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publication of a notice in the Federal Register announcing such action.

(n) **LIMITATIONS ON JUDICIAL RELIEF.**—Notwithstanding any other provision of law, the following limitations shall apply to actions brought before a court in connection with a rail project under this section:

(1) Venue for any action shall be where the rail project is located.

(2) A specific property interest impacted by the rail project in question must exist in order to have standing to bring an action.

(3) No action may be commenced by any person alleging a violation of—

(A) the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), chapters 5 and 7 of title 5, or any other Federal environmental law if such Federal law is identified in the draft environmental impact statement, unless such person provided written notice to the lead agency of the alleged violation of law, and the facts supporting such claim, during the public comment period on the draft environmental impact statement; or

(B) any other law with regard to the rail project unless such person provided written notice to the applicable approving agency of the alleged violation of law, and the facts supporting such claim, during the public comment period on such agency approval.

(4) Elected or appointed officials working for the Federal Government or a State government may not be named in their individual capacities in an action if they are acting within the scope of their official duties.

§ 22904. Integration of planning and environmental review

(a) **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 (c), the Federal lead agency for a rail 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 rail 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 rail project.

(b) **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 rail project, including with respect to whether private financial assistance or other special financial measures are necessary to implement the rail project;

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- (B) a decision with respect to rail project location;
- (C) 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;
- (D) a basic description of the environmental setting;
- (E) a decision with respect to methodologies for analysis; and
- (F) 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 and rail 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) freight and passenger rail needs and 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 state-wide or regional cumulative effects assessment; and
- (H) mitigation needs for a proposed action, or programmatic level mitigation, for potential effects that the Federal lead agency determines are most effectively addressed at a regional or national program level.

(c) *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 consideration of freight and passenger rail needs and potential effects.
- (3) During the planning process, notice was provided, to the extent required by applicable law, through publication or other means to Federal, State, and local government agencies and tribal governments that might have an interest in the proposed rail 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 oppor-

tunity to participate in the planning process leading to such planning product.

(4) Prior to determining the scope of environmental review for the rail 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 rail project.

(d) **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 rail 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 rail project.

(e) **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 processes conducted under chapters 52 and 227 of this title, section 211 of the Passenger Rail Investment and Improvement Act of 2008, or section 26101 of this title. 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.

§22905. 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 rail projects. Under this program, a State may use State laws and procedures to conduct re-

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views and make approvals in lieu of Federal environmental 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 rail 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.

§ 22906. Railroad corridor preservation

(a) IN GENERAL.—The Secretary may assist an applicant to acquire railroad right-of-way and adjacent real property interests before the completion of the environmental reviews for any rail project that may use the right-of-way and the real property interests if the acquisition is otherwise permitted under Federal law. The Secretary may establish restrictions on such an acquisition as the Secretary determines to be necessary and appropriate.

(b) ENVIRONMENTAL REVIEWS.—Railroad right-of-way and real property interests acquired under this section may not be developed in anticipation of final approval of the rail project until all required environmental reviews for the rail project have been completed.

§ 22907. Treatment of railroads for historic preservation

Except for a railroad operated as a historic site with the purpose of preserving the railroad for listing in the National Register of Historic Places, a railroad subject to the safety regulation jurisdiction of the Federal Railroad Administration, or any portion of such railroad, or any property in current or former use by a railroad and intended to be restored to use by a railroad, shall not be considered a historic site, district, object, structure, or property of national, State, or local significance for purposes of section 303 of this title or section 106 or 110 of the National Historic Preservation Act (16 U.S.C. 470f or 470h-2) by virtue of being listed as a resource in, or eligible for listing in, the National Register of Historic Places. At the discretion of the Secretary, with the advice of the Department of the Interior, significant individual elements of a railroad such as depots and major bridges would be subject to such section 106 or 110.

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§22908. Categorical exclusion

(a) **TREATMENT OF RAIL PROJECTS.**—The Secretary shall, for the purposes of this title, treat a rail project as a class of action categorically excluded from the requirements relating to the environmental assessment process or the preparation of environmental impact statements under the standards promulgated by the Council on Environmental Quality (40 C.F.R. 1508.4), if such rail project—

(1) replaces or maintains existing railroad equipment; track and bridge structures; electrification, communication, signaling, or security facilities; stations; maintenance-of-way and maintenance-of-equipment bases; or other existing railroad-related facilities;

(2) is a rail line addition of any length within an existing right of way;

(3) is related to the implementation of positive train control systems, as required by section 20157 of title 49, United States Code; or

(4) replaces, reconstructs, or rehabilitates an existing railroad bridge, including replacement of a culvert, that does not require the acquisition of a significant amount of right-of-way.

(b) **ADDITIONAL ACTIONS.**—If a rail project qualifies for categorical exclusion under this section except for additional actions that do not fit in the relevant category, the rail project may be categorically excluded if the Secretary determines, based on information provided by the project sponsor, that the additional actions meet the standards for categorical exclusion promulgated by the Council on Environmental Quality (40 C.F.R. 1508.4).

(c) **OTHER OPERATING ADMINISTRATIONS' CATEGORICAL EXCLUSIONS.**—If a rail project would be eligible for categorical exclusion from the requirements relating to the environmental assessment process or the preparation of environmental impact statements by another operating administration of the Department of Transportation, the Federal Railroad Administration may categorically exclude the rail project.

§22909. State assumption of responsibility for categorical exclusions

(a) **CATEGORICAL EXCLUSION DETERMINATIONS.**—

(1) **IN GENERAL.**—The Secretary may assign, and a State may assume, responsibility for determining whether certain designated activities are included within classes of action identified by the Secretary that are categorically excluded from requirements for environmental assessments or environmental impact statements pursuant to regulations promulgated by the Council on Environmental Quality under part 1500 of title 40, Code of Federal Regulations (as in effect on October 1, 2003).

(2) **SCOPE OF AUTHORITY.**—A determination described in paragraph (1) shall be made by a State in accordance with criteria established by the Secretary and for any type of activity for which a categorical exclusion classification is appropriate.

(3) **CRITERIA.**—The criteria under paragraph (2) shall include provisions for public availability of information consistent with section 552 of title 5 and the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(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 rail projects.

(b) *OTHER APPLICABLE FEDERAL LAWS.*—

(1) *IN GENERAL.*—If a State assumes responsibility under subsection (a), the Secretary may also assign and the State may assume all or part of the responsibilities of the Secretary for environmental review, consultation, or other related actions required under any Federal environmental law applicable to activities that are classified by the Secretary as categorical exclusions, with the exception of government-to-government consultation with Indian tribes, subject to the same procedural and substantive requirements as would be required if that responsibility were carried out by the Secretary.

(2) *SOLE RESPONSIBILITY.*—A State that assumes responsibility under paragraph (1) with respect to a Federal law shall be solely responsible and solely liable for complying with and carrying out that law, and the Secretary shall have no such responsibility or liability.

(c) *MEMORANDA OF UNDERSTANDING.*—

(1) *IN GENERAL.*—The Secretary and the State, after providing public notice and opportunity for comment, shall enter into a memorandum of understanding setting forth the responsibilities to be assigned under this section and the terms and conditions under which the assignments are made, including establishment of the circumstances under which the Secretary would reassume responsibility for categorical exclusion determinations.

(2) *TERM.*—A memorandum of understanding—

(A) shall have a term of not more than 3 years; and

(B) shall be renewable.

(3) *ACCEPTANCE OF JURISDICTION.*—In a memorandum of understanding, the State shall consent to accept the jurisdiction of the Federal courts for the compliance, discharge, and enforcement of any responsibility of the Secretary that the State assumes.

(4) *MONITORING.*—The Secretary shall—

(A) monitor compliance by the State with the memorandum of understanding and the provision by the State of financial resources to carry out the memorandum of understanding; and

(B) take into account the performance by the State when considering renewal of the memorandum of understanding.

(d) *TERMINATION.*—The Secretary may terminate any assumption of responsibility under a memorandum of understanding on a determination that the State is not adequately carrying out the responsibilities assigned to the State.

(e) *STATE AGENCY DEEMED TO BE FEDERAL AGENCY.*—A State agency that is assigned a responsibility under a memorandum of understanding shall be deemed to be a Federal agency for the purposes of the Federal law under which the responsibility is exercised.

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§ 22910. Rail project delivery program

(a) ESTABLISHMENT.—

(1) IN GENERAL.—The Secretary shall carry out a rail project delivery program (referred to in this section as the “program”).

(2) ASSUMPTION OF RESPONSIBILITY.—

(A) IN GENERAL.—Subject to the other provisions of this section, with the written agreement of the Secretary and a State, which may be in the form of a memorandum of understanding, the Secretary may assign, and the State may assume, the responsibilities of the Secretary with respect to one or more rail projects within the State under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(B) ADDITIONAL RESPONSIBILITY.—If a State assumes responsibility under subparagraph (A)—

(i) the Secretary may assign to the State, and the State may assume, all or part of the responsibilities of the Secretary for environmental review, consultation, or other action required under any Federal environmental law pertaining to the review or approval of a specific rail project; but

(ii) the Secretary may not assign any responsibility imposed on the Secretary by chapter 227 of this title.

(C) PROCEDURAL AND SUBSTANTIVE REQUIREMENTS.—A State shall assume responsibility under this section subject to the same procedural and substantive requirements as would apply if that responsibility were carried out by the Secretary.

(D) FEDERAL RESPONSIBILITY.—Any responsibility of the Secretary not explicitly assumed by the State by written agreement under this section shall remain the responsibility of the Secretary.

(E) NO EFFECT ON AUTHORITY.—Nothing in this section preempts or interferes with any power, jurisdiction, responsibility, or authority of an agency, other than the Department of Transportation, under applicable law (including regulations) with respect to a rail project.

(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 rail projects.

(b) STATE PARTICIPATION.—

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

(2) APPLICATION.—Not later than 270 days after the date of enactment of this section, the Secretary shall promulgate regulations that establish requirements relating to information required to be contained in any application of a State to participate in the program, including, at a minimum—

(A) the rail projects or classes of projects for which the State anticipates exercising the authority that may be granted under the program;

(B) verification of the financial resources necessary to carry out the authority that may be granted under the program; and

(C) evidence of the notice and solicitation of public comment by the State relating to participation of the State in the program, including copies of comments received from that solicitation.

(3) PUBLIC NOTICE.—

(A) IN GENERAL.—Each State that submits an application under this subsection shall give notice of the intent of the State to participate in the program not later than 30 days before the date of submission of the application.

(B) METHOD OF NOTICE AND SOLICITATION.—The State shall provide notice and solicit public comment under this paragraph by publishing the complete application of the State in accordance with the appropriate public notice law of the State.

(4) SELECTION CRITERIA.—The Secretary may approve the application of a State under this section only if—

(A) the regulatory requirements under paragraph (2) have been met;

(B) the Secretary determines that the State has the capability, including financial and personnel, to assume the responsibility; and

(C) the head of the State agency having primary jurisdiction over rail matters enters into a written agreement with the Secretary described in subsection (c).

(5) OTHER FEDERAL AGENCY VIEWS.—If a State applies to assume a responsibility of the Secretary that would have required the Secretary to consult with another Federal agency, the Secretary shall solicit the views of the Federal agency before approving the application.

(c) WRITTEN AGREEMENT.—A written agreement under this section shall—

(1) be executed by the Governor or the top-ranking transportation official in the State who is charged with responsibility for rail construction;

(2) be in such form as the Secretary may prescribe;

(3) provide that the State—

(A) agrees to assume all or part of the responsibilities of the Secretary described in subsection (a);

(B) expressly consents, on behalf of the State, to accept the jurisdiction of the Federal courts for the compliance, discharge, and enforcement of any responsibility of the Secretary assumed by the State;

(C) certifies that State laws (including regulations) are in effect that—

(i) authorize the State to take the actions necessary to carry out the responsibilities being assumed; and

(ii) are comparable to section 552 of title 5, including providing that any decision regarding the public availability of a document under those State laws is reviewable by a court of competent jurisdiction; and

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(D) agrees to maintain the financial resources necessary to carry out the responsibilities being assumed;

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

(5) shall be renewable.

(d) JURISDICTION.—

(1) IN GENERAL.—The United States district courts shall have exclusive jurisdiction over any civil action against a State for failure to carry out any responsibility of the State under this section.

(2) LEGAL STANDARDS AND REQUIREMENTS.—A civil action under paragraph (1) shall be governed by the legal standards and requirements that would apply in such a civil action against the Secretary had the Secretary taken the actions in question.

(3) INTERVENTION.—The Secretary shall have the right to intervene in any action described in paragraph (1).

(e) EFFECT OF ASSUMPTION OF RESPONSIBILITY.—A State that assumes responsibility under subsection (a)(2) shall be solely responsible and solely liable for carrying out, in lieu of the Secretary, the responsibilities assumed under subsection (a)(2), until the program is terminated as provided in subsection (j).

(f) LIMITATIONS ON AGREEMENTS.—Nothing in this section permits a State to assume any rulemaking authority of the Secretary under any Federal law.

(g) AUDITS.—

(1) IN GENERAL.—To ensure compliance by a State with any agreement of the State under subsection (c) (including compliance by the State with all Federal laws for which responsibility is assumed under subsection (a)(2)), for each State participating in the program under this section, the Secretary shall conduct—

(A) semiannual audits during each of the first 2 years of State participation; and

(B) annual audits during each of the third and fourth years of State participation.

(2) PUBLIC AVAILABILITY AND COMMENT.—

(A) IN GENERAL.—An audit conducted under paragraph (1) shall be provided to the public for comment.

(B) RESPONSE.—Not later than 60 days after the date on which the period for public comment ends, the Secretary shall respond to public comments received under subparagraph (A).

(h) MONITORING.—After the fourth year of participation of the 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.

(i) REPORT TO CONGRESS.—The Secretary shall submit to Congress an annual report that describes the administration of the program.

(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—

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- (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 Secretary.

§ 22911. Exemption in emergencies

If any railroad, track, bridge, or other facility 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), is proposed to be reconstructed with Federal funds, 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.

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PART C—PASSENGER TRANSPORTATION

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CHAPTER 241—GENERAL

Sec.							
24101.	Findings, mission, and goals.						
		*	*	*	*	*	*
[24105.	Congestion grants.]						
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[§ 24105. Congestion grants

[(a) AUTHORITY.—The Secretary of Transportation may make grants to States, or to Amtrak in cooperation with States, for fi-

nancing the capital costs of facilities, infrastructure, and equipment for high priority rail corridor projects necessary to reduce congestion or facilitate ridership growth in intercity rail passenger transportation.

[(b) ELIGIBLE PROJECTS.—Projects eligible for grants under this section include projects—

[(1) identified by Amtrak as necessary to reduce congestion or facilitate ridership growth in intercity rail passenger transportation along heavily traveled rail corridors;

[(2) identified by the Surface Transportation Board as necessary to improve the on time performance and reliability of intercity rail passenger transportation under section 24308(f); and

[(3) designated by the Secretary as being sufficiently advanced in development to be capable of serving the purposes described in subsection (a) on an expedited schedule.

[(c) FEDERAL SHARE.—The Federal share of the cost of a project financed under this section shall not exceed 80 percent.

[(d) GRANT CONDITIONS.—The Secretary of Transportation shall require each recipient of a grant under this section to comply with the grant requirements of section 24405 of this title.

[(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated, from amounts made available under section 301 of the Passenger Rail Investment and Improvement Act of 2008, to the Secretary to carry out this section—

[(1) \$50,000,000 for fiscal year 2010;

[(2) \$75,000,000 for fiscal year 2011;

[(3) \$100,000,000 for fiscal year 2012; and

[(4) \$100,000,000 for fiscal year 2013.]

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CHAPTER 243—AMTRAK

Sec. 24301. Status and applicable laws.

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24316. Plan [to assist families of passengers] to address needs of families of passengers involved in rail passenger accidents.

24317. Inspector General.

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§ 24305. General authority

(a) * * *

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(c) MISCELLANEOUS AUTHORITY.—Amtrak may—

(1) * * *

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(4) provide food and beverage services on its trains [only if revenues from the services each year at least equal the cost of providing the services] only as provided in subsection (h);

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(f) DOMESTIC BUYING PREFERENCES.—(1) * * *

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(5) *The requirements of this subsection apply to all contracts for a project carried out within the scope of the applicable finding, determination, or decision under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), regardless of the funding source of such contracts, if at least one contract for the project is funded with amounts made available to carry out this title.*

(6) *If the Secretary receives a request for an exemption under this subsection, the Secretary shall provide notice of and an opportunity for public comment on the request at least 30 days before making a finding based on the request. Such a notice shall include the information available to the Secretary concerning the request and shall be provided by electronic means, including on the official public Internet Web site of the Department of Transportation. If the Secretary grants an exemption under this subsection, the Secretary shall publish in the Federal Register a detailed justification for the exemption that addresses the public comments received under this paragraph and shall ensure that such justification is published before the exemption takes effect.*

(g) LIMITATIONS ON USE OF FEDERAL FUNDS.—

(1) LIMITATIONS.—*Amtrak may not use any Federal funds for the following purposes:*

(A) *Hiring or contracting with any outside legal professional for the purpose of filing, litigating, or otherwise pursuing any cause of action in a Federal or State court against a passenger rail service provider.*

(B) *Filing, litigating, or otherwise pursuing in any Federal or State court any cause of action against a passenger rail service provider arising from a competitive bid process in which Amtrak and the passenger rail service provider participated.*

(2) DEFINITIONS.—*For the purposes of this subsection—*

(A) *the term “outside legal professional” means any individual, corporation, partnership, limited liability corporation, limited liability partnership, or other private entity in the business of providing legal services that is not employed on a full-time basis solely by Amtrak; and*

(B) *the term “passenger rail service provider” means any company, partnership, or other public or private entity that operates passenger rail service or bids to operate passenger rail service in a competitive process.*

(h) FOOD AND BEVERAGE SERVICE.—

(1) IN GENERAL.—*Except as provided in paragraph (6), food and beverage service may be provided on Amtrak trains only by a bidder selected by the Federal Railroad Administration under paragraph (5). The Federal Railroad Administration may consult with and obtain assistance from the General Services Administration in carrying out this subsection.*

(2) REQUESTS FOR PROPOSALS.—*Not later than 60 days after the date of enactment of this subsection, the Federal Railroad Administration shall issue separate requests for proposals for provision of food and beverage service on Amtrak trains on*

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the national rail passenger transportation system for each of subparagraphs (A) through (D) of section 24102(5).

(3) DEADLINES.—

(A) SUBMITTAL OF BIDS.—Bids for the provision of food and beverage service on Amtrak trains pursuant to the requests for proposals issued under paragraph (2) shall be submitted to the Federal Railroad Administration not later than 60 days after the issuance of the relevant request for proposals.

(B) SELECTION OF WINNING BIDS.—The Federal Railroad Administration shall select winning bidders pursuant to paragraph (5) not later than 90 days after the issuance of the relevant request for proposals.

(4) AMTRAK PARTICIPATION.—Amtrak may participate in the bidding pursuant to a request for proposals issued under paragraph (2).

(5) SELECTION OF PROVIDERS.—The Federal Railroad Administration shall select for the provision of food and beverage service on Amtrak trains the qualified bidder responding to the request for proposals issued under paragraph (2) whose bid would result in the lowest cost, or the greatest source of revenue, to Amtrak.

(6) EXEMPTION.—If no qualified bidder responds to the request for proposals issued under paragraph (2), Amtrak, after transmitting to the Federal Railroad Administration and the Congress an explanation of the reasons for the need of an exemption, may request from the Federal Railroad Administration, and the Federal Railroad Administration may grant, an exemption from the limitations under this subsection.

(7) SUBSIDY FOR NET LOSS.—The Federal Railroad Administration shall provide directly to the entity providing food and beverage service on Amtrak trains any portion of appropriations for Amtrak necessary to cover a net loss resulting from the provision of such service, but only to the extent that such net loss was anticipated in the bid selected.

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[§ 24310. Management accountability

[(a) IN GENERAL.—Within 3 years after the date of enactment of the Passenger Rail Investment and Improvement Act of 2008, and 2 years thereafter, the Inspector General of the Department of Transportation shall complete an overall assessment of the progress made by Amtrak management and the Department of Transportation in implementing the provisions of that Act.

[(b) ASSESSMENT.—The management assessment undertaken by the Inspector General may include a review of—

- [(1) effectiveness in improving annual financial planning;
- [(2) effectiveness in implementing improved financial accounting;
- [(3) efforts to implement minimum train performance standards;
- [(4) progress maximizing revenues, minimizing Federal subsidies, and improving financial results; and

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[(5) any other aspect of Amtrak operations the Inspector General finds appropriate to review.]

§24310. Management accountability

(a) *IN GENERAL.*—Promptly after the date of enactment of the American Energy and Infrastructure Jobs Act of 2012, and again not later than 5 years after the date of enactment of the Passenger Rail Investment and Improvement Act of 2008, the Inspector General of the Department of Transportation shall complete an overall assessment of the progress made by the Department of Transportation, and the Inspector General of Amtrak shall complete an overall assessment of the progress made by Amtrak management, in implementing the provisions of the Passenger Rail Investment and Improvement Act of 2008.

(b) *ASSESSMENT.*—The management assessment undertaken by the Amtrak Inspector General may include a review of—

- (1) effectiveness in improving annual financial planning;
- (2) effectiveness in implementing improved financial accounting;
- (3) efforts to implement minimum train performance standards;
- (4) progress maximizing revenues, minimizing Federal subsidies, and improving financial results; and
- (5) any other aspect of Amtrak operations the Amtrak Inspector General finds appropriate to review.

* * * * *

§24317. Inspector General

(a) *INVESTIGATION AUTHORITY.*—The Inspector General of Amtrak shall have all authority available to other Inspectors General, as necessary in carrying out the duties specified in the Inspector General Act 1978 (5 U.S.C. App. 3), to investigate any alleged violation of section 286, 287, 371, 641, 1001, or 1002 of title 18, and, with respect to audits conducted by the Amtrak Office of the Inspector General, any violation of section 1516 of such title.

(b) *SERVICES FROM GENERAL SERVICES ADMINISTRATION.*—The Inspector General of Amtrak may obtain from the Administrator of General Services, and the Administrator shall provide to the Inspector General, services under sections 502(a) and 602 of title 40, including travel programs.

(c) *QUALIFIED IMMUNITY.*—

(1) *IN GENERAL.*—An employee of the Amtrak Office of Inspector General shall enjoy the same personal qualified immunity from lawsuit or liability as the employees of other inspectors general that operate under authority of the Inspector General Act of 1978 with respect to the performance of investigative, audit, or inspection functions authorized under that Act that are carried out for the Amtrak Office of Inspector General.

(2) *FEDERAL GOVERNMENT LIABILITY.*—No liability of any kind shall attach to or rest upon the United States for any damages from or by any actions of the Amtrak Office of Inspector General, its employees, agents, or representatives.

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**CHAPTER 244—INTERCITY PASSENGER RAIL SERVICE
CORRIDOR CAPITAL ASSISTANCE**

Sec.
24401. Definitions.
[24402. Capital investment grants to support intercity passenger rail service.]
24402. *Intercity passenger rail capital grants to States.*

* * * * *

§ 24402. [Capital investment grants to support intercity passenger rail service] *Intercity passenger rail capital grants to States*

(a) * * *

[(b) PROJECT AS PART OF STATE RAIL PLAN.—

[(1) The Secretary may not approve a grant for a project under this section unless the Secretary finds that the project is part of a State rail plan developed under chapter 227 of this title, or under the plan required by section 211 of the Passenger Rail Investment and Improvement Act of 2008, and that the applicant or recipient has or will have the legal, financial, and technical capacity to carry out the project, satisfactory continuing control over the use of the equipment or facilities, and the capability and willingness to maintain the equipment or facilities.

[(2) An applicant shall provide sufficient information upon which the Secretary can make the findings required by this subsection.

[(3) If an applicant has not selected the proposed operator of its service competitively, the applicant shall provide written justification to the Secretary showing why the proposed operator is the best, taking into account price and other factors, and that use of the proposed operator will not unnecessarily increase the cost of the project.]

[(c)] (b) PROJECT SELECTION CRITERIA.—The Secretary, in selecting the recipients of financial assistance to be provided under subsection (a), shall—

(1) require—
(A) * * *

* * * * *

(D) [that if an applicant has selected the proposed operator of its service competitively, that the applicant provide] *that the applicant shall select the proposed operator of its service competitively, and that the applicant shall provide written justification to the Secretary showing why the proposed operator is the best, taking into account costs and other factors;*

* * * * *

(2) select projects—
(A) * * *

(B) for which there is a high degree of confidence that the proposed project is feasible and will result in the anticipated benefits, as indicated by—

(i) * * *

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- (ii) the readiness of the project to be commenced;
- and
- (iii) the timing and amount of the project's future noncommitted investments; and
- [(iv) the commitment of any affected host rail carrier to ensure the realization of the anticipated benefits; and
- [(v) other relevant factors as determined by the Secretary; and]

* * * * *

[(d)] (c) STATE RAIL PLANS.—State rail plans completed before the date of enactment of the Passenger Rail Investment and Improvement Act of 2008 that substantially meet the requirements of chapter 227 of this title, as determined by the Secretary pursuant to section 22506 of this title, shall be deemed by the Secretary to have met the requirements of subsection [(c)(1)(A)] (b)(1)(A) of this section.

