procedures set forth in regulations prescribed under subsection (e) of this section, assist the safe resumption of transportation of the package, packages, or transport unit concerned.

(d) EMERGENCY ORDERS.—

(1) If, upon inspection, investigation, testing, or research, the Secretary determines that a violation of a provision of this chapter, or a regulation prescribed under this chapter, or an unsafe condition or practice, constitutes or is causing an imminent hazard, the Secretary may issue or impose emergency restrictions, prohibitions, recalls, or out-of-service orders, without notice or an opportunity for a hearing, but only to the extent necessary to abate the imminent hazard.

(2) The action of the Secretary under paragraph (1) of this subsection shall be in a written emergency order that—

(A) describes the violation, condition, or practice that constitutes or is causing the imminent hazard;

(B) states the restrictions, prohibitions, recalls, or out-of-service orders issued or imposed; and

(C) describe the standards and procedures for obtaining relief from the order.

(3) After taking action under paragraph (1) of this subsection, the Secretary shall provide for review of the action under section 554 of title 5 if a petition for review is filed within 20 calendar days of the issuance of the order for the action.

(4) If a petition for review of an action is filed under paragraph (3) of this subsection and the review under that paragraph is not completed by the end of the 30-day period beginning on the date the petition is filed, the action shall cease to be effective at the end of such period unless the Secretary determines, in writing, that the imminent hazard providing a basis for the action continues to exist.

(5) In this subsection, the term "out-of-service order" means a requirement that an aircraft, vessel, motor vehicle, train, railcar, locomotive, other vehicle, transport unit, transport vehicle, freight container, potable tank, or other package not be moved until specified conditions have been met.

(e) REGULATIONS.—The Secretary shall prescribe in accordance with section 553 of title 5 regulations to carry out the authority in subsections (c) and (d) of this section.

(f) FACILITY, STAFF, AND REPORTING SYSTEM ON RISKS, EMERGENCIES, AND ACTIONS.—

(1) The Secretary shall—

(A) maintain a facility and technical staff sufficient to provide, within the United States Government, the capa-

bility of evaluating a risk relating to the transportation of hazardous material and material alleged to be hazardous;

(B) maintain a central reporting system and information center capable of providing information and advice to law enforcement and firefighting personnel, and other interested individuals, and officers and employees of the United States Government and State and local governments on meeting an emergency relating to the transportation of hazardous material; and

(C) conduct a continuous review on all aspects of transporting hazardous material to decide on and take appropriate actions to ensure safe transportation of hazardous material.

(2) Paragraph (1) of this subsection shall not prevent the Secretary from making a contract with a private entity for use of a supplemental reporting system and information center operated and maintained by the contractor.

(g) GRANTS, COOPERATIVE AGREEMENTS, AND OTHER TRANSACTIONS.—The Secretary may enter into grants, cooperative agreements, and other transactions with a person, agency, or instrumentality of the United States, a unit of State or local government, an Indian tribe, a foreign government (in coordination with the Department of State), an educational institution, or other appropriate entity—

(1) to expand risk assessment and emergency response capabilities with respect to the security of transportation of hazardous material;

(2) to conduct research, development, demonstration, risk assessment and emergency response planning and training activities; or

(3) to otherwise carry out this chapter.

(h) REPORTS.—

(1) The Secretary shall, once every 2 years, submit to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure a comprehensive report on the transportation of hazardous material during the preceding 2 calendar years. Each report shall include, for the period covered by such report—

(A) a statistical compilation of the accidents and casualties related to the transportation of hazardous material during such period;

(B) a list and summary of applicable Government regulations, criteria, orders, and special permits;

(C) a summary of the basis for each special permit issued;

(D) an evaluation of the effectiveness of enforcement activities relating to the transportation of hazardous material during such period, and of the degree of voluntary compliance with regulations;

(E) a summary of outstanding problems in carrying out this chapter, set forth in order of priority; and

(F) any recommendations for legislative or administrative action that the Secretary considers appropriate.

(2) Before December 31, 2004, and every 3 years thereafter, the Secretary, through the Bureau of Transportation Statistics and in consultation with other Federal departments and agencies, shall submit a report to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure on the transportation of hazardous material in all modes of transportation during the preceding 3 calendar years. Each report shall include, for the period covered by such report—

(A) a summary of the hazardous material shipments, deliveries, and movements during such period, set forth by tonnage by mode, both domestically and across United States borders; and

(B) a summary of shipment estimates during such period as a proxy for risk.

(i) SECURITY SENSITIVE INFORMATION.—

(1) If the Secretary determines that particular information may reveal a vulnerability of a hazardous material to attack during transportation in commerce, or may facilitate the diversion of hazardous material during transportation in commerce for use in an attack on people or property, the Secretary may disclose such information only—

(A) to the owner, custodian, offeror, or carrier of such hazardous material;

(B) to an officer, employee, or agent of the United States Government, or a State or local government, including volunteer fire departments, concerned with carrying out transportation safety laws, protecting hazardous material in the course of transportation in commerce, protecting public safety or national security, or enforcing Federal law designed to protect public health or the environment; or

(C) in an administrative or judicial proceeding brought under this chapter, under other Federal law intended to protect public health or the environment, or under other Federal law intended to address terrorist actions or threats of terrorist actions.

(2) The Secretary may make determinations under paragraph (1) of this subsection with respect categories of information in accordance with regulations prescribed by the Secretary.

(3) A release of information pursuant to a determination under paragraph (1) of this subsection shall not be treated as a release of such information to the public for purposes of section 552 of title 5.

§ 5122. Enforcement

(a) GENERAL.—At the request of the [Secretary of Transportation,] *Secretary,* the Attorney General may bring a civil action in an appropriate district court of the United States to enforce this [chapter or a regulation prescribed or order] *chapter, a regulation prescribed under this chapter, or an order, special permit, or approval* issued under this chapter. [The court may award appropriate relief, including punitive damages.] *In an action under this subsection, the court may award appropriate relief, including a temporary or permanent injunction, civil penalties under section 5123 of this title, and punitive damages.*

(b) IMMINENT HAZARDS.—

(1) If the Secretary has reason to believe that an imminent hazard exists, the Secretary may bring a civil action in an appropriate district court of the United States—

(A) to suspend or restrict the transportation of the hazardous material responsible for the hazard; or

(B) to eliminate or [ameliorate] *mitigate* the hazard.

(2) On request of the Secretary, the Attorney General shall bring an action under paragraph (1) of this subsection.

(c) WITHHOLDING OF CLEARANCE.—

(1) If any owner, operator, or individual in charge of a vessel is liable for a civil penalty under section 5123 of this title or for a fine under section 5124 of this title, or if reasonable cause exists to believe that such owner, operator, or individual in charge may be subject to such a civil penalty or fine, the Secretary of the Treasury, upon the request of the Secretary, shall with respect to such vessel refuse or revoke any clearance required by section 4197 of the Revised Statutes of the United States (46 App. U.S.C. 91).

(2) Clearance refused or revoked under this subsection may be granted upon the filing of a bond or other surety satisfactory to the Secretary.

§ 5123. Civil penalty

(a) PENALTY.—

(1) A person that knowingly violates this [chapter or a regulation prescribed or order] *chapter, a regulation prescribed under this chapter, or an order, special permit, or approval* issued under this chapter is liable to the United States Government for a civil penalty of at least $250 but not more than [$25,000] *$100,000* for each violation. A person acts knowingly when—

(A) the person has actual knowledge of the facts giving rise to the violation; or

(B) a reasonable person acting in the circumstances and exercising reasonable care would have that knowledge.

(2) A separate violation occurs for each day the violation, committed by a person that transports or causes to be transported hazardous material, continues.

(b) HEARING REQUIREMENT.—The Secretary [of Transportation] may find that a person has violated this [chapter or a regulation prescribed] *chapter, a regulation prescribed under this chapter, or an order, special permit, or approval issued* under this chapter only after notice and an opportunity for a hearing. The Secretary shall impose a penalty under this section by giving the person written notice of the amount of the penalty.

(c) PENALTY CONSIDERATIONS.—In determining the amount of a civil penalty under this section, the Secretary shall consider—

(1) the nature, circumstances, extent, and gravity of the violation;

(2) with respect to the violator, the degree of culpability, any history of prior violations, the ability to pay, and any effect on the ability to continue to do business; and

(3) other matters that justice requires.

(d) CIVIL ACTIONS TO COLLECT.—The Attorney General may bring a civil action in an appropriate district court of the United States to collect a civil penalty under this [section.] *section and any accrued interest on the civil penalty as calculated in accordance with section 1005 of the Oil Pollution Act of 1990 (33 U.S.C. 2705). In the civil action, the amount and appropriateness of the civil penalty shall not be subject to review.*

(e) COMPROMISE.—The Secretary may compromise the amount of a civil penalty imposed under this section before referral to the Attorney General.

(f) SETOFF.—The Government may deduct the amount of a civil penalty imposed or compromised under this section from amounts it owes the person liable for the penalty.

(g) DEPOSITING AMOUNTS COLLECTED.—Amounts collected under this section shall be deposited in the Treasury as miscellaneous receipts.

§ 5124. Criminal penalty

(a) IN GENERAL.—A person knowingly violating section 5104(b) of this title or willfully violating this [chapter or a regulation prescribed or order] *chapter, a regulation prescribed under this chapter, or an order, special permit, or approval* issued under this chapter shall be fined under title 18, imprisoned for not more than 5 years, or both.

(b) AGGRAVATED VIOLATIONS.—A person knowingly violating section 5104(b) of this title or willfully violating this chapter or a regulation prescribed, or an order, special permit, or approval issued, under this chapter, who thereby causes the release of hazardous material shall be fined under title 18, imprisoned for not more than 20 years, or both.

(c) SEPARATE VIOLATIONS.—A separate violation occurs for each day the violation, committed by a person who transports or causes to be transported hazardous material, continues.

§ 5125. Preemption

(a) PURPOSES.—The Secretary shall exercise the authority in this section—

(1) to achieve uniform regulation of the transportation of hazardous material;

(2) to eliminate rules that are inconsistent with the regulations prescribed under this chapter; and

(3) to otherwise promote the safe and efficient movement of hazardous material in commerce.

[(a)] *(b)* [GENERAL.—Except as provided in subsections (b), (c), and (e)] *PREEMPTION GENERALLY.—Except as provided in subsections (c), (d), and (f)* of this section and unless authorized by another law of the United States, a requirement of a State, political subdivision of a State, or Indian tribe is preempted if—

(1) complying with a requirement of the State, political subdivision, or tribe and a requirement of this chapter, a regulation prescribed under this chapter, or a hazardous materials transportation security regulation or directive issued by the Secretary of Homeland Security is not possible; or

(2) the requirement of the State, political subdivision, or tribe, as applied or enforced, is an obstacle to accomplishing

and carrying out this chapter, a regulation prescribed under this chapter, or a hazardous materials transportation security regulation or directive issued by the Secretary of Homeland Security.

[(b)] *(c)* SUBSTANTIVE DIFFERENCES.—(1) Except as provided in [subsection (c)] *subsection (d)* of this section and unless authorized by another law of the United States, a law, regulation, order, or other requirement of a State, political subdivision of a State, or Indian tribe about any of the following subjects, that is not substantively the same as a provision of this chapter, a regulation prescribed under this chapter, or a hazardous materials transportation security regulation or directive issued by the Secretary of Homeland Security, is preempted:

(A) the designation, description, and classification of hazardous material.

(B) the packing, repacking, handling, labeling, marking, and placarding of hazardous material.

(C) the preparation, execution, and use of shipping documents related to hazardous material and requirements related to the number, contents, and placement of those documents.

(D) the written notification, recording, and reporting of the unintentional release in transportation of hazardous material.

[(E) the design, manufacturing, fabricating, marking, maintenance, reconditioning, repairing, or testing of a packaging or a container represented, marked, certified, or sold as qualified for use in transporting hazardous material.]

(E) the manufacturing, designing, inspecting, testing, reconditioning, or repairing of a packaging or packaging component that is represented as qualified for use in transporting hazardous material in commerce.

(2) If the Secretary [of Transportation] prescribes or has prescribed under section 5103(b), 5104, 5110, or 5112 of this title or prior comparable provision of law a regulation or standard related to a subject referred to in paragraph (1) of this subsection, a State, political subdivision of a State, or Indian tribe may prescribe, issue, maintain, and enforce only a law, regulation, standard, or order about the subject that is substantively the same as a provision of this chapter or a regulation prescribed or order issued under this chapter. The Secretary shall decide on and publish in the Federal Register the effective date of section 5103(b) of this title for any regulation or standard about any of those subjects that the Secretary [prescribes after November 16, 1990. However, the] *prescribes. The* effective date may not be earlier than 90 days after the Secretary prescribes the regulation or standard nor later than the last day of the 2-year period beginning on the date the Secretary prescribes the regulation or standard.

(3) If a State, political subdivision of a State, or Indian tribe imposes a fine or penalty the Secretary decides is appropriate for a violation related to a subject referred to in paragraph (1) of this subsection, an additional fine or penalty may not be imposed by any other authority.

[(c)] *(d)* COMPLIANCE WITH SECTION 5112(B) REGULATIONS.

(1) Except as provided in paragraph (2) of this subsection, after the last day of the 2-year period beginning on the date a regulation is prescribed under section 5112(b) of this title, a

State or Indian tribe may establish, maintain, or enforce a highway routing designation over which hazardous material may or may not be transported by motor vehicles, or a limitation or requirement related to highway routing, only if the designation, limitation, or requirement complies with section 5112(b).

(2)(A) A highway routing designation, limitation, or requirement established before the date a regulation is prescribed under section 5112(b) of this title does not have to comply with section 5112(b)(1)(B), (C), and (F).

(B) This subsection and section 5112 of this title do not require a State or Indian tribe to comply with section 5112(b)(1)(I) if the highway routing designation, limitation, or requirement was established before November 16, 1990.

(C) The Secretary may allow a highway routing designation, limitation, or requirement to continue in effect until a dispute related to the designation, limitation, or requirement is resolved under section 5112(d) of this title.

[(d)] *(e)* DECISIONS ON PREEMPTION.—

(1) A person (including a State, political subdivision of a State, or Indian tribe) directly affected by a requirement of a State, political subdivision, or tribe may apply to the Secretary, as provided by regulations prescribed by the Secretary, for a decision on whether the requirement is preempted by [subsection (a), (b)(1), or (c) of this section.] *subsection (b), (c)(1), or (d) of this section or section 5119(b) of this title.* The Secretary shall publish notice of the application in the Federal Register. The Secretary shall issue a decision on an application for a determination within 180 days after the date of the publication of the notice of having received such application, or the Secretary shall publish a statement in the Federal Register of the reason why the Secretary's decision on the application is delayed, along with an estimate of the additional time necessary before the decision is made. After notice is published, an applicant may not seek judicial relief on the same or substantially the same issue until the Secretary takes final action on the application or until 180 days after the application is filed, whichever occurs first.

(2) After consulting with States, political subdivisions of States, and Indian tribes, the Secretary shall prescribe regulations for carrying out paragraph (1) of this subsection.

(3) Subsection (a) of this section does not prevent a State, political subdivision of a State, or Indian tribe, or another person directly affected by a requirement, from seeking a decision on preemption from a court of competent jurisdiction instead of applying to the Secretary under paragraph (1) of this subsection.

[(e)] *(f)* WAIVER OF PREEMPTION.—A State, political subdivision of a State, or Indian tribe may apply to the Secretary for a waiver of preemption of a requirement the State, political subdivision, or tribe acknowledges is preempted by [subsection (a), (b)(1), or (c) of this section.] *subsection (b), (c)(1), or (d) of this section or section 5119(b) of this title.* Under a procedure the Secretary prescribes by regulation, the Secretary may waive preemption on deciding the requirement—

(1) provides the public at least as much protection as do requirements of this chapter and regulations prescribed under this chapter; and

(2) is not an unreasonable burden on commerce.

(g) EMERGENCY WAIVER OF PREEMPTION.—

(1) The Secretary may, upon a finding of good cause, waive the preemption of a requirement of a State, political subdivision of a State, or Indian tribe under this section without prior notice or an opportunity for public comment thereon.

(2) For purposes of paragraph (1) of this subsection, good cause exists when—

(A) there is a potential threat that hazardous material being transported in commerce may be used in an attack on people or property; and

(B) notice and an opportunity for public comment thereon are impracticable or contrary to the public interest.

(3)(A) A waiver of preemption under paragraph (1) of this subsection shall be in effect for a period specified by the Secretary, but not more than 6 months.

(B) If the Secretary determines before the expiration of a waiver of preemption under subparagraph (A) of this paragraph that the potential threat providing the basis for the waiver continues to exist, the Secretary may, after providing notice and an opportunity for public comment thereon, extend the duration of the waiver for such period after the expiration of the waiver under that subparagraph as the Secretary considers appropriate.

(4) An action of the Secretary under paragraph (1) or (3) of this subsection shall be in writing and shall set forth the standards and procedures for seeking reconsideration of the action.

(5) After taking action under paragraph (1) or (3) of this subsection, the Secretary shall provide for review of the action if a petition for review of the action is filed within 20 calendar days after the date of the action.

(6) If a petition for review of an action is filed under paragraph (5) of this subsection and review of the action is not completed by the end of the 30-day period beginning on the date the petition is filed, the waiver under this subsection shall cease to be effective at the end of such period unless the Secretary determines, in writing, that the potential threat providing the basis for the waiver continues.

[(f) JUDICIAL REVIEW.—A party to a proceeding under subsection (d) or (e) of this section may bring a civil action in an appropriate district court of the United States for judicial review of the decision of the Secretary not later than 60 days after the decision becomes final.**]**

[(g)**]** *(h)* FEES.—

(1) A State, political subdivision of a State, or Indian tribe may impose a fee related to transporting hazardous material only if the fee is fair and used for a purpose related to transporting hazardous material, including enforcement and planning, developing, and maintaining a capability for emergency response.

(2) A State or political subdivision thereof or Indian tribe that levies a fee in connection with the transportation of haz-

ardous materials shall, upon the Secretary's request, report to the Secretary on—

(A) the basis on which the fee is levied upon persons involved in such transportation;

(B) the purposes for which the revenues from the fee are used;

(C) the annual total amount of the revenues collected from the fee; and

(D) such other matters as the Secretary requests.

(i) APPLICATION OF EACH PREEMPTION STANDARD.—Each standard for preemption in subsection (b), (c)(1), or (d) of this section, and in section 5119(b) of this title, is independent in its application to a requirement of a State, political subdivision of a State, or Indian tribe.

(j) NON-FEDERAL ENFORCEMENT STANDARDS.—This section does not apply to any procedure, penalty, required mental state, or other standard utilized by a State, political subdivision of a State, or Indian tribe to enforce a requirement applicable to the transportation of hazardous material.

§ 5126. Relationship to other laws

(a) CONTRACTS.—A person under contract with a department, agency, or instrumentality of the United States Government that transports ⟦or causes to be transported hazardous material,⟧ *hazardous material or causes hazardous material to be transported,* or ⟦manufactures, fabricates, marks, maintains, reconditions, repairs, or tests a packaging or a container that the person represents, marks, certifies, or sells⟧ *manufactures, designs, inspects, tests, reconditions, marks, or repairs a packaging or packaging component that is represented* as qualified for use in transporting hazardous material ⟦must⟧ *shall* comply with this chapter, regulations prescribed and orders issued under this chapter, and all other requirements of the Government, State and local governments, and Indian tribes (except a requirement preempted by a law of the United States) in the same way and to the same extent that any person engaging in that transportation, ⟦manufacturing, fabricating, marking, maintenance, reconditioning, repairing, or testing⟧ *manufacturing, designing, inspecting, testing, reconditioning, marking, or repairing* that is in or affects commerce must comply with the provision, regulation, order, or requirement.

(b) NONAPPLICATION.—This chapter does not apply to—

(1) a pipeline subject to regulation under chapter 601 of this title; or

(2) any matter that is subject to the postal laws and regulations of the United States under this chapter or title 18 or ⟦39.⟧ *39, except in the case of an imminent hazard.*

§ 5127. Judicial review

(a) FILING AND VENUE.—Except as provided in section 20114(c) of this title, a person suffering legal wrong or adversely affected or aggrieved by a final action of the Secretary under this chapter may petition for review of the final action in the United States Court of Appeals for the District of Columbia or in the court of appeals of the United States for the circuit in which the person or resides or

has the principal place of business. The petition shall be filed not more than 60 days after the action of the Secretary becomes final.

(b) PROCEDURES.—When a petition on a final action is filed under subsection (a) of this section, the clerk of the court shall immediately send a copy of the petition to the Secretary. The Secretary shall file with the court a record of any proceeding in which the final action was issued as provided in section 2112 of title 28.

(c) AUTHORITY OF COURT.—The court in which a petition on a final action is filed under subsection (a) of this section has exclusive jurisdiction, as provided in subchapter II of chapter 5 of title 5 to affirm or set aside any part of the final action and may order the Secretary to conduct further proceedings. Findings of fact by the Secretary, if supported by substantial evidence, are conclusive.

(d) REQUIREMENT FOR PRIOR OBJECTIONS.—In reviewing a final action under this section, the court may consider an objection to the final action only if—

(1) the objection was made in the course of a proceeding or review conducted by the Secretary; or

(2) there was a reasonable ground for not making the objection in the proceeding.

[§ 5127. Authorization of appropriations]

[(a) GENERAL.—Not more than $18,000,000 may be appropriated to the Secretary of Transportation for fiscal year 1993, $18,000,000 for fiscal year 1994, $18,540,000 for fiscal year 1995, $19,100,000 for fiscal year 1996, and $19,670,000 for fiscal year 1997 to carry out this chapter (except sections 5107(e), 5108(g)(2), 5113, 5115, 5116, and 5119).

[(b) TRAINING OF HAZMAT EMPLOYEE INSTRUCTORS.—

[(1) There is authorized to be appropriated to the Secretary $3,000,000 for each of fiscal years 1995, 1996, 1997, and 1998 to carry out section 5107(e).

[(2)(A) There shall be available to the Secretary for carrying out section 5116(j), from amounts in the account established pursuant to section 5116(i), $250,000 for each of fiscal years 1995, 1996, 1997, and 1998.

[(B) In addition to amounts made available under subparagraph (A), there is authorized to be appropriated to the Secretary for carrying out section 5116(j) $1,000,000 for each of the fiscal years 1995, 1996, 1997, and 1998.

[(c) TRAINING CURRICULUM.

[(1) Not more than $1,000,000 is available to the Secretary of Transportation from the account established under section 5116(i) of this title for each of the fiscal years ending September 30, 1993-1998, to carry out section 5115 of this title.

[(2) The Secretary of Transportation may transfer to the Director of the Federal Emergency Management Agency from amounts available under this subsection amounts necessary to carry out section 5115(d)(1) of this title.

[(d) PLANNING AND TRAINING.—

[(1) Not more than $5,000,000 is available to the Secretary of Transportation from the account established under section 5116(i) of this title for each of the fiscal years ending September 30, 1993-1998, to carry out section 5116(a) of this title.

[(2) Not more than $7,800,000 is available to the Secretary of Transportation from the account established under section 5116(i) of this title for each of the fiscal years ending September 30, 1993-1998, to carry out section 5116(b) of this title.

[(3) Not more than the following amounts are available from the account established under section 5116(i) of this title for each of the fiscal years ending September 30, 1993-1998, to carry out section 5116(f) of this title:

[(A) $750,000 each to the Secretaries of Transportation and Energy, Administrator of the Environmental Protection Agency, and Director of the Federal Emergency Management Agency.

[(B) $200,000 to the Director of the National Institute of Environmental Health Sciences.

[(e) UNIFORM FORMS AND PROCEDURES.—Not more than $400,000 may be appropriated to the Secretary of Transportation for the fiscal year ending September 30, 1993, to carry out section 5119 of this title.

[(f) CREDITS TO APPROPRIATIONS.—The Secretary of Transportation may credit to any appropriation to carry out this chapter an amount received from a State, Indian tribe, or other public authority or private entity for expenses the Secretary incurs in providing training to the State, authority, or entity.

[(g) AVAILABILITY OF AMOUNTS.—Amounts available under subsections (c)-(e) of this section remain available until expended.]

§ 5128. Authorization of appropriations

(a) GENERAL.—In order to carry out this chapter (except sections 5107(e), 5108(g), 5112, 5113, 5115, 5116, and 5119 of this title), the following amounts are authorized to be appropriated to the Secretary:

(1) For fiscal year 2004, not more than $24,981,000.

(2) For fiscal year 2005, not more than $27,000,000.

(3) For fiscal year 2006, not more than $29,000,000.

(4) For each of fiscal years 2007 through 2009, not more than $30,000,000.

(b) EMERGENCY PREPAREDNESS FUND.—There shall be available from the Emergency Preparedness Fund under section 5116(i) of this title, amounts as follows:

(1) To carry out section 5107(e) of this title, $4,000,000 for each of fiscal years 2004 through 2009.

(2) To carry out section 5115 of this title, $200,000 for each of fiscal years 2004 through 2009.

(3) To carry out section 5116(a) of this title, $8,000,000 for each of fiscal years 2004 through 2009.

(4) To carry out section 5116(b) of this title, $13,800,000 for each of fiscal years 2004 through 2009.

(5) To carry out section 5116(f) of this title, $150,000 for each of fiscal years 2004 through 2009.

(6) To carry out section 5116(i)(4) of this title, $150,000 for each of fiscal years 2004 through 2009.

(7) To carry out section 5116(j) of this title, $1,000,000 for each of fiscal years 2004 through 2009.

(8) To publish and distribute an emergency response guidebook under section 5116(i)(3) of title 49, United States Code, $500,000 for each of fiscal years 2004 through 2009.

(c) CREDIT TO APPROPRIATIONS.—The Secretary may credit to any appropriation to carry out this chapter an amount received from a State, political subdivision of a State, Indian tribe, or other public authority or private entity for expenses the Secretary incurs in providing training to the State, political subdivision, Indian tribe, or other authority or entity.

(d) AVAILABILITY OF AMOUNTS.—Amounts available under subsections (a) and (b) of this section shall remain available until expended.

[CHAPTER 57. SANITARY FOOD TRANSPORTATION

[§ 5701. Findings

[Congress finds that—

[(1) the United States public is entitled to receive food and other consumer products that are not made unsafe because of certain transportation practices;

[(2) the United States public is threatened by the transportation of products potentially harmful to consumers in motor vehicles and rail vehicles that are used to transport food and other consumer products; and

[(3) the risks to consumers by those transportation practices are unnecessary and those practices must be ended.

[§ 5702. Definitions

[In this chapter—

[(1) "cosmetic", "device", "drug", "food", and "food additive" have the same meanings given those terms in section 201 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321).

[(2) "nonfood product" means (individually or by class) a material, substance, or product that is not a cosmetic, device, drug, food, or food additive, or is deemed a nonfood product under section 5703(a)(2) of this title, including refuse and solid waste (as defined in section 1004 of the Solid Waste Disposal Act (42 U.S.C. 6903)).

[(3) "refuse" means discarded material that is, or is required by law, to be transported to or disposed of in a landfill or incinerator.

[(4) "State" means a State of the United States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, the Virgin Islands, American Samoa, Guam, and any other territory or possession of the United States.

[(5) "transports" and "transportation" mean any movement of property in commerce (including intrastate commerce) by motor vehicle or rail vehicle.

[(6) "United States" means all of the States.

[§ 5703. General regulation

[(a) GENERAL REQUIREMENTS.—

[(1) Not later than July 31, 1991, the Secretary of Transportation, after consultation required by section 5709 of this title, shall prescribe regulations on the transportation of cosmetics,

devices, drugs, food, and food additives in motor vehicles and rail vehicles that are used to transport nonfood products that would make the cosmetics, devices, drugs, food, or food additives unsafe to humans or animals.

[(2) The Secretary shall deem a cosmetic, device, or drug to be a nonfood product if—

[(A) the cosmetic, device, or drug is transported in a motor vehicle or rail vehicle before, or at the same time as, a food or food additive; and

[(B) transportation of the cosmetic, device, or drug would make the food or food additive unsafe to humans or animals.

[(b) SPECIAL REQUIREMENTS.—In prescribing regulations under subsection (a)(1) of this section, the Secretary, after consultation required by section 5709 of this title, shall establish requirements for appropriate—

[(1) recordkeeping, identification, marking, certification, or other means of verification to comply with sections 5704-5706 of this title;

[(2) decontamination, removal, disposal, and isolation to comply with regulations carrying out sections 5704 and 5705 of this title; and

[(3) material for the construction of tank trucks, rail tank cars, cargo tanks, and accessory equipment to comply with regulations carrying out section 5704 of this title.

[(c) CONSIDERATIONS AND ADDITIONAL REQUIREMENTS.—In prescribing regulations under subsection (a)(1) of this section, the Secretary, after consultation required by section 5709 of this title, shall consider, and may establish requirements related to, each of the following:

[(1) the extent to which packaging or similar means of protecting and isolating commodities are adequate to eliminate or ameliorate the potential risks of transporting cosmetics, devices, drugs, food, or food additives in motor vehicles or rail vehicles used to transport nonfood products.

[(2) appropriate compliance and enforcement measures to carry out this chapter.

[(3) appropriate minimum insurance or other liability requirements for a person to whom this chapter applies.

[(d) PACKAGES MEETING PACKAGING STANDARDS.—If the Secretary finds packaging standards to be adequate, regulations under subsection (a)(1) of this section may not apply to cosmetics, devices, drugs, food, food additives, or nonfood products packaged in packages that meet the standards.

[§ 5704. Tank trucks, rail tank cars, and cargo tanks

[(a) PROHIBITIONS.—The regulations prescribed under section 5703(a)(1) of this title shall include provisions prohibiting a person from—

[(1) using, offering for use, or arranging for the use of a tank truck, rail tank car, or cargo tank used in motor vehicle or rail transportation of cosmetics, devices, drugs, food, or food additives if the tank truck, rail tank car, or cargo tank is used to transport a nonfood product, except a nonfood product included in a list published under subsection (b) of this section;

[(2) using, offering for use, or arranging for the use of a tank truck or cargo tank to provide motor vehicle transportation of cosmetics, devices, drugs, food, food additives, or nonfood products included in the list published under subsection (b) of this section unless the tank truck or cargo tank is identified, by a permanent marking on the tank truck or cargo tank, as transporting only cosmetics, devices, drugs, food, food additives, or nonfood products included in the list;

[(3) using, offering for use, or arranging for the use of a tank truck or cargo tank to provide motor vehicle transportation of a nonfood product that is not included in the list published under subsection (b) of this section if the tank truck or cargo tank is identified, as provided in clause (2) of this subsection, as a tank truck or cargo tank transporting only cosmetics, devices, drugs, food, food additives, or nonfood products included in the list; or

[(4) receiving, except for lawful disposal purposes, any cosmetic, device, drug, food, food additive, or nonfood product that has been transported in a tank truck or cargo tank in violation of clause (2) or (3) of this subsection.

[(b) LIST OF NONFOOD PRODUCTS NOT UNSAFE.—After consultation required by section 5709 of this title, the Secretary of Transportation shall publish in the Federal Register a list of nonfood products the Secretary decides do not make cosmetics, devices, drugs, food, or food additives unsafe to humans or animals because of transportation of the nonfood products in a tank truck, rail tank car, or cargo tank used to transport cosmetics, devices, drugs, food, or food additives. The Secretary may amend the list periodically by publication in the Federal Register.

[(c) DISCLOSURE.—A person that arranges for the use of a tank truck or cargo tank used in motor vehicle transportation for the transportation of a cosmetic, device, drug, food, food additive, or nonfood product shall disclose to the motor carrier or other appropriate person if the cosmetic, device, drug, food, food additive, or nonfood product being transported is to be used—

[(1) as, or in the preparation of, a food or food additive; or

[(2) as a nonfood product included in the list published under subsection (b) of this section.

[§ 5705. Motor and rail transportation of nonfood products

[(a) PROHIBITIONS.—The regulations prescribed under section 5703(a)(1) of this title shall include provisions prohibiting a person from using, offering for use, or arranging for the use of a motor vehicle or rail vehicle (except a tank truck, rail tank car, or cargo tank described in section 5704 of this title) to transport cosmetics, devices, drugs, food, or food additives if the vehicle is used to transport nonfood products included in a list published under subsection (b) of this section.

