Calendar No. 192

109TH CONGRESS *1st Session*	SENATE	REPORT 109–120

SURFACE TRANSPORTATION SAFETY IMPROVEMENT ACT OF 2005

R E P O R T

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ON

S. 1567

JULY 29, 2005.—Ordered to be printed

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SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED NINTH CONGRESS

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

REPORT

[To accompany S. 1567]

The Committee on Commerce, Science, and Transportation reports favorably an original bill to reauthorize and improve surface transportation 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 (FYs) 2006 through 2009 for motor carrier safety programs, highway safety programs, hazardous materials transportation safety, oversight of household goods transportation, and boating safety and sport fish programs.

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 and sport fish programs. 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, Account-

able, 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.

SUMMARY OF PROVISIONS

TITLE I—MOTOR CARRIER SAFETY

The purpose of this title is to improve the safety of the trucking and intercity bus industries. These safety programs are administered by the Federal Motor Carrier Safety Administration (FMCSA), which was established by Congress in 1999. Major provisions include:

MOTOR CARRIER SAFETY ASSISTANCE PROGRAM (MCSAP).—MCSAP is reauthorized for the years 2006 through 2009 at an average annual funding level of $200 million, more than twice the TEA–21 level, and consistent with the Administration's reauthorization proposal. This program makes grants to States for the enforcement of motor carrier safety rules and regulations.

COMMERCIAL DRIVER'S LICENSE (CDL) MODERNIZATION.—The CDL program is designed to ensure that only safe and qualified drivers operate commercial motor vehicles (CMV) and provides the primary method for tracking truck and bus drivers to determine if they have a pattern of traffic or safety violations that would indicate they are unsafe drivers. However, the computer system used to track CDL information, known as the Commercial Driver's License Information System (CDLIS), is out of date and needs to be updated. The bill includes $20 million to update the system.

SINGLE STATE REGISTRATION SYSTEM (SSRS).—SSRS is a commercial vehicle registration system dating back to the days of the economic regulation of the trucking industry. Eliminating SSRS has been attempted for many years, but doing so has been difficult because some States derive significant revenue from the program. The bill would replace the existing outdated system that requires truckers to register in multiple States, with a system that requires truckers to register in only one State. The registration fees would be redistributed to States in a way that would ensure that States don't lose current revenues derived from SSRS.

MEDICAL PROGRAM.—In response to concerns regarding the quality of the current medical certificate program for CMV drivers, the bill would establish a Medical Review Board to recommend standards for the physical examinations of commercial drivers and a registry for qualified medical examiners. Medical examiners who perform the exams are required to receive training in such standards to be listed on the registry.

ROADABILITY.—For many years there has been a dispute about who should be responsible for the safety of truck trailers, known as "intermodal chassis", owned by the railroad and steamship companies, but that are hauled by tractors owned by trucking companies. At the center of this dispute are trucking industry concerns regarding safety violations and fines for unsafe trailers they pick

up at rail yards or ports. The bill contains provisions that would delineate responsibility for safety among the various parties.

TITLE II—HIGHWAY AND VEHICULAR SAFETY

The purpose of this title is to support highway safety programs designed to reduce deaths and injuries resulting from motor vehicle crashes. These programs are administered by NHTSA which was established by the Highway Safety Act of 1970. Major provisions include:

STATE GRANT PROGRAMS

STATE AND COMMUNITY HIGHWAY SAFETY GRANT PROGRAM.—This program is reauthorized for FYs 2006 through 2009 at an average annual funding level of $231 million, a 50 percent increase from the TEA–21 level. These grants, allocated according to a formula, fund States' safety programs, such as safety belts; drunk driving prevention; motorcycle; pedestrian and bicycle safety; emergency medical services; traffic law enforcement; and roadway safety.

OCCUPANT PROTECTION INCENTIVE GRANTS.—This program would be funded at an average annual level of $154 million. The program would grant money to States that enact a new primary seat belt law and to States that have already enacted a primary seat belt law. States that have already enacted a primary seat belt law would receive a one-time grant over the life of the bill equal to 250 percent of their FY 2003 grant from section 402 of title 23, United States Code. States that enact a primary seat belt law after December 31, 2002 would receive a one-time grant over the life of the bill equal to 500 percent of their FY 2003 grant from section 402 of title 23, United States Code. Most of this grant money may be used for highway safety construction purposes.

IMPAIRED DRIVING.—This program would be reauthorized for FYs 2006 through 2009 at an average annual funding level of $132 million. States can qualify for a grant by enacting four out of the following seven criteria in FY 2006 and FY 2007, and by enacting five out of the following seven criteria in FY 2008 and FY 2009. States may choose from the following menu of policy options: (1) impaired driving check points and saturation patrols; (2) outreach to judges and prosecutors to improve prosecution of drunk driving cases; (3) create an information system for government use that tracks drunk driving arrests and convictions; (4) reduce for two years in a row the percentage of fatally-injured drivers with a blood alcohol content of 0.08 percent; (5) a program that returns State and local fines collected for drunk driving offenses back into drunk driving prevention programs; (6) enact a law that creates greater penalties for drivers convicted of driving with a blood alcohol content of 0.15 percent or higher; and (7) create specialized courts for handling only impaired driving cases. The ten States with the highest rate of impaired driving fatalities would automatically qualify for a grant, and could double their grant by meeting the criteria above.

HIGHWAY RESEARCH AND DEVELOPMENT PROGRAM.—This program is reauthorized for FYs 2006 through 2009 at an average annual funding level of $142 million. These programs focus on the research and development of safety countermeasures related to impaired driving, occupant protection, traffic law enforcement and

criminal justice, licensing, motorcycle safety, pedestrian safety, bicycle safety, teen drivers, and emergency medical services. This section also would provide $24 million a year to NHTSA to launch national advertising campaigns to increase seat belt use and reduce drunk driving during holiday periods.

STATE TRAFFIC SAFETY INFORMATION SYSTEM IMPROVEMENTS.—This is a new discretionary grant program, funded at a $45 million level each of FYs 2006 through 2009, to encourage States to improve their traffic records systems by increasing the efficiency and uniformity of data collection and access through upgrading data collection systems. The purpose is to develop a more accurate data base of vehicle crash characteristics that will allow traffic safety professionals to better identify traffic safety problems, and develop effective countermeasures on a more timely basis.

GRANTS FOR IMPROVING CHILD PASSENGER SAFETY PROGRAMS.—Would authorize grants to States to implement Anton's Law, which is aimed at increasing the use of booster seats for small children.

MOTORCYCLIST SAFETY TRAINING.—Would provide grants to States for motorcyclist training programs.

VEHICLE SAFETY IMPROVEMENTS

This section requires NHTSA to issue rulemakings to improve the safety of passenger automobiles.

VEHICLE ROLLOVER AND PREVENTION.—The bill would require the Department to issue a comprehensive set of rules to reduce death and injuries caused by passenger vehicle rollovers. The rules must reduce rollovers by using new technologies, reduce ejections of passengers from vehicles that do rollover, and protect occupants in rollover accidents. The bill includes deadlines for issuing such rules.

VEHICLE COMPATIBILITY ENHANCEMENT.—Would require NHTSA to issue a rulemaking by 2008 that would require automobiles to better protect passengers in a side-impact crash, and to conduct a study of front-impact crashes within one year.

VEHICLE BACKOVER AVOIDANCE TECHNOLOGY STUDY.—Would require NHTSA to study technologies for automobiles that would reduce injuries and deaths caused by cars and trucks backing up.

VEHICLE BACKOVER DATA COLLECTION.—Would require NHTSA to conduct a study of non-traffic crashes, with the focus on persons injured or killed due to a car backing up. NHTSA currently does not collect this data on a regular basis because these injuries and deaths occur in private driveways and parking lots, not on public streets where data is currently collected.

SAFETY BELT USE REMINDERS.—Would repeal existing law that limits audible seat belt reminders to no more than eight seconds. Automakers have asked for new flexibility to experiment with new seat belt reminder systems.

POWER WINDOW SWITCHES.—Would require NHTSA to issue a rulemaking by April 2007 in which power windows in automobiles not in excess of 10,000 pounds must have switches that would raise the window only when the switch is pulled up or out.

AMENDMENT TO THE AUTOMOBILE INFORMATION DISCLOSURE ACT.—Would require automobile safety "star" ratings compiled by NHTSA's New Car Assessment Program (NCAP) to be placed on

the window sticker of new automobiles in a similar manner to the gas mileage information.

TITLE III—HAZARDOUS MATERIALS TRANSPORTATION SAFETY

The purpose of this title is to improve the safety and security of the transportation of hazardous materials. The Pipeline and Hazardous Materials Safety Administration (PHMSA) is responsible for administering hazardous materials (hazmat) transportation programs, whose authorization expired September 30, 1998. In the aftermath of recent hazmat accidents in South Carolina and several other States, reauthorization of this program has become increasingly important. Major provisions include:

AUTHORIZATION AND REGISTRATION FEES.—The bill would authorize $25 million in FY 2005, $29 million in FY 2006, and $30 million for each of FY 2007 through 2009.

PLANNING AND TRAINING GRANTS.—The bill would increase safety and security by increasing the amount of money available for community planning and training grants. PHMSA would fully fund planning and training grants and States would be permitted to flex some of their planning money to training programs. In addition, the bill provides additional funds for hazmat employee "train the trainer" grants and allows these grants, at the Secretary's discretion, to be used to train private sector employees directly who handle hazmat.

SHIPPING PAPERS.—Shipping papers are documents that accompany a hazmat shipment and contain critical safety information. The Department of Transportation highlighted to the Committee that shippers are often the focus of their investigations of certain types of hazmat violations and that present retention requirements for shipping papers are inadequate for enforcement purposes. The bill would require shippers to keep their shipping papers for three years in order to facilitate the investigate of past violations and continues to require carriers to retain their shipping papers for the current one year period.

HAZARDOUS MATERIALS ENDORSEMENT BACKGROUND CHECKS.—The bill would require Mexican and Canadian commercial motor vehicle operators transporting hazmat in the U.S. to undergo a background check similar to that given to a U.S. licensed operator. Additionally, the bill improves procedures for hazmat background checks to eliminate redundancy, improve notification, and ensure due process and provides for a study of the current capacity to perform background checks.

OPERATION RESPOND.—The bill would authorize $5 million for FYs 2005 through 2009 for the Operation Respond Emergency Information System to improve the real time delivery of information about hazmat in transportation to first responders.

CARGO INSPECTIONS.—The Secretary of Transportation would be authorized to establish a program of random inspections to determine the extent to which undeclared hazmat is transported in commerce through U.S. points of entry.

MAILABILITY.—The bill 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.

SANITARY FOODS.—The bill 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 engaged in food transport. Highway and railroad safety inspectors would be trained to spot threats to food safety and to report possible contamination.

CARGO INSPECTION PROGRAM.—The bill would authorize the Secretary of Transportation to establish a program of random inspections to determine the extent to which undeclared HAZMAT is transported in commerce through U.S. points of entry.

HAZMAT COOPERATIVE RESEARCH PROGRAM.—The bill would create a HAZMAT research cooperative through the National Academy of Sciences' Transportation Research Board.

RAIL TANK CAR IMPROVEMENTS.—The bill would require the Federal Railroad Administration (FRA) to validate a predictive model for certain rail tank car standards; initiate a rulemaking on standards and complete an analysis of the impact resistance of steel used in pressurized tank cars built before 1989; and, require railroads to improve inspection procedures for continuous welded rail track and the identification of cracks in rail joint bars.

TITLE IV—HOUSEHOLD GOODS

The purpose of this title is to provide greater protection to consumers entrusting their belongings to a moving company. The oversight of the interstate household goods moving industry is the responsibility of the Federal Motor Carrier Safety Administration (FMCSA). FMCSA is tasked with issuing regulations, conducting oversight activities, and taking enforcement actions on consumer complaints, which have averaged about 3,000 per year since 2001.

ENFORCEMENT OF REGULATIONS.—The legislation would allow a State authority that enforces State consumer protection laws, and State Attorneys General, to enforce Federal laws and regulations with respect to the transportation of household goods in interstate commerce.

CIVIL AND CRIMINAL PENALTIES.—The bill would authorize a penalty, of not less than $10,000, for a broker who provides an estimate to a shipper before entering into an agreement with a carrier to move the shipper's goods. This will discourage brokers from providing unreasonably low estimates to unsuspecting shippers. A $10,000 penalty, a 24-month suspension of registration, and up to 5 years imprisonment would also be authorized for failure to give up possession of a shipper's household goods.

REGISTRATION REQUIREMENTS.—The Secretary would be authorized to register a person to provide transportation of household goods only after that person met certain requirements. In addition, the bill authorizes a penalty, of not less than $25,000, for carriers and brokers who transport household goods but do not register with DOT.

PAYMENT OF RATES.—The legislation would codify existing regulations that require a carrier to give up possession of household goods 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. The bill would permit a carrier to charge only a prorated amount for the partial delivery of a shipment which is par-

tially lost or damaged, and limits the amount of impracticable charges that must be paid at the time of delivery.

CARRIER LIABILITY.—The bill would establish that a carrier is liable for the entire pre-determined total value of goods shipped unless otherwise authorized by the shipper. The current standard liability is 60 cents per pound.

CONSUMER INFORMATION.—The Secretary would be directed to modify existing regulations to require a carrier's or broker's website to provide certain information. In addition, the Secretary would be required to establish a system and database for complaints and solicitation of State information regarding the number and type of complaints about a carrier.

TITLE V—AQUATIC RESOURCES TRUST FUND (ARTF) REAUTHORIZATION

In conjunction with the extensions of the motorboat fuel, fishing equipment excise, and other tax and trust fund authorizations, this title would reauthorize through 2020 the Boat 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, eliminate the two separate Boat Safety and Sport Fish restoration accounts in the trust fund, and rename the trust fund as the Sport Fish Restoration and Boating Trust Fund.

The Sport Fish Restoration and Boat 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, most recently reauthorized in 1998 under TEA–21, and temporarily extended by several provisions enacted during the 108th Congress. 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 Boat Safety account receives a fixed annual amount. This legislative construct has effectively capped the amount authorized for Boat 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 except those for administration and multi-State grants would annually receive a set percentage of the total revenues. Sport Fish Restoration would be set at 57 percent, Boating Safety at 18.5 percent, Coastal Wetlands at 18.5 percent, Clean Vessel Act programs at 2 percent, Boating Infrastructure at 2 percent, National Outreach and Communications at 2 percent, multi-State grants at $3 million, and fund management at $9 million. Under this new formula, Boating Safety funding would increase significantly. Anticipated gas tax revenues increases into the Trust Fund and a dissolution of the current boating safety account would prevent funding reductions in other programs.

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.

Additionally, it would change the Boating Safety Grant matching requirements for States from a 2:1 ratio to a 3:1 ratio, the same as for Sport Fish Restoration grants.

LEGISLATIVE HISTORY

In the 108th Congress, the Senate passed S.1072, the Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2004 (SAFETEA). This bill, based in part on the Administration's original SAFETEA proposal, contained an amendment from the Commerce Committee reauthorizing the programs within the Committee's jurisdiction. However, disputes over funding levels for the highway and mass transit infrastructure programs stalled last year's bill in conference committee, necessitating reconsideration this year. The current TEA–21 safety programs continue to operate under short-term extensions.

In the 109th Congress, the Senate continued its work on a highway reauthorization bill. On April 5, 2005, the Senate Subcommittee on Surface Transportation and Merchant Marine held a hearing on highway, motor carrier, and hazardous materials transportation safety and transportation of household goods. On April 14, 2005, the Committee held a mark up hearing and considered an original highway reauthorization bill. During consideration of this bill there were no votes taken and no amendments were adopted. It was ordered reported favorably by unanimous consent.

ESTIMATED COSTS

In accordance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate and section 403 of the Congressional Budget Act of 1974, the Committee provides the following cost estimate, prepared by the Congressional Budget Office:

APRIL 26, 2005.

Hon. TED STEVENS,
Chairman, Committee on Commerce, Science, and Transportation, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for the Surface Transportation Safety Improvement Act of 2005.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Lisa Driskill (for federal costs), Marjorie Miller (for the state and local impact), and Jean Talarico (for the private-sector).

Sincerely,

DOUGLAS HOLTZ-EAKIN.

Enclosure.

Surface Transportation Safety Improvement Act of 2005

Summary: CBO estimates that implementing the Surface Transportation Safety Improvements Act of 2005 would cost $5.5 billion over the 2006–2010 period, assuming appropriation action consistent with the bill. We further estimate that enacting the bill would increase direct spending by about $40 million over the same period and by about $100 million through fiscal year 2015. Finally,

CBO estimates that enacting this legislation would increase revenues by $1 million a year over the next 10 years.

The bill would extend the authority for programs administered by the National Highway Traffic Safety Administration (NHTSA), the Federal Motor Carrier Safety Administration and certain hazardous material transportation programs. For such programs, the bill would authorize the appropriation of $927 million over the 2006–2010 period. The bill also would provide about $2.9 billion in contract authority (the authority to incur obligations in advance of appropriations) over the 2006–2009 period for highway traffic safety programs and $2 billion in contract authority over the same period for motor carrier safety programs.

Consistent with the Balanced Budget and Emergency Deficit Control Act, CBO assumes that the contract authority for these highway traffic and motor carrier safety programs would continue at the same rate provided immediately before the programs expire in 2009. Therefore, this estimate includes an additional $550 million in contract authority in each year over the 2010–2015 period.

Title V would make the balances in the boat safety account of the Aquatic Resources Trust Fund (ARTF) available to be spent without further appropriation. Spending of amounts in that account are currently subject to appropriation. We estimate that making balances in the boat safety account available without appropriation would increase direct spending by $8 million in fiscal year 2006, by $76 million over the 2006–2010 period, and by $97 million over the 2006–2015 period. (New spending from the Crime Victims Fund would account for additional direct spending of between $500,000 and $1 million a year over the next 10 years, stemming from increased revenues for new criminal penalties.)

This bill contains intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA), but CBO estimates that the costs of those mandates would fall significantly below the threshold established by that act ($62 million in 2005, adjusted annually for inflation). The remaining provisions of the bill would benefit states by reauthorizing existing grant programs and creating new grant programs. Any costs to states to participate in those programs would be incurred voluntarily.

The bill contains numerous mandates as defined in UMRA that would affect private-sector entities in the transportation industry—manufacturers of motor vehicles, motor carriers, shippers and carriers of hazardous materials, and businesses involved in the transportation of household goods. CBO cannot determine whether the aggregate cost of the private-sector mandates in the bill would exceed the annual threshold established in UMRA ($123 million in 2005, adjusted annually for inflation) because some of the requirements established by the bill would hinge on future regulatory action, about which information is not available.

Estimated Cost to the Federal Government: The estimated budgetary impact this legislation is summarized in Table 1. The costs of this legislation fall within budget functions 300 (natural resources and environment) and 400 (transportation).

Basis of estimate: For this estimate, CBO assumes that the legislation will be enacted by May 30, 2005, the date the current authorization for safety programs expires. We also assume appropriation action consistent with the authorization and contract authority

levels in the bill. Estimates of outlays are based on historical spending patterns of similar existing programs.

TABLE 1. SUMMARY OF ESTIMATED BUDGETARY EFFECTS OF THE SURFACE TRANSPORTATION SAFETY IMPROVEMENT ACT OF 2005

	By fiscal year, in millions of dollars—				
	2006	2007	2008	2009	2010
CHANGES IN SPENDING SUBJECT TO APPROPRIATION					
Estimated Authorization Level	207	211	224	239	46
Estimated Outlays	709	1,258	1,373	1,485	679
CHANGES IN DIRECT SPENDING					
Estimated Budget Authority	494	515	537	563	569
Estimated Outlays	9	−10	5	18	20
CHANGES IN REVENUES					
Estimated Revenues	1	1	1	1	1

Spending subject to appropriation

CBO estimates that the bill would authorize the appropriation of $927 million for highway traffic, motor carrier, and hazmat safety programs over the 2006–2010 period. Over the same period, the bill would provide $4.9 billion in contract authority for certain highway traffic and motor carrier safety programs. In addition, the bill also would require the Department of Transportation (DOT) to complete various studies and periodic evaluations of state highway safety programs. Assuming appropriation action consistent with the authorizations and contract authority specified in the bill and assuming appropriation of amounts necessary to complete studies and program evaluations, CBO estimates that implementing these provisions would cost $5.5 billion over the 2006–2010 period (see Table 2).

Highway Traffic Safety Programs. The legislation would provide about $2.9 billion in contract authority for highway traffic safety programs over the 2006–2009 period. In addition, the bill would authorize the appropriation of $744 million over this period. Under current law, all spending on highway traffic safety programs is considered discretionary because it is controlled by annual limitations on obligations set in appropriations acts. For this estimate, CBO assumes that appropriation action will continue to limit spending on these programs. We estimate that implementing these provisions of the bill would cost about $3.4 billion over the 2006–2010 period.

Section 222 would require NHTSA to perform periodic management reviews of state highway safety programs. CBO estimates that conducting the studies and periodic evaluations of state transportation safety programs would cost about $2 million every three years.

TABLE 2. ESTIMATED CHANGES IN SPENDING SUBJECT TO APPROPRIATION UNDER THE SURFACE TRANSPORTATION SAFETY IMPROVEMENT ACT OF 2005

	By fiscal year, in millions of dollars—				
	2006	2007	2008	2009	2010
CHANGES IN SPENDING SUBJECT TO APPROPRIATION					
Highway Traffic Safety Programs:					
Estimated Authorization Level [1]	174	173	186	201	9
Estimated Outlays	432	726	829	929	477
Motor Carrier Safety Programs:					
Estimated Authorization Level	1	1	1	1	1
Estimated Outlays	255	496	508	519	165
Hazmat Safety Programs:					
Estimated Authorization Level	32	37	37	37	37
Estimated Outlays	22	35	37	37	37
Total Changes:					
Estimated Authorization Level	207	211	224	239	46
Estimated Outlays	709	1,258	1,373	1,485	679

[1] Under current law, most budget authority for highway traffic and motor carrier safety programs is provided as contract authority, a mandatory form of budget authority. Outlays from these programs, however, are subject to obligation limitations contained in appropriation acts and are therefore discretionary. The bill would provide contract authority for many of these safe'' programs, but for certain highway traffic safety programs, it also would authorize the appropriation of discretionary funds.

Motor Carrier Safety Programs. The bill would provide about $2 billion in contract authority for motor carrier safety programs over the 2006–2009 period. In addition, the bill would authorize the appropriation of $4 million over this period for program outreach and education efforts. Under current law, all spending on motor carrier safety programs is considered discretionary because it is controlled by annual limitations on obligations set in appropriations acts. For this estimate, CBO assumes appropriation action will continue to limit spending on these programs. We estimate that implementing these provisions of the bill would cost about $1.9 billion over the 2006–2010 period.

Hazmat Safety Programs. The bill would authorize the appropriation of $180 million for hazmat safety programs over the 2006–2010 period. CBO estimates that implementing this provision would cost $168 million over that period. The bill also would require the department to assess the impact of federal laws and regulations on people who decide against transporting hazardous materials. CBO estimates that this study would cost less than $500,000 in fiscal year 2006.

Direct spending and revenues

Table 3 summarizes the estimated effects on direct spending and revenues. The bill would provide contract authority for certain highway traffic and motor carrier safety programs; however, CBO assumes that the outlays for these programs would continue to be controlled by appropriation action and therefore would be discretionary.

The bill also would make funds available without further appropriation for boat safety and sport fish restoration programs. Additionally, it would make certain changes to emergency preparedness fees and grants, and we estimate that those provisions would reduce direct spending by $41 million over the 2005–2006 period and increase such spending by an equal amount in subsequent years. Other changes under the bill would have a net negligible effect on the budget, such as establishing a new federal program for registering motor carrier operators and authorizing the collection and

spending of fees for modernizing the commercial driver's license information system.

The bill would increase certain civil and criminal penalties as well as establish new penalties. CBO estimates that these provisions would increase revenues by about $10 million over the 2006–2015 period and would increase direct spending by about half that amount over the same period.

TABLE 3.—ESTIMATED EFFECTS ON DIRECT SPENDING AND REVENUES UNDER THE SURFACE TRANSPORTATION SAFETY IMPROVEMENT ACT OF 2005

	By fiscal year, in millions of dollars—									
	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015
CHANGES IN DIRECT SPENDING										
Baseline Spending for Safety Transportation Programs:										
Estimated Budget Authority	721	721	721	721	721	721	721	721	721	721
Estimated Outlays	0	0	0	0	0	0	0	0	0	0
Proposed Changes:										
Highway Traffic Safety Programs:										
Estimated Budget Authority	402	417	434	452	452	452	452	452	452	452
Estimated Outlays	0	0	0	0	0	0	0	0	0	0
Motor Carrier Safety Programs:										
Estimated Budget Authority	63	75	85	98	98	98	98	98	98	98
Estimated Outlays	0	0	0	0	0	0	0	0	0	0
Spending of Boat Safety Balances:										
Estimated Budget Authority	28	22	17	12	18	0	0	0	0	0
Estimated Outlays	8	15	19	17	17	11	6	2	1	1
Hazmat Safety Programs:										
Estimated Budget Authority	0	0	0	0	0	0	0	0	0	0
Estimated Outlays	0	−26	−15	0	2	7	12	11	5	4
Crime Victims Fund:										
Estimated Budget Authority	1	1	1	1	1	1	1	1	1	1
Estimated Outlays	1	1	1	1	1	1	1	1	1	1
Total Changes:										
Estimated Budget Authority	494	515	537	563	569	551	551	551	551	551
Estimated Outlays	9	−10	5	18	20	19	19	14	7	6
Direct Spending Under the Bill for Safety Programs:										
Estimated Budget Authority	1,215	1,236	1,258	1,284	1,290	1,272	1,272	1,272	1,272	1,272
Estimated Outlays	9	−10	5	18	20	19	19	14	7	6
CHANGES IN REVENUES										
Estimated Revenues	1	1	1	1	1	1	1	1	1	1

Highway Traffic and Motor Carrier Programs. CBO's current baseline projects an annual level of contract authority for all highway traffic and motor carrier safety programs of $721 million. Over the 2006–2009 period, the bill would provide about $2 billion in contract authority above the baseline level.

The Balanced Budget and Emergency Deficit Control Act specifies that an expiring mandatory program with current-year outlays in excess of $50 million be assumed to continue at the program

level in place when it is scheduled to expire. Following this assumption, CBO projects that, under this legislation, $550 million in contract authority would be available for those safety programs each year beginning in 2010 above the current baseline level.

Thus, over the 2006–2015 period, CBO estimates that the bill would provide $4.4 billion of contract authority above baseline assumptions for Highway Safety Programs and about $0.9 billion more for Motor Carrier Safety Programs.

Spending of Balances in the Boat Safety Account. Title V would make available without further appropriation balances of the boat safety account of the ARTF. Under the bill, the current fund balance of $92 million and $5 million of interest that would be earned after the legislation's enactment would be made available in specified amounts over the 2006–2010 period. Such amounts would be distributed to the U.S. Coast Guard and the U.S. Fish and Wildlife Service for boat safety and sport fish restoration programs carried out under the Dingell-Johnson Sport Fish Restoration Act. CBO estimates that enacting this provision would increase direct spending by $8 million in fiscal year 2006 and by $97 million over the 2006–2015 period.

Hazmat Safety Programs. Under current law, DOT collects fees from shippers and carriers of hazardous materials. The department also provides grants to emergency responders for training and planning activities related to the transportation of hazardous materials. CBO estimates that DOT will collect and spend $14 million each year over the 2006–2015 period for this activity. The bill would increase that amount to $28 million each year; however, because the department is likely to collect the increase in fees at a different rate than it will spend the increase, CBO estimates those changes would decrease direct spending by $41 million over the 2007–2008 period and then increase direct spending by the same amount over the 2009–2015 period. In total, CBO estimates that the net impact of changes to the fees and grants would not be significant over the next 10 years.

Registration of Motor Carriers. In addition to providing contract authority for the motor carrier safety programs, the bill would establish a new federal program for registering operators of motor carriers. Under this program, each state would collect fees from motor carrier operators and provide those fees to the federal government. The federal government would use the fees to provide grants to states for improving the safety of motor carriers. CBO estimates the federal government would collect and spend between $25 million and $30 million each year under the new program; however, because the government is likely to spend the grants very quickly, CBO estimates the net budgetary impact of establishing this program would not be significant in any year.