[(e)] (d) AMTRAK ELIGIBILITY.—To receive a grant under this section, Amtrak may enter into a cooperative agreement with 1 or more States to carry out 1 or more projects on a State rail plan's ranked list of rail capital projects developed under section 22504(a)(5) of this title. For such a grant, Amtrak may not use Federal funds authorized under section 101(a) or (c) of the Passenger Rail Investment and Improvement Act of 2008 to fulfill the non-Federal share requirements under subsection [(g)] (f) of this section.

[(f)] (e) LETTERS OF INTENT AND EARLY SYSTEMS WORK AGREEMENTS.—

- (1) * * *
- (2) At least 30 days before issuing a letter under paragraph (1) of this subsection, the Secretary shall notify in writing the Committee on Transportation and Infrastructure of the House of Representatives, the Committee on Commerce, Science, and Transportation of the Senate, and the House and Senate Committees on Appropriations of the proposed letter or agreement. The Secretary shall include with the notification a copy of the proposed letter or agreement, the criteria used in subsection [(c)] (b) for selecting the project for a grant award, and a description of how the project meets such criteria.

* * * * *

[(g)] (f) FEDERAL SHARE OF NET PROJECT COST.—

(1) * * *

* * * * *

[(3) The following amounts, not to exceed \$15,000,000 per fiscal year, shall be available to each applicant as a credit toward an applicant's matching requirement for a grant awarded under this section—

- [(A) in each of fiscal years 2009, 2010, and 2011—
- [(i) 50 percent of the average of amounts expended in fiscal years 2002 through 2008 by an applicant for capital projects related to intercity passenger rail service; and

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[(ii) 50 percent of the average of amounts expended in fiscal years 2002 through 2008 by an applicant for operating costs of such service; and

[(B) in each of fiscal years 2010, 2011 and 2012, 50 percent of the amount by which the amounts expended for capital projects and operating costs related to intercity passenger rail service by an applicant in the prior fiscal year exceed the average capital and operating expenditures made for such service in fiscal years 2006, 2007, and 2008.

The Secretary may require such information as necessary to verify such expenditures. Credits made available to an applicant in a fiscal year under this paragraph may only be applied towards grants awarded in that fiscal year.

[(4) The Federal share of expenditures for capital improvements under this chapter may not exceed 100 percent.]

[(h)] (g) 2-YEAR AVAILABILITY.—Funds appropriated under this section shall remain available until expended. [If any amount provided as a grant under this section is not obligated or expended for the purposes described in subsection (a) within 2 years after the date on which the State received the grant, such sums shall be returned to the Secretary for other intercity passenger rail development projects under this section at the discretion of the Secretary.] *If any amount provided as a grant under this section is not obligated within 3 years after the date on which the State is awarded the grant, such amount shall be rescinded and deposited to the general fund of the Treasury, where such amount shall be dedicated for the sole purpose of deficit reduction and prohibited from use as an offset for other spending increases or revenue reductions.*

[(i)] (h) COOPERATIVE AGREEMENTS.—

(1) * * *

* * * * *

[(j)] (i) SPECIAL TRANSPORTATION CIRCUMSTANCES.—In carrying out this section, the Secretary shall allocate an appropriate portion of the amounts available under this section to provide grants to States—

(1) * * *

* * * * *

[(k)] (j) SMALL CAPITAL PROJECTS.—The Secretary shall make not less than 5 percent annually available from the amounts authorized under section 101(c) of the Passenger Rail Investment and Improvement Act of 2008 beginning in fiscal year 2009 for grants for capital projects eligible under this section not exceeding \$2,000,000, including costs eligible under section 209(d) of that Act. For grants awarded under this subsection, the Secretary may waive requirements of this section, including state rail plan requirements, as appropriate.

[(l)] (k) NONMOTORIZED TRANSPORTATION ACCESS AND STORAGE.—Grants under this chapter may be used to provide access to rolling stock for nonmotorized transportation, including bicycles, and recreational equipment, and to provide storage capacity in

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trains for such transportation, equipment, and other luggage, to ensure passenger safety.

* * * * *

§ 24405. Grant conditions

(a) BUY AMERICA.—(1) * * *

* * * * *

[(4) If the Secretary determines that it is necessary to waive the application of paragraph (1) based on a finding under paragraph (2), the Secretary shall, before the date on which such finding takes effect—

[(A) publish in the Federal Register a detailed written justification as to why the waiver is needed; and

[(B) provide notice of such finding and an opportunity for public comment on such finding for a reasonable period of time not to exceed 15 days.]

[(5)] (4) Not later than December 31, 2012, the Secretary shall submit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report on any waivers granted under paragraph (2).

[(6)] (5) The Secretary of Transportation may not make a waiver under paragraph (2) of this subsection for goods produced in a foreign country if the Secretary, in consultation with the United States Trade Representative, decides that the government of that foreign country—

(A) * * *

* * * * *

[(7)] (6) A person is ineligible to receive a contract or sub-contract made with amounts authorized under this chapter if a court or department, agency, or instrumentality of the Government decides the person intentionally—

(A) * * *

* * * * *

[(8)] (7) The Secretary may not impose any limitation on assistance provided under this chapter that restricts a State from imposing more stringent requirements than this subsection on the use of articles, materials, and supplies mined, produced, or manufactured in foreign countries in projects carried out with that assistance or restricts a recipient of that assistance from complying with those State-imposed requirements.

[(9)] (8) The Secretary may allow a manufacturer or supplier of steel, iron, or manufactured goods to correct after bid opening any certification of noncompliance or failure to properly complete the certification (but not including failure to sign the certification) under this subsection if such manufacturer or supplier attests under penalty of perjury that such manufacturer or supplier submitted an incorrect certification as a result of an inadvertent or clerical error. The burden of establishing inadvertent or clerical error is on the manufacturer or supplier.

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[(10)] (9) A party adversely affected by an agency action under this subsection shall have the right to seek review under section 702 of title 5.

[(11)] (10) The requirements of this subsection shall only apply to projects for which the costs exceed \$100,000.

(11) *The requirements of this subsection apply to all contracts for a project carried out within the scope of the applicable finding, determination, or decision under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), regardless of the funding source of such contracts, if at least one contract for the project is funded with amounts made available to carry out this title.*

(12) *If the Secretary receives a request for a waiver under this subsection, the Secretary shall provide notice of and an opportunity for public comment on the request at least 30 days before making a finding based on the request. Such a notice shall include the information available to the Secretary concerning the request and shall be provided by electronic means, including on the official public Internet Web site of the Department of Transportation. If the Secretary issues a waiver under this subsection, the Secretary shall publish in the Federal Register a detailed justification for the waiver that addresses the public comments received under this paragraph and shall ensure that such justification is published before the waiver takes effect.*

CHAPTER 247—AMTRAK ROUTE SYSTEM

* * * * *

§ 24711. Alternate passenger rail service pilot program

(a) **IN GENERAL.**—Within 1 year after the date of enactment of the Passenger Rail Investment and Improvement Act of 2008, the Federal Railroad Administration shall complete a rulemaking proceeding to develop a pilot program that—

(1) permits a rail carrier or rail carriers that own infrastructure over which Amtrak operates a passenger rail service route described in subparagraph (B), (C), or (D) of section 24102(5) or in section 24702 to petition the Administration to be considered as a passenger rail service provider over that route in lieu of Amtrak for [a period not to exceed 5 years after the date of enactment of the Passenger Rail Investment and Improvement Act of 2008] *an operations period of 5 years, renewable for a second 5-year operations period at the discretion of the Administrator;*

* * * * *

(f) **TRANSFER AUTHORITY.**—*The Secretary of Transportation may provide directly to a winning bidder selected under this section any portion of appropriations for Amtrak operations necessary to cover the operating subsidy described in subsection (a)(5)(B).*

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PART D—HIGH-SPEED RAIL

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CHAPTER 261—HIGH-SPEED RAIL ASSISTANCE

* * * * *

§ 26106. High-speed rail corridor development

(a) * * *

* * * * *

(e) COMPETITIVE GRANT SELECTION AND CRITERIA FOR GRANTS.—

(1) * * *

(2) GRANT CRITERIA.—The Secretary, in selecting the recipients of high-speed rail development grants to be provided under subsection (c), shall—

(A) require—

(i) * * *

* * * * *

(v) [that if an applicant has selected the proposed operator of its service, that the applicant provide] *that the applicant shall select the proposed operator of its service competitively, and that the applicant shall provide written justification to the Secretary showing why the proposed operator is the best, taking into account costs and other factors;*

* * * * *

(B) select high-speed rail projects—

(i) * * *

(ii) for which there is a high degree of confidence that the proposed project is feasible and will result in the anticipated benefits, as indicated by—

(I) the project's precommencement compliance with environmental protection requirements; *and*

(II) the readiness of the project to be commenced; *and*

[(III) the commitment of any affected host rail carrier to ensure the realization of the anticipated benefits; and

[(IV) other relevant factors as determined by the Secretary;]

* * * * *

SUBTITLE VI—MOTOR VEHICLE AND DRIVER PROGRAMS

* * * * *

PART B—COMMERCIAL

* * * * *

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CHAPTER 311—COMMERCIAL MOTOR VEHICLE SAFETY

SUBCHAPTER I—GENERAL AUTHORITY AND STATE GRANTS

Sec.

31100. Purpose.

* * * * *

[31102. Grants to States.]

31102. Motor carrier safety assistance program.

* * * * *

[31107. Border enforcement grants.]

* * * * *

[31109. Performance and registration information system management.]

31109. Performance and registration information systems management program.

* * * * *

SUBCHAPTER III—SAFETY REGULATION

* * * * *

31134. Requirement for registration and Department of Transportation number.

* * * * *

SUBCHAPTER I—GENERAL AUTHORITY AND STATE GRANTS PROGRAMS

* * * * *

§ 31102. Grants to States

[(a) GENERAL AUTHORITY.—Subject to this section and the availability of amounts, the Secretary of Transportation may make grants to States for the development or implementation of programs for improving motor carrier safety and the enforcement of regulations, standards, and orders of the United States Government on commercial motor vehicle safety, hazardous materials transportation safety, and compatible State regulations, standards, and orders.

[(b) STATE PLAN PROCEDURES AND CONTENTS.—(1) The Secretary shall prescribe procedures for a State to submit a plan under which the State agrees to assume responsibility for improving motor carrier safety and to adopt and enforce regulations, standards, and orders of the Government on commercial motor vehicle safety, hazardous materials transportation safety, or compatible State regulations, standards, and orders. The Secretary shall approve the plan if the Secretary decides the plan is adequate to promote the objectives of this section and the plan—

[(A) implements performance-based activities, including deployment of technology to enhance the efficiency and effectiveness of commercial motor vehicle safety programs;

[(B) designates the State motor vehicle safety agency responsible for administering the plan throughout the State;

[(C) contains satisfactory assurances the agency has or will have the legal authority, resources, and qualified personnel necessary to enforce the regulations, standards, and orders;

[(D) contains satisfactory assurances the State will devote adequate amounts to the administration of the plan and enforcement of the regulations, standards, and orders;

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[(E) provides that the total expenditure of amounts of the State and its political subdivisions (not including amounts of the Government) for commercial motor vehicle safety programs for enforcement of commercial motor vehicle size and weight limitations, drug interdiction, and State traffic safety laws and regulations under subsection (c) of this section will be maintained at a level at least equal to the average level of that expenditure for the 3 full fiscal years beginning after October 1 of the year 5 years prior to the beginning of each Government fiscal year.

[(F) provides a right of entry and inspection to carry out the plan;

[(G) provides that all reports required under this section be submitted to the agency and that the agency will make the reports available to the Secretary on request;

[(H) provides that the agency will adopt the reporting requirements and use the forms for recordkeeping, inspections, and investigations the Secretary prescribes;

[(I) requires registrants of commercial motor vehicles to make a declaration of knowledge of applicable safety regulations, standards, and orders of the Government and the State;

[(J) provides that the State will grant maximum reciprocity for inspections conducted under the North American Inspection Standard through the use of a nationally accepted system that allows ready identification of previously inspected commercial motor vehicles;

[(K) ensures that activities described in subsection (c)(1) of this section, if financed with grants under subsection (a) of this section, will not diminish the effectiveness of the development and implementation of commercial motor vehicle safety programs described in subsection (a);

[(L) ensures that the State agency will coordinate the plan, data collection, and information systems with State highway safety programs under title 23;

[(M) ensures participation in SAFETYNET and other information systems by all appropriate jurisdictions receiving funding under this section;

[(N) ensures that information is exchanged among the States in a timely manner;

[(O) provides satisfactory assurances that the State will undertake efforts that will emphasize and improve enforcement of State and local traffic safety laws and regulations related to commercial motor vehicle safety;

[(P) provides satisfactory assurances that the State will promote activities in support of national priorities and performance goals, including—

[(i) activities aimed at removing impaired commercial motor vehicle drivers from the highways of the United States through adequate enforcement of regulations on the use of alcohol and controlled substances and by ensuring ready roadside access to alcohol detection and measuring equipment;

[(ii) activities aimed at providing an appropriate level of training to State motor carrier safety assistance pro-

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gram officers and employees on recognizing drivers impaired by alcohol or controlled substances; and

[(iii) interdiction activities affecting the transportation of controlled substances by commercial motor vehicle drivers and training on appropriate strategies for carrying out those interdiction activities;

[(Q) provides that the State has established a program to ensure that—

[(i) accurate, complete, and timely motor carrier safety data is collected and reported to the Secretary; and

[(ii) the State will participate in a national motor carrier safety data correction system prescribed by the Secretary;

[(R) ensures that the State will cooperate in the enforcement of registration requirements under section 13902 and financial responsibility requirements under sections 13906, 31138, and 31139 and regulations issued thereunder;

[(S) ensures consistent, effective, and reasonable sanctions;

[(T) ensures that roadside inspections will be conducted at a location that is adequate to protect the safety of drivers and enforcement personnel;

[(U) provides that the State will include in the training manual for the licensing examination to drive a noncommercial motor vehicle and a commercial motor vehicle, information on best practices for driving safely in the vicinity of noncommercial and commercial motor vehicles;

[(V) provides that the State will enforce the registration requirements of section 13902 by prohibiting the operation of any vehicle discovered to be operated by a motor carrier without a registration issued under such section or to operate beyond the scope of such registration;

[(W) provides that the State will conduct comprehensive and highly visible traffic enforcement and commercial motor vehicle safety inspection programs in high-risk locations and corridors; and

[(X) except in the case of an imminent or obvious safety hazard, ensures that an inspection of a vehicle transporting passengers for a motor carrier of passengers is conducted at a station, terminal, border crossing, maintenance facility, destination, or other location where a motor carrier may make a planned stop.

[(2) If the Secretary disapproves a plan under this subsection, the Secretary shall give the State a written explanation and allow the State to modify and resubmit the plan for approval.

[(3) In estimating the average level of State expenditure under paragraph (1)(E) of this subsection, the Secretary—

[(A) may allow the State to exclude State expenditures for Government-sponsored demonstration or pilot programs; and

[(B) shall require the State to exclude Government amounts and State matching amounts used to receive Government financing under subsection (a) of this section.

[(c) USE OF GRANTS TO ENFORCE OTHER LAWS.—A State may use amounts received under a grant under subsection (a)—

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[(1) for the following activities if the activities are carried out in conjunction with an appropriate inspection of the commercial motor vehicle to enforce Government or State commercial motor vehicle safety regulations:

[(A) enforcement of commercial motor vehicle size and weight limitations at locations other than fixed weight facilities, at specific locations such as steep grades or mountainous terrains where the weight of a commercial motor vehicle can significantly affect the safe operation of the vehicle, or at ports where intermodal shipping containers enter and leave the United States; and

[(B) detection of the unlawful presence of a controlled substance (as defined under section 102 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 802)) in a commercial motor vehicle or on the person of any occupant (including the operator) of the vehicle; and

[(2) for documented enforcement of State traffic laws and regulations designed to promote the safe operation of commercial motor vehicles, including documented enforcement of such laws and regulations relating to noncommercial motor vehicles when necessary to promote the safe operation of commercial motor vehicles if the number of motor carrier safety activities (including roadside safety inspections) conducted in the State is maintained at a level at least equal to the average level of such activities conducted in the State in fiscal years 2003, 2004, and 2005; except that the State may not use more than 5 percent of the basic amount the State receives under the grant under subsection (a) for enforcement activities relating to noncommercial motor vehicles described in this paragraph unless the Secretary determines a higher percentage will result in significant increases in commercial motor vehicle safety.

[(d) CONTINUOUS EVALUATION OF PLANS.—On the basis of reports submitted by a State motor vehicle safety agency of a State with a plan approved under this section and the Secretary's own investigations, the Secretary shall make a continuing evaluation of the way the State is carrying out the plan. If the Secretary finds, after notice and opportunity for comment, the State plan previously approved is not being followed or has become inadequate to ensure enforcement of the regulations, standards, or orders, the Secretary shall withdraw approval of the plan and notify the State. The plan stops being effective when the notice is received. A State adversely affected by the withdrawal may seek judicial review under chapter 7 of title 5. Notwithstanding the withdrawal, the State may retain jurisdiction in administrative or judicial proceedings begun before the withdrawal if the issues involved are not related directly to the reasons for the withdrawal.

[(e) ANNUAL REPORT.—The Secretary shall submit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science and Transportation of the Senate an annual report that—

[(1) analyzes commercial motor vehicle safety trends among the States and documents the most effective commercial

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motor vehicle safety programs implemented with grants under this section; and

[(2) describes the effect of activities carried out with grants made under this section on commercial motor vehicle safety.]

§31102. Motor carrier safety assistance program

(a) *GENERAL AUTHORITY.*—The Secretary of Transportation shall administer a motor carrier safety assistance program to assist States with—

(1) the development or implementation of programs for improving motor carrier safety; and

(2) the enforcement of Federal regulations, standards, and orders (and compatible State regulations, standards, and orders) on—

(A) commercial motor vehicle safety; and

(B) hazardous materials transportation safety.

(b) *STATE PLANS.*—

(1) *PROCEDURES.*—The Secretary shall prescribe procedures for a State to participate in the program, including procedures under which the State shall submit a plan, in writing, to the Secretary in which the State agrees—

(A) to assume responsibility for improving motor carrier safety in the State; and

(B) to adopt and enforce Federal regulations, standards, and orders (and compatible State regulations, standards, and orders) on—

(i) commercial motor vehicle safety; and

(ii) hazardous materials transportation safety.

(2) *CONTENTS.*—A plan submitted by a State under paragraph (1) shall—

(A) provide for implementation of performance-based activities, including deployment of technology, to enhance the efficiency and effectiveness of commercial motor vehicle safety programs;

(B) provide for implementation of a border commercial motor vehicle safety program and related enforcement activities if the State shares a land border with another country;

(C) designate a State motor vehicle safety agency (in this paragraph referred to as the “designated State agency”) responsible for administering the plan throughout the State;

(D) provide satisfactory assurances that the designated State agency has or will have the legal authority, resources, and qualified personnel necessary to enforce the regulations, standards, and orders;

(E) provide satisfactory assurances that the State will devote adequate amounts to the administration of the plan and enforcement of the regulations, standards, and orders;

(F) provide a right of entry and inspection to carry out the plan;

(G) provide that all reports required under this section be submitted to the designated State agency and that the

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designated State agency will make the reports available to the Secretary on request;

(H) provide that the designated State agency will adopt the reporting requirements and use the forms for record-keeping, inspections, and investigations the Secretary prescribes;

(I) require registrants of commercial motor vehicles to make a declaration of knowledge of applicable safety regulations, standards, and orders of the Government and the State;

(J) provide that the State will grant maximum reciprocity for inspections conducted under the North American Inspection Standard through the use of a nationally accepted system that allows ready identification of previously inspected commercial motor vehicles;

(K) ensure that activities described in subsection (f)(3)(B), if financed with grants under this section, will not diminish the effectiveness of the development and implementation of commercial motor vehicle safety programs described in subsection (a);

(L) ensure that the designated State agency will coordinate the plan, data collection, and information systems with State highway safety programs under title 23;

(M) ensure participation in appropriate Federal Motor Carrier Safety Administration information systems and other information systems by all appropriate jurisdictions receiving funding under this section;

(N) provide satisfactory assurances that the State is willing and able to exchange information with other States in a timely manner;

(O) provide satisfactory assurances that the State will undertake efforts that will emphasize and improve enforcement of State and local traffic safety laws and regulations related to commercial motor vehicle safety;

(P) provide satisfactory assurances that the State will promote activities in support of national priorities, including—

(i) activities aimed at removing impaired commercial motor vehicle drivers from the highways of the United States—

(I) through adequate enforcement of regulations on the use of alcohol and controlled substances; and

(II) by ensuring ready roadside access to alcohol detection and measuring equipment;

(ii) activities aimed at providing an appropriate level of training to State motor carrier safety assistance program officers and employees on recognizing drivers impaired by alcohol or controlled substances; and

(iii) interdiction activities affecting the transportation of controlled substances by commercial motor vehicle drivers and training on appropriate strategies for carrying out those interdiction activities;

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(Q) provide satisfactory assurances that the State has established a program to ensure that—

(i) accurate, complete, and timely motor carrier safety data is collected and reported to the Secretary; and

(ii) the State will participate in a national motor carrier safety data correction system prescribed by the Secretary;

(R) ensure that the State will cooperate in the enforcement of financial responsibility requirements under sections 13906, 31138, and 31139 and regulations issued thereunder;

(S) ensure consistent, effective, and reasonable sanctions;

(T) ensure that roadside inspections will be conducted at a location that is adequate to protect the safety of drivers and enforcement personnel;

(U) provide satisfactory assurances that the State will include, in the training manual for the licensing examination to drive a noncommercial motor vehicle and a commercial motor vehicle, information on best practices for driving safely in the vicinity of noncommercial and commercial motor vehicles;

(V) provide satisfactory assurances that the State will enforce the registration requirements of sections 13902 and 31134 by prohibiting the operation of any vehicle discovered to be operated by a motor carrier—

(i) without a registration issued under such sections; or

(ii) beyond the scope of such registration;

(W) provide satisfactory assurances that the State will conduct comprehensive and highly visible traffic enforcement and commercial motor vehicle safety inspection programs in high-risk locations and corridors; and

(X) provide for implementation of activities to monitor the safety performance of motor carriers of passengers, including inspections of commercial motor vehicles designed or used to transport passengers; except that roadside inspections must be conducted at a station, terminal, border crossing, maintenance facility, destination, or other location where a motor carrier may make a planned stop, except in the case of an imminent or obvious safety hazard.

(3) MAINTENANCE OF EFFORT.—

(A) IN GENERAL.—A plan submitted by a State under this subsection shall provide that the total expenditure of amounts of the State and political subdivisions of the State (not including amounts of the United States) for commercial motor vehicle safety programs and for enforcement of commercial motor vehicle size and weight limitations, drug interdiction, and State traffic safety laws and regulations under subsection (f) will be maintained at a level at least equal to the average level of that expenditure for the 3 most recent fiscal years ending before the date of enactment of

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the Motor Carrier Safety, Efficiency, and Accountability Act of 2012.

(B) CALCULATING STATE EXPENDITURES.—In calculating the average level of State expenditure, the Secretary—

(i) may allow the State to exclude State expenditures for Government-sponsored demonstration or pilot programs; and

(ii) shall require the State to exclude Government amounts.

(c) GUIDANCE AND STANDARDS.—

(1) IN GENERAL.—Not later than October 1, 2013, the Secretary shall—

(A) develop guidance on the effectiveness of specific enforcement and related activities in generating reductions in fatalities and crashes involving commercial motor vehicles; and

(B) publish standards for data timeliness, accuracy, and completeness that will allow States to meet the objectives of this section and that are consistent with the standards issued under section 31106(a)(4).

(2) OPTIMIZATION OF ALLOCATIONS.—The Secretary shall develop a tool for States to optimize allocations of motor carrier safety resources to carry out enforcement and related activities to meet the objectives of this section.

(3) UPDATES OF GUIDANCE.—The Secretary shall update the guidance issued under paragraph (1)(A) periodically to reflect new information.

(d) PERFORMANCE MEASURES.—

(1) STATE TARGETS.—For fiscal year 2014, and each fiscal year thereafter, each State, in the plan submitted by that State under subsection (b), shall—

(A) establish targets, in quantifiable metrics, for enforcement activities, data quality, and other benchmarks to reduce fatalities and crashes involving commercial motor vehicles;

(B) select target activities in accordance with the Secretary's latest guidance to ensure States pursue activities likely to generate maximum fatality and crash reduction; and

(C) meet the standards for data published by the Secretary under subsection (c)(1)(B).

(2) ANNUAL UPDATES OF STATE PLANS.—A State shall—

(A) update its plan under subsection (b) annually to establish targets for the following fiscal year; and

(B) submit the updated plan to the Secretary.

(3) REQUIREMENTS FOR TARGETS.—If a State receives an increase in grant funds under this section in a fiscal year as compared to the previous fiscal year, the targets established by the State under paragraph (1) for the fiscal year shall exceed the levels achieved by the State in the previous fiscal year.

(4) STATE REPORTS.—

(A) INFORMATION ON FATALITIES AND CRASHES INVOLVING COMMERCIAL MOTOR VEHICLES.—Under the motor car-

rier safety assistance program, a State shall report to the Secretary the number and rate of fatalities and crashes involving commercial motor vehicles occurring in the State in the previous fiscal year.

