112th CONGRESS
2d Session
HOUSE OF REPRESENTATIVES
REPORT
112- 446

PROVIDING FOR CONSIDERATION OF THE BILL (H.R. 4348) TO PROVIDE AN EXTENSION OF FEDERAL-AID HIGHWAY, HIGHWAY SAFETY, MOTOR CARRIER SAFETY, TRANSIT, AND OTHER PROGRAMS FUNDED OUT OF THE HIGHWAY TRUST FUND PENDING ENACTMENT OF A MULTIYEAR LAW REAUTHORIZING SUCH PROGRAMS, AND FOR OTHER PURPOSES

April 17, 2012.—Referred to the House Calendar and ordered to be printed.

Ms. Foxx, from the Committee on Rules, submitted the following

REPORT 619

[To accompany H. Res.__]

The Committee on Rules, having had under consideration House Resolution____, by a record vote of 7 to 3, report the same to the House with the recommendation that the resolution be adopted.

SUMMARY OF PROVISIONS OF THE RESOLUTION

The resolution provides for consideration of H.R. 4348, the Surface Transportation Extension Act of 2012, Part II, under a structured rule. The resolution provides one hour of general debate equally divided and controlled by the chair and ranking minority member of the Committee on Transportation and Infrastructure. The resolution waives all points of order against consideration of the bill. The resolution provides that the bill shall be considered as read. The resolution waives all points of order against provisions in the bill. The resolution makes in order only those amendments printed in this report. Each such amendment may be offered only in the order printed in this report, may be offered only by a Member designated in this report, shall be considered as read, shall be debatable for the time specified in this report equally divided and controlled by the proponent and an opponent, shall not be subject to amendment, and shall not be subject to a demand for division of the question in the House or in the Committee of the Whole. The resolution waives all points of order against the amendments printed in this report. Finally, the resolution provides one motion to recommit with or without instructions.

EXPLANATION OF WAIVERS

Although the resolution waives all points of order against consideration of the bill, the Committee is not aware of any points of order. The waiver is prophylactic in nature.

Although the resolution waives all points of order against provisions in the bill, the Committee is not aware of any points of order. The waiver is prophylactic in nature.

Although the resolution waives all points of order against the amendments printed in this report, the Committee is not aware of any points of order. The waiver is prophylactic in nature.

COMMITTEE VOTES

The results of each record vote on an amendment or motion to report, together with the names of those voting for and against, are printed below:

Rules Committee Record Vote No. 211

Motion by Mr. McGovern to make in order and provide the appropriate waivers for amendment #3, offered by Rep. McGovern (MA), which would reduce the federal deficit by $40 billion by eliminating subsidies to oil companies. Defeated: 3–7

Majority Members	Vote	Minority Members	Vote
Mr. Sessions	Nay	Mr. McGovern	Yea
Ms. Foxx	Nay	Mr. Hastings of Florida	Yea
Mr. Woodall	Nay	Mr. Polis	Yea
Mr. Nugent	Nay		
Mr. Scott of South Carolina	Nay		
Mr. Webster	Nay		
Mr. Dreier, Chairman	Nay		

Rules Committee Record Vote No. 212

Motion by Mr. Hastings of Florida to make in order and provide the appropriate waivers for amendment #1, offered by Rep. Rahall II (WV), Rep. Bishop (NY), Rep. Brown (FL) and Rep. DeFazio (OR), which would provide a total of $109 billion in funding for FY 2012 and FY 2013 for reformed and

restructured Federal highway, highway safety, and public transportation programs. Would fully pay for the highway, transit, and highway safety programs authorized by the bill in FY 2012 and 2013, and allows the USDOT to maintain a positive balance in both the highway and transit accounts of the Trust Fund at the end of the bill. Defeated: 3–7

Majority Members	Vote	Minority Members	Vote
Mr. Sessions	Nay	Mr. McGovern	Yea
Ms. Foxx	Nay	Mr. Hastings of Florida	Yea
Mr. Woodall	Nay	Mr. Polis	Yea
Mr. Nugent	Nay		
Mr. Scott of South Carolina	Nay		
Mr. Webster	Nay		
Mr. Dreier, Chairman	Nay		

Rules Committee Record Vote No. 213

Motion by Ms. Foxx to report the rule. Adopted: 7-3

Majority Members	Vote	Minority Members	Vote
Mr. Sessions	Yea	Mr. McGovern	Nay
Ms. Foxx	Yea	Mr. Hastings of Florida	Nay
Mr. Woodall	Yea	Mr. Polis	Nay
Mr. Nugent	Yea		
Mr. Scott of South Carolina	Yea		
Mr. Webster	Yea		
Mr. Dreier, Chairman	Yea		

SUMMARY OF THE AMENDMENTS MADE IN ORDER

1. Boustany (LA): Would include a guarantee that requires that the total amount available for spending from the Harbor Maintenance Trust Fund (HMTF) each fiscal year be equal to the Trust Fund receipts as estimated by the President's budget for that year. (10 minutes)
2. Ribble (WI): Would add to the bill the environmental streamlining provisions from Title III of the American Energy and Infrastructure Jobs Act (H.R. 7). (10 minutes)
3. McKinley (WV): Would insert the text of H.R. 2273, Coal Residuals Reuse and Management Act. Would leave regulation and enforcement of coal combustion residuals to the states, and utilize the existing framework and requirements of federal regulatory programs for those states to follow. (10 minutes)

TEXT OF AMENDMENTS MADE IN ORDER

1. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE BOUSTANY JR. OF LOUISIANA OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

AMENDMENT TO H.R. 4348

OFFERED BY MR. BOUSTANY OF LOUISIANA

At the end of the bill, add the following (and conform the table of contents of the bill accordingly):

TITLE IV—HARBOR MAINTENANCE PROGRAMS

SEC. 401. FUNDING FOR HARBOR MAINTENANCE PROGRAMS.

(a) HARBOR MAINTENANCE TRUST FUND GUARANTEE.—

(1) IN GENERAL.—The total budget resources for a fiscal year shall be equal to the level of receipts for harbor maintenance for that fiscal year. Such amounts shall be used only for harbor maintenance programs.

(2) GUARANTEE.—No funds may be appropriated for harbor maintenance programs unless the amount under paragraph (1) has been provided for all such programs.

(b) DEFINITIONS.—In this section, the following definitions apply:

(1) HARBOR MAINTENANCE PROGRAMS.—The term "harbor maintenance programs" means ex-

penditures under section 9505(c)(1) of the Internal Revenue Code of 1986 (relating to expenditures from the Harbor Maintenance Trust Fund).

(2) LEVEL OF RECEIPTS FOR HARBOR MAINTENANCE.—The term "level of receipts for harbor maintenance" means the level of taxes credited to the Harbor Maintenance Trust Fund under section 9505(a)(1) of the Internal Revenue Code of 1986 for a fiscal year as set forth in the President's budget baseline projection as defined in section 257 of the Balanced Budget and Emergency Deficit Control Act of 1985 (Public Law 99–177) for that fiscal year submitted pursuant to section 1105 of title 31, United States Code, reduced by the amount requested in such President's budget for payments described in section 9505(c)(3) of the Internal Revenue Code of 1986.

(3) TOTAL BUDGET RESOURCES.—The term "total budget resources" means the total amount made available by appropriations Acts from the Harbor Maintenance Trust Fund for a fiscal year for making expenditures under section 9505(c)(1) of the Internal Revenue Code of 1986.

2. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE RIBBLE OF WISCONSIN OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

AMENDMENT TO H.R. 4348

OFFERED BY M__. _____

At the end of the bill, add the following (and conform the table of contents of the bill accordingly):

TITLE IV—ENVIRONMENTAL STREAMLINING

SEC. 401. AMENDMENTS TO TITLE 23, UNITED STATES CODE.

Except as otherwise expressly provided, whenever in this title an amendment or repeal is expressed in terms of an amendment to, or a repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of title 23, United States Code.

SEC. 402. DECLARATION OF POLICY.

(a) EXPEDITED PROJECT DELIVERY.—Section 101(b) is amended by adding at the end the following:

"(4) EXPEDITED PROJECT DELIVERY.—Congress declares that it is in the national interest to expedite the delivery of surface transportation projects by substantially reducing the average length of the environmental review process. Accordingly, it is the policy of the United States that—

"(A) the Secretary shall have the lead role among Federal agencies in carrying out the environmental review process for surface transportation projects;

"(B) each Federal agency shall cooperate with the Secretary to expedite the environmental review process for surface transportation projects;

"(C) there shall be a presumption that the mode, facility type, and corridor location for a surface transportation project will be determined in the transportation planning process, as established in sections 134 and 135 and sections 5303 and 5304 of title 49;

"(D) project sponsors shall not be prohibited from carrying out pre-construction project development activities concurrently with the environmental review process;

"(E) programmatic approaches shall be used, to the maximum extent possible, to reduce the need for project-by-project reviews and decisions by Federal agencies; and

"(F) the Secretary shall actively support increased opportunities for project sponsors to

assume responsibilities of the Secretary in carrying out the environmental review process.".

SEC. 403. EXEMPTION IN EMERGENCIES.

If any road, highway, or bridge is in operation or under construction when damaged by an emergency declared by the Governor of the State and concurred in by the Secretary, or declared by the President pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121), and is reconstructed in the same location with the same capacity, dimensions, and design as before the emergency, then that reconstruction project shall be exempt from any further environmental reviews, approvals, licensing, and permit requirements under—

(1) the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.);

(2) sections 402 and 404 of the Federal Water Pollution Control Act (33 U.S.C. 1342, 1344);

(3) the National Historic Preservation Act (16 U.S.C. 470 et seq.);

(4) the Migratory Bird Treaty Act (16 U.S.C. 703 et seq.);

(5) the Wild and Scenic Rivers Act (16 U.S.C. 1271 et seq.);

(6) the Fish and Wildlife Coordination Act (16 U.S.C. 661 et seq.);

(7) the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.), except when the reconstruction occurs in designated critical habitat for threatened and endangered species;

(8) Executive Order 11990 (42 U.S.C. 4321 note; relating to the protection of wetlands); and

(9) any Federal law (including regulations) requiring no net loss of wetlands.

SEC. 404. ADVANCE ACQUISITION OF REAL PROPERTY INTERESTS.

(a) REAL PROPERTY INTERESTS.—Section 108 is amended—

(1) by striking "real property" each place it appears and inserting "real property interests";

(2) by striking "right-of-way" each place it appears and inserting "real property interest"; and

(3) by striking "rights-of-way" each place it appears and inserting "real property interests".