Modernization of the Commercial Driver's License Information System. The bill would allow the Department of Transportation to collect and spend certain fees for modernizing the commercial driver's license information system. Currently, such fees are collected by the American Association of Motor Vehicle Administrators on behalf of DOT and spent by that organization for such purposes. Starting in 2007, the bill would allow that any fees collected in excess of the costs of operating the commercial driver's license system would be transferred to the DOT and spent on the modernization

plan outlined in the bill. CBO expects that such collections and spending could amount to a few million per year and would have a negligible net effect on the budget.

Revenues and the Crime Victims Fund. The bill would raise the maximum civil and criminal penalty amounts imposed on individuals for violations of certain regulations relating to motor carriers, movers of household goods, and transportation of hazardous materials. In addition, the bill would establish several new civil and criminal penalties for various other transportation safety violations. In total, CBO estimates that doing so would increase governmental receipts by $1 million in 2006 and about $10 million over the 2006–2015 period. Half of these amounts would result from civil penalties, and half would result from criminal penalties. Collections of civil penalties are recorded in the budget as revenues. Criminal penalties are recorded as revenues then deposited in the Crime Victims Fund and later spent, thus the net impact on the budget in each year would be negligible.

Estimated impact on state, local, and tribal governments: This bill contains several intergovernmental mandates as defined in UMRA. Although CBO cannot determine the exact cost of all of the mandates in the bill, we estimate that their aggregate costs would fall significantly below the threshold established by that act ($62 million in 2005, adjusted annually for inflation).

Intergovernmental mandates

Unified Carrier Registration System. Federal law currently prohibits states from taxing all motor carriers, other than agricultural or private motor carriers, unless they participate in the Single State Registration System (SSRS)—a mandate as defined by UMRA. This bill would terminate the SSRS and replace it with the Unified Carrier Registration System (UCR), an online system under which states would continue to collect information required by the federal government and in turn collect fees from covered motor carriers. While this change would not be a new mandate, it would affect the cost of complying with the existing mandate.

The costs incurred by states to administer and enforce federal registration systems would increase somewhat because the UCR would encompass private and agricultural carriers—classes of carriers now exempt from federal registration and financial responsibility standards. On balance, though, CBO expects that states would incur little additional costs and would benefit from efficiencies generated by the online system, particularly after the initial years.

The addition of private and agricultural carriers also would preempt the limited authority states now have to register and tax these motor carriers outside of a federal registration system. According to state and industry sources, however, states collect only a minimal amount of revenue from these carriers, so losses resulting from this preemption would be small.

CBO assumes that the proposed new system would result in collections at least equal to the amount currently collected by states participating in SSRS. Further, the new fee structure would provide a minimum amount of administrative revenue to any newly participating state.

In addition, according to the Federal Motor Carrier Safety Administration, the Secretary may require states to collect certain federal fees from motor carriers. Under current law, motor carriers pay a registration fee to the federal government for operating authority. The administration uses those fees to fund various motor carrier grant programs for the states. Under this unified registration system, states would forward those collections, approximately $25 million to $30 million to the federal government.

Finally, the proposed system would preempt states' authority to require commercial vehicles to display certain forms of identification in addition to those required by DOT. CBO estimates that this preemption would not affect state budgets because, while it would limit the application of state standards to commercial motor vehicles, it would impose no duty on states that would result in additional spending.

Commercial Driver Learner's Permit. Section 152 would expand an existing mandate that requires states' commercial driver's license programs to comply with federal standards. The section would require states to issue learner's permits for commercial drivers. According to state sources, most states already issue such permits, although some of them issue them in a paper format that would have to be upgraded under the bill's requirements. CBO estimates that the current system in most states would meet the requirements of the bill, however, so additional costs would not be large. Furthermore, newly permitting states would likely recover a significant portion of their costs through fees.

Vehicles purchased by Schools. Section 259 would impose a new intergovernmental mandate by prohibiting schools from purchasing, renting, or leasing IS-passenger vehicles to transport students unless those vehicles comply with standards prescribed for school buses. This mandate would not impose significant additional costs on state, local, or tribal governments, because it is substantially the same as a requirement now imposed on dealers that sell vehicles to schools. The new requirement would apply to purchases of new and used vehicles, however, while the existing requirement applies only to new vehicles.

Other Mandates. The bill includes other provisions that would preempt state regulation of motor carriers and licensing of commercial motor vehicle operators. It would broaden an existing federal preemption of state laws and regulations governing commercial motor vehicle safety, and another concerning transportation of property. It also would give the federal government the authority to overrule a state action to deny a hazardous materials endorsement to a commercial driver's license. These preemptions generally would impose no duties on state, local, or tribal governments that would result in additional costs.

Other impacts

The bill contains many other provisions that would impose new conditions for receiving federal assistance or new requirements for participating in voluntary federal programs. Any additional costs to states from these provisions would be incurred voluntarily. States that participate in federal programs to enforce commercial motor vehicle and highway safety regulations receive various forms of federal assistance to do so, including grants from the Motor Carrier

Safety Assistance Program and other monies from the Highway Trust Fund. This bill would reauthorize those grant programs.

Etimated Impact on the private sector: The bill contains numerous mandates as defined in UMRA that would affect private-sector entities in the transportation industry—manufacturers of motor vehicles, motor carriers, shippers and carriers of hazardous materials, and businesses involved in the transportation of household goods. CBO cannot determine whether the aggregate cost of the private-sector mandates in the bill would exceed the annual threshold established in UMRA ($123 million in 2005, adjusted annually for inflation) because some of the requirements established by the bill would hinge on future regulatory action, about which information is not available.

Safety standards for motor vehicles

The bill would impose numerous mandates addressing motor vehicle safety. Provisions in the bill affecting safety standards include three mandates with small costs, three with undetermined costs because the costs would depend on future rulemaking, and one potential mandate that would depend on a determination by the Secretary of Transportation.

Safety Labeling Requirement. Section 257 would require that automobile manufacturers add a safety rating regarding impact crash and rollover resistance tests under the New Car Assessment Program on the label that they currently affix to the automobile. According to industry representatives, the incremental cost to add this information to the label would be minimal.

Power Window Switches. Section 258 would require that the Department of Transportation upgrade its standards to require that power windows in motor vehicles weighing not more than 10,000 pounds have switches that raise the window only when the switch is pulled up or out. According to government and industry representatives, several major vehicle manufacturers currently use the push-pull switches across all or part of their model line, therefore, CBO estimates that the cost to comply with this mandate would be small.

Vehicles Purchased by Schools. Section 259 would prohibit a school from purchasing, renting, or leasing 15-passenger vehicles to transport students unless those vehicles comply with standards prescribed for school buses. Under current law, a dealer can sell a vehicle to a school only if it complies with standards for school buses. The new requirement would apply to purchases of new and used vehicles, however, while the existing requirement applies only to new vehicles. CBO estimates that the cost to private schools to comply with this mandate would not be great since it is the same requirement currently imposed on dealers.

The cost to comply with the following two mandates would depend on the details of future regulations:

• Vehicle Rollover and Crash Mitigation. Section 251 would require manufacturers of new passenger motor vehicles sold in the United States with a gross vehicle weight of up to 10,000 pounds to comply with regulations that the Secretary determines are necessary to reduce the death and injuries caused by passenger vehicle rollovers. The rules must reduce rollovers by using new tech-

nologies, reduce ejections of passengers from vehicles that do rollover, and protect occupants in rollover accidents.

• Side-Impact Crash Protection. Section 252 would require manufacturers of automobiles to comply with standards designed to enhance passenger motor vehicle occupant protection, in all seating positions, in side impact crashes.

Safety Belt Use Reminders. Section 256 would allow NHTSA to require a safety belt use reminder. According to NHTSA's publication, "Initiatives to Address Safety Belt Use," issued in July 2003, the agency currently encourages manufacturers to voluntarily install enhanced safety belt reminder systems on all vehicles and would continue to do so under the bill. If enough manufacturers do not install such systems voluntarily, however, NHTSA could issue a rule making the requirement mandatory. Currently, more than half of the new vehicles have some type of enhancement to encourage the use of seat belts. If the Secretary determines that it is necessary to mandate the installation of such technologies, CBO estimates that the incremental cost to the manufacturers could range from $2 million to $24 million annually. The incremental cost to the industry would depend on the number of vehicles not in compliance at the time such a rule went into effect.

New requirements for private motor carriers

Unified Carrier Registration (UCR). Under Section 134, private motor carriers and exempt motor carriers would be required to pay a new federal registration fee under the UCR. A private carrier is a person who is the owner of the property being transported for a commercial enterprise that includes manufacturers, distributors, and retailers. Exempt carriers are those operating only in specific urban areas, carrying agricultural products, and intermodal carriers. Currently, only for-hire carriers (persons providing motor vehicle transportation for compensation) pay a federal registration fee. Based on government and industry sources, CBO estimates that the private and exempt motor carriers would be required to pay $20 million annually beginning in 2007.

Financial Responsibility for Private Motor Carriers. Section 112 would require private motor carriers to file the same evidence of financial responsibility that is required for for-hire carriers. According to industry sources, most private motor carriers already meet the financial responsibility requirements in this section. CBO expects that the costs of this private-sector mandate would not be great.

Intermodal equipment safety regulations

Section 127 would require the Secretary of Transportation to make safety regulations for intermodal equipment that would be included under the regulations of the Federal Motor Carrier Safety Administration. Intermodal equipment refers to the trailers and container chassis used to haul cargo from one mode of transportation to another. Under the regulations, providers of intermodal equipment would be identified and matched with their equipment by unique identifying numbers. In addition, providers would be required to inspect, repair, and maintain certain intermodal equipment and keep repair and maintenance records. Currently, motor carriers are responsible for the condition of intermodal equipment

while it is being used on the highway. The safety regulations described in this section would transfer that responsibility to the provider and would regulate equipment maintenance, which would impose a private-sector mandate on providers of intermodal equipment. The incremental costs to the industry would consist of the cost of applying the numbers for providers, the administrative costs of recordkeeping, and any additional costs of complying with the safety regulations to be set under the bill. CBO has no basis for estimating the costs of complying with the new safety standards.

Requirements for transporters and shippers of hazardous materials

Section 329 would increase registration fees on persons transporting (or causing to be transported in commerce) certain hazardous material. CBO estimates that the increase in those fees for carriers and shippers of hazardous materials would be $15 million annually for 2006 through 2008 and $13 million for 2009.

Section 330 would require shippers of hazardous material to retain shipping papers or an electronic format of those papers for three years with the paper or electronic format to be accessible through the shipper's principal place of business during that period. Shipping papers must accompany each hazardous material's package and they contain information about the materials being transported, emergency contact numbers, and the shipper's certification. Currently, shippers are required to retain the shipping paper or electronic image for one year. CBO estimates that the direct cost to retain such information for two additional years would be minimal.

Household goods transportation reform

The bill also would impose private-sector mandates related to consumer protection on persons engaged in the transportation of household goods in interstate or foreign commerce. Based on information from government sources, CBO estimates that the costs of those mandates would be small. The bill would require that movers:

- Supply customers with the DOT publication, "Ready to Move?" at the time that a written estimate is provided;
- Conduct a visual inspection of the household goods to be transported and provide a revised written estimate if the estimated charges are different from an earlier nonbinding written estimate that was done without a visual inspection;
- Comply with additional requirements for registration, including providing DOT with written evidence of participation in an arbitration program, identifying their tariff and providing a copy of the notice of the availability of that tariff for inspection, and providing evidence of their knowledge of and compliance with regulations related to consumer protection; and
- Disclose information regarding business relationships with any other motor carrier, freight forwarder, or broker of household goods within the previous three years of the time of disclosure.

Estimate Prepared by: Federal Spending: Lisa Cash Driskill and Deborah Reis. Federal Revenues: Annabelle Bartsch. Impact on State, Local, and Tribal Governments: Marjorie Miller. Impact on the Private Sector: Jean Talarico, Selena Caldera, Craig Cammarata, and Paige Piper/Bach.

Estimate approved by: Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

REGULATORY IMPACT STATEMENT

In compliance with subsection (b)(2) 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 paragraph (1) of that subsection in order to expedite the business of the Senate.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title

This section established that this Act may be cited as the "Surface Transportation Safety Improvement Act of 2005".

Section 2. Amendment of United States Code

Unless otherwise stated, amendments made by this Act are to title 49, United States Code. Also, amendments in subtitle A of title II of this Act are to title 23, United States Code, unless otherwise stated.

Section 3. Table of contents

This section includes the table of contents.

TITLE I—MOTOR CARRIER SAFETY

SUBTITLE A—MOTOR CARRIERS

Section 101. Short title

This section establishes that this title may be referred to as the "Motor Carrier Safety Reauthorization Act of 2005".

Section 102. Contract authority

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

Section 103. Authorization of appropriations

This section would authorize the following appropriations from the Highway Trust Fund for FMCSA safety programs (excluding MCSAP) for FYs 2006 through 2009.

For administrative expenses of the Federal Motor Carrier Safety Administration:

- FY 2006 $211,400,000
- FY 2007 $217,500,000
- FY 2008 $222,600,000
- FY 2009 $228,500,000

Border Enforcement Grants:

- FY 2006 $33,000,000
- FY 2007 $34,000,000
- FY 2008 $35,000,000
- FY 2009 $36,000,000

$4,000,000 for each of FYs 2006 through 2009 for the performance and registration information system management grant program.

Commercial driver's license and driver improvement program grants:

- FY 2006 $23,000,000
- FY 2007 $23,000,000
- FY 2008 $24,000,000
- FY 2009 $25,000,000

$25,000,000 for each of FYs 2006 through 2009 for carrying out the commercial vehicle information systems and networks deployment program.

CDLIS Modernization

- FY 2006 $2,000,000
- FY 2007 $6,000,000
- FY 2008 $6,000,000
- FY 2009 $6,000,000

The amounts made available under the Highway Trust Fund are to remain available until expended.

Section 104. High risk carrier compliance reviews

This section would provide funds for the Secretary to complete compliance reviews on motor carriers that pose the highest safety risk. At a minimum, these compliance reviews will be conducted whenever a motor carrier is rated at a category A or B for 2 consecutive months.

Section 105. Overdue reports, studies, and rulemakings

The section would require the Secretary to submit a schedule for the completion of several outstanding reports, studies and rulemaking proceedings to Congress within 6 months of enactment. Every 6 months after the initial report, until all outstanding reports, studies, and rulemakings are submitted, the Secretary shall submit a revised schedule of completion, indicating the progress made. The section also would require FMCSA to issue a report on the status of five 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.

Section 106. Amendments to the listed reports, studies and rulemaking proceedings

This section would require the Secretary to require that a safety audit be immediately changed to a compliance review and appropriate actions be taken if there are any safety violations by a new motor carrier entrant. It also would ensure that the Secretary enforces Federal motor carrier safety regulations that apply to interstate CMVs designed to transport between 9 to 15 passengers, regardless of distance traveled.

Section 107. Motor carrier safety grants

This section provides language that would ensure that inspections of motor carriers of passengers are conducted at stations, terminals, border crossings, or maintenance facilities, except in the case of an imminent or obvious hazard. It would provide that a State's training manual for the licensing examination to drive a motor vehicle will include information on best practices for driving safely in the vicinity of motor vehicles. It also provides that a State

must suspend the operation of any vehicle found to be operating without registration or beyond the scope of its registration.

This section would make funds available for activities carried out in conjunction with an appropriate inspection of a CMV to enforce Federal or State regulations, including regulating commercial motor vehicle size and weight limitations at locations other than fixed weight facilities, at ports, or at other specific locations and for the detection of the unlawful presence of a controlled substance in a commercial motor vehicle or on any occupant of the vehicle. These grants are also for enforcement of State traffic laws and regulations designed for the safe operation of commercial motor vehicles.

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.

This section authorizes the following amounts from the Highway Trust Fund to carry out section 31102:

- 2006 $193,620,000
- 2007 $197,490,000
- 2008 $201,440,000
- 2009 $205,470,000

Up to $15,000,000 for each of FYs 2006 through 2009 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. 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. The Secretary is also required to designate up to $29,000,000 for audits of new entrant motor carriers and can withhold these funds from a State or local government that is unable to use government employees to conduct these audits. Should they be unable to do so, the Secretary would be authorized, but not required, to expend the funds directly to carry out new entrant audits in those jurisdictions. The Secretary may also designate $2,000,000 in FY 2006 and up to $6,000,000 for FY 2007 through 2009 for the modernization of the commercial driver's license information system.

This section also 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, 2005.

Section 108. Technical corrections

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.

Section 109. 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.

Section 110. Medical program

Section 110 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, requirements for current valid medical certificates, courses for medical examiners, requirements for the electronic transmittal of applicant and numerical identifiers for any completed medical examination report, and to periodically review a representative sample of the medical examinations reports. 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.

Section 111. Operation of commercial motor vehicles by individuals who use insulin to treat 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 a 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 made in July, 2000.

Section 112. 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.

Section 113. 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.

Section 114. 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 classes typically involve the same vehicles, drivers, dispatchers, mechanics, and safety management controls, and may be involved in the same kind of accidents or violations. 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.

Section 115. 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.

Section 116. 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.

Section 117. Pattern of safety violations by motor carrier management

Some motor carrier managers order, encourage, or tolerate widespread regulatory violations. When caught, these managers sometimes declare bankruptcy, rename the motor carrier, 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. 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 noncompliance, with Federal motor carrier safety standards. In this context, "officer" means owner, director, chief executive officer, chief operating officer, chief financial officer, safety director, vehicle maintenance supervisor, and driver supervisor of a motor carrier. 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 only 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.

Section 118. 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 innovative 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. The Federal share of the cost of activities carried out under a cooperative research and development agreement will not exceed 50 percent, except when there is substantial public interest or benefit, as determined by the Secretary. 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.

Section 119. 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.

Section 120. 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 March 2004, 27 States participated in the PRISM program, also the States of Alaska and New York

have provided the FMCSA with a Letter of Intent to implement 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 out-of-service (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 would be authorized by section 103 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.

Section 121. Commercial vehicle information systems and networks deployment

This section would provide States grants to complete core deployment of the Commercial Vehicle Information Systems and Networks program (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.

Section 122. 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.

Section 123. Foreign commercial motor vehicles

In response to concerns raised by the Department of Transportation's Inspector General regarding foreign commercial motor vehicles operating beyond their operating authority, this section would require FMCSA to provide outreach and training to ensure that States are properly enforcing operating authority requirements for foreign commercial vehicles. Additionally, this section would require a study of whether current or future Canadian and Mexican truck fleets that operate or are expected to operate in the United States meet U.S. truck safety standards. The Committee is concerned that some foreign commercial motor vehicles operating in the United States might not appreciably meet certain U.S. vehicle safety standards required upon manufacture of the vehicle.

However, because the current system of identifying compliance with such standards is not used by foreign commercial motor vehicles and similar safety standards in other nations are not identical to U.S. standards, the present state of compliance with U.S. standards is unclear. The Committee expects the study to address these questions and serve as the basis for later consideration of this issue.

Section 124. Pre-employment safety screening

This section would require the Secretary of Transportation to provide electronic access of commercial motor vehicle accident report information and all driver safety violations contained in the Motor Carrier Management Information System to companies conducting pre-employment screening services for the motor carrier industry. The information released to these companies will require the written consent of the driver applicant, be in accordance with all Federal laws, and will ensure the information is only made available to an authorized company or individual. The use of this pre-screening process is not mandatory and may be used only during the pre-employment assessment of a driver-applicant.

Section 125. Office of intermodalism

This section would allow the Director of the Office of Intermodalism to use funds made available for grants to the States under section 5504 of Title 49, United States Code to provide technical assistance for intermodal data collection. The section also instructs the Director to develop a plan to improve the national intermodal transportation system and report on such improvements. Additionally, the section requires that the Director, in conjunction with the Director of the Bureau of Transportation Statistics, develop common measures to compare transportation investments across modes and to formulate new methodology for measuring the impacts of intermodal transportation.

Section 126. Decals

This section would require that the Commercial Vehicle Safety Alliance (CVSA) shall not restrict the sale of commercial motor vehicle safety inspection decals to FMCSA if FMCSA continues to abide by the agreement it has with CVSA to the extent possible in accordance with the law. CVSA and FMCSA have a long-standing and successful partnership in ensuring the safety of commercial motor vehicles. A recent dispute regarding safety inspection decals between the two entities suggests that processes for resolving disputes should be improved. While the Committee expects FMCSA to live up to its commitments with CVSA, the Committee also believes that inspection decals should not be unilaterally withheld from the Federal agency responsible for ensuring motor carrier safety.

Section 127. Roadability

This section would require the Secretary, not later than 1 year after enactment, to issue regulations establishing a program to ensure that intermodal equipment used to transport intermodal containers is safe and systematically maintained. This language is generally consistent with a private sector agreement on intermodal equipment interchanged between railroads, steamship lines and

trucking companies. This section places the maintenance responsibility on the companies that provide the equipment and control the daily disposition of it. It would require the Secretary to promulgate regulations identifying intermodal equipment providers responsible for the inspection and maintenance of intermodal equipment and matching intermodal equipment to the equipment provider through a unique identifying number. A rulemaking proceeding for regulations under this section shall be established within 120 days after enactment of this Act.

Under this section, any intermodal equipment that fails to comply with applicable safety regulations may be placed out of service and the Secretary, or his designee, may inspect intermodal equipment and copy related maintenance and repair records. This section of the bill preempts any law, regulation, order or other requirement of a State, political subdivision of a State, or tribal organization.

This section defines the terms "intermodal equipment", "intermodal equipment interchange agreement", "intermodal equipment provider", and "interchange".

Section 128. Motor carrier regulations

This section would cause the regulations regarding maximum driving and on-duty time for drivers used by motor carriers not to apply, during planting and harvesting periods as determined by the States, to drivers transporting agricultural commodities or farm supplies for agricultural purposes, if the transportation is limited to an area within a 100 mile radius from the source of the commodities or the distribution site for the farm supplies. This section also provides a definition for the terms "agricultural commodity" and "farm supplies". The section would also clarify the regulations regarding commercial motor vehicles providing transportation of property or passengers to or from a theatrical or television motion picture production and also for utility service vehicles.

SUBTITLE B—UNIFIED CARRIER REGISTRATION

Section 131. Short title

The subtitle may be cited as the "Unified Carrier Registration Act of 2005".

Section 132. 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.

Section 133. Inclusion of motor private and exempt carriers

This section would amend 49 U.S.C. 13905 to define "registration" for purposes of the Unified Carrier Registration System (UCRS) and the UCRS Plan and Agreement as the filing by a carrier of a MCS Form 150 to obtain a DOT identification number. The definition would apply to 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.

Section 134. 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 early 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.

Section 135. 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 recyclables. 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 UCRS to carriers that operate solely in intrastate commerce.

Section 136. Identification of vehicles

Section 136 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 International Fuel Tax Agreement, or in connection with Federal hazardous materials regulations or Federal vehicle inspection standards.

Section 137. Use of UCR agreement revenues as matching funds

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

SUBTITLE C—COMMERCIAL DRIVER'S LICENSES

Section 151. CDL task force

This section would require the Secretary to convene a task force to study and report on the need for improvements to the CDL program in order to improve safety. The task force 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 task force 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.

Section 152. 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.

Section 153. Grants to States for commercial driver's license improvements

This section would allow the Secretary to make a grant to a State to improve the implementation of the commercial driver's license program, providing that the State is making a good faith effort toward substantial compliance with the requirements made in this bill. The State may use this grant for expenses related to its commercial driver's license program, but the grant may not be used to rent, lease, or buy land or buildings.

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. 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.

Section 154. Modernization of CDL information system

This section would require the Secretary of Transportation to establish an account to be known as the "Information System Modernization Account"(ISMA). Fees in excess of the costs of operating the information system collected for any fiscal year beginning after FY 2006 by the Secretary of Transportation, or an organization that represents the interests of the States, would be credited to the ISMA. These funds would be available only for the purpose of modernizing the information system. This section would also require the Secretary to establish a comprehensive plan for modernization of the information system and set a date by which each State must convert to the new information system. Also, within one year of enactment of this Act, the Inspector General of the Department of

Transportation shall perform a baseline audit of the information system that includes an assessment of the validity of the data in the information system, an assessment of the extent to which convictions are validly posted on a driver's record, recommendations to the Secretary on how to update the baseline audit annually to ensure that any shortcomings in the information system are addressed, a methodology for conducting the update, and any recommendations the Inspector General feels necessary to improve the integrity of the data collected.

TITLE II—HIGHWAY AND VEHICULAR SAFETY

Section 201. Short title

This section would establish that this title may be cited as the "Highway and Vehicular Safety Reauthorization Act of 2005".

SUBTITLE A—HIGHWAY SAFETY GRANT PROGRAM

Section 211. Short title

The subtitle is entitled the "Highway Safety Grant Program Reauthorization Act of 2005".

Section 212. 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 $696 million for FY 2006, $711 million for FY 2007, $728 million for FY 2008, and $746 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.

Section 213. Highway safety programs (section 402)

This program would be reauthorized for FYs 2006 through 2009 at an average annual funding level of $217 million, a 40 percent increase from the TEA–21 level. These grants, allocated according to a formula, fund States' safety programs, such as safety belts, drunk driving, motorcycle, pedestrian and bicycle safety, emergency medical services, traffic law enforcement and roadway safety.

Section 214. Highway safety research and outreach programs (section 403)

This program would be reauthorized for FYs 2006 through 2009 at an average annual funding level of $142 million. These programs focus on the research and development of safety countermeasures related to impaired driving, occupant protection, traffic law enforcement and criminal justice, licensing, motorcycle, pedestrian, bicycle, teen drivers and emergency medical services. The States use this research to model their safety programs for the most impact on saving lives and reducing injuries. This section also would provide $24 million a year to NHTSA to launch national advertising campaigns to increase seat belt use and reduce drunk driving during holiday periods. Launching these advertising campaigns at the

national level is much more cost effective than individual States buying advertising at the local level.

Section 215. National highway safety advisory committee technical correction

This section would make a minor technical correction to section 404(d) of title 23, United States Code.

Section 216. Occupant protection grants (section 405)

This new program would be funded at an average annual level of $154 million. The program would grant money to States that enact a new primary seat belt law and to States that have already enacted a primary seat belt law. States that have already enacted a primary seat belt law would receive a one-time grant over the life of the bill equal to 250 percent of their FY 2003 grant from section 402. States that enact a new primary seat belt law after December 31, 2002 would receive a one-time grant over the life of the bill equal to 500 percent of their FY 2003 grant from section 402. Most of this grant money may be used for highway safety construction purposes.

Section 217. Older driver safety; law enforcement training (section 406)

This section would amend section 406 by adding an older driver research and demonstration program and a law enforcement training program to train law enforcement personnel in police chase techniques that are consistent with guidelines issued by the International Association of Chiefs of Police.

Section 218. Emergency medical services (section 407)

This section would create a new section 407(a) of title 23, United States Code, directing the Secretary and the Secretary of Homeland Security to establish jointly a Federal Interagency Committee on Emergency Medical Services (Interagency Committee). One purpose of the Interagency Committee would be to 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.

Section 219. Repeal of authority for alcohol traffic safety programs

This section would eliminate section 408 of title 23, United States Code, which would be replaced largely by a rewritten section 410.

Section 220. Impaired driving program (section 410)

This program would be reauthorized for FYs 2006 through 2009 at an average annual funding level of $132 million. States can qualify for a grant by enacting four out of the following seven criteria in FY 2006 and FY 2007, and by enacting five out of the following seven criteria in FY 2008 and FY 2009. States may choose from the following menu of policy options: (1) impaired driving check points and saturation patrols; (2) outreach to judges and prosecutors to improve prosecution of drunk driving cases; (3) cre-

ate an information system for government use that tracks drunk driving arrests and convictions; (4) reduce for two years in a row the percentage of fatally-injured drivers with a blood alcohol content of 0.08 percent; (5) a program that returns State and local fines collected for drunk driving offenses back into drunk driving prevention programs; (6) enact a law that creates greater penalties for drivers convicted of driving with a blood alcohol content of 0.15 percent or higher; and (7) create specialized courts for handling only impaired driving cases. The ten States with the highest rate of impaired driving fatalities will be eligible for an additional grant.

Section 221. State traffic safety information system improvements (section 412)

This section would create a new discretionary grant program, funded at $45 million for each of FYs 2006 through 2009 to encourage States to improve their traffic records systems by increasing the efficiency and uniformity of data collection and access through upgrading data collection systems. The purpose is to develop a more accurate data base of vehicle crash characteristics that will allow traffic safety professionals to better identify traffic safety problems, and develop effective countermeasures on a more timely basis.