(B) OTHER INFORMATION.—A State shall include in the report required under subparagraph (A) information on commercial motor vehicles registered in the State and involved in crashes in such fiscal year and any other information requested by the Secretary.

(5) ASSESSMENTS.—As part of the annual plan approval process under subsection (e), the Secretary shall assess whether—

(A) a State met its targets in the previous fiscal year; and

(B) targeted activities are reducing fatalities and crashes involving commercial motor vehicles.

(e) PLAN REVIEW.—

(1) APPROVAL PROCESS.—Before distributing grant funds under subsection (f) in a fiscal year, the Secretary shall—

(A) review each State plan submitted to the Secretary under subsection (b), as updated by the State under subsection (d); and

(B)(i) approve the plan if the Secretary determines that the plan is adequate to promote the objectives of this section; or

(ii) disapprove the plan.

(2) RESUBMITTAL.—If the Secretary disapproves a plan under this subsection, the Secretary shall—

(A) give the State a written explanation; and

(B) allow the State to modify and resubmit the plan for approval.

(3) CONTINUOUS EVALUATION OF PLANS.—

(A) IN GENERAL.—On the basis of reports submitted by the motor vehicle safety agency of a State with a plan approved under this subsection and the Secretary's own investigations, the Secretary shall make a continuing evaluation of the way the State is carrying out the plan.

(B) WITHDRAWAL OF APPROVAL.—

(i) IN GENERAL.—If the Secretary finds, after notice and opportunity for comment, a State plan previously approved under this subsection is not being followed or has become inadequate to ensure enforcement of the regulations, standards, or orders, the Secretary shall withdraw approval of the plan and notify the State.

(ii) EFFECTIVE DATE.—The plan shall not be effective beginning on the date the notice is received.

(iii) JUDICIAL REVIEW.—A State adversely affected by a withdrawal under this subparagraph may seek judicial review under chapter 7 of title 5.

(C) ADMINISTRATIVE AND JUDICIAL PROCEEDINGS.—Notwithstanding a withdrawal of approval of a State plan under this paragraph, the State may retain jurisdiction in administrative or judicial proceedings begun before the

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date of the withdrawal if the issues involved are not related directly to the reasons for the withdrawal.

(f) GRANTS TO STATES.—

(1) IN GENERAL.—*Subject to the availability of funds, the Secretary shall make grants to States for the development or implementation of programs under this section in accordance with paragraph (3).*

(2) ELIGIBILITY.—

(A) IN GENERAL.—*A State shall be eligible for a grant under this subsection in a fiscal year in an amount equal to the State's allocated amount determined under section 31104(f) if the State has in effect a State plan under subsection (b) that has been approved by the Secretary under subsection (e) for that fiscal year.*

(B) WITHHOLDING OF FUNDS.—*In the case of a State that does not meet the requirements of subparagraph (A) in a fiscal year, the Secretary may withhold grant funds from a State's allocated amount determined under section 31104(f) for that fiscal year as follows:*

(i) The Secretary may withhold up to 25 percent of such funds if the State had a plan approved under subsection (e) for the fiscal year preceding the fiscal year of the grant, but has not had a plan approved under subsection (e) for the fiscal year of the grant.

(ii) The Secretary may withhold up to 50 percent of such funds if the State had a plan approved under subsection (e) for the second fiscal year preceding the fiscal year of the grant, but has not had a plan approved under subsection (e) for the fiscal year of the grant and the preceding fiscal year.

(iii) The Secretary may withhold up to 75 percent of such funds if the State had a plan approved under subsection (e) for the third fiscal year preceding the fiscal year of the grant, but has not had a plan approved under subsection (e) for the fiscal year of the grant and the 2 preceding fiscal years.

(iv) The Secretary may withhold 100 percent of such funds if the State has not had a plan approved under subsection (e) for the fiscal year of the grant and the 3 preceding fiscal years.

(C) SUBSEQUENT AVAILABILITY OF WITHHELD FUNDS.—*The Secretary shall make available to a State the grant funds withheld from the State for a fiscal year under subparagraph (B) if the Secretary approves the State's plan under subsection (e) on or before the last day of that fiscal year.*

(D) REALLOCATION OF WITHHELD FUNDS.—*If the Secretary withholds grant funds from a State for a fiscal year under subparagraph (B), and the State does not have a plan approved under subsection (e) on or before the last day of that fiscal year, such funds shall be released to the Secretary for reallocation among the States under section 31104(f) in the following fiscal year.*

(3) USE OF GRANT FUNDS.—

(A) *IN GENERAL.*—A State receiving a grant under this subsection shall use the grant funds for activities to further the State's plan under subsection (b).

(B) *USE OF GRANTS TO ENFORCE OTHER LAWS.*—Subject to subparagraph (C), a State may use grant funds received under this subsection—

(i) if carried out in conjunction with an appropriate inspection of a commercial motor vehicle to enforce Federal or State commercial motor vehicle safety regulations, for—

(I) enforcement of commercial motor vehicle size and weight limitations at locations other than fixed weight facilities, at specific locations such as steep grades or mountainous terrains where the weight of a commercial motor vehicle can significantly affect the safe operation of the vehicle, or at ports where intermodal shipping containers enter and leave the United States; and

(II) detection of the unlawful presence of a controlled substance (as defined under section 102 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 802)) in a commercial motor vehicle or on the person of any occupant (including the operator) of the vehicle; and

(ii) for documented enforcement of State traffic laws and regulations designed to promote the safe operation of commercial motor vehicles, including documented enforcement of such laws and regulations relating to noncommercial motor vehicles when necessary to promote the safe operation of commercial motor vehicles.

(C) *LIMITATIONS.*—

(i) *EFFECT ON COMMERCIAL MOTOR VEHICLE SAFETY PROGRAMS.*—A State may use grant funds received under this subsection for an activity described in subparagraph (B) only if the activity will not diminish the effectiveness of commercial motor vehicle safety programs described in subsection (a).

(ii) *ENFORCEMENT ACTIVITIES RELATING TO NONCOMMERCIAL MOTOR VEHICLES.*—A State may not use more than 5 percent of the total amount of grants received by the State under this subsection in a fiscal year for enforcement activities relating to noncommercial motor vehicles described in subparagraph (B)(ii) unless the Secretary determines a higher percentage will result in significant increases in commercial motor vehicle safety.

(g) *ANNUAL REPORT.*—The Secretary shall submit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate an annual report that—

(1) analyzes commercial motor vehicle safety trends among the States and documents the most effective commercial motor

vehicle safety programs implemented with grants under this section;

(2) describes the effect of activities carried out with grants made under this section on commercial motor vehicle safety; and

(3) documents the number and rate of fatalities and crashes involving commercial motor vehicles by State.

§ 31103. United States Government's share of costs

(a) COMMERCIAL MOTOR VEHICLE SAFETY PROGRAMS AND ENFORCEMENT.—The Secretary of Transportation shall reimburse a State, from a grant made under this subchapter, an amount that is not more than 80 percent of the costs incurred by the State in a fiscal year in developing and implementing programs to improve commercial motor vehicle safety and enforce commercial motor vehicle regulations, standards, or orders adopted under this subchapter or subchapter II of this chapter. In determining those costs, the Secretary shall include in-kind contributions by the State. Amounts of the State and its political subdivisions required to be expended under [section 31102(b)(1)(E) of this title] *section 31102(b)(3)* may not be included as part of the share not provided by the United States Government. Amounts generated under the unified carrier registration agreement under section 14504a and received by a State and used for motor carrier safety purposes may be included as part of the State's share not provided by the United States. The Secretary may allocate among the States whose applications for grants have been approved those amounts appropriated for grants to support those programs, under criteria that may be established.

(b) OTHER ACTIVITIES.—The Secretary may reimburse State agencies, local governments, or other persons up to 100 percent for public education activities authorized by section 31104(f)(2).]

(b) NEW ENTRANT MOTOR CARRIER SAFETY REVIEWS.—

(1) INCREASE IN SHARE OF COSTS.—Subject to paragraph (2), the Secretary may reimburse a State an amount that is up to 100 percent of the costs incurred by the State in a fiscal year for new entrant motor carrier safety reviews conducted under section 31144(g).

(2) LIMITATION.—The increased Federal share provided under paragraph (1) shall apply with respect to reimbursements of costs described in paragraph (1) made using not more than 20 percent of the funds allocated to a State under section 31104(f) for a fiscal year. Any such reimbursements made using an amount in excess of 20 percent of such funds shall be subject to the cost-sharing requirements of subsection (a).

§ 31104. Availability of amounts

(a) IN GENERAL.—Subject to subsection (f), there are authorized to be appropriated from the Highway Trust Fund (other than the Mass Transit Account) to carry out section 31102—

- [(1) \$188,480,000 for fiscal year 2005;
- [(2) \$188,000,000 for fiscal year 2006;
- [(3) \$197,000,000 for fiscal year 2007;
- [(4) \$202,000,000 for fiscal year 2008;

- [(5) \$209,000,000 for fiscal year 2009;
- [(6) \$209,000,000 for fiscal year 2010;
- [(7) \$209,000,000 for fiscal year 2011; and
- [(8) \$212,000,000 for fiscal year 2012.]

(a) *IN GENERAL.*—Subject to subsection (f), there is authorized to be appropriated from the Highway Trust Fund (other than the Alternative Transportation Account) to carry out section 31102 \$247,000,000 for each of fiscal years 2013 through 2016.

* * * * *

[(e) *DEDUCTION FOR ADMINISTRATIVE EXPENSES.*—On October 1 of each fiscal year or as soon after that date as practicable, the Secretary may deduct, from amounts made available under subsection (a) of this section for that fiscal year, not more than 1.25 percent of those amounts for administrative expenses incurred in carrying out section 31102 of this title in that fiscal year. The Secretary shall use at least 75 percent of those deducted amounts to train non-Government employees and to develop related training materials in carrying out section 31102.

[(f) *ALLOCATION CRITERIA AND ELIGIBILITY.*—On October 1 of each fiscal year or as soon after that date as practicable and after making the deduction under subsection (e), the Secretary shall allocate amounts made available to carry out section 31102 for such fiscal year among the States with plans approved under section 31102. Such allocation shall be made under such criteria as the Secretary prescribes by regulation.]

(e) *DEDUCTION FOR ADMINISTRATIVE EXPENSES.*—

(1) *IN GENERAL.*—On October 1 of each fiscal year (or as soon after that date as practicable), the Secretary may deduct, from amounts made available under subsection (a) for that fiscal year, not more than 1.25 percent of those amounts for administrative expenses incurred in carrying out section 31102 in that fiscal year.

(2) *TRAINING.*—The Secretary shall use at least 75 percent of the amounts deducted under paragraph (1) to train non-Government employees and to develop related training materials in carrying out section 31102.

(f) *ALLOCATION CRITERIA.*—

(1) *IN GENERAL.*—On October 1 of each fiscal year (or as soon after that date as practicable) and after making the deduction under subsection (e), the Secretary shall allocate amounts made available to carry out section 31102 for such fiscal year among the States that are eligible for grant funds under section 31102(f)(2).

(2) *ALLOCATION FORMULA.*—The amounts made available to carry out section 31102 shall be allocated among the States in the following manner:

(A) 20 percent in the ratio that—

- (i) the total public road mileage in each State; bears to
- (ii) the total public road mileage in all States.

(B) 20 percent in the ratio that—

- (i) the total vehicle miles traveled in each State; bears to
- (ii) the total vehicle miles traveled in all States.

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- (C) 20 percent in the ratio that—
 - (i) the total population of each State (as shown in the annual census estimates issued by the Bureau of the Census); bears to
 - (ii) the total population of all States (as shown in the annual census estimates issued by the Bureau of the Census).
- (D) 20 percent in the ratio that—
 - (i) the total special fuel consumption (net after reciprocity adjustment) in each State (as determined by the Secretary); bears to
 - (ii) the total special fuel consumption (net after reciprocity adjustment) in all States (as determined by the Secretary).
- (E) 10 percent only to those States that share a land border with another country and conduct border commercial motor vehicle safety programs and related activities (in this subparagraph referred to as a "border State"), with—
 - (i) 70 percent of such amount to be allocated among border States in the ratio that—
 - (I) the total number of international commercial motor vehicle inspections conducted within the boundaries of each border State (as determined by the Secretary); bears to
 - (II) the total number of international commercial motor vehicle inspections conducted within the boundaries of all border States (as determined by the Secretary); and
 - (ii) 30 percent of such amount to be allocated among border States in the ratio that—
 - (I) the total number of land border crossing locations with State-maintained commercial motor vehicle safety enforcement infrastructure within the boundaries of each border State (as determined by the Secretary); bears to
 - (II) the total number of land border crossing locations with State-maintained commercial motor vehicle safety enforcement infrastructure within the boundaries of all border States (as determined by the Secretary).
- (F) 10 percent only to those States that reduce the rate of large truck-involved fatal accidents in the State for the most recent calendar year for which data are available when compared to the average rate of large truck-involved fatal accidents in the State for the 10-year period ending on the last day preceding that calendar year (in this subparagraph referred to as an "eligible State"), with—
 - (i) 25 percent of such amount to be allocated among eligible States in the ratio that—
 - (I) the total public road mileage in each eligible State; bears to
 - (II) the total public road mileage in all eligible States;

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(ii) 25 percent of such amount to be allocated among eligible States in the ratio that—

(I) the total vehicle miles traveled in each eligible State; bears to

(II) the total vehicle miles traveled in all eligible States;

(iii) 25 percent of such amount to be allocated among eligible States in the ratio that—

(I) the total population of each eligible State (as shown in the annual census estimates issued by the Bureau of the Census); bears to

(II) the total population of all eligible States (as shown in the annual census estimates issued by the Bureau of the Census); and

(iv) 25 percent of such amount to be allocated among eligible States in the ratio that—

(I) the total special fuel consumption (net after reciprocity adjustment) in each eligible State (as determined by the Secretary); bears to

(II) the total special fuel consumption (net after reciprocity adjustment) in all eligible States (as determined by the Secretary).

(3) MAXIMUM AND MINIMUM ALLOCATIONS.—

(A) MAXIMUM ALLOCATION.—The allocation under subparagraphs (A) through (D) of paragraph (2) for a fiscal year to each State (excluding the Virgin Islands, American Samoa, Guam, and the Northern Mariana Islands) shall be not greater than 4.944 percent of the total allocation under those subparagraphs in that fiscal year.

(B) MINIMUM ALLOCATION.—The allocation under paragraph (2) for a fiscal year to each State (excluding the Virgin Islands, American Samoa, Guam, and the Northern Mariana Islands) shall be not less than 0.44 percent of the total allocation under that paragraph in that fiscal year.

(C) ALLOCATION TO TERRITORIES.—The annual allocation to each of the Virgin Islands, American Samoa, Guam, and the Northern Mariana Islands shall be \$350,000.

* * * * *

(i) ADMINISTRATIVE EXPENSES.—

[(1) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated from the Highway Trust Fund (other than the Mass Transit Account) for the Secretary of Transportation to pay administrative expenses of the Federal Motor Carrier Safety Administration—

- [(A) \$254,849,000 for fiscal year 2005;
- [(B) \$213,000,000 for fiscal year 2006;
- [(C) \$223,000,000 for fiscal year 2007;
- [(D) \$228,000,000 for fiscal year 2008;
- [(E) \$234,000,000 for fiscal year 2009;
- [(F) \$239,828,000 for fiscal year 2010;
- [(G) \$244,144,000 for fiscal year 2011; and
- [(H) \$244,144,000 for fiscal year 2012.]

(1) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated from the Highway Trust Fund (other

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than the Alternative Transportation Account) for the Secretary of Transportation to pay administrative expenses of the Federal Motor Carrier Safety Administration \$244,144,000 for each of fiscal years 2013 through 2016.

* * * * *

(3) OUTREACH AND EDUCATION.—

(A) IN GENERAL.—Using the funds authorized by this subsection, the Secretary shall conduct an outreach and education program to be administered by the Administrator of the Federal Motor Carrier Safety Administration in cooperation with the Administrator of the National Highway Traffic Safety Administration.

(B) PROGRAM ELEMENTS.—The program shall include, at a minimum, the following:

(i) A program to promote a more comprehensive and national effort to educate commercial motor vehicle operators and passenger vehicle drivers about how such operators and drivers can more safely share the road with each other.

(ii) A program to promote enhanced traffic enforcement efforts aimed at reducing the incidence of the most common unsafe driving behaviors that cause or contribute to crashes involving commercial motor vehicles and passenger vehicles.

(iii) A program to establish a public-private partnership to provide resources and expertise for the development and dissemination of information relating to sharing the road referred to in clauses (i) and (ii) to each partner's constituents and to the general public through the use of brochures, videos, paid and public advertisements, the Internet, and other media.

* * * * *

[(k) HIGH-PRIORITY ACTIVITIES.—

[(1) CRITERIA.—The Secretary shall establish safety performance criteria to be used to distribute high priority program funds under this subsection.

[(2) SET ASIDE.—The Secretary may set aside from amounts made available by subsection (a) up to \$15,000,000 for each of fiscal years 2006 through 2012 for States, local governments, and organizations representing government agencies or officials described in paragraph (3) for carrying out high priority activities and projects that improve commercial motor vehicle safety and compliance with commercial motor vehicle safety regulations (including activities and projects that are national in scope), increase public awareness and education, demonstrate new technologies, and reduce the number and rate of accidents involving commercial motor vehicles.

[(3) DESCRIPTION OF RECIPIENTS.—Amounts set aside under this subsection shall be allocated by the Secretary only to State agencies, local governments, and organizations representing government agencies or officials that use and train qualified officers and employees in coordination with State motor vehicle safety agencies.

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[(4) LIMITATION.—At least 90 percent of the amounts set aside for a fiscal year under this subsection shall be awarded in grants to State agencies and local government agencies.]

* * * * *

§ 31106. Information systems

(a) INFORMATION SYSTEMS AND DATA ANALYSIS.—

(1) * * *

* * * * *

(3) DATA ANALYSIS CAPACITY AND PROGRAMS.—The Secretary shall develop and maintain under this section data analysis capacity and programs that provide the means to—

(A) * * *

* * * * *

(F) ensure, to the maximum extent practical, all the data is complete, timely, and accurate across all information systems and initiatives; [and]

(G) establish and implement a national motor carrier safety data correction system[.]; and

(H) determine whether a motor carrier is or has been related, through common stock, common ownership, common control, common management, or common familial relationship to any other motor carrier.

* * * * *

[(b) PERFORMANCE AND REGISTRATION INFORMATION PROGRAM.—

[(1) INFORMATION CLEARINGHOUSE.—The Secretary]

(b) INFORMATION CLEARINGHOUSE.—The Secretary shall include, as part of the motor carrier information system authorized by this section, a program to establish and maintain a clearinghouse and repository of information related to State registration and licensing of commercial motor vehicles, the registrants of such vehicles, and the motor carriers operating such vehicles. The clearinghouse and repository may include information on the safety fitness of each of the motor carriers and registrants and other information the Secretary considers appropriate, including information on motor carrier, commercial motor vehicle, and driver safety performance.

[(2) DESIGN.—The program shall link Federal motor carrier safety information systems with State commercial vehicle registration and licensing systems and shall be designed to enable a State to—

[(A) determine the safety fitness of a motor carrier or registrant when licensing or registering the registrant or motor carrier or while the license or registration is in effect; and

[(B) deny, suspend, or revoke the commercial motor vehicle registrations of a motor carrier or registrant that has been issued an operations out-of-service order by the Secretary.

[(3) CONDITIONS FOR PARTICIPATION.—The Secretary shall require States, as a condition of participation in the program, to—

[(A) comply with the uniform policies, procedures, and technical and operational standards prescribed by the Secretary under subsection (a)(4);

[(B) possess or seek the authority to possess for a time period no longer than determined reasonable by the Secretary, to impose sanctions relating to commercial motor vehicle registration on the basis of a Federal safety fitness determination; and

[(C) establish and implement a process to cancel the motor vehicle registration and seize the registration plates of a vehicle when an employer is found liable under section 31310(i)(2)(C) for knowingly allowing or requiring an employee to operate such a commercial motor vehicle in violation of an out-of-service order.

[(4) GRANTS.—From the funds authorized by section 31104(i), the Secretary may make a grant in a fiscal year to a State to implement the performance and registration information system management requirements of this subsection.]

* * * * *

[§ 31107. Border enforcement grants

[(a) GENERAL AUTHORITY.—The Secretary of Transportation may make a grant in a fiscal year to an entity or State that shares a land border with another country for carrying out border commercial motor vehicle safety programs and related enforcement activities and projects.

[(b) MAINTENANCE OF EXPENDITURES.—The Secretary may make a grant to a State under this section only if the State agrees that the total expenditure of amounts of the State and political subdivisions of the State, exclusive of amounts from the United States, for carrying out border commercial motor vehicle safety programs and related enforcement activities and projects will be maintained at a level at least equal to the average level of that expenditure by the State and political subdivisions of the State for the last 2 fiscal years of the State or the Federal Government ending before October 1, 2005, whichever the State designates.

[(c) GOVERNMENTS SHARE OF COSTS.—The Secretary shall reimburse a State under a grant made under this section an amount that is not more than 100 percent of the costs incurred by the State in a fiscal year for carrying out border commercial motor vehicle safety programs and related enforcement activities and projects.

[(d) AVAILABILITY AND REALLOCATION OF AMOUNTS.—Allocations to a State remain available for expenditure in the State for the fiscal year in which they are allocated and for the next fiscal year. Amounts not expended by a State during those 2 fiscal years are available to the Secretary for reallocation under this section.]

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[§31109. Performance and registration information system management

[The Secretary of Transportation may make a grant to a State to implement the performance and registration information system management requirements of section 31106(b).]

§31109. Performance and registration information systems management program

(a) *IN GENERAL.*—The Secretary shall carry out a performance and registration information systems management program to link Federal motor carrier safety information systems with State commercial vehicle registration and licensing systems as part of the motor carrier information system established under section 31106.

(b) *DESIGN.*—The program shall enable a State to—

(1) determine the safety fitness of a motor carrier or registrant—

(A) when licensing or registering the motor carrier or registrant; or

(B) while the license or registration is in effect; and

(2) deny, suspend, or revoke the commercial motor vehicle registration of a motor carrier or registrant to whom the Secretary has issued an operations out-of-service order.

(c) *PROGRAM PARTICIPATION.*—Not later than September 30, 2015, the Secretary shall require a State to participate in the program by—

(1) complying with the uniform policies, procedures, and technical and operational standards prescribed by the Secretary under section 31106(a)(4);

(2) having in effect a law providing the State with the authority to impose the sanctions described in paragraph (3)(A) on the basis of an out-of-service order issued by the Secretary; and

(3) establishing and implementing a process, approved by the Secretary, to—

(A) deny, suspend, or revoke the vehicle registration or seize the registration plates of a commercial motor vehicle registered to a motor carrier to whom the Secretary has issued an out-of-service order; and

(B) reinstate the vehicle registration or return the registration plates of the commercial motor vehicle subject to sanctions under subparagraph (A) if the Secretary permits such carrier to resume operations after the date of issuance of such order.

(d) *FUNDING.*—A State may use grant funds made available to the State under section 4126 of SAFETEA-LU (119 Stat. 1738) for each of fiscal years 2013 through 2016 to meet the requirements of this section for participation in the program under subsection (c).

SUBCHAPTER II—LENGTH AND WIDTH LIMITATIONS

§31111. Length limitations

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

(1) * * *

* * * * *

(5) TRAILER TRANSPORTER TOWING UNIT.—The term "trailer transporter towing unit" means a power unit that is not used to carry property when operating in a towaway trailer transporter combination.

(6) TOWAWAY TRAILER TRANSPORTER COMBINATION.—The term "towaway trailer transporter combination" means a combination of vehicles consisting of a trailer transporter towing unit and 2 trailers or semitrailers—

(A) with a total weight that does not exceed 26,000 pounds; and

(B) in which the trailers or semitrailers carry no property and constitute inventory property of a manufacturer, distributor, or dealer of such trailers or semitrailers.

(b) GENERAL LIMITATIONS.—(1) Except as provided in this section, a State may not prescribe or enforce a regulation of commerce that—

[(A) imposes a vehicle length limitation of less than 45 feet on a bus, of less than 48 feet on a semitrailer operating in a truck tractor-semi-trailer combination, or of less than 28 feet on a semitrailer or trailer operating in a truck tractor-semi-trailer-trailer combination, on any segment of the Dwight D. Eisenhower System of Interstate and Defense Highways (except a segment exempted under subsection (f) of this section) and those classes of qualifying Federal-aid Primary System highways designated by the Secretary of Transportation under subsection (e) of this section;]

(A) imposes a vehicle length limitation, on any segment of the Dwight D. Eisenhower System of Interstate and Defense Highways (except a segment exempted under subsection (f)) and those classes of qualifying Federal-aid primary system highways designated by the Secretary of Transportation under subsection (e), of—

(i) less than 45 feet on a bus;

(ii) less than 53 feet on a semitrailer operating in a truck tractor-semi-trailer combination; or

(iii) notwithstanding section 31112, less than 33 feet on a semitrailer or trailer operating in a truck tractor-semi-trailer-trailer combination;

* * * * *

(E) has the effect of prohibiting the use of an existing semitrailer or trailer, of not more than 28.5 feet in length, in a truck tractor-semi-trailer-trailer combination if the semitrailer or trailer was operating lawfully on December 1, 1982, within a 65-foot overall length limit in any State[; or];

(F) imposes a limitation of less than 46 feet on the distance from the kingpin to the center of the rear axle on trailers used exclusively or primarily in connection with motorsports competition events[.];

(G) imposes a vehicle length limitation of less than 80 feet on a stinger steered automobile transporter with a rear overhand of less than 6 feet;

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(H) has the effect of imposing an overall length limitation of less than 82 feet on a towaway trailer transporter combination;

(I) imposes a limitation of less than 46 feet on the distance from the kingpin to the center of the rear axle on a trailer used exclusively or primarily for the transport of livestock; or

(J) has the effect of prohibiting the use of a device designed by a bus manufacturer to affix to the rear of an intercity bus purchased after October 1, 2012, for use in carrying passenger baggage, if the device does not result in the bus exceeding 47 feet in total length.