[(b) LIST OF UNSAFE NONFOOD PRODUCTS.—

[(1) After consultation required by section 5709 of this title, the Secretary of Transportation shall publish in the Federal Register a list of nonfood products the Secretary decides would make cosmetics, devices, drugs, food, or food additives unsafe to humans or animals because of transportation of the nonfood products in a motor vehicle or rail vehicle used to transport

cosmetics, devices, drugs, food, or food additives. The Secretary may amend the list periodically by publication in the Federal Register.

[(2) The list published under paragraph (1) of this subsection may not include cardboard, pallets, beverage containers, and other food packaging except to the extent the Secretary decides that the transportation of cardboard, pallets, beverage containers, or other food packaging in a motor vehicle or rail vehicle used to transport cosmetics, devices, drugs, food, or food additives would make the cosmetics, devices, drugs, food, or food additives unsafe to humans or animals.

[§ 5706. Dedicated vehicles

[(a) PROHIBITIONS.—The regulations prescribed under section 5703(a)(1) of this title shall include provisions prohibiting a person from using, offering for use, or arranging for the use of a motor vehicle or rail vehicle to transport asbestos, in forms or quantities the Secretary of Transportation decides are necessary, or products that present an extreme danger to humans or animals, despite any decontamination, removal, disposal, packaging, or other isolation procedures, unless the motor vehicle or rail vehicle is used only to transport one or more of the following: asbestos, those extremely dangerous products, or refuse.

[(b) LIST OF APPLICABLE PRODUCTS.—After consultation required by section 5709 of this title, the Secretary shall publish in the Federal Register a list of the products to which this section applies. The Secretary may amend the list periodically by publication in the Federal Register.

[§ 5707. Waiver authority

[(a) GENERAL AUTHORITY.—After consultation required by section 5709 of this title, the Secretary of Transportation may waive any part of this chapter or regulations prescribed under this chapter for a class of persons, motor vehicles, rail vehicles, cosmetics, devices, drugs, food, food additives, or nonfood products, if the Secretary decides that the waiver—

[(1) would not result in the transportation of cosmetics, devices, drugs, food, or food additives that would be unsafe to humans or animals; and

[(2) would not be contrary to the public interest and this chapter.

[(b) PUBLICATION OF WAIVERS.—The Secretary shall publish in the Federal Register any waiver and the reasons for the waiver.

[§ 5708. Food transportation inspections

[(a) GENERAL AUTHORITY.—For commercial motor vehicles, the Secretary of Transportation may carry out this chapter and assist in carrying out compatible State laws and regulations through means that include inspections conducted by State employees that are paid for with money authorized under section 31104 of this title, if the recipient State agrees to assist in the enforcement of this chapter or is enforcing compatible State laws and regulations.

[(b) PROVIDING ASSISTANCE.—On the request of the Secretary of Transportation, the Secretaries of Agriculture and Health and Human Services, the Administrator of the Environmental Protec-

tion Agency, and the heads of other appropriate departments, agencies, and instrumentalities of the United States Government shall provide assistance, to the extent available, to the Secretary of Transportation to carry out this chapter, including assistance in the training of personnel under a program established under subsection (c) of this section.

[(c) TRAINING PROGRAM.—After consultation required by section 5709 of this title and consultation with the heads of appropriate State transportation and food safety authorities, the Secretary of Transportation shall develop and carry out a training program for inspectors to conduct vigorous enforcement of this chapter and regulations prescribed under this chapter or compatible State laws and regulations. As part of the training program, the inspectors, including State inspectors or personnel paid with money authorized under section 31104 of this title, shall be trained in the recognition of adulteration problems associated with the transportation of cosmetics, devices, drugs, food, and food additives and in the procedures for obtaining assistance of the appropriate departments, agencies, and instrumentalities of the Government and State authorities to support the enforcement.

[§ 5709. Consultation

[As provided by sections 5703-5708 of this title, the Secretary of Transportation shall consult with the Secretaries of Agriculture and Health and Human Services and the Administrator of the Environmental Protection Agency.

[§ 5710. Administrative

[The Secretary of Transportation has the same duties and powers in regulating transportation under this chapter as the Secretary has under section 5121(a)-(c)(except subsection (c)(1)(A)) of this title in regulating transportation under chapter 51 of this title.

[§ 5711. Enforcement and penalties

[(a) ACTIONS.—The Secretary of Transportation shall request that a civil action be brought and take action to eliminate or ameliorate an imminent hazard related to a violation of a regulation prescribed or order issued under this chapter in the same way and to the same extent as authorized by section 5122 of this title.

[(b) APPLICABLE PENALTIES AND PROCEDURES.—The penalties and procedures in sections 5123 and 5124 of this title apply to a violation of a regulation prescribed or order issued under this chapter.

[§ 5712. Relationship to other laws

[Section 5125 of this title applies to the relationship between this chapter and a requirement of a State, a political subdivision of a State, or an Indian tribe.

[§ 5713. Application of sections 5711 and 5712

[Sections 5711 and 5712 of this title apply only to transportation occurring on or after the date that regulations prescribed under section 5703(a)(1) of this title are effective.

[§ 5714. Coordination procedures

[Not later than November 3, 1991, the Secretary of Transportation, after consultation with appropriate State officials, shall establish procedures to promote more effective coordination between the departments, agencies, and instrumentalities of the United States Government and State authorities with regulatory authority over motor carrier safety and railroad safety in carrying out and enforcing this chapter.]

CHAPTER 57—SANITARY FOOD TRANSPORTATION

Sec.

5701. Food transportation safety inspections.

§ 5701. Food transportation safety inspections

(a) INSPECTION PROCEDURES.—

(1) IN GENERAL.—The Secretary of Transportation, in consultation with the Secretary of Health and Human Services and the Secretary of Agriculture, shall—

(A) establish procedures for transportation safety inspections for the purpose of identifying suspected incidents of contamination or adulteration of—

(i) food in violation of regulations promulgated under section 416 of the Federal Food, Drug, and Cosmetic Act; and

(ii) meat subject to detention under section 402 of the Federal Meat Inspection Act (21 U.S.C. 672); and

(iii) poultry products subject to detention under section 19 of the Poultry Products Inspection Act (21 U.S.C. 467a); and

(B) train personnel of the Department of Transportation in the appropriate use of the procedures.

(2) APPLICABILITY.—The procedures established under paragraph (1) of this subsection shall apply, at a minimum, to Department of Transportation personnel that perform commercial motor vehicle or railroad safety inspections.

(b) NOTIFICATION OF SECRETARY OF HEALTH AND HUMAN SERVICES OR SECRETARY OF AGRICULTURE.—The Secretary of Transportation shall promptly notify the Secretary of Health and Human Services or the Secretary of Agriculture, as applicable, of any instances of potential food contamination or adulteration of a food identified during transportation safety inspections.

(c) USE OF STATE EMPLOYEES.—The means by which the Secretary of Transportation carries out subsection (b) of this section may include inspections conducted by State employees using funds authorized to be appropriated under sections 31102 through 31104 of this title.

SUBTITLE IV. INTERSTATE TRANSPORTATION

PART B. MOTOR CARRIERS, WATER CARRIERS, BROKERS, AND FREIGHT FORWARDERS

CHAPTER 135. JURISDICTION

SUBCHAPTER I. MOTOR CARRIER TRANSPORTATION

§ 13506. Miscellaneous motor carrier transportation exemptions

(a) IN GENERAL.—

Neither the Secretary nor the Board has jurisdiction under this part over—

(1) a motor vehicle transporting only school children and teachers to or from school;

(2) a motor vehicle providing taxicab service;

(3) a motor vehicle owned or operated by or for a hotel and only transporting hotel patrons between the hotel and the local station of a carrier;

(4) a motor vehicle controlled and operated by a farmer and transporting—

(A) the farmer's agricultural or horticultural commodities and products; or

(B) supplies to the farm of the farmer;

(5) a motor vehicle controlled and operated by a cooperative association (as defined by section 15(a) of the Agricultural Marketing Act (12 U.S.C. 1141j(a))) or by a federation of cooperative associations if the federation has no greater power or purposes than a cooperative association, except that if the cooperative association or federation provides transportation for compensation between a place in a State and a place in another State, or between a place in a State and another place in the same State through another State—

(A) for a nonmember that is not a farmer, cooperative association, federation, or the United States Government, the transportation (except for transportation otherwise exempt under this subchapter)—

(i) shall be limited to transportation incidental to the primary transportation operation of the cooperative association or federation and necessary for its effective performance; and

(ii) may not exceed in each fiscal year 25 percent of the total transportation of the cooperative association or federation between those places, measured by tonnage; and

(B) the transportation for all nonmembers may not exceed in each fiscal year, measured by tonnage, the total transportation between those places for the cooperative association or federation and its members during that fiscal year;

[(6) transportation by motor vehicle of—

[(A) ordinary livestock;

[(B) agricultural or horticultural commodities (other than manufactured products thereof);

[(C) commodities listed as exempt in the Commodity List incorporated in ruling numbered 107, March 19, 1958, Bureau of Motor Carriers, Interstate Commerce Commission, other than frozen fruits, frozen berries, frozen vegetables, cocoa beans, coffee beans, tea, bananas, or hemp, or wool imported from a foreign country, wool tops and noils, or wool waste (carded, spun, woven, or knitted);

[(D) cooked or uncooked fish, whether breaded or not, or frozen or fresh shellfish, or byproducts thereof not intended for human consumption, other than fish or shellfish that have been treated for preserving, such as canned, smoked, pickled, spiced, corned, or kippered products; and

[(E) livestock and poultry feed and agricultural seeds and plants, if such products (excluding products otherwise exempt under this paragraph) are transported to a site of agricultural production or to a business enterprise engaged in the sale to agricultural producers of goods used in agricultural production;]

[(7)] *(6)* a motor vehicle used only to distribute newspapers;

[(8)] *(7)*(A) transportation of passengers by motor vehicle incidental to transportation by aircraft;

(B) transportation of property (including baggage) by motor vehicle as part of a continuous movement which, prior or subsequent to such part of the continuous movement, has been or will be transported by an air carrier or (to the extent so agreed by the United States and approved by the Secretary) by a foreign air carrier; or

(C) transportation of property by motor vehicle in lieu of transportation by aircraft because of adverse weather conditions or mechanical failure of the aircraft or other causes due to circumstances beyond the control of the carrier or shipper;

[(9)] *(8)* the operation of a motor vehicle in a national park or national monument;

[(10)] *(9)* a motor vehicle carrying not more than 15 individuals in a single, daily roundtrip to commute to and from work;

[(11) transportation of used pallets and used empty shipping containers (including intermodal cargo containers), and other used shipping devices (other than containers or devices used in the transportation of motor vehicles or parts of motor vehicles);

[(12) transportation of natural, crushed, vesicular rock to be used for decorative purposes;

[(13) transportation of wood chips;]

[(14)] *(10)* brokers for motor carriers of passengers, except as provided in section 13904(d); or

[(15) transportation of broken, crushed, or powdered glass.]

(b) EXEMPT UNLESS OTHERWISE NECESSARY.—Except to the extent the Secretary or Board, as applicable, finds it necessary to exercise jurisdiction to carry out the transportation policy of section 13101, neither the Secretary nor the Board has jurisdiction under this part over—

(1) transportation provided entirely in a municipality, in contiguous municipalities, or in a zone that is adjacent to, and commercially a part of, the municipality or municipalities, except—

(A) when the transportation is under common control, management, or arrangement for a continuous carriage or shipment to or from a place outside the municipality, municipalities, or zone; or

(B) that in transporting passengers over a route between a place in a State and a place in another State, or between a place in a State and another place in the same State through another State, the transportation is exempt from jurisdiction under this part only if the motor carrier operating the motor vehicle also is lawfully providing intrastate transportation of passengers over the entire route under the laws of each State through which the route runs;

(2) transportation by motor vehicle provided casually, occasionally, or reciprocally but not as a regular occupation or business, except when a broker or other person sells or offers for sale passenger transportation provided by a person authorized to transport passengers by motor vehicle under an application pending, or registration issued, under this part; or

(3) the emergency towing of an accidentally wrecked or disabled motor vehicle.

§ 13507. Mixed loads of regulated and unregulated property

A motor carrier of property providing transportation exempt from jurisdiction under paragraph [(6), (8), (11), (12), or (13)] *(6)* of section 13506(a) may transport property under such paragraph in the same vehicle and at the same time as property which the carrier is authorized to transport under a registration issued under section 13902(a). Such transportation shall not affect the unregulated status of such exempt property or the regulated status of the property which the carrier is authorized to transport under such registration.

CHAPTER 137. RATES AND THROUGH ROUTES

§ 13707. Payment of rates

(a) TRANSFER OF POSSESSION UPON PAYMENT.—Except as provided in subsection (b), a carrier providing transportation or service subject to jurisdiction under this part shall give up possession at the destination of the property transported by it only when payment for the transportation or service is made.

(b) EXCEPTIONS.—

(1) REGULATIONS.—Under regulations of the Secretary governing the payment for transportation and service and preventing discrimination, those carriers may give up possession at destination of property transported by them before payment for the transportation or service.—The regulations of the Secretary may provide for weekly or monthly payment for transportation provided by motor carriers and for periodic payment for transportation provided by water carriers.—

(2) EXTENSIONS OF CREDIT TO GOVERNMENTAL ENTITIES.—Such a carrier (including a motor carrier being used by a household goods freight forwarder) may extend credit for transporting property for the United States Government, a State, a

territory or possession of the United States, or a political subdivision of any of them.

(3) SHIPMENTS OF HOUSEHOLD GOODS.—

(A) IN GENERAL.—A carrier providing transportation for a shipment of household goods shall give up possession of the household goods transported at the destination upon payment of—

(i) 100 percent of the charges contained in a binding estimate provided by the carrier;

(ii) not more than 110 percent of the charges contained in a nonbinding estimate provided by the carrier; or

(iii) in the case of a partial delivery of the shipment, the prorated percentage of the charges calculated in accordance with subparagraph (B).

(B) CALCULATION OF PRORATED CHARGES.—For purposes of subparagraph (A)(iii), the prorated percentage of the charges shall be the percentage of the total charges due to the carrier as described in clause (i) or (ii) of subparagraph (A) that is equal to the percentage of the total units listed on the inventory provided by the carrier under section 14104(d) of this title.

CHAPTER 139. REGISTRATION

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SUBTITLE IV. INTERSTATE TRANSPORTATION

PART B. MOTOR CARRIERS, WATER CARRIERS, BROKERS, AND FREIGHT FORWARDERS

CHAPTER 139. REGISTRATION

§ 13902. Registration of motor carriers

(a) MOTOR CARRIER GENERALLY.—

(1) IN GENERAL.—Except as provided in this section, the Secretary shall register a person to provide transportation subject to jurisdiction under subchapter I of chapter 135 of this title as a motor carrier if the Secretary finds that the person is willing and able to comply with—

(A) this part and the applicable regulations of the Secretary and the Board;

[(B) any safety regulations imposed by the Secretary and the safety fitness requirements established by the Secretary under section 31144; and]

(B) any safety regulations imposed by the Secretary, the duties of employers and employees established by the Secretary under section 31135, and the safety fitness requirements established by the Secretary under section 31144; and

(C) the minimum financial responsibility requirements established by the Secretary pursuant to sections 13906 and 31138.

(2) CONSIDERATION OF EVIDENCE; FINDINGS.—The Secretary shall consider and, to the extent applicable, make findings on, any evidence demonstrating that the registrant is unable to

comply with the requirements of subparagraph (A), (B), or (C) of paragraph (1).

(3) WITHHOLDING.—If the Secretary determines that any registrant under this section does not meet the requirements of paragraph (1), the Secretary shall withhold registration.

(4) LIMITATION ON COMPLAINTS.—The Secretary may hear a complaint from any person concerning a registration under this subsection only on the ground that the registrant fails or will fail to comply with this part, the applicable regulations of the Secretary and the Board, the safety regulations of the Secretary, or the safety fitness or minimum financial responsibility requirements of paragraph (1) of this subsection.

(b) MOTOR CARRIERS OF PASSENGERS.—

(1) REGISTRATION OF PRIVATE RECIPIENTS OF GOVERNMENTAL ASSISTANCE.—The Secretary shall register under subsection (a)(1) a private recipient of governmental assistance to provide special or charter transportation subject to jurisdiction under subchapter I of chapter 135 as a motor carrier of passengers if the Secretary finds that the recipient meets the requirements of subsection (a)(1), unless the Secretary finds, on the basis of evidence presented by any person objecting to the registration, that the transportation to be provided pursuant to the registration is not in the public interest.

(2) REGISTRATION OF PUBLIC RECIPIENTS OF GOVERNMENTAL ASSISTANCE.—

(A) CHARTER TRANSPORTATION.—The Secretary shall register under subsection (a)(1) a public recipient of governmental assistance to provide special or charter transportation subject to jurisdiction under subchapter I of chapter 135 as a motor carrier of passengers if the Secretary finds that—

(i) the recipient meets the requirements of subsection (a)(1); and

(ii)(I) no motor carrier of passengers (other than a motor carrier of passengers which is a public recipient of governmental assistance) is providing, or is willing to provide, the transportation; or

(II) the transportation is to be provided entirely in the area in which the public recipient provides regularly scheduled mass transportation services.

(B) REGULAR-ROUTE TRANSPORTATION.—The Secretary shall register under subsection (a)(1) a public recipient of governmental assistance to provide regular-route transportation subject to jurisdiction under subchapter I of chapter 135 as a motor carrier of passengers if the Secretary finds that the recipient meets the requirements of subsection (a)(1), unless the Secretary finds, on the basis of evidence presented by any person objecting to the registration, that the transportation to be provided pursuant to the registration is not in the public interest.

(C) TREATMENT OF CERTAIN PUBLIC RECIPIENTS.—Any public recipient of governmental assistance which is providing or seeking to provide transportation of passengers subject to jurisdiction under subchapter I of chapter 135 shall, for purposes of this part, be treated as a person

which is providing or seeking to provide transportation of passengers subject to such jurisdiction.

(3) INTRASTATE TRANSPORTATION BY INTERSTATE CARRIERS.—A motor carrier of passengers that is registered by the Secretary under subsection (a) is authorized to provide regular-route transportation entirely in one State as a motor carrier of passengers if such intrastate transportation is to be provided on a route over which the carrier provides interstate transportation of passengers.

(4) PREEMPTION OF STATE REGULATION REGARDING CERTAIN SERVICE.—No State or political subdivision thereof and no interstate agency or other political agency of 2 or more States shall enact or enforce any law, rule, regulation, standard or other provision having the force and effect of law relating to the provision of pickup and delivery of express packages, newspapers, or mail in a commercial zone if the shipment has had or will have a prior or subsequent movement by bus in intrastate commerce and, if a city within the commercial zone, is served by a motor carrier of passengers providing regular-route transportation of passengers subject to jurisdiction under subchapter I of chapter 135.

(5) JURISDICTION OVER CERTAIN INTRASTATE TRANSPORTATION.—Subject to section 14501(a), any intrastate transportation authorized by this subsection shall be treated as transportation subject to jurisdiction under subchapter I of chapter 135 until such time as the carrier takes such action as is necessary to establish under the laws of such State rates, rules, and practices applicable to such transportation, but in no case later than the 30th day following the date on which the motor carrier of passengers first begins providing transportation entirely in one State under this paragraph.

(6) SPECIAL OPERATIONS.—This subsection shall not apply to any regular-route transportation of passengers provided entirely in one State which is in the nature of a special operation.

(7) SUSPENSION OR REVOCATION.—Intrastate transportation authorized under this subsection may be suspended or revoked by the Secretary under section 13905 of this title at any time.

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

(A) PUBLIC RECIPIENT OF GOVERNMENTAL ASSISTANCE.—The term "public recipient of governmental assistance" means—

(i) any State,

(ii) any municipality or other political subdivision of a State,

(iii) any public agency or instrumentality of one or more States and municipalities and political subdivisions of a State,

(iv) any Indian tribe, and

(v) any corporation, board, or other person owned or controlled by any entity described in clause (i), (ii), (iii), or (iv), which before, on, or after January 1, 1996, received governmental assistance for the purchase or operation of any bus.

(B) PRIVATE RECIPIENT OF GOVERNMENT ASSISTANCE.—The term "private recipient of government assistance" means any person (other than a person described in subparagraph (A)) who before, on, or after January 1, 1996, received governmental financial assistance in the form of a subsidy for the purchase, lease, or operation of any bus.

(c) RESTRICTIONS ON MOTOR CARRIERS DOMICILED IN OR OWNED OR CONTROLLED BY NATIONALS OF A CONTIGUOUS FOREIGN COUNTRY.—

(1) PREVENTION OF DISCRIMINATORY PRACTICES.—If the President, or the delegate thereof, determines that an act, policy, or practice of a foreign country contiguous to the United States, or any political subdivision or any instrumentality of any such country is unreasonable or discriminatory and burdens or restricts United States transportation companies providing, or seeking to provide, motor carrier transportation to, from, or within such foreign country, the President or such delegate may—

(A) seek elimination of such practices through consultations; or

(B) notwithstanding any other provision of law, suspend, modify, amend, condition, or restrict operations, including geographical restriction of operations, in the United States by motor carriers of property or passengers domiciled in such foreign country or owned or controlled by persons of such foreign country.

(2) EQUALIZATION OF TREATMENT.—Any action taken under paragraph (1)(A) to eliminate an act, policy, or practice shall be so devised so as to equal to the extent possible the burdens or restrictions imposed by such foreign country on United States transportation companies.

(3) REMOVAL OR MODIFICATION.—The President, or the delegate thereof, may remove or modify in whole or in part any action taken under paragraph (1)(A) if the President or such delegate determines that such removal or modification is consistent with the obligations of the United States under a trade agreement or with United States transportation policy.

(4) PROTECTION OF EXISTING OPERATIONS.—Unless and until the President, or the delegate thereof, makes a determination under paragraph (1) or (3), nothing in this subsection shall affect—

(A) operations of motor carriers of property or passengers domiciled in any contiguous foreign country or owned or controlled by persons of any contiguous foreign country permitted in the commercial zones along the United States-Mexico border as such zones were defined on December 31, 1995; or

(B) any existing restrictions on operations of motor carriers of property or passengers domiciled in any contiguous foreign country or owned or controlled by persons of any contiguous foreign country or any modifications thereof pursuant to section 6 of the Bus Regulatory Reform Act of 1982.

(5) PUBLICATION; COMMENT.—Unless the President, or the delegate thereof, determines that expeditious action is re-

quired, the President shall publish in the Federal Register any determination under paragraph (1) or (3), together with a description of the facts on which such a determination is based and any proposed action to be taken pursuant to paragraph (1)(B) or (3), and provide an opportunity for public comment.

(6) DELEGATION TO SECRETARY.—The President may delegate any or all authority under this subsection to the Secretary, who shall consult with other agencies as appropriate. In accordance with the directions of the President, the Secretary may issue regulations to enforce this subsection.

(7) CIVIL ACTIONS.—Either the Secretary or the Attorney General may bring a civil action in an appropriate district court of the United States to enforce this subsection or a regulation prescribed or order issued under this subsection. The court may award appropriate relief, including injunctive relief.

(8) LIMITATION ON STATUTORY CONSTRUCTION.—This subsection shall not be construed as affecting the requirement for all foreign motor carriers and foreign motor private carriers operating in the United States to comply with all applicable laws and regulations pertaining to fitness, safety of operations, financial responsibility, and taxes imposed by section 4481 of the Internal Revenue Code of 1986.

(d) TRANSITION RULE.—

(1) IN GENERAL.—Pending the implementation of the rulemaking required by section 13908, the Secretary may register a person under this section—

(A) as a motor common carrier if such person would have been issued a certificate to provide transportation as a motor common carrier under this subtitle on December 31, 1995; and

(B) as a motor contract carrier if such person would have been issued a permit to provide transportation as a motor contract carrier under this subtitle on such day.

(2) DEFINITIONS.—In this subsection, the terms "motor common carrier" and "motor contract carrier" have the meaning such terms had under section 10102 as such section was in effect on December 31, 1995.

(e) PENALTIES FOR FAILURE TO COMPLY WITH REGISTRATION REQUIREMENTS.—In addition to other penalties available under law, motor carriers that fail to register their operations as required by this section or that operate beyond the scope of their registrations may be subject to the following penalties:

(1) OUT-OF-SERVICE ORDERS.—If, upon inspection or investigation, the Secretary determines that a motor vehicle providing transportation requiring registration under this section is operating without a registration or beyond the scope of its registration, the Secretary may order the vehicle out-of-service. Subsequent to the issuance of the out-of-service order, the Secretary shall provide an opportunity for review in accordance with section 554 of title 5, United States Code; except that such review shall occur not later than 10 days after issuance of such order.

(2) PERMISSION FOR OPERATIONS.—A person domiciled in a country contiguous to the United States with respect to which an action under subsection (c)(1)(A) or (c)(1)(B) is in effect and

providing transportation for which registration is required under this section shall maintain evidence of such registration in the motor vehicle when the person is providing the transportation. The Secretary shall not permit the operation in interstate commerce in the United States of any motor vehicle in which there is not a copy of the registration issued pursuant to this section.

(f) MOTOR CARRIER DEFINED.—In this section and sections 13905 and 13906, the term "motor carrier" includes foreign motor private carriers.

* * * * * * *

§ 13905. Effective periods of registration

(a) PERSON HOLDING ICC AUTHORITY.—Any person having authority to provide transportation or service as a motor carrier, freight forwarder, or broker under this title, as in effect on December 31, 1995, shall be deemed, for purposes of this part, to be registered to provide such transportation or service under this part.

(b) PERSON REGISTERED WITH SECRETARY.—Any person having registered with the Secretary to provide transportation or service as a motor carrier or motor private carrier under this title, as in effect on January 1, 2002, but not having registered pursuant to section 13902(a) of this title, shall be deemed, for purposes of this part, to be registered to provide such transportation or service for purposes of sections 13908 and 14504a of this title.

[(b)**]** *(c)* IN GENERAL.—Except as otherwise provided in this part, each registration issued under section 13902, 13903, or 13904 shall be effective from the date specified by the Secretary and shall remain in effect for such period as the Secretary determines appropriate by regulation.

[(c)**]** *(d)* SUSPENSION, AMENDMENTS, AND REVOCATIONS.—

(1) IN GENERAL.—On application of the registrant, the Secretary may amend or revoke a registration. On complaint or on the Secretary's own initiative and after notice and an opportunity for a proceeding, the Secretary may (A) suspend, amend, or revoke any part of the registration of a motor carrier, broker, or freight forwarder for willful failure to comply with this part, an applicable regulation or order of the Secretary or of the Board, or a condition of its registration; and (B) suspend, amend, or revoke any part of the registration of a motor carrier, broker, or freight forwarder: (i) for failure to pay a civil penalty imposed under chapter 5, 51, 149, or 311 of this title; or (ii) for failure to arrange and abide by an acceptable payment plan for such civil penalty, within 90 days of the time specified by order of the Secretary for the payment of such penalty. Subparagraph (B) shall not apply to any person who is unable to pay a civil penalty because such person is a debtor in a case under chapter 11 of title 11, United States Code.

(2) REGULATIONS.—Not later than 12 months after the date of the enactment of this paragraph, the Secretary, after notice and opportunity for public comment, shall issue regulations to provide for the suspension, amendment, or revocation of a reg-

istration under this part for failure to pay a civil penalty as provided in paragraph (1)(B).

[(d)] *(e)* PROCEDURE.—Except on application of the registrant, the Secretary may revoke a registration of a motor carrier, freight forwarder, or broker, only after—

(1) the Secretary has issued an order to the registrant under section 14701 requiring compliance with this part, a regulation of the Secretary, or a condition of the registration; and

(2) the registrant willfully does not comply with the order for a period of 30 days.

[(e)] *(f)* EXPEDITED PROCEDURE.—

[(1) PROTECTION OF SAFETY.—Without regard to subchapter II of chapter 5 of title 5, the Secretary may suspend the registration of a motor carrier, a freight forwarder, or a broker for failure to comply with safety requirements of the Secretary or the safety fitness requirements pursuant to section 13904(c), 13906, or 31144 of this title, or an order or regulation of the Secretary prescribed under those sections.]

(1) PROTECTION OF SAFETY.—Notwithstanding subchapter II of chapter 5 of title 5, the Secretary—

(A) may suspend the registration of a motor carrier, a freight forwarder, or a broker for failure to comply with requirements of the Secretary pursuant to section 13904(c) or 13906 of this title, or an order or regulation of the Secretary prescribed under those sections; and

(B) shall revoke the registration of a motor carrier that has been prohibited from operating in interstate commerce for failure to comply with the safety fitness requirements of section 31144 of this title.

(2) IMMINENT HAZARD TO PUBLIC HEALTH.—Without regard to subchapter II of chapter 5 of title 5, the Secretary [may suspend a registration] *shall revoke the registration* of a motor carrier of passengers if the Secretary finds that such carrier has been conducting unsafe operations which are an imminent hazard to public health or property.

[(3) NOTICE; PERIOD OF SUSPENSION.—The Secretary may suspend under this subsection the registration only after giving notice of the suspension to the registrant. The suspension remains in effect until the registrant complies with those applicable sections or, in the case of a suspension under paragraph (2), until the Secretary revokes such suspension.]

(3) NOTICE; PERIOD OF SUSPENSION.—The Secretary may suspend or revoke under this subsection the registration only after giving notice of the suspension or revocation to the registrant. A suspension remains in effect until the registrant complies with the applicable sections or, in the case of a suspension under paragraph (2), until the Secretary revokes the suspension.

§ 13906. Security of motor carriers, *motor private carriers,* brokers, and freight forwarders

(a) MOTOR CARRIER REQUIREMENTS.—

(1) LIABILITY INSURANCE REQUIREMENT.—The Secretary may register a motor carrier under section 13902 only if the registrant files with the Secretary a bond, insurance policy, or other type of security approved by the Secretary, in an amount

not less than such amount as the Secretary prescribes pursuant to, or as is required by, sections 31138 and 31139, and the laws of the State or States in which the registrant is operating, to the extent applicable. The security must be sufficient to pay, not more than the amount of the security, for each final judgment against the registrant for bodily injury to, or death of, an individual resulting from the negligent operation, maintenance, or use of motor vehicles, or for loss or damage to property (except property referred to in paragraph (3) of this subsection), or both. A registration remains in effect only as long as the registrant continues to satisfy the security requirements of this paragraph.

(2) SECURITY REQUIREMENT.—Not later than 120 days after the date of enactment of the Unified Carrier Registration Act of 2003, any person, other than a motor private carrier, registered with the Secretary to provide transportation or service as a motor carrier under section 13905(b) of this title shall file with the Secretary a bond, insurance policy, or other type of security approved by the Secretary, in an amount not less than required by sections 31138 and 31139 of this title.

[(2)**]** *(3)* AGENCY REQUIREMENT.—A motor carrier shall comply with the requirements of sections 13303 and 13304. To protect the public, the Secretary may require any such motor carrier to file the type of security that a motor carrier is required to file under paragraph (1) of this subsection. This paragraph only applies to a foreign motor private carrier and foreign motor carrier operating in the United States to the extent that such carrier is providing transportation between places in a foreign country or between a place in one foreign country and a place in another foreign country.

[(3)**]** *(4)* TRANSPORTATION INSURANCE.—The Secretary may require a registered motor carrier to file with the Secretary a type of security sufficient to pay a shipper or consignee for damage to property of the shipper or consignee placed in the possession of the motor carrier as the result of transportation provided under this part. A carrier required by law to pay a shipper or consignee for loss, damage, or default for which a connecting motor carrier is responsible is subrogated, to the extent of the amount paid, to the rights of the shipper or consignee under any such security.

(b) BROKER REQUIREMENTS.—The Secretary may register a person as a broker under section 13904 only if the person files with the Secretary a bond, insurance policy, or other type of security approved by the Secretary to ensure that the transportation for which a broker arranges is provided. The registration remains in effect only as long as the broker continues to satisfy the security requirements of this subsection.

(c) FREIGHT FORWARDER REQUIREMENTS.

(1) LIABILITY INSURANCE.—The Secretary may register a person as a freight forwarder under section 13903 of this title only if the person files with the Secretary a bond, insurance policy, or other type of security approved by the Secretary. The security must be sufficient to pay, not more than the amount of the security, for each final judgment against the freight forwarder for bodily injury to, or death of, an individual, or loss of, or

damage to, property (other than property referred to in paragraph (2) of this subsection), resulting from the negligent operation, maintenance, or use of motor vehicles by or under the direction and control of the freight forwarder when providing transfer, collection, or delivery service under this part.