Section 222. NHTSA accountability

This section would create a framework for advancing NHTSA's management of its grant programs and its program recommendations to the States. It would require a review of each State highway safety program at least once every three years along with recommendations on how each State may improve the management and oversight of its grant activities. It would also develop management and program review guidelines for the NHTSA Regional Offices. The General Accounting Office will conduct a study on the effectiveness of the advice and recommendations given to the States by NHTSA. 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.

Section 223. Grants for improving child passenger safety programs

This section would authorize grants to States to implement Anton's Law, which is aimed at increasing the use of booster seats for small children.

Section 224. Motorcyclist safety training and motorist awareness programs

This section would create a new section 414 of title 23, United States Code, to provide grants to States to implement motorcycle safety training programs based on specific criteria, including improvements to motorcyclist safety training, program delivery, and public awareness.

SUBTITLE B—SPECIFIC VEHICLE SAFETY-RELATED RULINGS

Section 251. Vehicle rollover prevention and crash mitigation

This section would require the Department to issue a comprehensive set of rules to reduce deaths and injuries caused by passenger vehicle rollovers. The rules must reduce rollovers by promoting using new technologies, reduce ejections of passengers from vehicles that do rollover, and protect occupants in rollover accidents. In formulating the safety standards, the Secretary shall consider the ejection mitigation capabilities of safety technologies, such as advanced side glazing, side curtains, and side impact air bags. The bill includes deadlines for issuing these rules.

Section 252. Side-impact crash protection rulemaking

This section would require NHTSA to complete a rulemaking proceeding under chapter 301 of Title 49 to establish a performance standard to enhance occupant protection in side impact crashes.

Section 253. Tire research

This section would require the Secretary to transmit a report on research conducted to address tire aging and provide recommendations for a potential rulemaking regarding tire aging.

Section 254. Vehicle backover avoidance technology study

This section would require NHTSA to study technologies for automobiles that would reduce injuries and deaths caused by cars and trucks backing up.

Section 255. Nontraffic incident data collection

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

Section 256. Safety belt use reminders

This section would repeal existing law that limits audible seat belt reminders to no more than eight seconds and requires the Secretary to conduct a study of advanced safety belt reminder systems to help achieve further gains in safety belt use.

Section 257. Amendment of Automobile Information Disclosure Act

This section would amend the Automobile Information Disclosure Act by requiring automobile safety "star" ratings compiled by NHTSA's New Car Assessment Program (NCAP) to be placed on the window sticker of new automobiles in a similar manner to the gas mileage information.

Section 258. Power window switches

This section would require NHTSA to issue a rulemaking by April 2007 in which power windows in automobiles not in excess of 10,000 pounds must have switches that would raise the window only when the switch is pulled up or out.

Section 259. 15-Passenger vans

This section would require NHTSA to include the testing of 15-passenger vans as part of its rollover resistance program. It would also prohibit school systems from purchasing or leasing a motor vehicle designed to transport 15 passengers if the vehicle will be used to transport school children to or from school or a school-related event unless that vehicle complies with all existing Federal Motor Vehicle Safety Standards prescribed for school buses.

Section 260. Authorization of appropriations

This section would authorize the following amounts for NHTSA to carry out the above rulemakings:

- $136 million for FY 2006,
- $142.8 million for FY 2007,
- $149.9 million for FY 2008, and
- $157.4 million for FY 2009.

TITLE III—HAZARDOUS MATERIALS

Section 301. Short title

This section contains the short title and table of contents.

SUBTITLE A—GENERAL AUTHORITIES ON TRANSPORTATION OF HAZARDOUS MATERIALS

Section 321. Purpose

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

Section 322. 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 that the terms include the self-employed, including owner-operators of motor vehicles, vessels or aircraft, and temporary or part time employees.

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. Also, the definition of "imminent hazard" would be further clarified.

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, and would include those that design, manufacture, fabricate, inspect, mark, maintain, recondition, repair, or test a package, container, or packaging component for use in the transportation of hazardous materials in commerce.

Section 323. General regulatory authority

This section would amend subsection 5103(a), title 49, United States Code, to update the terminology used to describe materials the Secretary is required to designate as hazardous under that subsection. It would also amend subsection 5103(b)(1)(A) to conform with the definition changes made to section 5102.

Section 324. 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.

Section 325. Background checks for foreign drivers hauling hazardous materials

This section 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. In addition, the bill improves procedures for hazmat background checks to eliminate redundancy, improve notification, and ensure due process and provides for a study of the capacity to perform background checks currently.

Section 326. Representation and tampering

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

Section 327. Transporting certain material

This section would amend section 5105 by deleting subsection (d) because the required study has been completed and submitted to Congress.

Section 328. 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.

Section 329. Registration

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

To reduce registrants' reporting requirements, a registrant 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 exempted 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 $3,000. The Secretary would be directed to reinstate the fees that were suspended due to regulatory action.

Section 330. 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 retain shipping papers for three years after the shipping paper is provided to the carrier, while maintaining the current one year retention requirement for carriers.

Section 331. Rail tank cars

This section would repeal section 5111 as the Secretary has further specified requirements for rail tank cars.

Section 332. Unsatisfactory safety ratings

This section would provide that an unfit owner or operator transporting hazardous material in commerce, as determined by the Secretary, shall be subject to the civil penalties in section 5123 and the criminal penalties in section 5124.

Section 333. 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.

Section 334. Planning and training grants; 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. In-

formation on the allocation and uses of the grants would be made available to the public on an annual basis.

Section 335. 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 for the renewal of special permits for successive four-year 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 FY 1990. The PHMSA 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.

Section 336. 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 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. In addition, States would be authorized to participate in the uniform forms and procedures program recommended by the Alliance for Uniform Hazmat Transportation Procedures.

Section 337. 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 also would provide enhanced authority for DOT officials to discover hidden shipments of hazardous materials. Section 5121(c) is amended to clarify and enhance the inspection and enforcement 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. The Committee expects that the

Secretary will take into consideration the impact of these procedures on the resumption of transit for time sensitive medical material such as radiopharmaceuticals and radionucleides. 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.

The Secretary would be authorized 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.

Section 338. 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.

Section 339. 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. Civil penalties for death, serious illness, or severe injury would be increased to up to $100,000 to serve as a deterrent against violations that could led

to such outcomes. Maximum civil penalty amounts for other violations are set at the current level of $32,500 and violations related to employee training will be subject to a minimum penalty of $450. A violator would be liable for interest that accrues on a civil penalty.

Section 340. 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 section also would provide that a separate violation occurs for each day a violation continues.

Section 341. 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.

Subsection 5125(j) 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(i) 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.

Section 342. 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 supersede postal laws and regulations under titles 18 or 39 only 'in case of an imminent hazard.'

Section 343. 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 judi-

cial review of DOT and Federal Aviation Administration aviation orders (49 U.S.C. 46110).

Section 344. Authorization of appropriations

This section would authorize appropriations of $24,940,000 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 FYs 2005 through 2009 to carry out section 5107(e) (training grants);
- $200,000 for each of FYs 2005 through 2009 to carry out section 5115 (training curriculum for the public sector);
- $21,800,000 for each of FYs 2005 through 2009 for sections 5116(a) and (b) to be spilt as follows:
  - $5,000,000 for section 5116(a);
  - $7,800,000 for 5116(b); and
  - 35 percent of the remainder for 5116(a) and 65 percent of the remainder for 5116(b). The Secretary may increase the amount for 5116(b) if the Secretary determines it appropriate based upon the relative training and planning needs of individual applicants.
- $150,000 for each of FYs 2005 through 2009 to carry out section 5116(f) (monitoring and technical assistance to the public sector);
- $150,000 for each of FYs 2005 through 2009 to carry out section 5116(i)(4) (administrative costs);
- $1,000,000 for each of FYs 2005 through 2009 to carry out section 5116(j) (supplemental training grants);
- $750,000 for each of FYs 2005 through 2009 to carry out section 5116(i)(3) (for publication and distribution of the Emergency Response Guidebook).

Section 345. 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.

Section 346. Technical corrections

This section makes technical corrections to the highway routing of hazardous material, air transportation of ionizing radiation material, and international uniformity of standards and requirements.

SUBTITLE B—OTHER MATTERS

Section 361. Administrative authority for pipeline and hazardous materials safety administration

This section would provide PHMSA 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 PHMSA with the authority to enter into "other transactions" agreements to conduct research into transportation service and infrastructure assurance and to carry out PHMSA'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. The Committee understands that the flexibility provided by this authority is thought generally to improve the acquisition process and promote shared government-industry responsibility for achieving desired milestones.

Section 362. 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.

Section 363. Criminal matters

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

Section 364. 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.

Section 365. Information on hazmat registrations

This section would require PHMSA 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, PHMSA also would be required to notify FMCSA whenever a motor carrier initially registers to handle hazmat.

Section 366. 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 hazmat 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.

Section 367. National first responder transportation incident response system

This section would authorize $5,000,000 annually for FYs 2005 through 2009 for Operation Respond to update the Operation Respond Emergency Information System (OREIS) and permits the Secretary to require the Operation Respond system function across multiple transportation modes. The Operation Respond Institute (ORI) is a not-for-profit, public/private partnership serving the emergency response community with technology tools for safety and security incidents occurring on North American railroads and highways. ORI's principal tool, OREIS provides first responders with real-time information about the hazardous materials contents of railcars and motor carriers that have been involved in incidents and chemical-specific response guidance. OREIS also contains passenger railroad schematics, chemical databases, and other resources that allow for expedited response to hazmat and transportation incidents, emergencies, and disasters. The Committee ex-

pects to ORI to improve and expand the current system to allow it to reach more members of the first responder community with improved data quality and timeliness. This expanded program should also focus on the needs of responders in rural areas, in and around the nations inland and coastal ports and at border crossings. The Operation Respond software and messaging system should be integrated with other relevant technologies, such as fleet tracking, automatic crash notification, E-911, wireless and highway, railroad, and transit GIS systems. ORI should consult with the Department of Transportation, the Department of Homeland, State and locals officials, and the transportation industry in designing the expanded system and the Secretary of Transportation should oversee this expansion to ensure it is progressing in accordance with the public interest. The Committee believes that future upgrades and expansions of this system should be financially largely by the users of this system.

Section 368. Hazardous material transportation plan requirements

This section would exempt farmers as defined in the section from certain hazardous materials transportation plans for local farm-related shipments within 150 miles of their farm.

Section 369. Welded rail and tank car safety improvements

This section would require the Federal Railroad Administration (FRA) to validate a predictive model for certain tank car standards. It would also initiate a rulemaking to develop appropriate standards and complete an analysis of the impact resistance of steel used in pressurized tank cars built before 1989. Additionally, the section directs the FRA to require railroads to improve inspection procedures for continuous welded rail (CWR) track and the identification of cracks in rail joint bars. These provisions follow recommendations made to the FRA by the National Transportation Safety Board following a 2002 railroad derailment in Minot, North Dakota. The section provides an authorization of $1,000,000 for FY 2006 to help encourage quick completion of the ongoing agency work on these provisions.

Section 370. Report regarding impact on public safety of train travel in communities without grade separation

This section would require the Secretary to conduct a study on the impact of blocked highway-rail grade crossings on the ability of emergency responders to perform public safety and security duties, and to report recommendations.

Section 371. Hazardous materials cooperative research program

This section would authorize $2,000,000 for FYs 2006 through 2009 for the Secretary to develop and administer a hazardous materials cooperative research program and require certain specific studies.

SUBTITLE C—SANITARY FOOD TRANSPORTATION

Section 381. Short title

This section sets forth the short title for the Sanitary Food Transportation Act of 2005. This title would reallocate responsibil-

ities for food transportation safety among the U.S. Department of Health and Human Services (HHS), DOT, and the Department of Agriculture.

Section 382. 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 non-food products that could render food products adulterated if 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 non-food 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 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.

Section 383. Department of Transportation requirements

This section would require the Secretary, in consultation with the Secretaries of HHS and 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 Agriculture of any instances of potential food contamination identified during those inspections.

Section 384. 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 IV—HOUSEHOLD GOODS MOVERS

Section 401. Short title

This section establishes that this title may be referred to as the "Household Goods Mover Oversight Enforcement and Reform Act of 2005".

Section 402. 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.

Section 403. 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, as a condition of delivery, under this provision to pay unforeseen additional charges not included in a binding or non-binding estimate that are 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. The section also states that the charges collected at delivery for impracticable operations can not exceed 15 percent of all other charges due at delivery. Post-contract services requested by a shipper after the contract is executed are not covered by this provision.

Section 404. Household goods carrier operations

Current regulations promulgated by FMCSA require that a mover must provide the customer a written estimate of charges and ancillary services and a written inventory of the goods being moved. This section would require that, 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". The written estimate may be either binding or non-binding, and must be based on a visual inspection of the household goods if they are located within a 50 mile radius of the location of the carrier's household goods agent preparing the estimate. 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.

Section 405. 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.

Section 406. Arbitration requirements

This section would require movers to offer shippers arbitration and raises the threshold for bidding arbitration to $10,000 from $5,000 currently. Additionally, 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. The purpose is to investigate whether arbitrators are truly independent of both parties involved in a dispute. Today, arbitrators are selected by the mover and there is concern that the process may favor the mover.

Section 407. 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. 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. The DOT or the STB would be authorized to 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. Application of these provisions is limited to individual shippers, as defined in this section, as the Committee understands that corporate and government shippers generally are better equipped to ensure they receive fair and proper treatment from moving companies than individual shippers.

Section 408. 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 authorities that regulate the movement of household goods, and Federal and local law en-

forcement 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 industries involved in the transportation of household goods, the public, and other interested parties.

Section 409. Information about household goods transportation on carriers' 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.

Section 410. 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. The Secretary would be required to submit an annual report detailing the complaints that were filed and logged over that year.

Section 411. Review of liability of carriers

Within one year after the date of enactment, the Surface Transportation Board (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 with respect to household goods movers.

Section 412. 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.

Section 413. 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 twenty-four 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, United States Code, or imprisonment of up to five years, or both.

Section 414. 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.

Section 415. Additional registration requirements for motor carriers of household goods

This section would require that the Secretary may register a person to provide transportation of household goods only after that person has provided evidence of participation in an arbitration program; identified its tariff and provided a copy of the notice of the availability of that tariff for inspection; provided evidence that it has access to, has read, is familiar with, and will observe all laws relating to consumer protection, estimating, consumers' rights and responsibilities, and options for limitations of liability for loss and damage; disclose any relationship involving common stock, common ownership, common management, or common familial relationships between that person and any other motor carrier within the last 3 years.

TITLE V—RECREATIONAL BOATING SAFETY PROGRAMS

Section 501. Short title

The section would state the title would be entitled the "Sport Fishing and Recreational Boating Safety Act of 2005".

SUBTITLE A—FEDERAL AID IN SPORT FISH RESTORATION ACT AMENDMENTS

Section 511. Amendment of Federal aid in Sport Fish Restoration Act

The section would state that amendments under this subsection refer to the Dingell-Johnson Sport Fish Restoration Act enacted August 9, 1950 (64 State. 430; 16 U.S.C. 777 et seq.).

Section 512. Authorization of appropriations

Section 512 would authorize 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.

Section 513. Division of annual appropriations

This section would amend that Act to authorize annual appropriations for FYs 2006 through 2020 for the various Wallop-Breaux programs of the Sport Fish Restoration Account based on percentages of the amount remaining in the Fund after fixed amount deductions for administration and multi-state grants, which would

allow each program area to share in the benefits of revenue increases. The percentage allocations made under this section would be: (1) 57 percent to the Secretary of the Interior for Sport Fish Restoration, to include a minimum of 15 percent of that amount for boating access; (2) 18.5 percent to the Secretary of the Interior for Coastal Wetlands; (3) 18.5 percent to the Secretary of Homeland Security for State recreational boating safety programs; (4) 2 percent for marine sanitation devices as provided under the Clean Vessel Act; (5) 2 percent for the Secretary of the Interior for qualified projects under the Sport Fishing and Boating Safety Act of 1998; and (6) 2 percent to the Secretary of the Interior for the national outreach effort and communications program. 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 of the Interior after three years shall be transferred to the Secretary of Homeland Security for State recreational boating safety programs.

Section 514. Maintenance of projects

The section would make conforming changes to that Act relating to changes made in section 512 concerning the maintenance of U.S. Fish and Wildlife Service projects.

Section 515. Boating infrastructure

This section would make conforming changes to that Act for the distribution of Boating Infrastructure funds made in section 513.

Section 516. Requirements and restrictions concerning use of amounts for expenses for administration

This section would make conforming changes to that Act regarding the distribution of revenues for administrative purposes under section 513.

Section 517. 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 513 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.

Section 518. Multistate conservation grant program

This section would make conforming changes relating to distribution of funds for the multistate grant program under section 513.

Section 519. Expenditures from boat safety account

This section would amend the Act to authorize the distribution, without further appropriation, of the balance of the Boat Safety Account over FYs 2006 through 2010 to the Coastal Wetlands, Boating Safety, Clean Vessel Act, Boating Infrastructure, and National Outreach and Communications programs.

SUBTITLE B—CLEAN VESSEL ACT AMENDMENTS

Section 531. Grant program

This section would remove the requirement that coastal States receive priority consideration for grant applications.

SUBTITLE C—RECREATIONAL BOATING SAFETY PROGRAM AMENDMENTS

Section 551. State matching funds requirement

Section 551 would reduce the percentage of State matching funds required for the recreational boating safety program from one-half to one-quarter, the same match requirement for Sport Fish Restoration grants. 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.

Section 552. 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.

Section 553. Authorization of appropriations for State recreational boating safety programs

This section 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 requirement that the Coast Guard spend not less than one percent of the boating safety funds to pay investigative and administrative costs. With the total amount of boating safety funds increasing significantly under this Act, the Coast Guard requested that it have more flexibility in this area. Also, it would change the annual amount made available to the Coast Guard for coordinating and carrying out the national recreational boating safety program from $3,333,336 to not more than five percent of the amount of the Trust Fund dedicated to boating safety. Also, it would remove the limitation on the portion of the amount provided to the Coast Guard that is used to ensure manufacturer compliance with safety standards for recreational vessels and associated equipment. Current law limits the Coast Guard from using more than $1,333,336 for manufacturer compliance. This would be changed to 'a minimum of $2,000,000', which would provide the Coast Guard with the flexibility to use additional funds for manufacturer compliance as necessary. Finally, this section would require that boating safety funds provided to the Coast Guard be expended within two succeeding fiscal years. After that time, unexpended funds would be distrib-

uted to the States for boating safety purposes, in addition to the other amounts allocated to the States under this Act.

Section 554. Maintenance of effort for State recreational boating safety programs

This section 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 new section 46 U.S.C. 13107 that would be added by the bill 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.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new material is printed in italic, existing law in which no change is proposed is shown in roman):

AUTOMOBILE INFORMATION DISCLOSURE ACT

SEC. 3. LABEL AND ENTRY REQUIREMENTS.

[15 U.S.C. 1232]

Every manufacturer of new automobiles distributed in commerce shall, prior to the delivery of any new automobile to any dealer, or at or prior to the introduction date of new models delivered to a dealer prior to such introduction date, securely affix to the windshield, or side window of such automobile a label on which such manufacturer shall endorse clearly, distinctly and legibly true and correct entries disclosing the following information concerning such automobile—

(a) the make, model, and serial or identification number or numbers;

(b) the final assembly point;

(c) the name, and the location of the place of business, of the dealer to whom it is to be delivered;

(d) the name of the city or town at which it is to be delivered to such dealer;

(e) the method of transportation used in making delivery of such automobile, if driven or towed from final assembly point to place of delivery; [and]

(f) the following information:

(1) the retail price of such automobile suggested by the manufacturer;

(2) the retail delivered price suggested by the manufacturer for each accessory or item of optional equipment, physically attached to such automobile at the time of its delivery to such dealer, which is not included within the price of such automobile as stated pursuant to paragraph (1);

(3) the amount charged, if any, to such dealer for the transportation of such automobile to the location at which it is delivered to such dealer; *and*

(4) the total of the amounts specified pursuant to paragraphs (1), (2), and [(3).] *(3);*

(g) if 1 or more safety ratings for such automobile have been assigned and formally published or released by the National Highway Traffic Safety Administration under the New Car Assessment Program, information about safety ratings that—

(1) includes a graphic depiction of the number of stars, or other applicable rating, that corresponds to each such assigned safety rating displayed in a clearly differentiated fashion indicating the maximum possible safety rating;

(2) refers to frontal impact crash tests, side impact crash tests, and rollover resistance tests (whether or not such automobile has been assigned a safety rating for such tests);

(3) contains information describing the nature and meaning of the crash test data presented and a reference to additional vehicle safety resources, including http://www.safecar.gov; and

(4) is presented in a legible, visible, and prominent fashion and covers at least—

(A) 8 percent of the total area of the label; or

(B) an area with a minimum length of 4 ½ inches and a minimum height of 3 ½ inches; and

(h) if an automobile has not been tested by the National Highway Traffic Safety Administration under the New Car Assessment Program, or safety ratings for such automobile have not been assigned in one or more rating categories, a statement to that effect.

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DINGELL-JOHNSON SPORT FISH RESTORATION ACT

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] *Sport Fish Restoration and Boating Trust Fund* established by section 9504(a) of the Internal Revenue Code of 1954 the amounts paid, transferred, or otherwise credited to [that Account.] *that Trust Fund, except as provided in section 9504(c) of the Internal Revenue Code of 1986.* 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 57 percent of the balance of each annual appropriation to be apportioned among the States, as provided for in section 4(c).*

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 2019.

[(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) FISCAL YEAR 2004.—For fiscal year 2004, 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 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 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) FIRST 8 MONTHS OF FISCAL YEAR 2005.—For the period of October 1, 2004, through May 31, 2005, of the balance of each annual appropriation remaining after making the distribution under subsection (a), an amount equal to $54,666,664, 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) $6,666,664 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) $5,333,334 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 Sec-

retary of Transportation and shall be expended for State recreational boating safety programs under section 13106 of title 46, United States Code.

[(6) 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;

[(6) $10,000,000 for fiscal year 2004; and

[(7) $6,666,664 for the period of October 1, 2004, through May 31, 2005; 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).]

(a) IN GENERAL.—For fiscal years 2006 through 2020, the balance of each annual appropriation made in accordance with the provisions of section 3 remaining after the distributions for administrative expenses and other purposes under subsection (b) and for multistate conservation grants under section 14 shall be distributed as follows:

(1) COASTAL WETLANDS.—18.5 percent to the Secretary of the Interior for distribution as provided in the Coastal Wetlands Planning, Protection, and Restoration Act (16 U.S.C. 3951 et seq.).

(2) BOATING SAFETY.—18.5 percent to the Secretary of Homeland Security for State recreational boating safety programs under section 13106 of title 46, United States Code.

(3) CLEAN VESSEL ACT.—2.0 percent to the Secretary of the Interior for qualified projects under section 5604(c) of the Clean Vessel Act of 1992 (33 U.S.C. 1322 note).

(4) BOATING INFRASTRUCTURE.—2.0 percent to the Secretary of the Interior for obligation for qualified projects under section 7404(d) of the Sportfishing and Boating Safety Act of 1998 (16 U.S.C. 777g–1(d)).

(5) NATIONAL OUTREACH AND COMMUNICATIONS.—2.0 percent to the Secretary of the Interior for the National Outreach and Communications Program under section 8(d) of this Act. Such amounts shall remain available for 3 fiscal years, after which any portion thereof that is unobligated by the Secretary for that program may be expended by the Secretary under subsection (c) of this section.

[(d)] *(b)* 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.]

(A) SET-ASIDE.—For a fiscal year after fiscal year 2005, the Secretary of the Interior may use no more than the amount specified in subparagraph (B) for the fiscal year for expenses of administration incurred in the implementation of this Act, in accordance with this section and section 9. The amount specified in subparagraph (B) for a fiscal year may not be included in the amount of the annual appropriation distributed under subsection (a) for the fiscal year.

(B) AVAILABLE 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.

[(e)] *(c)* 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] *Secretary, for a fiscal year after fiscal year 2005, after the*

distribution, transfer, use and deduction under subsection (b), and after deducting amounts used for grants under section 14 of this title, shall apportion 57 percent of the balance 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)] *(d)* 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)] *(e)* 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).

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

SEC. 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 57 percent of the balance of each annual appropriation to be apportioned among the States under section 4(c).*

(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)] *subsection (a)(5) or subsection (b)* of section 4 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 development 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.

* * * * * * *

SPORTFISHING AND BOATING SAFETY ACT OF 1998

SEC. . 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.

* * * * * * *

(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) 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,⟧ *section 4(a)(4) of the Dingell-Johnson Sport Fish Restoration 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.

* * * * * * *

DINGELL-JOHNSON SPORT FISH RESTORATION ACT

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(b)* 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(b)* 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 competitive 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 Inte-

rior, 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) 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 57 percent of the balance of each annual 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 fiscal year after fiscal year 2005, not more than $3,000,000 of each annual appropriation made in accordance with the provisions of section 3 shall be distributed to the Secretary of the Interior for making multistate conservation project grants in accordance with this section.

(2) 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(c)* for use by the States in the same manner as funds apportioned under [section 4(e).] *section 4(c).*

(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(b) 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.

SEC. 15. EXPENDITURES FROM BOAT SAFETY ACCOUNT.

The following amounts, available under section 9504(c) of the Internal Revenue Code of 1986 without further appropriation, shall be distributed as follows:

(1) In fiscal year 2006, $28,155,000 shall be distributed—

(A) under section 4 of this Act in the following manner:

(i) $11,200,000 to be added to funds available under subsection (a)(2) of that section;

(ii) $1,245,000 to be added to funds available under subsection (a)(3) of that section;

(iii) $1,245,000 to be added to funds available under subsection (a)(4) of that section;

(iv) $1,245,000 to be added to funds available under subsection (a)(5) of that section; and

(v) $12,800,000 to be added to funds available under subsection (b) of that section; and

(B) under section 14 of this Act, $420,000, to be added to funds available under subsection (a)(1) of that section.

(2) In fiscal year 2007, $22,419,000 shall be distributed—

(A) under section 4 of this Act in the following manner:

(i) $8,075,000 to be added to funds available under subsection (a)(2) of that section;

(ii) $713,000 to be added to funds available under subsection (a)(3) of that section;

(iii) $713,000 to be added to funds available under subsection (a)(4) of that section;

(iv) $713,000 to be added to funds available under subsection (a)(5) of that section; and

(v) $11,925,000 to be added to funds available under subsection (b) of this Act; and

(B) under section 14 of this Act, $280,000 to be added to funds available under subsection (a)(1) of that section.

(3) In fiscal year 2008, $17,139,000 shall be distributed—

(A) under section 4 of this Act in the following manner:

(i) $6,800,000 to be added to funds available under subsection (a)(2) of that section;

(ii) $333,000 to be added to funds available under subsection (a)(3) of that section;

(iii) $333,000 to be added to funds available under subsection (a)(4) of that section;

(iv) $333,000 to be added to funds available under subsection (a)(5) of that section; and

(v) $9,200,000 to be added to funds available under subsection (b) of that section; and

(B) under section 14 of this Act, $140,000, to be added to funds available under subsection (a)(1) of that section.

(4) In fiscal year 2009, $12,287,000 shall be distributed—

(A) under section 4 of this Act in the following manner:

(i) $5,100,000 to be added to funds available under subsection (a)(2) of that section;

(ii) $48,000 to be added to funds available under subsection (a)(3) of that section;

(iii) $48,000 to be added to funds available under subsection (a)(4) of that section;

(iv) $48,000 to be added to funds available under subsection (a)(5) of that section; and

(v) $6,900,000 to be added to funds available under subsection (b) of that section; and

(B) under section 14 of this Act, $143,000, to be added to funds available under subsection (a)(1) of that section.

(5) In fiscal year 2010, all remaining funds in the Account shall be distributed under section 4 of this Act in the following manner:

(A) one-third to be added to funds available under subsection (b); and

(B) two-thirds to be added to funds available under subsection (h).

* * * * * * *

TITLE 18, UNITED STATES CODE

§ 39. Commercial motor vehicles required to stop for inspections

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

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

* * * * * * *

§ 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 Homeland 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 ar-

senals, 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. 18 U.S.C 3663 (2005)

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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.

* * * * * * *

§ 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.