* * * * *

§ 31114. Access to the Interstate System

(a) PROHIBITION ON DENYING ACCESS.—A State may not enact or enforce a law denying to a commercial motor vehicle subject to this subchapter or subchapter I of this chapter reasonable access between—

(1) * * *

(2) terminals, facilities for food, fuel, repairs, and rest, and points of loading and unloading for household goods carriers, motor carriers of passengers, a towaway trailer transporter combination as defined in section 31111(a), or any truck tractor-semitrailer combination in which the semitrailer has a length of not more than 28.5 feet and that generally operates as part of a vehicle combination described in section 31111(c) of this title.

* * * * *

SUBCHAPTER III—SAFETY REGULATION

* * * * *

§ 31134. Requirement for registration and Department of Transportation number

(a) IN GENERAL.—An employer or an employee of the employer may operate a commercial motor vehicle in interstate commerce only if the Secretary of Transportation registers the employer under this section and issues the employer a Department of Transportation number.

(b) REGISTRATION.—Upon application for registration and a Department of Transportation number under this section, the Secretary shall register the employer if the Secretary determines that—

(1) the employer is willing and able to comply with the requirements of this subchapter and chapter 51 if applicable; and

(2)(A) during the 3-year period before the date of the filing of the application, the employer was not related through common stock, common ownership, common control, common management, or common familial relationship to any other person subject to safety regulations under this subchapter who, during such 3-year period, was unwilling or unable to comply with the requirements of this subchapter or chapter 51 if applicable; or

(B) the employer has disclosed to the Secretary any relationship involving common stock, common ownership, common

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control, common management, or common familial relationship between that person and any other motor carrier.

(c) **REVOCATION OR SUSPENSION.**—The Secretary shall revoke or suspend the registration of an employer issued under subsection (b) if the Secretary determines that—

(1) the authority of the employer to operate as a motor carrier, freight forwarder, or broker pursuant to chapter 139 is revoked or suspended under section 13905(d)(1) or 13905(f); or

(2) the employer has willfully failed to comply with the requirements for registration set forth in subsection (b).

(d) **COMMERCIAL REGISTRATION.**—An employer registered under this section may not provide transportation subject to jurisdiction under subchapter I of chapter 135 unless the employer is also registered under section 13902 to provide such transportation.

(e) **STATE AUTHORITY.**—Nothing in this section shall be construed as affecting the authority of a State to issue a Department of Transportation number under State law to a person operating in intrastate commerce.

§ 31135. Duties of employers and employees

(a) * * *

* * * * *

(d) **AVOIDING COMPLIANCE.**—

(1) **IN GENERAL.**—Two or more employers shall not use common ownership, common management, common control, or common familial relationship to enable any or all such employers to avoid compliance, or mask or otherwise conceal non-compliance, or a history of noncompliance, with commercial motor vehicle safety regulations issued under this subchapter or an order of the Secretary issued under this subchapter or such regulations.

(2) **PENALTY.**—If the Secretary determines that actions described in the preceding sentence have occurred, the Secretary shall—

(A) deny, suspend, amend, or revoke all or part of any such employer's registration under sections 13905 and 31134; and

(B) take into account such noncompliance for purposes of determining civil penalty amounts under section 521(b)(2)(D).

[(d)] (e) **DEFINITIONS.**—In this section, the following definitions apply:

(1) * * *

* * * * *

§ 31138. Minimum financial responsibility for transporting passengers

(a) * * *

* * * * *

(e) **NONAPPLICATION.**—This section does not apply to a motor vehicle—

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(1) * * *

* * * * *

(4) providing transportation service within a transit service area under an agreement with a Federal, State, or local government funded, in whole or in part, with a grant under [section 5307, 5310, or 5311] section 5307, 5311, or 5317, including transportation designed and carried out to meet the special needs of elderly individuals and individuals with disabilities; except that, in any case in which the transit service area is located in more than 1 State, the minimum level of financial responsibility for such motor vehicle will be at least the highest level required for any of such States.

* * * * *

§ 31142. Inspection of vehicles

(a) * * *

[(b) INSPECTION OF VEHICLES AND RECORD RETENTION.—The Secretary of Transportation shall prescribe regulations on Government standards for inspection of commercial motor vehicles and retention by employers of records of an inspection. The standards shall provide for annual or more frequent inspections of a commercial motor vehicle unless the Secretary finds that another inspection system is as effective as an annual or more frequent inspection system. Regulations prescribed under this subsection are deemed to be regulations prescribed under section 31136 of this title.]

(b) INSPECTION OF VEHICLES AND RECORD RETENTION.—

(1) REGULATIONS ON GOVERNMENT STANDARDS.—The Secretary of Transportation shall prescribe regulations on Government standards for inspection of commercial motor vehicles and retention by employers of records of such inspections.

(2) CONTENTS OF STANDARDS.—The standards shall provide for—

(A) annual or more frequent inspections of a commercial motor vehicle designed or used to transport property unless the Secretary finds that another inspection system is as effective as an annual or more frequent inspection system; and

(B) annual or more frequent inspections of a commercial motor vehicle designed or used to transport passengers.

(3) TREATMENT OF REGULATIONS.—Regulations prescribed under this subsection shall be treated as regulations prescribed under section 31136.

(4) SPECIAL RULES FOR INSPECTION PROGRAM.—Any inspection required under paragraph (2)(B) shall be conducted by, or under a program established by, the State in which the vehicle is registered. A roadside inspection conducted by a State or other jurisdiction shall not be considered an inspection for the purposes of meeting the requirements of paragraph (2)(B).

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§ 31144. Safety fitness of owners and operators

(a) * * *

* * * * *

(g) [SAFETY REVIEWS OF NEW OPERATORS] *NEW ENTRANT MOTOR CARRIER SAFETY REVIEWS.*—

[(1) IN GENERAL.—The Secretary shall require, by regulation, each owner and each operator granted new operating authority, after the date on which section 31148(b) is first implemented, to undergo a safety review within the first 18 months after the owner or operator, as the case may be, begins operations under such authority.]

(1) *SAFETY REVIEW.*—The Secretary shall require, by regulation, each owner and operator issued a new registration under section 13902 or 31134 to undergo a safety review under this section—

(A) *except as provided by subparagraphs (B) and (C), within the first 18 months after the date on which the owner or operator begins operations under such registration;*

(B) *in the case of an owner or operator with authority to transport hazardous materials, within the first 9 months after the date on which the owner or operator begins operations under such registration; and*

(C) *in the case of an owner or operator with authority to transport passengers, within the first 90 days after the date on which the owner or operator begins operations under such registration.*

* * * * *

[(4) *NEW ENTRANT AUTHORITY.*—Notwithstanding any other provision of this title, any new operating authority granted after the date on which section 31148(b) is first implemented shall be designated as new entrant authority until the safety review required by paragraph (1) is completed.

[(5) *NEW ENTRANT AUDITS.*—

[(A) *GRANTS.*—The Secretary may make grants to States and local governments for new entrant motor carrier audits under this subsection without requiring a matching contribution from such States and local governments.

[(B) *SET ASIDE.*—The Secretary shall set aside from amounts made available by section 31104(a) up to \$29,000,000 per fiscal year for audits of new entrant motor carriers conducted pursuant to this paragraph.

[(C) *DETERMINATION.*—If the Secretary determines that a State or local government is not able to use government employees to conduct new entrant motor carrier audits, the Secretary may use the funds set aside under this paragraph to conduct audits for such States or local governments.]

(4) *NEW ENTRANT REGISTRATION.*—

(A) *IN GENERAL.*—Notwithstanding any other provision of this title, any new registration issued under section 13902 or 31134 shall each be designated as new entrant

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registration until the safety review required by paragraph (1) is completed.

(B) REQUIREMENT FOR ISSUANCE OF PERMANENT OPERATING AUTHORITY.—A new registration issued to an owner or operator under section 13902 or 31134 shall become permanent after the owner or operator has passed the safety review required under paragraph (1).

(5) FUNDING.—

(A) IN GENERAL.—A State shall carry out the requirements of this section with funds allocated to the State under section 31104(f).

(B) DETERMINATION.—If the Secretary determines that a State or local government is not able to use government employees to conduct new entrant motor carrier safety reviews with funds allocated to the State under section 31104(f), the Secretary may conduct for the State or local government the safety reviews that the State or local government is not able to conduct with such funds.

(h) SAFETY REVIEWS OF OWNERS AND OPERATORS OF INTERSTATE FOR-HIRE COMMERCIAL MOTOR VEHICLES DESIGNED OR USED TO TRANSPORT PASSENGERS.—

(1) IN GENERAL.—Not later than September 30, 2015, the Secretary shall determine the safety fitness of each owner, and each operator, of a commercial motor vehicle designed or used to transport passengers who the Secretary registers, on or before September 30, 2014 (including before the date of enactment of this subsection), under section 13902 or 31134.

(2) SAFETY FITNESS RATING.—As part of the safety fitness determination required by paragraph (1), the Secretary shall assign a safety fitness rating to each owner and each operator described in paragraph (1).

(3) PERIODIC MONITORING.—

(A) PROCESS.—The Secretary shall establish a process, by regulation, for monitoring on a regular basis the safety performance of an owner or operator of a commercial motor vehicle designed or used to transport passengers, following the assignment of a safety rating to such owner or operator.

(B) ELEMENTS OF MONITORING AND SAFETY ENFORCEMENT.—Regulations issued under subparagraph (A) shall provide for the following:

(i) Monitoring of the safety performance, in critical safety areas (as defined by the Secretary, by regulation) of an owner or operator of a commercial motor vehicle designed or used to transport passengers (including by activities conducted onsite at the offices of the owner or operator or offsite).

(ii) Increasingly more stringent interventions designed to correct unsafe practices of an owner or operator of a commercial motor vehicle designed or used to transport passengers.

(iii) Periodic updates to the safety fitness rating of an owner or operator if the Secretary determines that such update will improve the safety performance of the owner or operator.

(iv) Enforcement action, including determining that the owner or operator is not fit and may not operate a commercial motor vehicle under subsection (c)(2).

* * * * *

§ 31149. Medical program

(a) * * *

* * * * *

(c) MEDICAL STANDARDS AND REQUIREMENTS.—

(1) IN GENERAL.—The Secretary, with the advice of the Medical Review Board and the chief medical examiner, shall—

(A) * * *

* * * * *

[(D) develop, as appropriate, specific courses and materials for medical examiners listed in the national registry established under this section, and require those medical examiners to, at a minimum, self-certify that they have completed specific training, including refresher courses, to be listed in the registry;]

(D) develop requirements applicable to a medical examiner in order for the medical examiner to be listed in the national registry established under this section, including—

(i) specific courses and materials that must be completed;

(ii) at a minimum, self-certification requirements to verify that the medical examiner has completed specific training, including refresher courses, that the Secretary determines are necessary; and

(iii) an examination developed by the Secretary for which a passing grade must be achieved.

(E) require medical examiners to transmit the name of the applicant and numerical identifier, as determined by the Administrator of the Federal Motor Carrier Safety Administration, for any completed medical examination report required under section 391.43 of title 49, Code of Federal Regulations, electronically to the chief medical examiner on monthly basis; [and]

(F) periodically review a representative sample of the medical examination reports associated with the name and numerical identifiers of applicants transmitted under subparagraph (E) for errors, omissions, or other indications of improper certification[.]; and

(G) review each year the implementation of commercial driver's license requirements of a minimum of 10 States to assess the accuracy, validity, and timeliness of—

(i) submission of physical examination reports and medical certificates to State licensing agencies; and

(ii) the processing of such submissions by State licensing agencies.

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CHAPTER 313—COMMERCIAL MOTOR VEHICLE OPERATORS

Sec.
 31301. Definitions.
 * * * * *
 31306a. National clearinghouse for records relating to alcohol and controlled substances testing.
 * * * * *
 [31313. Grants for commercial driver's license program improvements.]
 31313. Grants for commercial driver's license program implementation.
 * * * * *

§ 31306. Alcohol and controlled substances testing

(a) * * *

* * * * *

(j) APPLICATION OF PENALTIES.—An employer, including an individual who is self-employed, shall be subject to civil and criminal penalties in accordance with section 521(b) for a violation of this section. This section does not supersede a penalty applicable to an operator of a commercial motor vehicle under this chapter or another law.

§ 31306a. National clearinghouse for records relating to alcohol and controlled substances testing

(a) ESTABLISHMENT.—

(1) IN GENERAL.—Subject to the requirements of this section, the Secretary of Transportation shall establish and maintain an information system that will serve as a national clearinghouse for records relating to the alcohol and controlled substances testing program applicable to operators of commercial motor vehicles under section 31306.

(2) PURPOSES.—The purposes of the clearinghouse shall be—

(A) to improve compliance with the requirements of the testing program; and

(B) to help prevent accidents and injuries resulting from the misuse of alcohol or use of controlled substances by operators of commercial motor vehicles.

(3) CONTENTS.—The clearinghouse shall be a repository of records relating to violations of the testing program by individuals submitted to the Secretary in accordance with this section.

(4) ELECTRONIC EXCHANGE OF RECORDS.—The Secretary shall ensure the ability for records to be submitted to the clearinghouse, and requested from the clearinghouse, on an electronic basis.

(5) DEADLINE.—The Secretary shall establish the clearinghouse not later than 1 year after the date of enactment of this section.

(b) EMPLOYMENT PROHIBITIONS.—

(1) IN GENERAL.—An employer may permit an individual to operate a commercial motor vehicle or perform any other safety sensitive function only if the employer makes a request for information from the clearinghouse at such times as the Secretary

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shall specify, by regulation, and the information in the clearinghouse at the time of the request indicates that the individual—

(A) has not violated the requirements of the testing program in the preceding 3-year period; or

(B) if the individual has violated the requirements of the testing program during that period, is eligible to return to safety sensitive duties pursuant to the return-to-duty process established under the testing program.

(2) VIOLATIONS.—For purposes of paragraph (1), an individual shall be considered to have violated the requirements of the testing program if the individual—

(A) has a confirmed or verified, as applicable, positive alcohol or controlled substances test result under the testing program;

(B) has failed or refused to submit to an alcohol or controlled substances test under the testing program; or

(C) has otherwise failed to comply with the requirements of the testing program.

(3) APPLICABILITY.—Paragraph (1) shall apply to an individual who performs a safety sensitive function for an employer as a full-time regularly employed driver, casual, intermittent, or occasional driver, or leased driver, or independent owner-operator contractor of such employer or, as determined by the Secretary, pursuant to another arrangement.

(4) WRITTEN NOTICE THAT CLEARINGHOUSE IS OPERATIONAL.—The Secretary shall issue a written notice when the Secretary determines that the clearinghouse is operational and employers are able to use the clearinghouse to meet the requirements of section 382.413 of title 49, Code of Federal Regulations, as in effect on the date of enactment of this section.

(5) EFFECTIVE DATE.—Paragraph (1) shall take effect on a date specified by the Secretary in the written notice issued under paragraph (4) that is not later than 30 days after the date of issuance of the written notice.

(6) CONTINUED APPLICATION OF EXISTING REQUIREMENTS.—Following the date on which paragraph (1) takes effect, an employer shall continue to be subject to the requirements of section 382.413 of title 49, Code of Federal Regulations, as in effect on the date of enactment of this section, for a period of 3 years or for such longer period as the Secretary determines appropriate.

(7) NOTICE OF REQUIREMENTS APPLICABLE TO EMPLOYERS.—The Secretary shall provide notice of the requirements applicable to employers under this section through published notices in the Federal Register.

(c) REPORTING OF RECORDS.—

(1) IN GENERAL.—The Secretary shall require employers and appropriate service agents, including medical review officers, to submit to the Secretary for inclusion in the clearinghouse records of violations of the testing program by individuals described in subsection (b)(3).

(2) SPECIFIC REPORTING REQUIREMENTS.—In carrying out paragraph (1), the Secretary shall require, at a minimum—

(A) a medical review officer to report promptly, as determined by the Secretary, to the clearinghouse—

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(i) a verified positive controlled substances test result of an individual under the testing program; and
 (ii) a failure or refusal of an individual to submit to a controlled substances test in accordance with the requirements of the testing program; and
 (B) an employer (or, in the case of an operator of a commercial motor vehicle who is self-employed, the service agent administering the operator's testing program) to report promptly, as determined by the Secretary, to the clearinghouse—

(i) a confirmed positive alcohol test result of an individual under the testing program; and
 (ii) a failure or refusal of an individual to provide a specimen for a controlled substances test in accordance with the requirements of the testing program.

(3) **UPDATING OF RECORDS.**—The Secretary shall ensure that a record in the clearinghouse is updated to include a return-to-duty test result of an individual under the testing program.

(4) **INCLUSION OF RECORDS IN CLEARINGHOUSE.**—The Secretary shall include all records of violations received pursuant to this subsection in the clearinghouse.

(5) **MODIFICATIONS AND DELETIONS.**—If the Secretary determines that a record contained in the clearinghouse is not accurate, the Secretary shall modify or delete the record.

(6) **NOTIFICATION OF INDIVIDUALS.**—The Secretary shall establish a process to provide notification to an individual of—
 (A) a submission of a record to the clearinghouse relating to the individual; and

(B) any modification or deletion of a record in the clearinghouse pertaining to the individual, including the reason for the modification or deletion.

(7) **TIMELY AND ACCURATE REPORTING.**—The Secretary may establish additional requirements, as appropriate, to ensure timely and accurate reporting of records to the clearinghouse.

(8) **DELETION OF RECORDS.**—The Secretary shall delete a record of a violation submitted to the clearinghouse after a period of 3 years beginning on the date the individual is eligible to return to safety sensitive duties pursuant to the return-to-duty process established under the testing program.

(d) **ACCESS TO CLEARINGHOUSE BY EMPLOYERS.**—

(1) **IN GENERAL.**—The Secretary shall establish a process for an employer to request and receive records in the clearinghouse pertaining to an individual in accordance with subsection (b).

(2) **WRITTEN CONSENT OF INDIVIDUALS.**—An employer shall obtain the written consent of an individual before requesting any records in the clearinghouse pertaining to the individual.

(3) **ACCESS TO RECORDS.**—Upon receipt of a request for records from an employer under paragraph (1), the Secretary shall provide the employer with access to the records as expeditiously as practicable.

(4) **RECORDS OF REQUESTS.**—The Secretary shall require an employer to maintain for a 3-year period—

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- (A) a record of each request made by the employer for records from the clearinghouse; and
- (B) any information received pursuant to the request.

(5) USE OF RECORDS.—

(A) IN GENERAL.—An employer—

- (i) may obtain from the clearinghouse a record pertaining to an individual only for the purpose of determining whether a prohibition applies with respect to the individual to operate a commercial motor vehicle or perform any other safety sensitive function under subsection (b)(1); and
- (ii) may use the record only for such purpose.

(B) PROTECTION OF PRIVACY OF INDIVIDUALS.—An employer that receives a record from the clearinghouse pertaining to an individual shall protect the privacy of the individual and the confidentiality of the record, including taking reasonable precautions to ensure that information contained in the record is not divulged to any person who is not directly involved in determining whether a prohibition applies with respect to the individual to operate a commercial motor vehicle or perform any other safety sensitive function under subsection (b)(1).

(e) ACCESS TO CLEARINGHOUSE BY INDIVIDUALS.—

(1) IN GENERAL.—The Secretary shall establish a process for an individual to request and receive information from the clearinghouse—

- (A) to learn whether a record pertaining to the individual is contained in the clearinghouse;
- (B) to verify the accuracy of the record;
- (C) to verify updates to the individual's record, including completion of a return-to-duty process under the testing program; and
- (D) to learn of requests for information from the clearinghouse regarding the individual.

(2) DISPUTE PROCEDURE.—The Secretary shall establish a procedure, including an appeal process, for an individual to dispute and remedy an administrative error in a record pertaining to the individual in the clearinghouse, except that the appeal process shall not be used to dispute or remedy the validity of a controlled substance or alcohol test result.

(3) ACCESS TO RECORDS.—Upon receipt of a request for records from an individual under paragraph (1), the Secretary shall provide the individual with access to the records as expeditiously as practicable.

(f) ACCESS TO CLEARINGHOUSE BY CHIEF COMMERCIAL DRIVER LICENSING OFFICIALS.—

(1) IN GENERAL.—The Secretary shall establish a process for the chief commercial driver licensing official of a State to request and receive records pertaining to an individual from the clearinghouse.

(2) USE OF INFORMATION.—The chief commercial driver licensing official of a State may not obtain from the clearinghouse a record pertaining to an individual for any purpose other than to take an action related to a commercial driver's li-

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cense for the individual under applicable State law or to comply with section 31311(a)(22).

(g) USE OF CLEARINGHOUSE INFORMATION FOR ENFORCEMENT PURPOSES.—The Secretary may use the records in the clearinghouse for the purposes of enforcement activities under this chapter.

(h) DESIGN OF CLEARINGHOUSE.—

(1) IN GENERAL.—In establishing the clearinghouse, the Secretary shall develop a secure process for—

(A) registration, authorization, and authentication of a user of the clearinghouse;

(B) registration, authorization, and authentication of individuals required to report to the clearinghouse under subsection (c);

(C) preventing information from the clearinghouse from being accessed by unauthorized users;

(D) timely and accurate electronic submissions of data to the clearinghouse under subsection (c);

(E) timely and accurate access to records from the clearinghouse under subsections (d), (e), and (f); and

(F) updates to an individual's record related to compliance with the return-to-duty process under the testing program.

(2) ARCHIVE CAPABILITY.—The clearinghouse shall be designed to allow for an archive of the receipt, modification, and deletion of records for the purposes of auditing and evaluating the timeliness, accuracy, and completeness of data in the clearinghouse.

(3) SECURITY STANDARDS.—The clearinghouse shall be designed and administered in compliance with applicable Department of Transportation information technology security standards.

(4) INTEROPERABILITY WITH OTHER SYSTEMS.—In establishing the clearinghouse and developing requirements for data to be included in the clearinghouse, the Secretary, to the maximum extent practicable, shall take into consideration—

(A) existing information systems containing regulatory and safety data for motor vehicle operators;

(B) the efficacy of using or combining clearinghouse data with 1 or more of such systems; and

(C) the potential interoperability of the clearinghouse with existing and future information systems containing regulatory and safety data for motor vehicle operators.

(i) PRIVACY.—

(1) AVAILABILITY OF CLEARINGHOUSE INFORMATION.—The Secretary shall establish a process to make information available from the clearinghouse in a manner that is consistent with this section and applicable Federal information and privacy laws, including regulations.

(2) UNAUTHORIZED INDIVIDUALS.—The Secretary may not provide information from the clearinghouse to an individual who is not authorized by this section to receive the information.

(j) FEES.—

(1) AUTHORITY TO COLLECT FEES.—

(A) **GENERAL AUTHORITY.**—The Secretary may collect fees for requests for information from the clearinghouse.

(B) **AMOUNT TO BE COLLECTED.**—Fees collected under this subsection in a fiscal year shall equal as nearly as possible the costs of operating the clearinghouse in that fiscal year, including personnel costs.

(C) **RECEIPTS TO BE CREDITED AS OFFSETTING COLLECTIONS.**—The amount of any fee collected under this subsection shall be—

(i) credited as offsetting collections to the account that finances the activities and services for which the fee is imposed; and

(ii) available without further appropriation for such activities and services until expended.

(2) **LIMITATION.**—The Secretary shall ensure that an individual requesting information from the clearinghouse in order to dispute or remedy an error in a record pertaining to the individual pursuant to subsection (e)(2) may obtain the information without being subject to a fee authorized by paragraph (1).

(k) **ENFORCEMENT.**—An employer, and any person acting as a service agent, shall be subject to civil and criminal penalties for a violation of this section in accordance with section 521(b).

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

(1) **CHIEF COMMERCIAL DRIVER LICENSING OFFICIAL.**—The term “chief commercial driver licensing official” means the official in a State who is authorized—

(A) to maintain a record about a commercial driver’s license issued by the State; and

(B) to take action on a commercial driver’s license issued by the State.

(2) **CLEARINGHOUSE.**—The term “clearinghouse” means the clearinghouse to be established under subsection (a).

(3) **EMPLOYER.**—Notwithstanding section 31301, the term “employer” means a person or entity employing 1 or more employees (including an individual who is self-employed) that is subject to Department of Transportation requirements under the testing program. The term does not include a service agent.

(4) **MEDICAL REVIEW OFFICER.**—The term “medical review officer” means a person who is a licensed physician and who is responsible for receiving and reviewing laboratory results generated under the testing program and evaluating medical explanations for certain controlled substances test results.