(2) FREIGHT FORWARDER INSURANCE.—The Secretary may require a registered freight forwarder to file with the Secretary a bond, insurance policy, or other type of security approved by the Secretary sufficient to pay, not more than the amount of the security, for loss of, or damage to, property for which the freight forwarder provides service.

(3) EFFECTIVE PERIOD.—The freight forwarder's registration remains in effect only as long as the freight forwarder continues to satisfy the security requirements of this subsection.

(d) TYPE OF INSURANCE.—The Secretary may determine the type and amount of security filed under this section. A motor carrier may submit proof of qualifications as a self-insurer to satisfy the security requirements of this section. The Secretary shall adopt regulations governing the standards for approval as a self-insurer. Motor carriers which have been granted authority to self-insure as of January 1, 1996, shall retain that authority unless, for good cause shown and after notice and an opportunity for a hearing, the Secretary finds that the authority must be revoked.

(e) NOTICE OF CANCELLATION OF INSURANCE.—The Secretary shall issue regulations requiring the submission to the Secretary of notices of insurance cancellation sufficiently in advance of actual cancellation so as to enable the Secretary to promptly revoke the registration of any carrier or broker after the effective date of the cancellation.

(f) FORM OF ENDORSEMENT.—The Secretary shall also prescribe the appropriate form of endorsement to be appended to policies of insurance and surety bonds which will subject the insurance policy or surety bond to the full security limits of the coverage required under this section.

[§ 13908. Registration and other reforms

[(a) REGULATIONS REPLACING CERTAIN PROGRAMS.—The Secretary, in cooperation with the States, and after notice and opportunity for public comment, shall issue regulations to replace the current Department of Transportation identification number system, the single State registration system under section 14504, the registration system contained in this chapter, and the financial responsibility information system under section 13906 with a single, on-line, Federal system. The new system shall serve as a clearinghouse and depository of information on and identification of all foreign and domestic motor carriers, brokers, and freight forwarders, and others required to register with the Department as well as information on safety fitness and compliance with required levels of financial responsibility. In issuing the regulations, the Secretary shall consider whether or not to integrate the requirements of section 13304 into the new system and may integrate such requirements into the new system.

[(b) FACTORS TO BE CONSIDERED.—In conducting the rulemaking under subsection (a), the Secretary shall, at a minimum, consider the following factors:

[(1) FUNDING FOR STATE ENFORCEMENT OF MOTOR CARRIER SAFETY REGULATIONS.

[(2) Whether the existing single State registration system is duplicative and burdensome.

[(3) The justification and need for collecting the statutory fee for such system under section 14504(c)(2)(B)(iv).

[(4) The public safety.

[(5) The efficient delivery of transportation services.

[(6) How, and under what conditions, to extend the registration system to motor private carriers and to carriers exempt under sections 13502, 13503, and 13506.

[(c) FEES SYSTEM.—The Secretary may establish, under section 9701 of title 31, a fee system for registration and filing evidence of financial responsibility under the new system under subsection (a). Fees collected under the fee system shall cover the costs of operating and upgrading the registration system, including all personnel costs associated with the system. Fees collected under this subsection may be credited to the Department of Transportation appropriations account for purposes for which such fees are collected, and shall be available for expenditure until expended.

[(d) STATE REGISTRATION PROGRAMS.—If the Secretary determines that no State should require insurance filings or collect fees for such filings (including filings and fees authorized under section 14504), the Secretary may prevent any State or political subdivision thereof, or any political authority of 2 or more States, from imposing any insurance filing requirements or fees that are for the same purposes as filings or fees the Secretary requires under the new system under subsection (a). The Secretary may not take any action pursuant to this subsection unless—

[(1) fees that will be collected by the Secretary under subsection (c) and distributed in each fiscal year to the States will provide each State with at least as much revenue as that State received in fiscal year 1995 under section 11506, as in effect on December 31, 1995; and

[(2) all States will receive from the distribution of such fees a minimum apportionment.

[(e) DEADLINE FOR CONCLUSION; MODIFICATIONS.—Not later than 24 months after January 1, 1996, the Secretary—

[(1) shall conclude the rulemaking under this section;

[(2) may implement such changes under this section as the Secretary considers appropriate and in the public interest; and

[(3) shall transmit to Congress a report on any findings of the rulemaking and the changes being implemented under this section, together with such recommendations for legislative language necessary to conform this part to such changes.]

§ 13908. Registration and other reforms

(a) ESTABLISHMENT OF UNIFIED CARRIER REGISTRATION SYSTEM.—The Secretary, in cooperation with the States, representatives of the motor carrier, motor private carrier, freight forwarder and broker industries, and after notice and opportunity for public comment, shall issue within 1 year after the date of enactment of the Unified Carrier Registration Act of 2003 regulations to establish, an online, Federal registration system to be named the Unified Carrier Registration System to replace—

(1) the current Department of Transportation identification number system, the Single State Registration System under section 14504 of this title;

(2) the registration system contained in this chapter and the financial responsibility information system under section 13906; and

(3) the service of process agent systems under sections 503 and 13304 of this title.

(b) ROLE AS CLEARINGHOUSE AND DEPOSITORY OF INFORMATION.—The Unified Carrier Registration System shall serve as a clearinghouse and depository of information on, and identification of, all foreign and domestic motor carriers, motor private carriers, brokers, and freight forwarders, and others required to register with the Department, including information with respect to a carrier's safety rating, compliance with required levels of financial responsibility, and compliance with the provisions of section 14504a of this title. The Secretary shall ensure that Federal agencies, States, representatives of the motor carrier industry, and the public have access to the Unified Carrier Registration System, including the records and information contained in the System.

(c) PROCEDURES FOR CORRECTING INFORMATION.—Not later than 60 days after the effective date of this section, the Secretary shall prescribe regulations establishing procedures that enable a motor carrier to correct erroneous information contained in any part of the Unified Carrier Registration System.

(d) FEE SYSTEM.—The Secretary shall establish, under section 9701 of title 31, a fee system for the Unified Carrier Registration System according to the following guidelines:

(1) REGISTRATION AND FILING EVIDENCE OF FINANCIAL RESPONSIBILITY.—The fee for new registrants shall as nearly as possible cover the costs of processing the registration and conducting the safety audit or examination, if required, but shall not exceed $300.

(2) EVIDENCE OF FINANCIAL RESPONSIBILITY.—The fee for filing evidence of financial responsibility pursuant to this section shall not exceed $10 per filing. No fee shall be charged for a filing for purposes of designating an agent for service of process or the filing of other information relating to financial responsibility.

(3) ACCESS AND RETRIEVAL FEES.—

(A) IN GENERAL.—Except as provided in subparagraph (B), the fee system shall include a nominal fee for the access to or retrieval of information from the Unified Carrier Registration System to cover the costs of operating and upgrading the System, including the personnel costs incurred by the Department and the costs of administration of the Unified Carrier Registration Agreement.

(B) EXCEPTIONS.—There shall be no fee charged—

(i) to any agency of the Federal Government or a State government or any political subdivision of any such government for the access to or retrieval of information and data from the Unified Carrier Registration System for its own use; or

(ii) to any representative of a motor carrier, motor private carrier, leasing company, broker, or freight for-

warder (as each is defined in section 14504a of this title) for the access to or retrieval of the individual information related to such entity from the Unified Carrier Registration System for the individual use of such entity.

CHAPTER 141. OPERATIONS OF CARRIERS

SUBCHAPTER I. GENERAL REQUIREMENTS

§ 14104. Household goods carrier operations

(a) GENERAL REGULATORY AUTHORITY.—

(1) PAPERWORK MINIMIZATION.—The Secretary may issue regulations, including regulations protecting individual shippers, in order to carry out this part with respect to the transportation of household goods by motor carriers subject to jurisdiction under subchapter I of chapter 135. The regulations and paperwork required of motor carriers providing transportation of household goods shall be minimized to the maximum extent feasible consistent with the protection of individual shippers.

(2) PERFORMANCE STANDARDS.—

(A) IN GENERAL.—Regulations of the Secretary protecting individual shippers shall include, where appropriate, reasonable performance standards for the transportation of household goods subject to jurisdiction under subchapter I of chapter 135.—

(B) FACTORS TO CONSIDER.—In establishing performance standards under this paragraph, the Secretary shall take into account at least the following—

(i) the level of performance that can be achieved by a well-managed motor carrier transporting household goods;

(ii) the degree of harm to individual shippers which could result from a violation of the regulation;

(iii) the need to set the level of performance at a level sufficient to deter abuses which result in harm to consumers and violations of regulations;

(iv) service requirements of the carriers;

(v) the cost of compliance in relation to the consumer benefits to be achieved from such compliance; and

(vi) the need to set the level of performance at a level designed to encourage carriers to offer service responsive to shipper needs.

(3) LIMITATIONS ON STATUTORY CONSTRUCTION.—Nothing in this section shall be construed to limit the Secretary's authority to require reports from motor carriers providing transportation of household goods or to require such carriers to provide specified information to consumers concerning their past performance.

(b) ESTIMATES.—

[(1) AUTHORITY TO PROVIDE WITHOUT COMPENSATION.—Every motor carrier providing transportation of household goods subject to jurisdiction under subchapter I of chapter 135, upon request of a prospective shipper, may provide the shipper with an estimate of charges for transportation of household goods

and for the proposed services. The Secretary shall not prohibit any such carrier from charging a prospective shipper for providing a written, binding estimate for the transportation and proposed services.]

(1) REQUIREMENT FOR WRITTEN ESTIMATE.—A motor carrier providing transportation of household goods subject to jurisdiction under subchapter I of chapter 135 shall provide to a prospective shipper a written estimate of all charges related to the transportation of the household goods, including charges for—

(A) packing;

(B) unpacking;

(C) loading;

(D) unloading; and

(E) handling of the shipment from the point of origin to the final destination (whether that destination is storage or transit).

(2) OTHER INFORMATION.—At the time that a motor carrier provides the written estimate required by paragraph (1), the motor carrier shall provide the shipper a copy of the Department of Transportation publication FMCSA-ESA-03-005 (or its successor edition or publication) entitled "Ready to Move?". Before the execution of a contract for service, a motor carrier shall provide the shipper a copy of the Department of Transportation publication OCE 100, entitled "Your Rights and Responsibilities When You Move" required by section 375.2 of title 49, Code of Federal Regulations (or any corresponding similar regulation).

(3) BINDING AND NONBINDING ESTIMATES.—The written estimate required by paragraph (1) may be either binding or nonbinding. If the written estimate is nonbinding, and is not based on a visual inspection, the carrier shall, at the first opportunity and prior to the execution of a contract for service, conduct a visual inspection of the household goods to be transported and provide a revised written estimate if the estimated charges are different than the original estimate. The Secretary may not prohibit any such carrier from charging a prospective shipper for providing a written, binding estimate for the transportation and related services.

[(2)] *(4)* APPLICABILITY OF ANTITRUST LAWS.—Any charge for an estimate of charges provided by a motor carrier to a shipper for transportation of household goods subject to jurisdiction under subchapter I of chapter 135 shall be subject to the antitrust laws, as defined in the first section of the Clayton Act (15 U.S.C. 12).

(c) NOTIFICATION OF FINAL CHARGES.—If the final charges for a shipment of household goods exceed 100 percent of a binding estimate or 110 percent of a nonbinding estimate, the motor carrier shall provide the shipper an itemized statement of the charges. The statement shall be provided to the shipper within 24 hours prior to the delivery of the shipment unless the shipper waives this requirement. Such notification shall—

(1) be delivered in writing at the motor carrier's expense; and

(2) disclose the requirements of section 13707(b)(3) of this title regarding payment for delivery of a shipment of household goods.

(d) REQUIREMENT FOR INVENTORY.—A motor carrier providing transportation of a shipment of household goods, as defined in section 13012(10)(A), that is subject to jurisdiction under subchapter I of chapter 135 of this title shall, at the time of loading the shipment, prepare a written inventory of all articles tendered and accepted by the motor carrier for transportation. Such inventory shall—

(1) list or otherwise reasonably identify each item tendered for transportation;

(2) be signed by the shipper and the motor carrier, or the agent of the shipper or carrier, at the time the shipment is loaded and at the time the shipment is unloaded at the final destination;

(3) be attached to, and considered part of, the bill of lading; and

(4) be subject to the same requirements of the Secretary for record inspection and preservation that apply to bills of lading.

[(c)**]** *(e)* FLEXIBILITY IN WEIGHING SHIPMENTS.—The Secretary shall issue regulations that provide motor carriers providing transportation of household goods subject to jurisdiction under subchapter I of chapter 135 with the maximum possible flexibility in weighing shipments, consistent with assurance to the shipper of accurate weighing practices. The Secretary shall not prohibit such carriers from backweighing shipments or from basing their charges on the reweigh weights if the shipper observes both the tare and gross weighings (or, prior to such weighings, waives in writing the opportunity to observe such weighings) and such weighings are performed on the same scale.

SUBCHAPTER II. REPORTS AND RECORDS

* * * * * * *

§ 14124. Consumer complaints

(a) ESTABLISHMENT OF SYSTEM AND DATABASE.—The Secretary shall—

(1) establish a system to—

(A) file and log a complaint made by a shipper that relates to motor carrier transportation of household goods; and

(B) to compile any complaint information gathered by a State with regard to such transportation;

(2) establish a database of such complaints; and

(3) develop a procedure—

(A) to provide the public access to the database;

(B) to forward a complaint, including the motor carrier bill of lading number related to the complaint to a motor carrier named in such complaint and to an appropriate State authority (as defined in section 14710(c));

(C) to permit a motor carrier to challenge information in the database; and

(D) to provide, for motor carriers included in the database, the percentage of such complaints that are disputed by each such motor carrier.

(b) REQUIREMENT FOR ANNUAL REPORTS.—The Secretary shall issue regulations requiring a motor carrier that provides transportation of household goods to submit to the Secretary, not later than March 31st of each year, an annual report covering the 12-month period ending on the preceding March 31st that includes—

(1) the number of shipments of household goods that the motor carrier received from shippers and that were delivered to a final destination during the preceding calendar year;

(2) the number and general category of complaints lodged against the motor carrier during the preceding calendar year;

(3) the number of shipments described in paragraph (1) that resulted in the filing of a claim against the motor carrier for loss or damage to the shipment for an amount in excess of $500 during the preceding calendar year broken down by—

(A) the number of claims filed by shippers relocated under a contract between the motor carrier and shippers' employers; and

(B) the number of claims filed by other shippers; and

(4) the number of shipments described in paragraph (3) that were—

(A) resolved during the preceding calendar year; or

(B) pending on the last day of the preceding calendar year.

CHAPTER 145. FEDERAL-STATE RELATIONS

§ 14501. Federal authority over intrastate transportation

(a) MOTOR CARRIERS OF PASSENGERS.—

(1) LIMITATION ON STATE LAW.—No State or political subdivision thereof and no interstate agency or other political agency of 2 or more States shall enact or enforce any law, rule, regulation, standard, or other provision having the force and effect of law relating to—

(A) scheduling of interstate or intrastate transportation (including discontinuance or reduction in the level of service) provided by a motor carrier of passengers subject to jurisdiction under subchapter I of chapter 135 of this title on an interstate route;

(B) the implementation of any change in the rates for such transportation or for any charter transportation except to the extent that notice, not in excess of 30 days, of changes in schedules may be required; or

(C) the authority to provide intrastate or interstate charter bus transportation. This paragraph shall not apply to intrastate commuter bus operations, or to intrastate bus transportation of any nature in the State of Hawaii.

(2) MATTERS NOT COVERED.—Paragraph (1) shall not restrict the safety regulatory authority of a State with respect to motor vehicles, the authority of a State to impose highway route controls or limitations based on the size or weight of the motor vehicle, or the authority of a State to regulate carriers with regard to minimum amounts of financial responsibility relating to insurance requirements and self-insurance authorization.

(b) FREIGHT FORWARDERS AND BROKERS.—

(1) GENERAL RULE.—Subject to paragraph (2) of this subsection, no State or political subdivision thereof and no intrastate agency or other political agency of 2 or more States shall enact or enforce any law, rule, regulation, standard, or other provision having the force and effect of law relating to intrastate rates, intrastate routes, or intrastate services of any freight forwarder or broker.

(2) CONTINUATION OF HAWAII'S AUTHORITY.—Nothing in this subsection and the amendments made by the Surface Freight Forwarder Deregulation Act of 1986 shall be construed to affect the authority of the State of Hawaii to continue to regulate a motor carrier operating within the State of Hawaii.

(c) MOTOR CARRIERS OF PROPERTY.—

(1) GENERAL RULE.—Except as provided in paragraphs (2) and (3), a State, political subdivision of a State, or political authority of 2 or more States may not enact or enforce a law, regulation, or other provision having the force and effect of law related to a price, route, or service of any motor carrier (other than a carrier affiliated with a direct air carrier covered by section 41713(b)(4)) or any motor private carrier, broker, or freight forwarder with respect to the transportation of property.

(2) MATTERS NOT COVERED.—Paragraph (1)—

(A) shall not restrict the safety regulatory authority of a State with respect to motor vehicles, the authority of a State to impose highway route controls or limitations based on the size or weight of the motor vehicle or the hazardous nature of the cargo, or the authority of a State to regulate motor carriers with regard to minimum amounts of financial responsibility relating to insurance requirements and self-insurance authorization;

(B) does not apply to the *intrastate* transportation of household goods; and

(C) does not apply to the authority of a State or a political subdivision of a State to enact or enforce a law, regulation, or other provision relating to the price of for-hire motor vehicle transportation by a tow truck, if such transportation is performed without the prior consent or authorization of the owner or operator of the motor vehicle.

(3) STATE STANDARD TRANSPORTATION PRACTICES.—

(A) CONTINUATION.—Paragraph (1) shall not affect any authority of a State, political subdivision of a State, or political authority of 2 or more States to enact or enforce a law, regulation, or other provision, with respect to the intrastate transportation of property by motor carriers, related to—

(i) uniform cargo liability rules,

(ii) uniform bills of lading or receipts for property being transported,

(iii) uniform cargo credit rules,

(iv) antitrust immunity for joint line rates or routes, classifications, mileage guides, and pooling, or

(v) antitrust immunity for agent-van line operations (as set forth in section 13907), if such law, regulation,

or provision meets the requirements of subparagraph (B).

(B) REQUIREMENTS.—A law, regulation, or provision of a State, political subdivision, or political authority meets the requirements of this subparagraph if—

(i) the law, regulation, or provision covers the same subject matter as, and compliance with such law, regulation, or provision is no more burdensome than compliance with, a provision of this part or a regulation issued by the Secretary or the Board under this part; and

(ii) the law, regulation, or provision only applies to a carrier upon request of such carrier.

(C) ELECTION.—Notwithstanding any other provision of law, a carrier affiliated with a direct air carrier through common controlling ownership may elect to be subject to a law, regulation, or provision of a State, political subdivision, or political authority under this paragraph.

(4) NONAPPLICABILITY TO HAWAII.—This subsection shall not apply with respect to the State of Hawaii.

(d) PRE-ARRANGED GROUND TRANSPORTATION.—

(1) IN GENERAL.—No State or political subdivision thereof and no interstate agency or other political agency of 2 or more States shall enact or enforce any law, rule, regulation, standard or other provision having the force and effect of law requiring a license or fee on account of the fact that a motor vehicle is providing pre-arranged ground transportation service if the motor carrier providing such service—

(A) meets all applicable registration requirements under chapter 139 for the interstate transportation of passengers;

(B) meets all applicable vehicle and intrastate passenger licensing requirements of the State or States in which the motor carrier is domiciled or registered to do business; and

(C) is providing such service pursuant to a contract for—

(i) transportation by the motor carrier from one State, including intermediate stops, to a destination in another State; or

(ii) transportation by the motor carrier from one State, including intermediate stops in another State, to a destination in the original State.

(2) INTERMEDIATE STOP DEFINED.—In this section, the term "intermediate stop", with respect to transportation by a motor carrier, means a pause in the transportation in order for one or more passengers to engage in personal or business activity, but only if the driver providing the transportation to such passenger or passengers does not, before resuming the transportation of such passenger (or at least 1 of such passengers), provide transportation to any other person not included among the passengers being transported when the pause began.

(3) MATTERS NOT COVERED.—Nothing in this subsection shall be construed—

(A) as subjecting taxicab service to regulation under chapter 135 or section 31138;

(B) as prohibiting or restricting an airport, train, or bus terminal operator from contracting to provide preferential

access or facilities to one or more providers of pre-arranged ground transportation service; and

(C) as restricting the right of any State or political subdivision of a State to require, in a nondiscriminatory manner, that any individual operating a vehicle providing pre-arranged ground transportation service originating in the State or political subdivision have submitted to pre-licensing drug testing or a criminal background investigation of the records of the State in which the operator is domiciled, by the State or political subdivision by which the operator is licensed to provide such service, or by the motor carrier providing such service, as a condition of providing such service.

§ 14504. Registration of motor carriers by a State

(a) DEFINITIONS.—In this section, the terms "standards" and "amendments to standards" mean the specification of forms and procedures required by regulations of the Secretary to prove the lawfulness of transportation by motor carrier referred to in section 13501.

(b) GENERAL RULE.—The requirement of a State that a motor carrier, providing transportation subject to jurisdiction under subchapter I of chapter 135 and providing transportation in that State, must register with the State is not an unreasonable burden on transportation referred to in section 13501 when the State registration is completed under standards of the Secretary under subsection (c). When a State registration requirement imposes obligations in excess of the standards of the Secretary, the part in excess is an unreasonable burden.

(c) SINGLE STATE REGISTRATION SYSTEM.—

(1) IN GENERAL.—The Secretary shall maintain standards for implementing a system under which—

(A) a motor carrier is required to register annually with only one State by providing evidence of its Federal registration under chapter 139;

(B) the State of registration shall fully comply with standards prescribed under this section; and

(C) such single State registration shall be deemed to satisfy the registration requirements of all other States.

(2) SPECIFIC REQUIREMENTS.—

(A) EVIDENCE OF FEDERAL REGISTRATION; PROOF OF INSURANCE; PAYMENT OF FEES.—Under the standards of the Secretary implementing the single State registration system described in paragraph (1) of this subsection, only a State acting in its capacity as registration State under such single State system may require a motor carrier registered by the Secretary under this part—

(i) to file and maintain evidence of such Federal registration;

(ii) to file satisfactory proof of required insurance or qualification as a self-insurer;

(iii) to pay directly to such State fee amounts in accordance with the fee system established under subparagraph (B)(iv) of this paragraph, subject to allocation of fee revenues among all States in which the car-

rier operates and which participate in the single State registration system; and

(iv) to file the name of a local agent for service of process.

(B) RECEIPTS; FEE SYSTEM.—The standards of the Secretary—

(i) shall require that the registration State issue a receipt, in a form prescribed under the standards, reflecting that the carrier has filed proof of insurance as provided under subparagraph (A)(ii) of this paragraph and has paid fee amounts in accordance with the fee system established under clause (iv) of this subparagraph;

(ii) shall require that copies of the receipt issued under clause (i) of this subparagraph be kept in each of the carrier's commercial motor vehicles;

(iii) shall not require decals, stamps, cab cards, or any other means of registering or identifying specific vehicles operated by the carrier;

(iv) shall establish a fee system for the filing of proof of insurance as provided under subparagraph (A)(ii) of this paragraph that—

(I) is based on the number of commercial motor vehicles the carrier operates in a State and on the number of States in which the carrier operates;

(II) minimizes the costs of complying with the registration system; and

(III) results in a fee for each participating State that is equal to the fee, not to exceed $10 per vehicle, that such State collected or charged as of November 15, 1991; and

(v) shall not authorize the charging or collection of any fee for filing and maintaining evidence of Federal registration under subparagraph (A)(i) of this paragraph.

(C) PROHIBITED FEES.—The charging or collection of any fee under this section that is not in accordance with the fee system established under subparagraph (B)(iv) of this paragraph shall be deemed to be a burden on interstate commerce.

(D) LIMITATION ON PARTICIPATION BY STATES.—Only a State which, as of January 1, 1991, charged or collected a fee for a vehicle identification stamp or number under part 1023 of title 49, Code of Federal Regulations, shall be eligible to participate as a registration State under this subsection or to receive any fee revenue under this subsection.

(d) TERMINATION OF PROVISIONS.—Subsections (b) and (c) shall cease to be effective on the first January 1st occurring more than 12 months after the date of enactment of the Unified Carrier Registration Act of 2003.

§ 14504a. Unified carrier registration system plan and agreement

(a) DEFINITIONS.—In this section and section 14506 of this title:

(1) COMMERCIAL MOTOR VEHICLE.—

(A) IN GENERAL.—Except as provided in subparagraph (B), the term "commercial motor vehicle" has the meaning given the term in section 31101 of this title.

(B) EXCEPTION.—With respect to motor carriers required to make any filing or pay any fee to a State with respect to the motor carrier's authority or insurance related to operation within such State, the term "commercial motor vehicle" means any self-propelled vehicle used on the highway in commerce to transport passengers or property for compensation regardless of the gross vehicle weight rating of the vehicle or the number of passengers transported by such vehicle.

(2) BASE-STATE.—

(A) IN GENERAL.—The term "Base-State" means, with respect to the Unified Carrier Registration Agreement, a State—

(i) that is in compliance with the requirements of subsection (e); and

(ii) in which the motor carrier, motor private carrier, broker, freight forwarder or leasing company maintains its principal place of business.

(B) DESIGNATION OF BASE-STATE.—A motor carrier, motor private carrier, broker, freight forwarder or leasing company may designate another State in which it maintains an office or operating facility as its Base-State in the event that—

(i) the State in which the motor carrier, motor private carrier, broker, freight forwarder or leasing company maintains its principal place of business is not in compliance with the requirements of subsection (e); or

(ii) the motor carrier, motor private carrier, broker, freight forwarder or leasing company does not have a principal place of business in the United States.

(3) INTRASTATE FEE.—The term "intrastate fee" means any fee, tax, or other type of assessment, including per vehicle fees and gross receipts taxes, imposed on a motor carrier or motor private carrier for the renewal of the intrastate authority or insurance filings of such carrier with a State.

(4) LEASING COMPANY.—The term "leasing company" means a lessor that is engaged in the business of leasing or renting for compensation motor vehicles without drivers to a motor carrier, motor private carrier, or freight forwarder.

(5) MOTOR CARRIER.—The term "motor carrier" has the meaning given the term in section 13102(12) of this title, but shall include all carriers that are otherwise exempt from the provisions of part B of this title pursuant to the provisions of chapter 135 of this title or exemption actions by the former Interstate Commerce Commission under this title.

(6) PARTICIPATING STATE.—The term "participating state" means a State that has complied with the requirements of subsection (e) of this section.

(7) SSRS.—The term "SSRS" means the Single State Registration System in effect on the date of enactment of the Unified Carrier Registration Act of 2003.

(8) UNIFIED CARRIER REGISTRATION AGREEMENT.—The terms "Unified Carrier Registration Agreement" and "UCR Agreement" mean the interstate agreement developed under the Unified Carrier Registration Plan governing the collection and distribution of registration and financial responsibility information provided and fees paid by motor carriers, motor private carriers, brokers, freight forwarders and leasing companies pursuant to this section.

(9) UNIFIED CARRIER REGISTRATION PLAN.—The terms "Unified Carrier Registration Plan" and "UCR Plan" mean the organization of State, Federal and industry representatives responsible for developing, implementing and administering the Unified Carrier Registration Agreement.

(10) VEHICLE REGISTRATION.—The term "vehicle registration" means the registration of any commercial motor vehicle under the International Registration Plan or any other registration law or regulation of a jurisdiction.

(b) APPLICABILITY OF PROVISIONS TO FREIGHT FORWARDERS.—A Freight forwarder that operates commercial motor vehicles and is not required to register as a carrier pursuant to section 13903(b) of this title shall be subject to the provisions of this section as if a motor carrier.

(c) UNREASONABLE BURDEN.—For purposes of this section, it shall be considered an unreasonable burden upon interstate commerce for any State or any political subdivision of a State, or any political authority of 2 or more States—

(1) to enact, impose, or enforce any requirement or standards, or levy any fee or charge on any interstate motor carrier or interstate motor private carrier in connection with—

(A) the registration with the State of the interstate operations of a motor carrier or motor private carrier;

(B) the filing with the State of information relating to the financial responsibility of a motor carrier or motor private carrier pursuant to sections 31138 or 31139 of this title;

(C) the filing with the State of the name of the local agent for service of process of a motor carrier or motor private carrier pursuant to sections 503 or 13304 of this title; or

(D) the annual renewal of the intrastate authority, or the insurance filings, of a motor carrier or motor private carrier, or other intrastate filing requirement necessary to operate within the State, if the motor carrier or motor private carrier is—

(i) registered in compliance with section 13902 or section 13905(b) of this title; and

(ii) in compliance with the laws and regulations of the State authorizing the carrier to operate in the State pursuant to section 14501(c)(2)(A) of this title

except with respect to—

(I) intrastate service provided by motor carriers of passengers that is not subject to the preemptive provisions of section 14501(a) of this title,

(II) motor carriers of property, motor private carriers, brokers, or freight forwarders, or their services or operations, that are described in subparagraphs (B) and (C) of section 14501(c)(2) and sec-

tion 14506(c)(3) or permitted pursuant to section 14506(b) of this title, and

(III) the intrastate transportation of waste or recycables by any carrier); or

(2) to require any interstate motor carrier or motor private carrier to pay any fee or tax, not proscribed by paragraph (1)(D) of this subsection, that a motor carrier or motor private carrier that pays a fee which is proscribed by that paragraph is not required to pay.

(d) UNIFIED CARRIER REGISTRATION PLAN.—

(1) BOARD OF DIRECTORS.—

(A) GOVERNANCE OF PLAN.—The Unified Carrier Registration Plan shall be governed by a Board of Directors consisting of representatives of the Department of Transportation, Participating States, and the motor carrier industry.

(B) NUMBER.—The Board shall consist of 15 directors.

(C) COMPOSITION.—The Board shall be composed of directors appointed as follows:

(i) FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION.—The Secretary shall appoint 1 director from each of the Federal Motor Carrier Safety Administration's 4 Service Areas (as those areas were defined by the Federal Motor Carrier Safety Administration on January 1, 2003), from among the chief administrative officers of the State agencies responsible for overseeing the administration of the UCR Agreement.

(ii) STATE AGENCIES.—The Secretary shall appoint 5 directors from the professional staffs of State agencies responsible for overseeing the administration of the UCR Agreement in their respective States. Nominees for these 5 directorships shall be submitted to the Secretary by the national association of professional employees of the State agencies responsible for overseeing the administration of the UCR Agreement in their respective States.

(iii) MOTOR CARRIER INDUSTRY.—The Secretary shall appoint 5 directors from the motor carrier industry. At least 1 of the appointees shall be an employee of the national trade association representing the general motor carrier of property industry.

(iv) DEPARTMENT OF TRANSPORTATION.—The Secretary shall appoint the Deputy Administrator of the Federal Motor Carrier Safety Administration, or such other presidential appointee from the United States Department of Transportation, as the Secretary may designate, to serve as a director.

(D) CHAIRPERSON AND VICE-CHAIRPERSON.—The Secretary shall designate 1 director as Chairperson and 1 director as Vice-Chairperson of the Board. The Chairperson and Vice-Chairperson shall serve in such capacity for the term of their appointment as directors.

(E) TERM.—In appointing the initial Board, the Secretary shall designate 5 of the appointed directors for initial terms of 3 years, 5 of the appointed directors for initial terms of 2 years, and 5 of the appointed directors for initial terms

of 1 year. Thereafter, all directors shall be appointed for terms of 3 years, except that the term of the Deputy Administrator or other individual designated by the Secretary under subparagraph (C)(iv) shall be at the discretion of the Secretary. A director may be appointed to succeed himself or herself. A director may continue to serve on the Board until his or her successor is appointed.

(2) RULES AND REGULATIONS GOVERNING THE UCR AGREEMENT.—The Board of Directors shall develop the rules and regulations to govern the UCR Agreement and submit such rules and regulations to the Secretary for approval and adoption. The rules and regulations shall—

(A) prescribe uniform forms and formats, for—

(i) the annual submission of the information required by a Base-State of a motor carrier, motor private carrier, leasing company, broker, or freight forwarder;

(ii) the transmission of information by a Participating State to the Unified Carrier Registration System;

(iii) the payment of excess fees by a State to the designated depository and the distribution of fees by the depository to those States so entitled; and

(iv) the providing of notice by a motor carrier, motor private carrier, broker, freight forwarder, or leasing company to the Board of the intent of such entity to change its Base-State, and the procedures for a State to object to such a change under subparagraph (C) of this paragraph;

(B) provide for the administration of the Unified Carrier Registration Agreement, including procedures for amending the Agreement and obtaining clarification of any provision of the Agreement;

(C) provide procedures for dispute resolution that provide due process for all involved parties; and

(D) designate a depository.