(b) STATE-FUNDED EARLY ACQUISITION OF REAL PROPERTY INTERESTS.—Section 108(c) is amended—

(1) in the subsection heading by striking "EARLY ACQUISITION OF RIGHTS-OF-WAY" and in-

serting "STATE-FUNDED EARLY ACQUISITION OF REAL PROPERTY INTERESTS";

(2) by redesignating paragraphs (1) and (2) as paragraphs (2) and (3), respectively;

(3) in paragraph (2), as redesignated—

(A) in the heading by striking "GENERAL RULE" and inserting "ELIGIBILITY FOR REIMBURSEMENT"; and

(B) by striking "Subject to paragraph (2)" and inserting "Subject to paragraph (3)";

(4) by inserting before paragraph (2), as redesignated, the following:

"(1) IN GENERAL.—A State may carry out, at the expense of the State, acquisitions of interests in real property for a project before completion of the review process required for the project under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) without affecting subsequent approvals required for the project by the State or any Federal agency."; and

(5) in paragraph (3), as redesignated—

(A) in the matter preceding subparagraph (A) by striking "in paragraph (1)" and inserting "in paragraph (2)"; and

(B) in subparagraph (G) by striking "both the Secretary and the Administrator of the Environmental Protection Agency have concurred" and inserting "the Secretary has determined".

(c) FEDERALLY FUNDED ACQUISITION OF REAL PROPERTY INTERESTS.—Section 108 is further amended by adding at the end the following:

"(d) FEDERALLY FUNDED EARLY ACQUISITION OF REAL PROPERTY INTERESTS.—

"(1) IN GENERAL.—The Secretary may authorize the use of Federal funds for the acquisition of a real property interest by a State. For purposes of this subsection, an acquisition of a real property interest includes the acquisition of any interest in land, including the acquisition of a contractual right to acquire any interest in land, or any other similar action to acquire or preserve rights-of-way for a transportation facility.

"(2) STATE CERTIFICATION.—A State requesting Federal funding for an acquisition of a real property interest shall certify in writing that—

"(A) the State has authority to acquire the real property interest under State law;

"(B) the acquisition of the real property interest is for a transportation purpose; and

"(C) the State acknowledges that early acquisition will not be considered by the Secretary in the environmental assessment of a project, the decision relative to the need to construct a project, or the selection of a project design or location.

"(3) ENVIRONMENTAL COMPLIANCE.—Before authorizing Federal funding for an acquisition of a real property interest, the Secretary shall complete for the acquisition the review process under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.). For purposes of the review process, the acquisition of a real property interest shall be treated as having independent utility and does not limit consideration of alternatives for future transportation improvements with respect to the real property interest.

"(4) PROGRAMMING.—The acquisition of a real property interest for which Federal funding is requested shall be included as a project in an applicable transportation improvement program under sections 134 and 135 and sections 5303 and 5304 of title 49. The acquisition project may be included in the transportation improvement program on its own, without including the future construction project for

which the real property interest is being acquired. The acquisition project may consist of the acquisition of a specific parcel, a portion of a transportation corridor, or an entire transportation corridor.

"(5) OTHER REQUIREMENTS.—The acquisition of a real property interest shall be carried out in compliance with all requirements applicable to the acquisition of real property interests for federally funded transportation projects.

"(e) CONSIDERATION OF LONG-RANGE TRANSPORTATION NEEDS.—The Secretary shall encourage States and other public authorities, if practicable, to acquire transportation real property interests that are sufficient to accommodate long-range transportation needs and, if possible, to do so through the acquisition of broad real property interests that have the capacity for expansion over a 50- to 100-year period and the potential to accommodate one or more transportation modes.".

SEC. 405. STANDARDS.

Section 109 is amended by adding at the end the following:

"(r) UNDERTAKING DESIGN ACTIVITIES BEFORE COMPLETION OF ENVIRONMENTAL REVIEW PROCESS.—

"(1) IN GENERAL.—A State may carry out, at the expense of the State, design activities at any

level of detail for a project before completion of the review process required for the project under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) without affecting subsequent approvals of the project.

"(2) ELIGIBILITY FOR REIMBURSEMENT.—Subject to paragraph (3), funds apportioned to a State under this title may be used to participate in the payment of costs incurred by the State for design activities, if the results of the activities are subsequently incorporated (in whole or in substantial part) into a project eligible for surface transportation program funds.

"(3) TERMS AND CONDITIONS.—The Federal share payable of the costs described in paragraph (2) shall be eligible for reimbursement out of funds apportioned to a State under this title when the design activities are incorporated (in whole or in substantial part) into a project eligible for surface transportation program funds, if the State demonstrates to the Secretary and the Secretary finds that—

"(A) before the time that the cost incurred by a State is approved for Federal participation, environmental compliance pursuant to the

National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) has been completed for the project for which the design activities were conducted by the State; and

"(B) the design activities conducted pursuant to this subsection did not preclude the consideration of alternatives to the project.".

SEC. 406. LETTING OF CONTRACTS.

(a) BIDDING REQUIREMENTS.—Section 112(b)(1) is amended to read as follows:

"(1) IN GENERAL.—

"(A) COMPETITIVE BIDDING REQUIREMENT.—Subject to paragraphs (2), (3), and (4), construction of each project, subject to the provisions of subsection (a), shall be performed by contract awarded by competitive bidding, unless the State transportation department demonstrates, to the satisfaction of the Secretary, that some other method is more cost effective or that an emergency exists.

"(B) BASIS OF AWARD.—

"(i) IN GENERAL.—Contracts for the construction of each project shall be awarded only on the basis of the lowest re-

sponsive bid submitted by a bidder meeting established criteria of responsibility.

"(ii) PROHIBITION.—No requirement or obligation shall be imposed as a condition precedent to the award of a contract to such bidder for a project, or to the Secretary's concurrence in the award of a contract to such bidder, unless such requirement or obligation is otherwise lawful and is specifically set forth in the advertised specifications.".

(b) DESIGN-BUILD CONTRACTING.—Section 112(b)(3) is amended—

(1) in subparagraph (A) by striking "subparagraph (C)" and inserting "subparagraph (B)";

(2) by striking subparagraph (B);

(3) by redesignating subparagraphs (C) through (E) as subparagraphs (B) through (D), respectively; and

(4) in subparagraph (C), as redesignated—

(A) in the matter preceding clause (i) by striking "of the SAFETEA-LU" and inserting "of the Surface Transportation Extension Act of 2012, Part II";

(B) in clause (ii) by striking "and" at the end;

(C) in clause (iii)—

(i) by striking "final design or"; and

(ii) by striking the period at the end and inserting "; and"; and

(D) by adding at the end the following:

"(iv) permit the State transportation department, the local transportation agency, and the design-build contractor to proceed, at the expense of one or more of those entities, with design activities at any level of detail for a project before completion of the review process required for the project under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) without affecting subsequent approvals required for the project. Design activities carried out under this clause shall be eligible for Federal reimbursement as a project expense in accordance with the requirements under section 109(r).".

(c) EFFICIENCIES IN CONTRACTING.—Section 112(b) is amended by adding at the end the following:

"(4) METHOD OF CONTRACTING.—

"(A) IN GENERAL.—

"(i) TWO-PHASE CONTRACT.—A contracting agency may award a two-phase contract for preconstruction and construction services.

"(ii) PRE-CONSTRUCTION SERVICES PHASE.—In the pre-construction services phase, the contractor shall provide the contracting agency with advice for scheduling, work sequencing, cost engineering, constructability, cost estimating, and risk identification.

"(iii) AGREEMENT.—Prior to the start of the construction services phase, the contracting agency and the contractor may agree to a price and other factors specified in regulation for the construction of the project or a portion of the project.

"(iv) CONSTRUCTION PHASE.—If an agreement is reached under clause (iii), the contractor shall be responsible for the construction of the project or portion of the project at the negotiated price and other factors specified in regulation.

"(B) SELECTION.—A contract shall be awarded to a contractor using a competitive selection process based on qualifications, experience, best value, or any other combination of factors considered appropriate by the contracting agency.

"(C) TIMING.—

"(i) RELATIONSHIP TO NEPA PROCESS.—Prior to the completion of the process required under section 102 of the National Environmental Policy Act of 1969 (42 U.S.C. 4332), a contracting agency may—

"(I) issue requests for proposals;

"(II) proceed with the award of a contract for preconstruction services under subparagraph (A); and

"(III) issue notices to proceed with a preliminary design and any work related to preliminary design.

"(ii) PRECONSTRUCTION SERVICES PHASE.—If the preconstruction services phase of a contract under subparagraph (A)(ii) focuses primarily on one alternative, the Secretary shall require that the con-

tract include appropriate provisions to achieve the objectives of section 102 of the National Environmental Policy Act of 1969 (42 U.S.C. 4332) and comply with other applicable Federal laws and regulations.

"(iii) CONSTRUCTION SERVICES PHASE.—A contracting agency may not proceed with the award of the construction services phase of a contract under subparagraph (A)(iv) and may not proceed, or permit any consultant or contractor to proceed, with construction until completion of the process required under section 102 of the National Environmental Policy Act of 1969 (42 U.S.C. 4332).

"(iv) APPROVAL REQUIREMENT.—Prior to authorizing construction activities, the Secretary shall approve the contracting agency's price estimate for the entire project, as well as any price agreement with the general contractor for the project or a portion of the project.

"(v) DESIGN ACTIVITIES.—A contracting agency may proceed, at its ex-

pense, with design activities at any level of detail for a project before completion of the review process required for the project under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) without affecting subsequent approvals required for the project. Design activities carried out under this clause shall be eligible for Federal reimbursement as a project expense in accordance with the requirements under section 109(r).".

SEC. 407. ELIMINATION OF DUPLICATION IN HISTORIC PRESERVATION REQUIREMENTS.

(a) PRESERVATION OF PARKLANDS.—Section 138 is amended by adding at the end the following:

"(c) ELIMINATION OF DUPLICATION FOR HISTORIC SITES AND PROPERTIES.—The requirements of this section shall be considered to be satisfied for an historic site or property where its treatment has been agreed upon in a memorandum of agreement by invited and mandatory signatories, including the Advisory Council on Historic Preservation, if participating, in accordance with section 106 of the National Historic Preservation Act (16 U.S.C. 470f).".

(b) POLICY ON LANDS, WILDLIFE AND WATERFOWL REFUGES, AND HISTORIC SITES.—Section 303 of title 49, United States Code, is amended by adding at the end the following:

"(e) ELIMINATION OF DUPLICATION FOR HISTORIC SITES AND PROPERTIES.—The requirements of this section shall be considered to be satisfied for an historic site or property where its treatment has been agreed upon in a memorandum of agreement by invited and mandatory signatories, including the Advisory Council on Historic Preservation, if participating, in accordance with section 106 of the National Historic Preservation Act (16 U.S.C. 470f).".