(5) **SAFETY SENSITIVE FUNCTION.**—The term “safety sensitive function” has the meaning such term has under part 382 of title 49, Code of Federal Regulations, or any successor regulation.

(6) **SERVICE AGENT.**—The term “service agent” means a person or entity, other than an employee of an employer, who provides services covered by part 40 of title 49, Code of Federal Regulations, or any successor regulation, to employers or employees (or both) under the testing program, and the term includes a medical review officer.

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(7) TESTING PROGRAM.—The term “testing program” means the alcohol and controlled substances testing program established under section 31306.

* * * * *

§ 31308. Commercial driver’s license

After consultation with the States, the Secretary of Transportation shall prescribe regulations on minimum uniform standards for the issuance of commercial drivers’ licenses and learner’s permits by the States and for information to be contained on each of the licenses and permits. The standards shall require at a minimum that—

[(1) an individual issued a commercial driver’s license pass written and driving tests for the operation of a commercial motor vehicle that comply with the minimum standards prescribed by the Secretary under section 31305(a) of this title;]

(1) an individual issued a commercial driver’s license—

(A) pass written and driving tests for the operation of a commercial motor vehicle that comply with the minimum standards prescribed by the Secretary under section 31305(a); and

(B) present certification of completion of driver training that meets the requirements established by the Secretary under section 4042 of the Motor Carrier Safety, Efficiency, and Accountability Act of 2012;

§ 31309. Commercial driver’s license information system

(a) * * *

* * * * *

(e) MODERNIZATION PLAN.—

(1) * * *

* * * * *

(4) DEADLINE FOR STATE PARTICIPATION.—

(A) IN GENERAL.—The Secretary shall establish in the plan a date by which all States must be operating commercial driver’s license information systems that are compatible with the modernized information system under this section[,] and must use the systems to receive and submit conviction and disqualification data.

* * * * *

§ 31311. Requirements for State participation

(a) GENERAL.—To avoid having amounts withheld from apportionment under section 31314 of this title, a State shall comply with the following requirements:

(1) * * *

* * * * *

(5) [At least 60 days before issuing a commercial driver’s license (or a shorter period the Secretary prescribes by regulation),] Within the time period the Secretary prescribes by regulation, the State shall notify the Secretary or the operator of

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the information system under section 31309 of this title, as the case may be, of the proposed issuance of the license and other information the Secretary may require to ensure identification of the individual applying for the license.

* * * * *

(22) Before renewing or issuing a commercial driver's license to an individual, the State shall request information pertaining to the individual from the drug and alcohol clearinghouse maintained under section 31306a.

(23) The State shall ensure that the State's commercial driver's license information system complies with applicable Federal information technology standards.

* * * * *

(d) STATE COMMERCIAL DRIVER'S LICENSE PROGRAM PLAN.—

(1) IN GENERAL.—A State shall develop and submit to the Secretary for approval a plan for complying with the requirements of subsection (a) in the period beginning on the date that the plan is approved and ending on September 30, 2017.

(2) CONTENTS.—A plan submitted by a State under paragraph (1) shall identify—

(A) the actions that the State must take to address any deficiencies in the State's commercial driver's license program, as identified by the Secretary in the most recent audit of the program; and

(B) other actions that the State must take to comply with the requirements of subsection (a).

(3) PRIORITY.—

(A) IMPLEMENTATION SCHEDULE.—A plan submitted by a State under paragraph (1) shall include a schedule for the implementation of the actions identified under paragraph (2).

(B) DEADLINE FOR COMPLIANCE WITH REQUIREMENTS.—A plan submitted by a State under paragraph (1) shall include assurances that the State will take the necessary actions to comply with the requirements of subsection (a) not later than September 30, 2017.

(4) APPROVAL AND DISAPPROVAL.—The Secretary shall—

(A) review a plan submitted by a State under paragraph (1); and

(B)(i) approve the plan if the Secretary determines that the plan is adequate to promote the objectives of this section; or

(ii) disapprove the plan.

(5) MODIFICATION OF DISAPPROVED PLANS.—If the Secretary disapproves a plan under this subsection, the Secretary shall—

(A) provide the State a written explanation of the disapproval; and

(B) allow the State to modify and resubmit the plan for approval.

(6) PLAN UPDATES.—The Secretary may require States to review and update plans, as appropriate.

(e) ANNUAL COMPARISON OF STATE LEVELS OF COMPLIANCE.—

On an annual basis, the Secretary shall—

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- (1) *conduct a comparison of the relative levels of compliance by States with the requirements of subsection (a); and*
- (2) *make available to the public the results of the comparison, using a mechanism that the Secretary determines appropriate.*

* * * * *

§ 31313. Grants for commercial driver's license program [improvements] *implementation*

[(a) GRANTS FOR COMMERCIAL DRIVER'S LICENSE PROGRAM IMPROVEMENTS.—

[(1) GENERAL AUTHORITY.—The Secretary of Transportation may make a grant to a State in a fiscal year—

[(A) to comply with the requirements of section 31311; and

[(B) in the case of a State that is making a good faith effort toward substantial compliance with the requirements of section 31311 and this section, to improve its implementation of its commercial driver's license program.

[(2) PURPOSES FOR WHICH GRANTS MAY BE USED.—

[(A) IN GENERAL.—A State may use grants under paragraphs (1)(A) and (1)(B) only for expenses directly related to its compliance with section 31311; except that a grant under paragraph (1)(B) may be used for improving implementation of the State's commercial driver's license program, including expenses for computer hardware and software, publications, testing, personnel, training, and quality control. The grant may not be used to rent, lease, or buy land or buildings.

[(B) PRIORITY.—In making grants under paragraph (1)(B), the Secretary shall give priority to States that will use such grants to achieve compliance with the requirements of the Motor Carrier Safety Improvement Act of 1999, including the amendments made by such Act.

[(3) APPLICATION.—In order to receive a grant under this section, a State shall submit an application for such grant that is in such form, and contains such information, as the Secretary may require. The application shall include the State's assessment of its commercial driver's license program.

[(4) MAINTENANCE OF EXPENDITURES.—The Secretary may make a grant to a State under this subsection only if the State agrees that the total expenditure of amounts of the State and political subdivisions of the State, exclusive of amounts from the United States, for the State's commercial driver's license program will be maintained at a level at least equal to the average level of that expenditure by the State and political subdivisions of the State for the last 2 fiscal years of the State ending before the date of enactment of this section.

[(5) GOVERNMENT SHARE.—The Secretary shall reimburse a State under a grant made under this subsection an amount that is not more than 100 percent of the costs incurred by the State in a fiscal year in complying with section 31311 and improving its implementation of its commercial driver's license

program. In determining such costs, the Secretary shall include in-kind contributions by the State. Amounts required to be expended by the State under paragraph (4) may not be included as part of the non-Federal share of such costs.

[(b) HIGH-PRIORITY ACTIVITIES.—

[(1) GRANTS FOR NATIONAL CONCERNS.—The Secretary may make a grant to a State agency, local government, or other person for 100 percent of the costs of research, development, demonstration projects, public education, and other special activities and projects relating to commercial driver licensing and motor vehicle safety that are of benefit to all jurisdictions of the United States or are designed to address national safety concerns and circumstances.

[(2) FUNDING.—The Secretary may deduct up to 10 percent of the amounts made available to carry out this section for a fiscal year to make grants under this subsection.

[(c) EMERGING ISSUES.—The Secretary may designate up to 10 percent of the amounts made available to carry out this section for a fiscal year for allocation to a State agency, local government, or other person at the discretion of the Secretary to address emerging issues relating to commercial driver's license improvements.

[(d) APPORTIONMENT.—Except as otherwise provided in subsection (c), all amounts made available to carry out this section for a fiscal year shall be apportioned to States according to criteria prescribed by the Secretary.]

(a) GRANTS FOR COMMERCIAL DRIVER'S LICENSE PROGRAM IMPLEMENTATION.—

(1) IN GENERAL.—*The Secretary of Transportation may make a grant to a State in a fiscal year to assist the State in complying with the requirements of section 31311.*

(2) ELIGIBILITY.—*A State shall be eligible for a grant under this subsection if the State has in effect a commercial driver's license program plan approved by the Secretary under section 31311(d).*

(3) USES OF GRANT FUNDS.—*A State may use grant funds under this subsection—*

(A) to comply with section 31311; and

(B) in the case of a State that is making a good faith effort toward substantial compliance with the requirements of section 31311 and this section, to improve its implementation of its commercial driver's license program, including expenses—

(i) for computer hardware and software;

(ii) for publications, testing, personnel, training, and quality control;

(iii) for commercial driver's license program coordinators; and

(iv) to establish and implement a system to notify an employer of an operator of a commercial motor vehicle of a suspension or revocation of such operator's driver's license.

(C) PROHIBITIONS.—*A State may not use grant funds under this subsection to rent, lease, or buy land or buildings.*

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(4) MAINTENANCE OF EXPENDITURES.—The Secretary may make a grant to a State under this subsection only if the State provides assurances satisfactory to the Secretary that the total expenditure of amounts of the State and political subdivisions of the State (not including amounts of the United States) for the State's commercial driver's license program will be maintained at a level that at least equals the average level of that expenditure by the State and political subdivisions of the State for the most recent 3 fiscal years ending before the date of enactment of the Motor Carrier Safety, Efficiency, and Accountability Act of 2012.

(b) APPORTIONMENT.—

(1) APPORTIONMENT FORMULA.—Subject to paragraph (2), the amounts made available to carry out this section for a fiscal year shall be apportioned among the States in the ratio that—

(A) the number of commercial driver's licenses issued in each State; bears to

(B) the total number of commercial driver's licenses issued in all States.

(2) MINIMUM APPORTIONMENT.—The apportionment to each State that has in effect a commercial driver's license program plan approved by the Secretary under section 31311(d) shall be not less than one-half of 1 percent of the total funds available to carry out this section.

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SUBTITLE X—MISCELLANEOUS

* * * * *

CHAPTER 805—MISCELLANEOUS

* * * * *

§ 80502. Transportation of animals

(a) * * *

* * * * *

(c) NONAPPLICATION.—[This section does not] Subsections (a) and (b) do not apply when animals are transported in a vehicle or vessel in which the animals have food, water, space, and an opportunity for rest.

(d) TRANSPORTATION OF HORSES.—

(1) PROHIBITION.—No person may transport, or cause to be transported, a horse from a place in a State, the District of Columbia, or a territory or possession of the United States through or to a place in another State, the District of Columbia, or a territory or possession of the United States in a motor vehicle containing 2 or more levels stacked on top of each other.

(2) MOTOR VEHICLE DEFINED.—In this subsection, the term "motor vehicle" has the meaning given that term in section 13102.

[(d)] (e) CIVIL PENALTY.—[A rail carrier]

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(1) *IN GENERAL.*—A rail carrier, express carrier, or common carrier (except by air or water), a receiver, trustee, or lessee of one of those carriers, or an owner or master of a vessel that knowingly and willfully violates [this section] subsection (a) or (b) is liable to the United States Government for a civil penalty of at least \$100 but not more than \$500 for each violation. [On learning of a violation]

(2) *TRANSPORTATION OF HORSES IN MULTILEVEL TRAILER.*—

(A) *CIVIL PENALTY.*—A person that knowingly violates subsection (d) is liable to the United States Government for a civil penalty of at least \$100 but not more than \$500 for each violation. A separate violation occurs under subsection (d) for each horse that is transported, or caused to be transported, in violation of subsection (d).

(B) *RELATIONSHIP TO OTHER LAWS.*—The penalty provided under subparagraph (A) shall be in addition to any penalty or remedy available under any other law or common law.

(3) *CIVIL ACTION.*—On learning of a violation of a provision of this section, the Attorney General shall bring a civil action to collect the penalty in the district court of the United States for the judicial district in which the violation occurred or the defendant resides or does business.

* * * * *

INTERMODAL SURFACE TRANSPORTATION EFFICIENCY ACT OF 1991

* * * * *

TITLE I—SURFACE TRANSPORTATION

* * * * *

Part A—Title 23 Programs

* * * * *

SEC. 1023. GROSS VEHICLE WEIGHT RESTRICTION.

(a) * * *

* * * * *

(h) **OVER-THE-ROAD BUSES AND PUBLIC TRANSIT VEHICLES.**—

(1) **[TEMPORARY EXEMPTION] EXEMPTION.**—The second sentence of section 127 of title 23, United States Code, relating to axle weight limitations for vehicles using the Dwight D. Eisenhower System of Interstate and Defense Highways, shall not apply[, for the period beginning on October 6, 1992, and ending on October 1, 2009,] to—

(A) any over-the-road bus (as defined in section 301 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12181)); [or]

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(B) any vehicle that is regularly and exclusively used as an intrastate public agency transit passenger bus[.]; or (C) any motor home (as such term is defined in section 571.3 of title 49, Code of Federal Regulations).

(2) STATE ACTION.—

(A) WEIGHT LIMITATIONS.—[For the period beginning on the date of enactment of this subparagraph and ending on September 30, 2009, a] A covered State, including any political subdivision of such State, may not enforce a single axle weight limitation of less than 24,000 pounds, including enforcement tolerances, on any vehicle referred to in paragraph (1) in any case in which the vehicle is using the Interstate System.

* * * * *

SEC. 1105. HIGH PRIORITY CORRIDORS ON NATIONAL HIGHWAY SYSTEM.

(a) * * *

* * * * *

(e) PROVISIONS APPLICABLE TO CORRIDORS.—

(1) * * *

* * * * *

(5) INCLUSION OF CERTAIN ROUTE SEGMENTS ON INTERSTATE SYSTEM.—

(A) IN GENERAL.—The portions of the routes referred to in subsection (c)(1), subsection (c)(3) (relating solely to the Kentucky Corridor), clauses (i), (ii), and (except with respect to Georgetown County) (iii) of subsection (c)(5)(B), subsection (c)(9), subsections (c)(18) and (c)(20), subsection (c)(36), subsection (c)(37), subsection (c)(40), subsection (c)(42), subsection (c)(45), subsection (c)(54), and subsection (c)(57) that are not a part of the Interstate System are designated as future parts of the Interstate System. Any segment of such routes shall become a part of the Interstate System at such time as the Secretary determines [that the segment—

[(i) meets the Interstate System design standards approved by the Secretary under section 109(b) of title 23, United States Code; and

[(ii) connects to an existing Interstate System segment.] that the segment meets the Interstate System design standards approved by the Secretary under section 109(b) of title 23, United States Code.

* * * * *

TRANSPORTATION EQUITY ACT FOR THE 21ST CENTURY

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) * * *

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

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Sec. 1. Short title; table of contents.

* * * * *

TITLE III—FEDERAL TRANSIT ADMINISTRATION PROGRAMS

* * * * *

[3038. Over-the-road bus accessibility program.]

* * * * *

TITLE IV—MOTOR CARRIER SAFETY

* * * * *

[Sec. 4023. Employee protections.]

* * * * *

TITLE III—FEDERAL TRANSIT ADMINISTRATION PROGRAMS

* * * * *

[SEC. 3038. OVER-THE-ROAD BUS ACCESSIBILITY PROGRAM.

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

[(1) INTERCITY, FIXED-ROUTE OVER-THE-ROAD BUS SERVICE.—The term “intercity, fixed-route over-the-road bus service” means regularly scheduled bus service for the general public, using an over-the-road bus, that—

[(A) operates with limited stops over fixed routes connecting 2 or more urban areas not in close proximity or connecting 1 or more rural communities with an urban area not in close proximity;

[(B) has the capacity for transporting baggage carried by passengers; and

[(C) makes meaningful connections with scheduled intercity bus service to more distant points.

[(2) OTHER OVER-THE-ROAD BUS SERVICE.—The term “other over-the-road bus service” means any other transportation using over-the-road buses including local fixed-route service, commuter service, and charter or tour service (including tour or excursion service that includes features in addition to bus transportation such as meals, lodging, admission to points of interest or special attractions or the services of a tour guide).

[(3) OVER-THE-ROAD BUS.—The term “over-the-road bus” means a bus characterized by an elevated passenger deck located over a baggage compartment.

[(b) GENERAL AUTHORITY.—The Secretary shall make grants under this section to operators of over-the-road buses to finance the incremental capital and training costs of complying with the Department of Transportation’s final rule regarding accessibility of over-the-road buses required by section 306(a)(2)(B) of the Americans with Disabilities Act of 1990 (42 U.S.C. 12186(a)(2)(B)).

[(c) GRANT CRITERIA.—In selecting applicants for grants under this section, the Secretary shall consider—

[(1) the identified need for over-the-road bus accessibility for persons with disabilities in the areas served by the applicant;

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[(2) the extent to which the applicant demonstrates innovative strategies and financial commitment to providing access to over-the-road buses to persons with disabilities;

[(3) the extent to which the over-the-road bus operator acquires equipment required by the final rule prior to any required timeframe in the final rule;

[(4) the extent to which financing the costs of complying with the Department of Transportation's final rule regarding accessibility of over-the-road buses presents a financial hardship for the applicant; and

[(5) the impact of accessibility requirements on the continuation of over-the-road bus service, with particular consideration of the impact of the requirements on service to rural areas and for low-income individuals.

[(d) COMPETITIVE GRANT SELECTION.—The Secretary shall conduct a national solicitation for applications for grants under this section. Grantees shall be selected on a competitive basis.

[(e) FEDERAL SHARE OF COSTS.—The Federal share of costs under this section shall be provided from funds made available to carry out this section and shall be determined in accordance with section 5323(i) of title 49, United States Code.

[(f) GRANT REQUIREMENTS.—A grant under this section shall be subject to all of the terms and conditions applicable to subrecipients who provide intercity bus transportation under section 5311(f) of title 49, United States Code, and such other terms and conditions as the Secretary may prescribe.

[(g) FUNDING.—

[(1) INTERCITY, FIXED ROUTE OVER-THE-ROAD BUS SERVICE.—Of the amounts made available to carry out this section in each fiscal year, 75 percent shall be available for operators of over-the-road buses used substantially or exclusively in intercity, fixed-route over-the-road bus service to finance the incremental capital and training costs of the Department of Transportation's final rule regarding accessibility of over-the-road buses. Such amounts shall remain available until expended.

[(2) OTHER OVER-THE-ROAD BUS SERVICE.—Of the amounts made available to carry out this section in each fiscal year, 25 percent shall be available for operators of other over-the-road bus service to finance the incremental capital and training costs of the Department of Transportation's final rule regarding accessibility of over-the-road buses. Such amounts shall remain available until expended.]

* * * * *

TITLE IV—MOTOR CARRIER SAFETY

* * * * *

[SEC. 4023. EMPLOYEE PROTECTIONS.

[Not later than 2 years after the date of enactment of this Act, the Secretary, in conjunction with the Secretary of Labor, shall report to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Transportation and Infrastruc-

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ture of the House of Representatives on the effectiveness of existing statutory employee protections provided for under section 31105 of title 49, United States Code. The report shall include recommendations to address any statutory changes necessary to strengthen the enforcement of such employee protection provisions.]

* * * * *

UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION POLICIES ACT OF 1970

* * * * *

TITLE II—UNIFORM RELOCATION ASSISTANCE

* * * * *

MOVING AND RELATED EXPENSES

SEC. 202. (a) Whenever a program or project to be undertaken by a displacing agency will result in the displacement of any person, the head of the displacing agency shall provide for the payment to the displaced person of—

(1) * * *

* * * * *

(4) actual reasonable expenses necessary to reestablish a displaced farm, nonprofit organization, or small business at its new site, but not to exceed ~~[\$10,000]~~ \$25,000, as adjusted by regulation, in accordance with section 213(d).

* * * * *

(c) Any displaced person eligible for payments under subsection (a) of this section who is displaced from the person's place of business or farm operation and who is eligible under criteria established by the head of the lead agency may elect to accept the payment authorized by this subsection in lieu of the payment authorized by subsection (a) of this section. Such payment shall consist of a fixed payment in an amount to be determined according to criteria established by the head of the lead agency, except that such payment shall not be less than \$1,000 nor more than ~~[\$20,000]~~ \$40,000, as adjusted by regulation, in accordance with section 213(d). A person whose sole business at the displacement dwelling is the rental of such property to others shall not qualify for a payment under this subsection.

* * * * *

REPLACEMENT HOUSING FOR HOMEOWNER

SEC. 203. (a)(1) In addition to payments otherwise authorized by this title, the head of the displacing agency shall make an additional payment not in excess of ~~[\$22,500]~~ \$31,000, as adjusted by regulation, in accordance with section 213(d), to any displaced person who is displaced from a dwelling actually owned and occupied by such displaced person for not less than [one hundred and eighty days prior to] 90 days before the initiation of negotiations for the

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acquisition of the property. Such additional payment shall include the following elements:

(A) * * *

* * * * *

REPLACEMENT HOUSING FOR TENANTS AND CERTAIN OTHERS

SEC. 204. (a) In addition to amounts otherwise authorized by this title, the head of a displacing agency shall make a payment to or for any displaced person displaced from any dwelling not eligible to receive a payment under section 203 which dwelling was actually and lawfully occupied by such displaced person for not less than 90 days immediately prior to (1) the initiation of negotiations for acquisition of such dwelling, or (2) in any case in which displacement is not a direct result of acquisition, such other event as the head of the lead agency shall prescribe. Such payment shall consist of the amount necessary to enable such person to lease or rent for a period not to exceed 42 months, a comparable replacement dwelling, but not to exceed [\$5,250] \$7,200, as adjusted by regulation, in accordance with section 213(d). At the discretion of the head of the displacing agency, a payment under this subsection may be made in periodic installments. Computation of a payment under this subsection to a low-income displaced person for a comparable replacement dwelling shall take into account such person's income.

(b) Any person eligible for a payment under subsection (a) of this section may elect to apply such payment to a down payment on, and other incidental expenses pursuant to, the purchase of a decent, safe, and sanitary replacement dwelling. Any such person may, at the discretion of the head of the displacing agency, be eligible under this subsection for the maximum payment allowed under subsection (a), except that, in the case of a displaced homeowner who has owned and occupied the displacement dwelling for at least 90 days but not more than 180 days immediately prior to the initiation of negotiations for the acquisition of such dwelling, such payment shall not exceed the payment such person would otherwise have received under section 203(a) of this Act had the person owned and occupied the displacement dwelling 180 days immediately prior to the initiation of such negotiations.]

* * * * *

DUTIES OF LEAD AGENCY

SEC. 213. (a) * * *

(b) The head of the lead agency is authorized to issue such regulations and establish such procedures as he may determine to be necessary to assure—

(1) * * *

(2) that a displaced person who makes proper application for a payment authorized for such person by this title shall be paid promptly after a move or, in hardship cases, be paid in advance; [and]

(3) that any aggrieved person may have his application reviewed by the head of the Federal agency having authority over the applicable program or project or, in the case of a pro-

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gram or project receiving Federal financial assistance, by the State agency having authority over such program or project or the Federal agency having authority over such program or project if there is no such State agency[.]; and

(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 provide to the lead agency an annual summary report that describes the activities conducted by the Federal agency.

* * * * *

(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.

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

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result in the displacement of persons or the acquisition of real property.

* * * * *

MOTOR CARRIER SAFETY IMPROVEMENT ACT OF 1999

* * * * *

TITLE II—COMMERCIAL MOTOR VEHICLE AND DRIVER SAFETY

* * * * *

SEC. 229. CERTAIN EXEMPTIONS.

(a) EXEMPTIONS.—

[(1) TRANSPORTATION OF AGRICULTURAL COMMODITIES AND FARM SUPPLIES.—Regulations prescribed by the Secretary under sections 31136 and 31502 regarding maximum driving and on-duty time for drivers used by motor carriers shall not apply during planting and harvest periods, as determined by each State, to drivers transporting agricultural commodities or farm supplies for agricultural purposes in a State if such transportation is limited to an area within a 100 air mile radius from the source of the commodities or the distribution point for the farm supplies.]

(1) TRANSPORTATION OF AGRICULTURAL COMMODITIES AND FARM SUPPLIES.—Regulations issued by the Secretary under sections 31136 and 31502 of title 49, United States Code, regarding maximum driving and on-duty time for a driver used by a motor carrier, shall not apply during a planting or harvest period of a State, as that period is determined by the State, to—

(A) drivers transporting agricultural commodities in the State from the source of the agricultural commodities to a location within a 150 air-mile radius from the source;

(B) drivers transporting farm supplies for agricultural purposes in the State from a wholesale or retail distribution point of the farm supplies to a farm or other location where the farm supplies are intended to be used within a 150 air-mile radius from the distribution point; or

(C) drivers transporting farm supplies for agricultural purposes in the State from a wholesale distribution point of the farm supplies to a retail distribution point of the farm supplies within a 150 air-mile radius from the wholesale distribution point.

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SECTION 306 OF THE SAFETEA-LU TECHNICAL CORRECTIONS ACT OF 2008

SEC. 306. APPLICABILITY OF FAIR LABOR STANDARDS ACT REQUIREMENTS AND LIMITATION ON LIABILITY.