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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, 505, or 564

(e) The refusal to permit access to or copying of any record as required by section 412, 414, 416, 504, 564, 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), 572(i), 515(f), 519, or 564 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, 571, 572, 573, 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.

(l) [Deleted]

(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 article 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 prescription drug 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 to comply with paragraph (7)(E) of section 704(g); the knowing inclusion by a person accredited under paragraph (2) of such section 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; (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 declaration 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.—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. 316. SANITARY TRANSPORTATION PRACTICES.

(a) DEFINITIONS.—In this section:

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

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

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

(c) CONTENTS.—The regulations shall—

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

(A) sanitation;

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

(C) limitations on the use of vehicles;

(D) information to be disclosed—

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

(ii) to a manufacturer or other person that—

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

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

(E) recordkeeping; and

(2) include—

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

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

(d) WAIVERS.—

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

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

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

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

(e) PREEMPTION.—

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

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

(f) ASSISTANCE OF OTHER AGENCIES.—The Secretary of Transportation, the Secretary of Agriculture, the Administrator of the Environmental Protection Agency, and the heads of other Federal agencies, as appropriate, shall provide assistance on request, to the extent resources are available, to the Secretary for the purposes of carrying out this section.

* * * * * * *

SEC. 703. [RECORDS OF INTERSTATE SHIPMENT]. *RECORDS.*

[21 U.S.C. 373]

[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).

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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.

* * * * * * *

TITLE 23, UNITED STATES CODE

§ 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, (7) to reduce accidents resulting from fatigued and distracted drivers, including distractions arising from the use of electronic devices in vehicles,* and [(6)] *(8)* 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, distracted 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) [Repealed]

(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 subsequently 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 LAW ENFORCEMENT VEHICULAR PURSUIT TRAINING.—No State may receive any funds available for fiscal

years after fiscal year 2007 for programs under this chapter until the State submits to the Secretary a written statement that the State actively encourages all relevant law enforcement agencies in that State to follow the guidelines established for vehicular pursuit issued by the International Association of Chiefs of Police that are in effect on the date of enactment of the Highway Safety Grant Program Reauthorization Act of 2005, or as revised and in effect after that date as determined by the Secretary.

(m) CONSOLIDATION OF GRANT APPLICATIONS.—The Secretary shall establish an approval process by which a State may apply for all grants included under this chapter through a single application with a single annual deadline. The Bureau of Indian Affairs shall establish a similarly simplified process for applications from Indian tribes.

(n) ADMINISTRATIVE EXPENSES.—Funds authorized to be appropriated to carry out this section shall be subject to a deduction, not to exceed 5 percent of the amount of such funds, for the necessary costs of administering the provisions of this section, section 405, section 407A, section 410, and section 412 of this chapter.

[§ 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, launch initiatives to counter, and conduct demonstration projects on fatigued driving by drivers of motor vehicles and distracted driving in such vehicles, including the effect that the use of electronic devices and other factors deemed relevant by the Secretary have on driving;

(4) conduct training or education programs in cooperation with other Federal departments and agencies, States, private sector persons, highway safety personnel, and law enforcement personnel;

(5) conduct research on, and evaluate the effectiveness of, traffic safety countermeasures, including seat belts and impaired driving initiatives;

(6) conduct research on, evaluate, and develop best practices related to driver education programs, including driver education curricula, instructor training and certification, program administration and delivery mechanisms, and make recommendations for harmonizing driver education and multistage graduated licensing systems;

(7) conduct research, training, and education programs related to older drivers; and

(8) conduct demonstration projects.

(b) NATIONWIDE TRAFFIC SAFETY CAMPAIGNS.—

(1) REQUIREMENT FOR CAMPAIGNS.—The Administrator of the National Highway Traffic Safety Administration shall establish and administer a program under which at least 2 high-visibility traffic safety law enforcement campaigns will be carried out for the purposes specified in paragraph (2) in each of years 2006 through 2009.

(2) PURPOSE.—The purpose of each law enforcement campaign is to achieve either or both of the following objectives:

(A) Reduce alcohol-impaired or drug-impaired operation of motor vehicles.

(B) Increase use of seat belts by occupants of motor vehicles.

(3) ADVERTISING.—The Administrator may use, or authorize the use of, funds available under this section to pay for the development, production, and use of broadcast and print media

advertising in carrying out traffic safety law enforcement campaigns under this subsection. Consideration shall be given to advertising directed at non-English speaking populations, including those who listen, read, or watch nontraditional media.

(4) COORDINATION WITH STATES.—The Administrator shall coordinate with the States in carrying out the traffic safety law enforcement campaigns under this subsection, including advertising funded under paragraph (3), with a view to—

(A) relying on States to provide the law enforcement resources for the campaigns out of funding available under this section and sections 402, 405, and 410 of this title; and

(B) providing out of National Highway Traffic Safety Administration resources most of the means necessary for national advertising and education efforts associated with the law enforcement campaigns.

(5) ANNUAL EVALUATION.—The Secretary shall conduct an annual evaluation of the effectiveness of such initiatives.

(6) FUNDING.—The Secretary shall use $24,000,000 in each of fiscal years 2006 through 2009 for advertising and educational initiatives to be carried out nationwide in support of the campaigns under this section.

(c) INTERNATIONAL COOPERATION.—

(1) AUTHORITY.—The Administrator of the National Highway Traffic Safety Administration may participate and cooperate in international activities to enhance highway safety.

(2) AMOUNT FOR PROGRAM.—Of the amount available for a fiscal year to carry out this section, $200,000 may be used for activities authorized under paragraph (1).

§ 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 traveltime, 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.

[(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.

[(f) 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) 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) Passenger motor vehicle. The term "passenger motor vehicle" means a passenger car or a multipurpose passenger motor vehicle.

[(6) 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.]

§ 405. Safety belt performance grants

(a) IN GENERAL.—The Secretary of Transportation shall make grants to States in accordance with the provisions of this section to encourage the enactment and enforcement of laws requiring the use of safety belts in passenger motor vehicles.

(b) GRANTS FOR ENACTING PRIMARY SAFETY BELT USE LAWS.—

(1) IN GENERAL.—The Secretary shall make a single grant to each State that either—

(A) enacts for the first time after December 31, 2002, has in effect, and is enforcing a conforming primary safety belt use law for all passenger motor vehicles; or

(B) in the case of a State that does not have such a primary safety belt use law, has a State safety belt use rate for each of the 2 calendar years immediately preceding the fiscal year of a grant of 90 percent or more, as measured under criteria determined by the Secretary.

(2) AMOUNT.—The amount of a grant available to a State in fiscal year 2006 or in a subsequent fiscal year under paragraph

(1) of this subsection is equal to 500 percent of the amount apportioned to the State for fiscal year 2003 under section 402(c) of this title.

(3) JULY 1 CUT-OFF.—For the purpose of determining the eligibility of a State for a grant under paragraph (1)(A), a primary safety belt use law enacted after June 30th of any year shall—

(A) not be considered to have been enacted in the Federal fiscal year in which that June 30th falls; but

(B) be considered as if it were enacted after the beginning of the next Federal fiscal year.

(4) SHORTFALL.—If the total amount of grants provided for by this subsection for a fiscal year exceeds the amount of funds available for such grants for that fiscal year, then the Secretary shall make grants under this subsection to States in the order in which—

(A) the primary safety belt use law came into effect; or

(B) the State's safety belt use rate was 90 percent or more for 2 consecutive calendar years (as measured by criteria determined by the Secretary),

whichever first occurs.

(5) CATCH-UP GRANTS.—The Secretary shall make a grant to any State eligible for a grant under this subsection that did not receive a grant for a fiscal year because of the application of paragraph (4), in the next fiscal year if the State's primary safety belt use law remains in effect or its safety belt use rate is 90 percent or more for the 2 consecutive calendar years preceding such next fiscal year (subject to paragraph (4)).

(c) GRANTS FOR PRE-2003 LAWS.—To the extent that amounts made available for any of fiscal years 2006 through 2009 exceed the total amounts to be awarded under subsection (b) for the fiscal year, including amounts to be awarded for catch-up grants under subsection (b)(5), the Secretary shall make a single grant to each State that enacted, has is effect, and is enforcing a primary safety belt use law for all passenger motor vehicles that was in effect before January 1, 2003. The amount of a grant available to a State under this subsection shall be equal to 250 percent of the amount of funds apportioned to the State under section 402(c) of this title for fiscal year 2003. The Secretary may award the grant in up to 4 installments over a period of 4 fiscal years beginning with fiscal year 2006.

(d) ALLOCATION OF UNUSED GRANT FUNDS.—The Secretary shall make additional grants under this section of any amounts available for grants under this section that, on July 1, 2009, are neither obligated nor expended. The additional grants made under this subsection shall be allocated among all States that, as of that date, have enacted, have in effect, and are enforcing primary safety belt laws for all passenger motor vehicles. The allocations shall be made in accordance with the formula for apportioning funds among the States under section 402(c) of this title.

(e) USE OF GRANT FUNDS.—

(1) IN GENERAL.—Subject to paragraph (2), a State may use a grant under this section for any safety purpose under this title or for any project that corrects or improves a hazardous roadway location or feature or proactively addresses highway safety problems, including—

(A) intersection improvements;
(B) pavement and shoulder widening;
(C) installation of rumble strips and other warning devices;
(D) improving skid resistance;
(E) improvements for pedestrian or bicyclist safety;
(F) railway-highway crossing safety;
(G) traffic calming;
(H) the elimination of roadside obstacles;
(I) improving highway signage and pavement marking;
(J) installing priority control systems for emergency vehicles at signalized intersections;
(K) installing traffic control or warning devices at locations with high accident potential;
(L) safety-conscious planning; and
(M) improving crash data collection and analysis.

(2) SAFETY ACTIVITY REQUIREMENT.—Notwithstanding paragraph (1), the Secretary shall ensure that at least $1,000,000,000 of amounts received by States under this section are obligated or expended for safety activities under this chapter.

(f) CARRY-FORWARD OF EXCESS FUNDS.—If the amount available for grants under this section for any fiscal year exceeds the sum of the grants made under this section for that fiscal year, the excess amount and obligational authority shall be carried forward and made available for grants under this section in the succeeding fiscal year.

(g) FEDERAL SHARE.—The Federal share payable for grants under this subsection is 100 percent.

(h) PASSENGER MOTOR VEHICLE DEFINED.—In this section, the term "passenger motor vehicle" means—
(1) a passenger car,
(2) a pickup truck,
(3) a van, minivan, or sport utility vehicle,
with a gross vehicle weight rating of less than 10,000 pounds.

[§ 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.]

§ 406. Older driver safety; law enforcement training

(a) IMPROVING OLDER DRIVER SAFETY.—

(1) IN GENERAL.—Of the funds made available under this section, the Secretary shall allocate $2,000,000 in each of fiscal years 2006 through 2009 to conduct a comprehensive research and demonstration program to improve traffic safety pertaining to older drivers. The program shall—

(A) provide information and guidelines to assist physicians and other related medical personnel, families, licensing agencies, enforcement officers, and various public and transit agencies in enhancing the safety of older drivers;

(B) improve the scientific basis of medical standards and screenings strategies used in the licensing of all drivers in a non-discriminatory manner;

(C) conduct field tests to assess the safety benefits and mobility impacts of different driver licensing strategies and driver assessment and rehabilitation methods;

(D) assess the value and improve the safety potential of driver retraining courses of particular benefit to older drivers; and

(E) conduct other activities to accomplish the objectives of this section.

(2) FORMULATION OF PLAN.—After consultation with affected parties, the Secretary shall formulate an older driver traffic safety plan to guide the design and implementation of this program. The plan shall be submitted to the House of Representatives Committee on Transportation and Infrastructure and the Senate Committee on Commerce, Science, and Transportation within 1 year after the date of enactment of the Highway Safety Grant Program Reauthorization Act of 2005.

(b) LAW ENFORCEMENT TRAINING.—

(1) REQUIREMENT FOR PROGRAM.—The Administrator of the National Highway Traffic Safety Administration shall carry out a program to train law enforcement personnel of each State and political subdivision thereof in police chase techniques that are consistent with the police chase guidelines issued by the International Association of Chiefs of Police.

(2) AMOUNT FOR PROGRAM.—Of the amount available for a fiscal year to carry out this section, $200,000 shall be available for carrying out this subsection.

§ 407. Innovative project grants

(a) In addition to other grants authorized by this chapter, the Secretary may make grants in any fiscal year to those States, political subdivisions thereof, and nonprofit organizations which develop innovative approaches to highway safety problems in accordance with criteria to be established by the Secretary in cooperation with

the States, political subdivisions thereof, and such nonprofit organizations as the Secretary deems appropriate.

(b) The Secretary shall establish a procedure for the selection of grant applications submitted under this section. In developing such procedure, the Secretary shall consult with the States and political subdivisions thereof, appropriate Federal departments and agencies, and such other public and nonprofit organizations as the Secretary deems appropriate.

(c) Any State, political subdivision thereof, and nonprofit organization may make an application under this section to carry out an innovative project described in subsection (a) of this section. Such application shall be in such form and contain such information as the Secretary, by regulation, prescribes.

(d) Not to exceed 2 per centum of the funds authorized to be appropriated to carry out this section shall be available to the Secretary for the necessary costs of administering the provisions of this section.

(e) The Secretary shall submit an annual report to the Congress which provides a description of each application received for a grant under this section and an evaluation of innovative projects carried out with grants made under this section.

§ 407A. Federal coordination and enhanced support of emergency medical services

(a) FEDERAL INTERAGENCY COMMITTEE ON EMERGENCY MEDICAL SERVICES.—

(1) ESTABLISHMENT.—The Secretary of Transportation and the Secretary of Homeland Security, through the Under Secretary for Emergency Preparedness and Response, shall establish a Federal Interagency Committee on Emergency Medical Services. In establishing the Interagency Committee, the Secretary of Transportation and the Secretary of Homeland Security through the Under Secretary for Emergency Preparedness and Response shall consult with the Secretary of Health and Human Services.

(2) MEMBERSHIP.—The Interagency Committee shall consist of the following officials, or their designees:

(A) The Administrator, National Highway Traffic Safety Administration.

(B) The Director, Preparedness Division, Emergency Preparedness and Response Directorate, Department of Homeland Security.

(C) The Administrator, Health Resources and Services Administration, Department of Health and Human Services.

(D) The Director, Centers for Disease Control and Prevention, Department of Health and Human Services.

(E) The Administrator, United States Fire Administration, Emergency Preparedness and Response Directorate, Department of Homeland Security.

(F) The Director, Center for Medicare and Medicaid Services, Department of Health and Human Services.

(G) The Undersecretary of Defense for Personnel and Readiness.

(H) The Director, Indian Health Service, Department of Health and Human Services.

(I) The Chief, Wireless Telecom Bureau, Federal Communications Commission.

(J) A representative of any other Federal agency identified by the Secretary of Transportation or the Secretary of Homeland Security through the Under Secretary for Emergency Preparedness and Response, in consultation with the Secretary of Health and Human Services, as having a significant role in relation to the purposes of the Interagency Committee.

(3) PURPOSES.—The purposes of the Interagency Committee are as follows:

(A) To ensure coordination among the Federal agencies involved with State, local, tribal, or regional emergency medical services and 9–1–1 systems.

(B) To identify State, local, tribal, or regional emergency medical services and 9–1–1 needs.

(C) To recommend new or expanded programs, including grant programs, for improving State, local, tribal, or regional emergency medical services and implementing improved emergency medical services communications technologies, including wireless 9–1–1.

(D) To identify ways to streamline the process through which Federal agencies support State, local, tribal or regional emergency medical services.

(E) To assist State, local, tribal or regional emergency medical services in setting priorities based on identified needs.

(F) To advise, consult, and make recommendations on matters relating to the implementation of the coordinated State emergency medical services programs.

(4) ADMINISTRATION.—The Administrator of the National Highway Traffic Safety Administration, in cooperation with the Director, Preparedness Division, Emergency Preparedness and Response Directorate, Department of Homeland Security, shall provide administrative support to the Interagency Committee, including scheduling meetings, setting agendas, keeping minutes and records, and producing reports.

(5) LEADERSHIP.—The members of the Interagency Committee shall select a chairperson of the Committee annually.

(6) MEETINGS.—The Interagency Committee shall meet as frequently as is determined necessary by the chairperson of the Committee.

(7) ANNUAL REPORTS.—The Interagency Committee shall prepare an annual report to Congress on the Committee's activities, actions, and recommendations.

(b) COORDINATED NATIONWIDE EMERGENCY MEDICAL SERVICES PROGRAM.—

(1) PROGRAM REQUIREMENT.—The Secretary of Transportation, acting through the Administrator of the National Highway Traffic Safety Administration, shall coordinate with officials of other Federal departments and agencies, and may assist State and local governments and emergency medical services organizations (whether or not a firefighter organization), private

industry, and other interested parties, to ensure the development and implementation of a coordinated nationwide emergency medical services program that is designed to strengthen transportation safety and public health and to implement improved emergency medical services communication systems, including 9–1–1.

(2) COORDINATED STATE EMERGENCY MEDICAL SERVICES PROGRAM.—Each State shall establish a program, to be approved by the Secretary, to coordinate the emergency medical services and resources deployed throughout the State, so as to ensure—

(A) improved emergency medical services communication systems, including 9–1–1;

(B) utilization of established best practices in system design and operations;

(C) implementation of quality assurance programs; and

(D) incorporation of data collection and analysis programs that facilitate system development and data linkages with other systems and programs useful to emergency medical services.

(3) ADMINISTRATION OF STATE PROGRAMS.—The Secretary may not approve a coordinated State emergency medical services program under this subsection unless the program—

(A) provides that the Governor of the State is responsible for its administration through a State office of emergency medical services that has adequate powers and is suitably equipped and organized to carry out such program and coordinates such program with the highway safety office of the State; and

(B) authorizes political subdivisions of the State to participate in and receive funds under such program, consistent with a goal of achieving statewide coordination of emergency medical services and 9–1–1 activities.

(4) FUNDING.—

(A) USE OF FUNDS.—Funds authorized to be appropriated to carry out this subsection shall be used to aid the States in conducting coordinated emergency medical services and 9–1–1 programs as described in paragraph (2).

(B) APPORTIONMENT.—

(i) APPORTIONMENT FORMULA.—The funds shall be apportioned as follows: 75 percent in the ratio that the population of each State bears to the total population of all the States, as shown by the latest available Federal census, and 25 percent in the ratio that the public road mileage in each State bears to the total public road mileage in all States. For the purpose of this subparagraph, the term "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 3/4 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 1/4 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.]

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§ 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 2005.*

[(3) MAXIMUM PERIOD OF ELIGIBILITY.—No State may receive grants under this section in more than 8 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,[,] seventh, and eighth 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) for fiscal year 2006 or 2007, carry out 4 of the programs required under subsection (c);

(2) for fiscal year 2008 or 2009, carry out 5 of the programs required under subsection (c); and

(3) for any such fiscal year—

(A) comply with the additional requirements set forth in subsection (d) with respect to such programs and activities; and

(B) comply with any additional requirements of the Secretary.

(c) STATE PROGRAMS AND ACTIVITIES.—To qualify for a grant under this subsection, a State shall select programs from among the following:

(1) CHECK-POINT, SATURATION PATROL PROGRAM.—

(A) A State program to conduct a series of high-visibility, Statewide law enforcement campaigns in which law enforcement personnel monitor for impaired driving, either through use of sobriety check-points or saturation patrols, on a nondiscriminatory, lawful basis for the purpose of determining whether the operators of the motor vehicles are driving while under the influence of alcohol or controlled substances that meets the requirements of subparagraphs (B) and (C).

(B) A program meets the requirements of this subparagraph only if a State organizes the campaigns in cooperation with related periodic national campaigns organized by the National Highway Traffic Safety Administration, but this subparagraph does not preclude a State from initiating sustained high-visibility, Statewide law enforcement campaigns independently of the cooperative efforts.

(C) A program meets the requirements of this subparagraph only if, for each fiscal year, a State demonstrates to the Secretary that the State and the political subdivisions of the State that receive funds under this section have increased, in the aggregate, the total number of impaired driving law enforcement activities at high incident locations, as described in subparagraph (A) (or any other similar activity approved by the Secretary), initiated in such State during the preceding fiscal year by a factor that the Secretary determines meaningful for the State over the number of such activities initiated in such State during the preceding fiscal year, which shall not be less than 5 percent.

(2) PROSECUTION AND ADJUDICATION PROGRAM.—A State prosecution and adjudication program under which—

(A) judges and prosecutors are actively encouraged to prosecute and adjudicate cases of defendants who repeatedly commit impaired driving offenses by reducing the use of State diversion programs, or other means that have the effect of avoiding or expunging a permanent record of impaired driving in such cases;

(B) the courts in a majority of the judicial jurisdictions of the State are monitored on the courts' adjudication of cases of impaired driving offenses; or

(C) annual Statewide outreach is provided for judges and prosecutors on innovative approaches to the prosecution and adjudication of cases of impaired driving offenses that have the potential for significantly improving the prosecution and adjudication of such cases.

(3) IMPAIRED OPERATOR INFORMATION SYSTEM.—

(A) A State impaired operator information system that—

(i) tracks drivers who are arrested or convicted for violation of laws prohibiting impaired operation of motor vehicles;

(ii) includes information about each case of an impaired driver beginning at the time of arrest through case disposition, including information about any trial, plea, plea agreement, conviction or other disposition, sentencing or other imposition of sanctions, and substance abuse treatment;

(iii) provides—

(I) accessibility to the information for law enforcement personnel Statewide and for United States law enforcement personnel; and

(II) linkage for the sharing of the information and of the information in State traffic record systems among jurisdictions and appropriate agencies, court systems and offices of the States;

(iv) shares information with the National Highway Traffic Safety Administration for compilation and use for the tracking of impaired operators of motor vehicles who move from State to State; and

(v) meets the requirements of subparagraphs (B), (C), and (D) of this paragraph, as applicable.

(B) A program meets the requirements of this subparagraph only if, during fiscal years 2006 and 2007, a State—

(i) assesses the system used by the State for tracking drivers who are arrested or convicted for violation of laws prohibiting impaired operation of motor vehicles;

(ii) identifies ways to improve the system, as well as to enhance the capability of the system to provide information in coordination with impaired operator information systems of other States; and

(iii) develops a strategic plan that sets forth the actions to be taken and the resources necessary to achieve the identified improvements and to enhance the capability for coordination with the systems of other States.

(C) A program meets the requirements of this subparagraph only if, in each of fiscal years 2008 and 2009, a State demonstrates to the Secretary that the State has made sub-

stantial and meaningful progress in improving the State's impaired operator information system, and makes public a report on the progress of the information system.

(4) IMPAIRED DRIVING PERFORMANCE.—The percentage of fatally-injured drivers with 0.08 percent or greater blood alcohol concentration in the State has decreased in each of the 2 most recent calendar years for which data are available.

(5) SELF-SUSTAINING IMPAIRED DRIVING PREVENTION PROGRAM.—A program under which a significant portion of the fines or surcharges collected from individuals who are fined for operating a motor vehicle while under the influence of alcohol are returned to communities for comprehensive programs for the prevention of impaired driving.

(6) PROGRAMS FOR DRIVERS WITH HIGH BAC.—A program or law that establishes a system of graduated sanctions for individuals convicted of operating a motor vehicle while under the influence of alcohol, under which enhanced or additional sanctions apply to such individuals determined to have a blood alcohol concentration of 0.15 percent or higher.

(7) IMPAIRED DRIVING COURTS.—

(A) IN GENERAL.—A program to consolidate and coordinate impaired driving cases into courts that specialize in impaired driving cases, with the emphasis on tracking and processing offenders of impaired driving laws, (hereinafter referred to as DWI courts) that meets the requirements of this paragraph.

(B) CHARACTERISTICS.—A DWI Court is a distinct function performed by a court system for the purpose of changing the behavior of alcohol or drug dependent offenders arrested for driving while impaired. A DWI Court can be a dedicated court with dedicated personnel, including judges, prosecutors and probation officers. A DWI court may be an existing court system that serves the following essential DWI Court functions:

(i) A DWI Court performs an assessment of high-risk offenders utilizing a team headed by the judge and including all criminal justice stakeholders (prosecutors, defense attorneys, probations officers, law enforcement personnel and others) along with alcohol/drug treatment professionals.

(ii) The DWI Court team recommends a specific plea agreement or contract for each offender that can include incarceration, treatment, and close community supervision. The agreement maximizes the probability of rehabilitation and minimizes the likelihood of recidivism.

(iii) Compliance with the agreement is verified with thorough monitoring and frequent alcohol testing. Periodic status hearings assess offender progress and allow an opportunity for modifying the sentence if necessary.

(C) ASSESSMENT.—In the first year of operation, the States shall assess the number of court systems in its jurisdiction that are consistently performing the DWI Court functions.

(D) PLAN.—In the second year of operation, the State shall develop a strategic plan for increasing the number of courts performing the DWI function.

(E) PROGRESS.—In subsequent years of operation, the State shall demonstrate progress in increasing the number of DWI Courts and in increasing the number of high-risk offenders participating in and successfully completing DWI Court agreements.

(d) USES OF GRANTS.—Grants made under this section may be used for programs and activities described in subsection (c) and to defray the following costs:

(1) Labor costs, management costs, and equipment procurement costs for the high-visibility, Statewide law enforcement campaigns under subsection (c)(1).

(2) The costs of the training of law enforcement personnel and the procurement of technology and equipment, such as and including video equipment and passive alcohol sensors, to counter directly impaired operation of motor vehicles.

(3) The costs of public awareness, advertising, and educational campaigns that publicize use of sobriety check points or increased law enforcement efforts to counter impaired operation of motor vehicles.

(4) The costs of public awareness, advertising, and educational campaigns that target impaired operation of motor vehicles by persons under 34 years of age.

(5) The costs of the development and implementation of a State impaired operator information system described in subsection (c)(3).

(6) The costs of operating programs that impound the vehicle of an individual arrested as an impaired operator of a motor vehicle for not less than 12 hours after the operator is arrested.

(e) ADDITIONAL AUTHORITIES FOR CERTAIN AUTHORIZED USES.—

(1) COMBINATION OF GRANT PROCEEDS.—Grant funds used for a campaign under subsection (d)(3) may be combined, or expended in coordination, with proceeds of grants under section 402 of this title.

(2) COORDINATION OF USES.—Grant funds used for a campaign under paragraph (3) or (4) of subsection (d) may be expended—

(A) in coordination with employers, schools, entities in the hospitality industry, and nonprofit traffic safety groups; and

(B) in coordination with sporting events and concerts and other entertainment events.

(f) FUNDING.—

(1) IN GENERAL.—Grant funding under this section shall be allocated among States that meet the eligibility criteria in subsection (b) on the basis of the apportionment formula that applies for apportionments under section 402(c) of this title.

(2) HIGH FATALITY-RATE STATES.—A State that is among the 10 States with the highest impaired driving-related fatality rates for the calendar year immediately preceding the fiscal year in which the grant may be made shall be eligible for a grant under this section if the State meets the requirements of subsection (g). A State that receives a grant based upon its eligi-

bility under this paragraph may also receive a grant under subsection (b) if it meets the eligibility requirements of that subsection.

(g) USE OF FUNDS BY HIGH FATALITY-RATE STATES.—

(1) REQUIRED USES.—At least ½ of the amounts allocated to States under subsection (f)(2) shall be used for the program described in subsection (c)(1).

(2) REQUIREMENT FOR PLAN.—A State receiving an allocation of grant funds under subsection (f)(2) shall expend those funds only after receiving approval from the Administrator of the National Highway Traffic Safety Administration for a plan regarding such expenditures.

(h) DEFINITIONS.—In this section:

(1) IMPAIRED OPERATOR.—The term 'impaired operator' means a person who, while operating a motor vehicle—

(A) has a blood alcohol content of 0.08 percent or higher; or

(B) is under the influence of a controlled substance.

(2) IMPAIRED DRIVING-RELATED FATALITY RATE.—The term 'impaired driving-related fatality rate' means the rate of alcohol-related fatalities, as calculated in accordance with regulations which the Administrator of the National Highway Traffic Safety Administration shall prescribe.

* * * * * * *

§ 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 de-

ficiencies in the State's highway safety data and traffic records system, is approved by the highway safety data and traffic records coordinating committee, and—

(i) specifies how existing deficiencies in the State's highway safety data and traffic records system were identified;

(ii) prioritizes, on the basis of the identified highway safety data and traffic records system deficiencies, the highway safety data and traffic records system needs and goals of the State, including the activities under subsection (a);

(iii) identifies performance-based measures by which progress toward those goals will be determined; and

(iv) specifies how the grant funds and any other funds of the State are to be used to address needs and goals identified in the multiyear plan.