SEC. 408. FUNDING THRESHOLD.

Section 139(b) is amended by adding at the end the following:

"(3) FUNDING THRESHOLD.—The Secretary's approval of a project receiving funds under this title or under chapter 53 of title 49 shall not be considered a Federal action for the purposes of the National Environmental Policy Act of 1969 if such funds—

"(A) constitute 15 percent or less of the total estimated project costs; or

"(B) are less than $10,000,000.".

SEC. 409. EFFICIENT ENVIRONMENTAL REVIEWS FOR PROJECT DECISIONMAKING.

(a) FLEXIBILITY.—Section 139(b) is further amended—

(1) in paragraph (2) by inserting ", and any requirements established in this section may be satisfied," after "exercised"; and

(2) by adding after paragraph (3), as added by this Act, the following:

"(4) PROGRAMMATIC COMPLIANCE.—At the request of a State, the Secretary may modify the procedures developed under this section to encourage programmatic approaches and strategies with respect to environmental programs and permits (in lieu of project-by-project reviews).".

(b) FEDERAL LEAD AGENCY.—Section 139(c) is amended—

(1) in paragraph (1) by adding at the end the following: "If the project requires approval from more than one modal administration within the Department, the Secretary shall designate a single modal administration to serve as the Federal lead agency for the Department in the environmental review process for the project.";

(2) in paragraph (3) by inserting "or other approvals by the Secretary" after "chapter 53 of title 49"; and

(3) by striking paragraph (5) and inserting the following:

"(5) ADOPTION AND USE OF DOCUMENTS.—Any environmental document prepared in accordance with this subsection shall be adopted and used by any Federal agency in making any approval of a project subject to this section as the document required to be completed under the National Environmental Policy Act of 1969.".

(c) PARTICIPATING AGENCIES.—

(1) EFFECT OF DESIGNATION.—Section 139(d)(4) is amended to read as follows:

"(4) EFFECT OF DESIGNATION.—

"(A) REQUIREMENT.—A participating agency shall comply with the requirements of this section and any schedule established under this section.

"(B) IMPLICATION.—Designation as a participating agency under this subsection shall not imply that the participating agency—

"(i) supports a proposed project; or

"(ii) has any jurisdiction over, or special expertise with respect to evaluation of, the project.".

(2) CONCURRENT REVIEWS.—Section 139(d)(7) is amended to read as follows:

"(7) CONCURRENT REVIEWS.—Each participating agency and cooperating agency shall—

"(A) carry out obligations of that agency under other applicable law concurrently, and in conjunction, with the review required under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.); and

"(B) formulate and implement administrative, policy, and procedural mechanisms to enable the agency to ensure completion of the environmental review process in a timely, coordinated, and environmentally responsible manner.".

(d) PROJECT INITIATION.—Section 139(e) is amended by adding at the end the following: "The project sponsor may satisfy this requirement by submitting to the Secretary a draft notice for publication in the Federal Register announcing the preparation of an environmental impact statement for the project.".

(e) ALTERNATIVES ANALYSIS.—Section 139(f) is amended—

(1) in paragraph (4)—

(A) by amending subparagraph (B) to read as follows

"(B) RANGE OF ALTERNATIVES.—

"(i) IN GENERAL.—Following participation under paragraph (1), the lead agency shall determine the range of alternatives for consideration in any document which the lead agency is responsible for preparing for the project.

"(ii) LIMITATION.—The range of alternatives shall be limited to alternatives that are consistent with the transportation mode and general design of the project described in the long-range transportation plan or transportation improvement program prepared pursuant to section 134 or 135 or section 5303 or 5304 of title 49.

"(iii) RESTRICTION.—A Federal agency may not require the evaluation of any alternative that was evaluated, but not adopted—

"(I) in any prior State or Federal environmental document with regard to the applicable long-range transportation plan or transportation improvement program; or

"(II) after the preparation of a programmatic or tiered environmental document that evaluated alternatives to the project.

"(iv) LEGAL SUFFICIENCY.—The evaluation of the range of alternatives shall be deemed legally sufficient if the environmental document complies with the requirements of this paragraph.";

(B) in subparagraph (C)—

(i) by striking "(C) METHODOLOGIES.—The lead agency" and inserting the following:

"(C) METHODOLOGIES.—

"(i) IN GENERAL.—The lead agency";

(ii) by striking "in collaboration with participating agencies at appropriate times during the study process" and inserting "after consultation with participating

agencies as part of the scoping process"; and

(iii) by adding at the end the following:

"(ii) COMMENTS.—Each participating agency shall limit comments on such methodologies to those issues that are within the authority and expertise of such participating agency.

"(iii) STUDIES.—The lead agency may not conduct studies proposed by any participating agency that are not within the authority or expertise of such participating agency."; and

(C) by adding at the end the following:

"(E) LIMITATIONS ON THE EVALUATION OF IMPACTS EVALUATED IN PRIOR ENVIRONMENTAL DOCUMENTS.—

"(i) IN GENERAL.—The lead agency may not reevaluate, and a Federal agency may not require the reevaluation of, cumulative impacts or growth-inducing impacts where such impacts were previously evaluated in—

"(I) a long-range transportation plan or transportation improvement program developed pursuant to section 134 or 135 or section 5303 or 5304 of title 49;

"(II) a prior environmental document approved by the Secretary; or

"(III) a prior State environmental document approved pursuant to a State law that is substantially equivalent to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)).

"(ii) LEGAL SUFFICIENCY.—The evaluation of cumulative impacts and growth inducing impacts shall be deemed legally sufficient if the environmental document complies with the requirements of this paragraph."; and

(2) by adding at the end the following:

"(5) EFFECTIVE DECISIONMAKING.—

"(A) CONCURRENCE.—At the discretion of the lead agency, a participating agency shall be presumed to concur in the determinations made by the lead agency under this subsection unless

the participating agency submits an objection to the lead agency in writing within 30 days after receiving notice of the lead agency's determination and specifies the statutory basis for the objection.

"(B) ADOPTION OF DETERMINATION.—If the participating agency concurs or does not object within the 30-day period, the participating agency shall adopt the lead agency's determination for purposes of any reviews, approvals, or other actions taken by the participating agency as part of the environmental review process for the project.".

(f) COORDINATION PLAN.—Section 139(g) is amended—

(1) in paragraph (1)(A) by striking "project or category of projects" and inserting "project, category of projects, or program of projects";

(2) by amending paragraph (3) to read as follows:

"(3) DEADLINES FOR DECISIONS UNDER OTHER LAWS.—

"(A) PRIOR APPROVAL DEADLINE.—If a participating agency is required to make a determination regarding or otherwise approve or

disapprove the project prior to the record of decision or finding of no significant impact of the lead agency, such participating agency shall make such determination or approval not later than 30 days after the lead agency publishes notice of the availability of a final environmental impact statement or other final environmental document, or not later than such other date that is otherwise required by law, whichever occurs first.

"(B) OTHER DEADLINES.—With regard to any determination or approval of a participating agency that is not subject to subparagraph (A), each participating agency shall make any required determination regarding or otherwise approve or disapprove the project not later than 90 days after the date that the lead agency approves the record of decision or finding of no significant impact for the project, or not later than such other date that is otherwise required by law, whichever occurs first.

"(C) DEEMED APPROVED.—In the event that any participating agency fails to make a determination or approve or disapprove the project within the applicable deadline described

in subparagraphs (A) and (B), the project shall be deemed approved by such participating agency, and such approval shall be deemed to comply with the applicable requirements of Federal law.

"(D) WRITTEN FINDING.—The Secretary may issue a written finding verifying the approval made in accordance with this paragraph."; and

(3) by striking paragraph (4).

(g) ISSUE IDENTIFICATION AND RESOLUTION.—Section 139(h)(4) is amended by adding at the end the following:

"(C) RESOLUTION FINAL.—

"(i) IN GENERAL.—The lead agency and participating agencies may not reconsider the resolution of any issue agreed to by the relevant agencies in a meeting under subparagraph (A).

"(ii) COMPLIANCE WITH APPLICABLE LAW.—Any such resolution shall be deemed to comply with applicable law notwithstanding that the agencies agreed to such resolution prior to the approval of the environmental document.".

(h) STREAMLINED DOCUMENTATION AND DECISIONMAKING.—Section 139 is amended—

(1) by redesignating subsections (i) through (l) as subsections (k) through (n), respectively; and

(2) by inserting after subsection (h) the following:

"(i) STREAMLINED DOCUMENTATION AND DECISIONMAKING.—

"(1) IN GENERAL.—The lead agency in the environmental review process for a project, in order to reduce paperwork and expedite decisionmaking, shall prepare a condensed final environmental impact statement.

"(2) CONDENSED FORMAT.—A condensed final environmental impact statement for a project in the environmental review process shall consist only of—

"(A) an incorporation by reference of the draft environmental impact statement;

"(B) any updates to specific pages or sections of the draft environmental impact statement as appropriate; and

"(C) responses to comments on the draft environmental impact statement and copies of the comments.

"(3) TIMING OF DECISION.—Notwithstanding any other provision of law, in conducting the environmental review process for a project, the lead agency shall combine a final environmental impact statement and a record of decision for the project into a single document if—

"(A) the alternative approved in the record of decision is either a preferred alternative that was identified in the draft environmental impact statement or is a modification of such preferred alternative that was developed in response to comments on the draft environmental impact statement;

"(B) the Secretary has received a certification from a State under section 128, if such a certification is required for the project; and

"(C) the Secretary determines that the lead agency, participating agency, or the project sponsor has committed to implement the measures applicable to the approved alternative that are identified in the final environmental impact statement.

"(j) SUPPLEMENTAL ENVIRONMENTAL REVIEW AND RE-EVALUATION.—

"(1) SUPPLEMENTAL ENVIRONMENTAL REVIEW.—After the approval of a record of decision or finding of no significant impact with regard to a project, an agency may not require the preparation of a subsequent environmental document for such project unless the lead agency determines that—

"(A) changes to the project will result in new significant impacts that were not evaluated in the environmental document; or

"(B) new information has become available or changes in circumstances have occurred after the lead agency approval of the project that will result in new significant impacts that were not evaluated in the environmental document.

"(2) RE-EVALUATIONS.—The Secretary may only require the re-evaluation of a document prepared under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) if—

"(A) the Secretary determines that the events in paragraph (1)(A) or (1)(B) apply; and

"(B) more than 5 years has elapsed since the Secretary's prior approval of the project or authorization of project funding.