(a) * * *

* * * * *

(c) COVERED EMPLOYEE DEFINED.—In this section, the term “covered employee” means an individual—

(1) * * *

(2) whose work, in whole or in part, is defined—

(A) * * *

(B) as affecting the safety of operation of motor vehicles weighing 10,000 pounds or less in transportation on public highways in interstate or foreign commerce, except vehicles—

(i) * * *

(ii) designed or used to transport more than 15 passengers (including the driver) and not used to transport passengers for compensation; [or]

(iii) used in transporting material found by the Secretary of Transportation to be hazardous under section 5103 of title 49, United States Code, and transported in a quantity requiring placarding under regulations prescribed by the Secretary under section 5103 of title 49, United States Code; [and] or

(iv) operating under contracts with rail carriers subject to part A of subtitle IV of title 49, United States Code, and used to transport employees of such rail carriers; and

* * * * *

SECTION 502 OF THE RAILROAD REVITALIZATION AND REGULATORY REFORM ACT OF 1976

SEC. 502. DIRECT LOANS AND LOAN GUARANTEES.

(a) * * *

(b) ELIGIBLE PURPOSES.—

(1) IN GENERAL.—Direct loans and loan guarantees under this section shall be used to—

(A) * * *

* * * * *

(C) develop or establish new intermodal or railroad facilities, including high-speed rail (as defined in section 26105(2) of title 49, United States Code) facilities.

* * * * *

(c) PRIORITY PROJECTS.—In granting applications for direct loans or guaranteed loans under this section, the Secretary shall give priority to projects that—

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(1) enhance public safety, including projects for the installation of positive train control systems as defined in section 20157(i) of title 49, United States Code;

* * * * *

(f) INFRASTRUCTURE PARTNERS.—

(1) AUTHORITY OF SECRETARY.—In lieu of or in combination with appropriations of budget authority to cover the costs of direct loans and loan guarantees as required under section 504(b)(1) of the Federal Credit Reform Act of 1990, the Secretary may accept on behalf of an applicant for assistance [under this section a commitment] under this section private insurance, including bond insurance, or any other commitment from a non-Federal source to fund in whole or in part credit risk premiums with respect to the loan that is the subject of the application. In no event shall the aggregate of appropriations of budget authority and credit risk premiums or private insurance, including bond insurance, described in this paragraph with respect to a direct loan or loan guarantee be less than the cost of that direct loan or loan guarantee.

* * * * *

(3) PAYMENT OF PREMIUMS.—Credit risk premiums under this subsection shall be paid to the Secretary before the disbursement of loan amounts, or, at the discretion of the Secretary, in a series of payments over the term of the loan. If private insurance, including bond insurance, is used, the policy premium shall be paid before the loan is disbursed.

* * * * *

(h) CONDITIONS OF ASSISTANCE.—(1) * * *

(2)(A) The Secretary shall not require an applicant for a direct loan or loan guarantee under this section to provide collateral. Any collateral provided or thereafter enhanced shall be valued as a going concern after giving effect to the present value of improvements contemplated by the completion and operation of the project. Such collateral shall be valued at 100 percent of the liquidated asset valuation, or going concern valuation when applicable. The Secretary shall not require that an applicant for a direct loan or loan guarantee under this section have previously sought the financial assistance requested from another source. The Secretary may subordinate rights of the Secretary under any provision of title 49 or title 23 of the United States Code, to the rights of the Secretary under this section and section 503.

(B) In the case of an applicant that is a State, an Interstate compact, a local government authority as defined in section 5302 of title 49, United States Code, or a high-speed rail system as defined in section 26105 of title 49, United States Code, the Secretary shall, for purposes of making a finding under subsection (g)(4), accept the net present value on a future stream of State or local subsidy income or dedicated revenue as collateral offered to secure the loan.

(C) For purposes of making a finding under subsection (g)(4) with respect to an application for a project for the installation of positive train control systems, the collateral value of that asset shall

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be deemed to be equal to the total cost of the labor and materials associated with installing the positive train control systems.

* * * * *
(i) TIME LIMIT FOR APPROVAL OR [DISAPPROVAL.—Not later than 90 days after receiving] DISAPPROVAL.—

(1) IN GENERAL.—Not later than 90 days after an application is determined pursuant to paragraph (2) to be a complete application for a direct loan or loan guarantee under this section, the Secretary shall approve or disapprove the application. In order to enable compliance with such time limit, the Office of Management and Budget shall take any actions required with respect to the application within such 90-day period.

(2) COMPLETION OF APPLICATION.—The Secretary shall establish procedures for making a determination not later than 45 days after submission of an application under this section whether the application is complete. Such procedures shall—

(A) provide for a checklist of the required components of a complete application;

(B) provide that an independent financial analyst be assigned within 45 days of submittal to review the application;

(C) require the Secretary to provide to the applicant a description of the specific components of the application that remain incomplete or unsatisfactory if an application is determined to be incomplete; and

(D) permit reapplication without prejudice for applications determined to be incomplete or unsatisfactory.

(j) REPAYMENT SCHEDULES.—

(1) * * *

* * * * *
(3) TREATMENT OF COSTS ASSOCIATED WITH DEFERRAL.—Any additional costs associated with a deferred repayment schedule under paragraph (1) may be financed over the remaining term of the loan beginning at the time the payments begin, or may be included in the credit risk premium determined under subsection (f)(2).

(k) REPORT TO CONGRESS.—Not later than 1 year after the date of enactment of the American Energy and Infrastructure Jobs Act of 2012, and annually thereafter, the Secretary shall transmit to the Congress a report on the program under this section that summarizes the number of loans approved and disapproved by the Secretary during the previous year. Such report shall not disclose the identity of loan or loan guarantee recipients. The report shall describe—

(1) the number of preapplication meetings with potential applicants;

(2) the number of applications received and determined complete under subsection (i)(2), including the requested loan amounts;

(3) the dates of receipt of applications;

(4) the dates applications were determined complete under subsection (i)(2);

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(5) the number of applications determined incomplete under subsection (i)(2);

(6) the final decision dates for both approvals and denials of applications;

(7) the number of applications withdrawn from consideration; and

(8) the annual loan portfolio asset quality.

(l) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary for purposes of carrying out subsections (f)(3) and (j)(3), \$50,000,000 for fiscal year 2013.

PASSENGER RAIL INVESTMENT AND IMPROVEMENT ACT OF 2008

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DIVISION B—AMTRAK

* * * * *

TITLE I—AUTHORIZATIONS

SEC. 101. AUTHORIZATION FOR AMTRAK CAPITAL AND OPERATING EXPENSES.

(a) OPERATING GRANTS.—There are authorized to be appropriated to the Secretary for the use of Amtrak for operating costs the following amounts:

(1) * * *

* * * * *

(4) For fiscal year 2012, **[\$616,000,000]** \$466,000,000.

(5) For fiscal year 2013, **[\$631,000,000]** \$473,250,000.

* * * * *

TITLE II—AMTRAK REFORM AND OPERATIONAL IMPROVEMENTS

* * * * *

SEC. 209. STATE-SUPPORTED ROUTES.

(a) * * *

* * * * *

(c) REVIEW.—If Amtrak and the States (including the District of Columbia) in which Amtrak operates such routes do not voluntarily adopt and implement the methodology developed under subsection (a) in allocating costs and determining compensation for the provision of service in accordance with the date established therein, the Surface Transportation Board shall determine the appropriate methodology required under subsection (a) for such services in accordance with the procedures and procedural schedule applicable to a proceeding under section 24904(c) of title 49, United States Code,

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and require the full implementation of this methodology with regards to the provision of such service [within 1 year after the Board's determination] by the first day of the first fiscal year beginning at least 1 year after the Board's determination of the appropriate methodology.

* * * * *

RAIL SAFETY IMPROVEMENT ACT OF 2008

DIVISION A—RAIL SAFETY

SEC. 1. SHORT TITLE; TABLE OF CONTENTS; AMENDMENT OF TITLE 49.

(a) **SHORT TITLE.**—This division may be cited as the “Rail Safety Improvement Act of 2008”.

(b) **TABLE OF CONTENTS.**—The table of contents for this division is as follows:

Sec. 1. Short title; table of contents; amendment of title 49.

* * * * *

TITLE III—FEDERAL RAILROAD ADMINISTRATION

* * * * *

Sec. 307. Update of Federal Railroad Administration's [website] *Web site*.

* * * * *

TITLE IV—RAILROAD SAFETY ENHANCEMENTS

* * * * *

Sec. 403. [Track inspection time study] *Study and rulemaking on track inspection time; rulemaking on concrete cross ties.*

* * * * *

Sec. 408. Study of repeal of [Conrail] *Consolidated Rail Corporation* provision.

* * * * *

TITLE VI—CLARIFICATION OF FEDERAL JURISDICTION OVER [SOLID WASTE FACILITIES] *SOLID WASTE RAIL TRANSFER FACILITIES*

* * * * *

Sec. 602. Clarification of general jurisdiction over [solid waste transfer facilities] *solid waste rail transfer facilities.*

* * * * *

SEC. 2. DEFINITIONS.

(a) **IN GENERAL.**—In this division:

(1) **CROSSING.**—The term “crossing” means a location within a State, other than a location where one or more railroad tracks cross one or more railroad tracks at grade, where—

(A) * * *

* * * * *

SEC. 102. RAILROAD SAFETY STRATEGY.

(a) **SAFETY GOALS.**—In conjunction with existing federally-required and voluntary strategic planning efforts ongoing at the Department and the Federal Railroad Administration as of the date of enactment of this Act, the Secretary shall develop a long-term strategy for improving railroad safety to cover a period of not less

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than 5 years. The strategy shall include an annual plan and schedule for achieving, at a minimum, the following goals:

(1) * * *

* * * * *

[(6) Improving the safety of railroad bridges, tunnels, and related infrastructure to prevent accidents, incidents, injuries, and fatalities caused by catastrophic failures and other bridge and tunnel failures.]

(6) *Improving the safety of railroad bridges, tunnels, and related infrastructure to prevent accidents, incidents, injuries, and fatalities caused by catastrophic and other failures of such infrastructure.*

* * * * *

TITLE II—HIGHWAY-RAIL GRADE CROSSING AND PEDESTRIAN SAFETY AND TRESPASSER PREVENTION

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SEC. 206. OPERATION LIFESAVER.

(a) GRANT.—The Federal Railroad Administration shall make a grant or grants to Operation Lifesaver to carry out a public information and education program to help prevent and reduce pedestrian, motor vehicle, and other accidents, incidents, injuries, and fatalities, and to improve awareness along railroad rights-of-way and at highway-rail grade crossings. The program shall include, as appropriate, development, placement, and dissemination of [Public Service Announcements] *public service announcements* in newspaper, radio, television, and other media. The program shall also include, as appropriate, school presentations, brochures and materials, support for public awareness campaigns, and related support for the activities of Operation Lifesaver's member organizations. As part of an educational program funded by grants awarded under this section, Operation Lifesaver shall provide information to the public on how to identify and report to the appropriate authorities unsafe or malfunctioning highway-rail grade crossings.

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TITLE III—FEDERAL RAILROAD ADMINISTRATION

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SEC. 307. UPDATE OF FEDERAL RAILROAD ADMINISTRATION'S [WEBSITE] WEB SITE.

(a) IN GENERAL.—The Secretary shall update the Federal Railroad Administration's public [website] *Web site* to better facilitate the ability of the public, including those individuals who are not regular users of the public [website] *Web site*, to find current information regarding the Federal Railroad Administration's activities.

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(b) PUBLIC REPORTING OF VIOLATIONS.—On the Federal Railroad Administration's public [website's] *Web site's* home page, the Secretary shall provide a mechanism for the public to submit written reports of potential violations of Federal railroad safety and hazardous materials transportation laws, regulations, and orders to the Federal Railroad Administration.

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TITLE IV—RAILROAD SAFETY ENHANCEMENTS

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SEC. 403. [TRACK INSPECTION TIME STUDY] STUDY AND RULEMAKING ON TRACK INSPECTION TIME; RULEMAKING ON CONCRETE CROSS TIES.

(a) * * *

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SEC. 405. LOCOMOTIVE CAB STUDIES.

(a) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the Secretary, through the Railroad Safety Advisory Committee if the Secretary makes such a request, shall complete a study on the safety impact of the use of personal electronic devices, including [cell phones] *cellular telephones*, video games, and other distracting devices, by safety-related railroad employees (as defined in section 20102(4) of title 49, United States Code), during the performance of such employees' duties. The study shall consider the prevalence of the use of such devices.

* * * * *

(d) AUTHORITY.—Based on the conclusions of the study required under (a), the [Secretary of Transportation] *Secretary* may prohibit the use of personal electronic devices, such as cell phones, video games, or other electronic devices that may distract employees from safely performing their duties, unless those devices are being used according to railroad operating rules or for other work purposes. Based on the conclusions of other studies conducted under subsection (b), the Secretary may prescribe regulations to improve elements of the cab environment to protect an employee's health and safety.

* * * * *

SEC. 408. STUDY OF REPEAL OF [CONRAIL] CONSOLIDATED RAIL CORPORATION PROVISION.

Not later than 1 year after the date of enactment of this Act, the Secretary shall complete a study of the impacts of repealing section 711 of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 797j). Not later than 6 months after completing the study, the Secretary shall transmit a report with the Secretary's findings, conclusions, and recommendations to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure.

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SEC. 412. ALCOHOL AND CONTROLLED SUBSTANCE TESTING FOR MAINTENANCE-OF-WAY EMPLOYEES.

Not later than 2 years following the date of enactment of this Act, the [Secretary of Transportation] *Secretary* shall complete a rulemaking proceeding to revise the regulations prescribed under section 20140 of title 49, United States Code, to cover all employees of railroad carriers and contractors or subcontractors to railroad carriers who perform maintenance-of-way activities.

* * * * *

SEC. 414. TUNNEL INFORMATION.

Not later than 120 days after the date of enactment of this Act, each railroad carrier shall, with respect to each of its tunnels which—

(1) * * *

(2) carry 5 or more scheduled passenger trains per day, or 500 or more carloads of poison- or toxic-by-inhalation hazardous materials (as defined in [parts 171.8, 173.115,] *sections 171.8, 173.115, and 173.132* of title 49, Code of Federal Regulations) per year,

maintain, for at least two years, historical documentation of structural inspection and maintenance activities for such tunnels, including information on the methods of ingress and egress into and out of the tunnel, the types of cargos typically transported through the tunnel, and schematics or blueprints for the tunnel, when available. Upon request, a railroad carrier shall provide periodic briefings on such information to the governments of the local jurisdiction in which the tunnel is located, including updates whenever a repair or rehabilitation project substantially alters the methods of ingress and egress. Such governments shall use appropriate means to protect and restrict the distribution of any security sensitive information (as defined in [part 1520.5] *section 1520.5* of title 49, Code of Federal Regulations) provided by the railroad carrier under this section, consistent with national security interests.

* * * * *

SEC. 416. SAFETY INSPECTIONS IN MEXICO.

Mechanical and brake inspections of rail cars performed in Mexico shall not be treated as satisfying United States rail safety laws or regulations unless the [Secretary of Transportation] *Secretary* certifies that—

(1) * * *

* * * * *

(4) the Federal Railroad Administration is permitted to perform onsite inspections for the purpose of ensuring compliance with the requirements of this [subsection] *section*.

SEC. 417. RAILROAD BRIDGE SAFETY ASSURANCE.

(a) * * *

* * * * *

(c) **USE OF BRIDGE MANAGEMENT PROGRAMS REQUIRED.**—The Secretary shall instruct bridge experts to obtain copies of the most recent bridge management programs of [each railroad] *each railroad carrier* within the expert's areas of responsibility, and require

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that experts use those programs when conducting bridge observations.

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TITLE V—RAIL PASSENGER DISASTER FAMILY ASSISTANCE

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SEC. 503. ESTABLISHMENT OF TASK FORCE.

(a) * * *

(b) **MODEL PLAN AND RECOMMENDATIONS.**—The task force established pursuant to subsection (a) shall develop—

(1) a model plan to assist rail passenger carriers in responding to [passenger rail accidents] *rail passenger accidents*;

(2) recommendations on methods to improve the timeliness of the notification provided by passenger rail carriers to the families of passengers involved in a [passenger rail accident] *rail passenger accident*;

(3) recommendations on methods to ensure that the families of passengers involved in a [passenger rail accident] *rail passenger accident* who are not citizens of the United States receive appropriate assistance; and

(4) recommendations on methods to ensure that emergency services personnel have as immediate and accurate [a count of the number of passengers onboard the train] *a count of the number of passengers aboard the train* as possible.

* * * * *

(d) **DEFINITIONS.**—*In this section, the terms “passenger” and “rail passenger accident” have the meaning given those terms by section 1139 of this title.*

TITLE VI—CLARIFICATION OF FEDERAL JURISDICTION OVER [SOLID WASTE FACILITIES] SOLID WASTE RAIL TRANSFER FACILITIES

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SEC. 602. CLARIFICATION OF GENERAL JURISDICTION OVER [SOLID WASTE TRANSFER FACILITIES] SOLID WASTE RAIL TRANSFER FACILITIES.

(a) * * *

* * * * *

DINGELL-JOHNSON SPORT FISH RESTORATION ACT

* * * * *

SEC. 4. (a) IN GENERAL.—[For each of fiscal years 2006 through 2012, the balance of each annual] *For each fiscal year*

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through fiscal year 2016, the balance of each annual appropriation made in accordance with the provisions of section 3 remaining after the distributions for administrative expenses and other purposes under subsection (b) and for multistate conservation grants under section 14 shall be distributed as follows:

(1) * * *

* * * * *

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

(1) IN GENERAL.—

(A) SET-ASIDE FOR ADMINISTRATION.—[From the annual appropriation made in accordance with section 3, for each of fiscal years 2006 through 2012, the Secretary] From the annual appropriation made in accordance with section 3 for each fiscal year through fiscal year 2016, the Secretary of the Interior may use no more than the amount specified in subparagraph (B) for the fiscal year for expenses for administration incurred in the implementation of this Act, in accordance with this section and section 9. The amount specified in subparagraph (B) for a fiscal year may not be included in the amount of the annual appropriation distributed under subsection (a) for the fiscal year.

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

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

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

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

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

[(II) the amount determined by multiplying— [(aa) the available amount for the preceding fiscal year; and

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

(B) AVAILABLE AMOUNTS.—The available amount referred to in subparagraph (A) is, for each fiscal year, the sum of—

(i) the available amount for the preceding fiscal year; and

(ii) the amount determined by multiplying—

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

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

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INTERNAL REVENUE CODE OF 1986

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Subtitle I—Trust Fund Code

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CHAPTER 98—TRUST FUND CODE

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Subchapter A—Establishment of Trust Funds

* * * * *

SEC. 9504. SPORT FISH RESTORATION AND BOATING TRUST FUND.

(a) * * *

(b) SPORT FISH RESTORATION AND BOATING TRUST FUND.—

(1) * * *

(2) EXPENDITURES FROM TRUST FUND.—Amounts in the Sport Fish Restoration and Boating trust Fund shall be available, as provided by appropriation Acts, for making expenditures—

(A) to carry out the purposes of the Dingell-Johnson Sport Fish Restoration Act [(as in effect on the date of the enactment of the Surface Transportation Extension Act of 2011, Part II)] (as in effect on the date of enactment of the Sportfishing and Recreational Boating Safety Act of 2012),

(B) to carry out the purposes of section 7404(d) of the Transportation Equity Act for the 21st Century [(as in effect on the date of the enactment of the Surface Transportation Extension Act of 2011, Part II)] (as in effect on the date of enactment of the Sportfishing and Recreational Boating Safety Act of 2012), and

(C) to carry out the purposes of the Coastal Wetlands Planning, Protection and Restoration Act [(as in effect on the date of the enactment of the Surface Transportation Extension Act of 2011, Part II)] (as in effect on the date of enactment of the Sportfishing and Recreational Boating Safety Act of 2012).

* * * * *

(d) LIMITATION ON TRANSFERS TO TRUST FUND.—

(1) * * *

(2) EXCEPTION FOR PRIOR OBLIGATIONS.—Paragraph (1) shall not apply to any expenditure to liquidate any contract entered into (or for any amount otherwise obligated) [before April 1, 2012, in accordance] before October 1, 2016, in accordance with the provisions of this section.

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TITLE 46, UNITED STATES CODE

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Subtitle II—Vesels and Seamen

* * * * *

PART I—STATE BOATING SAFETY PROGRAMS

* * * * *

CHAPTER 131—RECREATIONAL BOATING SAFETY

* * * * *

§ 13107. Authorization of appropriations

(a)(1) * * *

(2) The Secretary shall use not more than [two] 1.5 percent of the amount available each fiscal year for State recreational boating safety programs under this chapter to pay the costs of investigations, personnel, and activities related to administering those programs.

* * * * *

[(c)(1) Of the amount transferred to the Secretary under subsection (a)(2) of section 4 of the Dingell-Johnson Sport Fish Restoration Act (16 U.S.C. 777c(a)(2)), \$5,500,000 is available to the Secretary for payment of expenses of the Coast Guard for personnel and activities directly related to coordinating and carrying out the national recreational boating safety program under this title, of which not less than \$2,000,000 shall be available to the Secretary only to ensure compliance with chapter 43 of this title.]

(c)(1) Of the amount transferred to the Secretary under section 4(a)(2) of the Dingell-Johnson Sport Fish Restoration Act (16 U.S.C. 777c(a)(2))—

(A) \$6,000,000 is available to the Secretary for the payment of expenses of the Coast Guard for personnel and activities directly related to coordinating and carrying out the national recreational boating safety program under this title, of which not less than \$2,000,000 shall be available to the Secretary only to ensure compliance with chapter 43 of this title; and

(B) \$100,000 is available to fund the activities of the National Boating Safety Advisory Council established under this chapter.

* * * * *

DISSENTING VIEWS

In the wake of the greatest recession since the Great Depression, more than 2.5 million construction and manufacturing workers are still out of work. Passage of Federal surface transportation legislation is critical to both the nation's continued economic recovery and our long-term economic competitiveness. We desperately need increased infrastructure investment to create American jobs, restore our nation's economic growth, greatly improve quality of life in our communities, and reduce the nation's dependence on imported oil. If investment levels are adequate and directed toward the system's greatest needs, the benefits of this investment will reach every American and every business and offer reduced congestion, improved travel times, expanded transportation options, improved safety, and direct and indirect job creation.

We had hoped that the Committee on Transportation and Infrastructure would develop legislation demonstrating a commitment to reforming the nation's surface transportation programs to meet the needs of the 21st Century, and addressing the nation's well documented surface transportation needs. Unfortunately, H.R. 7 fails on both fronts. As reported by the Committee, the bill fails to provide the necessary investment levels to build the nation's surface transportation network, and undermines the intermodal nature of the nation's surface transportation system. In fact, the bill cuts Federal-aid highway investment by \$15.8 billion – destroying 550,000 family-wage jobs over the coming years.

With the nation's surface transportation network at a crisis point, we are deeply troubled that, instead of coming together to build on the longstanding, bipartisan traditions of this Committee and develop a forward-looking proposal that meets nation's surface transportation infrastructure needs, our Republican colleagues have put forth a proposal that cuts funding, destroys jobs, undermines safety, and dramatically limits public participation in the surface transportation process. This bill is filled with special-interest provisions and ideological attacks on long-standing surface transportation programs and policies. In addition, the changes made by H.R. 3864, as reported by the Committee on Ways and Means, undermine the user-financed system that has provided dedicated revenues for both highway and public transit investment for decades.

We are saddened that, for the first time in the Committee's storied history, the majority is bringing a partisan surface transportation bill to the Floor. As currently drafted, this bill lacks credibility, and will not become law. We urge our Republican colleagues to end this partisan game and work with us to invest in our nation and put Americans back to work.

1. FUNDING AND REVENUES

We are particularly troubled with the impact of H.R. 7 on American jobs. Despite our Republican colleagues' insistence that H.R. 7 is a critical aspect of their job creation agenda, the legislation actually cuts Federal-aid highway investment by \$15.8 billion when compared to the fiscal year 2011 investment level. This cut will destroy 550,000 family-wage jobs over the coming years. The Transportation Construction Coalition, which represents 28 national transportation construction and labor organizations, has written to the Committee that any cuts

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from current investment levels “are real, and all involved should be clear that this is a step away from job creation and preservation.”

We are also very concerned that only five States will receive more in Federal-aid highway investment over the life of the bill when compared to a five-year investment total based on current law funding levels (FY 2011). As reported, H.R. 7 short-changes surface transportation investment, allowing the nation’s infrastructure investment deficit to continue to grow, and significantly undermines the job creation potential of this legislation.