(2) GRANT AMOUNT.—Subject to subsection (d)(3), the amount of a first-year grant to a State for a fiscal year shall be the higher of—

(A) the amount determined by multiplying—

(i) the amount appropriated to carry out this section for such fiscal year, by

(ii) the ratio that the funds apportioned to the State under section 402 of this title for fiscal year 2003 bears to the funds apportioned to all States under such section for fiscal year 2003; or

(B) $300,000.

(c) SUCCESSIVE YEAR GRANTS.—

(1) ELIGIBILITY.—A State shall be eligible for a grant under this subsection in a fiscal year succeeding the first fiscal year in which the State receives a grant under subsection (b) if the State, to the satisfaction of the Secretary—

(A) submits an updated multiyear plan that meets the requirements of subsection (b)(1)(B);

(B) certifies that its highway safety data and traffic records coordinating committee continues to operate and supports the multiyear plan;

(C) specifies how the grant funds and any other funds of the State are to be used to address needs and goals identified in the multiyear plan;

(D) demonstrates measurable progress toward achieving the goals and objectives identified in the multiyear plan; and

(E) includes a current report on the progress in implementing the multiyear plan.

(2) GRANT AMOUNT.—Subject to subsection (d)(3), the amount of a year grant made to a State for a fiscal year under this subsection shall equal the higher of—

(A) the amount determined by multiplying—

(i) the amount appropriated to carry out this section for such fiscal year, by

(ii) the ratio that the funds apportioned to the State under section 402 of this title for fiscal year 2003 bears to the funds apportioned to all States under such section for fiscal year 2003; or

(B) $500,000.

(d) ADDITIONAL REQUIREMENTS AND LIMITATIONS.—

(1) MODEL DATA ELEMENTS.—The Secretary, in consultation with States and other appropriate parties, shall determine the model data elements that are useful for the observation and analysis of State and national trends in occurrences, rates, outcomes, and circumstances of motor vehicle traffic accidents. In order to be eligible for a grant under this section, a State shall submit to the Secretary a certification that the State has adopted and uses such model data elements, or a certification that the State will use grant funds provided under this section toward adopting and using the maximum number of such model data elements as soon as practicable.

(2) DATA ON USE OF ELECTRONIC DEVICES.—The model data elements required under paragraph (1) shall include data elements, as determined appropriate by the Secretary in consultation with the States and with appropriate elements of the law enforcement community, on the impact on traffic safety of the use of electronic devices while driving.

(3) MAINTENANCE OF EFFORT.—No grant may be made to a State under this section in any fiscal year unless the State enters into such agreements with the Secretary as the Secretary may require to ensure that the State will maintain its aggregate expenditures from all other sources for highway safety data programs at or above the average level of such expenditures maintained by such State in the 2 fiscal years preceding the date of enactment of the Highway Safety Grant Program Reauthorization Act of 2005.

(4) FEDERAL SHARE.—The Federal share of the cost of adopting and implementing in a fiscal year a State program described in subsection (a) may not exceed 80 percent.

(5) LIMITATION ON USE OF GRANT PROCEEDS.—A State may use the proceeds of a grant received under this section only to implement the program described in subsection (a) for which the grant is made.

(e) APPLICABILITY OF CHAPTER 1.—Section 402(d) of this title shall apply in the administration of this section.

§ 413. Agency accountability

(a) TRIENNIAL STATE MANAGEMENT REVIEWS.—At least once every 3 years the National Highway Traffic Safety Administration shall conduct a review of each State highway safety program. The review shall include a management evaluation of all grant programs partially or fully funded under this title. The Administrator shall provide review-based recommendations on how each State may improve the management and oversight of its grant activities and may provide a management and oversight plan.

(b) RECOMMENDATIONS BEFORE SUBMISSION.—In order to provide guidance to State highway safety agencies on matters that should be addressed in the State highway safety program goals and initiatives as part of its highway safety plan before the plan is submitted for review, the Administrator shall provide non-binding data-based recommendations to each State at least 90 days before the date on which the plan is to be submitted for approval.

(c) STATE PROGRAM REVIEW.—The Administrator shall—

(1) conduct a program improvement review of any State that does not make substantial progress over a 3-year period in meeting its priority program goals; and

(2) provide technical assistance and safety program recommendations to the State for any goal not achieved.

(d) REGIONAL HARMONIZATION.—The Administration and the Inspector General of the Department of Transportation shall undertake a State grant administrative review of the practices and procedures of the management reviews and program reviews conducted by Administration regional offices and formulate a report of best practices to be completed within 180 days after the date of enactment of the Highway Safety Grant Program Reauthorization Act of 2005.

(e) BEST PRACTICES GUIDELINES.—

(1) UNIFORM GUIDELINES.—The Administrator shall issue uniform management review guidelines and program review guidelines based on the report under subsection (d). Each regional office shall use the guidelines in executing its State administrative review duties.

(2) PUBLICATION.—The Administrator shall make the following documents available via the Internet upon their completion:

(A) The Administrator's management review guidelines and the program review guidelines.

(B) State highway safety plans.

(C) State annual accomplishment reports.

(D) The Administrator's State management reviews.

(E) The Administration's State program improvement plans.

(3) REPORTS TO STATE HIGHWAY SAFETY AGENCIES.—The Administrator may not make a plan, report, or review available under paragraph (2) that is directed to a State highway safety agency until after it has been submitted to that agency.

(f) GOVERNMENT ACCOUNTABILITY OFFICE REVIEW.—The General Accountability Office shall analyze the effectiveness of the National Highway Traffic Safety Administration's oversight of traffic safety grants by determining the usefulness of the Administration's advice to the States regarding grants administration and State activities, the extent to which the States incorporate the Administration's recommendation into their highway safety plans and programs, and improvements that result in a State's highway safety program that may be attributable to the Administration's recommendations. Based on this analysis, the General Accountability Office shall submit a report by not later than the end of fiscal year 2008 to the House of Representatives Committee on Transportation and Infrastructure and the Senate Committee on Commerce, Science, and Transportation.

§ 414. Motorcyclist safety training and motorist awareness programs

(a) DEFINITIONS.—In this section:

(1) MOTORCYCLIST SAFETY TRAINING.—The term "motorcyclist safety training" means any formal program of instruction that—

(A) provides accident avoidance and other safety-oriented operational skills to motorcyclists, including innovative training opportunities to meet unique regional needs; and

(B) is approved for use in a State by the designated State authority having jurisdiction over motorcyclist safety issues, which may include the State Motorcycle Safety Administrator or a motorcycle advisory council appointed by the Governor of the State.

(2) MOTORIST AWARENESS.—The term "motorist awareness" means individual or collective motorist awareness of—

(A) the presence of motorcycles on or near roadways; and

(B) safe driving practices that avoid injury to motorcyclists, bicyclists, and pedestrians.

(3) MOTORIST AWARENESS PROGRAM.—The term "motorist awareness program" means any informational or public awareness program designed to enhance motorist awareness that is developed by or in coordination with the designated State authority having jurisdiction over motorcyclist safety issues, which may include the State Motorcycle Safety Administrator or, in the absence of a State Administrator, a motorcycle advisory council appointed by a Governor of the State.

(4) STATE.—The term 'State' means—

(A) a State;

(B) the District of Columbia; and

(C) the Commonwealth of Puerto Rico.

(b) ELIGIBILITY.—Not later than 90 days after the date of enactment of this section and on September 1 of each fiscal year thereafter, based on a letter of certification provided by the Governor of each State, the Secretary shall develop and publish a list of States that, as of the date of publication of the list, have established motorcyclist safety training programs and motorist awareness programs, including information that indicates—

(1) the level of base funding provided for each such program for the applicable fiscal year; and

(2) whether the level of base funding provided for each such program for the applicable fiscal year was increased, decreased, or maintained from the level of funding provided for the program for the previous fiscal year.

(c) ALLOCATION.—Not later than 120 days after the date of enactment of this section, on October 1, 2004, and on October 1 of each fiscal year thereafter, the Secretary shall allocate to each State for which the base funding allocated for motorcyclist safety training and motorist awareness programs was not less than the amount allocated for the previous year, not less than $100,000, to be used only for motorcyclist safety training and motorist awareness programs, including—

(1) improvements to motorcyclist safety training curricula;

(2) improvements in program delivery to both urban and rural areas, including—

(A) procurement or repair of practice motorcycles;

(B) instructional aides; and

(C) mobile training units;

(3) an increase in the recruitment or retention of motorcyclist safety training instructors certified by a State Motorcycle Safety

Administrator or motorcycle advisory council appointed by the Governor; and

(4) public awareness, public service announcements, and other outreach programs to enhance motorist awareness.

(d) CONTRACTS WITH ORGANIZATIONS.—The Secretary may enter into an agreement with an organization that is recommended by and represents the interests of State Motorcycle Safety Administrators to review, determine, and disseminate a description of best practices in motorcycle safety training and motorist awareness, and to recommend such practices, to State administrators, governors, State legislative bodies, and chief licensing officers of States.

(e) AUTHORIZATION OF APPROPRIATIONS.—From funds available to carry out section 406 of this title, $5,200,000 shall be made available for each of fiscal years 2006 through 2009 to carry out this section.

TITLE 28, UNITED STATES CODE

§ 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[, and 841a]) or pursuant to part B or C of ⟦subtitle IV⟧ *subtitle IV, subchapter III, or chapter 315* 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.

* * * * * * *

§ 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 payment 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.

* * * * * * *

§ 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 con-

tains 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 juris-

diction, upon cause shown, to enjoin violations of section 1716 of title 18.

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§ 3018. Hazardous material

(a) IN GENERAL.—The Postal Service shall prescribe regulations for the safe transportation of hazardous material in the mails.

(b) PROHIBITIONS.—No person may—

(1) mail or cause to be mailed hazardous material that has been declared by statute or Postal Service regulation to be nonmailable;

(2) mail or cause to be mailed hazardous material in violation of any statute or Postal Service regulation restricting the time, place, or manner in which hazardous material may be mailed; or

(3) manufacture, distribute, or sell any container, packaging kit, or similar device that—

(A) is represented, marked, certified, or sold by such person for use in the mailing of hazardous material; and

(B) fails to conform with any statute or Postal Service regulation setting forth standards for a container, packaging kit, or similar device used for the mailing of hazardous material.

(c) CIVIL PENALTY.—

(1) IN GENERAL.—A person who knowingly violates this section or a regulation prescribed under this section shall be liable to the Postal Service for—

(A) a civil penalty of at least $250, but not more than $100,000, for each violation;

(B) the costs of any clean-up associated with such violation; and

(C) damages.

(2) KNOWING ACTION.—A person acts knowingly for purposes of paragraph (1) when—

(A) the person has actual knowledge of the facts giving rise to the violation; or

(B) a reasonable person acting in the circumstances and exercising reasonable care would have had that knowledge.

(3) KNOWLEDGE OF STATUTE OR REGULATION NOT ELEMENT OF OFFENSE.—Knowledge of the existence of a statutory provision or Postal Service regulation is not an element of an offense under this subsection.

(4) SEPARATE VIOLATIONS.—

(A) VIOLATIONS OVER TIME.—A separate violation under this subsection occurs for each day hazardous material, mailed or cause to be mailed in noncompliance with this section, is in the mail.

(B) SEPARATE ITEMS.—A separate violation under this subsection occurs for each item containing hazardous material that is mailed or caused to be mailed in noncompliance with this section.

(d) HEARINGS.—The Postal Service may determine that a person has violated this section or a regulation prescribed under this section only after notice and an opportunity for a hearing.

(e) PENALTY CONSIDERATIONS.—In determining the amount of a civil penalty for a violation of this section, the Postal Service shall consider—

(1) the nature, circumstances, extent, and gravity of the violation;

(2) with respect to the person who committed the violation, the degree of culpability, any history of prior violations, the ability to pay, and any effect on the ability to continue in business;

(3) the impact on Postal Service operations; and

(4) any other matters that justice requires.

(f) CIVIL ACTIONS TO COLLECT.—

(1) IN GENERAL.—In accordance with section 4409(d) of this title, a civil action may be commenced in an appropriate district court of the United States to collect a civil penalty, clean-up costs, and damages assessed under subsection (c).

(2) LIMITATION.—In a civil action under paragraph (1), the validity, amount, and appropriateness of the civil penalty, clean-up costs, and damages covered by the civil action shall not be subject to review.

(3) COMPROMISE.—The Postal Service may compromise the amount a civil penalty, clean-up costs, and damages assessed under subsection (c) before commencing a civil action with respect to such civil penalty, clean-up costs, and damages under paragraph (1).

(g) CIVIL JUDICIAL PENALTIES.—

(1) IN GENERAL.—At the request of the Postal Service, the Attorney General may bring a civil action in an appropriate district court of the United States to enforce this section or a regulation prescribed under this section.

(2) RELIEF.—The court in a civil action under paragraph (1) may award appropriate relief, including a temporary or permanent injunction, civil penalties as determined in accordance with this section, or punitive damages.

(3) CONSTRUCTION.—A civil action under this subsection shall be in lieu of civil penalties for the same violation under subsection (c)(1)(A).

(h) DEPOSIT OF AMOUNTS COLLECTED.—Amounts collected under this section shall be deposited into the Postal Service Fund under section 2003 of this title.

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TITLE 46, UNITED STATES CODE

§ 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)).] *subsections (a)(2) and (f) of section 4 of the Dingell-Johnson Sport Fish Restoration Act (16 U.S.C. 777c(a)(2) and (f)).* 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)(1) Of the amount transferred to the [Secretary of Transportation under paragraph (5)(C) of section 4(b)] *Secretary under subsection (a)(2) of section 4* of the Dingell-Johnson Sport Fish Restoration Act [(16 U.S.C. 777c(b)), $3,333,336] *(16 U.S.C. 777c(a)(2), not more than 5 percent* 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 [$1,333,336] *not less than $2,000,000* shall be available to the Secretary only to ensure compliance with chapter 43 of this title.

(2) 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.

(3) Amounts made available by this subsection shall remain available [until expended.] *during the 2 succeeding fiscal years. Any amount that is unexpected or unobligated at the end of the 3-year period during which it is available shall be withdrawn by the Secretary and allocated to the States in addition to any other amounts available for allocation in the fiscal year in which they are withdrawn or the following fiscal year.*

(4) The Secretary shall publish annually in the Federal Register a detailed accounting of the projects, programs, and activities funded under this subsection.

TITLE 49, UNITED STATES CODE

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§ 108. Pipeline and Hazardous Materials Safety Administration

(a) IN GENERAL.—The Pipeline and Hazardous Materials Safety Administration shall be an administration in the Department of Transportation.

(b) SAFETY AS HIGHEST PRIORITY.—In carrying out its duties, the Administration shall consider the assignment and maintenance of safety as the highest priority, recognizing the clear intent, encouragement, and dedication of Congress to the furtherance of the highest degree of safety in pipeline transportation and hazardous materials transportation.

(c) ADMINISTRATOR.—The head of the Administration shall be the Administrator who shall be appointed by the President, by and with the advice and consent of the Senate, and shall be an individual with professional experience in pipeline safety, hazardous materials safety, or other transportation safety. The Administrator shall report directly to the Secretary of Transportation.

(d) DEPUTY ADMINISTRATOR.—The Administration shall have a Deputy Administrator who shall be appointed by the Secretary. The Deputy Administrator shall carry out duties and powers prescribed by the Administrator.

(e) CHIEF SAFETY OFFICER.—The Administration shall have an Assistant Administrator for Pipeline and Hazardous Materials Safety appointed in the competitive service by the Secretary. The Assistant Administrator shall be the Chief Safety Officer of the Administration. The Assistant Administrator shall carry out the duties and powers prescribed by the Administrator.

(f) DUTIES AND POWERS OF THE ADMINISTRATOR.—The Administrator shall carry out—

(1) duties and powers related to pipeline and hazardous materials transportation and safety vested in the Secretary by chapters 51, 57, 61, 601, and 603; and

(2) other duties and powers prescribed by the Secretary.

(g) LIMITATION.—A duty or power specified in subsection (f)(1) may be transferred to another part of the Department of Transportation or another government entity only if specifically provided by law.

(h) ADMINISTRATIVE AUTHORITIES.—

(1) GRANTS, COOPERATIVE AGREEMENTS, AND OTHER TRANSACTIONS.—The Administrator may enter into grants, cooperative agreements, and other transactions with Federal agencies, State and local government agencies, other public entities, private organizations, and other persons—

(A) to conduct research into transportation service and infrastructure assurance; and

(B) to carry out other research activities of the Administration.

(2) LIMITATION ON DISCLOSURE OF CERTAIN INFORMATION.—

(A) LIMITATION.—If the Administrator determines that particular information developed in research sponsored by the Administration may reveal a systemic vulnerability of transportation service or infrastructure, such information may be disclosed only to—

(i) a person responsible for the security of the transportation service or infrastructure;

(ii) a person responsible for protecting public safety; or

(iii) an officer, employee, or agent of the Federal Government, or a State or local government, who, as determined by the Administrator, has need for such information in the performance of official duties.

(B) TREATMENT OF RELEASE.—The release of information under subparagraph (A) shall not be treated as a release to the public for purposes of section 552 of title 5.

§ 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 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.]

(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 investigation, 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, to 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.

§ 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 *on a fulltime, part time, or temporary basis* by a hazmat employer; [and]

(ii) is self-employed (including an owner-operator of a motor vehicle, vessel, or aircraft) transporting hazardous material in commerce; and

[(ii)] *(iii) who during the course of fulltime, part time, or temporary* employment directly affects hazardous material transportation safety as the Secretary decides by regulation; *and*

[(B) includes an owner-operator of a motor vehicle transporting hazardous material in commerce; and]

[(C)] *(B)* includes an individual, employed *on a fulltime, part time, or temporary basis* 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;]

(ii) designs, manufactures, fabricates, inspects, marks, maintains, reconditions, repairs, or tests a package, container, or packaging component that is represented, marked, certified, or sold by that person as qualified for use in transporting hazardous material in commerce;

(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.

[(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, carrying 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 on a full time, part time, or temporary basis, or

(ii) is self-employed (including an owner-operator of a motor vehicle, vessel, or aircraft) transporting hazardous material in commerce, and

(B) who—

(i) transports hazardous material in commerce,

(ii) causes hazardous material to be transported in commerce, or

(iii) designs, manufactures, fabricates, inspects, marks, maintains, reconditions, repairs, or tests a package, container, or packaging component that is represented, marked, certified, or sold by that person as qualified for use in transporting hazardous material in commerce, and

includes a department, agency, or instrumentality of the United States Government, or an authority of a State, political subdivision of a State, or Indian tribe, carrying out an activity described in subparagraph (B).

(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" means the national response team established under the national contingency plan*] *"Na-*

tional Response Team" means the National Response Team 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).

(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**]**

(i) offers hazardous material for transportation in commerce;

(ii) transports hazardous material to further a commercial enterprise; or

(iii) designs, manufactures, fabricates, inspects, marks, maintains, reconditions, repairs, or tests a package, container, or packaging component that is represented, marked, certified, or sold by that person as qualified for use in transporting hazardous material in commerce; but

(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) designs, manufactures, fabricates, inspects, marks, maintains, reconditions, repairs, or tests a package, container, or packaging component that is represented, marked, certified, or sold by that person as qualified for use in transporting hazardous material in commerce;

(iv) prepares or accepts hazardous material for transportation in commerce;

(v) is responsible for the safety of transporting hazardous material in commerce;

(vi) certifies compliance with any requirement under this chapter; or

(vii) misrepresents whether such person is engaged in any activity under clause (i) through (vi) of this subparagraph; and

(B) shall govern safety aspects, including security, of the transportation of hazardous material the Secretary considers appropriate.

(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.]

(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),] *(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 requires 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] *No person may* 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)] *(d)* 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.

§ 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 designing, manufacturing, fabricating, inspecting, marking, maintaining, reconditioning, repairing, or testing a package, container, or packaging component that is represented, marked, certified, or sold by that person as qualified for use in transporting hazardous material in commerce.

(3) 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, manufacture, fabricate, inspect, mark, maintain, re-

condition, repair, or test a package, container 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] *$3,000* 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) 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. 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.]

(d) RETENTION OF PAPERS.—

(1) SHIPPERS.—The person who provides the shipping paper under this section shall retain the paper, or an electronic format of it, for a period of 3 years after the date that the shipping paper is provided to the carrier, with the paper or electronic format to be accessible through the shipper's principal place of business.

(2) CARRIERS.—The carrier required to keep the shipping paper under this section, shall retain the paper, or an electronic format of it, for a period of 1 year after the date that the shipping paper is provided to the carrier, with the paper or electronic format to be accessible through the carrier's principal place of business.

(3) AVAILABILITY TO GOVERNMENT AGENCIES.—Any person required to keep a shipping paper under this subsection shall, upon request, make it available to a Federal, State, or local government agency at reasonable times and locations.

[§ 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.] *Association 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.] *Secretary. 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 the planning grants allocated under subsection (a), training grants under subsection (b), and grants under subsection (j) of this section and under section 5107 of this title.* **[**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**]** *ISSUE SPECIAL PERMITS.*—(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] *the 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] *the 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] *granted a variance* 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 Pipeline and Hazardous Materials Safety 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 tester, or other person responsible for a package or packages to ascertain the nature and hazards of the contents of the package or packages;

(E) as necessary under terms and conditions prescribed by the Secretary, order the offeror, carrier, or other person responsible for a package or packages to have the package or packages transported to an appropriate facility, opened, examined, and analyzed; and

(F) when safety might otherwise be compromised, authorize properly qualified personnel to assist in activities carried out under this paragraph.

(2) An officer or employee acting under the authority of the Secretary under this subsection shall display proper credentials when requested.

(3) In instances when, as a result of an inspection or investigation under this subsection, an imminent hazards is not found to exist, the Secretary shall, in accordance with procedures set forth in regulations prescribed under subsection (e) of this section, assist the safe resumption of transportation of the package, packages, or transport unit concerned.

(d) EMERGENCY ORDERS.—

(1) If, upon inspection, investigation, testing, or research, the Secretary determines that a violation of a provision of this chapter, or a regulation prescribed under this chapter, or an unsafe condition or practice, constitutes or is causing an imminent hazard, the Secretary may issue or impose emergency restrictions, prohibitions, recalls, or out-of-service orders, without notice or an opportunity for a hearing, but only to the extent necessary to abate the imminent hazard.

(2) The action of the Secretary under paragraph (1) of this subsection shall be in a written emergency order that—

(A) describes the violation, condition, or practice that constitutes or is causing the imminent hazard;

(B) states the restrictions, prohibitions, recalls, or out-of-service orders issued or imposed; and

(C) describe the standards and procedures for obtaining relief from the order.

(3) After taking action under paragraph (1) of this subsection, the Secretary shall provide for review of the action under section 554 of title 5 if a petition for review is filed within 20 calendar days of the issuance of the order for the action.

(4) If a petition for review of an action is filed under paragraph (3) of this subsection and the review under that paragraph is not completed by the end of the 30-day period beginning on the date the petition is filed, the action shall cease to be effective at the end of such period unless the Secretary determines, in writing, that the imminent hazard providing a basis for the action continues to exist.

(5) In this subsection, the term 'out-of-service order' means a requirement that an aircraft, vessel, motor vehicle, train, railcar, locomotive, other vehicle, transport unit, transport vehicle, freight container, potable tank, or other package not be moved until specified conditions have been met.

(e) REGULATIONS.—The Secretary shall prescribe in accordance with section 553 of title 5 regulations to carry out the authority in subsections (c) and (d) of this section.

(f) FACILITY, STAFF, AND REPORTING SYSTEM ON RISKS, EMERGENCIES, AND ACTIONS.—

(1) The Secretary shall—

(A) maintain a facility and technical staff sufficient to provide, within the United States Government, the capability of evaluating a risk relating to the transportation of hazardous material and material alleged to be hazardous;

(B) maintain a central reporting system and information center capable of providing information and advice to law enforcement and firefighting personnel, and other interested individuals, and officers and employees of the United States Government and State and local governments on meeting an emergency relating to the transportation of hazardous material; and

(C) conduct a continuous review on all aspects of transporting hazardous material to decide on and take appropriate actions to ensure safe transportation of hazardous material.

(2) Paragraph (1) of this subsection shall not prevent the Secretary from making a contract with a private entity for use of a supplemental reporting system and information center operated and maintained by the contractor.

(g) GRANTS, COOPERATIVE AGREEMENTS, AND OTHER TRANSACTIONS.—The Secretary may enter into grants, cooperative agreements, and other transactions with a person, agency, or instrumentality of the United States, a unit of State or local government, an Indian tribe, a foreign government (in coordination with the Department of State), an educational institution, or other appropriate entity—

(1) to expand risk assessment and emergency response capabilities with respect to the security of transportation of hazardous material;

(2) to conduct research, development, demonstration, risk assessment and emergency response planning and training activities; or

(3) to otherwise carry out this chapter.

(h) REPORTS.—

(1) The Secretary shall, once every 2 years, submit to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure a comprehensive report on the transportation of hazardous material during the preceding 2 calendar years. Each report shall include, for the period covered by such report—

(A) a statistical compilation of the accidents, incidents, and casualties related to the transportation of hazardous material during such period;

(B) a list and summary of applicable Government regulations, criteria, orders, and special permits;

(C) a summary of the basis for each special permit issued;

(D) an evaluation of the effectiveness of enforcement activities relating to the transportation of hazardous material during such period, and of the degree of voluntary compliance with regulations;

(E) a summary of outstanding problems in carrying out this chapter, set forth in order of priority; and

(F) any recommendations for legislative or administrative action that the Secretary considers appropriate.

(2) Before December 31, 2007, and every 3 years thereafter, the Secretary, through the Bureau of Transportation Statistics and in consultation with other Federal departments and agencies, shall submit a report to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure on the transportation of hazardous material in all modes of transportation during the preceding 3 calendar years. Each report shall include, for the period covered by such report—

(A) a summary of the hazardous material shipments, deliveries, and movements during such period, set forth by hazardous materials type, by tonnage and ton-miles, and by mode, both domestically and across United States borders; and

(B) a summary of shipment estimates during such period as a proxy for risk.

(i) SECURITY SENSITIVE INFORMATION.—

(1) If the Secretary determines that particular information may reveal a vulnerability of a hazardous material to attack during transportation in commerce, or may facilitate the diversion of hazardous material during transportation in commerce for use in an attack on people or property, the Secretary may disclose such information only—

(A) to the owner, custodian, offeror, or carrier of such hazardous material;

(B) to an officer, employee, or agent of the United States Government, or a State or local government, including volunteer fire departments, concerned with carrying out transportation safety laws, protecting hazardous material in the course of transportation in commerce, protecting public safety or national security, or enforcing Federal law designed to protect public health or the environment; or

(C) in an administrative or judicial proceeding brought under this chapter, under other Federal law intended to protect public health or the environment, or under other Federal law intended to address terrorist actions or threats of terrorist actions.

(2) The Secretary may make determinations under paragraph (1) of this subsection with respect categories of information in accordance with regulations prescribed by the Secretary.

(3) A release of information pursuant to a determination under paragraph (1) of this subsection shall not be treated as a release of such information to the public for purposes of section 552 of title 5.

§ 5122. Enforcement

(a) GENERAL.—At the request of the Secretary [of Transportation,] 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 issued] *regulation, order, spe-*

cial 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] *$32,500* 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) If the Secretary finds that a violation under paragraph (1) results in death, serious illness, or severe injury to any person, the Secretary may increase the amount of the civil penalty for such violation to not more than $100,000.

(3) If the violation is related to training, paragraph (1) shall be applied by substituting '$450' for '$250'.

[(2)] *(4)* 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 chap-

ter 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 designing, manufacturing, fabricating, inspecting, marking, maintaining, reconditioning, repairing, or testing a package, container, or packaging component that is represented, marked, certified, or sold by that person as qualified for use in transporting hazardous material in commerce.

(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.

[(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) 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 hazardous 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.

(h) APPLICATION OF EACH PREEMPTION STANDARD.—Each standard for preemption in subsection (b), (c)(1), or (d) of this section, and in section 5119(b) of this title, is independent in its application to a requirement of a State, political subdivision of a State, or Indian tribe.