(3) COMPENSATION AND EXPENSES.—Except for the representative of the Department of Transportation appointed pursuant to paragraph 1(D), no director shall receive any compensation or other benefits from the Federal Government for serving on the Board or be considered a Federal employee as a result of such service. All Directors shall be reimbursed for expenses they incur attending duly called meetings of the Board. In addition, the Board may approve the reimbursement of expenses incurred by members of any subcommittee or task force appointed pursuant to paragraph (5). The reimbursement of expenses to directors and subcommittee and task force members shall be based on the then applicable rules of the General Service Administration governing reimbursement of expenses for travel by Federal employees.

(4) MEETINGS.—

(A) IN GENERAL.—The Board shall meet at least once per year. Additional meetings may be called, as needed, by the Chairperson of the Board, a majority of the directors, or the Secretary.

(B) QUORUM.—A majority of directors shall constitute a quorum.

(C) VOTING.—Approval of any matter before the Board shall require the approval of a majority of all directors present at the meeting.

(D) OPEN MEETINGS.—Meetings of the Board and any subcommittees or task forces appointed pursuant to paragraph (5) of this section shall be subject to the provisions of section 552b of title 5.

(5) SUBCOMMITTEES.—

(A) INDUSTRY ADVISORY SUBCOMMITTEE.—The Chairperson shall appoint an Industry Advisory Subcommittee. The Industry Advisory Subcommittee shall consider any matter before the Board and make recommendations to the Board.

(B) OTHER SUBCOMMITTEES.—The Chairperson shall appoint an Audit Subcommittee, a Dispute Resolution Subcommittee, and any additional subcommittees and task forces that the Board determines to be necessary.

(C) MEMBERSHIP.—The chairperson of each subcommittee shall be a director. The other members of subcommittees and task forces may be directors or non-directors.

(D) REPRESENTATION ON SUBCOMMITTEES.—Except for the Industry Advisory Subcommittee (the membership of which shall consist solely of representatives of entities subject to the fee requirements of subsection (f) of this section), each subcommittee and task force shall include representatives of the Federal Motor Carrier Safety Administration, the Participating States, and the motor carrier industry.

(6) DELEGATION OF AUTHORITY.—The Board may contract with any private commercial or non-profit entity or any agency of a State to perform administrative functions required under the Unified Carrier Registration Agreement, but may not delegate its decision or policy-making responsibilities.

(7) DETERMINATION OF FEES.—The Board shall determine the annual fees to be assessed carriers, leasing companies, brokers, and freight forwarders pursuant to the Unified Carrier Registration Agreement. In determining the level of fees to be assessed in the next Agreement year, the Board shall consider—

(A) the administrative costs associated with the Unified Carrier Registration Plan and the Agreement;

(B) whether the revenues generated in the previous year and any surplus or shortage from that or prior years enable the Participating States to achieve the revenue levels set by the Board; and

(C) the parameters for fees set forth in subsection (f)(1).

(8) LIABILITY PROTECTIONS FOR DIRECTORS.—No individual appointed to serve on the Board shall be liable to any other director or to any other party for harm, either economic or non-economic, caused by an act or omission of the individual arising from the individual's service on the Board if—

(A) the individual was acting within the scope of his or her responsibilities as a director; and

(B) the harm was not caused by willful or criminal misconduct, gross negligence, reckless misconduct, or a con-

scious, flagrant indifference to the right or safety of the party harmed by the individual.

(9) INAPPLICABILITY OF FEDERAL ADVISORY COMMITTEE ACT.—The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the Unified Carrier Registration Plan or its committees.

(10) CERTAIN FEES NOT AFFECTED.—This section does not limit the amount of money a State may charge for vehicle registration or the amount of any fuel use tax a State may impose pursuant to the International Fuel Tax Agreement.

(e) STATE PARTICIPATION.—

(1) STATE PLAN.—No State shall be eligible to participate in the Unified Carrier Registration Plan or to receive any revenues derived under the Agreement, unless the State submits to the Secretary, not later than 3 years after the date of enactment of the Unified Carrier Registration Act of 2003, a plan—

(A) identifying the State agency that has or will have the legal authority, resources, and qualified personnel necessary to administer the Unified Carrier Registration Agreement in accordance with the rules and regulations promulgated by the Board of Directors of the Unified Carrier Registration Plan; and

(B) containing assurances that an amount at least equal to the revenue derived by the State from the Unified Carrier Registration Agreement shall be used for motor carrier safety programs, enforcement, and financial responsibility, or the administration of the UCR Plan and UCR Agreement.

(2) AMENDED PLANS.—A State may change the agency designated in the plan submitted under this subsection by filing an amended plan with the Secretary and the Chairperson of the Unified Carrier Registration Plan.

(3) WITHDRAWAL OF PLAN.—In the event a State withdraws, or notifies the Secretary that it is withdrawing, the plan submitted under this subsection, the State may no longer participate in the Unified Carrier Registration Agreement or receive any portion of the revenues derived under the Agreement.

(4) TERMINATION OF ELIGIBILITY.—If a State fails to submit a plan to the Secretary as required by paragraph (1) or withdraws its plan under paragraph (3), the State shall be prohibited from subsequently submitting or resubmitting a plan or participating in the Agreement.

(5) PROVISION OF PLAN TO CHAIRPERSON.—The Secretary shall provide a copy of each plan submitted under this subsection to the initial Chairperson of the Board of Directors of the Unified Carrier Registration Plan not later than 90 days of appointing the Chairperson.

(f) CONTENTS OF UNIFIED CARRIER REGISTRATION AGREEMENT.—The Unified Carrier Registration Agreement shall provide the following:

(1) DETERMINATION OF FEES.—(A) Fees charged motor carriers, motor private carriers, or freight forwarders in connection with the filing of proof of financial responsibility under the UCR Agreement shall be based on the number of commercial motor vehicles owned or operated by the motor carrier, motor private carrier, or freight forwarder. Brokers and leasing com-

panies shall pay the same fees as the smallest bracket of motor carriers, motor private carriers, and freight forwarders.

(B) The fees shall be determined by the Board with the approval of the Secretary.

(C) The Board shall develop no more than 6 and no less than 4 ranges of carriers by size of fleet.

(D) The fee scale shall be progressive and use different vehicle ratios for different ranges of carrier fleet size.

(E) The Board may adjust the fees within a reasonable range on an annual basis if the revenues derived from the fees—

(i) are insufficient to provide the revenues to which the States are entitled under this section; or

(ii) exceed those revenues.

(2) DETERMINATION OF OWNERSHIP OR OPERATION.—Commercial motor vehicles owned or operated by a motor carrier, motor private carrier, or freight forwarder shall mean those commercial motor vehicles registered in the name of the motor carrier, motor private carrier, or freight forwarder or controlled by the motor carrier, motor private carrier, or freight forwarder under a long term lease during a vehicle registration year.

(3) CALCULATION OF NUMBER OF COMMERCIAL MOTOR VEHICLES OWNED OR OPERATED.—The number of commercial motor vehicles owned or operated by a motor carrier, motor private carrier, or freight forwarder for purposes of subsection (e)(1) shall be based either on the number of commercial motor vehicles the motor carrier, motor private carrier, or freight forwarder has indicated it operates on its most recently filed MCS–150 or the total number of such vehicles it owned or operated for the 12-month period ending on June 30 of the year immediately prior to the each registration year of the Unified Carrier Registration System.

(4) PAYMENT OF FEES.—Motor carriers, motor private carriers, leasing companies, brokers, and freight forwarders shall pay all fees required under this section to their Base-State pursuant to the UCR Agreement.

(g) PAYMENT OF FEES.—Revenues derived under the UCR Agreement shall be allocated to Participating States as follows:

(1) A State that participated in the Single State Registration System in the last calendar year ending before the date of enactment of the Unified Carrier Registration Act of 2003 and complies with the requirements of subsection (e) of this section is entitled to receive a portion of the UCR Agreement revenues generated under the Agreement equivalent to the revenues it received under the SSRS in the last calendar year ending before the date of enactment of the Unified Carrier Registration Act of 2003, as long as the State continues to comply with the provisions of subsection (e).

(2) A State that collected intrastate registration fees from interstate motor carriers, interstate motor private carriers, or interstate exempt carriers and complies with the requirements of subsection (e) of this section is entitled to receive an additional portion of the UCR Agreement revenues generated under the Agreement equivalent to the revenues it received from such interstate carriers in the last calendar year ending before the date of enactment of the Unified Carrier Registration Act of

2003, as long as the State continues to comply with the provisions of subsection (e).

(3) States that comply with the requirements of subsection (e) of this section but did not participate in SSRS during the last calendar year ending before the date of enactment of the Unified Carrier Registration Act of 2003 shall be entitled to an annual allotment not to exceed $500,000 from the UCR Agreement revenues generated under the Agreement as long as the State continues to comply with the provisions of subsection (e).

(4) The amount of UCR Agreement revenues to which a State is entitled under this section shall be calculated by the Board and approved by the Secretary.

(h) DISTRIBUTION OF UCR AGREEMENT REVENUES.—

(1) ELIGIBILITY.—Each State that is in compliance with the provisions of subsection (e) shall be entitled to a portion of the revenues derived from the UCR Agreement in accordance with subsection (g).

(2) ENTITLEMENT TO REVENUES.—A State that is in compliance with the provisions of subsection (e) may retain an amount of the gross revenues it collects from motor carriers, motor private carriers, brokers, freight forwarders and leasing companies under the UCR Agreement equivalent to the portion of revenues to which the State is entitled under subsection (g). All revenues a Participating State collects in excess of the amount to which the State is so entitled shall be forwarded to the depository designated by the Board under subsection (d)(2)(D).

(3) DISTRIBUTION OF FUNDS FROM DEPOSITORY.—The excess funds collected in the depository shall be distributed as follows:

(A) Excess funds shall be distributed on a pro rata basis to each Participating State that did not collect revenues under the UCR Agreement equivalent to the amount such State is entitled under subsection (g), except that the sum of the gross UCR Agreement revenues collected by a Participating State and the amount distributed to it from the depository shall not exceed the amount to which the State is entitled under subsection (g).

(B) Any excess funds held by the depository after all distributions under subparagraph (A) have been made shall be used to pay the administrative costs of the UCR Plan and the UCR Agreement.

(C) Any excess funds held by the depository after distributions and payments under subparagraphs (A) and (B) shall be retained in the depository, and the UCR Agreement fees for motor carriers, motor private carriers, leasing companies, freight forwarders, and brokers for the next fee year shall be reduced by the Board accordingly.

(i) ENFORCEMENT.—

(1) CIVIL ACTIONS.—Upon request by the Secretary of Transportation, the Attorney General may bring a civil action in a court of competent jurisdiction to enforce compliance with this section and with the terms of the Unified Carrier Registration Agreement.

(2) VENUE.—An action under this section may be brought only in the Federal court sitting in the State in which an order is required to enforce such compliance.

(3) RELIEF.—Subject to section 1341 of title 28, the court, on a proper showing—

(A) shall issue a temporary restraining order or a preliminary or permanent injunction; and

(B) may issue an injunction requiring that the State or any person comply with this section.

(4) ENFORCEMENT BY STATES.—Nothing in this section—

(A) prohibits a Participating State from issuing citations and imposing reasonable fines and penalties pursuant to applicable State laws and regulations on any motor carrier, motor private carrier, freight forwarder, broker, or leasing company for failure to—

(i) submit documents as required under subsection (d)(2); or

(ii) pay the fees required under subsection (f); or

(B) authorizes a State to require a motor carrier, motor private carrier, or freight forwarder to display as evidence of compliance any form of identification in excess of those permitted under section 14506 of this title on or in a commercial motor vehicle.

(j) APPLICATION TO INTRASTATE CARRIERS.—Notwithstanding any other provision of this section, a State may elect to apply the provisions of the UCR Agreement to motor carriers and motor private carriers subject to its jurisdiction that operate solely in intrastate commerce within the borders of the State.

* * * * * * *

§ 14506. Identification of vehicles

(a) RESTRICTION ON REQUIREMENTS.—No State, political subdivision of a State, interstate agency, or other political agency of 2 or more States may enact or enforce any law, rule, regulation standard, or other provision having the force and effect of law that requires a motor carrier, motor private carrier, freight forwarder, or leasing company to display any form of identification on or in a commercial motor vehicle, other than forms of identification required by the Secretary of Transportation under section 390.21 of title 49, Code of Federal Regulations.

(b) EXCEPTION.—Notwithstanding paragraph (a), a State may continue to require display of credentials that are required—

(1) under the International Registration Plan under section 31704 of this title;

(2) under the International Fuel Tax Agreement under section 31705 of this title;

(3) in connection with Federal requirements for hazardous materials transportation under section 5103 of this title; or

(4) in connection with the Federal vehicle inspection standards under section 31136 of this title.

CHAPTER 147. ENFORCEMENT; INVESTIGATIONS; RIGHTS; REMEDIES

§ 14706. Liability of carriers under receipts and bills of lading

(a) GENERAL LIABILITY.—

(1) MOTOR CARRIERS AND FREIGHT FORWARDERS.—A carrier providing transportation or service subject to jurisdiction under subchapter I or III of chapter 135 shall issue a receipt or bill of lading for property it receives for transportation under this part. That carrier and any other carrier that delivers the property and is providing transportation or service subject to jurisdiction under subchapter I or III of chapter 135 or chapter 105 are liable to the person entitled to recover under the receipt or bill of lading. The liability imposed under this paragraph is for the actual loss or injury to the property caused by (A) the receiving carrier, (B) the delivering carrier, or (C) another carrier over whose line or route the property is transported in the United States or from a place in the United States to a place in an adjacent foreign country when transported under a through bill of lading and, except in the case of a freight forwarder, applies to property reconsigned or diverted under a tariff under section 13702. Failure to issue a receipt or bill of lading does not affect the liability of a carrier. A delivering carrier is deemed to be the carrier performing the line-haul transportation nearest the destination but does not include a carrier providing only a switching service at the destination.

(2) FREIGHT FORWARDER.—A freight forwarder is both the receiving and delivering carrier. When a freight forwarder provides service and uses a motor carrier providing transportation subject to jurisdiction under subchapter I of chapter 135 to receive property from a consignor, the motor carrier may execute the bill of lading or shipping receipt for the freight forwarder with its consent. With the consent of the freight forwarder, a motor carrier may deliver property for a freight forwarder on the freight forwarder's bill of lading, freight bill, or shipping receipt to the consignee named in it, and receipt for the property may be made on the freight forwarder's delivery receipt.

(b) APPORTIONMENT.—The carrier issuing the receipt or bill of lading under subsection (a) of this section or delivering the property for which the receipt or bill of lading was issued is entitled to recover from the carrier over whose line or route the loss or injury occurred the amount required to be paid to the owners of the property, as evidenced by a receipt, judgment, or transcript, and the amount of its expenses reasonably incurred in defending a civil action brought by that person.

(c) SPECIAL RULES.—

(1) MOTOR CARRIERS.—

(A) SHIPPER WAIVER.—Subject to the provisions of subparagraph (B), a carrier providing transportation or service subject to jurisdiction under subchapter I or III of chapter 135 may, subject to the provisions of this chapter (including with respect to a motor carrier, the requirements of section 13710(a)), establish rates for the transportation of property (other than household goods described in section 13102(10)(A)) under which the liability of the carrier for such property is limited to a value established by written or electronic declaration of the shipper or by written agreement between the carrier and shipper if that value would be reasonable under the circumstances surrounding the transportation.

(B) CARRIER NOTIFICATION.—If the motor carrier is not required to file its tariff with the Board, it shall provide under section 13710(a)(1) to the shipper, on request of the shipper, a written or electronic copy of the rate, classification, rules, and practices upon which any rate applicable to a shipment, or agreed to between the shipper and the carrier, is based. The copy provided by the carrier shall clearly state the dates of applicability of the rate, classification, rules, or practices.

(C) PROHIBITION AGAINST COLLECTIVE ESTABLISHMENT.—No discussion, consideration, or approval as to rules to limit liability under this subsection may be undertaken by carriers acting under an agreement approved pursuant to section 13703.

(2) WATER CARRIERS.—If loss or injury to property occurs while it is in the custody of a water carrier, the liability of that carrier is determined by its bill of lading and the law applicable to water transportation. The liability of the initial or delivering carrier is the same as the liability of the water carrier.

(d) CIVIL ACTIONS.—

(1) AGAINST DELIVERING CARRIER.—A civil action under this section may be brought against a delivering carrier in a district court of the United States or in a State court. Trial, if the action is brought in a district court of the United States is in a judicial district, and if in a State court, is in a State through which the defendant carrier operates.

(2) AGAINST CARRIER RESPONSIBLE FOR LOSS.—A civil action under this section may be brought against the carrier alleged to have caused the loss or damage, in the judicial district in which such loss or damage is alleged to have occurred.

(3) JURISDICTION OF COURTS.—A civil action under this section may be brought in a United States district court or in a State court.

(4) JUDICIAL DISTRICT DEFINED.—In this section, "judicial district" means—

(A) in the case of a United States district court, a judicial district of the United States; and

(B) in the case of a State court, the applicable geographic area over which such court exercises jurisdiction.

(e) MINIMUM PERIOD FOR FILING CLAIMS.—

(1) IN GENERAL.—A carrier may not provide by rule, contract, or otherwise, a period of less than 9 months for filing a claim against it under this section and a period of less than 2 years for bringing a civil action against it under this section. The period for bringing a civil action is computed from the date the carrier gives a person written notice that the carrier has disallowed any part of the claim specified in the notice.

(2) SPECIAL RULES.—For the purposes of this subsection—

(A) an offer of compromise shall not constitute a disallowance of any part of the claim unless the carrier, in writing, informs the claimant that such part of the claim is disallowed and provides reasons for such disallowance; and

(B) communications received from a carrier's insurer shall not constitute a disallowance of any part of the claim

unless the insurer, in writing, informs the claimant that such part of the claim is disallowed, provides reason for such disallowance, and informs the claimant that the insurer is acting on behalf of the carrier.

(f) LIMITING LIABILITY OF HOUSEHOLD GOODS CARRIERS TO DECLARED VALUE.—

(1) IN GENERAL.—A carrier or group of carriers subject to jurisdiction under subchapter I or III of chapter 135 may petition the Board to modify, eliminate, or establish rates for the transportation of household goods under which the liability of the carrier for that property is limited to a value established by written declaration of the shipper or by a written agreement.

(2) FULL VALUE PROTECTION OBLIGATION.—Unless the carrier receives a waiver in writing under paragraph (3), a carrier's maximum liability for household goods that are lost, damaged, destroyed, or otherwise not delivered to the final destination is an amount equal to the replacement value of such goods, subject to a maximum amount equal to the declared value of the shipment.

(3) APPLICATION OF RATES.—The released rates established by the Board under paragraph (1) (commonly known as "released rates") shall not apply to the transportation of household goods by a carrier unless the liability of the carrier for the full value of such household goods under paragraph (2) is waived in writing by the shipper.

(g) MODIFICATIONS AND REFORMS.—

(1) STUDY.—The Secretary shall conduct a study to determine whether any modifications or reforms should be made to the loss and damage provisions of this section, including those related to limitation of liability by carriers.

(2) FACTORS TO CONSIDER.—In conducting the study, the Secretary, at a minimum, shall consider—

(A) the efficient delivery of transportation services;

(B) international and intermodal harmony;

(C) the public interest; and

(D) the interest of carriers and shippers.

(3) REPORT.—Not later than 12 months after January 1, 1996, the Secretary shall submit to Congress a report on the results of the study, together with any recommendations of the Secretary (including legislative recommendations) for implementing modifications or reforms identified by the Secretary as being appropriate.

§ 14708. Dispute settlement program for household goods carriers

(a) OFFERING SHIPPERS ARBITRATION.—

(1) REQUIREMENT TO OFFCER.—As a condition of registration under section 13902 or 13903, a carrier providing transportation of household goods subject to jurisdiction under subchapter I or III of chapter 135 must agree to offer in accordance with this section to shippers of household goods arbitration as a means of settling disputes between such carriers and ⟦shippers of household goods concerning damage or loss to the household goods transported.⟧ *shippers. The carrier may not*

require the shipper to agree to use arbitration as a means to settle such a dispute.

(2) REQUIREMENTS FOR CARRIERS.—If a dispute with a carrier providing transportation of household goods involves a claim that is—

(A) not more than $5,000 and the shipper requests arbitration, such arbitration shall be binding on the parties; or

(B) for more than $5,000 and the shipper requests arbitration, such arbitration shall be binding on the parties only if the carrier agrees to arbitration.

(b) ARBITRATION REQUIREMENTS.—

(1) PREVENTION OF SPECIAL ADVANTAGE.—The arbitration that is offered must be designed to prevent a carrier from having any special advantage in any case in which the claimant resides or does business at a place distant from the carrier's principal or other place of business.

(2) NOTICE OF ARBITRATION PROCEDURE.—The carrier must provide the shipper an adequate notice of the availability of neutral arbitration, including a concise easy-to-read, accurate summary of the arbitration procedure, any applicable costs, and disclosure of the legal effects of election to utilize arbitration. Such notice must be given to persons for whom household goods are to be transported by the carrier before such goods are tendered to the carrier for transportation.

(3) PROVISION OF FORMS.—Upon request of a shipper, the carrier must promptly provide such forms and other information as are necessary for initiating an action to resolve a dispute under arbitration.

[(4) INDEPENDENCE OF ARBITRATOR.—Each person authorized to arbitrate or otherwise settle disputes must be independent of the parties to the dispute and must be capable, as determined under such regulations as the Secretary may issue, to resolve such disputes fairly and expeditiously. The carrier must ensure that each person chosen to settle the disputes is authorized and able to obtain from the shipper or carrier any material and relevant information to the extent necessary to carry out a fair and expeditious decisionmaking process.**]**

(4) INDEPENDENCE OF ARBITRATOR.—The Secretary shall establish a system for the certification of persons authorized to arbitrate or otherwise settle a dispute between a shipper of household goods and a carrier. The Secretary shall ensure that each person so certified is—

(A) independent of the parties to the dispute;

(B) capable, as determined under such regulations as the Secretary may issue, to resolve such disputes fairly and expeditiously; and

(C) authorized and able to obtain from the shipper or carrier any material and relevant information to the extent necessary to carry out a fair and expeditious decisionmaking process.

(5) APPORTIONMENT OF COSTS.—No shipper may be charged more than half of the cost for instituting an arbitration proceeding that is brought under this section. In the decision, the arbitrator may determine which party shall pay the cost or a

portion of the cost of the arbitration proceeding, including the cost of instituting the proceeding.

[(6) REQUESTS.—The carrier must not require the shipper to agree to utilize arbitration prior to the time that a dispute arises. If the dispute involves a claim for $5,000 or less and the shipper requests arbitration, such arbitration shall be binding on the parties. If the dispute involves a claim for more than $5,000 and the shipper requests arbitration, such arbitration shall be binding on the parties only if the carrier agrees to arbitration.]

[(7)] *(6)* ORAL PRESENTATION OF EVIDENCE.—The arbitrator may provide for an oral presentation of a dispute concerning transportation of household goods by a party to the dispute (or a party's representative), but such oral presentation may be made only if all parties to the dispute expressly agree to such presentation and the date, time, and location of such presentation.

[(8)] *(7)* DEADLINE FOR DECISION.—The arbitrator must, as expeditiously as possible but at least within 60 days of receipt of written notification of the dispute, render a decision based on the information gathered; except that, in any case in which a party to the dispute fails to provide in a timely manner any information concerning such dispute which the person settling the dispute may reasonably require to resolve the dispute, the arbitrator may extend such 60-day period for a reasonable period of time. A decision resolving a dispute may include any remedies appropriate under the circumstances, including repair, replacement, refund, reimbursement for expenses, and compensation for damages.

(c) LIMITATION ON USE OF MATERIALS.—Materials and information obtained in the course of a decision making process to settle a dispute by arbitration under this section may not be used to bring an action under section 14905.

(d) ATTORNEY'S FEES TO SHIPPERS.—In any court action to resolve a dispute between a shipper of household goods and a carrier providing transportation or service subject to jurisdiction under subchapter I or III of chapter 135 concerning the transportation of household goods by such carrier, the shipper shall be awarded reasonable attorney's fees if—

(1) the shipper submits a claim to the carrier within 120 days after the date the shipment is delivered or the date the delivery is scheduled, whichever is later;

(2) the shipper prevails in such court action; and

(3)(A) a decision resolving the dispute was not rendered through arbitration under this section within the period provided under subsection [(b)(8)] *(b)(7)* of this section or an extension of such period under such subsection; or

(B) the court proceeding is to enforce a decision rendered through arbitration under this section and is instituted after the period for performance under such decision has elapsed.

(e) ATTORNEY'S FEES TO CARRIERS.—In any court action to resolve a dispute between a shipper of household goods and a carrier providing transportation, or service subject to jurisdiction under subchapter I or III of chapter 135 concerning the transportation of household goods by such carrier, such carrier may be awarded rea-

sonable attorney's fees by the court [only if the shipper brought such action in bad faith—

[(1) after resolution of such dispute through arbitration under this section; or

[(2) after institution of an arbitration proceeding by the shipper to resolve such dispute under this section but before—

[(A) the period provided under subsection (b)(8) for resolution of such dispute (including, if applicable, an extension of such period under such subsection) ends; and

[(B) a decision resolving such dispute is rendered.]

if—

(1) the court proceeding is to enforce a decision rendered in favor of the carrier through arbitration under this section and is instituted after the shipper has a reasonable opportunity to pay any charges required by such decision; or

(2) the shipper brought such action in bad faith—

(A) after resolution of such dispute through arbitration under this section; or

(B) after institution of an arbitration proceeding by the shipper to resolve such dispute under this section but before—

(i) the period provided under subsection (b)(7) for resolution of such dispute (including, if applicable, an extension of such period under such subsection) ends; and

(ii) a decision resolving such dispute is rendered.

(f) LIMITATION OF APPLICABILITY TO COLLECT-ON-DELIVERY TRANSPORTATION.—The provisions of this section shall apply only in the case of collect-on-delivery transportation of household goods.

(g) REVIEW BY SECRETARY.—Not later than 18 months after January 1, 1996, the Secretary shall complete a review of the dispute settlement program established under this section. If, after notice and opportunity for comment, the Secretary determines that changes are necessary to such program to ensure the fair and equitable resolution of disputes under this section, the Secretary shall implement such changes and transmit a report to Congress on such changes.

§ 14710. Enforcement of Federal laws and regulations with respect to transportation of household goods

(a) ENFORCEMENT BY STATES.—Notwithstanding any other provision of this title, a State authority may enforce chapters 137, 147, and 149, subchapter I of chapter 141, section 13907, and section 14124 of this title and regulations thereunder related to transportation of household goods in interstate commerce. Any fine or penalty imposed on a carrier in a proceeding under this subsection shall, notwithstanding any provision of law to the contrary, be paid to and retained by the State.

(b) STATE AUTHORITY DEFINED.—The term "State authority' means an agency of a State that has authority under the laws of the State to regulate the intrastate movement of household goods.

§ 14711. Enforcement by State attorneys general

(a) IN GENERAL.—A State, as parens patriae, may bring a civil action on behalf of its residents in an appropriate district court of

the United States to enforce this part, or a regulation or order of the Secretary or Board, as applicable, or to impose the civil penalties authorized by this part or such regulation or order, whenever the attorney general of the State has reason to believe that the interests of the residents of the State have been or are being threatened or adversely affected by a carrier or broker providing transportation subject to jurisdiction under subchapter I or III of chapter 135 of this title, or a foreign motor carrier providing transportation registered under section 13902 of this title, that is engaged in household goods transportation that violates this part or a regulation or order of the Secretary or Board, as applicable.

(b) NOTICE.—The State shall serve written notice to the Secretary or the Board, as the case may be, of any civil action under subsection (a) prior to initiating such civil action. The notice shall include a copy of the complaint to be filed to initiate such civil action, except that if it is not feasible for the State to provide such prior notice, the State shall provide such notice immediately upon instituting such civil action.

(c) AUTHORITY TO INTERVENE.—Upon receiving the notice required by subsection (b), the Secretary or Board may intervene in such civil action and upon intervening—

(1) be heard on all matters arising in such civil action; and

(2) file petitions for appeal of a decision in such civil action.

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

(e) VENUE; SERVICE OF PROCESS.—In a civil action brought under subsection (a)—

(1) the venue shall be a judicial district in which—

(A) the carrier, foreign motor carrier, or broker operates;

(B) the carrier, foreign motor carrier, or broker was authorized to provide transportation at the time the complaint arose; or

(C) where the defendant in the civil action is found;

(2) process may be served without regard to the territorial limits of the district or of the State in which the civil action is instituted; and

(3) a person who participated with a carrier or broker in an alleged violation that is being litigated in the civil action may be joined in the civil action without regard to the residence of the person.

(f) ENFORCEMENT OF STATE LAW.—Nothing contained in this section shall prohibit an authorized State official from proceeding in State court to enforce a criminal statute of such State.

CHAPTER 149. CIVIL AND CRIMINAL PENALTIES

§ 14901. General civil penalties

(a) REPORTING AND RECORDKEEPING.—A person required to make a report to the Secretary or the Board, answer a question, or make, prepare, or preserve a record under this part concerning transportation subject to jurisdiction under subchapter I or III of chapter

135 or transportation by a foreign carrier registered under section 13902, or an officer, agent, or employee of that person that—

(1) does not make the report;

(2) does not specifically, completely, and truthfully answer the question;

(3) does not make, prepare, or preserve the record in the form and manner prescribed;

(4) does not comply with section 13901; or

(5) does not comply with section 13902(c); is liable to the United States for a civil penalty of not less than $500 for each violation and for each additional day the violation continues; except that, in the case of a person who is not registered under this part to provide transportation of passengers, or an officer, agent, or employee of such person, that does not comply with section 13901 with respect to providing transportation of passengers, the amount of the civil penalty shall not be less than $2,000 for each violation and for each additional day the violation continues.

(b) TRANSPORTATION OF HAZARDOUS WASTES.—A person subject to jurisdiction under subchapter I of chapter 135, or an officer, agent, or employee of that person, and who is required to comply with section 13901 of this title but does not so comply with respect to the transportation of hazardous wastes as defined by the Environmental Protection Agency pursuant to section 3001 of the Solid Waste Disposal Act (but not including any waste the regulation of which under the Solid Waste Disposal Act has been suspended by Congress) shall be liable to the United States for a civil penalty not to exceed $20,000 for each violation.

(c) FACTORS TO CONSIDER IN DETERMINING AMOUNT.—In determining and negotiating the amount of a civil penalty under subsection (a) or (d) concerning transportation of household goods, the degree of culpability, any history of prior such conduct, the degree of harm to shipper or shippers, ability to pay, the effect on ability to do business, whether the shipper has been adequately compensated before institution of the proceeding, and such other matters as fairness may require shall be taken into account.

(d) PROTECTION OF HOUSEHOLD GOODS SHIPPERS.—

(1) IN GENERAL.—If a carrier providing transportation of household goods subject to jurisdiction under subchapter I or III of chapter 135 or a receiver or trustee of such carrier fails or refuses to comply with any regulation issued by the Secretary or the Board relating to protection of individual shippers, such carrier, receiver, or trustee is liable to the United States for a civil penalty of not less than $1,000 for each violation and for each additional day during which the violation continues.

(2) ESTIMATE OF BROKER WITHOUT CARRIER AGREEMENT.—If a broker for transportation of household goods subject to jurisdiction under subchapter I of chapter 135 of this title makes an estimate of the cost of transporting any such goods before entering into an agreement with a carrier to provide transportation of household goods subject to such jurisdiction, the broker is liable to the United States for a civil penalty of not less than $10,000 for each violation.

(3) UNAUTHORIZED TRANSPORTATION.—If a person provides transportation of household goods subject to jurisdiction under subchapter I of chapter 135 this title or provides broker services for such transportation without being registered under chapter 139 of this title to provide such transportation or services as a motor carrier or broker, as the case may be, such person is liable to the United States for a civil penalty of not less than $25,000 for each violation.