Federal-Aid Highway Funding
Comparison of Current Law and H.R. 7
(in dollars)

State	5-Year Investment Based on Current Law (FY 2011)	5-Year Investment Based on H.R. 7 (FY 2012-2016)	Difference
Alabama	3,936,513,785	3,577,320,987	-359,192,798
Alaska	2,601,654,825	1,562,249,935	-1,039,404,890
Arizona	3,796,307,150	3,529,808,058	-266,499,092
Arkansas	2,686,373,045	2,226,235,526	-460,137,519
California	19,043,669,975	18,319,117,341	-724,552,634
Colorado	2,774,530,160	2,684,197,639	-90,332,521
Connecticut	2,606,039,695	2,270,861,848	-335,177,847
Delaware	877,699,050	809,537,781	-68,161,269
District of Columbia	827,890,730	802,318,331	-25,572,399
Florida	9,830,701,585	8,949,798,846	-880,902,739
Georgia	6,699,554,405	6,168,169,871	-531,384,534
Hawaii	877,571,265	812,421,352	-65,149,913
Idaho	1,484,055,620	1,248,018,780	-236,036,840
Illinois	7,376,867,925	6,492,135,827	-884,732,098
Indiana	4,943,973,945	4,414,789,297	-529,184,648
Iowa	2,496,689,110	2,345,749,617	-150,939,493
Kansas	1,960,762,820	2,135,084,672	174,321,852
Kentucky	3,447,472,360	3,023,919,656	-423,552,704
Louisiana	3,641,649,935	3,109,807,385	-531,842,550
Maine	957,785,850	877,980,374	-79,805,476
Maryland	3,109,330,355	3,322,040,295	212,709,940
Massachusetts	3,151,260,980	3,182,985,435	31,724,455
Michigan	5,462,948,555	5,245,485,840	-217,462,715
Minnesota	3,383,394,820	3,070,272,344	-313,122,476
Mississippi	2,509,452,930	2,235,048,579	-274,404,351
Missouri	4,911,992,200	4,190,625,827	-721,366,373

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State	5-Year Investment Based on Current Law (FY 2011)	5-Year Investment Based on H.R. 7 (FY2012-2016)	Difference
Montana	2,128,864,565	1,612,281,940	-516,582,625
Nebraska	1,499,728,110	1,546,696,794	46,968,684
Nevada	1,884,077,085	1,476,268,498	-407,808,587
New Hampshire	857,281,050	824,643,931	-32,637,119
New Jersey	5,180,583,835	5,111,470,674	-69,113,161
New Mexico	1,905,403,175	1,773,405,471	-131,997,704
New York	8,709,302,770	8,103,420,242	-605,882,528
North Carolina	5,401,430,945	5,205,726,556	-195,704,389
North Dakota	1,288,163,500	1,286,572,625	-1,590,875
Ohio	6,954,907,100	6,521,011,770	-433,895,330
Oklahoma	3,290,688,480	2,907,164,872	-383,523,608
Oregon	2,593,421,530	2,294,326,235	-299,095,295
Pennsylvania	8,513,165,010	7,564,818,148	-948,346,862
Rhode Island	1,134,738,290	906,229,415	-228,508,875
South Carolina	3,257,529,525	3,218,463,389	-39,066,136
South Dakota	1,463,248,565	1,286,729,334	-176,519,231
Tennessee	4,384,546,675	3,940,348,353	-444,198,322
Texas	16,373,844,700	16,225,291,901	-148,552,799
Utah	1,671,634,775	1,512,605,524	-159,029,251
Vermont	1,053,052,205	812,816,960	-240,235,245
Virginia	5,280,022,395	4,919,101,465	-360,920,930
Washington	3,517,425,230	3,253,568,918	-263,856,312
West Virginia	2,267,507,355	1,813,712,495	-453,794,860
Wisconsin	3,904,064,605	3,282,857,230	-621,207,375
Wyoming	1,329,239,180	1,407,412,707	78,173,527
HIGHWAY FORMULA TOTAL	201,240,013,730	185,412,926,890	-15,827,086,840

Prepared by Committee on Transportation and Infrastructure Democratic staff based on information provided by the Federal Highway Administration (current law column) and Committee Republican staff (H.R. 7 column).

One of the most troubling aspects of the proposal is the source of funding for public transportation programs. Specifically, H.R. 3864, as ordered reported by the Committee on Ways and Means, eliminates the deposit of 2.86 cents of every gallon of gasoline into the Mass Transit Account of the Highway Trust Fund. Instead, the legislation transfers \$40 billion from the General Fund to a new "Alternative Transportation Account" established to fund transit programs and four highway programs previously funded out of the Highway Trust Fund.

While we realize that this change is outside the jurisdiction of this Committee, we are appalled that our Republican colleagues have allowed this fundamental change in the funding of

our surface transportation system to be adopted. By breaking the link between highways and transit and funding from the Trust Fund, this legislation represents the balkanization of surface transportation programs and leaves public transportation without a dedicated revenue source. Transit programs will have to compete with every other discretionary priority funded by the General Fund of the Treasury. A lack of dedicated revenue will further undermine the ability of public transportation providers to plan for long-term investments.

This short-sighted change to appease a minority of the Republican caucus who insist on cutting Federal spending at any cost is an inconceivable step backwards in surface transportation policy. More than 600 organizations agree with our view and have written letters of opposition to this financing mechanism.

2. BUY AMERICA

H.R. 7 also misses an opportunity to create more American jobs and to revive American manufacturing by failing to close all existing loopholes in Buy America laws. We acknowledge and support the adoption, during Committee consideration, of some provisions originally included in H.R. 3533, the "Invest in American Jobs Act of 2011", to prohibit the segmentation of highway, transit, and rail projects to evade Buy America requirements and the inclusion of more stringent notice requirements prior to the issuance of a waiver from Buy America rules. However, we are concerned that some of the changes in the bill to address environmental streamlining may undermine the application of these provisions. More importantly, H.R. 7 fails to close several gaping loopholes in Buy America laws.

Transit Rolling Stock Loophole: H.R. 7 continues to allow transit rolling stock procurements to be comprised of only 60 percent U.S.-made components. Currently, the Federal Transit Administration (FTA)'s regulations count the full cost of a component toward the domestic origin threshold if at least 60 percent of the subcomponents of the component are made in the United States. In practice, this means that a piece of rolling stock can be compliant with Buy America requirements even with as little as 36 percent of the total cost of the components of a bus or rail car being produced in the U.S. Despite the existing 60 percent domestic content standard for transit, foreign-owned railcar manufacturers and suppliers continue to keep higher-value manufacturing activities – such as design and engineering – in their home countries. Keeping higher-value manufacturing activities outside of the U.S. means far more jobs are created and sustained in the home countries of these companies, and innovation and capabilities continue to develop outside of the U.S. A full domestic content requirement will bring more jobs, skills, and economic activity to the U.S.

We strongly urge changes to H.R. 7 to ensure that rolling stock is subject to the same 100 percent domestic origin standards as steel, iron, and manufactured goods, and that the requirement to move from 60 percent to 100 percent be phased in over time. We strongly believe all future Federal investment in rolling stock should fully support American jobs. Some may argue that moving beyond 60 percent domestic content is impractical. In reality, as domestic content requirements increase, U.S. companies will step forward to fill the gap. In the last few years, as FTA has made waiver applications publicly available, several U.S. manufacturing companies have demonstrated their ability to produce transit bus and rail car

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components, such as software and streetcar rails, that were previously assumed to be unavailable domestically.

Rail Loopholes: The bill also fails to significantly strengthen and close loopholes for Buy America requirements applicable to rail projects. It fails to eliminate the exemptions from Buy America for Amtrak for capital projects that are less than \$1 million, for high-speed and intercity passenger rail projects that are less than \$100,000, and for the Railroad Rehabilitation and Improvement Financing (RRIF) loan program.

Waiver Loopholes: H.R. 7 also does not require the Secretary of Transportation to publish criteria to be used to determine whether a public interest waiver of Buy America requirements is warranted. Currently, the Secretary has complete discretion to decide on what basis to issue a public interest waiver, and these factors can vary from wavier to wavier and from one Administration to the next. We urge inclusion of language to define and set forth specific criteria that will be used by the Federal Highway Administration, the Federal Transit Administration, the Federal Railroad Administration, and Amtrak when considering whether to grant a public interest waiver. H.R. 7 also does not address the multitude of standing public interest and nationwide waivers that have been in place for decades. For instance, the Federal Highway Administration has a standing waiver for all manufactured goods, put in place during the initial rulemaking to implement Buy America in 1983. Similarly, the Federal Transit Administration has a general public interest waiver in place for software, even though software development is now done in the U.S. We believe that a review within one year, and every five years thereafter, of all such standing waivers is warranted.

3. LIMITING ENVIRONMENTAL REVIEW AND PUBLIC PARTICIPATION FOR HIGHWAY AND RAIL PROJECTS

The review process that is established under the National Environmental Policy Act (NEPA) and substantive environmental protections provided by a host of other Federal laws are intended to ensure that the impacts of transportation projects funded with Federal dollars are fully analyzed, other Federal agencies and the public have input into the decision-making process, a range of alternatives are considered, and environmental impacts are mitigated. Although H.R. 7 does not actually amend NEPA or other environmental laws directly, the effect of the legislation is to significantly limit or preclude their application to projects authorized under Title 23 and to rail projects. We have serious concerns that the changes made in the bill, which are extremely broad and far reaching, and significant detrimental impacts to both environmental review and public participation in the development and approval of such projects.

According to the Federal Highway Administration (FHWA), only about four percent of all projects funded through FHWA programs require an Environmental Assessment (EA) or Environmental Impact Statement (EIS). Of the remaining projects funded by FHWA, 96 percent are processed as categorical exclusions – the least intensive environmental review process under NEPA – and all project review is completed, on average, in 2.4 to six months. In the case of FTA, 99 percent of projects are processed as categorical exclusions, and all review resolved, on average, in less than six months. Despite this, NEPA and other Federal environmental laws are frequently cited as the main cause of delays in project delivery. Available data shows, however,

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that a lack of funding, changes in project design and scope, low priority and local controversy, and the complexity of a project are generally cited as more significant factors in project delivery delay than environmental review.

Still, in an effort to improve the effectiveness of environmental review processes with respect to highway and transit projects, significant changes to Title 23 were made in the last reauthorization bill (Pub. L. 109-58). The majority of these changes have been implemented, and according to FHWA, the efficiency of environmental reviews has improved significantly since their adoption. Still, there has been an ongoing push by our Republican counterparts to further limit environmental review under the guise of project streamlining. While we strongly support efficient review of projects to ensure timely project delivery, we believe it is possible to balance these needs with adequate opportunity for public input and environmental review. Unfortunately, H.R. 7 ignores that balance with respect to projects authorized under Title 23. Of further concern, the bill applies the same "streamlining" provisions part and parcel to rail projects that receive Federal funds, despite the fact that there is no data nor has the Committee held one hearing indicating a correlation between the NEPA review process and a delay in rail project delivery.

Waivers of NEPA for Certain Projects: The bill completely waives the application of NEPA for all highway and rail projects where the Federal share of the cost is less than \$10 million or 15 percent of the cost of the project. This arbitrary threshold for declaring a project to be exempt from a NEPA review process ignores the potential scope and impacts of the project on both the environment and the local community. This arbitrary approach is of particular concern in cases where a large-scale project may have a Federal cost share that does not meet the percentage threshold. This outright waiver also means that the provisions to prohibit segmentation to avoid compliance with Buy America laws adopted during Committee consideration of the bill may not apply to these projects.

The bill would also exempt the reconstruction of any road, highway, bridge, or rail project that is damaged in an emergency from any further review under NEPA and a wide range of other environmental laws if replacement is in the same location, with the same capacity, dimension, and design as before the emergency. Although we strongly agree that the quick replacement of public infrastructure after an emergency is the highest priority, it is not clear why an exemption from environmental laws is needed to accomplish this goal. Currently, any facility rebuilt with Emergency Relief program funds are categorically excluded under NEPA. Additionally, the Council on Environmental Quality and other Federal agencies already have policies, procedures, and legal authorities in place to expedite any needed reviews, and there are numerous examples that demonstrate the ability to expedite emergency infrastructure decisions.

For instance, in the case of levees and other flood control structures damaged in the New Orleans metropolitan area after Hurricane Katrina, reconstruction took place in ten months. As another example, in the case of the I-35W bridge collapse in Minneapolis, Minnesota, reconstruction took place in 339 days with no waiver of environmental laws. In both examples, the reconstruction activities were carried out in accordance with current environmental laws and regulations, which had virtually no impact on time required to complete the reconstruction work. However, in both situations, it was the availability of full funding for the projects that may have

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been the most important factor for their expedited completion. In our view, this fact highlights a major concern with the focus of this bill – it claims to expedite project delivery by eliminating substantive and procedural environmental protections, but short-changes long-term funding of transportation programs. These examples show that the real causes of delay may be exactly the opposite of this bill's focus.

Limits on the Review Process: We are also concerned that, in addition to significantly limiting the universe of highway and rail projects that would be subject to review and public participation under NEPA, the bill places limitations on the review process itself. Specifically, H.R. 7 limits consideration of alternatives that would need to be considered as a project is analyzed; limits the assessment of cumulative impacts; mandates the use of certain documents in the review process and allows the use of documents that are not subject to agency consultation or judicial review; limits input by other Federal agencies and sets arbitrary timelines for agency participation that, if not met, deems the agencies to be in concurrence with the decisions of the Secretary of Transportation; establishes timelines for approvals or determinations under other Federal laws that, if not met, then the project is deemed to be in compliance with those laws; and limits or precludes judicial review in numerous circumstances.

Short Circuiting the Public Process: In addition, the bill allows States to acquire real property interests, carry out final design activities, and let contracts before a NEPA review process has been completed. This process raises serious questions about project outcomes being predetermined and undermines the public's role in the selection of a preferred alternative.

Again, while we support timely project delivery, it is already the case that the vast majority of projects require the minimal review process established under NEPA. For those remaining four or five percent of projects, it is understandable that, because of their size, complexity, or potential impact to local communities or the environment, a more robust Federal, state, and local review and input is warranted. To further limit or bias the review process of these larger and more complex projects that warrant a broader review and analysis, as this bill does, is to limit the ability of the public to fully consider alternatives and to ignore the potential impacts of these projects to the environment and the community.

State Delegation: For both highway and rail projects, the bill authorizes the Secretary of Transportation to establish a program that would allow States to use state laws and procedures to conduct reviews and make approvals in lieu of any Federal environmental laws and regulations if the Secretary determines the State's environmental review and approval procedures are "substantially equivalent" to the Federal laws and regulations. This delegation of authority has been allowed in the case of NEPA under a pilot program that only one State has taken advantage of to date. Although we support the continuation of this pilot program, a one-state pilot program does not provide enough information or data on which to make permanent changes to law that affect all States; nor does it provide the data that would support turning the implementation and enforcement of all Federal environmental laws over to the States.

In addition, in the case of other environmental laws, we are concerned that the Secretary of Transportation is charged with making a determination regarding the adequacy of state programs and not the Federal agencies responsible for and expert in these laws. In other words,

this bill gives the Secretary of Transportation the sole authority to delegate the statutory responsibilities and authorities of other Federal agencies. There is no requirement for the Secretary to receive the concurrence of these agencies before doing so. In addition, unlike the provisions set forth in the last reauthorization to grant States authority to assume the Secretary of Transportation's responsibilities for NEPA review, this new provision does not stipulate that States that assume these new responsibilities shall be solely responsible and solely liable for complying with and carrying out the laws and does not require States who establish such programs to accept the jurisdiction of the Federal courts for the compliance, discharge, and enforcement of these responsibilities. The fact that these requirements do not apply to this section, while they do apply to the responsibilities to carry out and enforce NEPA, would imply that no such assumption of responsibility is expected. We question, then, who would bear legal responsibility if Federal laws were not adequately implemented and enforced. This issue is further complicated by the fact that the bill stipulates compliance with a permit issued by a State under a Secretariially-approved program is deemed in compliance with Federal law regardless of whether the requirements of the Federal law are actually being met.

This provision also ignores the fact that several Federal laws, including the Clean Water Act and the Clean Air Act, already have a statutory process for delegating responsibilities to the States under certain circumstances. For example, under the Clean Water Act, 46 of 50 States have been approved by the Environmental Protection Agency (EPA) to manage their Clean Water Act point source permitting program, and all States have been approved by EPA to manage their Clean Air Act programs. However, if this provision were to become law, it is possible a State that did not qualify for such delegation (or had such delegation revoked) under the Clean Water Act or the Clean Air Act could then be given this responsibility by the Secretary of Transportation for transportation projects, in direct conflict with other Federal laws.

Limitation on Law Suits: We are also concerned that the bill bars any claim arising under Federal law for any project unless it is filed within 90 days after the final approval of the project is published in the Federal Register. Current law allows 180 days for claims to be filed and that deadline was already shortened from six years in the last reauthorization. This limit on the public's right to challenge a project decision combined with all the other amendments in the bill intended to limit the NEPA process will have significant impacts on the public participation in the development and delivery of transportation projects.

New Activities Classified as Categorical Exclusions: We are concerned that H.R. 7 categorizes any project within a right-of-way, any extension of a rail line in a right of way, or the replacement of any railroad-related facilities as a class of action categorically excluded from review under NEPA, regardless of the scope of the project. While we support the concept of expedited procedures within the existing footprint of a facility, the arbitrary application of the categorical exclusion authority under NEPA ensures that many projects that could have significant impact on the environment and local communities will not go through any significant review. For instance, a community may have a two-lane road today, but own enough right-of-way to support an eight-lane superhighway. Under H.R. 7, the State and local transportation agencies could expand that road to eight lanes with no consideration of alternatives, no analysis of impacts, and no public input in the decision-making process.

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Yet, at the same time, section 3017 of the bill, as reported, also stipulates that the Secretary of Transportation shall treat *an activity carried out under Title 23 as a class of action categorically excluded under NEPA*. Thus, any highway, transit, bridge, tunnel, multimodal project or railway crossing that receives Federal-aid highway funding is subject to only the most cursory review and virtually no public input, regardless of the scope of the project.

270-Day Time Limit: Finally, with respect to projects carried out under Title 23, section 3018 of H.R. 7, as reported, provides that, notwithstanding any other provision of law, any environmental review process for a highway project under NEPA or any other applicable environmental law shall be completed within 270 days after it is initiated, and if it is not completed, it shall be deemed to have no significant impact on the environment under NEPA and be considered a final agency action, warranting no further review. Furthermore, the bill limits the ability to appeal this action, and does not make clear what occurs in cases where reviews or permit processes under other environmental laws are not complete.

As stated earlier, more than 90 percent of FHWA and FTA projects are already categorically excluded under NEPA from needing a broad review that warrants the development of an EIS. The projects that do warrant the development of an EIS are those projects that will have the most significant environmental and community impacts and need greater deliberation and public input. These projects will likely be larger and more complex. Establishing an arbitrary and unreasonable deadline on the review process does not make sense.

We are also concerned that the project sponsor could simply delay the NEPA review process and, with the passage of 270 days, would be deemed in compliance with the law. Any delays in the ability to implement review and permit requirements could simply result in compliance with those laws after 270 days regardless of whether the requirements were actually met. Or, if the States were to assume NEPA authority or authority for other environmental laws as discussed above, any delays in the ability to implement review and permit requirements could simply result in compliance with those laws after 270 days regardless of whether the requirements were actually met.

In short, while we strongly support timely project delivery, we do not think the drastic changes made in this bill in the name of streamlining are necessary to achieve that goal, and we remain very concerned about the impacts these changes will have on the public participation process and the assessment of impacts to the environment.

Presidential Permit: We acknowledge that our Republican colleagues agreed to an amendment during Committee consideration offered by Mr. DeFazio to strike section 3003, "Expedited Permits", from the bill. This section authorized the President to issue an "expedited permit" for any transportation infrastructure project (including highway, bridge, rail, transit, or interstate pipeline projects) if the President determined that the project will enhance the economic competitiveness of the United States. Not only did the provision give the President unfettered authority to approve a project, it also deemed any project approved using this authority to be in compliance *with all applicable Federal laws and regulations*. Furthermore, neither the submission of a project for consideration or the approval of any permit would have been subject to judicial review. Section 3003 would have allowed the President to approve any

project, anytime, anywhere, anyhow without consideration of alternatives under NEPA. Further, other Federal laws, such as those governing civil rights, worker safety and labor standards, and water and air pollution could have also been waived. We are pleased that this provision was deleted and would strongly oppose any attempt to revisit this issue during Floor action.

4. FEDERAL-AID HIGHWAYS

Lack of Accountability: Although we support our Republican colleagues' efforts to restructure and consolidate Federal-aid highway programs, we are, however, concerned that the program as proposed will become nothing more than a block grant to the States, with little or no accountability for achieving specific outcomes with the Federal investment. As the Government Accountability Office has stated, the lack of clear Federal goals and the flexibility given to States under current surface transportation programs undermines the effectiveness of these programs in addressing key surface transportation challenges.¹ H.R. 7 expands this flexibility with few if any linkages between performance requirements and accountability for achieving outcomes. Despite our Republican colleagues' claims that this bill will allow States to invest in their most critical infrastructure needs, it is not clear how this will be achieved or overseen; nor will there be any significant consequences for States that fail to achieve this outcome. If we are to ensure that taxpayers receive the most for their investment in surface transportation programs, the bill must require transparency in funding decisions by States and include provisions linking performance management and accountability in the use of Federal gas tax revenue.

Disadvantaged Business Enterprise: We are pleased that the Disadvantaged Business Enterprise (DBE) program is continued in H.R. 7. This program is critical to ensuring equal opportunity in surface transportation contracting. We are concerned, however, that our Republican colleagues rejected efforts during Committee consideration to strengthen this program by increasing oversight, prohibiting excessive or discriminatory bonding requirements, and statutorily requiring annual adjustments to the personal net worth cap. These proposals would have made improvements to the program to address the under-representation and continuing discrimination in surface transportation contracting.

Highway Bridge Funding: We are also concerned about the treatment of highway bridges in H.R. 7. With one in every four bridges in the nation classified as deficient, we believe that investments in addressing highway bridge deficiencies should be a priority in the use of Federal-aid highway funding. Although States would be required to invest an amount equal to 10 percent of their National Highway System (NHS) and Surface Transportation Program (STP) funds on highway bridge projects on the NHS, the amount of funds provided for bridges is significantly less than the \$4.85 billion currently provided under the Highway Bridge Program. We support efforts to double the NHS bridge set-aside from 10 to 20 percent.

We are also concerned that the formula established for the new NHS program does not include a factor relating to bridge conditions. This approach moves away from the needs-based formula in the distribution of the existing Highway Bridge program and shifts core highway formula funding away from States with significant bridge investment needs.

¹ *Surface Transportation: Restructured Federal Approach Needed for More Focused, Performance-Based, and Sustainable Programs.* GAO-08-400; Washington, DC; March 2008.

Transportation Enhancements: H.R. 7 also undermines transportation options and pedestrian safety through the elimination of the current transportation enhancement (TE) set-aside. This set-aside allows States to choose to implement low-cost transportation options that improve quality of life and enhance roadway safety. Pedestrians and cyclists currently account for approximately 13 percent of all fatalities involving motor vehicles. The TE set-aside allows States to develop appropriate facilities for these modes, which is essential in reducing the highway fatality rate.

Public Lands Highway Program: We are also concerned about the changes to the Federal lands programs under the bill. While we are not necessarily opposed to efforts to consolidate and streamline the current program, we are concerned that the bill would give Federal Land Management agencies significant flexibility in the administration of these programs at the expense of the State and local governments. Specifically, we oppose the elimination of funding that goes directly to States and local governments through the elimination of the Public Lands Highways program. Currently, 41 States receive funding under this program, with most of the funds going to State and county road projects. The elimination of the Public Lands Highways program will require State and local governments to assume the costs of maintaining and improving roads that provide access to and through Federal lands. The bill imposes a significant cost on States and local governments who own the roads but who do not derive any significant revenues from the Federal land.

Mandates on States and Limits on Local Decision-making: Although the bill purports to provide States broad flexibility to manage their Federal-aid highway programs, we are concerned that the proposal includes a number of new provisions and mandates that would undermine local decision-making and control. Specifically, H.R. 7 includes a mandate that State departments of transportation use private-sector firms for engineering and design services on Federal-aid highway projects. The bill also requires States to conduct an analysis of all projects costing more than \$500 million to determine if the use of public-private partnerships should be considered. Such provisions limit the ability of States to manage their programs, and steer them toward choices they may not have made otherwise, and which may be more costly.

Similarly, H.R. 7 includes a provision allowing the Governor of a State to modify a local Transportation Improvement Plan (TIP) without the agreement of the effected Metropolitan Planning Organization (MPO). This provision undermines current law and local control and shifts the balance of power within metropolitan regions.

State Infrastructure Banks: We do not support the inclusion of a new program to reward States that establish a State Infrastructure Bank (SIB). We recognize the role SIBs can play in a State's surface transportation program, and do not object to increasing the amount of formula funding that a State can choose to use toward capitalizing a SIB. However, only 32 States (including Puerto Rico) have established a SIB. There are many reasons why States may choose not to capitalize a SIB: lack of statutory authority, concerns over impact on its debt limit and bond rating, or inability to generate revenue to repay a SIB loan. The creation of this new program incentivizes States to establish an entity that they may not believe is in their best interest.

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Projects of Regional and National Significance (PNRS) Program: We are also concerned that H.R. 7 does not include a program to provide funding for high-cost transportation projects of national or regional importance to the surface transportation system. Under the current state-based formula distribution of Federal-aid highway funds, large, freight-based, multi-jurisdictional projects do not fare well. We believe that the establishment of a competitive, merit-based grant program will provide funding for the development of projects with national or regional – as opposed to local – benefits that will improve the operation of the nation’s intermodal freight transportation network and strengthen the nation’s economic competitiveness.

Undermines the Obligation to Mitigate Project Impacts on the Environment: We recognize that surface transportation projects have an impact on the natural environment, including wetlands and natural habitat. Federal law, including the Clean Water Act, attempts to reduce the impact by establishing a process to, first, avoid and minimize potential impacts to the environment, whenever possible, and to ensure that those impacts are adequately mitigated should they occur. As recent flooding events demonstrate, unrestrained development and unmitigated impacts to wetlands can exacerbate the size and scope of flooding events, and put downstream communities at greater risk.