"(3) CHANGE TO RECORD OF DECISION.—After the approval of a record of decision, the Secretary

may not require the record of decision to be changed solely because of a change in the fiscal circumstances surrounding the project.".

(i) REGULATIONS.—Section 139(m) (as redesignated by subsection (h)(1) of this section) is further amended to read as follows:

"(m) REGULATIONS.—

"(1) IN GENERAL.—Not later than 1 year after the date of enactment of the Surface Transportation Extension Act of 2012, Part II, the Secretary, by regulation, shall—

"(A) implement this section; and

"(B) establish methodologies and procedures for evaluating the environmental impacts, including cumulative impacts and growth-inducing impacts, of transportation projects subject to this section.

"(2) COMPLIANCE WITH APPLICABLE LAW.—Any environmental document that utilizes the methodologies and procedures established under this subsection shall be deemed to comply with the applicable requirements of—

"(A) the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) or its implementing regulations; or

"(B) any other Federal environmental statute applicable to transportation projects.".

SEC. 410. DISPOSAL OF HISTORIC PROPERTIES.

(a) DISPOSAL OF HISTORIC PROPERTIES.—Section 156 is amended—

(1) by striking the section heading and inserting "**Sale or lease of real property**"; and

(2) by adding at the end the following:

"(d) ASSESSMENT OF ADVERSE EFFECTS.—Notwithstanding part 800 of title 36, Code of Federal Regulations, the sale or lease by a State of any historic property that is not listed in the National Register of Historic Places shall not be considered an adverse effect to the property within any consultation process carried out under section 106 of the National Historic Preservation Act (16 U.S.C. 470f).".

(b) CLERICAL AMENDMENT.—The analysis for chapter 1 is amended by striking the item relating to section 156 and inserting the following:

"156. Sale or lease of real property.".

SEC. 411. INTEGRATION OF PLANNING AND ENVIRONMENTAL REVIEW.

(a) IN GENERAL.—Chapter 1 is amended by adding at the end the following:

"§ 167. Integration of planning and environmental review

"(a) DEFINITIONS.—In this section, the following definitions apply:

"(1) ENVIRONMENTAL REVIEW PROCESS.—

"(A) IN GENERAL.—The term 'environmental review process' means the process for preparing for a project an environmental impact statement, environmental assessment, categorical exclusion, or other document prepared under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

"(B) INCLUSIONS.—The term 'environmental review process' includes the process for and completion of any environmental permit, approval, review, or study required for a project under any Federal law other than the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

"(2) PLANNING PRODUCT.—The term 'planning product' means any decision, analysis, study, or other documented result of an evaluation or decisionmaking process carried out during transportation planning.

"(3) PROJECT.—The term 'project' means any highway project or program of projects, public trans-

portation capital project or program of projects, or multimodal project or program of projects that requires the approval of the Secretary.

"(4) PROJECT SPONSOR.—The term 'project sponsor' means the agency or other entity, including any private or public-private entity, that seeks approval of the Secretary for a project.

"(b) PURPOSE AND FINDINGS.—

"(1) PURPOSE.—The purpose of this section is to establish the authority and provide procedures for achieving integrated planning and environmental review processes to—

"(A) enable statewide and metropolitan planning processes to more effectively serve as the foundation for project decisions;

"(B) foster better decisionmaking;

"(C) reduce duplication in work;

"(D) avoid delays in transportation improvements; and

"(E) better transportation and environmental results for communities and the United States.

"(2) FINDINGS.—Congress finds the following:

"(A) This section is consistent with and is adopted in furtherance of sections 101 and 102

of the National Environmental Policy Act of 1969 (42 U.S.C. 4331 and 4332) and section 109 of this title.

"(B) This section should be broadly construed and may be applied to any project, class of projects, or program of projects carried out under this title or chapter 53 of title 49.

"(c) ADOPTION OF PLANNING PRODUCTS FOR USE IN NEPA PROCEEDINGS.—

"(1) IN GENERAL.—Notwithstanding any other provision of law and subject to the conditions set forth in subsection (e), the Federal lead agency for a project, at the request of the project sponsors, may adopt and use a planning product in proceedings relating to any class of action in the environmental review process of the project.

"(2) PARTIAL ADOPTION OF PLANNING PRODUCTS.—The Federal lead agency may adopt a planning product under paragraph (1) in its entirety or may select portions for adoption.

"(3) TIMING.—A determination under paragraph (1) with respect to the adoption of a planning product shall be made at the time the lead agencies decide the appropriate scope of environmental review for the project.

"(d) APPLICABILITY.—

"(1) PLANNING DECISIONS.—Planning decisions that may be adopted pursuant to this section include—

"(A) a purpose and need or goals and objectives statement for the project, including with respect to whether tolling, private financial assistance, or other special financial measures are necessary to implement the project;

"(B) a decision with respect to travel corridor location, including project termini;

"(C) a decision with respect to modal choice, including a decision to implement corridor or subarea study recommendations to advance different modal solutions as separate projects with independent utility;

"(D) a decision with respect to the elimination of unreasonable alternatives and the selection of the range of reasonable alternatives for detailed study during the environmental review process;

"(E) a basic description of the environmental setting;

"(F) a decision with respect to methodologies for analysis; and

"(G) identifications of programmatic level mitigation for potential impacts that the Federal lead agency, in consultation with Federal, State, local, and tribal resource agencies, determines are most effectively addressed at a regional or national program level, including—

"(i) system-level measures to avoid, minimize, or mitigate impacts of proposed transportation investments on environmental resources, including regional ecosystem and water resources; and

"(ii) potential mitigation activities, locations, and investments.

"(2) PLANNING ANALYSES.—Planning analyses that may be adopted pursuant to this section include studies with respect to—

"(A) travel demands;

"(B) regional development and growth;

"(C) local land use, growth management, and development;

"(D) population and employment;

"(E) natural and built environmental conditions;

"(F) environmental resources and environmentally sensitive areas;

"(G) potential environmental effects, including the identification of resources of concern and potential cumulative effects on those resources, identified as a result of a statewide or regional cumulative effects assessment; and

"(H) mitigation needs for a proposed action, or for programmatic level mitigation, for potential effects that the Federal lead agency determines are most effectively addressed at a regional or national program level.

"(e) CONDITIONS.—Adoption and use of a planning product under this section is subject to a determination by the Federal lead agency, in consultation with joint lead agencies and project sponsors as appropriate, that the following conditions have been met:

"(1) The planning product was developed through a planning process conducted pursuant to applicable Federal law.

"(2) The planning process included broad multidisciplinary consideration of systems-level or corridor-wide transportation needs and potential effects.

"(3) During the planning process, notice was provided through publication or other means to Federal, State, and local government agencies and tribal governments that might have an interest in the pro-

posed project, and to members of the general public, of the planning products that the planning process might produce and that might be relied on during the environmental review process, and such entities have been provided an appropriate opportunity to participate in the planning process leading to such planning product.

"(4) Prior to determining the scope of environmental review for the project, the joint lead agencies have made documentation relating to the planning product available to Federal, State, and local governmental agencies and tribal governments that may have an interest in the proposed action, and to members of the general public.

"(5) There is no significant new information or new circumstance that has a reasonable likelihood of affecting the continued validity or appropriateness of the planning product.

"(6) The planning product is based on reliable and reasonably current data and reasonable and scientifically acceptable methodologies.

"(7) The planning product is documented in sufficient detail to support the decision or the results of the analysis and to meet requirements for

use of the information in the environmental review process.

"(8) The planning product is appropriate for adoption and use in the environmental review process for the project.

"(f) EFFECT OF ADOPTION.—Notwithstanding any other provision of law, any planning product adopted by the Federal lead agency in accordance with this section shall not be reconsidered or made the subject of additional interagency consultation during the environmental review process of the project unless the Federal lead agency, in consultation with joint lead agencies and project sponsors as appropriate, determines that there is significant new information or new circumstances that affect the continued validity or appropriateness of the adopted planning product. Any planning product adopted by the Federal lead agency in accordance with this section may be relied upon and used by other Federal agencies in carrying out reviews of the project.

"(g) RULE OF CONSTRUCTION.—This section may not be construed to make the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) process applicable to the transportation planning process conducted under chapter 52 of title 49. Initiation of the National Environmental Policy Act of 1969 process as a part of,

or concurrently with, transportation planning activities does not subject transportation plans and programs to the National Environmental Policy Act of 1969 process. This section may not be construed to affect the use of planning products in the National Environmental Policy Act of 1969 process pursuant to other authorities under law or to restrict the initiation of the National Environmental Policy Act of 1969 process during planning.".

(b) CLERICAL AMENDMENT.—The analysis for such chapter is amended by adding at end the following:

"167. Integration of planning and environmental review.".

SEC. 412. DEVELOPMENT OF PROGRAMMATIC MITIGATION PLANS.

(a) IN GENERAL.—Chapter 1 (as amended by this title) is further amended by adding at the end the following:

"§ 168. Development of programmatic mitigation plans

"(a) IN GENERAL.—As part of the statewide or metropolitan transportation planning process, a State or metropolitan planning organization may develop one or more programmatic mitigation plans to address the potential environmental impacts of future transportation projects.

"(b) SCOPE.—

"(1) SCALE.—A programmatic mitigation plan may be developed on a regional, ecosystem, watershed, or statewide scale.

"(2) RESOURCES.—The plan may encompass multiple environmental resources within a defined geographic area or may focus on a specific resource, such as aquatic resources, parklands, or wildlife habitat.

"(3) PROJECT IMPACTS.—The plan may address impacts from all projects in a defined geographic area or may focus on a specific type of project, such as bridge replacements.

"(4) CONSULTATION.—The scope of the plan shall be determined by the State or metropolitan planning organization, as appropriate, in consultation with the agency or agencies with jurisdiction over the resources being addressed in the mitigation plan.

"(c) CONTENTS.—A programmatic mitigation plan may include—

"(1) an assessment of the condition of environmental resources in the geographic area covered by the plan, including an assessment of recent trends and any potential threats to those resources;

"(2) an assessment of potential opportunities to improve the overall quality of environmental resources in the geographic area covered by the plan, through strategic mitigation for impacts of transportation projects;

"(3) standard measures for mitigating certain types of impacts;

"(4) parameters for determining appropriate mitigation for certain types of impacts, such as mitigation ratios or criteria for determining appropriate mitigation sites;

"(5) adaptive management procedures, such as protocols that involve monitoring predicted impacts over time and adjusting mitigation measures in response to information gathered through the monitoring; and

"(6) acknowledgment of specific statutory or regulatory requirements that must be satisfied when determining appropriate mitigation for certain types of resources.