(i) NON-FEDERAL ENFORCEMENT STANDARDS.—This section does not apply to any procedure, penalty, required mental state, or other standard utilized by a State, political subdivision of a State, or Indian tribe to enforce a requirement applicable to the transportation of hazardous material.

§ 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, or manufactures, fabricates, marks, maintains, reconditions, repairs, or tests a packaging or a container that the person represents, marks, certifies, or sells] *hazardous material, or causes hazardous material to be transported, or designs, manufactures, fabricates, inspects, marks, maintains, reconditions, repairs, or tests a package, container, 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] *designing, manufacturing, fabricating, inspecting, marking, maintaining, reconditioning, repairing, or testing* 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 adversely affected or aggrieved by a final action of the Secretary under this chapter may petition for review of the final action in the United States Court of Appeals for the District of Columbia or in the court of appeals of the United States for the circuit in which the person resides or has a principal place of business. The petition shall be filed not more than 60 days after the action of the Secretary becomes final.

(b) PROCEDURES.—When a petition on a final action is filed under subsection (a) of this section, the clerk of the court shall immediately send a copy of the petition to the Secretary. The Secretary shall file with the court a record of any proceeding in which the final action was issued as provided in section 2112 of title 28.

(c) AUTHORITY OF COURT.—The court in which a petition on a final action is filed under subsection (a) of this section has exclusive

jurisdiction, as provided in subchapter II of chapter 5 of title 5 to affirm or set aside any part of the final action and may order the Secretary to conduct further proceedings.

(d) REQUIREMENT FOR PRIOR OBJECTIONS.—In reviewing a final action under this section, the court may consider an objection to the final action only if—

(1) the objection was made in the course of a proceeding or review conducted by the Secretary; or

(2) there was a reasonable ground for not making the objection in the proceeding.

§ [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 Agen-

cy, 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 2005, not more than $24,940,000.

(2) For fiscal year 2006, not more than $29,000,000.

(3) For each of fiscal years 2007 through 2009, not more than $30,000,000.

(b) EMERGENCY PREPAREDNESS FUND.—There shall be available from the Emergency Preparedness Fund under section 5116(i) of this title, amounts as follows:

(1) To carry out section 5107(e) of this title, $4,000,000 for each of fiscal years 2005 through 2009.

(2) To carry out section 5115 of this title, $200,000 for each of fiscal years 2005 through 2009.

(3) To carry out sections 5116(a) and (b) of this title, $21,800,000 for each of fiscal years 2005 through 2009, to be allocated as follows:

(A) $5,000,000 to carry out section 5116(a).

(B) $7,800,000 to carry out section 5116(b).

(C) Of the amount provided for by this paragraph in excess of the suballocations in subparagraphs (A) and (B)—

(i) 35 percent shall be used to carry out section 5116(a), and

(ii) 65 percent shall be used to carry out section 5116(b),

except that the Secretary may increase the proportion to carry out section 5116(b) and decrease the proportion to carry out section 5116(a) if the Secretary determines that such reallocation is appropriate to carry out the intended uses of these funds as described in the applications submitted by States and Indian tribes.

(4) To carry out section 5116(f) of this title, $150,000 for each of fiscal years 2005 through 2009.

(5) To carry out section 5116(i)(4) of this title, $150,000 for each of fiscal years 2005 through 2009.

(6) To carry out section 5116(j) of this title, $1,000,000 for each of fiscal years 2005 through 2009.

(7) To publish and distribute an emergency response guidebook under section 5116(i)(3) of title 49, United States Code, $750,000 for each of fiscal years 2005 through 2009.

(c) SECTION 5121 REPORTS.—There are authorized to be appropriated to the Secretary of Transportation for the use of the Bureau of Transportation Statistics such sums as may be necessary to carry out section 5121(h) of this title.

(d) CREDIT TO APPROPRIATIONS.—The Secretary may credit to any appropriation to carry out this chapter an amount received from a State, political subdivision of a State, Indian tribe, or other public authority or private entity for expenses the Secretary incurs in providing training to the State, political subdivision, Indian tribe, or other authority or entity.

(e) AVAILABILITY OF AMOUNTS.—Amounts available under subsections (a) and (b) of this section shall remain available until expended.

§ 5503. Office of Intermodalism

(a) ESTABLISHMENT.—There is established in the Research and Innovative Technology Administration an Office of Intermodalism.

(b) DIRECTOR.—The head of the Office is a Director who shall be appointed by the Secretary.

(c) DUTIES AND POWERS.—The Director shall carry out the duties of the Secretary described in section 301(3) of this title.

(d) RESEARCH.—The Director shall—

(1) coordinate United States Government research on intermodal transportation as provided in the plan developed under section 6009(b) of the Intermodal Surface Transportation Efficiency Act of 1991 (Public Law 102–240, 105 Stat. 2177); and

(2) carry out additional research needs identified by the Director.

(e) TECHNICAL ASSISTANCE.—The Director shall provide technical assistance to States and to metropolitan planning organizations for urban areas having a population of at least 1,000,000 in collecting data related to intermodal transportation to facilitate the collection of the data by States and metropolitan planning organizations. *Amounts reserved under section 5504(d) not awarded to States as grants may be used by the Director to provide technical assistance under this subsection.*

(f) NATIONAL INTERMODAL SYSTEM IMPROVEMENT PLAN—

(1) IN GENERAL.—The Director, in consultation with the advisory board established under section 5502 of this title and other public and private transportation interests, shall develop a plan to improve the national intermodal transportation system. The plan shall include—

(A) an assessment and forecast of the national intermodal transportation system's impact on mobility, safety, energy consumption, the environment, technology, international trade, economic activity, and quality of life in the United States;

(B) an assessment of the operational and economic attributes of each passenger and freight mode of transportation and the optimal role of each mode in the national intermodal transportation system;

(C) a description of recommended intermodal and multimodal research and development projects;

(D) a description of emerging trends that have an impact on the national intermodal transportation system;

(E) recommendations for improving intermodal policy, transportation decisionmaking, and financing to maximize mobility and the return on investment of Federal spending on transportation;

(F) an estimate of the impact of current Federal and State transportation policy on the national intermodal transportation system; and

(G) specific near and long-term goals for the national intermodal transportation system.

(2) PROGRESS REPORTS.—The Director shall submit an initial report on the plan to improve the national intermodal transportation system 2 years after the date of enactment of the Surface Transportation Safety Improvement Act of 2005, and a follow-up report 2 years after that, to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure. The progress report shall—

(A) describe progress made toward achieving the plan's goals;

(B) describe challenges and obstacles to achieving the plan's goals;

(C) update the plan to reflect changed circumstances or new developments; and

(D) make policy and legislative recommendations the Director believes are necessary and appropriate to achieve the goals of the plan.

(3) PLAN DEVELOPMENT FUNDING.—Such sums as may be necessary from the administrative expenses of the Research and Innovative Technology Administration shall be reserved each year for the purpose of completing and updating the plan to improve the national intermodal transportation plan.

(g) IMPACT MEASUREMENT METHODOLOGY; IMPACT REVIEW.—The Director and the Director of the Bureau of Transportation Statistics shall jointly—

(1) develop, in consultation with the modal administrations, and State and local planning organizations, common measures to compare transportation investment decisions across the various modes of transportation; and

(2) formulate a methodology for measuring the impact of intermodal transportation on—

(A) the environment;

(B) public health and welfare;

(C) energy consumption;

(D) the operation and efficiency of the transportation system;

(E) congestion, including congestion at the Nation's ports; and

(F) the economy and employment.

[(f)**]** *(h)* ADMINISTRATIVE AND CLERICAL SUPPORT.—The Director shall provide administrative and clerical support to the Intermodal Transportation Advisory Board.

[§ 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.]

§ 5701. Food transportation safety inspections

(a) INSPECTION PROCEDURES.—

(1) IN GENERAL.—The Secretary of Transportation, in consultation with the Secretary of Health and Human Services and the Secretary of Agriculture, shall—

(A) establish procedures for transportation safety inspections for the purpose of identifying suspected incidents of contamination or adulteration of—

(i) food in violation of regulations promulgated under section 416 of the Federal Food, Drug, and Cosmetic Act;

(ii) meat subject to detention under section 402 of the Federal Meat Inspection Act (21 U.S.C. 672); and

(iii) poultry products subject to detention under section 19 of the Poultry Products Inspection Act (21 U.S.C. 467a); and

(B) train personnel of the Department of Transportation in the appropriate use of the procedures.

(2) APPLICABILITY.—The procedures established under paragraph (1) of this subsection shall apply, at a minimum, to Department of Transportation personnel that perform commercial motor vehicle or railroad safety inspections.

(b) NOTIFICATION OF SECRETARY OF HEALTH AND HUMAN SERVICES OR SECRETARY OF AGRICULTURE.—The Secretary of Transportation shall promptly notify the Secretary of Health and Human Services or the Secretary of Agriculture, as applicable, of any instances of potential food contamination or adulteration of a food identified during transportation safety inspections.

(c) USE OF STATE EMPLOYEES.—The means by which the Secretary of Transportation carries out subsection (b) of this section may include inspections conducted by State employees using funds authorized to be appropriated under sections 31102 through 31104 of this title.

* * * * * * *

§ 13102. Definitions

In this part, the following definitions shall apply:

(1) BOARD.—The term "Board" means the Surface Transportation Board.

(2) BROKER.—The term "broker" means a person, other than a motor carrier or an employee or agent of a motor carrier, that as a principal or agent sells, offers for sale, negotiates for,

or holds itself out by solicitation, advertisement, or otherwise as selling, providing, or arranging for, transportation by motor carrier for compensation.

(3) CARRIER.—The term "carrier" means a motor carrier, a water carrier, and a freight forwarder.

(4) CONTRACT CARRIAGE.—The term "contract carriage" means—

(A) for transportation provided before January 1, 1996, service provided pursuant to a permit issued under section 10923, as in effect on December 31, 1995; and

(B) for transportation provided after December 31, 1995, service provided under an agreement entered into under section 14101(b).

(5) CONTROL.—The term "control", when referring to a relationship between persons, includes actual control, legal control, and the power to exercise control, through or by—

(A) common directors, officers, stockholders, a voting trust, or a holding or investment company, or

(B) any other means.

(6) FOREIGN MOTOR CARRIER.—The term "foreign motor carrier" means a person (including a motor carrier of property but excluding a motor private carrier)—

(A)(i) that is domiciled in a contiguous foreign country; or

(ii) that is owned or controlled by persons of a contiguous foreign country; and

(B) in the case of a person that is not a motor carrier of property, that provides interstate transportation of property by motor vehicle under an agreement or contract entered into with a motor carrier of property (other than a motor private carrier or a motor carrier of property described in subparagraph (A)).

(7) FOREIGN MOTOR PRIVATE CARRIER.—The term "foreign motor private carrier" means a person (including a motor private carrier but excluding a motor carrier of property)—

(A)(i) that is domiciled in a contiguous foreign country; or

(ii) that is owned or controlled by persons of a contiguous foreign country; and

(B) in the case of a person that is not a motor private carrier, that provides interstate transportation of property by motor vehicle under an agreement or contract entered into with a person (other than a motor carrier of property or a motor private carrier described in subparagraph (A)).

(8) FREIGHT FORWARDER.—The term "freight forwarder" means a person holding itself out to the general public (other than as a pipeline, rail, motor, or water carrier) to provide transportation of property for compensation and in the ordinary course of its business—

(A) assembles and consolidates, or provides for assembling and consolidating, shipments and performs or provides for break-bulk and distribution operations of the shipments;

(B) assumes responsibility for the transportation from the place of receipt to the place of destination; and

(C) uses for any part of the transportation a carrier subject to jurisdiction under this subtitle.

The term does not include a person using transportation of an air carrier subject to part A of subtitle VII.

(9) HIGHWAY.—The term "highway" means a road, highway, street, and way in a State.

(10) HOUSEHOLD GOODS.—The term "household goods", as used in connection with transportation, means personal effects and property used or to be used in a dwelling, when a part of the equipment or supply of such dwelling, and similar property if the transportation of such effects or property is—

(A) arranged and paid for by the householder, except such term does not include property moving from a factory or store, other than property that the householder has purchased with the intent to use in is or her dwelling and is transported at the request of, and the transportation charges are paid to the carrier by, the householder; or

(B) arranged and paid for by another party.

(11) HOUSEHOLD GOODS FREIGHT FORWARDER.—The term "household goods freight forwarder" means a freight forwarder of one or more of the following items: household goods, unaccompanied baggage, or used automobiles.

(12) INDIVIDUAL SHIPPER.—The term 'individual shipper' means any person who—

(A) is the shipper, consignor, or consignee of a household goods shipment;

(B) is identified as the shipper, consignor, or consignee on the face of the bill of lading;

(C) owns the goods being transported; and

(D) pays his or her own tariff transportation charges.

[(12)**]** *(13)* MOTOR CARRIER.—The term "motor carrier" means a person providing motor vehicle transportation for compensation.

[(13)**]** *(14)* MOTOR PRIVATE CARRIER.—The term "motor private carrier" means a person, other than a motor carrier, transporting property by motor vehicle when—

(A) the transportation is as provided in section 13501 of this title;

(B) the person is the owner, lessee, or bailee of the property being transported; and

(C) the property is being transported for sale, lease, rent, or bailment or to further a commercial enterprise.

[(14)**]** *(15)* MOTOR VEHICLE.—The term "motor vehicle" means a vehicle, machine, tractor, trailer, or semitrailer propelled or drawn by mechanical power and used on a highway in transportation, or a combination determined by the Secretary, but does not include a vehicle, locomotive, or car operated only on a rail, or a trolley bus operated by electric power from a fixed overhead wire, and providing local passenger transportation similar to street-railway service.

[(15)**]** *(16)* NONCONTIGUOUS DOMESTIC TRADE.—The term "noncontiguous domestic trade" means transportation subject to jurisdiction under chapter 135 involving traffic originating in or destined to Alaska, Hawaii, or a territory or possession of the United States.

[(16)] *(17)* PERSON.—The term "person", in addition to its meaning under section 1 of title 1, includes a trustee, receiver, assignee, or personal representative of a person.

[(17)] *(18)* PRE-ARRANGED GROUND TRANSPORTATION SERVICE.—The term "pre-arranged ground transportation service" means transportation for a passenger (or a group of passengers) that is arranged in advance (or is operated on a regular route or between specified points) and is provided in a motor vehicle with a seating capacity not exceeding 15 passengers (including the driver).

[(18)] *(19)* SECRETARY.—The term "Secretary" means the Secretary of Transportation.

[(19)] *(20)* STATE.—The term "State" means the 50 States of the United States and the District of Columbia.

[(20)] *(21)* TAXICAB SERVICE.—The term "taxicab service" means passenger transportation in a motor vehicle having a capacity of not more than 8 passengers (including the driver), not operated on a regular route or between specified places, and that—

(A) is licensed as a taxicab by a State or a local jurisdiction; or

(B) is offered by a person that—

(i) provides local transportation for a fare determined (except with respect to transportation to or from airports) primarily on the basis of the distance traveled; and

(ii) does not primarily provide transportation to or from airports.

[(21)] *(22)* TRANSPORTATION.—The term "transportation" includes—

(A) a motor vehicle, vessel, warehouse, wharf, pier, dock, yard, property, facility, instrumentality, or equipment of any kind related to the movement of passengers or property, or both, regardless of ownership or an agreement concerning use; and

(B) services related to that movement, including arranging for, receipt, delivery, elevation, transfer in transit, refrigeration, icing, ventilation, storage, handling, packing, unpacking, and interchange of passengers and property.

[(22)] *(23)* UNITED STATES.—The term "United States" means the States of the United States and the District of Columbia.

[(23)] *(24)* VESSEL.—The term "vessel" means a watercraft or other artificial contrivance that is used, is capable of being used, or is intended to be used, as a means of transportation by water.

[(24)] *(25)* WATER CARRIER.—The term "water carrier" means a person providing water transportation for compensation.

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§ 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 re-

duced if the usual amounts expended by the State for the State's recreational boating safety program, as determined under section 13105 of this chapter, for the previous fiscal year is less than the average of the total of such expenditures for the 3 fiscal years immediately preceding that previous fiscal year. The reduction shall be proportionate, as a percentage, to the amount by which the level of State expenditures for such previous fiscal year is less than the average of the total of such expenditures for the 3 fiscal years immediately preceding that previous fiscal year.

(b) REDUCTION OF THRESHOLD.—If the total amount available for allocation and distribution under this chapter in a fiscal year for all participating State recreational boating safety programs is less than such amount for the preceding fiscal year, the level of State expenditures required under subsection (a) of this section for the preceding fiscal year shall be decreased proportionately.

(c) WAIVER.—

(1) IN GENERAL.—Upon the written request of a State, the Secretary may waive the provisions of subsection (a) of this section for 1 fiscal year if the Secretary determines that a reduction in expenditures for the State's recreational boating safety program is attributable to a non-selective reduction in expenditures for the programs of all Executive branch agencies of the State government, or for other reasons if the State demonstrates to the Secretary's satisfaction that such waiver is warranted.

(2) 30-DAY DECISION.—The Secretary shall approve or deny a request for a waiver not later than 30 days after the date the request is received.

* * * * * * *

§ 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)(A)] *(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; *or*

[(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] *14904(d).*

[(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.

§ 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 weight of that portion of the shipment delivered to the total weight of the shipment.

(C) POST-CONTRACT SERVICES.—Subparagraph (A) does not apply to additional services requested by a shipper after the contract of service is executed that were not included in the estimate.

(D) IMPRACTICABLE OPERATIONS.—Subparagraph (A) does not apply to impracticable operations, as defined by the applicable carrier tariff, except that the charges collected at delivery for such operations shall not exceed 15 percent of all other charges due at delivery. Any remaining charges due shall be paid within 30 days after the carrier presents its freight bill.

§ 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 required, 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.

(3) TERMINATION.—This subsection shall cease to be in effect on the transition termination date.

(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) MODIFICATION OF CARRIER REGISTRATION.—

(1) IN GENERAL.—On and after the transition termination date, the Secretary—

(A) may not register a motor carrier under this section as a motor common carrier or a motor contract carrier;

(B) shall register applicants under this section as motor carriers; and

(C) shall issue any motor carrier registered under this section after that date a motor carrier certificate of registration that specifies whether the holder of the certificate may provide transportation of persons, household goods, other property, or any combination thereof.

(2) PRE-EXISTING CERTIFICATES AND PERMITS.—The Secretary shall redesignate any motor carrier certificate or permit issued before the transition termination date as a motor carrier certificate of registration. On and after the transition termination date, any person holding a motor carrier certificate of registration redesignated under this paragraph may provide both contract carriage (as defined in section 13102(4)(B) of this title) and transportation under terms and conditions meeting the requirements of section 13710(a)(1) of this title. The Secretary may not, pursuant to any regulation or form issued before or after the transition termination date, make any distinction among holders of motor carrier certificates of registration on the basis of whether the holder would have been classified as a common carrier or as a contract carrier under—

(A) subsection (d) of this section, as that section was in effect before the transition termination date; or

(B) any other provision of this title that was in effect before the transition termination date.

(3) TRANSITION TERMINATION DATE DEFINED.—In subsection (d) and this subsection, the term "transition termination date" means the first day of January occurring more than 12 months after the date of enactment of the Unified Carrier Registration Act of 2005.

[(f)**]** *(g)* 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.—

(1) IN GENERAL.—Except as provided in paragraph (2), any person having registered with the Secretary to provide transportation or service as a motor carrier or motor private carrier under this title, as in effect on January 1, 2005, but not having registered pursuant to section 13902(a) of this title, shall be deemed, for purposes of this part, to be registered to provide such transportation or service for purposes of sections 13908 and 14504a of this title.

(2) EXCLUSIVELY INTRASTATE OPERATORS.—Paragraph (1) does not apply to a motor carrier or motor private carrier (including a transporter of waste or recyclable materials) engaged exclusively in intrastate transportation operations.

[(b)**]** *(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 registration 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 reg-

istrant 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 2005, any person, other than a motor private carrier, registered with the Secretary to provide transportation or service as a motor carrier under section 13905(b) of this title shall file with the Secretary a bond, insurance policy, or other type of security approved by the Secretary, in an amount not less than required by sections 31138 and 31139 of this title.

[(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) FEE 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 2005 regulations to establish, an online, Federal registration system to be named the Unified Carrier Registration System to replace—

(1) the current Department of Transportation identification number system, the Single State Registration System under section 14504 of this title;

(2) the registration system contained in this chapter and the financial responsibility information system under section 13906; and

(3) the service of process agent systems under sections 503 and 13304 of this title.

(b) ROLE AS CLEARINGHOUSE AND DEPOSITORY OF INFORMATION.—The Unified Carrier Registration System shall serve as a clearinghouse and depository of information on, and identification of, all foreign and domestic motor carriers, motor private carriers, brokers, and freight forwarders, and others required to register with the Department, including information with respect to a carrier's safety rating, compliance with required levels of financial responsibility, and compliance with the provisions of section 14504a of this title. The Secretary shall ensure that Federal agencies, States, representatives of the motor carrier industry, and the public have access to the Unified Carrier Registration System, including the records and information contained in the System.

(c) PROCEDURES FOR CORRECTING INFORMATION.—Not later than 60 days after the effective date of this section, the Secretary shall prescribe regulations establishing procedures that enable a motor carrier to correct erroneous information contained in any part of the Unified Carrier Registration System.

(d) FEE SYSTEM.—The Secretary shall establish, under section 9701 of title 31, a fee system for the Unified Carrier Registration System according to the following guidelines:

(1) REGISTRATION AND FILING EVIDENCE OF FINANCIAL RESPONSIBILITY.—The fee for new registrants shall as nearly as possible cover the costs of processing the registration and conducting the safety audit or examination, if required, but shall not exceed $300.

(2) EVIDENCE OF FINANCIAL RESPONSIBILITY.—The fee for filing evidence of financial responsibility pursuant to this section shall not exceed $10 per filing. No fee shall be charged for a filing for purposes of designating an agent for service of process or the filing of other information relating to financial responsibility.

(3) ACCESS AND RETRIEVAL FEES.—

(A) IN GENERAL.—Except as provided in subparagraph (B), the fee system shall include a nominal fee for the access to or retrieval of information from the Unified Carrier Registration System to cover the costs of operating and upgrading the System, including the personnel costs incurred by the Department and the costs of administration of the Unified Carrier Registration Agreement.

(B) EXCEPTIONS.—There shall be no fee charged—

(i) to any agency of the Federal Government or a State government or any political subdivision of any such government for the access to or retrieval of infor-

mation and data from the Unified Carrier Registration System for its own use; or

(ii) to any representative of a motor carrier, motor private carrier, leasing company, broker, or freight forwarder (as each is defined in section 14504a of this title) for the access to or retrieval of the individual information related to such entity from the Unified Carrier Registration System for the individual use of such entity.

(e) APPLICATION TO CERTAIN INTRASTATE OPERATIONS.—Nothing in this section requires the registration of a motor carrier, a motor private carrier of property, or a transporter of waste or recyclable materials operating exclusively in intrastate transportation not otherwise required to register with the Secretary under another provision of this title.

§ 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 car-

riers 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.

(2) OTHER INFORMATION.—At the time that a motor carrier provides the written estimate required by paragraph (1), the motor carrier shall provide the shipper a copy of the Department of Transportation publication FMCSA–ESA–03–005 (or its successor edition or publication) entitled 'Ready to Move?'. Before the execution of a contract for service, a motor carrier shall provide the shipper a copy of the Department of Transportation publication OCE 100, entitled 'Your Rights and Responsibilities When You Move' required by section 375.2 of title 49, Code of Federal Regulations (or any corresponding similar regulation).

(3) BINDING AND NONBINDING ESTIMATES.—The written estimate required by paragraph (1) may be either binding or nonbinding. The written estimate shall be based on a visual inspection of the household goods if the household goods are located within a 50-mile radius of the location of the carrier's household goods agent preparing the estimate. The Secretary may not prohibit any such carrier from charging a prospective shipper for providing a written, binding estimate for the transportation and related services.

[(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) 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.

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§ 14124. Consumer complaints

(a) ESTABLISHMENT OF SYSTEM AND DATABASE.—The Secretary of Transportation shall—

(1) establish a system to—

(A) file and log a complaint made by a shipper that relates to motor carrier transportation of household goods; and

(B) to solicit information gathered by a State regarding the number and type of complaints involving the interstate transportation of household goods;

(2) establish a database of such complaints; and

(3) develop a procedure—

(A) to provide public access to the database, subject to section 522a of title 5;

(B) to forward a complaint, including the motor carrier bill of lading number, if known, related to the complaint to a motor carrier named in such complaint and to an appropriate State authority (as defined in section 14710(c) in the State in which the complainant resides; and

(C) to permit a motor carrier to challenge information in the database.

(b) SUMMARY TO CONGRESS.—The Secretary shall transmit a summary each year of the complaints filed and logged under subsection (a) for the preceding calendar year to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure.

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§ 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 intra-

state 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 prearranged 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 carrier 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 2005.

§ 14504a. Unified carrier registration system plan and agreement

(a) DEFINITIONS.—In this section and section 14506 of this title:

(1) COMMERCIAL MOTOR VEHICLE.—

(A) IN GENERAL.—Except as provided in subparagraph (B), the term "commercial motor vehicle" has the meaning given the term in section 31101 of this title.

(B) EXCEPTION.—With respect to motor carriers required to make any filing or pay any fee to a State with respect to the motor carrier's authority or insurance related to operation within such State, the term "commercial motor vehicle" means any self-propelled vehicle used on the highway in commerce to transport passengers or property for compensation regardless of the gross vehicle weight rating of the vehicle or the number of passengers transported by such vehicle.

(2) BASE-STATE.—

(A) IN GENERAL.—The term "Base-State" means, with respect to the Unified Carrier Registration Agreement, a State—

(i) that is in compliance with the requirements of subsection (e); and

(ii) in which the motor carrier, motor private carrier, broker, freight forwarder or leasing company maintains its principal place of business.

(B) DESIGNATION OF BASE-STATE.—A motor carrier, motor private carrier, broker, freight forwarder or leasing company may designate another State in which it maintains an office or operating facility as its Base-State in the event that—

(i) the State in which the motor carrier, motor private carrier, broker, freight forwarder or leasing company maintains its principal place of business is not in compliance with the requirements of subsection (e); or

(ii) the motor carrier, motor private carrier, broker, freight forwarder or leasing company does not have a principal place of business in the United States.

(3) INTRASTATE FEE.—The term "intrastate fee" means any fee, tax, or other type of assessment, including per vehicle fees and gross receipts taxes, imposed on a motor carrier or motor private carrier for the renewal of the intrastate authority or insurance filings of such carrier with a State.

(4) LEASING COMPANY.—The term 'leasing company' means a lessor that is engaged in the business of leasing or renting for compensation motor vehicles without drivers to a motor carrier, motor private carrier, or freight forwarder.

(5) MOTOR CARRIER.—The term "motor carrier" has the meaning given the term in section 13102(12) of this title, but shall include all carriers that are otherwise exempt from the provisions of part B of this title pursuant to the provisions of chapter 135 of this title or exemption actions by the former Interstate Commerce Commission under this title.

(6) PARTICIPATING STATE.—The term "participating state" means a State that has complied with the requirements of subsection (e) of this section.

(7) SSRS.—The term "SSRS" means the Single State Registration System in effect on the date of enactment of the Unified Carrier Registration Act of 2005.

(8) UNIFIED CARRIER REGISTRATION AGREEMENT.—The terms "Unified Carrier Registration Agreement" and "UCR Agreement" mean the interstate agreement developed under the Unified Carrier Registration Plan governing the collection and distribution of registration and financial responsibility information provided and fees paid by motor carriers, motor private carriers, brokers, freight forwarders and leasing companies pursuant to this section.

(9) UNIFIED CARRIER REGISTRATION PLAN.—The terms "Unified Carrier Registration Plan" and "UCR Plan" mean the organization of State, Federal and industry representatives responsible for developing, implementing and administering the Unified Carrier Registration Agreement.

(10) VEHICLE REGISTRATION.—The term "vehicle registration" means the registration of any commercial motor vehicle under the International Registration Plan or any other registration law or regulation of a jurisdiction.

(b) APPLICABILITY OF PROVISIONS TO FREIGHT FORWARDERS.—A Freight forwarder that operates commercial motor vehicles and is not required to register as a carrier pursuant to section 13903(b) of this title shall be subject to the provisions of this section as if a motor carrier.