In recent years, both the Government Accountability Office (GAO) and the National Academy of Sciences have reviewed the adequacy of Federal mitigation activities, including the mitigation of surface transportation projects. Both organizations have questioned whether the current statutory obligations are adequate to address the impacts of projects to the environment, and have highlighted instances where project sponsors have avoided meeting their legal mitigation responsibilities altogether.

In that light, we are concerned with the provisions in H.R. 7 that propose significant changes to the Title 23 mitigation requirements. H.R. 7 dilutes the statutory requirement for mitigation by allowing project sponsors to delay any efforts to redress losses until after a project is completed. These changes would allow project sponsors to defer any efforts to mitigate project impacts, even financial contributions to commercial mitigation banks or third-party mitigation efforts, until the very end of the process, potentially when the funding for the project has been fully obligated, the impacts to the environment have already occurred, and the chances of additional funding solely for mitigation activities would be exhausted.

In our view, this intentional and unnecessary delay for mitigation requirements further marginalizes the importance of restoring losses to wetlands and habitat, as required by Federal law, and increases the likelihood of potential flooding and other consequences from unmitigated impacts of construction projects. In addition, this bill marks the first time that project sponsors would be statutorily authorized to mitigate any and all potential impacts to the environment after the project is completed – a standard that is inconsistent with the current provisions of Title 23 (“concurrent with or in advance of project construction”) or the statutorily obligations followed by other agencies, such as the Corps of Engineers, in section 906 of the Water Resources Development Act of 1986 (“mitigation...shall be undertaken...before any construction of the project...commences, or...concurrently...with the physical construction of such project.”).

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We are equally concerned about the elimination of the current law requirement that any mitigation activities funded under Title 23 be carried out "in accordance with applicable Federal law and regulations." We can only surmise that this change was intended to further weaken the statutory requirements that sponsors adequately mitigate the impacts of projects on the environment.

We are unaware of any evidence to suggest that the current mitigation timing has been a burden, especially if the selected mitigation option is undertaken through financial contributions to a commercial mitigation bank or other third-party activity. No hearings were undertaken, or testimony received, that suggests the mitigation changes proposed in H.R. 7 are warranted, or what their potential impact might be; however, there is strong evidence that further weakening of the statutory mitigation obligations will further reduce the chances of mitigation success.

5. PUBLIC TRANSPORTATION

As discussed under the funding section, we are deeply concerned with the changes to the sources of funding for public transportation programs. Removing dedicated, user-financed transit funding from the Highway Trust Fund is a short-sighted change that breaks long-standing transportation policy. In addition to our strong objection to this change, there are a number of other programmatic and policy concerns contained in Title II of the bill, as reported.

Bus and Bus Facilities: We are concerned with changes to the distribution of funds under the Bus and Bus Facilities grant program. H.R. 7 distributes funds under this program through a newly-created formula rather than on a discretionary basis as was the case before this bill. While we do not object to the funds being distributed by formula, a change in program eligibility now prohibits any transit system that operates heavy rail, commuter rail, or light rail to receive funding under the program. This bill significantly limits the availability of Federal bus grant funding for the nation's transit systems in large population centers. In these difficult economic times, transit systems do not have extra funds available to undertake capital and maintenance projects without Federal funds; they struggle to find sufficient non-Federal sources of funds to keep their systems operating. We do not understand the rationale for this change and oppose its inclusion in the bill.

Privatization: We strongly oppose provisions in Title II of H.R. 7 that mandate and subsidize the privatization of public transit service. Specifically, section 2012 authorizes a higher Federal share (90 percent) for the capital cost of buses and bus-related facilities and equipment purchased with any FTA grant funds, if a public transit agency contracts out 20 percent or more of its fixed-route bus service. At a time when Federal resources available to invest in transit are dwindling, we do not support directing more of these resources to for-profit private bus companies nor do we think it is appropriate for the Federal Government to tip the scales in favor of private companies offering transit service. Further, a subsidy is not needed to spur privatization. During the past decade, the percentage of contracted, fixed-route bus service in the U.S. has doubled on its own, without Federal taxpayer assistance.

H.R. 7 also makes private entities eligible to receive Federal grants funds directly, as subrecipients, under the Bus and Bus Facilities program and the Coordinated Access and

Mobility program. Private operators already have ample opportunity to compete for contracts with a public transit provider. Private operators are already used extensively, for example, in paratransit service. Competing for service that the public sector cannot provide sufficiently or appropriately is already something private companies do successfully.

Section 2004 of H.R. 7 further strikes the requirement that local policies and decision-making determine the degree to which private enterprise participation under various transit programs is utilized. By doing so, this change essentially mandates private-sector participation in the planning process. Although the bill strikes the local control language, it leaves in place sanctions if the State or MPO do not meet certain criteria to include the private sector. This represents unwarranted Federal intrusion into local decisions. The Federal Government should set transit policy - not micro-manage the choices made at the local level to meet the transit needs of communities.

Operating Assistance: H.R. 7 fails to provide flexibility to transit systems to use Federal funds to maintain service and transit worker jobs at times of economic crisis. Currently, transit systems located in urbanized areas above 200,000 in population may only use their Federal funds for capital projects and maintenance. With local sales tax revenues down and state and local budgets stretched thin, transit systems are having trouble securing the additional funds for operating and often have no choice but to raise fares or cut service. We strongly support the inclusion of language to allow transit systems to use a portion of their Urbanized Area Formula grant funds to keep buses and trains running in a time of economic hardship: when the unemployment rate in their area is at least seven percent or when the price of gas rises by more than 10 percent. Further, although some flexibility to use Federal funds for operating was included during Committee consideration for small transit systems that operate less than 100 buses during peak hours, we believe providing maximum flexibility for these small systems is warranted.

6. SAFETY

NHTSA Grant Funding: We are greatly concerned with the funding cuts contained in Title V of the bill for highway safety grants to States. As reported, the bill cuts over \$380 million over the life of the bill in grants to States. The bill provides only \$493 million per year for the single consolidated section 402 grant program. Comparatively, in FY 2011, Congress provided \$572 million for NHTSA's separate grant programs. The bill cuts NHTSA safety grant funding by 16 percent per year. In a time of tight budgets, States can ill afford to make up this difference on their own; as a result, States will be able to carry out fewer activities to enhance highway safety.

Motor Carrier Safety Grants: H.R. 7 delegates broad authority to the States to carry out the Motor Carrier Safety Assistance Program (MCSAP), yet significantly reduces the Federal oversight over State use of Federal funds. We are concerned that the bill changes the program guidance for MCSAP to allow a State to go up to three years without an approved safety plan before fully withholding MCSAP grant funds. States will be able to continue to spend Federal funds on activities even if the Secretary of Transportation determines that the State's commercial vehicle safety expenditures are not achieving the State's own safety goals.

Hours of Service: Section 6502 of H.R. 7 requires the Secretary of Transportation to conduct a field study by April 2013 related to changes to the restart provisions in the hours of service rule published by the Federal Motor Carrier Safety Administration (FMCSA) on December 27, 2011. This section further directs the Secretary to stay the rule and conduct a new rulemaking if the results of the study do not support the changes published by FMCSA. Congress mandated, in section 408 of the ICC Termination Act of 1995 (Pub. L. 104-88), that the Department of Transportation (DOT) conduct a rulemaking “dealing with a variety of fatigue-related issues pertaining to commercial motor vehicle safety” because the hours of service rules governing commercial truck and bus drivers had not been changed since 1962. FMCSA issued a final rule implementing this mandate on April 28, 2003. Since then, the courts have twice vacated the rules issued by FMCSA, including specifically vacating the 34-hour restart provision in 2007. Although we do not object to the requirement for FMCSA to conduct further study, we are greatly concerned with a legislative mandate to stay the rule based on the results of a single study, when FMCSA has considered numerous studies and data already in developing this rule. Attempts to legislatively delay implementation of a final rule will continue the uncertainty over what rules govern on duty time for commercial truck drivers, and will not improve safety.

Section 6602 eliminates Fair Labor Standards Act (FLSA) minimum wage and overtime pay protections for drivers operating under contracts with rail carriers to transport rail carrier employees. An exemption from FLSA requirements has existed for motor carriers since 1935. The motor carrier exemption states that the overtime provisions of the FLSA do not apply to any employee for whom the Secretary of Transportation has the authority to establish qualifications of drivers and maximum hours of service for all drivers regardless of the size of the vehicle. Prior to the passage of SAFETEA-LU, this exemption applied to all employees of motor carriers or private motor carriers, including drivers of vehicles weighing 10,000 pounds or less. The exemption was based on DOT’s authority under section 31502 of Title 49 to prescribe requirements for maximum hours of service. However, DOT has never subjected commercial drivers of vehicles weighing less than 10,000 pounds to any Federal safety standards, including hours of service. A definitional change in SAFETEA-LU removed DOT’s authority to establish qualifications and maximum hours of service for drivers of vehicles weighing less than 10,000 lbs. As a result, the motor carrier exemption for drivers of lighter-weight vehicles was eliminated and a new class of drivers became eligible for overtime pay under FLSA. Section 6602 exempts drivers of lighter-weight vehicles, presumably passenger vans, under contract with rail carriers to transport rail workers to and from worksites from FLSA requirements. We are very concerned that these drivers are also not covered by DOT hours-of-service rules, meaning that as a result of this change, no Federal wage and hour laws would apply to these workers.

Agriculture exemptions: H.R. 7 also contains several exemptions for farmers and agriculture haulers from driver safety and hours of service rules. Although we do not object to targeted and reasonable exemptions to facilitate the movement of goods to market for America’s farmers and agricultural community, we believe that any exemption must carefully consider the safety impacts.

A study conducted by FMCSA in May 2010 found that agricultural carriers overall had higher out-of-service and violation rates than non-agricultural carriers related to the safe operation of commercial motor vehicles, driver qualifications, and vehicle maintenance. Agricultural carriers exempt from hours of service had even higher out-of-service and violation rates than non-exempt agricultural carriers.

Several exemptions from Federal motor carrier safety regulations already exist for farmers, including an hours-of-service exemption during harvest and planting time within 100 miles, and an exemption from the requirements to hold a commercial drivers' license if a farmer travels within 150 miles in a State.

Section 6505 of the bill expands the existing hours-of-service exemption to a 150-mile radius of a farm or the source of the commodities, but also includes 150 miles from a wholesale or retail distribution point to a farm or where the supplies will be used and 150 miles from the wholesale distribution point to a retail distribution point. These second-stage movements have always been interpreted by FMCSA as outside the scope of the existing exemption, and do not have to involve a farmer directly. Section 6601 of the bill exempts farm or ranch owners or operators, and their employees or family members, from all requirements to hold a CDL, be medically qualified, pass a drug and alcohol test, and hours-of-service rules. To qualify for the exemption, the vehicle must be equipped with a special farm license plate or other designation by the State, and must weigh less than 26,000 pounds. For vehicles weighing more than 26,000 pounds, the exemptions still apply if the vehicle is traveling less than 150 miles from the farm or ranch. These changes represent a significant expansion of the current allowances, without any requirements that FMCSA evaluate the impacts of such exemptions to ensure that they result in an equivalent level of safety.

Positive Train Control: The bill extends the deadline for implementation of Positive Train Control (PTC) on passenger rail lines from December 31, 2015, to December 31, 2020, and could extend the deadline for PTC on rail lines that transport toxic-by-inhalation hazardous materials to anytime after 2020. PTC systems are designed to automatically prevent train-to-train collisions, overspeed derailments, incursions into established work zone limits, and the movement of a train through a switch left in the wrong position. Congress mandated installation of PTC on a bipartisan basis in the Rail Safety Improvement Act of 2008 (Pub. L. 110-432), in the wake of one of the most tragic rail accidents in U.S. history. On September 12, 2008, a head on collision between a freight train and commuter train in Chatsworth, California, took the lives of 25 passengers and seriously injured 130 others. PTC has been on the National Transportation Safety Board's (NTSB) list of most wanted safety improvements for more than 20 years. In the past 10 years alone, the NTSB has investigated 52 rail accidents, including four transit accidents, where the installation of PTC would likely have prevented the accident. These accidents include five serious accidents in 2005: Graniteville, South Carolina; Anding, Mississippi; Shepherd, Texas; Chicago, Illinois; and Texarkana, Arkansas. These figures, however, do not include the numerous accidents that the Federal Railroad Administration has investigated. In August 1999, the Railroad Safety Advisory Committee published a report entitled *Implementation of Positive Train Control Systems*, which stated that out of a select group of 6,400 accidents that occurred from 1988 through 1997, 2,659 of those accidents could have been prevented had some form of PTC been implemented.

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We recognize the complexities of installing PTC and therefore the need to allow additional time for the freight and commuter railroads to implement the 2008 mandate; however, a deadline of 2020 or beyond is far too long. We believe that a better approach would be to provide the Secretary with the authority to extend the current deadline for individual railroads for no more than three years, or December 31, 2018. In a letter dated February 1, 2012, to a Member of Congress, NTSB Chairman Deborah A.P. Hersman expressed its disappointment in the delay of PTC contained in H.R. 7.

In addition to extending the PTC mandate, H.R. 7 allows freight railroads to implement an alternative strategy in lieu of installing PTC. The alternative strategy could provide far less protection than required under the PTC mandate; it would only have to “reduce the risk” of a release to the same extent PTC would. According to DOT, it would not have to be designed to achieve all that PTC is required to prevent, including train-to-train collisions, over-speed derailments, incursions into established work zone limits, and the movement of a train through a switch left in the wrong positions. We believe this subsection should be clarified to ensure that whatever alternative strategy is utilized by the railroads and approved by the Secretary provides a level of safety at least equal to the level of safety that would have been provided if PTC had been implemented.

Rail and Hazardous Materials Regulations: While H.R. 7 purports to “improve regulations and regulatory review”, it may, in fact, make it much more cumbersome and time-consuming for DOT to issue regulations or guidance to protect the public from possible safety trends or to respond to imminent safety threats. The bill also introduces uncertainty by requiring any regulation to be based on “evidence”, but fails to define what it means by “evidence”. It also mandates that any substantive agency guidance to recipients of Federal assistance be subject to the requirements of the Administrative Procedure Act, which include public notice and comment procedures, which could prevent DOT from quickly being able to issue significant guidance in response to imminent safety hazards.

Hazardous Materials Safety: We oppose provisions of the bill which remove safety and health protections and endanger workers and the traveling public. Over the last decade, there have been 170,446 incidents involving transportation of hazardous materials, resulting in 134 fatalities, 2,783 injuries, and more than \$631 million in property damage. Although transportation incidents involving hazardous materials are declining, the hazardous materials industry remains one of the most dangerous industries in which to work.

Elimination of OSHA Authority: Provisions in the bill needlessly eliminate the authority of the Occupational Safety and Health Administration (OSHA) to protect workers who load, unload, and handle hazardous materials; design, manufacture, test, and mark hazardous materials packaging, and work at fixed facilities where hazmat is stored, including rail cars that store hazmat inside these facilities.

Since 1970, OSHA has promulgated a number of regulations that address the handling of hazardous materials at fixed facilities. These include regulations governing process safety management of highly hazardous chemicals and requirements for handling and storing specific

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hazardous materials, such as compressed gases, flammable and combustible liquids, explosives and blasting agents, liquefied petroleum gases, and anhydrous ammonia. OSHA regulations also address hazard communication requirements at fixed facilities, including container labeling and other forms of warnings, material safety data sheets, and employee training. In addition, facilities that handle and store hazardous materials must comply with OSHA regulations that address more general types of workplace hazards, such as walking and working surfaces, means of egress, noise, air-quality, environmental control, personal protective equipment, and fire protection.

In 1990, Congress mandated in the Hazardous Materials Transportation Uniform Safety Act (Public Law 101-615) that Department of Transportation (DOT) regulations would not preempt OSHA regulations, allowing both agencies to regulate in the hazmat arena: DOT to regulate transportation and OSHA to regulate worker safety. It would undermine worker safety, and create needless confusion, for DOT to now displace such OSHA protections and the agency's enforcement authority over these important regulations.

Hazmat Training: Similarly, H.R. 7 relieves certain employers who transport hazardous materials from one of the most important workers safety protections: training. Under current law, the definition of a "hazmat employer" is a person who employs or uses at least one hazmat employee on a full-time, part-time, or temporary basis; or is self-employed. H.R. 7 eliminates the phrase "or uses" from the definition thereby relieving employers who use contractors to load, unload, or handle hazardous materials from having to train those workers. Under the bill, only employers who directly employ personnel on a full- or part-time basis would have to comply with such training requirements.

H.R. 7 also eliminates the hazmat train-the-trainer program, which provides \$4 million in competitive grants per year to nonprofit hazmat employee organizations to train instructors to train hazmat employees. The National Labor College provides one such program on behalf of the rail unions for training rail workers, called the Rail Workers Hazardous Materials Training Program. The training is more comprehensive than required of railroads and does not replace, but rather builds upon, the training provided by hazmat employers. The program is funded, in part, through the National Institute of Environmental Health Sciences, the North American Railway Foundation, and DOT.

H.R. 7 further fails to address stronger training standards for emergency responders. Emergency responders who may be called to the scene of an accident need to receive more advanced training when responding to incidents related to the release of hazardous substances. Current law does not require States, local governments, and Indian tribes that receive Hazardous Emergency Preparedness (HMEP) grants from DOT to train fire fighters or other first responders at a specific level. As a result, most fire fighters only receive awareness training, which is not sufficient. We believe H.R. 7 should require entities receiving HMEP grants to train fire fighters at the Operations Level, at a minimum.

Hazmat Exemptions: With respect to exemptions from hazardous materials regulations, known as special permits, we are concerned with several provisions in the bill. In 2010, the Committee on Transportation and Infrastructure and the DOT Inspector General conducted investigations of DOT's special permit program. The investigations found that DOT did not

adequately review applicants' safety histories when issuing hazmat exemptions; ensure applicants will provide an acceptable level of safety; coordinate with the affected operating administrations; and conduct regular compliance reviews of individuals and companies that have been granted exemptions. Several provisions in H.R. 7 are contrary to these findings.

Limitation on Denial of Hazmat Applicants: The bill prohibits the Secretary from denying applications for hazmat exemptions for having an out-of-service rate that is greater than the national average. In other words, an applicant cannot be denied an exemption for having a poor safety record.

Provides Permanent Hazmat Exemptions: The bill also requires DOT to permanently adopt, in its regulations, every exemption that DOT has issued over the last six years; as long as it is a matter of general application, has future effect, and is consistent with hazardous materials safety. According to DOT, this means that more than 5,000 exemptions could now become permanent. A perfect example of one such exemption is a permit that authorizes the transportation of certain explosives that are forbidden or that exceed quantities authorized for transportation by cargo aircraft. According to DOT, as a result of this bill, that exemption would now be fully incorporated in regulation.

In addition, the bill prohibits the Secretary from charging fees to applicants for exemptions from hazmat regulations. The President's Fiscal Year 2012 budget proposed establishing fees to assist DOT staff in processing the more than 13,000 annual applications.

H.R. 7 contains other provisions that could have a significant deleterious effect on safety, which we believe should be stricken from the bill. These sections include provisions that (1) significantly limit DOT's authority to conduct hazmat inspections and investigations; (2) relieve carriers of liability for any violations stemming from pre-transportation functions, such as loading operations; (3) preempt certain State procedures, standards, and penalties; (4) eliminate DOT's authority to issue a regulation prohibiting the transportation of Class 3 flammable liquids, such as gasoline, in the external product piping of cargo tank motor vehicles; and (5) prevent the Secretary from issuing guidance and regulations to protect the public from trending or possible safety hazards.

Incorporation of Industry-Developed Standards in Regulations: H.R. 7 also allows DOT to continue to incorporate industry-developed standards by reference in regulations and then allow the industry to charge the public for access to those standards. We believe that H.R. 7 should adopt the approach taken in the Pipeline Safety, Regulatory Certainty, and Job Creation Act of 2011 (Public Law 112-90), which prohibits the Secretary from issuing guidance or a regulation that incorporates by reference any documents or portions thereof unless the documents or portions thereof are made available to the public, free of charge, on an Internet Web site.

DOT Inspectors: DOT currently has only 35 inspectors responsible for overseeing more than 300,000 hazmat entities. The bill's cut to DOT's hazmat program from more than \$42 million, provided in Fiscal Year 2012, to \$39 million annually thereafter, will make it even harder for DOT to enforce hazmat regulations and ensure public safety.

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7. PASSENGER RAIL

We are deeply concerned that H.R. 7 includes several provisions that will harm or eliminate freight and passenger rail programs, including Amtrak, in a very short-sighted approach that ignores our nation's growing infrastructure needs and fails to recognize that adequate investment in freight and passenger rail is crucial for national economic growth, global competitiveness, the environment, and quality of life.

H.R. 7 eliminates the program that provides capital grants for short line and regional railroads (49 U.S.C. 22301). The bill also fails to reauthorize the rail line relocation and improvement capital grant program, which was authorized in SAFETEA-LU through 2009 (49 U.S.C. 20154). In addition, the bill eliminates the congestion grant program, which provides grants to States and Amtrak for financing the capital costs of facilities, infrastructure, and equipment for high priority rail corridor projects necessary to reduce congestion or facilitate ridership growth in intercity rail passenger transportation; this program is currently authorized for \$100 million in 2012 and \$100 million for 2013 (49 U.S.C. 24105).

Amtrak Capital Funding: Consistent with our Republican colleagues' long-standing opposition to Amtrak, the bill includes several provisions to reduce Federal assistance for Amtrak. Last year, Amtrak set a new all-time ridership record of nearly 30.2 million passengers for FY 2011, the eighth ridership record in the last nine years. We are deeply committed to seeing Amtrak continue to succeed and are extremely troubled by the efforts of our Republican counterparts to continue to try to dismantle and bankrupt our national passenger railroad.

The bill reduces Amtrak's operating grants by nearly \$308 million over the next two years from current levels authorized in the Passenger Rail Investment and Improvement Act of 2008 (Public Law 110-432). Although the bill cuts Amtrak's operating grants, it fails to provide a corresponding increase in Amtrak's capital grants to help Amtrak upgrade tracks, bridges, and other infrastructure; pursue efforts to expand *Acela Express* capacity; advance initial planning work for the Gateway Program to provide additional capacity into Manhattan for intercity, commuter and high-speed rail services; improve station accessibility under requirements of the Americans with Disabilities Act; and continue the development of a next-generation reservation system.

Prohibition on Amtrak Contracting with Outside Counsel: The bill also prevents Amtrak from using its Federal funds to hire or contract with outside counsel or file any lawsuit, or defend itself, against a passenger rail operator, including a Class I railroad. The impact of this prohibition would severely impair Amtrak's ability to defend itself and the Federal taxpayer's investment. This provision is an open invitation for operators to sue Amtrak and an invitation for its competitors to engage in illegal activity because Amtrak could do nothing to defend itself. It could also have an immediate impact on the safety of Amtrak's operations. If, for example, a train operated by another entity collided with an Amtrak train – that entity could avoid any liability for its wrongdoing and negligence by simply suing Amtrak. Given that Amtrak would, at a minimum, be precluded from retaining counsel to defend itself or bring a counterclaim against the other entity for its malfeasance, Amtrak would bear full responsibility for any deaths or injuries caused by the other entity – even where it was clear that the other operator was solely

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responsible for the entire accident. If the host railroad over which Amtrak operates failed to take responsibility for its contractual commitments to maintain a safe and reliable right of way, Amtrak would be precluded from enforcing its contractual or statutory rights.

Amtrak is further prohibited from using Federal funds to pursue any litigation against a passenger rail operator arising from a competitive bid process in which Amtrak and the passenger rail operator participated. The Committee has held no hearings or briefings on this issue. Some Republican Members have raised concerns with a pending case that Amtrak has filed against Veolia, claiming Amtrak files frivolous lawsuits against its competitors after losing a bid. Nevertheless, to date, the U.S. District Court judge handling the case has denied all three attempts by Veolia to dismiss the lawsuit, including a motion to dismiss, motion for summary judgment, and motion for interlocutory appeal; the case is now set for trial.

Amtrak's Food and Beverage Service: The bill also requires the FRA to bid-out Amtrak's food and beverage service to the lowest cost bidder. This will result in the elimination of 2,000 Amtrak jobs, in a so-called "Jobs Act". Further, the bill allows the FRA to take Federal funding from Amtrak and provide it to the winning bidder to cover any losses. The winning bidder essentially needs only to claim they will lose less money than Amtrak; they are not required to show they will turn a profit.

Bidding out Amtrak Routes: Further, the bill makes permanent a pilot program established in PRIIA that allows any passenger rail provider to bid for any of Amtrak's routes. The bill allows that provider to operate the routes in renewable periods of five years. The bidder would be provided the operating grants that Amtrak would have gotten to operate over the route(s). We fail to see how transferring Amtrak's operating grants to a private company creates any savings or benefits for the Federal taxpayer.

Prohibition Against the Use of Funds for California High-Speed Rail: Finally, the bill prohibits the use of any highway, transit, or passenger rail funds to be used for the development of high-speed rail in the State of California. The prohibition includes innovative financing tools such as Transportation Infrastructure Finance and Innovation Act (TIFIA) or Railroad Rehabilitation & Improvement Financing (RRIF) loans. We oppose this provision. We believe that California needs to find a solution to its congestion and we should not prevent the State from being able to decide how best to address its transportation needs.

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