"(d) PROCESS.—Before adopting a programmatic mitigation plan, a State or metropolitan planning organization shall—

"(1) consult with the agency or agencies with jurisdiction over the environmental resources considered in the programmatic mitigation plan;

"(2) make a draft of the plan available for review and comment by applicable environmental resource agencies and the public;

"(3) consider any comments received from such agencies and the public on the draft plan; and

"(4) address such comments in the final plan.

"(e) INTEGRATION WITH OTHER PLANS.—A programmatic mitigation plan may be integrated with other plans, including watershed plans, ecosystem plans, species recovery plans, growth management plans, and land use plans.

"(f) CONSIDERATION IN PROJECT DEVELOPMENT AND PERMITTING.—If a programmatic mitigation plan has been developed pursuant to this section, any Federal agency responsible for environmental reviews, permits, or approvals for a transportation project shall give substantial weight to the recommendations in a programmatic mitigation plan when carrying out their responsibilities under applicable laws.

"(g) PRESERVATION OF EXISTING AUTHORITIES.—Nothing in this section limits the use of programmatic ap-

proaches to reviews under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).".

(b) CLERICAL AMENDMENT.—The analysis for such chapter (as amended by this title) is further amended by adding at the end the following:

"168. Development of programmatic mitigation plans.".

SEC. 413. STATE ASSUMPTION OF RESPONSIBILITY FOR CATEGORICAL EXCLUSIONS.

Section 326(a) is amended—

(1) in paragraph (2) by striking "and only for types of activities specifically designated by the Secretary" and inserting "and for any type of activity for which a categorical exclusion classification is appropriate"; and

(2) by adding at the end the following:

"(4) PRESERVATION OF FLEXIBILITY.—The Secretary shall not require a State, as a condition of assuming responsibility under this section, to forego project delivery methods that are otherwise permissible for highway projects.".

SEC. 414. SURFACE TRANSPORTATION PROJECT DELIVERY PROGRAM.

(a) PROGRAM NAME.—Section 327 is amended—

(1) in the section heading by striking "**pilot**"; and

(2) in subsection (a)(1) by striking "pilot".

(b) ASSUMPTION OF RESPONSIBILITY.—Section 327(a)(2) is amended—

(1) in subparagraph (A) by striking "highway";

(2) in subparagraph (B) by striking clause (ii) and inserting the following:

"(ii) the Secretary may not assign any responsibility imposed on the Secretary by section 134 or 135 or section 5303 or 5304 of title 49."; and

(3) by adding at the end the following:

"(F) PRESERVATION OF FLEXIBILITY.—The Secretary may not require a State, as a condition of participation in the program, to forego project delivery methods that are otherwise permissible for projects.".

(c) STATE PARTICIPATION.—Section 327(b) is amended—

(1) by amending paragraph (1) to read as follows:

"(1) PARTICIPATING STATES.—All States are eligible to participate in the program."; and

(2) in paragraph (2) by striking "this section, the Secretary shall promulgate" and inserting "amendments to this section by the Surface Trans-

portation Extension Act of 2012, Part II, the Secretary shall amend, as appropriate,".

(d) WRITTEN AGREEMENT.—Section 327(c) is amended—

(1) in paragraph (3)(D) by striking the period at the end and inserting a semicolon; and

(2) by adding at the end the following:

"(4) have a term of not more than 5 years; and

"(5) be renewable.".

(e) CONFORMING AMENDMENT.—Section 327(e) is amended by striking "subsection (i)" and inserting "subsection (j)".

(f) AUDITS.—Section 327(g)(1)(B) is amended by striking "subsequent year" and inserting "of the third and fourth years".

(g) MONITORING.—Section 327 is further amended—

(1) by redesignating subsections (h) and (i) as subsections (i) and (j), respectively; and

(2) by inserting after subsection (g) the following:

"(h) MONITORING.—After the fourth year of the participation of a State in the program, the Secretary shall monitor compliance by the State with the written agreement, including the provision by the State of financial resources to carry out the written agreement.".

(h) TERMINATION.—Section 327(j) (as redesignated by subsection (g)(1) of this section) is amended to read as follows:

"(j) TERMINATION.—The Secretary may terminate the participation of any State in the program if—

"(1) the Secretary determines that the State is not adequately carrying out the responsibilities assigned to the State;

"(2) the Secretary provides to the State—

"(A) notification of the determination of noncompliance; and

"(B) a period of at least 30 days during which to take such corrective action as the Secretary determines is necessary to comply with the applicable agreement; and

"(3) the State, after the notification and period provided under paragraph (2), fails to take satisfactory corrective action, as determined by the Secretary.".

(i) DEFINITIONS.—Section 327 is amended by adding at the end the following:

"(k) DEFINITIONS.—In this section, the following definitions apply:

"(1) MULTIMODAL PROJECT.—The term 'multimodal project' means a project funded, in

whole or in part, under this title or chapter 53 of title 49 and involving the participation of more than one Department of Transportation administration or agency.

"(2) PROJECT.—The term 'project' means any highway project, public transportation capital project, or multimodal project that requires the approval of the Secretary.".

(j) CLERICAL AMENDMENT.—The analysis for chapter 3 is amended by striking the item relating to section 327 and inserting the following:

"327. Surface transportation project delivery program.".

SEC. 415. PROGRAM FOR ELIMINATING DUPLICATION OF ENVIRONMENTAL REVIEWS.

(a) IN GENERAL.—Chapter 3 is amended by adding at the end the following:

"§ 330. Program for eliminating duplication of environmental reviews

"(a) ESTABLISHMENT.—

"(1) IN GENERAL.—The Secretary shall establish a program to eliminate duplicative environmental reviews and approvals under State and Federal law of projects. Under this program, a State may use State laws and procedures to conduct reviews and make approvals in lieu of Federal environ-

mental laws and regulations, consistent with the provisions of this section.

"(2) PARTICIPATING STATES.—All States are eligible to participate in the program.

"(3) SCOPE OF ALTERNATIVE REVIEW AND APPROVAL PROCEDURES.—For purposes of this section, alternative environmental review and approval procedures may include one or more of the following:

"(A) Substitution of one or more State environmental laws for one or more Federal environmental laws, if the Secretary determines in accordance with this section that the State environmental laws provide environmental protection and opportunities for public involvement that are substantially equivalent to the applicable Federal environmental laws.

"(B) Substitution of one or more State regulations for Federal regulations implementing one or more Federal environmental laws, if the Secretary determines in accordance with this section that the State regulations provide environmental protection and opportunities for public involvement that are substantially equivalent to the Federal regulations.

"(b) APPLICATION.—To participate in the program, a State shall submit to the Secretary an application containing such information as the Secretary may require, including—

"(1) a full and complete description of the proposed alternative environmental review and approval procedures of the State;

"(2) for each State law or regulation included in the proposed alternative environmental review and approval procedures of the State, an explanation of the basis for concluding that the law or regulation meets the requirements under subsection (a)(3); and

"(3) evidence of having sought, received, and addressed comments on the proposed application from the public and appropriate Federal environmental resource agencies.

"(c) REVIEW OF APPLICATION.—The Secretary shall—

"(1) review an application submitted under subsection (b);

"(2) approve or disapprove the application in accordance with subsection (d) not later than 90 days after the date of the receipt of the application; and

"(3) transmit to the State notice of the approval or disapproval, together with a statement of the reasons for the approval or disapproval.

"(d) APPROVAL OF STATE PROGRAMS.—

"(1) IN GENERAL.—The Secretary shall approve each such application if the Secretary finds that the proposed alternative environmental review and approval procedures of the State are substantially equivalent to the applicable Federal environmental laws and Federal regulations.

"(2) EXCLUSION.—The National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) shall not apply to any decision by the Secretary to approve or disapprove any application submitted pursuant to this section.

"(e) COMPLIANCE WITH PERMITS.—Compliance with a permit or other approval of a project issued pursuant to a program approved by the Secretary under this section shall be deemed compliance with the Federal laws and regulations identified in the program approved by the Secretary pursuant to this section.

"(f) REVIEW AND TERMINATION.—

"(1) REVIEW.—All State alternative environmental review and approval procedures approved

under this section shall be reviewed by the Secretary not less than once every 5 years.

"(2) PUBLIC NOTICE AND COMMENT.—In conducting the review process under paragraph (1), the Secretary shall provide notice and an opportunity for public comment.

"(3) EXTENSIONS AND TERMINATIONS.—At the conclusion of the review process, the Secretary may extend the State alternative environmental review and approval procedures for an additional 5-year period or terminate the State program.

"(g) REPORT TO CONGRESS.—Not later than 2 years after the date of enactment of this section and annually thereafter, the Secretary shall submit to Congress a report that describes the administration of the program.

"(h) DEFINITIONS.—For purposes of this section:

"(1) ENVIRONMENTAL LAW.—The term 'environmental law' includes any law that provides procedural or substantive protection, as applicable, for the natural or built environment with regard to the construction and operation of projects.

"(2) FEDERAL ENVIRONMENTAL LAWS.—The term 'Federal environmental laws' means laws governing the review of environmental impacts of, and issuance of permits and other approvals for, the con-

struction and operation of projects, including section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)), section 404 of the Federal Water Pollution Control Act (33 U.S.C. 1344), section 106 of the National Historic Preservation Act (16 U.S.C. 470f), and sections 7(a)(2), 9(a)(1)(B), and 10(a)(1)(B) of the Endangered Species Act of 1973 (16 U.S.C. 1536(a)(2), 1538(a)(1)(B), 1539(a)(1)(B)).

"(3) MULTIMODAL PROJECT.—The term 'multimodal project' means a project funded, in whole or in part, under this title or chapter 53 of title 49 and involving the participation of more than one Department of Transportation administration or agency.

"(4) PROJECT.—The term 'project' means any highway project, public transportation capital project, or multimodal project that requires the approval of the Secretary.".

(b) CLERICAL AMENDMENT.—The analysis for such chapter (as amended by title I of this Act) is further amended by adding at the end the following:

"330. Program for eliminating duplication of environmental reviews.".

SEC. 416. STATE PERFORMANCE OF LEGAL SUFFICIENCY REVIEWS.

(a) IN GENERAL.—Chapter 3 (as amended by this title) is further amended by adding at the end the following:

"§ 331. State performance of legal sufficiency reviews

"(a) IN GENERAL.—At the request of any State transportation department, the Federal Highway Administration shall enter into an agreement with the State transportation department to authorize the State to carry out the legal sufficiency reviews for environmental impact statements and environmental assessments under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) in accordance with this section.