(e) VIOLATION RELATING TO TRANSPORTATION OF HOUSEHOLD GOODS.—Any person that knowingly engages in or knowingly authorizes an agent or other person—

(1) to falsify documents used in the transportation of household goods subject to jurisdiction under subchapter I or III of chapter 135 which evidence the weight of a shipment; or

(2) to charge for accessorial services which are not performed or for which the carrier is not entitled to be compensated in any case in which such services are not reasonably necessary in the safe and adequate movement of the shipment;

is liable to the United States for a civil penalty of not less than $2,000 for each violation and of not less than $5,000 for each subsequent violation. Any State may bring a civil action in the United States district courts to compel a person to pay a civil penalty assessed under this subsection.

(f) VENUE.—Trial in a civil action under subsections (a) through (e) of this section is in the judicial district in which—

(1) the carrier or broker has its principal office;

(2) the carrier or broker was authorized to provide transportation or service under this part when the violation occurred;

(3) the violation occurred; or

(4) the offender is found.

Process in the action may be served in the judicial district of which the offender is an inhabitant or in which the offender may be found.

(g) BUSINESS ENTERTAINMENT EXPENSES.—

(1) IN GENERAL.—Any business entertainment expense incurred by a water carrier providing transportation subject to this part shall not constitute a violation of this part if that expense would not be unlawful if incurred by a person not subject to this part.

(2) COST OF SERVICE.—Any business entertainment expense subject to paragraph (1) that is paid or incurred by a water carrier providing transportation subject to this part shall not be taken into account in determining the cost of service or the rate base for purposes of section 13702.

§ 14915. Penalties for failure to give up possession of household goods

(a) CIVIL PENALTY.—Whoever is found to have failed to give up possession of household goods is liable to the United States for a civil penalty of not less than $10,000. Each day a carrier is found to have failed to give up possession of household goods may constitute a separate violation. If such person is a carrier or broker, the Secretary may suspend for a period of not less than 6 months the registration of such carrier or broker under chapter 139 of this title.

(b) CRIMINAL PENALTY.—Whoever has been convicted of having failed to give up possession of household goods shall be fined under title 18 or imprisoned for not more than 2 years, or both.

(c) FAILURE TO GIVE UP POSSESSION OF HOUSEHOLD GOODS DEFINED.—For purposes of this section, the term "failed to give up possession of household goods' means the knowing and willful failure of a motor carrier to deliver to, or unload at, the destination of a shipment of household goods that is subject to jurisdiction under subchapter I or III of chapter 135 of this title, for which charges have been estimated by the motor carrier providing transportation of such goods, and for which the shipper has tendered a payment described in clause (i), (ii), or (iii) of section 13707(b)(3)(A) of this title.

SUBTITLE V. RAIL PROGRAMS

PART A. SAFETY

CHAPTER 201. GENERAL

SUBCHAPTER II. PARTICULAR ASPECTS OF SAFETY

* * * * * * *

§ 20154. Capital grants for rail line relocation projects

(a) ESTABLISHMENT OF PROGRAM.—The Secretary of Transportation shall carry out a grant program to provide financial assistance for local rail line relocation projects.

(b) ELIGIBILITY.—A State is eligible for a grant under this section for any project for the improvement of the route or structure of a rail line passing through a municipality of the State that—

(1) is carried out for the purpose of mitigating the adverse effects of rail traffic on safety, motor vehicle traffic flow, or economic development in the municipality;

(2) involves a lateral or vertical relocation of any portion of the rail line within the municipality to avoid a closing of a grade crossing or the construction of a road underpass or overpass; and

(3) meets the costs-benefits requirement set forth in subsection (c).

(c) COSTS-BENEFITS REQUIREMENT.—A grant may be awarded under this section for a project for the relocation of a rail line only if the benefits of the project for the period equal to the estimated economic life of the relocated rail line exceed the costs of the project for that period, as determined by the Secretary considering the following factors:

(1) The effects of the rail line and the rail traffic on motor vehicle and pedestrian traffic, safety, and area commerce if the rail line were not so relocated.

(2) The effects of the rail line, relocated as proposed, on motor vehicle and pedestrian traffic, safety, and area commerce.

(3) The effects of the rail line, relocated as proposed, on the freight and passenger rail operations on the rail line.

(d) CONSIDERATIONS FOR APPROVAL OF GRANT APPLICATIONS.—In addition to considering the relationship of benefits to costs in deter-

mining whether to award a grant to an eligible State under this section, the Secretary shall consider the following factors:

(1) The capability of the State to fund the rail line relocation project without Federal grant funding.

(2) The requirement and limitation relating to allocation of grant funds provided in subsection (e).

(3) Equitable treatment of the various regions of the United States.

(e) ALLOCATION REQUIREMENTS.—

(1) GRANTS NOT GREATER THAN $20,000,000.—At least 50 percent of all grant funds awarded under this section out of funds appropriated for a fiscal year shall be provided as grant awards of not more than $20,000,000 each.

(2) LIMITATION PER PROJECT.—Not more than 25 percent of the total amount available for carrying out this section for a fiscal year may be provided for any 1 project in that fiscal year.

(f) FEDERAL SHARE.—The total amount of a grant awarded under this section for a rail line relocation project shall be 90 percent of the shared costs of the project, as determined under subsection (g)(4).

(g) STATE SHARE.—

(1) PERCENTAGE.—A State shall pay 10 percent of the shared costs of a project that is funded in part by a grant awarded under this section.

(2) FORMS OF CONTRIBUTIONS.—The share required by paragraph (1) may be paid in cash or in kind.

(3) IN-KIND CONTRIBUTIONS.—The in-kind contributions that are permitted to be counted under paragraph (2) for a project for a State are as follows:

(A) A contribution of real property or tangible personal property (whether provided by the State or a person for the State).

(B) A contribution of the services of employees of the State, calculated on the basis of costs incurred by the State for the pay and benefits of the employees, but excluding overhead and general administrative costs.

(C) A payment of any costs that were incurred for the project before the filing of an application for a grant for the project under this section, and any in-kind contributions that were made for the project before the filing of the application, if and to the extent that the costs were incurred or in-kind contributions were made, as the case may be, to comply with a provision of a statute required to be satisfied in order to carry out the project.

(4) COSTS NOT SHARED.—

(A) IN GENERAL.—For the purposes of subsection (f) and this subsection, the shared costs of a project in a municipality do not include any cost that is defrayed with any funds or in-kind contribution that a source other than the municipality makes available for the use of the municipality without imposing at least 1 of the following conditions:

(i) The condition that the municipality use the funds or contribution only for the project.

(ii) The condition that the availability of the funds or contribution to the municipality is contingent on the execution of the project.

(B) DETERMINATIONS OF THE SECRETARY.—The Secretary shall determine the amount of the costs, if any, that are not shared costs under this paragraph and the total amount of the shared costs. A determination of the Secretary shall be final.

(h) MULTISTATE AGREEMENTS TO COMBINE AMOUNTS.—Two or more States (not including political subdivisions of States) may, pursuant to an agreement entered into by the States, combine any part of the amounts provided through grants for a project under this section if—

(1) the project will benefit each of the States entering into the agreement; and

(2) the agreement is not a violation of a law of any such State.

(i) REGULATIONS.—The Secretary shall prescribe regulations for carrying out this section.

(j) STATE DEFINED.—In this section, the term "State" includes, except as otherwise specifically provided, a political subdivision of a State.

(k) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary for use in carrying out this section $350,000,000 for each of the fiscal years 2004 through 2008.

PART B. ASSISTANCE

[CHAPTER 223. LIGHT DENSITY RAIL LINE PILOT PROJECTS

[§ 22301. Light density rail line pilot projects

[(a) GRANTS.—The Secretary of Transportation may make grants to States that have State rail plans described in section 22102 (1) and (2), to fund pilot projects that demonstrate the relationship of light density railroad services to the statutory responsibilities of the Secretary, including those under title 23.

[(b) LIMITATIONS.—Grants under this section may be made only for pilot projects for making capital improvements to, and rehabilitating, publicly and privately owned rail line structures, and may not be used for providing operating assistance.

[(c) PRIVATE OWNER CONTRIBUTIONS.—Grants made under this section foro projects on privately owned rail line structures shall include contributions by the owner of the rail line structures, based on the benefit to those structures, as determined by the Secretary.

[(d) STUDY.—The Secretary shall conduct a study of the pilot projects carried out with grant assistance under this section to determine the public interest benefits associated with the light density railroad networks in the States and their contribution to a multimodal transportation system. Not later than March 31, 2003, the Secretary shall report to Congress any recommendations the Secretary considers appropriate regarding the eligibility of light density rail networks for Federal infrastructure financing.

[(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary to carry out this section $17,500,000 for each of the fiscal years 1998, 1999, 2000, 2001,

2002, and 2003. Such funds shall remain available until expended.]

CHAPTER 223—CAPITAL GRANTS FOR RAILROAD TRACK

Sec.
22301. Capital grants for railroad track.

§ 22301. Capital grants for railroad track

(a) ESTABLISHMENT OF PROGRAM.—

(1) ESTABLISHMENT.—The Secretary of Transportation shall establish a program of capital grants for the rehabilitation, preservation, or improvement of railroad track (including roadbed, bridges, and related track structures) of class II and class III railroads. Such grants shall be for rehabilitating, preserving, or improving track used primarily for freight transportation to a standard ensuring that the track can be operated safely and efficiently, including grants for rehabilitating, preserving, or improving track to handle 286,000 pound rail cars. Grants may be provided under this chapter—

(A) directly to the class II or class III railroad; or

(B) with the concurrence of the class II or class III railroad, to a State or local government.

(2) STATE COOPERATION.—Class II and class III railroad applicants for a grant under this chapter are encouraged to utilize the expertise and assistance of State transportation agencies in applying for and administering such grants. State transportation agencies are encouraged to provide such expertise and assistance to such railroads.

(3) REGULATIONS.—

(A) IN GENERAL.—The Secretary shall prescribe regulations to carry out the program under this section.

(B) CRITERIA.—In developing the regulations, the Secretary shall establish criteria that—

(i) condition the award of a grant to a railroad on reasonable assurances by the railroad that the facilities to be rehabilitated and improved will be economically and efficiently utilized;

(ii) ensure that the award of a grant is justified by present and probable future demand for rail services by the railroad to which the grant is to be awarded;

(iii) ensure that consideration is given to projects that are part of a State-sponsored rail plan; and

(iv) ensure that all such grants are awarded on a competitive basis.

(b) MAXIMUM FEDERAL SHARE.—The maximum Federal share for carrying out a project under this section shall be 80 percent of the project cost. The non-Federal share may be provided by any non-Federal source in cash, equipment, or supplies. Other in-kind contributions may be approved by the Secretary on a case by case basis consistent with this chapter.

(c) PROJECT ELIGIBILITY.—For a project to be eligible for assistance under this section the track must have been operated or owned by a class II or class III railroad as of the date of the enactment of the Railroad Track Modernization Act of 2003.

(d) USE OF FUNDS.—Grants provided under this section shall be used to implement track capital projects as soon as possible. In no event shall grant funds be contractually obligated for a project later than the end of the third Federal fiscal year following the year in which the grant was awarded. Any funds not so obligated by the end of such fiscal year shall be returned to the Secretary for reallocation.

(e) ADDITIONAL PURPOSE.—In addition to making grants for projects as provided in subsection (a), the Secretary may also make grants to supplement direct loans or loan guarantees made under title V of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 822(d)), for projects described in the last sentence of section 502(d) of such title. Grants made under this subsection may be used, in whole or in part, for paying credit risk premiums, lowering rates of interest, or providing for a holiday on principal payments.

(f) EMPLOYEE PROTECTION.—The Secretary shall require as a condition of any grant made under this section that the recipient railroad provide a fair arrangement at least as protective of the interests of employees who are affected by the project to be funded with the grant as the terms imposed under section 11326(a), as in effect on the date of the enactment of the Railroad Track Modernization Act of 2001.

(g) LABOR STANDARDS.—

(1) PREVAILING WAGES.—The Secretary shall ensure that laborers and mechanics employed by contractors and subcontractors in construction work financed by a grant made under this section will be paid wages not less than those prevailing on similar construction in the locality, as determined by the Secretary of Labor under the Act of March 3, 1931 (known as the Davis-Bacon Act; 40 U.S.C. 276a et seq.). The Secretary shall make a grant under this section only after being assured that required labor standards will be maintained on the construction work.

(2) WAGE RATES.—Wage rates in a collective bargaining agreement negotiated under the Railway Labor Act (45 U.S.C. 151 et seq.) are deemed for purposes of this subsection to comply with the Act of March 3, 1931 (known as the Davis-Bacon Act; 40 U.S.C. 276a et seq.).

PART C. PASSENGER TRANSPORTATION

CHAPTER 241. GENERAL

§ 24104. Authorization of appropriations

[(a) IN GENERAL.—There are authorized to be appropriated to the Secretary of Transportation—

[(1) $1,138,000,000 for fiscal year 1998;

[(2) $1,058,000,000 for fiscal year 1999;

[(3) $1,023,000,000 for fiscal year 2000;

[(4) $989,000,000 for fiscal year 2001; and

[(5) $955,000,000 for fiscal year 2002, for the benefit of Amtrak for capital expenditures under chapters 243, 247, and 249 of this title, operating expenses, and payments described in subsection (c)(1)(A) through (C). In fiscal years following the fifth anniversary of the enactment of the Amtrak Reform and

Accountability Act of 1997 no funds authorized for Amtrak shall be used for operating expenses other than those prescribed for tax liabilities under section 3221 of the Internal Revenue Code of 1986 that are more than the amount needed for benefits of individuals who retire from Amtrak and for their beneficiaries.

[(b) OPERATING EXPENSES.—

[(1) Not more than $381,000,000 may be appropriated to the Secretary for each of the fiscal years ending September 30, 1993, and September 30, 1994, for the benefit of Amtrak for operating expenses. Not more than 5 percent of the amounts appropriated for each fiscal year shall be used to pay operating expenses under section 24704 of this title for transportation in operation on September 30, 1992.

[(2)(A) Not more than the following amounts may be appropriated to the Secretary for the benefit of Amtrak for operating losses under section 24704 of this title for transportation beginning after September 30, 1992:

[(i) $7,500,000 for the fiscal year ending September 30, 1993.

[(ii) $9,500,000 for the fiscal year ending September 30, 1994.

[(B) The expenditure by Amtrak of an amount appropriated under subparagraph (A) of this paragraph is deemed not to be an operating expense when calculating the revenue-to-operating expense ratio of Amtrak.

[(c) MANDATORY PAYMENTS.—

[(1) Not more than $150,000,000 for the fiscal year ending September 30, 1993, and amounts that may be necessary for the fiscal year ending September 30, 1994, may be appropriated to the Secretary to pay—

[(A) tax liabilities under section 3221 of the Internal Revenue Code of 1986 (26 U.S.C. 3221) due in those fiscal years that are more than the amount needed for benefits for individuals who retire from Amtrak and for their beneficiaries;

[(B) obligations of Amtrak under section 8(a) of the Railroad Unemployment Insurance Act (45 U.S.C. 358(a)) due in those fiscal years that are more than obligations of Amtrak calculated on an experience-related basis; and

[(C) obligations of Amtrak due under section 3321 of the Code (26 U.S.C. 3321).

[(2) Amounts appropriated under this subsection are not a United States Government subsidy of Amtrak.

[(d) PAYMENT TO AMTRAK.—Amounts appropriated under this section shall be paid to Amtrak under the budget request of the Secretary as approved or modified by Congress when the amounts are appropriated. A payment may not be made more frequently than once every 90 days, unless Amtrak, for good cause, requests more frequent payment before a 90-day period ends. In each fiscal year in which amounts are authorized to be appropriated under this section, amounts appropriated shall be paid to Amtrak as follows:

[(1) 50 percent on October 1.

[(2) 25 percent on January 1.

[(3) 25 percent on April 1.

[(e) AVAILABILITY OF AMOUNTS AND EARLY APPROPRIATIONS.—

[(1) Amounts appropriated under this section remain available until expended.

[(2) Amounts for capital acquisitions and improvements may be appropriated in a fiscal year before the fiscal year in which the amounts will be obligated.

[(f) LIMITATIONS ON USE.—Amounts appropriated under this section may not be used to subsidize operating losses of commuter rail passenger or rail freight transportation.]

There are authorized to be appropriated to the Secretary of Transportation $2,000,000,000 for each of fiscal years 2004, 2005, 2006, 2007, 2008, and 2009 for the benefit of Amtrak for operating expenses.

SUBTITLE VI. MOTOR VEHICLE AND DRIVER PROGRAMS

PART A. GENERAL

CHAPTER 301. MOTOR VEHICLE SAFETY

SUBCHAPTER I. GENERAL

§ 30106. Agency accountability

(a) TRIENNIAL STATE MANAGEMENT REVIEWS.—At least once every 3 years the National Highway Traffic Safety Administration shall conduct a review of each State highway safety program. The review shall include a management evaluation of all grant programs partially or fully funded under this title. The Administration shall provide review-based recommendations on how each State may improve the management and oversight of its grant activities and may provide a management and oversight plan.

(b) RECOMMENDATIONS BEFORE SUBMISSION.—In order to provide guidance to State highway safety agencies on matters that should be addressed in the State highway safety program goals and initiatives part of its highway safety plan before the plan is submitted for review, the Administration shall provide data-based recommendations to each State at least 90 days before the date on which the plan is to be submitted for approval.

(c) STATE PROGRAM REVIEW.—The Administration shall—

(1) conduct a program improvement review of any State that does not make substantial progress over a 3-year period in meeting national priority program goals; and

(2) provide technical assistance and safety program recommendations to the State for any goal not achieved.

(d) REGIONAL ADMINISTRATOR HARMONIZATION.—The Administration and the Inspector General of the Department of Transportation shall undertake a State grant administrative review of the practices and procedures of the management reviews and program reviews conducted by Administration regional offices and formulate a report of best practices to be completed within 180 days after the date of enactment of the Surface Transportation Safety Reauthorization Act of 2003.

(e) BEST PRACTICES GUIDELINES.—

(1) UNIFORM GUIDELINES.—The Administration shall issue uniform management review and program review guidelines based on the report under subsection (d). Each regional office

shall use the guidelines in executing its State administrative review duties.

(2) PUBLICATION.—The Administration shall make the following documents available via the Internet upon their completion:

(A) The Administration's management review and program review guidelines.

(B) State highway safety plans.

(C) State annual accomplishment reports.

(D) The Administration's State management reviews.

(E) The Administration's State program improvement plans.

(3) REPORTS TO STATE HIGHWAY SAFETY AGENCIES.—The Administration may not make a plan, report, or review available under paragraph (2) that is directed to a State highway safety agency until after it has been submitted to that agency.

SUBCHAPTER II. STANDARDS AND COMPLIANCE

§ 30112. Prohibitions on manufacturing, selling, and importing noncomplying motor vehicles and equipment

(a) GENERAL.—Except as provided in this section, sections 30113 and 30114 of this title, and subchapter III of this chapter, a [person] *person, including a foreign motor carrier,* may not manufacture for sale, sell, offer for sale, introduce or deliver for introduction in interstate commerce, or import into the United States, any motor vehicle or motor vehicle equipment manufactured on or after the date an applicable motor vehicle safety standard prescribed under this chapter takes effect unless the vehicle or equipment complies with the standard and is covered by a certification issued under section 30115 of this title.

(b) NONAPPLICATION.—This section does not apply to—

(1) the sale, offer for sale, or introduction or delivery for introduction in interstate commerce of a motor vehicle or motor vehicle equipment after the first purchase of the vehicle or equipment in good faith other than for resale;

(2) a person—

(A) establishing that the person had no reason to know, despite exercising reasonable care, that a motor vehicle or motor vehicle equipment does not comply with applicable motor vehicle safety standards prescribed under this chapter; or

(B) holding, without knowing about the noncompliance and before the vehicle or equipment is first purchased in good faith other than for resale, a certificate issued by a manufacturer or importer stating the vehicle or equipment complies with applicable standards prescribed under this chapter;

(3) a motor vehicle or motor vehicle equipment intended only for export, labeled for export on the vehicle or equipment and on the outside of any container of the vehicle or equipment, and exported;

(4) a motor vehicle the Secretary of Transportation decides under section 30141 of this title is capable of complying with applicable standards prescribed under this chapter;

(5) a motor vehicle imported for personal use by an individual who receives an exemption under section 30142 of this title;

(6) a motor vehicle under section 30143 of this title imported by an individual employed outside the United States;

(7) a motor vehicle under section 30144 of this title imported on a temporary basis;

(8) a motor vehicle or item of motor vehicle equipment under section 30145 of this title requiring further manufacturing; or

(9) a motor vehicle that is at least 25 years old.

(c) DEFINITIONS.—In this section:

(1) FOREIGN MOTOR CARRIER.—The term "foreign motor carrier" has the meaning given that term in section 13102 of this title.

(2) IMPORT.—The term "import" means transport by any means into the United States, on a permanent or temporary basis, including the transportation of a motor vehicle into the United States for the purpose of providing the transportation of cargo or passengers.

§ 30115. Certification of compliance

(a) IN GENERAL.—A manufacturer or distributor of a motor vehicle or motor vehicle equipment shall certify to the distributor or dealer at delivery that the vehicle or equipment complies with applicable motor vehicle safety standards prescribed under this chapter. A person may not issue the certificate if, in exercising reasonable care, the person has reason to know the certificate is false or misleading in a material respect. Certification of a vehicle must be shown by a label or tag permanently fixed to the vehicle. Certification of equipment may be shown by a label or tag on the equipment or on the outside of the container in which the equipment is delivered.

(b) CERTIFICATION LABEL.—In the case of the certification label affixed by an intermediate or final stage manufacturer of a motor vehicle built in more than 1 stage, each intermediate or final stage manufacturer shall certify with respect to each applicable Federal motor vehicle safety standard—

(1) that it has complied with the specifications set forth in the compliance documentation provided by the incomplete motor vehicle manufacturer in accordance with regulations prescribed by the Secretary; or

(2) that it has elected to assume responsibility for compliance with that standard.

If the intermediate or final stage manufacturer elects to assume responsibility for compliance with the standard covered by the documentation provided by an incomplete motor vehicle manufacturer, the intermediate or final stage manufacturer shall notify the incomplete motor vehicle manufacturer in writing within a reasonable time of affixing the certification label. A violation of this subsection shall not be subject to a civil penalty under section 30165.

(c) APPLICATION TO FOREIGN MOTOR CARRIERS.—

(1) IN GENERAL.—The requirement for certification described in subsection (a) shall apply to a foreign motor carrier that imports a motor vehicle or motor vehicle equipment into the United States. Such certification shall be made to the Secretary

of Transportation prior to the import of the vehicle or equipment.

(2) DEFINITIONS.—In this subsection:

(A) FOREIGN MOTOR CARRIER.—The term "foreign motor carrier" has the meaning given that term in section 13102 of this title.

(B) IMPORT.—The term "import" has the meaning given that term in section 30112 of this title.

§ 30120. Remedies for defects and noncompliance

(a) WAYS TO REMEDY.—

(1) Subject to subsections (f) and (g) of this section, when notification of a defect or noncompliance is required under section 30118(b) or (c) of this title, the manufacturer of the defective or noncomplying motor vehicle or replacement equipment shall remedy the defect or noncompliance without charge when the vehicle or equipment is presented for remedy. Subject to subsections (b) and (c) of this section, the manufacturer shall remedy the defect or noncompliance in any of the following ways the manufacturer chooses:

(A) if a vehicle—

(i) by repairing the vehicle;

(ii) by replacing the vehicle with an identical or reasonably equivalent vehicle; or

(iii) by refunding the purchase price, less a reasonable allowance for depreciation.

(B) if replacement equipment, by repairing the equipment or replacing the equipment with identical or reasonably equivalent equipment.

(2) The Secretary of Transportation may prescribe regulations to allow the manufacturer to impose conditions on the replacement of a motor vehicle or refund of its price.

(b) TIRE REMEDIES.—

(1) A manufacturer of a tire, including an original equipment tire, shall remedy a defective or noncomplying tire if the owner or purchaser presents the tire for remedy not later than 60 days after the later of—

(A) the day the owner or purchaser receives notification under section 30119 of this title; or

(B) if the manufacturer decides to replace the tire, the day the owner or purchaser receives notification that a replacement is available.

(2) If the manufacturer decides to replace the tire and the replacement is not available during the 60-day period, the owner or purchaser must present the tire for remedy during a subsequent 60-day period that begins only after the owner or purchaser receives notification that a replacement will be available during the subsequent period. If tires are available during the subsequent period, only a tire presented for remedy during that period must be remedied.

(3) REIMBURSEMENT FOR TIRES REPLACED BEFORE REPLACEMENT NOTIFICATION IS RECEIVED.—A manufacturer, through its remedy program, shall include a plan for reimbursing an owner or purchaser who incurred the cost of the remedy in advance of the manu-

facturer's notification under subsection (b) or (c) of section 30118 up to 6 months after the last defect notice is mailed to owners.

(c) ADEQUACY OF REPAIRS.—

(1) If a manufacturer decides to repair a defective or noncomplying motor vehicle or replacement equipment and the repair is not done adequately within a reasonable time, the manufacturer shall—

(A) replace the vehicle or equipment without charge with an identical or reasonably equivalent vehicle or equipment; or

(B) for a vehicle, refund the purchase price, less a reasonable allowance for depreciation.

(2) Failure to repair a motor vehicle or replacement equipment adequately not later than 60 days after its presentation is prima facie evidence of failure to repair within a reasonable time. However, the Secretary may extend, by order, the 60-day period if good cause for an extension is shown and the reason is published in the Federal Register before the period ends. Presentation of a vehicle or equipment for repair before the date specified by a manufacturer in a notice under section 30119(a)(5) or 30121(c)(2) of this title is not a presentation under this subsection.

(3) If the Secretary determines that a manufacturer's remedy program is not likely to be capable of completion within a reasonable time, the Secretary may require the manufacturer to accelerate the remedy program if the Secretary finds—

(A) that there is a risk of serious injury or death if the remedy program is not accelerated; and

(B) that acceleration of the remedy program can be reasonably achieved by expanding the sources of replacement parts, expanding the number of authorized repair facilities, or both. The Secretary may prescribe regulations to carry out this paragraph.

(d) FILING MANUFACTURER'S REMEDY PROGRAM.—A manufacturer shall file with the Secretary a copy of the manufacturer's program under this section for remedying a defect or noncompliance. The Secretary shall make the program available to the public and publish a notice of availability in the Federal Register. A manufacturer's remedy program shall include a plan for reimbursing an owner or purchaser who incurred the cost of the remedy within a reasonable time in advance of the manufacturer's notification under subsection (b) or (c) of section 30118. The Secretary may prescribe regulations establishing what constitutes a reasonable time for purposes of the preceding sentence and other reasonable conditions for the reimbursement plan. In the case of a remedy program involving the replacement of tires, the manufacturer shall include a plan addressing how to prevent, to the extent reasonably within the control of the manufacturer, replaced tires from being resold for installation on a motor vehicle, and how to limit, to the extent reasonably within the control of the manufacturer, the disposal of replaced tires in landfills, particularly through shredding, crumbling, recycling, recovery, and other alternative beneficial non-vehicular uses. The manufacturer shall include information about the implementation of such plan with each quarterly report to the Secretary regarding the progress of any notification or remedy campaigns.

(e) HEARINGS ABOUT MEETING REMEDY REQUIREMENTS.—On the motion of the Secretary or on application by any interested person, the Secretary may conduct a hearing to decide whether the manufacturer has reasonably met the remedy requirements under this section. Any interested person may make written and oral presentations of information, views, and arguments on whether the manufacturer has reasonably met the remedy requirements. If the Secretary decides a manufacturer has not reasonably met the remedy requirements, the Secretary shall order the manufacturer to take specified action to meet those requirements and may take any other action authorized under this chapter.

(f) FAIR REIMBURSEMENT TO DEALERS.—A manufacturer shall pay fair reimbursement to a dealer providing a remedy without charge under this section.

(g) NONAPPLICATION.—

(1) The requirement that a remedy be provided without charge does not apply if the motor vehicle or replacement equipment was bought by the first purchaser more than 10 calendar years, or the tire, including an original equipment tire, was bought by the first purchaser more than 5 calendar years, before notice is given under section 30118(c) of this title or an order is issued under section 30118(b) of this title, whichever is earlier.

(2) This section does not apply during any period in which enforcement of an order under section 30118(b) of this title is restrained or the order is set aside in a civil action to which section 30121(d) of this title applies.

(h) EXEMPTIONS.—On application of a manufacturer, the Secretary shall exempt the manufacturer from this section if the Secretary decides a defect or noncompliance is inconsequential to motor vehicle safety. The Secretary may take action under this subsection only after notice in the Federal Register and an opportunity for any interested person to present information, views, and arguments.

(i) LIMITATION ON SALE OR LEASE.—

(1) If notification is required by an order under section 30118(b) of this title or is required under section 30118(c) of this title and the manufacturer has provided to a dealer (including retailers of motor vehicle equipment) notification about a new motor vehicle or new item of replacement equipment in the dealer's possession at the time of notification that contains a defect related to motor vehicle safety or does not comply with an applicable motor vehicle safety standard prescribed under this chapter, the dealer may sell or lease the motor vehicle or item of replacement equipment only if—

(A) the defect or noncompliance is remedied as required by this section before delivery under the sale or lease; or

(B) when the notification is required by an order under section 30118(b) of this title, enforcement of the order is restrained or the order is set aside in a civil action to which section 30121(d) of this title applies.

(2) This subsection does not prohibit a dealer from offering for sale or lease the vehicle or equipment.

(j) PROHIBITION ON SALES OF REPLACED EQUIPMENT.—No person may sell or lease any motor vehicle equipment (including a tire),

for installation on a motor vehicle, that is the subject of a decision under section 30118(b) or a notice required under section 30118(c) in a condition that it may be reasonably used for its original purpose unless—

(1) the defect or noncompliance is remedied as required by this section before delivery under the sale or lease; or

(2) notification of the defect or noncompliance is required under section 30118(b) but enforcement of the order is set aside in a civil action to which section 30121(d) applies.

* * * * * * *

§ 30128. Vehicle accident ejection protection

(a) IN GENERAL.—The Secretary shall issue a safety standard to reduce complete and partial ejection from passenger motor vehicles with a gross vehicle weight rating of up to 10,000 pounds that are involved in accidents that present a risk of occupant ejection. The reduction in such ejections shall be based on the combined ejection-mitigation capabilities of safety technologies, such as advanced side glazing, side curtains, and side impact air bags.

(b) DOOR LOCK AND RETENTION STANDARD.—The Secretary shall issue a rule to require manufacturers of new passenger motor vehicles distributed in commerce for sale in the United States to make such modifications to door locks, door latches, and retention components of doors in such vehicles as the Secretary determines to be necessary to prevent occupant ejection in vehicle accidents.

§ 30129. Vehicle compatibility and aggressivity reduction standard

(a) In General.—The Secretary of Transportation, through the National Highway Traffic Safety Administration, shall issue safety regulations to reduce vehicle incompatibility and aggressivity for passenger vehicles and non-passenger vehicles. The regulations shall address bumper height, weight, and any other characteristics necessary to ensure better management of crash forces in multiple vehicle frontal and side impact crashes between different types, sizes, and weights of passenger vehicles with a gross vehicle weight of 10,000 pounds or less in order to decrease occupant deaths and injuries.

(b) STANDARDS.—The Secretary, through the Administration, shall develop a standard rating metric to evaluate compatibility and aggressivity among passenger motor vehicles.

(c) PUBLIC INFORMATION.—The Secretary, through the Administration, shall create a public information program that includes vehicle rating based on risks to occupants, risks to other motorists, and combined risks by vehicle make and model.

§ 30130. Improved crashworthiness of passenger motor vehicles

(a) ROLLOVERS.—

(1) IN GENERAL.—The Secretary of Transportation, through the National Highway Traffic Safety Administration, shall prescribe a motor vehicle safety standard under this chapter for rollover crashworthiness standards for passenger motor vehicles

with a gross vehicle weight of not more than 10,000 pounds, using a roof strength standard based on dynamic tests that realistically duplicate the actual forces transmitted to a motor vehicle during an on-roof rollover crash, that includes—

(A) dynamic roof crush standards;

(B) improved seat structure and safety belt design, including seat belt pretensioners and load limiters;

(C) side impact head protection airbags; and

(D) roof injury protection measures.

(2) ROLLOVER RESISTANCE STANDARD.—The Secretary, through the Administration, shall prescribe a rollover prevention standard under this chapter that includes improvements on the basic design characteristics of passenger motor vehicles to increase their resistance to roll over. The Secretary shall also require additional technologies to improve the handling of passenger motor vehicles and thereby reduce the likelihood of vehicle instability and rollovers.