(c) UNREASONABLE BURDEN.—For purposes of this section, it shall be considered an unreasonable burden upon interstate commerce for any State or any political subdivision of a State, or any political authority of 2 or more States—

(1) to enact, impose, or enforce any requirement or standards, or levy any fee or charge on any interstate motor carrier or interstate motor private carrier in connection with—

(A) the registration with the State of the interstate operations of a motor carrier or motor private carrier;

(B) the filing with the State of information relating to the financial responsibility of a motor carrier or motor private carrier pursuant to sections 31138 or 31139 of this title;

(C) the filing with the State of the name of the local agent for service of process of a motor carrier or motor private carrier pursuant to sections 503 or 13304 of this title; or

(D) the annual renewal of the intrastate authority, or the insurance filings, of a motor carrier or motor private carrier, or other intrastate filing requirement necessary to operate within the State, if the motor carrier or motor private carrier is—

(i) registered in compliance with section 13902 or section 13905(b) of this title; and

(ii) in compliance with the laws and regulations of the State authorizing the carrier to operate in the State pursuant to section 14501(c)(2)(A) of this title

except with respect to—

(I) intrastate service provided by motor carriers of passengers that is not subject to the preemptive provisions of section 14501(a) of this title,

(II) motor carriers of property, motor private carriers, brokers, or freight forwarders, or their services or operations, that are described in subparagraphs (B) and (C) of section 14501(c)(2) and sec-

tion 14506(c)(3) or permitted pursuant to section 14506(b) of this title, and

(III) the intrastate transportation of waste or recyclable materials by any carrier); or

(2) to require any interstate motor carrier or motor private carrier to pay any fee or tax, not proscribed by paragraph (1)(D) of this subsection, that a motor carrier or motor private carrier that pays a fee which is proscribed by that paragraph is not required to pay.

(d) UNIFIED CARRIER REGISTRATION PLAN.—

(1) BOARD OF DIRECTORS.—

(A) GOVERNANCE OF PLAN.—The Unified Carrier Registration Plan shall be governed by a Board of Directors consisting of representatives of the Department of Transportation, Participating States, and the motor carrier industry.

(B) NUMBER.—The Board shall consist of 15 directors.

(C) COMPOSITION.—The Board shall be composed of directors appointed as follows:

(i) FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION.—The Secretary shall appoint 1 director from each of the Federal Motor Carrier Safety Administration's 4 Service Areas (as those areas were defined by the Federal Motor Carrier Safety Administration on January 1, 2005), from among the chief administrative officers of the State agencies responsible for overseeing the administration of the UCR Agreement.

(ii) STATE AGENCIES.—The Secretary shall appoint 5 directors from the professional staffs of State agencies responsible for overseeing the administration of the UCR Agreement in their respective States. Nominees for these 5 directorships shall be submitted to the Secretary by the national association of professional employees of the State agencies responsible for overseeing the administration of the UCR Agreement in their respective States.

(iii) MOTOR CARRIER INDUSTRY.—The Secretary shall appoint 5 directors from the motor carrier industry. At least 1 of the appointees shall be an employee of the national trade association representing the general motor carrier of property industry.

(iv) DEPARTMENT OF TRANSPORTATION.—The Secretary shall appoint the Deputy Administrator of the Federal Motor Carrier Safety Administration, or such other presidential appointee from the United States Department of Transportation, as the Secretary may designate, to serve as a director.

(D) CHAIRPERSON AND VICE-CHAIRPERSON.—The Secretary shall designate 1 director as Chairperson and 1 director as Vice-Chairperson of the Board. The Chairperson and Vice-Chairperson shall serve in such capacity for the term of their appointment as directors.

(E) TERM.—In appointing the initial Board, the Secretary shall designate 5 of the appointed directors for initial terms of 3 years, 5 of the appointed directors for initial terms of 2 years, and 5 of the appointed directors for initial terms

of 1 year. Thereafter, all directors shall be appointed for terms of 3 years, except that the term of the Deputy Administrator or other individual designated by the Secretary under subparagraph (C)(iv) shall be at the discretion of the Secretary. A director may be appointed to succeed himself or herself. A director may continue to serve on the Board until his or her successor is appointed.

(2) RULES AND REGULATIONS GOVERNING THE UCR AGREEMENT.—The Board of Directors shall issue rules and regulations to govern the UCR Agreement. The rules and regulations shall—

(A) prescribe uniform forms and formats, for—

(i) the annual submission of the information required by a Base-State of a motor carrier, motor private carrier, leasing company, broker, or freight forwarder;

(ii) the transmission of information by a Participating State to the Unified Carrier Registration System;

(iii) the payment of excess fees by a State to the designated depository and the distribution of fees by the depository to those States so entitled; and

(iv) the providing of notice by a motor carrier, motor private carrier, broker, freight forwarder, or leasing company to the Board of the intent of such entity to change its Base-State, and the procedures for a State to object to such a change under subparagraph (C) of this paragraph;

(B) provide for the administration of the Unified Carrier Registration Agreement, including procedures for amending the Agreement and obtaining clarification of any provision of the Agreement;

(C) provide procedures for dispute resolution that provide due process for all involved parties; and

(D) designate a depository.

(3) COMPENSATION AND EXPENSES.—Except for the representative of the Department of Transportation appointed pursuant to paragraph (1)(D), no director shall receive any compensation or other benefits from the Federal Government for serving on the Board or be considered a Federal employee as a result of such service. All Directors shall be reimbursed for expenses they incur attending duly called meetings of the Board. In addition, the Board may approve the reimbursement of expenses incurred by members of any subcommittee or task force appointed pursuant to paragraph (5). The reimbursement of expenses to directors and subcommittee and task force members shall be based on the then applicable rules of the General Service Administration governing reimbursement of expenses for travel by Federal employees.

(4) MEETINGS.—

(A) IN GENERAL.—The Board shall meet at least once per year. Additional meetings may be called, as needed, by the Chairperson of the Board, a majority of the directors, or the Secretary.

(B) QUORUM.—A majority of directors shall constitute a quorum.

(C) VOTING.—Approval of any matter before the Board shall require the approval of a majority of all directors present at the meeting.

(D) OPEN MEETINGS.—Meetings of the Board and any subcommittees or task forces appointed pursuant to paragraph (5) of this section shall be subject to the provisions of section 552b of title 5.

(5) SUBCOMMITTEES.—

(A) INDUSTRY ADVISORY SUBCOMMITTEE.—The Chairperson shall appoint an Industry Advisory Subcommittee. The Industry Advisory Subcommittee shall consider any matter before the Board and make recommendations to the Board.

(B) OTHER SUBCOMMITTEES.—The Chairperson shall appoint an Audit Subcommittee, a Dispute Resolution Subcommittee, and any additional subcommittees and task forces that the Board determines to be necessary.

(C) MEMBERSHIP.—The chairperson of each subcommittee shall be a director. The other members of subcommittees and task forces may be directors or non-directors.

(D) REPRESENTATION ON SUBCOMMITTEES.—Except for the Industry Advisory Subcommittee (the membership of which shall consist solely of representatives of entities subject to the fee requirements of subsection (f) of this section), each subcommittee and task force shall include representatives of the Participating States and the motor carrier industry.

(6) DELEGATION OF AUTHORITY.—The Board may contract with any private commercial or non-profit entity or any agency of a State to perform administrative functions required under the Unified Carrier Registration Agreement, but may not delegate its decision or policy-making responsibilities.

(7) DETERMINATION OF FEES.—

(A) RECOMMENDATION BY BOARD.—The Board shall recommend to the Secretary the annual fees to be assessed carriers, leasing companies, brokers, and freight forwarders pursuant to the Unified Carrier Registration Agreement. In making its recommendation to the Secretary for the level of fees to be assessed in the next Agreement year, and in setting the fee level, the Board and the Secretary shall consider—

(i) the administrative costs associated with the Unified Carrier Registration Plan and the Agreement;

(ii) whether the revenues generated in the previous year and any surplus or shortage from that or prior years enable the Participating States to achieve the revenue levels set by the Board; and

(iii) the parameters for fees set forth in subsection (f)(1).

(B) SETTING FEES.—The Secretary shall set the annual fees for the next Agreement year—

(i) within 90 days after receiving the Board's recommendation under subparagraph (A); and

(ii) after notice and opportunity for public comment.

(8) LIABILITY PROTECTIONS FOR DIRECTORS.—No individual appointed to serve on the Board shall be liable to any other director or to any other party for harm, either economic or noneconomic, caused by an act or omission of the individual arising from the individual's service on the Board if—

(A) the individual was acting within the scope of his or her responsibilities as a director; and

(B) the harm was not caused by willful or criminal misconduct, gross negligence, reckless misconduct, or a conscious, flagrant indifference to the right or safety of the party harmed by the individual.

(9) INAPPLICABILITY OF FEDERAL ADVISORY COMMITTEE ACT.—The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the Unified Carrier Registration Plan or its committees.

(10) CERTAIN FEES NOT AFFECTED.—This section does not limit the amount of money a State may charge for vehicle registration or the amount of any fuel use tax a State may impose pursuant to the International Fuel Tax Agreement.

(e) STATE PARTICIPATION.—

(1) STATE PLAN.—No State shall be eligible to participate in the Unified Carrier Registration Plan or to receive any revenues derived under the Agreement, unless the State submits to the Secretary, not later than 3 years after the date of enactment of the Unified Carrier Registration Act of 2005, a plan—

(A) identifying the State agency that has or will have the legal authority, resources, and qualified personnel necessary to administer the Unified Carrier Registration Agreement in accordance with the rules and regulations promulgated by the Board of Directors of the Unified Carrier Registration Plan; and

(B) containing assurances that an amount at least equal to the revenue derived by the State from the Unified Carrier Registration Agreement shall be used for motor carrier safety programs, enforcement, and financial responsibility, or the administration of the UCR Plan and UCR Agreement.

(2) AMENDED PLANS.—A State may change the agency designated in the plan submitted under this subsection by filing an amended plan with the Secretary and the Chairperson of the Unified Carrier Registration Plan.

(3) WITHDRAWAL OF PLAN.—If a State withdraws, or notifies the Secretary that it is withdrawing, the plan submitted under this subsection, then the State may no longer participate in the Unified Carrier Registration Agreement or receive any portion of the revenues derived under the Agreement. The Secretary shall notify the Chairperson upon receiving notice from a State that it is withdrawing its plan or withdrawing from the Agreement.

(4) TERMINATION OF ELIGIBILITY.—If a State fails to submit a plan to the Secretary as required by paragraph (1) or withdraws its plan under paragraph (3), the State shall be prohibited from subsequently submitting or resubmitting a plan or participating in the Agreement.

(5) PROVISION OF PLAN TO CHAIRPERSON.—The Secretary shall provide a copy of each plan submitted under this sub-

section to the initial Chairperson of the Board of Directors of the Unified Carrier Registration Plan not later than 90 days of appointing the Chairperson.

(f) CONTENTS OF UNIFIED CARRIER REGISTRATION AGREEMENT.—The Unified Carrier Registration Agreement shall provide the following:

(1) DETERMINATION OF FEES.—

(A) Fees charged motor carriers, motor private carriers, or freight forwarders in connection with the filing of proof of financial responsibility under the UCR Agreement shall be based on the number of commercial motor vehicles owned or operated by the motor carrier, motor private carrier, or freight forwarder. Brokers and leasing companies shall pay the same fees as the smallest bracket of motor carriers, motor private carriers, and freight forwarders.

(B) The fees shall be determined by the Secretary based upon the recommendation of the Board under subsection (d)(7).

(C) The Board shall develop no more than 6 and no less than 4 brackets of carriers by size of fleet.

(D) The fee scale shall be progressive and use different vehicle ratios for each bracket of carrier fleet size.

(E) The Board may ask the Secretary to adjust the fees within a reasonable range on an annual basis if the revenues derived from the fees—

(i) are insufficient to provide the revenues to which the States are entitled under this section; or

(ii) exceed those revenues.

(2) DETERMINATION OF OWNERSHIP OR OPERATION.—Commercial motor vehicles owned or operated by a motor carrier, motor private carrier, or freight forwarder shall mean those commercial motor vehicles registered in the name of the motor carrier, motor private carrier, or freight forwarder or controlled by the motor carrier, motor private carrier, or freight forwarder under a long term lease during a vehicle registration year.

(3) CALCULATION OF NUMBER OF COMMERCIAL MOTOR VEHICLES OWNED OR OPERATED.—The number of commercial motor vehicles owned or operated by a motor carrier, motor private carrier, or freight forwarder for purposes of paragraph (1) of this subsection shall be based either on the number of commercial motor vehicles the motor carrier, motor private carrier, or freight forwarder has indicated it operates on its most recently filed MCS–150 or the total number of such vehicles it owned or operated for the 12-month period ending on June 30 of the year immediately prior to the each registration year of the Unified Carrier Registration System. Commercial motor vehicles used exclusively in the intrastate transportation of property, waste, or recyclable material may not be included in determining the number of commercial motor vehicles owned or operated by a motor carrier or motor private carrier for purposes of paragraph (1) of this subsection.

(4) PAYMENT OF FEES.—Motor carriers, motor private carriers, leasing companies, brokers, and freight forwarders shall pay all fees required under this section to their Base-State pursuant to the UCR Agreement.

(g) PAYMENT OF FEES.—Revenues derived under the UCR Agreement shall be allocated to Participating States as follows:

(1) A State that participated in the Single State Registration System in the last SSRS registration year ending before the date of enactment of the Unified Carrier Registration Act of 2005 and complies with the requirements of subsection (e) of this section is entitled to receive a portion of the UCR Agreement revenues generated under the Agreement equivalent to the revenues it received under the SSRS in the last SSRS registration year ending before the date of enactment of the Unified Carrier Registration Act of 2005, as long as the State continues to comply with the provisions of subsection (e).

(2) A State that collected intrastate registration fees from interstate motor carriers, interstate motor private carriers, or interstate exempt carriers and complies with the requirements of subsection (e) of this section is entitled to receive an additional portion of the UCR Agreement revenues generated under the Agreement equivalent to the revenues it received from such interstate carriers in the last calendar year ending before the date of enactment of the Unified Carrier Registration Act of 2005, as long as the State continues to comply with the provisions of subsection (e).

(3) States that comply with the requirements of subsection (e) of this section but did not participate in SSRS during the last SSRS registration year ending before the date of enactment of the Unified Carrier Registration Act of 2005 shall be entitled to an annual allotment not to exceed $500,000 from the UCR Agreement revenues generated under the Agreement as long as the State continues to comply with the provisions of subsection (e).

(4) The amount of UCR Agreement revenues to which a State is entitled under this section shall be calculated by the Board and approved by the Secretary.

(h) DISTRIBUTION OF UCR AGREEMENT REVENUES.—

(1) ELIGIBILITY.—Each State that is in compliance with the provisions of subsection (e) shall be entitled to a portion of the revenues derived from the UCR Agreement in accordance with subsection (g).

(2) ENTITLEMENT TO REVENUES.—A State that is in compliance with the provisions of subsection (e) may retain an amount of the gross revenues it collects from motor carriers, motor private carriers, brokers, freight forwarders and leasing companies under the UCR Agreement equivalent to the portion of revenues to which the State is entitled under subsection (g). All revenues a Participating State collects in excess of the amount to which the State is so entitled shall be forwarded to the depository designated by the Board under subsection (d)(2)(D).

(3) DISTRIBUTION OF FUNDS FROM DEPOSITORY.—The excess funds collected in the depository shall be distributed as follows:

(A) Excess funds shall be distributed on a pro rata basis to each Participating State that did not collect revenues under the UCR Agreement equivalent to the amount such State is entitled under subsection (g), except that the sum of the gross UCR Agreement revenues collected by a Participating State and the amount distributed to it from the de-

pository shall not exceed the amount to which the State is entitled under subsection (g).

(B) Any excess funds held by the depository after all distributions under subparagraph (A) have been made shall be used to pay the administrative costs of the UCR Plan and the UCR Agreement.

(C) Any excess funds held by the depository after distributions and payments under subparagraphs (A) and (B) shall be retained in the depository, and the UCR Agreement fees for motor carriers, motor private carriers, leasing companies, freight forwarders, and brokers for the next fee year shall be reduced by the Secretary accordingly.

(i) ENFORCEMENT.—

(1) CIVIL ACTIONS.—Upon request by the Secretary of Transportation, the Attorney General may bring a civil action in a court of competent jurisdiction to enforce compliance with this section and with the terms of the Unified Carrier Registration Agreement.

(2) VENUE.—An action under this section may be brought only in the Federal court sitting in the State in which an order is required to enforce such compliance.

(3) RELIEF.—Subject to section 1341 of title 28, the court, on a proper showing—

(A) shall issue a temporary restraining order or a preliminary or permanent injunction; and

(B) may issue an injunction requiring that the State or any person comply with this section.

(4) ENFORCEMENT BY STATES.—Nothing in this section—

(A) prohibits a Participating State from issuing citations and imposing reasonable fines and penalties pursuant to applicable State laws and regulations on any motor carrier, motor private carrier, freight forwarder, broker, or leasing company for failure to—

(i) submit documents as required under subsection (d)(2); or

(ii) pay the fees required under subsection (f); or

(B) authorizes a State to require a motor carrier, motor private carrier, or freight forwarder to display as evidence of compliance any form of identification in excess of those permitted under section 14506 of this title on or in a commercial motor vehicle.

(j) APPLICATION TO INTRASTATE CARRIERS.—Notwithstanding any other provision of this section, a State may elect to apply the provisions of the UCR Agreement to motor carriers and motor private carriers subject to its jurisdiction that operate solely in intrastate commerce within the borders of the State.

* * * * * * *

§ 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.

* * * * * * *

§ 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 prop-

erty, 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, subject to rules issued by the Surface Transportation Board and applicable tariffs.

(3) APPLICATION OF RATES.—The released rates established by the Board under paragraph (1) (commonly known as 'released rates') shall not apply to the transportation of household goods by a carrier unless the liability of the carrier for the full value of such household goods under paragraph (2) is waived in writing by the shipper.

(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.—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.] *transported and to determine whether carrier charges, in addition to those collected at delivery, must be paid by the shipper for transportation and services related to the transportation of household goods.*

(b) 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.

(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] *$10,000* 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] *$10,000* and the shipper requests arbitration, such arbitration shall be binding on the parties only if the carrier agrees to arbitration.

(7) 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) 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.] *damages, and an order requiring the payment of additional carrier charges.*

(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) 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.]

(3)(A) the shipper was not advised by the carrier during the claim settlement process that a dispute settlement program was available to resolve the dispute;

(B) a decision resolving the dispute was not rendered through arbitration under this section within the period provided under

subsection (b)(8) of this section or an extension of such period under such subsection; or

(C) 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 reasonable 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.

(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 the consumer protection provisions that apply to individual shippers, as determined by the Secretary of Transportation, of this title that are related to the delivery and transportation of household goods in interstate commerce. Any fine or penalty imposed on a carrier in a proceeding under this subsection shall, notwithstanding any provision of law to the contrary, be paid to and retained by the State.

(b) NOTICE.—The State shall serve written notice to the Secretary or the Board, as the case may be, of any civil action under subsection (a) prior to initiating such civil action. The notice shall include a copy of the complaint to be filed to initiate such civil action, except that if it is not feasible for the State to provide such prior notice, the State shall provide such notice immediately upon instituting such civil action.

(c) STATE AUTHORITY DEFINED.—The term 'State authority' means an agency of a State that has authority under the laws of the State to regulate the intrastate movement of household goods.

§ 14711. Enforcement by State attorneys general

(a) IN GENERAL.—A State, as parens patriae, may bring a civil action on behalf of its residents in an appropriate district court of the United States to enforce the consumer protection provisions that apply to individual shippers, as determined by the Secretary of Transportation, of this title that are related to the delivery and transportation of household goods in interstate commerce, or regulations or orders of the Secretary or the Board thereunder, or to impose the civil penalties authorized by this part or such regulation or order, whenever the attorney general of the State has reason to believe that the interests of the residents of the State have been or are being threatened or adversely affected by a carrier or broker providing transportation subject to jurisdiction under subchapter I or III of chapter 135 of this title, or a foreign motor carrier providing transportation registered under section 13902 of this title, that is engaged in household goods transportation that violates this part or a regulation or order of the Secretary or Board, as applicable, promulgated under this part.

(b) NOTICE.—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.

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§ 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 viola-

tion 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.

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§ 14915. Penalties for failure to give up possession of household goods

(a) CIVIL PENALTY.—Whoever is found to have failed to give up possession of household goods is liable to the United States for a civil penalty of not less than $10,000. Each day a carrier is found to have failed to give up possession of household goods may constitute a separate violation. If such person is a carrier or broker, the Secretary may suspend the registration of such carrier or broker under chapter 139 of this title for a period of up to 24 months.

(b) CRIMINAL PENALTY.—Whoever has been convicted of having failed to give up possession of household goods shall be fined under title 18 or imprisoned for not more than 5 years, or both.

(c) FAILURE TO GIVE UP POSSESSION OF HOUSEHOLD GOODS DEFINED.—For purposes of this section, the term 'failed to give up possession of household goods' means the knowing and willful failure, in violation of a contract, to deliver to, or unload at, the destination of a shipment of household goods that is subject to jurisdiction under subchapter I or III of chapter 135 of this title, for which charges have been estimated by the motor carrier providing transportation of such goods, and for which the shipper has tendered a payment described in clause (i), (ii), or (iii) of section 13707(b)(3)(A) of this title.

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§ 30112. Prohibitions on manufacturing, selling, and importing noncomplying motor vehicles and equipment

(a) GENERAL.—*(1)* Except as provided in this section, sections 30113 and 30114 of this title, and subchapter III of this chapter, a person 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.

(2) Except as provided in this section, sections 30113 and 30114 of this title, and subchapter III of this chapter, a school or school system may not purchase, rent, or lease a motor vehicle designed or used to transport 15 passengers, including the driver, if that motor vehicle will be used significantly by, or on behalf of, the school or school system to transport preprimary, primary, or secondary school students to or from school or an event related to school, unless the motor vehicle complies with the motor vehicle standards prescribed for school buses and multifunction school activity buses under this title. This paragraph does not apply to the purchase, rental, or lease of a motor vehicle under a contract executed before the date of enactment of the Surface Transportation Safety Improvement Act of 2005.

(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.

§ 30122. Making safety devices and elements inoperative

(a) DEFINITION.—In this section, "motor vehicle repair business" means a person holding itself out to the public to repair for compensation a motor vehicle or motor vehicle equipment.

(b) PROHIBITION.—A manufacturer, distributor, dealer, or motor vehicle repair business may not knowingly make inoperative any part of a device or element of design installed on or in a motor vehicle or motor vehicle equipment in compliance with an applicable motor vehicle safety standard prescribed under this chapter unless the manufacturer, distributor, dealer, or repair business reasonably believes the vehicle or equipment will not be used (except for testing or a similar purpose during maintenance or repair) when the device or element is inoperative.

(c) REGULATIONS.—The Secretary of Transportation may prescribe regulations—

(1) to exempt a person from this section if the Secretary decides the exemption is consistent with motor vehicle safety and section 30101 of this title; and

(2) to define "make inoperative".

[(d) NONAPPLICATION.—This section does not apply to a safety belt interlock or buzzer designed to indicate a safety belt is not in use as described in section 30124 of this title.]

§ 30124. Buzzers indicating nonuse of safety belts

A motor vehicle safety standard prescribed under this chapter may [not] require or allow a manufacturer to comply with the

standard by using a safety belt interlock designed to prevent starting or operating a motor vehicle if an occupant is not using a safety belt or a buzzer designed to indicate a safety belt is not in use, [except] *including* a buzzer that operates only during the 8-second period after the ignition is turned to the "start" or "on" position.

* * * * * * *

§ 30128. Vehicle rollover prevention and crash mitigation

(a) IN GENERAL.—The Secretary shall initiate rulemaking proceedings, for the purpose of establishing rules or standards that will reduce vehicle rollover crashes and mitigate deaths and injuries associated with such crashes for motor vehicles with a gross vehicle weight rating of not more than 10,000 pounds.

(b) ROLLOVER PREVENTION.—One of the rulemaking proceedings initiated under subsection (a) shall be to establish performance criteria to reduce the occurrence of rollovers consistent with stability enhancing technologies. The Secretary shall issue a proposed rule in this proceeding by rule by October 1, 2006, and a final rule by April 1, 2009.

(c) OCCUPANT EJECTION PREVENTION.—

(1) IN GENERAL.—The Secretary shall also initiate a rulemaking proceding to establish performance standards to reduce complete and partial ejections of vehicle occupants from outboard seating positions. In formulating the standards the Secretary shall consider various ejection mitigation systems. The Secretary shall issue a final rule under this paragraph no later than October 1, 2009.

(2) DOOR LOCKS AND DOOR RETENTION.—The Secretary shall complete the rulemaking proceeding initiated to upgrade Federal Motor Vehicle Safety Standard No. 206, relating to door locks and door retention, no later than 30 months after the date of enactment of this Act.

(d) PROTECTION OF OCCUPANTS.—One of the rulemaking proceedings initiated under subsection (a) shall be to establish performance criteria to upgrade Federal Motor Vehicle Safety Standard No. 216 relating to roof strength for driver and passenger sides. The Secretary may consider industry and independent dynamic tests that realistically duplicate the actual forces transmitted during a rollover crash. The Secretary shall issue a proposed rule by December 31, 2005, and a final rule by July 1, 2008.

(e) DEADLINES.—If the Secretary determines that the deadline for a final rule under this section cannot be met, the Secretary shall—

(1) notify the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Energy and Commerce and explain why that deadline cannot be met; and

(2) establish a new deadline.

§ 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 Govern-

ment 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 maintenance facilities, except in the case of an imminent or obvious safety hazard;

(V) provides that the State will include in the training manual for the licensing examination to drive a non-commercial motor vehicle and a commercial motor vehicle, information on best practices for driving safely in the vicinity of commercial motor vehicles and in the vicinity of non-commercial vehicles, respectively; and

(W) provides that the State will enforce the registration requirements of section 13902 by suspending the operation of any vehicle discovered to be operating without registration or beyond the scope of its registration.

(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 $169,000,000 for fiscal year 2004.
[(8) Not more than $112,512,329 for the period of October 1, 2004, through May 31, 2005.]

(a) IN GENERAL.—There are authorized to be appropriated from the Highway Trust Fund (other than the Mass Transit Account) to carry out section 31102:

(1) Not more than $193,620,000 for fiscal year 2006.
(2) Not more than $197,490,000 for fiscal year 2007.
(3) Not more than $201,440,000 for fiscal year 2008.
(4) Not more than $205,470,000 for fiscal year 2009.

(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 $15,000,000 for each of fiscal years 2006 through 2009 from amounts available for allocation under paragraph (1) for States, local governments, and organizations representing government agencies or officials for carrying out high priority activities and projects that improve commercial motor vehicle safety and compliance with commercial motor vehicle safety regulations, including activities and projects that are national in scope, increase public awareness and education, or demonstrate new technologies, and will reduce the number and rate of accidents involving commercial motor vehicles. The amounts designated under this paragraph shall be allocated by the Secretary to State agencies, local governments, and organizations representing government agencies or officials that use and train qualified officers and employees in coordination with State motor vehicle safety agencies. The Secretary shall establish safety performance criteria to be used to distribute high priority program funds. At least 80 percent of the amounts designated under this paragraph shall be awarded to State agencies and local government agencies.

(3) NEW ENTRANT AUDITS.—The Secretary shall designate up to $29,000,000 of the amounts available for allocation under paragraph (1) for audits of new entrant motor carriers conducted pursuant to 31144(f). The Secretary may withhold such funds from a State or local government that is unable to use government employees to conduct new entrant motor carrier audits, and may instead utilize the funds to conduct audits in those jurisdictions.

(4) CDLIS MODERNIZATION.—The Secretary may designate up to $2,000,000 for fiscal year 2006 and up to $6,000,000 for fiscal years 2007 through 2009 from amounts available for allocation under paragraph (1) for commercial driver's license information system modernization under section 31309(f).

(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) $211,400,000 for fiscal year 2006;

(B) $217,500,000 for fiscal year 2007;

(C) $222,600,000 for fiscal year 2008; and

(D) $228,500,000 for fiscal year 2009.

(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.

§ 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.

[(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.]

(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.

(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;

[(5) $20,000,000 for the fiscal year 2004; and

[(6) $13,315,068 for the period of October 1, 2004 through May 31, 2005.