"(b) TERMS OF AGREEMENT.—An agreement authorizing a State to carry out legal sufficiency reviews for Federal-aid highway projects shall contain the following provisions:

"(1) A finding by the Federal Highway Administration that the State has the capacity to carry out legal sufficiency reviews that are equivalent in quality and consistency to the reviews that would otherwise be conducted by attorneys employed by such Administration.

"(2) An oversight process, including periodic reviews conducted by attorneys employed by such Ad-

ministration, to evaluate the quality of the legal sufficiency reviews carried out by the State transportation department under the agreement.

"(3) A requirement for the State transportation department to submit a written finding of legal sufficiency to the Federal Highway Administration concurrently with the request by the State for Federal approval of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) document.

"(4) An opportunity for the Federal Highway Administration to conduct an additional legal sufficiency review for any project, for not more than 30 days, if considered necessary by the Federal Highway Administration.

"(5) Procedures allowing either party to the agreement to terminate the agreement for any reason with 30 days notice to the other party.

"(c) EFFECT OF AGREEMENT.—A legal sufficiency review carried out by a State transportation department under this section shall be deemed by the Federal Highway Administration to satisfy the requirement for a legal sufficiency review in sections 771.125(b) and 774.7(d) of title 23, Code of Federal Regulations, or other applicable regulations issued by the Federal Highway Administration.".

(b) CLERICAL AMENDMENT.—The analysis for such chapter (as amended by this title) is further amended by adding at the end the following:

"331. State performance of legal sufficiency reviews.".

SEC. 417. CATEGORICAL EXCLUSIONS.

(a) IN GENERAL.—The Secretary shall treat an activity carried out under title 23, United States Code, or project within a right-of-way as a class of action categorically excluded from the requirements relating to environmental assessments or environmental impact statements under section 771.117(c) of title 23, Code of Federal Regulations.

(b) DEFINITIONS.—In this section, the following definitions apply:

(1) MULTIMODAL PROJECT.—The term "multimodal project" means a project funded, in whole or in part, under title 23, United States Code, or chapter 53 of title 49 of such Code and involving the participation of more than one Department of Transportation administration or agency.

(2) PROJECT.—The term "project" means any highway project, public transportation capital project, or multimodal project that requires the approval of the Secretary.

SEC. 418. ENVIRONMENTAL REVIEW PROCESS DEADLINE.

(a) IN GENERAL.—

(1) DEADLINE.—Notwithstanding any other provision of law, the environmental review process for a project shall be completed not later than 270 days after the date on which the notice of project initiation under section 139(e) of title 23, United States Code, is published in the Federal Register.

(2) CONSEQUENCES OF MISSED DEADLINE.—If the environmental review process for a project is not completed in accordance with paragraph (1)—

(A) the project shall be considered to have no significant impact to the human environment for purposes of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.); and

(B) that classification shall be considered to be a final agency action.

(b) DEFINITIONS.—In this section, the following definitions apply:

(1) ENVIRONMENTAL REVIEW PROCESS.—

(A) IN GENERAL.—The term "environmental review process" means the process for preparing for a project an environmental impact statement, environmental assessment, categorical exclusion, or other document prepared

under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(B) INCLUSIONS.—The term "environmental review process" includes the process for and completion of any environmental permit, approval, review, or study required for a project under any Federal law other than the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(2) LEAD AGENCY.—The term "lead agency" means the Department of Transportation and, if applicable, any State or local governmental entity serving as a joint lead agency pursuant to this section.

(3) MULTIMODAL PROJECT.—The term "multimodal project" means a project funded, in whole or in part, under title 23, United States Code, or chapter 53 of title 49 of such Code and involving the participation of more than one Department of Transportation administration or agency.

(4) PROJECT.—The term "project" means any highway project, public transportation capital project, or multimodal project that requires the approval of the Secretary.

SEC. 419. RELOCATION ASSISTANCE.

(a) ALTERNATIVE RELOCATION PAYMENT PROCESS.—

(1) ESTABLISHMENT.—For the purpose of identifying improvements in the timeliness of providing relocation assistance to persons displaced as a result of Federal or federally-assisted programs and projects, the Secretary shall establish an alternative relocation payment process under which payments to displaced persons eligible for relocation assistance pursuant to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601 et seq.), are calculated based on reasonable estimates and paid in advance of the physical displacement of the displaced person.

(2) PAYMENTS.—

(A) TIMING OF PAYMENTS.—Relocation assistance payments may be provided to the displaced person at the same time as payments of just compensation for real property acquired for a program or project of the State.

(B) COMBINED PAYMENT.—Payments for relocation and just compensation may be combined into a single unallocated amount.

(3) CONDITIONS FOR STATE USE OF ALTERNATIVE PROCESS.—

(A) IN GENERAL.—After public notice and an opportunity to comment, the Secretary shall adopt criteria for States to use the alternative relocation payment process established by the Secretary.

(B) MEMORANDUM OF AGREEMENT.—In order to use the alternative relocation payment process, a State shall enter into a memorandum of agreement with the Secretary that includes provisions relating to—

(i) the selection of projects or programs within the State to which the alternative relocation payment process will be applied;

(ii) program and project-level monitoring;

(iii) performance measurement;

(iv) reporting requirements; and

(v) the circumstances under which the Secretary may terminate or suspend the authority of the State to use the alternative relocation payment process.

(C) REQUIRED INFORMATION.—A State may use the alternative relocation payment

process only after the displaced persons affected by a program or project—

(i) are informed in writing—

(I) that the relocation payments the displaced persons receive under the alternative relocation payment process may be higher or lower than the amount that the displaced persons would have received under the standard relocation assistance process; and

(II) of their right not to participate in the alternative relocation payment process; and

(ii) agree in writing to the alternative relocation payment process.

(D) ELECTION NOT TO PARTICIPATE.—The displacing agency shall provide any displaced person who elects not to participate in the alternative relocation payment process with relocation assistance in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601 et seq.).

(4) PROTECTIONS AGAINST INCONSISTENT TREATMENT.—If other Federal agencies plan dis-

placements in or adjacent to an area of a project using the alternative relocation payment process within the same time period as a project acquisition and relocation action of the project, the Secretary shall adopt measures to protect against inconsistent treatment of displaced persons. Such measures may include a determination that the alternative relocation payment process authority may not be used on a specific project.

(5) REPORT.—

(A) IN GENERAL.—The Secretary shall submit to Congress an annual report on the implementation of the alternative relocation payment process.

(B) CONTENTS.—The report shall include an evaluation of the merits of the alternative relocation payment process, including the effects of the alternative relocation payment process on—

(i) displaced persons and the protections afforded to such persons by the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601 et seq.);

(ii) the efficiency of the delivery of Federal-aid highway projects and overall effects on the Federal-aid highway program; and

(iii) the achievement of the purposes of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601 et seq.).

(6) LIMITATION.—The alternative relocation payment process under this section may be used only on projects funded under title 23, United States Code, in cases in which the funds are administered by the Federal Highway Administration.

(7) NEPA APPLICABILITY.—Notwithstanding any other provision of law, the use of the alternative relocation payment process established under this section on a project funded under title 23, United States Code, and administered by the Federal Highway Administration is not a major Federal action requiring analysis or approval under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(b) UNIFORM RELOCATION ASSISTANCE ACT AMENDMENTS.—

(1) MOVING AND RELATED EXPENSES.—Section 202 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4622) is amended—

(A) in subsection (a)(4) by striking "$10,000" and inserting "$25,000, as adjusted by regulation, in accordance with section 213(d)"; and

(B) in the second sentence of subsection (c) by striking "$20,000" and inserting "$40,000, as adjusted by regulation, in accordance with section 213(d)".

(2) REPLACEMENT HOUSING FOR HOMEOWNERS.—The first sentence of section 203(a)(1) of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4623(a)(1)) is amended by—

(A) striking "$22,500" and inserting "$31,000, as adjusted by regulation, in accordance with section 213(d),"; and

(B) striking "one hundred and eighty days prior to" and inserting "90 days before".

(3) REPLACEMENT HOUSING FOR TENANTS AND CERTAIN OTHERS.—Section 204 of the Uniform

Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4624) is amended—

(A) in the second sentence of subsection (a) by striking "$5,250" and inserting "$7,200, as adjusted by regulation, in accordance with section 213(d)"; and

(B) in the second sentence of subsection (b) by striking ", except" and all that follows through the end of the subsection and inserting a period.

(4) DUTIES OF LEAD AGENCY.—Section 213 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4633) is amended—

(A) in subsection (b)—

(i) in paragraph (2) by striking "and";

(ii) in paragraph (3) by striking the period and inserting "; and"; and

(iii) by adding at the end the following:

"(4) that each Federal agency that has programs or projects requiring the acquisition of real property or causing a displacement from real property subject to the provisions of this Act shall pro-

vide to the lead agency an annual summary report that describes the activities conducted by the Federal agency."; and

(B) by adding at the end the following:

"(d) ADJUSTMENT OF PAYMENTS.—The head of the lead agency may adjust, by regulation, the amounts of relocation payments provided under sections 202(a)(4), 202(c), 203(a), and 204(a) if the head of the lead agency determines that cost of living, inflation, or other factors indicate that the payments should be adjusted to meet the policy objectives of this Act.".

(5) AGENCY COORDINATION.—Title II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601 et seq.) is amended by inserting after section 213 (42 U.S.C. 4633) the following:

"SEC. 214. AGENCY COORDINATION.

"(a) AGENCY CAPACITY.—Each Federal agency responsible for funding or carrying out relocation and acquisition activities shall have adequately trained personnel and such other resources as are necessary to manage and oversee the relocation and acquisition program of the Federal agency in accordance with this Act.

"(b) INTERAGENCY AGREEMENTS.—Not later than 1 year after the date of the enactment of this section, each

Federal agency responsible for funding relocation and acquisition activities (other than the agency serving as the lead agency) shall enter into a memorandum of understanding with the lead agency that—

"(1) provides for periodic training of the personnel of the Federal agency, which in the case of a Federal agency that provides Federal financial assistance, may include personnel of any displacing agency that receives Federal financial assistance;

"(2) addresses ways in which the lead agency may provide assistance and coordination to the Federal agency relating to compliance with this Act on a program or project basis; and

"(3) addresses the funding of the training, assistance, and coordination activities provided by the lead agency, in accordance with subsection (c).

"(c) INTERAGENCY PAYMENTS.—

"(1) IN GENERAL.—For the fiscal year that begins 1 year after the date of the enactment of this section, and each fiscal year thereafter, each Federal agency responsible for funding relocation and acquisition activities (other than the agency serving as the lead agency) shall transfer to the lead agency for the fiscal year, such funds as are necessary, but not less than $35,000, to support the training, assistance,

and coordination activities of the lead agency described in subsection (b).