(b) FRONTAL IMPACT STANDARDS AND CRASH TESTS.—

(1)IN GENERAL.—The Secretary, through the Administration, shall prescribe a motor vehicle safety standard under this chapter to improve the protection afforded to occupants in frontal impact crashes involving passenger motor vehicles with a gross vehicle weight of not more than 10,000 pounds.

(2) TEST METHODOLOGY.—In prescribing the standard under paragraph (1), the Secretary shall—

(A) evaluate additional test barriers and measurements of occupant head impact and neck injuries; and

(B) review frontal impact criteria, including consideration of criteria established by the Insurance Institute for Highway Safety.

(c) SIDE IMPACT STANDARDS AND CRASH TESTS.—

(1)IN GENERAL.—The Secretary, through the Administration, shall prescribe a motor vehicle safety standard under this chapter to improve the protection afforded to occupants in side impact crashes involving passenger motor vehicles with a gross vehicle weight of not more than 10,000 pounds.

(2) TEST METHODOLOGY.—In prescribing the standard under paragraph (1), the Secretary shall—

(A) evaluate additional test barriers and measurements of occupant head impact and neck injuries;

(C) consider the need for additional and new crash test dummies that represent the full range of occupant sizes and weights; and

(D) review side impact criteria, including consideration of criteria established by the Insurance Institute for Highway Safety.

PART B. COMMERCIAL

CHAPTER 311. COMMERCIAL MOTOR VEHICLE SAFETY

SUBCHAPTER I. STATE GRANTS AND OTHER COMMERCIAL MOTOR VEHICLE PROGRAMS

§ 31102. Grants to States

(a) GENERAL AUTHORITY.—Subject to this section and the availability of amounts, the Secretary of Transportation may make grants to States for the development or implementation of programs for improving motor carrier safety and the enforcement of regulations, standards, and orders of the United States Government on commercial motor vehicle safety, hazardous materials transportation safety, and compatible State regulations, standards, and orders.

(b) STATE PLAN PROCEDURES AND CONTENTS.—

(1) The Secretary shall prescribe procedures for a State to submit a plan under which the State agrees to assume responsibility for improving motor carrier safety and to adopt and enforce regulations, standards, and orders of the Government on commercial motor vehicle safety, hazardous materials transportation safety, or compatible State regulations, standards, and orders. The Secretary shall approve the plan if the Secretary decides the plan is adequate to promote the objectives of this section and the plan—

(A) implements performance-based [activities by fiscal year 2000;] *activities for commercial motor vehicles of passengers and freight;*

(B) designates the State motor vehicle safety agency responsible for administering the plan throughout the State;

(C) contains satisfactory assurances the agency has or will have the legal authority, resources, and qualified personnel necessary to enforce the regulations, standards, and orders;

(D) contains satisfactory assurances the State will devote adequate amounts to the administration of the plan and enforcement of the regulations, standards, and orders;

(E) provides that the total expenditure of amounts of the State and its political subdivisions (not including amounts of the Government) for commercial motor vehicle safety programs for enforcement of commercial motor vehicle size and weight limitations, drug interdiction, and State traffic safety laws and regulations under subsection (c) of this section will be maintained at a level at least equal to the average level of that expenditure for its last 3 full fiscal [years before December 18, 1991;] *years;*

(F) provides a right of entry and inspection to carry out the plan;

(G) provides that all reports required under this section be submitted to the agency and that the agency will make the reports available to the Secretary on request;

(H) provides that the agency will adopt the reporting requirements and use the forms for recordkeeping, inspections, and investigations the Secretary prescribes;

(I) requires registrants of commercial motor vehicles to make a declaration of knowledge of applicable safety regulations, standards, and orders of the Government and the State;

(J) provides that the State will grant maximum reciprocity for inspections conducted under the North American Inspection Standard through the use of a nationally accepted system that allows ready identification of previously inspected commercial motor vehicles;

(K) ensures that activities described in subsection (c)(1) of this section, if financed with grants under subsection (a) of this section, will not diminish the effectiveness of the development and implementation of commercial motor vehicle safety programs described in subsection (a);

(L) ensures that the State agency will coordinate the plan, data collection, and information systems with State highway safety programs under title 23;

(M) ensures participation in SAFETYNET and other information systems by all appropriate jurisdictions receiving funding under this section;

(N) ensures that information is exchanged among the States in a timely manner;

(O) provides satisfactory assurances that the State will undertake efforts that will emphasize and improve enforcement of State and local traffic safety laws and regulations related to commercial motor vehicle safety;

(P) provides satisfactory assurances that the State will promote activities in support of national priorities and performance goals, including—

(i) activities aimed at removing impaired commercial motor vehicle drivers from the highways of the United States through adequate enforcement of regulations on the use of alcohol and controlled substances and by ensuring ready roadside access to alcohol detection and measuring equipment;

(ii) activities aimed at providing an appropriate level of training to State motor carrier safety assistance program officers and employees on recognizing drivers impaired by alcohol or controlled substances; and

(iii) interdiction activities affecting the transportation of controlled substances by commercial motor vehicle drivers and training on appropriate strategies for carrying out those interdiction activities;

(Q) provides that the State will establish a program to ensure the proper and timely correction of commercial motor vehicle safety violations noted during an inspection carried out with funds authorized under section 31104;

(R) ensures that the State will cooperate in the enforcement of registration requirements under section 13902 and financial responsibility requirements under sections 13906, 31138, and 31139 and regulations issued thereunder;

(S) ensures consistent, effective, and reasonable sanctions; [and]

(T) ensures that roadside inspections will be conducted at a location that is adequate to protect the safety of drivers and enforcement [personnel.] *personnel;*

(U) ensures that inspections of motor carriers of passengers are conducted at stations, terminals, border crossings, or maintence facilities, except in the case of an imminent or obvious safety hazard;

(V) provides that the State will include in the training manual for the licensing examination to drive a non-commercial motor vehicle and a commercial motor vehicle, information on best practices for driving safely in the vicinity of commercial motor vehicles and in the vicinity of non-commercial vehicles, respectively; and

(W) provides that the State will enforce the registration requirements of section 13902 by suspending the operation of any vehicle discovered to be operating without registration or beyond the scope of its registration.

(2) If the Secretary disapproves a plan under this subsection, the Secretary shall give the State a written explanation and allow the State to modify and resubmit the plan for approval.

(3) In estimating the average level of State expenditure under paragraph (1)(D) of this subsection, the Secretary—

(A) may allow the State to exclude State expenditures for Government-sponsored demonstration or pilot programs; and

(B) shall require the State to exclude Government amounts and State matching amounts used to receive Government financing under subsection (a) of this section.

[(c) USE OF GRANTS TO ENFORCE OTHER LAWS.—A State may use amounts received under a grant under subsection (a) of this section for the following activities if the activities are carried out in conjunction with an appropriate inspection of the commercial motor vehicle to enforce Government or State commercial motor vehicle safety regulations:

[(1) enforcement of commercial motor vehicle size and weight limitations at locations other than fixed weight facilities, at specific locations such as steep grades or mountainous terrains where the weight of a commercial motor vehicle can significantly affect the safe operation of the vehicle, or at ports where intermodal shipping containers enter and leave the United States.

[(2) detection of the unlawful presence of a controlled substance (as defined under section 102 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 802)) in a commercial motor vehicle or on the person of any occupant (including the operator) of the vehicle.

[(3) enforcement of State traffic laws and regulations designed to promote the safe operation of commercial motor vehicles.]

(c) USE OF GRANTS TO ENFORCE OTHER LAWS.—A State may use amounts received under a grant under subsection (a) of this section for the following activities:

(1) If the activities are carried out in conjunction with an appropriate inspection of the commercial motor vehicle to enforce

Government or State commercial motor vehicle safety regulations—

(A) enforcement of commercial motor vehicle size and weight limitations at locations other than fixed weight facilities, at specific locations such as steep grades or mountainous terrains where the weight of a commercial motor vehicle can significantly affect the safe operation of the vehicle, or at ports where intermodal shipping containers enter and leave the United States; and

(B) detection of the unlawful presence of a controlled substance (as defined under section 102 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 802)) in a commercial motor vehicle or on the person of any occupant (including the operator) of the vehicle.

(2) Documented enforcement of State traffic laws and regulations designed to promote the safe operation of commercial motor vehicles, including documented enforcement of such laws and regulations against non-commercial motor vehicles when necessary to promote the safe operation of commercial motor vehicles.

(d) CONTINUOUS EVALUATION OF PLANS.—On the basis of reports submitted by a State motor vehicle safety agency of a State with a plan approved under this section and the Secretary's own investigations, the Secretary shall make a continuing evaluation of the way the State is carrying out the plan. If the Secretary finds, after notice and opportunity for comment, the State plan previously approved is not being followed or has become inadequate to ensure enforcement of the regulations, standards, or orders, the Secretary shall withdraw approval of the plan and notify the State. The plan stops being effective when the notice is received. A State adversely affected by the withdrawal may seek judicial review under chapter 7 of title 5. Notwithstanding the withdrawal, the State may retain jurisdiction in administrative or judicial proceedings begun before the withdrawal if the issues involved are not related directly to the reasons for the withdrawal.

§ 31103. United States Government's share of costs

(a) COMMERCIAL MOTOR VEHICLE SAFETY PROGRAMS AND ENFORCEMENT.—The Secretary of Transportation shall reimburse a State, from a grant made under this subchapter, an amount that is not more than 80 percent of the costs incurred by the State in a fiscal year in developing and implementing programs to improve commercial motor vehicle safety and enforce commercial motor vehicle regulations, standards, or orders adopted under this subchapter or subchapter II of this chapter. In determining those costs, the Secretary shall include in-kind contributions by the State. Amounts of the State and its political subdivisions required to be expended under section 31102(b)(1)(D) of this title may not be included as part of the share not provided by the United States Government. *Amounts generated by the Unified Carrier Registration Agreement, under section 14504a of this title and received by a State and used for motor carrier safety purposes may be included as part of the State's share not provided by the United States.* The Secretary may allocate among the States whose applications for

grants have been approved those amounts appropriated for grants to support those programs, under criteria that may be established.

(b) OTHER ACTIVITIES.—*(1)* The Secretary may reimburse State agencies, local governments, or other persons up to 100 percent for public education activities authorized by section 31104(f)(2).

(2) NEW ENTRANT MOTOR CARRIER AUDIT FUNDS.—From the amounts designated under section 31104(f)(4), the Secretary may allocate new entrant motor carrier audit funds to States and local governments without requiring a matching contribution from such States or local governments.

§ 31104. Availability of amounts

[(a) IN GENERAL.—The following amounts are made available from the Highway Trust Fund (other than the Mass Transit Account) for the Secretary of Transportation to incur obligations to carry out section 31102:

[(1) Not more than $79,000,000 for fiscal year 1998.

[(2) Not more than $90,000,000 for fiscal year 1999.

[(3) Not more than $95,000,000 for fiscal year 2000.

[(4) Not more than $100,000,000 for fiscal year 2001.

[(5) Not more than $105,000,000 for fiscal year 2002.

[(6) Not more than $110,000,000 for fiscal year 2003.

[(7) Not more than $68,750,000 for the period of October 1, 2003, through February 29, 2004.**]**

(a) IN GENERAL.—There are authorized to be appropriated from the Highway Trust Fund (other than the Mass Transit Account) to carry out section 31102:

(1) Not more than $186,100,000 for fiscal year 2004.

(2) Not more than $189,800,000 for fiscal year 2005.

(3) Not more than $193,600,000 for fiscal year 2006.

(4) Not more than $197,500,000 for fiscal year 2007.

(5) Not more than $201,400,000 for fiscal year 2008.

(6) Not more than $205,500,000 for fiscal year 2009.

(b) AVAILABILITY AND REALLOCATION OF AMOUNTS.—Amounts made available under subsection (a) of this section remain available until expended. Allocations to a State remain available for expenditure in the State for the fiscal year in which they are allocated and for the next fiscal year. Amounts not expended by a State during those 2 fiscal years are released to the Secretary for reallocation.

(c) REIMBURSEMENT FOR GOVERNMENT'S SHARE OF COSTS.—Amounts made available under subsection (a) of this section shall be used to reimburse States proportionately for the United States Government's share of costs incurred.

(d) GRANTS AS CONTRACTUAL OBLIGATIONS.—Approval by the Secretary of a grant to a State under section 31102 of this title is a contractual obligation of the Government for payment of the Government's share of costs incurred by the State in developing, implementing, or developing and implementing programs to enforce commercial motor vehicle regulations, standards, and orders.

(e) DEDUCTION FOR ADMINISTRATIVE EXPENSES.—On October 1 of each fiscal year or as soon after that date as practicable, the Secretary may deduct, from amounts made available under subsection (a) of this section for that fiscal year, not more than 1.25 percent of those amounts for administrative expenses incurred in carrying

out section 31102 of this title in that fiscal year. The Secretary shall use at least 75 percent of those deducted amounts to train non-Government employees and to develop related training materials in carrying out section 31102.

(f) ALLOCATION CRITERIA AND ELIGIBILITY.—

(1) IN GENERAL.—On October 1 of each fiscal year or as soon after that date as practicable and after making the deduction under subsection (e), the Secretary shall allocate amounts made available to carry out section 31102 for such fiscal year among the States with plans approved under section 31102. Such allocation shall be made under such criteria as the Secretary prescribes by regulation.

[(2) HIGH-PRIORITY AND BORDER ACTIVITIES.—

[(A) HIGH-PRIORITY ACTIVITIES AND PROJECTS.—The Secretary may designate up to 5 percent of amounts available for allocation under paragraph (1) for States, local governments, and other persons for carrying out high priority activities and projects that improve commercial motor vehicle safety and compliance with commercial motor vehicle safety regulations, including activities and projects that are national in scope, increase public awareness and education, or demonstrate new technologies.The amounts designated under this subparagraph shall be allocated by the Secretary to State agencies, local governments, and other persons that use and train qualified officers and employees in coordination with State motor vehicle safety agencies.

[(B) BORDER COMMERCIAL MOTOR VEHICLE SAFETY AND ENFORCEMENT PROGRAMS.—The Secretary may designate up to 5 percent of amounts available for allocation under paragraph (1) for States, local governments, and other persons for carrying out border commercial motor vehicle safety programs and enforcement activities and projects. The amounts designated under this subparagraph shall be allocated by the Secretary to State agencies, local governments, and other persons that use and train qualified officers and employees in coordination with State motor vehicle safety agencies.]

(2) HIGH-PRIORITY ACTIVITIES.—The Secretary may designate up to 5 percent of amounts available for allocation under paragraph (1) for States, local governments, and organizations representing government agencies or officials for carrying out high priority activities and projects that improve commercial motor vehicle safety and compliance with commercial motor vehicle safety regulations, including activities and projects that are national in scope, increase public awareness and education, or demonstrate new technologies. The amounts designated under this paragraph shall be allocated by the Secretary to State agencies, local governments, and organizations representing government agencies or officials that use and train qualified officers and employees in coordination with State motor vehicle safety agencies. At least 80 percent of the amounts designated under this paragraph shall be awarded to State agencies and local government agencies.

(3) SAFETY-PERFORMANCE INCENTIVE PROGRAMS.—The Secretary may designate up to 10 percent of the amounts available

for allocation under paragraph (1) for safety performance incentive programs for States. The Secretary shall establish safety performance criteria to be used to distribute incentive program funds. Such criteria shall include, at a minimum, reduction in the number and rate of fatal accidents involving commercial motor vehicles. Allocations under this paragraph do not require a matching contribution from a State.

(4) NEW ENTRANT AUDITS.—The Secretary shall designate up to $29,000,000 of the amounts available for allocation under paragraph (1) for audits of new entrant motor carriers conducted pursuant to 31144(f). The Secretary may withhold such funds from a State or local government that is unable to use government employees to conduct new entrant motor carrier audits, and may instead utilize the funds to conduct audits in those jurisdictions.

(g) PAYMENT TO STATES FOR COSTS.—Each State shall submit vouchers for costs the State incurs under this section and section 31102 of this title. The Secretary shall pay the State an amount not more than the Government share of costs incurred as of the date of the vouchers.

(h) INTRASTATE COMPATIBILITY.—The Secretary shall prescribe regulations specifying tolerance guidelines and standards for ensuring compatibility of intrastate commercial motor vehicle safety laws and regulations with Government motor carrier safety regulations to be enforced under section 31102(a) of this title. To the extent practicable, the guidelines and standards shall allow for maximum flexibility while ensuring the degree of uniformity that will not diminish transportation safety. In reviewing State plans and allocating amounts or making grants under section 153 of title 23, the Secretary shall ensure that the guidelines and standards are applied uniformly.

(i) ADMINISTRATIVE EXPENSES.—

(1) There are authorized to be appropriated from the Highway Trust Fund (other than the Mass Transit Account) for the Secretary of Transportation to pay administrative expenses of the Federal Motor Carrier Safety Administration—

(A) $227,900,000 for fiscal year 2004;
(B) $231,200,000 for fiscal year 2005;
(C) $236,400,000 for fiscal year 2006;
(D) $242,500,000 for fiscal year 2007;
(E) $247,600,000 for fiscal year 2008; and
(F) $253,500,000 for fiscal year 2009.

(2) The funds authorized by this subsection shall be used for personnel costs; administrative infrastructure; rent; information technology; programs for research and technology, information management, regulatory development (including a medical review board and rules for medical examiners), performance and registration information system management, and outreach and education; other operating expenses and similar matters; and such other expenses as may from time to time become necessary to implement statutory mandates not funded from other sources.

(3) The amounts made available under this section shall remain available until expended.

(4) Of the funds authorized by paragraph (1), $25,000,000 shall be used in each of fiscal years 2004 through 2009 for de-

ployment of the Commercial Vehicle Information Systems and Networks under section program established under section 241 of the Motor Carrier Safety Reauthorization Act of 2003.

(5) Of the funds authorized by paragraph (1), $6,750,000 in each of fiscal years 2004 through 2009 shall be used to carry out the medical program under section 31149.

§ 31106. Information systems

(a) INFORMATION SYSTEMS AND DATA ANALYSIS.—

(1) IN GENERAL.—Subject to the provisions of this section, the Secretary shall establish and operate motor carrier, commercial motor vehicle, and driver information systems and data analysis programs to support safety regulatory and enforcement activities required under this title.

(2) NETWORK COORDINATION.—In cooperation with the States, the information systems under this section shall be coordinated into a network providing accurate identification of motor carriers and drivers, commercial motor vehicle registration and license tracking, and motor carrier, commercial motor vehicle, and driver safety performance data.

(3) DATA ANALYSIS CAPACITY AND PROGRAMS.—The Secretary shall develop and maintain under this section data analysis capacity and programs that provide the means to—

(A) identify and collect necessary motor carrier, commercial motor vehicle, and driver data;

(B) evaluate the safety fitness of motor carriers and drivers;

(C) develop strategies to mitigate safety problems and to use data analysis to address and measure the effectiveness of such strategies and related programs;

(D) determine the cost-effectiveness of Federal and State safety compliance and enforcement programs and other countermeasures; and

(E) adapt, improve, and incorporate other information and information systems as the Secretary determines appropriate.

(4) STANDARDS.—To implement this section, the Secretary shall prescribe technical and operational standards to ensure—

(A) uniform, timely, and accurate information collection and reporting by the States and other entities as determined appropriate by the Secretary;

(B) uniform Federal, State, and local policies and procedures necessary to operate the information system; and

(C) the reliability and availability of the information to the Secretary and States.

(b) PERFORMANCE AND REGISTRATION INFORMATION PROGRAM.—

(1) INFORMATION CLEARINGHOUSE.—The Secretary shall include, as part of the motor carrier information system authorized by this section, a program to establish and maintain a clearinghouse and repository of information related to State registration and licensing of commercial motor vehicles, the registrants of such vehicles, and the motor carriers operating such vehicles. The clearinghouse and repository may include information on the safety fitness of each of the motor carriers and registrants and other information the Secretary considers

appropriate, including information on motor carrier, commercial motor vehicle, and driver safety performance.

[(2) DESIGN.—The program shall link Federal motor carrier safety information systems with State driver and commercial vehicle registration and licensing systems and shall be designed to enable a State to—

[(A) determine the safety fitness of a motor carrier or registrant when licensing or registering the registrant or motor carrier or while the license or registration is in effect; and

[(B) decide, in cooperation with the Secretary, whether and what types of sanctions or operating limitations to impose on the motor carrier or registrant to ensure safety.

[(3) CONDITIONS FOR PARTICIPATION.—The Secretary shall require States, as a condition of participation in the program, to—

[(A) comply with the uniform policies, procedures, and technical and operational standards prescribed by the Secretary under subsection (a)(4); and

[(B) possess or seek authority to impose commercial motor vehicle registration sanctions on the basis of a Federal safety fitness determination.]

(2) DESIGN.—The program shall link Federal motor carrier safety information systems with State commercial vehicle registration and licensing systems and shall be designed to enable a State to—

(A) determine the safety fitness of a motor carrier or registrant when licensing or registering the registrant or motor carrier or while the license or registration is in effect; and

(B) deny, suspend, or revoke the commercial motor vehicle registrations of a motor carrier or registrant that has been issued an operations out-of-service order by the Secretary.

(3) CONDITIONS FOR PARTICIPATION.—The Secretary shall require States, as a condition of participation in the program, to—

(A) comply with the uniform policies, procedures, and technical and operational standards prescribed by the Secretary under subsection (a)(4);

(B) possess the authority to impose sanctions relating to commercial motor vehicle registration on the basis of a Federal safety fitness determination; and

(C) cancel the motor vehicle registration and seize the registration plates of an employer found liable under section 31310(i)(2)(C) of this title for knowingly allowing or requiring an employee to operate a commercial motor vehicle in violation of an out-of-service order.

[(4) FUNDING.—The Secretary may make available up to 50 percent of the amounts available to carry out this section by section 31107 in each of fiscal years 1998, 1999, 2000, 2001, 2002, and 2003 to carry out this subsection. The Secretary is encouraged to direct no less than 80 percent of amounts made available to carry out this subsection to States that have not previously received financial assistance to develop or implement the information systems authorized by this section.]

(c) COMMERCIAL MOTOR VEHICLE DRIVER SAFETY PROGRAM.—In coordination with the information system under section 31309, the Secretary is authorized to establish a program to improve commercial motor vehicle driver safety. The objectives of the program shall include—

(1) enhancing the exchange of driver licensing information among the States, the Federal Government, and foreign countries;

(2) providing information to the judicial system on commercial motor vehicle drivers;

(3) evaluating any aspect of driver performance that the Secretary determines appropriate; and

(4) developing appropriate strategies and countermeasures to improve driver safety.

(d) COOPERATIVE AGREEMENTS, GRANTS, AND CONTRACTS.—The Secretary may carry out this section either independently or in cooperation with other Federal departments, agencies, and instrumentalities, or by making grants to, and entering into contracts and cooperative agreements with, States, local governments, associations, institutions, corporations, and other persons.

(e) INFORMATION AVAILABILITY AND PRIVACY PROTECTION POLICY.—The Secretary shall develop a policy on making information available from the information systems authorized by this section and section 31309. The policy shall be consistent with existing Federal information laws, including regulations, and shall provide for review and correction of such information in a timely manner.

[§ 31107. Contract authority funding for information systems

[(a) FUNDING.—There shall be available from the Highway Trust Fund (other than the Mass Transit Account) to carry out sections 31106 and 31309 of this title—

[(1) $6,000,000 for fiscal year 1998;

[(2) $10,000,000 for each of fiscal years 1999 and 2000;

[(3) $12,000,000 for each of fiscal years 2001 through 2002;

[(4) $15,000,000 for fiscal year 2003; and

[(5) $8,333,333 for the period of October 1, 2003 through February 29, 2004.

The amounts made available under this subsection shall remain available until expended.

[(b) CONTRACT AUTHORITY.—Approval by the Secretary of a grant with funds made available under this section imposes upon the United States Government a contractual obligation for payment of the Government's share of costs incurred in carrying out the objectives of the grant.

[(c) EMERGENCY CDL GRANTS.—From amounts made available by subsection (a) for a fiscal year, the Secretary of Transportation may make a grant of up to $1,000,000 to a State whose commercial driver's license program may fail to meet the compliance requirements of section 31311(a).]

§ 31107. Border enforcement grants

(a) GENERAL AUTHORITY.—From the funds authorized by section 222(c)(1) of the Motor Carrier Safety Reauthorization Act of 2003, the Secretary may make a grant in a fiscal year to a State that

shares a border with another country for carrying out border commercial motor vehicle safety programs and related enforcement activities and projects.

(b) MAINTENANCE OF EXPENDITURES.—The Secretary may make a grant to a State under this section only if the State agrees that the total expenditure of amounts of the State and political subdivisions of the State, exclusive of United States Government amounts, for carrying out border commercial motor vehicle safety programs and related enforcement activities and projects will be maintained at a level at least equal to the average level of that expenditure by the State and political subdivisions of the State for the last 2 State or Federal fiscal years before October 1, 2003.

[§ 31108. Authorization of appropriations

[Not more than $——— may be appropriated to the Secretary of Transportation for the fiscal year ending September 30, 19——, to carry out the safety duties and powers of the Federal Highway Administration.]

§ 31108. Motor carrier research and technology program

(a) RESEARCH, TECHNOLOGY, AND TECHNOLOGY TRANSFER ACTIVITIES.—

(1) The Secretary of Transportation shall establish and carry out a motor carrier and motor coach research and technology program. The Secretary may carry out research, development, technology, and technology transfer activities with respect to—

(A) the causes of accidents, injuries and fatalities involving commercial motor vehicles; and

(B) means of reducing the number and severity of accidents, injuries and fatalities involving commercial motor vehicles.

(2) The Secretary may test, develop, or assist in testing and developing any material, invention, patented article, or process related to the research and technology program.

(3) The Secretary may use the funds appropriated to carry out this section for training or education of commercial motor vehicle safety personnel, including, but not limited to, training in accident reconstruction and detection of controlled substances or other contraband, and stolen cargo or vehicles.

(4) The Secretary may carry out this section—

(A) independently;

(B) in cooperation with other Federal departments, agencies, and instrumentalities and Federal laboratories; or

(C) by making grants to, or entering into contracts, cooperative agreements, and other transactions with, any Federal laboratory, State agency, authority, association, institution, for-profit or non-profit corporation, organization, foreign country, or person.

(5) The Secretary shall use funds made available to carry out this section to develop, administer, communicate, and promote the use of products of research, technology, and technology transfer programs under this section.

(b) COLLABORATIVE RESEARCH AND DEVELOPMENT.—

(1) To advance innovative solutions to problems involving commercial motor vehicle and motor carrier safety, security,

and efficiency, and to stimulate the deployment of emerging technology, the Secretary may carry out, on a cost-shared basis, collaborative research and development with—

(A) non-Federal entities, including State and local governments, foreign governments, colleges and universities, corporations, institutions, partnerships, and sole proprietorships that are incorporated or established under the laws of any State; and

(B) Federal laboratories.

(2) In carrying out this subsection, the Secretary may enter into cooperative research and development agreements (as defined in section 12 of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3710a)).

(3)(A) The Federal share of the cost of activities carried out under a cooperative research and development agreement entered into under this subsection shall not exceed 50 percent, except that if there is substantial public interest or benefit, the Secretary may approve a greater Federal share.

(B) All costs directly incurred by the non-Federal partners, including personnel, travel, and hardware or software development costs, shall be credited toward the non-Federal share of the cost of the activities described in subparagraph (A).

(4) The research, development, or use of a technology under a cooperative research and development agreement entered into under this subsection, including the terms under which the technology may be licensed and the resulting royalties may be distributed, shall be subject to the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3701 et seq.).

(5) Section 5 of title 41, United States Code, shall not apply to a contract or agreement entered into under this section.

(c) AVAILABILITY OF AMOUNTS.—The amounts made available under section 222(a) of the Motor Carrier Safety Reauthorization Act of 2003 to carry out this section shall remain available until expended.

(d) CONTRACT AUTHORITY.—Approval by the Secretary of a grant with funds made available under section 222(a) of the Motor Carrier Safety Reauthorization Act of 2003 to carry out this section imposes upon the United States Government a contractual obligation for payment of the Government's share of costs incurred in carrying out the objectives of the grant.

§ 31109. Performance and Registration Information System Management

(a) IN GENERAL.—From the funds authorized by section 222(c)(2) of the Motor Carrier Safety Reauthorization Act of 2003, the Secretary may make a grant in a fiscal year to a State to implement the performance and registration information system management requirements of section 31106(b).

(b) AVAILABILITY OF AMOUNTS.—Amounts made available to a State under section 222(c)(2) of the Motor Carrier Safety Reauthorization Act of 2003 to carry out this section shall remain available until expended.

(c) SECRETARY'S APPROVAL.—Approval by the Secretary of a grant to a State under section 222(c)(2) of the Motor Carrier Safety Reau-

thorization Act of 2003 to carry out this section is a contractual obligation of the Government for payment of the amount of the grant.

SUBCHAPTER II. LENGTH AND WIDTH LIMITATIONS

§ 31111. Length limitations

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

(1) AUTOMOBILE TRANSPORTER.—The term "automobile transporter" means any vehicle combination designed and used specifically for the transport of assembled highway vehicles, including truck camper units.

(2) MAXI-CUBE VEHICLE.—The term "maxi-cube vehicle" means a truck tractor combined with a semitrailer and a separable property-carrying unit designed to be loaded and unloaded through the semitrailer, with the length of the separable property-carrying unit being not more than 34 feet and the length of the vehicle combination being not more than 65 feet.

(3) RESTRICTED PROPERTY-CARRYING UNIT.—The term "restricted property-carrying unit" means any trailer, semi-trailer, container, or other property-carrying unit that is longer than 53 feet.

[(3)**]** *(4)* TRUCK TRACTOR.—The term "truck tractor" means—

(A) a non-property-carrying power unit that operates in combination with a semitrailer or trailer; or

(B) a power unit that carries as property only motor vehicles when operating in combination with a semitrailer in transporting motor vehicles.

(b) GENERAL LIMITATIONS.—

(1) Except as provided in this section, a State may not prescribe or enforce a regulation of commerce that—

(A) imposes a vehicle length limitation of less than 45 feet on a bus, of less than 48 feet on a semitrailer operating in a truck tractor-semitrailer combination, or of less than 28 feet on a semitrailer or trailer operating in a truck tractor-semitrailer-trailer combination, on any segment of the Dwight D. Eisenhower System of Interstate and Defense Highways (except a segment exempted under subsection (f) of this section) and those classes of qualifying Federal-aid Primary System highways designated by the Secretary of Transportation under subsection (e) of this section;

(B) imposes an overall length limitation on a commercial motor vehicle operating in a truck tractor-semitrailer or truck tractor-semitrailer-trailer combination;

[(C) has the effect of prohibiting the use of a semitrailer or trailer of the same dimensions as those that were in actual and lawful use in that State on December 1, 1982;**]**

(C) allows operation on any segment of the National Highway System, including the Interstate System, of a restricted property-carrying unit unless the operation is specified on the list published under subsection (h);

(D) has the effect of prohibiting the use of an existing semitrailer or trailer, of not more than 28.5 feet in length, in a truck tractor-semitrailer-trailer combination if the

semitrailer or trailer was operating lawfully on December 1, 1982, within a 65-foot overall length limit in any State; or

(E) imposes a limitation of less than 46 feet on the distance from the kingpin to the center of the rear axle on trailers used exclusively or primarily in connection with motorsports competition events.

(2) A length limitation prescribed or enforced by a State under paragraph (1)(A) of this subsection applies only to a semitrailer or trailer and not to a truck tractor.

(c) MAXI-CUBE AND VEHICLE COMBINATION LIMITATIONS.—A State may not prohibit a maxi-cube vehicle or a commercial motor vehicle combination consisting of a truck tractor and 2 trailing units on any segment of the Dwight D. Eisenhower System of Interstate and Defense Highways (except a segment exempted under subsection (f) of this section) and those classes of qualifying Federal-aid Primary System highways designated by the Secretary under subsection (e) of this section.

(d) EXCLUSION OF SAFETY AND ENERGY CONSERVATION DEVICES.—Length calculated under this section does not include a safety or energy conservation device the Secretary decides is necessary for safe and efficient operation of a commercial motor vehicle. However, such a device may not have by its design or use the ability to carry cargo.

(e) QUALIFYING HIGHWAYS.—The Secretary by regulation shall designate as qualifying Federal-aid Primary System highways those highways of the Federal-aid Primary System in existence on June 1, 1991, that can accommodate safely the applicable vehicle lengths provided in this section.