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 103(b)(1) of the Motor Carrier Safety Reauthorization Act of 2005, the Secretary may make a grant in a fiscal year to a State that shares a border with another country for carrying out border commercial motor vehicle safety programs and related enforcement activities and projects.

(b) MAINTENANCE OF EXPENDITURES.—The Secretary may make a grant to a State under this section only if the State agrees that the total expenditure of amounts of the State and political subdivisions of the State, exclusive of United States Government amounts, for carrying out border commercial motor vehicle safety programs and related enforcement activities and projects will be maintained at a level at least equal to the average level of that expenditure by the State and political subdivisions of the State for the last 2 State or Federal fiscal years before October 1, 2005.

[§ 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.).

(c) AVAILABILITY OF AMOUNTS.—The amounts made available under section 103(a) of the Motor Carrier Safety Reauthorization Act of 2005 to carry out this section shall remain available until expended.

(d) CONTRACT AUTHORITY.—Approval by the Secretary of a grant with funds made available under section 103(a) of the Motor Carrier Safety Reauthorization Act of 2005 to carry out this section imposes upon the United States Government a contractual obligation for payment of the Government's share of costs incurred in carrying out the objectives of the grant.

§ 31109. Performance and Registration Information System Management

(a) IN GENERAL.—From the funds authorized by section 103(b)(2) of the Motor Carrier Safety Reauthorization Act of 2005, the Secretary may make a grant in a fiscal year to a State to implement the performance and registration information system management requirements of section 31106(b).

(b) AVAILABILITY OF AMOUNTS.—Amounts made available to a State under section 103(b)(2) of the Motor Carrier Safety Reauthorization Act of 2005 to carry out this section shall remain available until expended.

(c) SECRETARY'S APPROVAL.—Approval by the Secretary of a grant to a State under section 103(b)(2) of the Motor Carrier Safety Reauthorization Act of 2005 to carry out this section is a contractual obligation of the Government for payment of the amount of the grant.

§ 31132. Definitions

In this subchapter—

(1) "commercial motor vehicle" means a self-propelled or towed vehicle used on the highways in interstate commerce to transport passengers or property, if the vehicle—

(A) has a gross vehicle weight rating or gross vehicle weight of at least 10,001 pounds, whichever is greater;

(B) is designed or used to transport more than 8 passengers (including the driver) for compensation;

(C) is designed or used to transport more than 15 passengers, including the driver, and is not used to transport passengers for compensation; or

(D) is used in transporting material found by the Secretary of Transportation to be hazardous under section 5103 of this title and transported in a quantity requiring placarding under regulations prescribed by the Secretary under section 5103.

(2) "employee" means an operator of a commercial motor vehicle (including an independent contractor when operating a commercial motor vehicle), a mechanic, a freight handler, or an individual not an employer, who—

(A) directly affects commercial motor vehicle safety in the course of employment; and

(B) is not an employee of the United States Government, a State, or a political subdivision of a State acting in the

course of the employment by the Government, a State, or a political subdivision of a State.

(3) "employer"—

(A) means a person engaged in a business affecting interstate commerce that owns or leases a commercial motor vehicle in connection with that business, or assigns an employee to operate it; but

(B) does not include the Government, a State, or a political subdivision of a State.

(4) "interstate commerce" means trade, traffic, or transportation in the United States between a place in a State and—

(A) a place outside that State (including a place outside the United States); or

(B) another place in the same State through another State or through a place outside the United States.

(5) "intrastate commerce" means trade, traffic, or transportation in a State that is not interstate commerce.

(6) "medical examiner" means an individual licensed, certified, or registered in accordance with regulations issued by the Federal Motor Carrier Safety Administration as a medical examiner.

[(6)**]** *(7)* "regulation" includes a standard or order.

[(7)**]** *(8)* "State" means a State of the United States, the District of Columbia, and, in sections 31136 and 31140–31142 of this title, a political subdivision of a State.

[(8)**]** *(9)* "State law" includes a law enacted by a political subdivision of a State.

[(9)**]** *(10)* "State regulation" includes a regulation prescribed by a political subdivision of a State.

[(10)**]** *(11)* "United States" means the States of the United States and the District of Columbia.

§ 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) REGULATIONS.—Within 1 year after the date of enactment of the Motor Carrier Safety Reauthorization Act of 2005, the Secretary shall by regulation establish standards to implement subsection (b).

(d) DEFINITIONS.—In this section:

(1) MOTOR CARRIER.—The term 'motor carrier' has the meaning given the term in section 13102(12) of this title.

(2) OFFICER.—The term "officer" means an owner, director, chief executive officer, chief operating officer, chief financial officer, safety director, vehicle maintenance supervisor, and driver supervisor of a motor carrier, regardless of the title attached to those functions, and any person, however designated, exercising controlling influence over the operations of the motor carrier.

§ 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 vehicle 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.

(g) INSPECTION, REPAIR, AND MAINTENANCE OF INTERMODAL EQUIPMENT.—The Secretary or an employee of the Department of Transportation designated by the Secretary may inspect intermodal equipment, and copy related maintenance and repair records for such equipment, on demand and display of proper credentials.

(h) OUT-OF-SERVICE UNTIL REPAIR.—Any intermodal equipment that is determined under this section to fail to comply with applicable safety regulations shall be taken out of service and may not be used on a public highway until the repairs necessary to bring such equipment into compliance have been completed. Repairs of equipment taken out of service shall be documented in the maintenance records for such equipment.

§ 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 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.

(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 suffi-

cient 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 cumulative 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.

§ 31141. Review and preemption of State laws and regulations

(a) PREEMPTION AFTER DECISION.—A State may not enforce a State law or regulation on commercial motor vehicle safety that the Secretary of Transportation decides under this section may not be enforced.

(b) SUBMISSION OF REGULATION.—A State receiving funds made available under section 31104 that enacts a State law or issues a regulation on commercial motor vehicle safety shall submit a copy of the law or regulation to the Secretary immediately after the enactment or issuance.

(c) REVIEW AND DECISIONS BY SECRETARY.—

(1) REVIEW.—**[**The Secretary**]** *Except as provided by subsection (h), the Secretary* shall review State laws and regulations on commercial motor vehicle safety. The Secretary shall decide whether the State law or regulation—

(A) has the same effect as a regulation prescribed by the Secretary under section 31136;

(B) is less stringent than such regulation; or

(C) is additional to or more stringent than such regulation.

(2) REGULATIONS WITH SAME EFFECT.—If the Secretary decides a State law or regulation has the same effect as a regulation prescribed by the Secretary under section 31136 of this title, the State law or regulation may be enforced.

(3) LESS STRINGENT REGULATIONS.—If the Secretary decides a State law or regulation is less stringent than a regulation prescribed by the Secretary under section 31136 of this title, the State law or regulation may not be enforced.

(4) ADDITIONAL OR MORE STRINGENT REGULATIONS.—If the Secretary decides a State law or regulation is additional to or more stringent than a regulation prescribed by the Secretary under section 31136 of this title, the State law or regulation may be enforced unless the Secretary also decides that—

(A) the State law or regulation has no safety benefit;

(B) the State law or regulation is incompatible with the regulation prescribed by the Secretary; or

(C) enforcement of the State law or regulation would cause an unreasonable burden on interstate commerce.

(5) CONSIDERATION OF EFFECT ON INTERSTATE COMMERCE.—In deciding under paragraph (4) whether a State law or regulation will cause an unreasonable burden on interstate commerce, the Secretary may consider the effect on interstate commerce of implementation of that law or regulation with the implementation of all similar laws and regulations of other States.

(d) WAIVERS.—(1) A person (including a State) may petition the Secretary for a waiver of a decision of the Secretary that a State law or regulation may not be enforced under this section. The Secretary shall grant the waiver, as expeditiously as possible, if the person demonstrates to the satisfaction of the Secretary that the waiver is consistent with the public interest and the safe operation of commercial motor vehicles.

(2) Before deciding whether to grant or deny a petition for a waiver under this subsection, the Secretary shall give the petitioner an opportunity for a hearing on the record.

(e) WRITTEN NOTICE OF DECISIONS.—Not later than 10 days after making a decision under subsection (c) of this section that a State law or regulation may not be enforced, the Secretary shall give written notice to the State of that decision.

(f) JUDICIAL REVIEW AND VENUE.—(1) Not later than 60 days after the Secretary makes a decision under subsection (c) of this section, or grants or denies a petition for a waiver under subsection (d) of this section, a person (including a State) adversely affected by the decision, grant, or denial may file a petition for judicial review. The petition may be filed in the court of appeals of the United States for the District of Columbia Circuit or in the court of appeals of the United States for the circuit in which the person resides or has its principal place of business.

(2) The court has jurisdiction to review the decision, grant, or denial and to grant appropriate relief, including interim relief, as provided in chapter 7 of title 5.

(3) A judgment of a court under this subsection may be reviewed only by the Supreme Court under section 1254 of title 28.

(4) The remedies provided for in this subsection are in addition to other remedies provided by law.

(g) INITIATING REVIEW PROCEEDINGS.—To review a State law or regulation on commercial motor vehicle safety under this section, the Secretary may initiate a regulatory proceeding on the Secretary's own initiative or on petition of an interested person (including a State).

(h) PREEMPTION GENERALLY.—Except as otherwise authorized by law and as provided in subsection (i), a law, regulation, order, or other requirement of a State, a political subdivision of a State, or a tribal organization, is preempted if such law, regulation, order, or other requirement exceeds or is inconsistent with a requirement imposed under or pursuant to this chapter.

(i) PRE-EXISTING STATE REQUIREMENTS.—

(1) IN GENERAL.—Except as provided in paragraph (2), a State requirement for the periodic inspection of intermodal chassis by intermodal equipment providers that was in effect on January 1, 2005, shall remain in effect only until the date on

which requirements prescribed under section 127 of the Surface Transportation Safety Improvement Act of 2005 take effect.

(2) NON-PREEMPTION DETERMINATIONS.—

(A) IN GENERAL.—A State requirement described in paragraph (1) is not preempted by a Federal requirement prescribed under section 127 of that Act if the Secretary determines that the State requirement is as effective as the Federal requirement and does not unduly burden interstate commerce.

(B) APPLICATION REQUIRED.—Subparagraph (A) applies to a State requirement only if the State applies to the Secretary for a determination under this paragraph with respect to the requirement before the date on which requirements prescribed under section 127 of that Act take effect. The Secretary shall make a determination with respect to any such application within 6 months after the date on which the Secretary receives the application.

(C) AMENDED STATE REQUIREMENTS.—Any amendment to a State requirement not preempted under this subsection because of a determination by the Secretary under subparagraph (A) may not take effect unless—

(i) it is submitted to the Secretary before the effective date of the amendment; and

(ii) the Secretary determines that the amendment would not cause the State requirement to be less effective than the Federal requirement and would not unduly burden interstate commerce.

§ 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 within the United States, and in Canada and Mexico if the owner or operator also conducts operations within the United States;

(2) periodically update such safety fitness determinations;

(3) make such final safety fitness determinations readily available to the public; and

(4) prescribe by regulation penalties for violations of this section consistent with section 521.

(b) 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.

§ 31149. Exemptions from requirements relating to commercial motor vehicles and their operators

(a) EXEMPTIONS.—

[(1) TRANSPORTATION OF AGRICULTURAL COMMODITIES AND FARM SUPPLIES.—Regulations prescribed by the Secretary under sections 31136 and 31502 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.]

(1) TRANSPORTATION OF AGRICULTURAL COMMODITIES AND FARM SUPPLIES.—Regulations prescribed by the Secretary under sections 31136 and 31502 of this title regarding maximum driving and on-duty time for drivers used by motor carriers shall not apply during planting and harvest periods, as determined by each State, to drivers transporting agricultural commodities or farm supplies for agricultural purposes in a State if such transportation is limited to an area within a 100 air mile radius from the source of the commodities or the distribution point for the farm supplies.

(2) 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) OPERATORS OF UTILITY SERVICE VEHICLES.—

(A) INAPPLICABILITY OF FEDERAL REGULATIONS.—Such regulations may not apply to a driver of a utility service vehicle.

(B) PROHIBITION ON STATE REGULATIONS.—A State, a political subdivision of a State, an interstate agency, or other entity consisting of 2 or more States, shall not enact or enforce any law, rule, regulation, or standard that imposes requirements on a driver of a utility service vehicle that are similar to the requirements contained in such regulations.

(5) SNOW AND ICE REMOVAL.—A State may waive the requirements of chapter 313, 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] *Except 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)) 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) 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) 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 in a quantity requiring placarding under regulations issued to carry out such section.

(5) 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.

(6) 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.

(7) AGRICULTURAL COMMODITY.—The term "agricultural commodity" means any agricultural commodity, non-processed food, feed, fiber, or livestock (including livestock as defined in section 602 of the Emergency Livestock Feed Assistance Act of 1988 (7 U.S.C. 1471) and insects).

(8) FARM SUPPLIES FOR AGRICULTURAL PURPOSES.—The term "farm supplies for agricultural purposes" means products directly related to the growing or harvesting of agricultural commodities during the planting and harvesting seasons within each State, as determined by the State, and livestock feed at any time of the year.

§ 31150. Medical program

(a) MEDICAL REVIEW BOARD.—

(1) ESTABLISHMENT AND FUNCTION.—The Secretary of Transportation shall establish a Medical Review Board to provide the Federal Motor Carrier Safety Administration with medical advice and recommendations on driver qualification medical standards and guidelines, medical examiner education, and medical research.

(2) COMPOSITION.—The Medical Review Board shall be appointed by the Secretary and shall consist of 5 members se-

lected from medical institutions and private practice. The membership shall reflect expertise in a variety of specialties relevant to the functions of the Federal Motor Carrier Safety Administration.

(b) CHIEF MEDICAL EXAMINER.—The Secretary shall appoint a chief medical examiner who shall be an employee of the Federal Motor Carrier Safety Administration according to the SL schedule.

(c) MEDICAL STANDARDS AND REQUIREMENTS.—

(1) IN GENERAL.— The Secretary, with the advice of the Medical Review Board and the chief medical examiner, shall—

(A) establish, review, and revise—

(i) medical standards for applicants for and holders of commercial driver's licenses that will ensure that the physical condition of operators of commercial motor vehicles is adequate to enable them to operate the vehicles safely;

(ii) requirements for periodic physical examinations of such operators performed by medical examiners who have successfully completed training in physical and medical examination standards and are listed on a national registry maintained by the Department of Transportation; and

(B) issue certificates to such holders and applicants that have been found, upon examination, to be physically qualified to operate a commercial motor vehicle and to meet applicable medical standards unless the authority to issue certificates has been delegated to medical examiners under subparagraph (d)(2) of this section;

(C) require each holder of a commercial driver's license or learner's permit who operates a commercial vehicle in interstate commerce to have a current valid medical certificate;

(D) conduct periodic reviews of a select number of medical examiners on the national registry to ensure that proper examinations of applicants and holders are being conducted;

(E) develop, as appropriate, specific courses and materials for medical examiners listed in the national registry established under this section, and require those medical examiners to complete specific training, including refresher courses, to be listed in the registry;

(F) require medical examiners to transmit the name of the applicant and numerical identifier, as determined by the Administrator, for any completed medical examination report required under section 391.43 of title 49, Code of Federal Regulations, electronically to the Chief Medical Examiner on monthly basis; and

(G) periodically review a representative sample of the medical examination reports associated with the name and numerical identifiers of applicants transmitted under subparagraph (F) for errors, omissions, or other indications of improper certification.

(2) MONITORING PERFORMANCE.—The Secretary shall investigate patterns of errors or improper certification by a medical examiner. If the Secretary finds that a medical examiner has

issued a medical certificate to an applicant or holder who fails to meet the applicable standards at the time of the examination, such a medical examiner may be removed from the registry and the medical certificate of the applicant or holder may be deemed void.

(d) NATIONAL REGISTRY OF MEDICAL EXAMINERS.—The Secretary, through the Federal Motor Carrier Safety Administration—

(1) shall establish and maintain a current national registry of medical examiners who are qualified to perform examinations and issue medical certificates;

(2) shall delegate to those examiners the authority to issue such certificates upon successfully completing the required training;

(3) shall remove from the registry the name of any medical examiner that fails to meet or maintain the qualifications established by the Secretary for being listed in the registry or otherwise does not meet the requirements of this section or regulation issued there under; and

(4) shall accept as valid only medical certificates issued by persons on the national registry of medical examiners.

(e) REGULATIONS.—The Secretary is authorized to promulgate such regulations as may be necessary to carry out this section.

§ 31151. Commercial vehicle information systems and networks

(a) IN GENERAL.—The Secretary shall carry out a commercial vehicle information systems and networks program to—

(1) improve the safety and productivity of commercial vehicles; and

(2) reduce costs associated with commercial vehicle operations and Federal and State commercial vehicle regulatory requirements.

(b) PURPOSE.—The program shall advance the technological capability and promote the deployment of intelligent transportation system applications for commercial vehicle operations, including commercial vehicle, commercial driver, and carrier-specific information systems and networks.

(c) CORE DEPLOYMENT GRANTS.—

(1) IN GENERAL.—The Secretary shall make grants to eligible States for the core deployment of commercial vehicle information systems and networks.

(2) ELIGIBILITY.—To be eligible for a core deployment grant under this section, a State—

(A) shall have a commercial vehicle information systems and networks program plan and a system design approved by the Secretary;

(B) shall certify to the Secretary that its commercial vehicle information systems and networks deployment activities, including hardware procurement, software and system development, and infrastructure modifications, are consistent with the national intelligent transportation systems and commercial vehicle information systems and networks architectures and available standards, and promote interoperability and efficiency to the extent practicable; and

(C) shall agree to execute interoperability tests developed by the Federal Motor Carrier Safety Administration to verify that its systems conform with the national intelligent transportation systems architecture, applicable standards, and protocols for commercial vehicle information systems and networks.

(3) AMOUNT OF GRANTS.—The maximum aggregate amount a State may receive under this section for the core deployment of commercial vehicle information systems and networks may not exceed $2,500,000.

(4) USE OF FUNDS.—Funds from a grant under this subsection may only be used for the core deployment of commercial vehicle information systems and networks. Eligible States that have either completed the core deployment of commercial vehicle information systems and networks or completed such deployment before core deployment grant funds are expended may use the remaining core deployment grant funds for the expanded deployment of commercial vehicle information systems and networks in their State.

(d) EXPANDED DEPLOYMENT GRANTS.—

(1) IN GENERAL.—For each fiscal year, from the funds remaining after the Secretary has made core deployment grants under subsection (c) of this section, the Secretary may make grants to each eligible State, upon request, for the expanded deployment of commercial vehicle information systems and networks.

(2) ELIGIBILITY.—Each State that has completed the core deployment of commercial vehicle information systems and networks is eligible for an expanded deployment grant.

(3) AMOUNT OF GRANTS.—Each fiscal year, the Secretary may distribute funds available for expanded deployment grants equally among the eligible States, but not to exceed $1,000,000 per State.

(4) USE OF FUNDS.—A State may use funds from a grant under this subsection only for the expanded deployment of commercial vehicle information systems and networks.

(e) FEDERAL SHARE.—The Federal share of the cost of a project payable from funds made available to carry out this section shall not exceed 50 percent. The total Federal share of the cost of a project payable from all eligible sources shall not exceed 80 percent.

(f) AVAILABILITY OF FUNDS.—Funds authorized to be appropriated under section 103(b)(4) of the Motor Carrier Safety Reauthorization Act of 2005 shall be available for obligation in the same manner and to the same extent as if such funds were apportioned under chapter 1 of title 23, United States Code, except that such funds shall remain available until expended.

(g) DEFINITIONS.—In this section:

(1) COMMERCIAL VEHICLE INFORMATION SYSTEMS AND NETWORKS.—The term "commercial vehicle information systems and networks" means the information systems and communications networks that provide the capability to—

(A) improve the safety of commercial vehicle operations;

(B) increase the efficiency of regulatory inspection processes to reduce administrative burdens by advancing tech-

nology to facilitate inspections and increase the effectiveness of enforcement efforts;

(C) advance electronic processing of registration information, driver licensing information, fuel tax information, inspection and crash data, and other safety information;

(D) enhance the safe passage of commercial vehicles across the United States and across international borders; and

(E) promote the communication of information among the States and encourage multistate cooperation and corridor development.

(2) COMMERCIAL VEHICLE OPERATIONS.—The term "commercial vehicle operations"—

(A) means motor carrier operations and motor vehicle regulatory activities associated with the commercial movement of goods, including hazardous materials, and passengers; and

(B) with respect to the public sector, includes the issuance of operating credentials, the administration of motor vehicle and fuel taxes, and roadside safety and border crossing inspection and regulatory compliance operations.

(3) CORE DEPLOYMENT.—The term "core deployment" means the deployment of systems in a State necessary to provide the State with the following capabilities:

(A) SAFETY INFORMATION EXCHANGE.—Safety information exchange to—

(i) electronically collect and transmit commercial vehicle and driver inspection data at a majority of inspection sites;

(ii) connect to the Safety and Fitness Electronic Records system for access to interstate carrier and commercial vehicle data, summaries of past safety performance, and commercial vehicle credentials information; and

(iii) exchange carrier data and commercial vehicle safety and credentials information within the State and connect to Safety and Fitness Electronic Records for access to interstate carrier and commercial vehicle data.

(B) INTERSTATE CREDENTIALS ADMINISTRATION.—Interstate credentials administration to—

(i) perform end-to-end processing, including carrier application, jurisdiction application processing, and credential issuance, of at least the International Registration Plan and International Fuel Tax Agreement credentials and subsequently extend this processing to other credentials, including intrastate, titling, oversize/overweight, carrier registration, and hazardous materials;

(ii) connect to the International Registration Plan and International Fuel Tax Agreement clearinghouses; and

(iii) have at least 10 percent of the transaction volume handled electronically, and have the capability to

add more carriers and to extend to branch offices where applicable.

(C) ROADSIDE SCREENING.—Roadside electronic screening to electronically screen transponder-equipped commercial vehicles at a minimum of 1 fixed or mobile inspection sites and to replicate this screening at other sites.

(4) EXPANDED DEPLOYMENT.—The term "expanded deployment" means the deployment of systems in a State that exceed the requirements of an core deployment of commercial vehicle information systems and networks, improve safety and the productivity of commercial vehicle operations, and enhance transportation security.

§ 31152. Pre-employment safety screening

(a) IN GENERAL.—The Secretary of Transportation shall provide companies conducting pre-employment screening services for the motor carrier industry electronic access to—

(1) commercial motor vehicle accident report information contained in the Motor Carrier Management Information System; and

(2) all driver safety violations contained in the Motor Carrier Management Information System.

(b) ESTABLISHMENT.—Prior to making information available to such companies under subsection (a), the Secretary shall—

(1) ensure that any information released is done in accordance with the Fair Credit Reporting Act (15 U.S.C. 1681 et seq.) and all applicable Federal laws;

(2) require the driver applicant's written consent as a condition of releasing the information;

(3) ensure that the information made available to companies providing pre-employment screening services is not released to any other unauthorized company or individual, unless expressly authorized or required by law; and

(4) provide a procedure for drivers to remedy incorrect information in a timely manner.

(c) DESIGN.—To be eligible to have access to information under subsection (a), a company conducting pre-employment screening services for the motor carrier industry shall utilize a screening process—

(1) that is designed to assist the motor carrier industry in assessing an individual driver's crash and safety violation history as a pre-employment condition;

(2) the use of which is not mandatory; and

(3) which is used only during the pre-employment assessment of a driver-applicant.

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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 infor-

mation, conducting research, and examining needs, best practices, and new technology.".

* * * * * * *

§ 31302. Commercial driver's license requirement

No individual shall operate a commercial motor vehicle without a valid commercial driver's license issued in accordance with section 31308. An individual operating a commercial motor vehicle may have only one driver's license at any [time.] *license, and may have only 1 learner's permit at any time.*

§ 31308. Commercial driver's license

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 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] *Except as provided in subsection (e),*

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).

(e) INFORMATION SYSTEM MODERNIZATION ACCOUNT.—

(1) ESTABLISHMENT.—The Secretary of Transportation shall establish an account to be known as the Information System Modernization Account.

(2) CREDITS.—Fees collected for any fiscal year beginning after fiscal year 2006 under subsection (d) by the Secretary of Transportation, or an organization that represents the interests of the States, in excess of the costs of operating the information system in that fiscal year shall be and credited to the Information System Modernization Account.

(3) USE OF FUNDS.—Amounts credited to the Information System Modernization Account shall be available exclusively for the purpose of modernizing the information system under subsection (f).

(f) MODERNIZATION PLAN.—

(1) IN GENERAL.—The Secretary shall develop a comprehensive plan for modernization of the information system that—

(A) complies with applicable Federal information technology security standards;

(B) provides for the electronic exchange of all information including the posting of convictions;

(C) contains self auditing features to ensure that data is being posted correctly and consistently by the States;

(D) integrates the commercial driver's license and the medical certificate; and

(E) provides a schedule for modernization of the system.

(2) COMPETITIVE CONTRACTING.—The Secretary may use non-Federal entities selected by an open, merit-based, competitive process to develop and implement the modernization plan.

(3) STATE PARTICIPATION.—

(A) DEADLINE.—The Secretary shall establish a date by which each State must convert to the new information system.

(B) FUNDING.—A State may use funds made available under section 31318 of this title to develop or modify its system to be compatible with the modernized information system developed by the Secretary under this subsection.

§ 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 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 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.

(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 103(b)(3) of the Motor Carrier Safety Reauthorization Act of 2005, the Secretary may make a grant to a State, except as otherwise provided in subsection (e), in a fiscal year to improve its implementation of the commercial driver's license program, providing the State is making a good faith effort toward substantial compliance with the requirements of section 31311 and this section. The Secretary shall establish criteria for the distribution of grants and notify the States annually of such criteria.

(b) CONDITIONS.—Except as otherwise provided in subsection (e), a State may use a grant under this section only for expenses related to its commercial driver's license program, including, but not limited to, computer hardware and software, publications, testing, personnel, training, and quality control. The grant may not be used to rent, lease, or buy land or buildings. The Secretary shall give priority to grants that will be used to achieve compliance with the requirements of the Motor Carrier Safety Improvement Act of 1999. The Secretary may allocate the funds appropriated for such grants in a fiscal year among the eligible States whose applications for grants have been approved, under criteria established by the Secretary.

(c) MAINTENANCE OF EXPENDITURES.—Except as otherwise provided in subsection (e), the Secretary may make a grant to a State under this section only if the State agrees that the total expenditure of amounts of the State and political subdivisions of the State, exclusive of United States Government amounts, for the operation of the commercial driver's license program will be maintained at a level at least equal to the average level of that expenditure by the State and political subdivisions of the State for the last 2 fiscal years before October 1, 2005.

(d) GOVERNMENT SHARE.—Except as otherwise provided in subsection (e), the Secretary shall reimburse a State, from a grant made under this section, an amount that is not more than 80 percent of the costs incurred by the State in a fiscal year in implementing the commercial driver's license improvements described in subsection (b). In determining those costs, the Secretary shall include in-kind contributions by the State.

(e) HIGH-PRIORITY ACTIVITIES.—

(1) The Secretary may make a grant to a State agency, local government, or organization representing government agencies or officials for the full cost of research, development, demonstration projects, public education, or other special activities and projects relating to commercial driver licensing and motor vehicle safety that are of benefit to all jurisdictions or designed to address national safety concerns and circumstances.

(2) The Secretary may designate up to 10 percent of the amounts made available under section 103(b)(3) of the Motor Carrier Safety Reauthorization Act of 2005 in a fiscal year for high-priority activities under subsection (e)(1).

(f) EMERGING ISSUES.—The Secretary may designate up to 10 percent of the amounts made available under section 103(b)(3) of the Motor Carrier Safety Reauthorization Act of 2005 in a fiscal year for allocation to a State agency, local government, or other person at the discretion of the Secretary to address emerging issues relating to commercial driver's license improvements.

(g) APPORTIONMENT.—Except as otherwise provided in subsections (e) and (f), all amounts available in a fiscal year to carry out this section shall be apportioned to States according to a formula prescribed by the Secretary.

(h) DEDUCTION FOR ADMINISTRATIVE EXPENSES.—On October 1 of each fiscal year or as soon after that date as practicable, the Secretary may deduct, from amounts made available under section 103(b)(3) of the Motor Carrier Safety Reauthorization Act of 2005 for that fiscal year, up to 0.75 percent of those amounts for administrative expenses incurred in carrying out this section in that fiscal year.

§ 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—**]** *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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