"(2) INCLUDED COSTS.—The cost to a Federal agency of providing the funds described in paragraph (1) shall be included as part of the cost of 1 or more programs or projects undertaken by the Federal agency or with Federal financial assistance that result in the displacement of persons or the acquisition of real property.".

(c) COOPERATION WITH FEDERAL AGENCIES.—Section 308(a) is amended to read as follows:

"(a) AUTHORIZED ACTIVITIES.—

"(1) IN GENERAL.—The Secretary may perform, by contract or otherwise, authorized engineering or other services in connection with the survey, construction, maintenance, or improvement of highways for other Federal agencies, cooperating foreign countries, and State cooperating agencies.

"(2) INCLUSIONS.—Services authorized under paragraph (1) may include activities authorized under section 214 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601 et seq.).

"(3) REIMBURSEMENT.—Reimbursement for services carried out under this subsection, including

depreciation on engineering and road-building equipment, shall be credited to the applicable appropriation.".

3. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE MCKINLEY OF WEST VIRGINIA OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

AMENDMENT TO H.R. 4348

OFFERED BY MR. MCKINLEY OF WEST VIRGINIA

At the end of the bill, add the following (and conform the table of contents of the bill accordingly):

TITLE IV—COAL COMBUSTION RESIDUALS

SEC. 401. HIGHWAY AND INFRASTRUCTURE SAFETY THROUGH THE PROTECTION OF COAL COMBUSTION RESIDUAL RECYCLING.

(a) IN GENERAL.—Subtitle D of the Solid Waste Disposal Act (42 U.S.C. 6941 et seq.) is amended by adding at the end the following new section:

"SEC. 4011. MANAGEMENT AND DISPOSAL OF COAL COMBUSTION RESIDUALS.

"(a) STATE PERMIT PROGRAMS FOR COAL COMBUSTION RESIDUALS.—Each State may adopt and implement a coal combustion residuals permit program.

"(b) STATE ACTIONS.—

"(1) NOTIFICATION.—Not later than 6 months after the date of enactment of this section (except as provided by the deadline identified under subsection (d)(2)(B)), the Governor of each State shall notify the Administrator, in writing, whether such

State will adopt and implement a coal combustion residuals permit program.

"(2) CERTIFICATION.—

"(A) IN GENERAL.—Not later than 36 months after the date of enactment of this section (except as provided in subsections (f)(1)(A) and (f)(1)(C)), in the case of a State that has notified the Administrator that it will implement a coal combustion residuals permit program, the head of the lead State agency responsible for implementing the coal combustion residuals permit program shall submit to the Administrator a certification that such coal combustion residuals permit program meets the specifications described in subsection (c)(1).

"(B) CONTENTS.—A certification submitted under this paragraph shall include—

"(i) a letter identifying the lead State agency responsible for implementing the coal combustion residuals permit program, signed by the head of such agency;

"(ii) identification of any other State agencies involved with the implementation of the coal combustion residuals permit program;

"(iii) a narrative description that provides an explanation of how the State will ensure that the coal combustion residuals permit program meets the requirements of this section, including a description of the State's—

"(I) process to inspect or otherwise determine compliance with such permit program;

"(II) process to enforce the requirements of such permit program; and

"(III) public participation process for the promulgation, amendment, or repeal of regulations for, and the issuance of permits under, such permit program;

"(iv) a legal certification that the State has, at the time of certification, fully effective statutes or regulations necessary to implement a coal combustion residuals permit program that meets the specifications described in subsection (c)(1); and

"(v) copies of State statutes and regulations described in clause (iv).

"(3) MAINTENANCE OF 4005(C) OR 3006 PROGRAM.—In order to adopt or implement a coal combustion residuals permit program under this section (including pursuant to subsection (f)), the State agency responsible for implementing a coal combustion residuals permit program in a State shall maintain an approved program under section 4005(c) or an authorized program under section 3006.

"(c) PERMIT PROGRAM SPECIFICATIONS.—

"(1) MINIMUM REQUIREMENTS.—The specifications described in this subsection for a coal combustion residuals permit program are as follows:

"(A) The revised criteria described in paragraph (2) shall apply to a coal combustion residuals permit program, except as provided in paragraph (3).

"(B) Each structure shall be, in accordance with generally accepted engineering standards for the structural integrity of such structures, designed, constructed, and maintained to provide for containment of the maximum volumes of coal combustion residuals appropriate for the structure. If a structure is determined by the head of the agency responsible for implementing the coal combustion residuals permit

program to be deficient, the head of such agency has authority to require action to correct the deficiency according to a schedule determined by such agency. If the identified deficiency is not corrected according to such schedule, the head of such agency has authority to require that the structure close in accordance with subsection (h).

"(C) The coal combustion residuals permit program shall apply the revised criteria promulgated pursuant to section 4010(c) for location, design, groundwater monitoring, corrective action, financial assurance, closure, and post-closure described in paragraph (2) and the specifications described in this paragraph to surface impoundments.

"(D) If a structure that is classified as posing a high hazard potential pursuant to the guidelines published by the Federal Emergency Management Agency entitled 'Federal Guidelines for Dam Safety: Hazard Potential Classification System for Dams' (FEMA Publication Number 333) is determined by the head of the agency responsible for implementing the coal combustion residuals permit program to be defi-

cient with respect to the structural integrity requirement in subparagraph (B), the head of such agency has authority to require action to correct the deficiency according to a schedule determined by such agency. If the identified deficiency is not corrected according to such schedule, the head of such agency has authority to require that the structure close in accordance with subsection (h).

"(E) New structures that first receive coal combustion residuals after the date of enactment of this section shall be constructed with a base located a minimum of two feet above the upper limit of the natural water table.

"(F) In the case of a coal combustion residuals permit program implemented by a State, the State has the authority to inspect structures and implement and enforce such permit program.

"(G) In the case of a coal combustion residuals permit program implemented by a State, the State has the authority to address wind dispersal of dust from coal combustion residuals by requiring dust control measures, as determined appropriate by the head of the lead

State agency responsible for implementing the coal combustion residuals permit program.

"(2) REVISED CRITERIA.—The revised criteria described in this paragraph are—

"(A) the revised criteria for design, groundwater monitoring, corrective action, closure, and post-closure, for structures, including—

"(i) for new structures, and lateral expansions of existing structures, that first receive coal combustion residuals after the date of enactment of this section, the revised criteria regarding design requirements described in section 258.40 of title 40, Code of Federal Regulations; and

"(ii) for all structures that receive coal combustion residuals after the date of enactment of this section, the revised criteria regarding groundwater monitoring and corrective action requirements described in subpart E of part 258 of title 40, Code of Federal Regulations, except that, for the purposes of this paragraph, such revised criteria shall also include—

"(I) for the purposes of detection monitoring, the constituents boron, chloride, conductivity, fluoride, mercury, pH, sulfate, sulfide, and total dissolved solids; and

"(II) for the purposes of assessment monitoring, the constituents aluminum, boron, chloride, fluoride, iron, manganese, molybdenum, pH, sulfate, and total dissolved solids;

"(B) the revised criteria for location restrictions described in—

"(i) for new structures, and lateral expansions of existing structures, that first receive coal combustion residuals after the date of enactment of this section, sections 258.11 through 258.15 of title 40, Code of Federal Regulations; and

"(ii) for existing structures that receive coal combustion residuals after the date of enactment of this section, sections 258.11 and 258.15 of title 40, Code of Federal Regulations;

"(C) for all structures that receive coal combustion residuals after the date of enact-

ment of this section, the revised criteria for air quality described in section 258.24 of title 40, Code of Federal Regulations;

"(D) for all structures that receive coal combustion residuals after the date of enactment of this section, the revised criteria for financial assurance described in subpart G of part 258 of title 40, Code of Federal Regulations;

"(E) for all structures that receive coal combustion residuals after the date of enactment of this section, the revised criteria for surface water described in section 258.27 of title 40, Code of Federal Regulations;

"(F) for all structures that receive coal combustion residuals after the date of enactment of this section, the revised criteria for recordkeeping described in section 258.29 of title 40, Code of Federal Regulations;

"(G) for landfills and other land-based units, other than surface impoundments, that receive coal combustion residuals after the date of enactment of this section, the revised criteria for run-on and run-off control systems de-

scribed in section 258.26 of title 40, Code of Federal Regulations; and

"(H) for surface impoundments that receive coal combustion residuals after the date of enactment of this section, the revised criteria for run-off control systems described in section 258.26(a)(2) of title 40, Code of Federal Regulations.

"(3) APPLICABILITY OF CERTAIN REQUIREMENTS.—A State may determine that one or more of the requirements of the revised criteria described in paragraph (2) is not needed for the management of coal combustion residuals in that State, and may decline to apply such requirement as part of its coal combustion residuals permit program. If a State declines to apply a requirement under this paragraph, the State shall include in the certification under subsection (b)(2) a description of such requirement and the reasons such requirement is not needed in the State. If the Administrator determines that a State determination under this paragraph does not accurately reflect the needs for the management of coal combustion residuals in the State, the Administrator may treat such State determination as a deficiency under subsection (d).

"(d) WRITTEN NOTICE AND OPPORTUNITY TO REMEDY.—

"(1) IN GENERAL.—The Administrator shall provide to a State written notice and an opportunity to remedy deficiencies in accordance with paragraph (2) if at any time the State—

"(A) does not satisfy the notification requirement under subsection (b)(1);

"(B) has not submitted a certification under subsection (b)(2);

"(C) does not satisfy the maintenance requirement under subsection (b)(3); or

"(D) is not implementing a coal combustion residuals permit program that meets the specifications described in subsection (c)(1).

"(2) CONTENTS OF NOTICE; DEADLINE FOR RESPONSE.—A notice provided under this subsection shall—

"(A) include findings of the Administrator detailing any applicable deficiencies in—

"(i) compliance by the State with the notification requirement under subsection (b)(1);

"(ii) compliance by the State with the certification requirement under subsection (b)(2);

"(iii) compliance by the State with the maintenance requirement under subsection (b)(3); and

"(iv) the State coal combustion residuals permit program in meeting the specifications described in subsection (c)(1); and

"(B) identify, in collaboration with the State, a reasonable deadline, which shall be not sooner than 6 months after the State receives the notice, by which the State shall remedy the deficiencies detailed under subparagraph (A).

"(e) IMPLEMENTATION BY ADMINISTRATOR.—

"(1) IN GENERAL.—The Administrator shall implement a coal combustion residuals permit program for a State only in the following circumstances:

"(A) If the Governor of such State notifies the Administrator under subsection (b)(1) that such State will not adopt and implement such a permit program.