(f) EXEMPTIONS.—

(1) If the chief executive officer of a State, after consulting under paragraph (2) of this subsection, decides a segment of the Dwight D. Eisenhower System of Interstate and Defense Highways is not capable of safely accommodating a commercial motor vehicle having a length described in subsection (b)(1)(A) of this section or the motor vehicle combination described in subsection (c) of this section, the chief executive officer may notify the Secretary of that decision and request the Secretary to exempt that segment from either or both provisions.

(2) Before making a decision under paragraph (1) of this subsection, the chief executive officer shall consult with units of local government in the State in which the segment of the Dwight D. Eisenhower System of Interstate and Defense Highways is located and with the chief executive officer of any adjacent State that may be directly affected by the exemption. As part of the consultations, consideration shall be given to any potential alternative route that serves the area in which the segment is located and can safely accommodate a commercial motor vehicle having a length described in subsection (b)(1)(A) of this section or the motor vehicle combination described in subsection (c) of this section.

(3) A chief executive officer's notification under this subsection must include specific evidence of safety problems supporting the officer's decision and the results of consultations about alternative routes.

(4)(A) If the Secretary decides, on request of a chief executive officer or on the Secretary's own initiative, a segment of the Dwight D. Eisenhower System of Interstate and Defense Highways is not capable of safely accommodating a commercial motor vehicle having a length described in subsection (b)(1)(A) of this section or the motor vehicle combination described in subsection (c) of this section, the Secretary shall exempt the segment from either or both of those provisions. Before making a decision under this paragraph, the Secretary shall consider any possible alternative route that serves the area in which the segment is located.

(B) The Secretary shall make a decision about a specific segment not later than 120 days after the date of receipt of notification from a chief executive officer under paragraph (1) of this subsection or the date on which the Secretary initiates action under subparagraph (A) of this paragraph, whichever is applicable. If the Secretary finds the decision will not be made in time, the Secretary immediately shall notify Congress, giving the reasons for the delay, information about the resources assigned, and the projected date for the decision.

(C) Before making a decision, the Secretary shall give an interested person notice and an opportunity for comment. If the Secretary exempts a segment under this subsection before the final regulations under subsection (e) of this section are prescribed, the Secretary shall include the exemption as part of the final regulations. If the Secretary exempts the segment after the final regulations are prescribed, the Secretary shall publish the exemption as an amendment to the final regulations.

(g) ACCOMMODATING SPECIALIZED EQUIPMENT.—In prescribing regulations to carry out this section, the Secretary may make decisions necessary to accommodate specialized equipment, including automobile and vessel transporters and maxi-cube vehicles.

(h) RESTRICTED PROPERTY-CARRYING UNITS.—

(1) APPLICABILITY OF PROHIBITION.—

(A) IN GENERAL.—Notwithstanding subsection (b)(1)(C), a restricted property-carrying unit may continue to operate on a segment of the National Highway System if the operation of such unit is specified on the list published under paragraph (2).

(B) APPLICABILITY OF STATE LAWS AND REGULATIONS.—All operations specified on the list published under paragraph (2) shall continue to be subject to all State statutes, regulations, limitations and conditions, including routing-specific, commodity-specific, and configuration-specific designations and all other restrictions, in force on June 1, 2003.

(C) FIRE-FIGHTING UNITS.—Subsection (b)(1)(C) shall not apply to the operation of a restricted property-carrying unit that is used exclusively for fire-fighting.

(2) LISTING OF RESTRICTED PROPERTY-CARRYING UNITS.—

(A) IN GENERAL.—Not later than 60 days after the date of enactment of this subsection, the Secretary shall initiate a proceeding to determine and publish a list of restricted property-carrying units that were authorized by State offi-

cials pursuant to State statute or regulation on June 1, 2003, and in actual and lawful operation on a regular or periodic basis (including seasonal operations) on or before June 1, 2003.

(B) LIMITATION.—A restricted property-carrying unit may not be included on the list published under subparagraph (A) on the basis that a State law or regulation could have authorized the operation of the unit at some prior date by permit or otherwise.

(C) PUBLICATION OF FINAL LIST.—Not later than 270 days after the date of enactment of this subsection, the Secretary shall publish a final list of restricted property-carrying units described in subparagraph (A).

(D) UPDATES.—The Secretary shall update the list published under subparagraph (C) as necessary to reflect new designations made to the National Highway System.

(3) APPLICABILITY OF PROHIBITION.—The prohibition established by subsection (b)(1)(C) shall apply to any new designation made to the National Highway System and remain in effect on those portions of the National Highway System that cease to be designated as part of the National Highway System.

(4) LIMITATION ON STATUTORY CONSTRUCTION.—This subsection does not prevent a State from further restricting in any manner or prohibiting the operation of a restricted property-carrying unit; except that such restrictions or prohibitions shall be consistent with the requirements of this section and sections 31112 through 31114.

§ 31112. Property-carrying unit limitation

(a) DEFINITIONS.—In this section—

(1) "property-carrying unit" means any part of a commercial motor vehicle combination (except the truck tractor) used to carry property, including a trailer, a semitrailer, or the property-carrying section of a single unit truck.

(2) the length of the property-carrying units of a commercial motor vehicle combination is the length measured from the front of the first property-carrying unit to the rear of the last property-carrying unit.

(b) GENERAL LIMITATIONS.—A State may not allow by any means the operation, on any segment of the Dwight D. Eisenhower System of Interstate and Defense Highways and those classes of qualifying Federal-aid Primary System highways designated by the Secretary of Transportation under section 31111(e) of this title, of any commercial motor vehicle combination (except a vehicle or load that cannot be dismantled easily or divided easily and that has been issued a special permit under applicable State law) with more than one property-carrying unit (not including the truck tractor) whose property-carrying units are more than—

(1) the maximum combination trailer, semitrailer, or other type of length limitation allowed by law or regulation of that State before June 2, 1991; or

(2) the length of the property-carrying units of those commercial motor vehicle combinations, by specific configuration, in actual, lawful operation on a regular or periodic basis (in-

cluding continuing seasonal operation) in that State before June 2, 1991.

(c) SPECIAL RULES FOR WYOMING, OHIO, ALASKA, AND IOWA.—In addition to the vehicles allowed under subsection (b) of this section—

(1) Wyoming may allow the operation of additional vehicle configurations not in actual operation on June 1, 1991, but authorized by State law not later than November 3, 1992, if the vehicle configurations comply with the single axle, tandem axle, and bridge formula limits in section 127(a) of title 23 and are not more than 117,000 pounds gross vehicle weight;

(2) Ohio may allow the operation of commercial motor vehicle combinations with 3 property-carrying units of 28.5 feet each (not including the truck tractor) not in actual operation on June 1, 1991, to be operated in Ohio on the 1-mile segment of Ohio State Route 7 that begins at and is south of exit 16 of the Ohio Turnpike;

(3) Alaska may allow the operation of commercial motor vehicle combinations that were not in actual operation on June 1, 1991, but were in actual operation before July 6, 1991; and

(4) Iowa may allow the operation on Interstate Route 29 between Sioux City, Iowa, and the border between Iowa and South Dakota or on Interstate Route 129 between Sioux City, Iowa, and the border between Iowa and Nebraska of commercial motor vehicle combinations with trailer length, semitrailer length, and property-carrying unit length allowed by law or regulation and in actual lawful operation on a regular or periodic basis (including continued seasonal operation) in South Dakota or Nebraska, respectively, before June 2, 1991.

(d) ADDITIONAL LIMITATIONS.—

(1) A commercial motor vehicle combination whose operation in a State is not prohibited under subsections (b) and (c) of this section may continue to operate in the State on highways described in subsection (b) only if at least in compliance with all State laws, regulations, limitations, and conditions, including routing-specific and configuration-specific designations and all other restrictions in force in the State on June 1, 1991. However, subject to regulations prescribed by the Secretary under subsection (g)(2) of this section, the State may make minor adjustments of a temporary and emergency nature to route designations and vehicle operating restrictions in effect on June 1, 1991, for specific safety purposes and road construction.

(2) This section does not prevent a State from further restricting in any way or prohibiting the operation of any commercial motor vehicle combination subject to this section, except that a restriction or prohibition shall be consistent with this section and sections 31113(a) and (b) and 31114 of this title.

(3) A State making a minor adjustment of a temporary and emergency nature as authorized by paragraph (1) of this subsection or further restricting or prohibiting the operation of a commercial motor vehicle combination as authorized by paragraph (2) of this subsection shall advise the Secretary not later than 30 days after the action. The Secretary shall publish a notice of the action in the Federal Register.

(4) Nebraska may continue to allow to be operated under paragraphs (b)(1) and (b)(2) of this section, the State of Nebraska may allow longer combination vehicles that were not in actual operation on June 1, 1991 to be operated within its boundaries to transport sugar beets from the field where such sugar beets are harvested to storage, market, factory or stockpile or from stockpile to storage, market or factory. This provision shall expire on February 28, 1998.

(e) LIST OF STATE LENGTH LIMITATIONS.—

(1) Not later than February 16, 1992, each State shall submit to the Secretary for publication a complete list of State length limitations applicable to commercial motor vehicle combinations operating in the State on the highways described in subsection (b) of this section. The list shall indicate the applicable State laws and regulations associated with the length limitations. If a State does not submit the information as required, the Secretary shall complete and file the information for the State.

(2) Not later than March 17, 1992, the Secretary shall publish an interim list in the Federal Register consisting of all information submitted under paragraph (1) of this subsection. The Secretary shall review for accuracy all information submitted by a State under paragraph (1) and shall solicit and consider public comment on the accuracy of the information.

(3) A law or regulation may not be included on the list submitted by a State or published by the Secretary merely because it authorized, or could have authorized, by permit or otherwise, the operation of commercial motor vehicle combinations not in actual operation on a regular or periodic basis before June 2, 1991.

(4) Except as revised under this paragraph or paragraph (5) of this subsection, the list shall be published as final in the Federal Register not later than June 15, 1992. In publishing the final list, the Secretary shall make any revisions necessary to correct inaccuracies identified under paragraph (2) of this subsection. After publication of the final list, commercial motor vehicle combinations prohibited under subsection (b) of this section may not operate on the Dwight D. Eisenhower System of Interstate and Defense Highways and other Federal-aid Primary System highways designated by the Secretary except as published on the list. The list may be combined by the Secretary with the list required under section 127(d) of title 23.

(5) On the Secretary's own motion or on request by any person (including a State), the Secretary shall review the list published under paragraph (4) of this subsection. If the Secretary decides there is reason to believe a mistake was made in the accuracy of the list, the Secretary shall begin a proceeding to decide whether a mistake was made. If the Secretary decides there was a mistake, the Secretary shall publish the correction.

(f) NATIONAL HIGHWAY SYSTEM.—

(1) GENERAL RULE.—A State may not allow, on a segment of the National Highway System that is not covered under subsection (b) or (c), the operation of a commercial motor vehicle combination (except a vehicle or load that cannot be dismantled easily or divided easily and that has been issued a special per-

mit under applicable State law) with more than 1 property-carrying unit (not including the truck tractor) whose property-carrying units are more than—

(A) the maximum combination trailer, semitrailer, or other type of length limitation allowed by law or regulation of that State on June 1, 2003; or

(B) the length of the property-carrying units of those commercial motor vehicle combinations, by specific configuration, in actual and lawful operation on a regular or periodic basis (including continuing seasonal operation) in that State on or before June 1, 2003.

(2) ADDITIONAL LIMITATIONS.—

(A) APPLICABILITY OF STATE RESTRICTIONS.—A commercial motor vehicle combination whose operation in a State is not prohibited under paragraph (1) may continue to operate in the State on highways described in paragraph (1) only in compliance with all State laws, regulations, limitations, and conditions, including routing-specific and configuration-specific designations and all other restrictions in force in the State on June 1, 2003. Subject to regulations prescribed by the Secretary under subsection (h), the State may make minor adjustments of a temporary and emergency nature to route designations and vehicle operating restrictions in effect on June 1, 2003, for specific safety purposes and road construction.

(B) ADDITIONAL STATE RESTRICTIONS.—This subsection does not prevent a State from further restricting in any manner or prohibiting the operation of a commercial motor vehicle combination subject to this section, except that such restrictions or prohibitions shall be consistent with this section and sections 31113(a), 31113(b), and 31114.

(C) MINOR ADJUSTMENTS.—A State making a minor adjustment of a temporary and emergency nature as authorized by subparagraph (A) or further restricting or prohibiting the operation of a commercial motor vehicle combination as authorized by subparagraph (B) shall advise the Secretary not later than 30 days after the action. The Secretary shall publish a notice of the action in the Federal Register.

(3) LIST OF STATE LENGTH LIMITATIONS.—

(A) STATE SUBMISSIONS.—Not later than 60 days after the date of enactment of the Motor Carrier Safety Reauthorization Act of 2003, each State shall submit to the Secretary for publication a complete list of State length limitations applicable to commercial motor vehicle combinations operating in the State on the highways described in paragraph (1). The list shall indicate the applicable State laws and regulations associated with the length limitations. If a State does not submit the information as required, the Secretary shall complete and file the information for the State.

(B) PUBLICATION OF INTERIM LIST.—Not later than 90 days after the date of enactment of the Motor Carrier Safety Reauthorization Act of 2003, the Secretary shall publish an interim list in the Federal Register consisting of all information submitted under subparagraph (A). The Secretary

shall review for accuracy all information submitted by a State under subparagraph (A) and shall solicit and consider public comment on the accuracy of the information.

(C) LIMITATION.—A law or regulation may not be included on the list submitted by a State or published by the Secretary merely because it authorized, or could have authorized, by permit or otherwise, the operation of commercial motor vehicle combinations not in actual operation on a regular or periodic basis on or before June 1, 2003.

(D) PUBLICATION OF FINAL LIST.—Except as revised under this subparagraph or subparagraph (E), the list shall be published as final in the Federal Register not later than 270 days after the date of enactment of the Motor Carrier Safety Reauthorization Act of 2003. In publishing the final list, the Secretary shall make any revisions necessary to correct inaccuracies identified under subparagraph (B). After publication of the final list, commercial motor vehicle combinations prohibited under paragraph (1) may not operate on a highway described in paragraph (1) except as published on the list.

(E) INACCURACIES.—On the Secretary's own motion or on request by any person (including a State), the Secretary shall review the list published under subparagraph (D). If the Secretary decides there is reason to believe a mistake was made in the accuracy of the list, the Secretary shall begin a proceeding to decide whether a mistake was made. If the Secretary decides there was a mistake, the Secretary shall publish the correction.

[(f)**]** *(g)* LIMITATIONS ON STATUTORY CONSTRUCTION.—This section may not be construed—

(1) to allow the operation on any segment of the Dwight D. Eisenhower System of Interstate and Defense Highways of a longer combination vehicle prohibited under section *126(e) or* 127(d) of title 23;

(2) to affect in any way the operation of a commercial motor vehicle having only one property-carrying unit; or

(3) to affect in any way the operation in a State of a commercial motor vehicle with more than one property-carrying unit if the vehicle was in actual operation on a regular or periodic basis (including seasonal operation) in that State before June 2, 1991, *(or June 1, 2003, with respect to highways described in subsection (f)(1))* that was authorized under State law or regulation or lawful State permit.

[(g)**]** *(h)* REGULATIONS.—

(1) In carrying out this section only, the Secretary shall define by regulation loads that cannot be dismantled easily or divided easily.

(2) **[**Not later than June 15, 1992, the Secretary**]** *The Secretary* shall prescribe regulations establishing criteria for a State to follow in making minor adjustments under subsection (d) *of (f)* of this section.

§ 31135. Duties of employers and employees

(a) IN GENERAL.—Each employer and employee shall comply with regulations on commercial motor vehicle safety prescribed by the Secretary of Transportation under this subchapter that apply to the employer's or employee's conduct.

(b) PATTERN OF NON-COMPLIANCE.—If an officer of a motor carrier engages in a pattern or practice of avoiding compliance, or masking or otherwise concealing non-compliance, with regulations on commercial motor vehicle safety prescribed under this subchapter, the Secretary may suspend, amend, or revoke any part of the motor carrier's registration under section 13905 of this title.

(c) LIST OF PROPOSED OFFICERS.—Each person seeking registration as a motor carrier under section 13902 of this title shall submit a list of the proposed officers of the motor carrier. If the Secretary determines that any of the proposed officers has previously engaged in a pattern or practice of avoiding compliance, or masking or otherwise concealing non-compliance, with regulations on commercial motor vehicle safety prescribed under this chapter, the Secretary may deny the person's application for registration as a motor carrier under section 13902(a)(3).

(d) REGULATIONS.—The Secretary shall by regulation establish standards to implement subsections (b) and (c).

(e) DEFINITIONS.—In this section:

(1) MOTOR CARRIER.—The term motor carrier has the meaning given the term in section 13102(12) of this title; and

(2) OFFICER.—The term officer means an owner, chief executive officer, chief operating officer, chief financial officer, safety director, vehicle maintenance supervisor and driver supervisor of a motor carrier, regardless of the title attached to those functions.

§ 31136. United States Government regulations

(a) MINIMUM SAFETY STANDARDS.—Subject to section 30103(a) of this title, the Secretary of Transportation shall prescribe regulations on commercial motor vehicle safety. The regulations shall prescribe minimum safety standards for commercial motor vehicles. At a minimum, the regulations shall ensure that—

(1) commercial motor vehicles are maintained, equipped, loaded, and operated safely;

(2) the responsibilities imposed on operators of commercial motor vehicles do not impair their ability to operate the vehicles safely;

[(3) the physical condition of operators of commercial motor vehicles is adequate to enable them to operate the vehicles safely; and**]**

(3) the physical condition of operators of commercial motor vehicles is adequate to enable them to operate the vehicles safely, and the periodic physical examinations required of such operators are performed by medical examiners who have received training in physical and medical examination standards and are listed on a national registry maintained by the Department of Transportation; and

(4) the operation of commercial motor vehicles does not have a deleterious effect on the physical condition of the operators.

(b) ELIMINATING AND AMENDING EXISTING REGULATIONS.—The Secretary may not eliminate or amend an existing motor carrier safety regulation related only to the maintenance, equipment, loading, or operation (including routing) of vehicles carrying material found to be hazardous under section 5103 of this title until an equivalent or more stringent regulation has been prescribed under section 5103.

(c) PROCEDURES AND CONSIDERATIONS.—

(1) A regulation under this section shall be prescribed under section 553 of title 5 (without regard to sections 556 and 557 of title 5).

(2) Before prescribing regulations under this section, the Secretary shall consider, to the extent practicable and consistent with the purposes of this chapter—

(A) costs and benefits; and

(B) State laws and regulations on commercial motor vehicle safety, to minimize their unnecessary preemption.

(d) EFFECT OF EXISTING REGULATIONS.—If the Secretary does not prescribe regulations on commercial motor vehicle safety under this section, regulations on commercial motor vehicle safety prescribed by the Secretary before October 30, 1984, and in effect on October 30, 1984, shall be deemed in this subchapter to be regulations prescribed by the Secretary under this section.

(e) EXEMPTIONS.—The Secretary may grant in accordance with section 31315 waivers and exemptions from, or conduct pilot programs with respect to, any regulations prescribed under this section.

(f) LIMITATIONS ON MUNICIPALITY AND COMMERCIAL ZONE EXEMPTIONS AND WAIVERS.—

(1) The Secretary may not—

(A) exempt a person or commercial motor vehicle from a regulation related to commercial motor vehicle safety only because the operations of the person or vehicle are entirely in a municipality or commercial zone of a municipality; or

(B) waive application to a person or commercial motor vehicle of a regulation related to commercial motor vehicle safety only because the operations of the person or vehicle are entirely in a municipality or commercial zone of a municipality.

(2) If a person was authorized to operate a commercial motor vehicle in a municipality or commercial zone of a municipality in the United States for the entire period from November 19, 1987, through November 18, 1988, and if the person is otherwise qualified to operate a commercial motor vehicle, the person may operate a commercial motor vehicle entirely in a municipality or commercial zone of a municipality notwithstanding—

(A) paragraph (1) of this subsection;

(B) a minimum age requirement of the United States Government for operation of the vehicle; and

(C) a medical or physical condition that—

(i) would prevent an operator from operating a commercial motor vehicle under the commercial motor ve-

hicle safety regulations in title 49, Code of Federal Regulations;

(ii) existed on July 1, 1988;

(iii) has not substantially worsened; and

(iv) does not involve alcohol or drug abuse.

(3) This subsection does not affect a State commercial motor vehicle safety law applicable to intrastate commerce.

NATIONAL HIGHWAY SYSTEM DESIGNATION ACT OF 1995

SEC. 345. EXEMPTIONS FROM REQUIREMENTS RELATING TO COMMERCIAL MOTOR VEHICLES AND THEIR OPERATORS.

[49 U.S.C. 31136 NOTE]

(a) EXEMPTIONS.—

(1) TRANSPORTATION OF AGRICULTURAL COMMODITIES AND FARM SUPPLIES.—Regulations prescribed by the Secretary under sections 31136 and 31502 of title 49, United States Code, regarding maximum driving and on-duty time for drivers used by motor carriers shall not apply to drivers transporting agricultural commodities or farm supplies for agricultural purposes in a State if such transportation is limited to an area within a 100 air mile radius from the source of the commodities or the distribution point for the farm supplies and is during the planting and harvesting seasons within such State, as determined by the State.

(2) TRANSPORTATION AND OPERATION OF GROUND WATER WELL DRILLING RIGS.—Such regulations shall, in the case of a driver of a commercial motor vehicle who is used primarily in the transportation and operation of a ground water well drilling rig, permit any period of 7 or 8 consecutive days to end with the beginning of an off-duty period of 24 or more consecutive hours for the purposes of determining maximum driving and on-duty time.

(3) TRANSPORTATION OF CONSTRUCTION MATERIALS AND EQUIPMENT.—Such regulations shall, in the case of a driver of a commercial motor vehicle who is used primarily in the transportation of construction materials and equipment, permit any period of 7 or 8 consecutive days to end with the beginning of an off-duty period of 24 or more consecutive hours for the purposes of determining maximum driving and on-duty time.

[(4) DRIVERS OF UTILITY SERVICE VEHICLES.—Such regulations shall, in the case of a driver of a utility service vehicle, permit any period of 7 or 8 consecutive days to end with the beginning of an off-duty period of 24 or more consecutive hours for the purposes of determining maximum driving and on-duty time.**]**

(4) DRIVERS OF UTILITY SERVICE VEHICLES.—

(A) INAPPLICABILITY OF FEDERAL REGULATIONS.—Such regulations may not apply to a driver of a utility service vehicle.

(B) PROHIBITION ON STATE REGULATIONS.—A State, a political subdivision of a State, an interstate agency, or other entity consisting of 2 or more States, may not enact or enforce any law, rule, regulation, or standard that imposes

requirements on a driver of a utility service vehicle that are similar to the requirements contained in such regulations.

(5) SNOW AND ICE REMOVAL.—A State may waive the requirements of chapter 313 of title 49, United States Code, with respect to a vehicle that is being operated within the boundaries of an eligible unit of local government by an employee of such unit for the purpose of removing snow or ice from a roadway by plowing, sanding, or salting. Such waiver authority shall only apply in a case where the employee is needed to operate the vehicle because the employee of the eligible unit of local government who ordinarily operates the vehicle and who has a commercial drivers license is unable to operate the vehicle or is in need of additional assistance due to a snow emergency.

(b) PREEMPTION.—**[**Nothing**]** *Exce[t as provided in subsection (a)(4), nothing* contained in this section shall require the preemption of State laws and regulations concerning the safe operation of commercial motor vehicles as the result of exemptions from Federal requirements provided under this section.

(c) REVIEW BY THE SECRETARY.—The Secretary may conduct a rulemaking proceeding to determine whether granting any exemption provided by subsection (a) (other than **[**paragraph (2)**]** *an exemption under paragraph (1), (2), or (4) of that subsection*) is not in the public interest and would have a significant adverse impact on the safety of commercial motor vehicles. If, at any time as a result of such a proceeding, the Secretary determines that granting such exemption would not be in the public interest and would have a significant adverse impact on the safety of commercial motor vehicles, the Secretary may prevent the exemption from going into effect, modify the exemption, or revoke the exemption. The Secretary may develop a program to monitor the exemption, including agreements with carriers to permit the Secretary to examine insurance information maintained by an insurer on a carrier.

(d) REPORT.—The Secretary shall monitor the commercial motor vehicle safety performance of drivers of vehicles that are subject to an exemption under this section. If the Secretary determines that public safety has been adversely affected by an exemption granted under this section, the Secretary shall report to Congress on the determination.

(e) DEFINITIONS.—In this section, the following definitions apply:

(1) 7 or 8 consecutive days. The term "7 or 8 consecutive days" means the period of 7 or 8 consecutive days beginning on any day at the time designated by the motor carrier for a 24-hour period.

(2) 24-hour period.—The term "24-hour period" means any 24 consecutive hour period beginning at the time designated by the motor carrier for the terminal from which the driver is normally dispatched.

(3) AGRICULTURAL COMMODITY.—The term "agricultural commodity" has the meaning given the term in section 102 of the Agricultural Trade Act of 1978 (7 U.S.C. 5602).

[(5)**]** *(4)* ELIGIBLE UNIT OF LOCAL GOVERNMENT.—The term "eligible unit of local government" means a city, town, borough, county, parish, district, or other public body created by or pursuant to State law which has a total population of 3,000 individuals or less.

[(3)] *(5)* GROUND WATER WELL DRILLING RIG.—The term "ground water well drilling rig" means any vehicle, machine, tractor, trailer, semi-trailer, or specialized mobile equipment propelled or drawn by mechanical power and used on highways to transport water well field operating equipment, including water well drilling and pump service rigs equipped to access ground water.

[(4)] *(6)* TRANSPORTATION OF CONSTRUCTION MATERIALS AND EQUIPMENT.—The term "transportation of construction materials and equipment" means the transportation of construction and pavement materials, construction equipment, and construction maintenance vehicles, by a driver to or from an active construction site (a construction site between initial mobilization of equipment and materials to the site to the final completion of the construction project) within a 50 air mile radius of the normal work reporting location of the driver. This paragraph does not apply to the transportation of material found by the Secretary to be hazardous under section 5103 of title 49, United States Code, in a quantity requiring placarding under regulations issued to carry out such section.

[(6)] *(7)* UTILITY SERVICE VEHICLE.—The term "utility service vehicle" means any commercial motor vehicle—

(A) used in the furtherance of repairing, maintaining, or operating any structures or any other physical facilities necessary for the delivery of public utility services, including the furnishing of electric, gas, water, sanitary sewer, telephone, and television cable or community antenna service;

(B) while engaged in any activity necessarily related to the ultimate delivery of such public utility services to consumers, including travel or movement to, from, upon, or between activity sites (including occasional travel or movement outside the service area necessitated by any utility emergency as determined by the utility provider); and

(C) except for any occasional emergency use, operated primarily within the service area of a utility's subscribers or consumers, without regard to whether the vehicle is owned, leased, or rented by the utility.

(f) EFFECTIVE DATE.—Subsection (a) of this section shall take effect on the 180th day following the date of the enactment of this Act; except that paragraphs (1) and (2) of subsection (a) shall take effect on such date of enactment.

§ 31138. Minimum financial responsibility for transporting passengers

[(a) GENERAL REQUIREMENT.—The Secretary of Transportation shall prescribe regulations to require minimum levels of financial responsibility sufficient to satisfy liability amounts established by the Secretary covering public liability and property damage for the transportation of passengers for compensation by motor vehicle in the United States between a place in a State and—

[(1) a place in another State;

[(2) another place in the same State through a place outside of that State; or

[(3) a place outside the United States.]

(a) GENERAL REQUIREMENT.—The Secretary of Transportation shall prescribe regulations to require minimum levels of financial responsibility sufficient to satisfy liability amounts established by the Secretary covering public liability and property damage for the transportation of passengers by motor vehicle in the United States between a place in a State and—

(1) a place in another State;

(2) another place in the same State through a place outside of that State; or

(3) a place outside the United States.

(b) MINIMUM AMOUNTS.—The level of financial responsibility established under subsection (a) of this section for a motor vehicle with a seating capacity of—

(1) at least 16 passengers shall be at least $5,000,000; and

(2) not more than 15 passengers shall be at least $1,500,000.

(c) EVIDENCE OF FINANCIAL RESPONSIBILITY.—

(1) Subject to paragraph (2) of this subsection, financial responsibility may be established by evidence of one or a combination of the following if acceptable to the Secretary of Transportation:

(A) insurance, including high self-retention.

(B) a guarantee.

(C) a surety bond issued by a bonding company authorized to do business in the United States.

(2) A person domiciled in a country contiguous to the United States and providing transportation to which a minimum level of financial responsibility under this section applies shall have evidence of financial responsibility in the motor vehicle when the person is providing the transportation. If evidence of financial responsibility is not in the vehicle, the Secretary of Transportation and the Secretary of the Treasury shall deny entry of the vehicle into the United States.

(3) A motor carrier may obtain the required amount of financial responsibility from more than one source provided the cumulative amount is equal to the minimum requirements of this section.

(4) The Secretary may require a person, other than a motor carrier as defined in section 13102(12) of this title, transporting passengers by motor vehicle to file with the Secretary the evidence of financial responsibility specified in subsection (c)(1) of this section in an amount not less than that required by this section, and the laws of the State or States in which the person is operating, to the extent applicable. The extent of the financial responsibility must be sufficient to pay, not more than the amount of the financial responsibility, for each final judgment against the person for bodily injury to, or death of, an individual resulting from the negligent operation, maintenance, or use of motor vehicles, or for loss or damage to property, or both.

(d) CIVIL PENALTY.—

(1) If, after notice and an opportunity for a hearing, the Secretary of Transportation finds that a person (except an employee acting without knowledge) has knowingly violated this section or a regulation prescribed under this section, the person is liable to the United States Government for a civil pen-

alty of not more than $10,000 for each violation. A separate violation occurs for each day the violation continues.

(2) The Secretary of Transportation shall impose the penalty by written notice. In determining the amount of the penalty, the Secretary shall consider—

(A) the nature, circumstances, extent, and gravity of the violation;

(B) with respect to the violator, the degree of culpability, any history of prior violations, the ability to pay, and any effect on the ability to continue doing business; and

(C) other matters that justice requires.

(3) The Secretary of Transportation may compromise the penalty before referring the matter to the Attorney General for collection.

(4) The Attorney General shall bring a civil action in an appropriate district court of the United States to collect a penalty referred to the Attorney General for collection under this subsection.

(5) The amount of the penalty may be deducted from amounts the Government owes the person. An amount collected under this section shall be deposited in the Treasury as miscellaneous receipts.

(e) NONAPPLICATION.—This section does not apply to a motor vehicle—

(1) transporting only school children and teachers to or from school;

(2) providing taxicab service (as defined in section 13102);

(3) carrying not more than 15 individuals in a single, daily round trip to and from work; or

(4) providing transportation service within a transit service area under an agreement with a Federal, State, or local government funded, in whole or in part, with a grant under section 5307, 5310, or 5311, including transportation designed and carried out to meet the special needs of elderly individuals and individuals with disabilities; except that, in any case in which the transit service area is located in more than 1 State, the minimum level of financial responsibility for such motor vehicle will be at least the highest level required for any of such States.

§ 31139. Minimum financial responsibility for transporting property

(a) DEFINITIONS.—In this section—

(1) "farm vehicle" means a vehicle—

(A) designed or adapted and used only for agriculture;

(B) operated by a motor private carrier (as defined in section 10102 of this title); and

(C) operated only incidentally on highways.

(2) "interstate commerce" includes transportation between a place in a State and a place outside the United States, to the extent the transportation is in the United States.

(3) "State" means a State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, and the Northern Mariana Islands.

[(b) GENERAL REQUIREMENT AND MINIMUM AMOUNT.—(1) The Secretary of Transportation shall prescribe regulations to require minimum levels of financial responsibility sufficient to satisfy liability amounts established by the Secretary covering public liability, property damage, and environmental restoration for the transportation of property for compensation by motor vehicle in the United States between a place in a State and—

[(A) a place in another State;

[(B) another place in the same State through a place outside of that State; or

[(C) a place outside the United States.]

(b) GENERAL REQUIREMENTS AND MINIMUM AMOUNT.—

(1) The Secretary of Transportation shall prescribe regulations to require minimum levels of financial responsibility sufficient to satisfy liability amounts established by the Secretary covering public liability, property damage, and environmental restoration for the transportation of property by motor vehicle in the United States between a place in a State and—

(A) a place in another State;

(B) another place in the same State through a place outside of that State; or

(C) a place outside the United States.

(2) The level of financial responsibility established under paragraph (1) of this subsection shall be at least $750,000.

(c) FILING OF EVIDENCE OF FINANCIAL RESPONSIBILITY.—The Secretary may require a motor private carrier, as defined in section 13102 of this title, to file with the Secretary the evidence of financial responsibility specified in subsection (b) of this section in an amount not less than that required by this section, and the laws of the State or States in which the motor private carrier is operating, to the extent applicable. The amount of the financial responsibility must be sufficient to pay, not more than the amount of the financial responsibility, for each final judgment against the motor private carrier for bodily injury to, or death of, an individual resulting from negligent operation, maintenance, or use of motor vehicles, or for loss or damage to property, or both.

[(c)] *(d)* REQUIREMENTS FOR HAZARDOUS MATTER AND OIL.—

(1) The Secretary of Transportation shall prescribe regulations to require minimum levels of financial responsibility sufficient to satisfy liability amounts established by the Secretary covering public liability, property damage, and environmental restoration for the transportation by motor vehicle in interstate or intrastate commerce of—

(A) hazardous material (as defined by the Secretary);

(B) oil or hazardous substances (as defined by the Administrator of the Environmental Protection Agency); or

(C) hazardous wastes (as defined by the Administrator).

(2)(A) Except as provided in subparagraph (B) of this paragraph, the level of financial responsibility established under paragraph (1) of this subsection shall be at least $5,000,000 for the transportation—

(i) of hazardous substances (as defined by the Administrator) in cargo tanks, portable tanks, or hopper-type vehicles, with capacities of more than 3,500 water gallons;

(ii) in bulk of class A explosives, poison gas, liquefied gas, or compressed gas; or

(iii) of large quantities of radioactive material.

(B) The Secretary of Transportation by regulation may reduce the minimum level in subparagraph (A) of this paragraph (to an amount not less than $1,000,000) for transportation described in subparagraph (A) in any of the territories of Puerto Rico, the Virgin Islands, American Samoa, Guam, and the Northern Mariana Islands if—

(i) the chief executive officer of the territory requests the reduction;

(ii) the reduction will prevent a serious disruption in transportation service and will not adversely affect public safety; and

(iii) insurance of $5,000,000 is not readily available.

(3) The level of financial responsibility established under paragraph (1) of this subsection for the transportation of a material, oil, substance, or waste not subject to paragraph (2) of this subsection shall be at least $1,000,000. However, if the Secretary of Transportation finds it will not adversely affect public safety, the Secretary by regulation may reduce the amount for—

(A) a class of vehicles transporting such a material, oil, substance, or waste in intrastate commerce (except in bulk); and

(B) a farm vehicle transporting such a material or substance in interstate commerce (except in bulk).

[(d)**]** *(e)* FOREIGN MOTOR CARRIERS AND PRIVATE CARRIERS.—Regulations prescribed under this section may allow foreign motor carriers and foreign motor private carriers (as those terms are defined in section 10530 of this title) providing transportation of property under a certificate of registration issued under section 10530 to meet the minimum levels of financial responsibility under this section only when those carriers are providing transportation for property in the United States.

[(e)**]** *(f)* EVIDENCE OF FINANCIAL RESPONSIBILITY.—

(1) Subject to paragraph (2) of this subsection, financial responsibility may be established by evidence of one or a combination of the following if acceptable to the Secretary of Transportation:

(A) insurance.

(B) a guarantee.

(C) a surety bond issued by a bonding company authorized to do business in the United States.

(D) qualification as a self-insurer.

(2) A person domiciled in a country contiguous to the United States and providing transportation to which a minimum level of financial responsibility under this section applies shall have evidence of financial responsibility in the motor vehicle when the person is providing the transportation. If evidence of financial responsibility is not in the vehicle, the Secretary of Transportation and the Secretary of the Treasury shall deny entry of the vehicle into the United States.

(3) A motor carrier may obtain the required amount of financial responsibility from more than one source provided the cu-

mulative amount is equal to the minimum requirements of this section.

[(f)] *(g)* CIVIL PENALTY.—

(1) If, after notice and an opportunity for a hearing, the Secretary of Transportation finds that a person (except an employee acting without knowledge) has knowingly violated this section or a regulation prescribed under this section, the person is liable to the United States Government for a civil penalty of not more than $10,000 for each violation. A separate violation occurs for each day the violation continues.

(2) The Secretary of Transportation shall impose the penalty by written notice. In determining the amount of the penalty, the Secretary shall consider—

(A) the nature, circumstances, extent, and gravity of the violation;

(B) with respect to the violator, the degree of culpability, any history of prior violations, the ability to pay, and any effect on the ability to continue doing business; and

(C) other matters that justice requires.

(3) The Secretary of Transportation may compromise the penalty before referring the matter to the Attorney General for collection.

(4) The Attorney General shall bring a civil action in an appropriate district court of the United States to collect a penalty referred to the Attorney General for collection under this subsection.

(5) The amount of the penalty may be deducted from amounts the Government owes the person. An amount collected under this section shall be deposited in the Treasury as miscellaneous receipts.

[(g)] *(h)* NONAPPLICATION.—This section does not apply to a motor vehicle having a gross vehicle weight rating of less than 10,000 pounds if the vehicle is not used to transport in interstate or foreign commerce—

(1) class A or B explosives;

(2) poison gas; or

(3) a large quantity of radioactive material.

§ 31144. Safety fitness of owners and operators

[(a) IN GENERAL.—The Secretary shall—

[(1) determine whether an owner or operator is fit to operate safely commercial motor vehicles;

[(2) periodically update such safety fitness determinations;

[(3) make such final safety fitness determinations readily available to the public; and

[(4) prescribe by regulation penalties for violations of this section consistent with section 521.]

(a) IN GENERAL.—The Secretary shall—

(1) determine whether an owner or operator is fit to operate safely commercial motor vehicles, utilizing among other things the accident record of an owner or operator operating in interstate commerce and the accident record and safety inspection record of such owner or operator in operations that affect interstate commerce;

(2) periodically update such safety fitness determinations;

(3) make such final safety fitness determinations readily available to the public; and

(4) prescribe by regulation penalties for violations of this section consistent with section 521.

(b) PROCEDURE.—The Secretary shall maintain by regulation a procedure for determining the safety fitness of an owner or operator. The procedure shall include, at a minimum, the following elements:

(1) Specific initial and continuing requirements with which an owner or operator must comply to demonstrate safety fitness.

(2) A methodology the Secretary will use to determine whether an owner or operator is fit.

(3) Specific time frames within which the Secretary will determine whether an owner or operator is fit.

(c) PROHIBITED TRANSPORTATION.—

(1) IN GENERAL.—Except as provided in [sections 521(b)(5)(A) and 5113] *section 521(b)(5)(A) of this title* and this subsection, an owner or operator who the Secretary determines is not fit may not operate commercial motor vehicles in interstate commerce beginning on the 61st day after the date of such fitness determination and until the Secretary determines such owner or operator is fit.

(2) OWNERS OR OPERATORS TRANSPORTING PASSENGERS.—With regard to owners or operators of commercial motor vehicles designed or used to transport passengers, an owner or operator who the Secretary determines is not fit may not operate in interstate commerce beginning on the 46th day after the date of such fitness determination and until the Secretary determines such owner or operator is fit.

(3) OWNERS OR OPERATORS TRANSPORTING HAZARDOUS MATERIAL.—With regard to owners or operators of commercial motor vehicles designed or used to transport hazardous material for which placarding of a motor vehicle is required under regulations prescribed under chapter 51, an owner or operator who the Secretary determines is not fit may not operate in interstate commerce beginning on the 46th day after the date of such fitness determination and until the Secretary determines such owner or operator is fit. *A violation of this paragraph by an owner or operator transporting hazardous material shall be considered a violation of chapter 51 of this title, and shall be subject to the penalties in sections 5123 and 5124 of this title.*

(4) SECRETARY'S DISCRETION.—Except for owners or operators described in paragraphs (2) and (3), the Secretary may allow an owner or operator who is not fit to continue operating for an additional 60 days after the 61st day after the date of the Secretary's fitness determination, if the Secretary determines that such owner or operator is making a good faith effort to become fit.

(5) TRANSPORTATION AFFECTING INTERSTATE COMMERCE.—Owners or operators of commercial motor vehicles prohibited from operating in interstate commerce pursuant to paragraphs (1) through (3) of this section may not operate any commercial motor vehicle that affects interstate commerce until the Secretary determines that such owner or operator is fit.

(d) DETERMINATION OF UNFITNESS BY A STATE.—If a State that receives Motor Carrier Safety Assistance Program funds pursuant to section 31102 of this title determines, by applying the standards prescribed by the Secretary under subsection (b) of this section, that an owner or operator of commercial motor vehicles that has its principal place of business in that State and operates in intrastate commerce is unfit under such standards and prohibits the owner or operator from operating such vehicles in the State, the Secretary shall prohibit the owner or operator from operating such vehicles in interstate commerce until the State determines that the owner or operator is fit.

[(d)] *(e)* REVIEW OF FITNESS DETERMINATIONS.—

(1) IN GENERAL.—Not later than 45 days after an unfit owner or operator requests a review, the Secretary shall review such owner's or operator's compliance with those requirements with which the owner or operator failed to comply and resulted in the Secretary determining that the owner or operator was not fit.

(2) OWNERS OR OPERATORS TRANSPORTING PASSENGERS.—Not later than 30 days after an unfit owner or operator of commercial motor vehicles designed or used to transport passengers requests a review, the Secretary shall review such owner's or operator's compliance with those requirements with which the owner or operator failed to comply and resulted in the Secretary determining that the owner or operator was not fit.

(3) OWNERS OR OPERATORS TRANSPORTING HAZARDOUS MATERIAL.—Not later than 30 days after an unfit owner or operator of commercial motor vehicles designed or used to transport hazardous material for which placarding of a motor vehicle is required under regulations prescribed under chapter 51, the Secretary shall review such owner's or operator's compliance with those requirements with which the owner or operator failed to comply and resulted in the Secretary determining that the owner or operator was not fit.

[(e)] *(f)* PROHIBITED GOVERNMENT USE.—A department, agency, or instrumentality of the United States Government may not use to provide any transportation service an owner or operator who the Secretary has determined is not fit until the Secretary determines such owner or operator is fit.

[(c)] *(g)* SAFETY REVIEWS OF NEW OPERATORS.

(1) IN GENERAL.—The Secretary shall require, by regulation, each owner and each operator granted new operating authority, after the date on which section 31148(b) is first implemented, to undergo a safety review within the first 18 months after the owner or operator, as the case may be, begins operations under such authority.

(2) ELEMENTS.—In the regulations issued pursuant to paragraph (1), the Secretary shall establish the elements of the safety review, including basic safety management controls. In establishing such elements, the Secretary shall consider their effects on small businesses and shall consider establishing alternate locations where such reviews may be conducted for the convenience of small businesses.

(3) PHASE-IN OF REQUIREMENT.—The Secretary shall phase in the requirements of paragraph (1) in a manner that takes

into account the availability of certified motor carrier safety auditors.

(4) NEW ENTRANT AUTHORITY.—Notwithstanding any other provision of this title, any new operating authority granted after the date on which section 31148(b) is first implemented shall be designated as new entrant authority until the safety review required by paragraph (1) is completed.

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§ 31149. Medical program

(a) MEDICAL REVIEW BOARD.—

(1) ESTABLISHMENT AND FUNCTION.—The Secretary of Transportation shall establish a Medical Review Board to serve as an advisory committee to provide the Federal Motor Carrier Safety Administration with medical advice and recommendations on driver qualification medical standards and guidelines, medical examiner education, and medical research.

(2) COMPOSITION.—The Medical Review Board shall be appointed by the Secretary and shall consist of 5 members selected from medical institutions and private practice. The membership shall reflect expertise in a variety of specialties relevant to the functions of the Federal Motor Carrier Safety Administration.

(b) CHIEF MEDICAL EXAMINER.—The Secretary shall appoint a chief medical examiner for the Federal Motor Carrier Safety Administration.

(c) MEDICAL STANDARDS AND REQUIREMENTS.—The Secretary, with the advice of the Medical Review Board and the chief medical examiner, shall—

(1) establish, review, and revise—

(A) medical standards for applicants for and holders of commercial driver's licenses that will ensure that the physical condition of operators of commercial motor vehicles is adequate to enable them to operate the vehicles safely;

(B) requirements for periodic physical examinations of such operators performed by medical examiners who have received training in physical and medical examination standards and are listed on a national registry maintained by the Department of Transportation; and

(C) requirements for notification of the chief medical examiner if such an applicant or holder—

(i) fails to meet the applicable standards; or

(ii) is found to have a physical or mental disability or impairment that would interfere with the individual's ability to operate a commercial motor vehicle safely;

(2) require each holder of a commercial driver's license or learner's permit to have a current valid medical certificate;

(3) issue such certificates to such holders and applicants who are found, upon examination, to be physically qualified to operate a commercial motor vehicle and to meet applicable medical standards; and

(4) develop, as appropriate, specific courses and materials for medical examiners listed in the national registry established

under this section, and require those medical examiners to complete specific training, including refresher courses, to be listed in the registry.

(d) NATIONAL REGISTRY OF MEDICAL EXAMINERS.—The Secretary, through the Federal Motor Carrier Safety Administration—

(1) shall establish and maintain a current national registry of medical examiners who are qualified to perform the examination, testing, and inspection necessary to issue a medical certificate;

(2) may delegate to such examiners the authority to issue such certificates; and

(3) shall remove from the registry the name of any medical examiner that fails to meet the qualifications established by the Secretary for being listed in the registry.

(e) CONSULTATION AND COOPERATION WITH FAA.—

(1) IN GENERAL.—The Administrator of the Federal Motor Carrier Safety Administration shall consult the Administrator of the Federal Aviation Administration with respect to examinations, the issuance of certificates, standards, and procedures under this section in order to take advantage of such aspects of the Federal Aviation Administration's airman certificate program under chapter 447 of this title as the Administrator deems appropriate for carrying out this section.

(2) USE OF FAA-QUALIFIED EXAMINERS.—The Administrator of the Federal Motor Carrier Safety Administration and the Administrator of the Federal Aviation Administration are authorized and encouraged to execute a memorandum of understanding under which individuals holding or applying for a commercial driver's license or learner's permit may be examined, for purposes of this section, by medical examiners who are qualified to administer medical examinations for airman certificates under chapter 447 of this title and the regulations thereunder—

(A) until the national registry required by subsection (d) is fully established; and

(B) to the extent that the Administrators determine appropriate, after that registry is established.

(f) REGULATIONS.—The Secretary is authorized to promulgate such regulations as may be necessary to carry out this section.

SUBCHAPTER IV—MISCELLANEOUS

§ 31161. International cooperation

The Secretary is authorized to use funds appropriated under section 31104(i) of this title to participate and cooperate in international activities to enhance motor carrier, commercial motor vehicle, driver, and highway safety by such means as exchanging information, conducting research, and examining needs, best practices, and new technology.

CHAPTER 313. COMMERCIAL MOTOR VEHICLE OPERATORS

§ 31302. Commercial driver's license *and learner's permits* requirement

No individual shall operate a commercial motor vehicle without a valid commercial driver's license issued in accordance with sec-

tion 31308. An individual operating a commercial motor vehicle may have only one driver's license at any [time.] *time, and may have only 1 learner's permit at any time.*

§ 31308. Commercial driver's license *and learner's permit*

After consultation with the States, the Secretary of Transportation shall prescribe regulations on minimum uniform standards for the issuance of commercial drivers' licenses *and learners' permits* by the States and for information to be contained on each of the [licenses.] *licenses and permits.* The standards shall require at a minimum that—

(1) an individual issued a commercial driver's license pass written and driving tests for the operation of a commercial motor vehicle that comply with the minimum standards prescribed by the Secretary under section 31305(a) of this title;

(2) before a commercial driver's license learner's permit can be issued to an individual, the individual must pass a written test on the operation of a commercial motor vehicle that complies with the minimum standards prescribed by the Secretary under section 31305(a) of this title;

[(2)] *(3)* the license *or learner's permit* be tamperproof to the maximum extent practicable and each license *or learner's permit* issued after January 1, 2001, include unique identifiers (which may include biometric identifiers) to minimize fraud and duplication; and

[(3)] *(4)* the license *or learner's permit* contain—

(A) the name and address of the individual issued the license *or learner's permit* and a physical description of the individual;

(B) the social security account number or other number or information the Secretary decides is appropriate to identify the individual;

(C) the class or type of commercial motor vehicle the individual is authorized to operate under the license *or learner's permit*;

(D) the name of the State that issued the license *or learner's permit*; and

(E) the dates between which the license *or learner's permit* is valid.

§ 31309. Commercial driver's license *and learner's permit* information system

(a) GENERAL REQUIREMENT.—The Secretary of Transportation shall maintain an information system that will serve as a clearinghouse and depository of information about the licensing, identification, and disqualification of operators of commercial motor vehicles. The system shall be coordinated with activities carried out under section 31106. The Secretary shall consult with the States in carrying out this section.

(b) CONTENTS.—

(1) At a minimum, the information system under this section shall include for each operator of a commercial motor vehicle—

(A) information the Secretary considers appropriate to ensure identification of the operator;

(B) the name, address, and physical description of the operator;

(C) the social security account number of the operator or other number or information the Secretary considers appropriate to identify the operator;

(D) the name of the State that issued the license *or learner's permit* to the operator;

(E) the dates between which the license *or learner's permit* is valid; and

(F) whether the operator had a commercial motor vehicle driver's license *or learner's permit* revoked, suspended, or canceled by a State, lost the right to operate a commercial motor vehicle in a State for any period, or has been disqualified from operating a commercial motor vehicle.

(2) The information system under this section must accommodate any unique identifiers required to minimize fraud or duplication of a commercial driver's license *or learner's permit* under section 31308(2).

(c) AVAILABILITY OF INFORMATION.—Information in the information system shall be made available and subject to review and correction in accordance with the policy developed under section 31106(e).

(d) FEE SYSTEM.—The Secretary may establish a fee system for using the information system. Fees collected under this subsection in a fiscal year shall equal as nearly as possible the costs of operating the information system in that fiscal year. The Secretary shall deposit fees collected under this subsection in the Highway Trust Fund (except the Mass Transit Account).

§ 31310. Disqualifications

(a) BLOOD ALCOHOL CONCENTRATION LEVEL.—In this section, the blood alcohol concentration level at or above which an individual when operating a commercial motor vehicle is deemed to be driving under the influence of alcohol is .04 percent.

(b) FIRST VIOLATION OR COMMITTING FELONY.—

(1) Except as provided in paragraph (2) of this subsection and subsection (c) of this section, the Secretary of Transportation shall disqualify from operating a commercial motor vehicle for at least one year an individual—

(A) committing a first violation of driving a commercial motor vehicle under the influence of alcohol or a controlled substance;

(B) committing a first violation of leaving the scene of an accident involving a commercial motor vehicle operated by the individual;

(C) using a commercial motor vehicle in committing a felony (except a felony described in subsection (d) of this section);

(D) committing a first violation of driving a commercial motor vehicle when the individual's commercial driver's license is revoked, suspended, or canceled based on the individual's operation of a commercial motor vehicle or when the individual is disqualified from operating a commercial motor vehicle based on the individual's operation of a commercial motor vehicle; or

(E) convicted of causing a fatality through negligent or criminal operation of a commercial motor vehicle.

(2) If the vehicle involved in a violation referred to in paragraph (1) of this subsection is transporting hazardous material required to be placarded under section 5103 of this title, the Secretary shall disqualify the individual for at least 3 years.

(c) SECOND AND MULTIPLE VIOLATIONS.—

(1) Subject to paragraph (2) of this subsection, the Secretary shall disqualify from operating a commercial motor vehicle for life an individual—

(A) committing more than one violation of driving a commercial motor vehicle under the influence of alcohol or a controlled substance;

(B) committing more than one violation of leaving the scene of an accident involving a commercial motor vehicle operated by the individual;

(C) using a commercial motor vehicle in committing more than one felony arising out of different criminal episodes;

(D) committing more than one violation of driving a commercial motor vehicle when the individual's commercial driver's license is revoked, suspended, or canceled based on the individual's operation of a commercial motor vehicle or when the individual is disqualified from operating a commercial motor vehicle based on the individual's operation of a commercial motor vehicle;

(E) convicted of more than one offense of causing a fatality through negligent or criminal operation of a commercial motor vehicle; or

(F) committing any combination of single violations or use described in subparagraphs (A) through (E).

(2) The Secretary may prescribe regulations establishing guidelines (including conditions) under which a disqualification for life under paragraph (1) of this subsection may be reduced to a period of not less than 10 years.

(d) CONTROLLED SUBSTANCE VIOLATIONS.—The Secretary shall disqualify from operating a commercial motor vehicle for life an individual who uses a commercial motor vehicle in committing a felony involving manufacturing, distributing, or dispensing a controlled substance, or possession with intent to manufacture, distribute, or dispense a controlled substance.

(e) SERIOUS TRAFFIC VIOLATIONS.—

(1) The Secretary shall disqualify from operating a commercial motor vehicle for at least 60 days an individual who, in a 3-year period, commits 2 serious traffic violations involving a commercial motor vehicle operated by the individual.

(2) The Secretary shall disqualify from operating a commercial motor vehicle for at least 120 days an individual who, in a 3-year period, commits 3 serious traffic violations involving a commercial motor vehicle operated by the individual.

(f) EMERGENCY DISQUALIFICATION.—

(1) LIMITED DURATION.—The Secretary shall disqualify an individual from operating a commercial motor vehicle for not to exceed 30 days if the Secretary determines that allowing the individual to continue to operate a commercial motor vehicle

would create an imminent hazard (as such term is defined in section 5102).

(2) AFTER NOTICE AND HEARING.—The Secretary shall disqualify an individual from operating a commercial motor vehicle for more than 30 days if the Secretary determines, after notice and an opportunity for a hearing, that allowing the individual to continue to operate a commercial motor vehicle would create an imminent hazard (as such term is defined in section 5102).

(g) NONCOMMERCIAL MOTOR VEHICLE CONVICTIONS.—

(1) ISSUANCE OF REGULATIONS.—Not later than 1 year after the date of the enactment of this Act, the Secretary shall issue regulations providing for the disqualification by the Secretary from operating a commercial motor vehicle of an individual who holds a commercial driver's license and who has been convicted of—

(A) a serious offense involving a motor vehicle (other than a commercial motor vehicle) that has resulted in the revocation, cancellation, or suspension of the individual's license; or

(B) a drug or alcohol related offense involving a motor vehicle (other than a commercial motor vehicle).

(2) REQUIREMENTS FOR REGULATIONS.—Regulations issued under paragraph (1) shall establish the minimum periods for which the disqualifications shall be in effect, but in no case shall the time periods for disqualification for noncommercial motor vehicle violations be more stringent than those for offenses or violations involving a commercial motor vehicle. The Secretary shall determine such periods based on the seriousness of the offenses on which the convictions are based.

(h) STATE DISQUALIFICATION.—Notwithstanding subsections (b) through (g) of this section, the Secretary does not have to disqualify an individual from operating a commercial motor vehicle if the State that issued the individual a license authorizing the operation has disqualified the individual from operating a commercial motor vehicle under subsections (b) through (g). Revocation, suspension, or cancellation of the license is deemed to be disqualification under this subsection.

(i) OUT-OF-SERVICE ORDERS.—

(1)(A) To enforce section 392.5 of title 49, Code of Federal Regulations, the Secretary shall prescribe regulations establishing and enforcing an out-of-service period of 24 hours for an individual who violates section 392.5. An individual may not violate an out-of-service order issued under those regulations.

(B) The Secretary shall prescribe regulations establishing and enforcing requirements for reporting out-of-service orders issued under regulations prescribed under subparagraph (A) of this paragraph. Regulations prescribed under this subparagraph shall require at least that an operator of a commercial motor vehicle who is issued an out-of-service order to report the issuance to the individual's employer and to the State that issued the operator a driver's license.

[(2) Not later than December 18, 1992, the Secretary shall prescribe regulations establishing sanctions and penalties re-

lated to violations of out-of-service orders by individuals operating commercial motor vehicles. The regulations shall require at least that—

[(A) an operator of a commercial motor vehicle found to have committed a first violation of an out-of-service order shall be disqualified from operating such a vehicle for at least 90 days and liable for a civil penalty of at least $1,000;

[(B) an operator of a commercial motor vehicle found to have committed a 2d violation of an out-of-service order shall be disqualified from operating such a vehicle for at least one year and not more than 5 years and liable for a civil penalty of at least $1,000; and

[(C) an employer that knowingly allows or requires an employee to operate a commercial motor vehicle in violation of an out-of-service order shall be liable for a civil penalty of not more than $10,000.]

(2) The Secretary shall prescribe regulations establishing sanctions and penalties related to violations of out-of-service orders by individuals operating commercial motor vehicles. The regulations shall require at least that—

(A) an operator of a commercial motor vehicle found to have committed a first violation of an out-of-service order shall be disqualified from operating such a vehicle for at least 180 days and liable for a civil penalty of at least $2,500;

(B) an operator of a commercial motor vehicle found to have committed a second violation of an out-of-service order shall be disqualified from operating such a vehicle for at least 2 years and not more than 5 years and liable for a civil penalty of at least $5,000;

(C) an employer that knowingly allows or requires an employee to operate a commercial motor vehicle in violation of an out-of-service order shall be liable for a civil penalty of not more than $25,000; and

(D) an employer that knowingly and willfully allows or requires an employee to operate a commercial motor vehicle in violation of an out-of-service order shall, upon conviction, be subject for each offense to imprisonment for a term not to exceed 1 year or a fine under title 18, United States Code, or both.

(j) GRADE-CROSSING VIOLATIONS.—

(1) SANCTIONS.—The Secretary shall issue regulations establishing sanctions and penalties relating to violations, by persons operating commercial motor vehicles, of laws and regulations pertaining to railroad-highway grade crossings.

(2) MINIMUM REQUIREMENTS.—The regulations issued under paragraph (1) shall, at a minimum, require that—

(A) the penalty for a single violation is not less than a 60-day disqualification of the driver's commercial driver's license; and

(B) any employer that knowingly allows, permits, authorizes, or requires an employee to operate a commercial motor vehicle in violation of such a law or regulation shall be subject to a civil penalty of not more than $10,000.

§ 31314. Withholding amounts for State noncompliance

[(a) FIRST FISCAL YEAR.—The Secretary of Transportation shall withhold 5 percent of the amount required to be apportioned to a State under section 104(b)(1), (3), and (4) of title 23 on the first day of the fiscal year after the first fiscal year beginning after September 30, 1992, throughout which the State does not comply substantially with a requirement of section 31311(a) of this title.

[(b) SECOND FISCAL YEAR.—The Secretary shall withhold 10 percent of the amount required to be apportioned to a State under section 104(b)(1), (3), and (4) of title 23 on the first day of each fiscal year after the 2d fiscal year beginning after September 30, 1992, throughout which the State does not comply substantially with a requirement of section 31311(a) of this title.]

(a) FIRST FISCAL YEAR.—The Secretary of Transportation shall withhold up to 5 percent of the amount required to be apportioned to a State under section 104(b)(1), (3), and (4) of title 23 on the first day of the fiscal year after the first fiscal year beginning after September 30, 1992, throughout which the State does not comply substantially with a requirement of section 31311(a) of this title.

(b) SECOND FISCAL YEAR.—The Secretary shall withhold up to 10 percent of the amount required to be apportioned to a State under section 104(b)(1), (3), and (4) of title 23 on the first day of each fiscal year after the second fiscal year beginning after September 30, 1992, throughout which the State does not comply substantially with a requirement of section 31311(a) of this title.

(c) AVAILABILITY FOR APPORTIONMENT.—Amounts withheld under this section from apportionment to a State after September 30, 1995, are not available for apportionment to the State.

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§ 31318. Grants for Commercial Driver's License Program Improvements

(a) GENERAL AUTHORITY.—From the funds authorized by section 222(c)(3) of the Motor Carrier Safety Reauthorization Act of 2003, the Secretary may make a grant to a State, except as otherwise provided in subsection (e), in a fiscal year to improve its implementation of the commercial driver's license program, providing the State is in substantial compliance with the requirements of section 31311 and this section. The Secretary shall establish criteria for the distribution of grants and notify the States annually of such criteria.

(b) CONDITIONS.—Except as otherwise provided in subsection (e), a State may use a grant under this section only for expenses directly related to its commercial driver's license program, including, but not limited to, computer hardware and software, publications, testing, personnel, training, and quality control. The grant may not be used to rent, lease, or buy land or buildings. The Secretary shall give priority to grants that will be used to achieve compliance with Federal laws and regulations governing the commercial driver's license program. The Secretary may allocate the funds appropriated for such grants in a fiscal year among the eligible States whose applications for grants have been approved, under criteria established by the Secretary.

(c) MAINTENANCE OF EXPENDITURES.—Except as otherwise provided in subsection (e), the Secretary may make a grant to a State under this section only if the State agrees that the total expenditure of amounts of the State and political subdivisions of the State, exclusive of United States Government amounts, for the operation of the commercial driver's license program will be maintained at a level at least equal to the average level of that expenditure by the State and political subdivisions of the State for the last 2 fiscal years before October 1, 2003.

(d) GOVERNMENT SHARE.—Except as otherwise provided in subsection (e), the Secretary shall reimburse a State, from a grant made under this section, an amount that is not more than 80 percent of the costs incurred by the State in a fiscal year in implementing the commercial driver's license improvements described in subsection (b). In determining those costs, the Secretary shall include in-kind contributions by the State.

(e) HIGH-PRIORITY ACTIVITIES.—

(1) The Secretary may make a grant to a State agency, local government, or organization representing government agencies or officials for the full cost of research, development, demonstration projects, public education, or other special activities and projects relating to commercial driver licensing and motor vehicle safety that are of benefit to all jurisdictions or designed to address national safety concerns and circumstances.

(2) The Secretary may designate up to 10 percent of the amounts made available under section 222(c)(3) of the Motor Carrier Safety Reauthorization Act of 2003 in a fiscal year for high-priority activities under subsection (e)(1).

(f) EMERGING ISSUES.—The Secretary may designate up to 10 percent of the amounts made available under section 222(c)(3) of the Motor Carrier Safety Reauthorization Act of 2003 in a fiscal year for allocation to a State agency, local government, or other person at the discretion of the Secretary to address emerging issues relating to commercial driver's license improvements.

(g) APPORTIONMENT.—Except as otherwise provided in subsections (e) and (f), all amounts available in a fiscal year to carry out this section shall be apportioned to States according to a formula prescribed by the Secretary.

(h) DEDUCTION FOR ADMINISTRATIVE EXPENSES.—On October 1 of each fiscal year or as soon after that date as practicable, the Secretary may deduct, from amounts made available under section 222(c)(3) of the Motor Carrier Safety Reauthorization Act of 2003 for that fiscal year, up to 0.75 percent of those amounts for administrative expenses incurred in carrying out this section in that fiscal year.

PART C. INFORMATION, STANDARDS, AND REQUIREMENTS

CHAPTER 323. CONSUMER INFORMATION

§ 32310. Load capacity of light trucks

Each manufacturer of a new light duty truck manufactured after September 30, 2005, and distributed in commerce for sale in the United States, shall establish each year for each model year and cause to be attached in a prominent place on each of those trucks

at least 1 label containing a statement of the vehicle's maximum weight carrying capacity.

SUBTITLE VII. AVIATION PROGRAMS

PART A. AIR COMMERCE AND SAFETY

SUBPART IV. ENFORCEMENT AND PENALTIES

CHAPTER 463. PENALTIES

§ 46312. Transporting hazardous material

(a) IN GENERAL.—A person shall be fined under title 18, imprisoned for not more than 5 years, or both, if the person, in violation of a regulation or requirement related to the transportation of hazardous material prescribed by the Secretary of Transportation under this [part—] *or chapter 51 of this title—*

(1) willfully delivers, or causes to be delivered, property containing hazardous material to an air carrier or to an operator of a civil aircraft for transportation in air commerce; or

(2) recklessly causes the transportation in air commerce of the property.

(b) KNOWLEDGE OF REGULATIONS.—For purposes of subsection (a), knowledge by the person of the existence of a regulation or requirement related to the transportation of hazardous material prescribed by the Secretary under this part *or chapter 51 of this title* is not an element of an offense under this section but shall be considered in mitigation of the penalty.

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