"(B) If such State has received a notice under subsection (d) and, after any review brought by the State under section 7006, fails, by the deadline identified in such notice under subsection (d)(2)(B), to remedy the deficiencies detailed in such notice under subsection (d)(2)(A).

"(C) If such State informs the Administrator, in writing, that such State will no longer implement such a permit program.

"(2) REQUIREMENTS.—If the Administrator implements a coal combustion residuals permit program for a State under paragraph (1), such permit program shall consist of the specifications described in subsection (c)(1).

"(3) ENFORCEMENT.—If the Administrator implements a coal combustion residuals permit program for a State under paragraph (1), the authorities referred to in section 4005(c)(2)(A) shall apply with respect to coal combustion residuals and structures and the Administrator may use such authorities to inspect, gather information, and enforce the requirements of this section in the State.

"(f) STATE CONTROL AFTER IMPLEMENTATION BY ADMINISTRATOR.—

"(1) STATE CONTROL.—

"(A) NEW ADOPTION AND IMPLEMENTATION BY STATE.—For a State for which the Administrator is implementing a coal combustion residuals permit program under subsection (e)(1)(A), the State may adopt and implement such a permit program by—

"(i) notifying the Administrator that the State will adopt and implement such a permit program;

"(ii) not later than 6 months after the date of such notification, submitting to the Administrator a certification under subsection (b)(2); and

"(iii) receiving from the Administrator—

"(I) a determination that the State coal combustion residuals permit program meets the specifications described in subsection (c)(1); and

"(II) a timeline for transition of control of the coal combustion residuals permit program.

"(B) REMEDYING DEFICIENT PERMIT PROGRAM.—For a State for which the Adminis-

trator is implementing a coal combustion residuals permit program under subsection (e)(1)(B), the State may adopt and implement such a permit program by—

"(i) remedying the deficiencies detailed in the notice provided under subsection (d)(2)(A); and

"(ii) receiving from the Administrator—

"(I) a determination that the deficiencies detailed in such notice have been remedied; and

"(II) a timeline for transition of control of the coal combustion residuals permit program.

"(C) RESUMPTION OF IMPLEMENTATION BY STATE.—For a State for which the Administrator is implementing a coal combustion residuals permit program under subsection (e)(1)(C), the State may adopt and implement such a permit program by—

"(i) notifying the Administrator that the State will adopt and implement such a permit program;

"(ii) not later than 6 months after the date of such notification, submitting to the Administrator a certification under subsection (b)(2); and

"(iii) receiving from the Administrator—

"(I) a determination that the State coal combustion residuals permit program meets the specifications described in subsection (c)(1); and

"(II) a timeline for transition of control of the coal combustion residuals permit program.

"(2) REVIEW OF DETERMINATION.—

"(A) DETERMINATION REQUIRED.—The Administrator shall make a determination under paragraph (1) not later than 90 days after the date on which the State submits a certification under paragraph (1)(A)(ii) or (1)(C)(ii), or notifies the Administrator that the deficiencies have been remedied pursuant to paragraph (1)(B)(i), as applicable.

"(B) REVIEW.—A State may obtain a review of a determination by the Administrator under paragraph (1) as if such determination

was a final regulation for purposes of section 7006.

"(3) IMPLEMENTATION DURING TRANSITION.—

"(A) EFFECT ON ACTIONS AND ORDERS.—Actions taken or orders issued pursuant to a coal combustion residuals permit program shall remain in effect if—

"(i) a State takes control of its coal combustion residuals permit program from the Administrator under paragraph (1); or

"(ii) the Administrator takes control of a coal combustion residuals permit program from a State under subsection (e).

"(B) CHANGE IN REQUIREMENTS.—Subparagraph (A) shall apply to such actions and orders until such time as the Administrator or the head of the lead State agency responsible for implementing the coal combustion residuals permit program, as applicable—

"(i) implements changes to the requirements of the coal combustion residuals permit program with respect to the basis for the action or order; or

"(ii) certifies the completion of a corrective action that is the subject of the action or order.

"(4) SINGLE PERMIT PROGRAM.—If a State adopts and implements a coal combustion residuals permit program under this subsection, the Administrator shall cease to implement the permit program implemented under subsection (e) for such State.

"(g) EFFECT ON DETERMINATION UNDER 4005(C) OR 3006.—The Administrator shall not consider the implementation of a coal combustion residuals permit program by the Administrator under subsection (e) in making a determination of approval for a permit program or other system of prior approval and conditions under section 4005(c) or of authorization for a program under section 3006.

"(h) CLOSURE.—If it is determined, pursuant to a coal combustion residuals permit program, that a structure should close, the time period and method for the closure of such structure shall be set forth in a closure plan that establishes a deadline for completion and that takes into account the nature and the site-specific characteristics of the structure to be closed. In the case of a surface impoundment, the closure plan shall require, at a min-

imum, the removal of liquid and the stabilization of remaining waste, as necessary to support the final cover.

"(i) AUTHORITY.—

"(1) STATE AUTHORITY.—Nothing in this section shall preclude or deny any right of any State to adopt or enforce any regulation or requirement respecting coal combustion residuals that is more stringent or broader in scope than a regulation or requirement under this section.

"(2) AUTHORITY OF THE ADMINISTRATOR.—

"(A) IN GENERAL.—Except as provided in subsection (e) of this section and section 6005 of this title, the Administrator shall, with respect to the regulation of coal combustion residuals, defer to the States pursuant to this section.

"(B) IMMINENT HAZARD.—Nothing in this section shall be construed to affect the authority of the Administrator under section 7003 with respect to coal combustion residuals.

"(C) TECHNICAL AND ENFORCEMENT ASSISTANCE ONLY UPON REQUEST.—Upon request from the head of a lead State agency that is implementing a coal combustion residuals permit program, the Administrator may provide

to such State agency only the technical or enforcement assistance requested.

"(3) CITIZEN SUITS.—Nothing in this section shall be construed to affect the authority of a person to commence a civil action in accordance with section 7002.

"(j) MINE RECLAMATION ACTIVITIES.—A coal combustion residuals permit program implemented under subsection (e) by the Administrator shall not apply to the utilization, placement, and storage of coal combustion residuals at surface mining and reclamation operations.

"(k) DEFINITIONS.—In this section:

"(1) COAL COMBUSTION RESIDUALS.—The term 'coal combustion residuals' means—

"(A) the solid wastes listed in section 3001(b)(3)(A)(i), including recoverable materials from such wastes;

"(B) coal combustion wastes that are co-managed with wastes produced in conjunction with the combustion of coal, provided that such wastes are not segregated and disposed of separately from the coal combustion wastes and comprise a relatively small proportion of the total wastes being disposed in the structure;

"(C) fluidized bed combustion wastes;

"(D) wastes from the co-burning of coal with non-hazardous secondary materials provided that coal makes up at least 50 percent of the total fuel burned; and

"(E) wastes from the co-burning of coal with materials described in subparagraph (A) that are recovered from monofills.

"(2) COAL COMBUSTION RESIDUALS PERMIT PROGRAM.—The term 'coal combustion residuals permit program' means a permit program or other system of prior approval and conditions that is adopted by or for a State for the management and disposal of coal combustion residuals to the extent such activities occur in structures in such State.

"(3) STRUCTURE.—The term 'structure' means a landfill, surface impoundment, or other land-based unit which may receive coal combustion residuals.

"(4) REVISED CRITERIA.—The term 'revised criteria' means the criteria promulgated for municipal solid waste landfill units under section 4004(a) and under section 1008(a)(3), as revised under section 4010(c) in accordance with the requirement of such section that the criteria protect human health and the environment.".

(b) 2000 REGULATORY DETERMINATION.—Nothing in this section, or the amendments made by this section, shall be construed to alter in any manner the Environmental Protection Agency's regulatory determination entitled "Notice of Regulatory Determination on Wastes from the Combustion of Fossil Fuels", published at 65 Fed. Reg. 32214 (May 22, 2000), that the fossil fuel combustion wastes addressed in that determination do not warrant regulation under subtitle C of the Solid Waste Disposal Act (42 U.S.C. 6921 et seq.).

(c) CONFORMING AMENDMENT.—The table of contents contained in section 1001 of the Solid Waste Disposal Act is amended by inserting after the item relating to section 4010 the following:

"Sec. 4011. Management and disposal of coal combustion residuals.".

House Calendar No. _____

112TH CONGRESS
2D SESSION

H. RES. _____

Report No. 112–_____

Providing for consideration of the bill (H.R. 4348) to provide an extension of Federal-aid highway, highway safety, motor carrier safety, transit, and other programs funded out of the Highway Trust Fund pending enactment of a multiyear law reauthorizing such programs, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

APRIL 17, 2012

Ms. FOXX, from the Committee on Rules, reported the following resolution; which was referred to the House Calendar and ordered to be printed

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RESOLUTION

Providing for consideration of the bill (H.R. 4348) to provide an extension of Federal-aid highway, highway safety, motor carrier safety, transit, and other programs funded out of the Highway Trust Fund pending enactment of a multiyear law reauthorizing such programs, and for other purposes.

Resolved, That at any time after the adoption of this resolution the Speaker may, pursuant to clause 2(b) of rule XVIII, declare the House resolved into the Committee

of the Whole House on the state of the Union for consideration of the bill (H.R. 4348) to provide an extension of Federal-aid highway, highway safety, motor carrier safety, transit, and other programs funded out of the Highway Trust Fund pending enactment of a multiyear law reauthorizing such programs, and for other purposes. The first reading of the bill shall be dispensed with. All points of order against consideration of the bill are waived. General debate shall be confined to the bill and shall not exceed one hour equally divided and controlled by the chair and ranking minority member of the Committee on Transportation and Infrastructure. After general debate the bill shall be considered for amendment under the five-minute rule. The bill shall be considered as read. All points of order against provisions in the bill are waived. No amendment to the bill shall be in order except those printed in the report of the Committee on Rules accompanying this resolution. Each such amendment may be offered only in the order printed in the report, may be offered only by a Member designated in the report, shall be considered as read, shall be debatable for the time specified in the report equally divided and controlled by the proponent and an opponent, shall not be subject to amendment, and shall not be subject to a demand for division of the question in the House or in the Committee of the Whole. All points

of order against such amendments are waived. At the conclusion of consideration of the bill for amendment the Committee shall rise and report the bill to the House with such amendments as may have been adopted. The previous question shall be considered as ordered on the bill and amendments thereto to final passage without intervening motion except one motion to recommit with or without instructions.