

Calendar No. 543

112TH CONGRESS }
2d Session }

SENATE

{ REPORT
{ 112-238

COMMERCIAL MOTOR VEHICLE SAFETY
ENHANCEMENT ACT OF 2011

R E P O R T

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND
TRANSPORTATION

ON

S. 1950



NOVEMBER 13, 2012.—Ordered to be printed

U.S. GOVERNMENT PRINTING OFFICE

29-010

WASHINGTON : 2012

SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED TWELFTH CONGRESS

SECOND SESSION

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NOVEMBER 13, 2012.—Ordered to be printed

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

R E P O R T

[To accompany S. 1950]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (S. 1950) to amend title 49, United States Code, to improve commercial motor vehicle safety and reduce commercial motor vehicle-related accidents and fatalities, to authorize the Federal Motor Carrier Safety Administration, and for other purposes, having considered the same, reports favorably thereon with an amendment (in the nature of a substitute) and recommends that the bill (as amended) do pass.

PURPOSE OF THE BILL

S. 1950, the Commercial Motor Vehicle Safety Enhancement Act of 2011, is a bill to improve commercial motor vehicle safety and reduce commercial motor vehicle-related accidents and fatalities, to authorize the Federal Motor Carrier Safety Administration for fiscal years 2012 and 2013, and for other purposes.

BACKGROUND AND NEEDS

A. BACKGROUND AND NEEDS ON COMMERCIAL MOTOR CARRIER SAFETY

The commercial motor carrier industry is a major component of the U.S. economy. In 2007, more than 13 billion tons of freight, valued at \$11.8 trillion, was transported nearly 3.5 trillion ton-miles in the United States. The Bureau of Transportation Statistics reports that trucking held the greatest share in all these categories, handling 69 percent, or 9 billion tons, of freight shipped; 71 percent, or \$8.4 trillion, of the total value of goods shipped; and 40

percent, or 1.4 trillion ton-miles, of total ton-miles.¹ By comparison, the next greatest share was rail with 15 percent, or 1.9 billion tons, of total freight shipped and 37 percent, or 1.4 trillion ton-miles, of total ton-miles; and parcel, handling 13 percent, or \$1.6 billion in total freight value. In 2009, the commercial motor carrier industry generated \$250.5 billion in operating revenue, down from the \$301.4 billion in operating revenue generated in 2008.

According to the Federal Motor Carrier Safety Administration (FMCSA), both the injury and fatality rates for accidents involving commercial motor vehicles (CMVs)² have been declining on a per-mile basis since 2001, potentially due to increased compliance with safety measures. For example, seat belt use by drivers of large trucks has increased to 72 percent in 2008 from 48 percent in 2002. Additionally, the reduction of fatalities and injuries over the last several years is partly due to the current economic downturn, which has led to fewer motor vehicles and less congestion on our highways. As the economy improves and commerce increases, fatalities and injuries are likely to rise again unless concrete action is taken to prevent them.

Despite these positive trends, significant safety challenges still exist. For example, FMCSA reports that the rate of crashes (although not injuries and fatalities) involving large trucks and buses has increased in recent years. This is due in part to FMCSA working with the States to improve their reporting of large truck and bus crash and inspection data. As a result, large truck crashes reported to FMCSA increased from 109,248 to more than 133,931 annually from calendar year 2001 to 2008, an increase of 23 percent. During this same period, the total number of large truck fatal and injury crashes has actually decreased, from 90,451 crashes in 2001 to 67,733 in 2008 according to FMCSA³, demonstrating that the increase in crashes represents more complete and accurate reporting by the States to FMCSA than in the past. Some question whether this change in data reporting has affected the perception of a reduction in fatality rates, which has declined from 2.31 in 2001 to 1.79 in 2008 per 100 million vehicle miles traveled.

FMCSA is the Department of Transportation (DOT) agency responsible for commercial truck (motor carrier) and bus (motor-coach) safety. Its primary mission is to reduce crashes, injuries, and fatalities involving CMVs. To achieve this goal, FMCSA sets minimum safety standards for all CMVs, including the vehicle standards, the requirements for proper insurance and systematic maintenance, and the physical qualifications and operating rules for drivers. Additionally, FMCSA grants operating authority to a

¹Bureau of Transportation Statistics, "U.S. Freight on the Move: Highlights from the 2007 Commodity Flow Survey Preliminary Data," by Michael Margreta, Chester Ford, and M. Adhi Dipo, September 2009.

²A "commercial motor vehicle" is defined under section 390.5 of title 49, Code of Federal Regulations as any self-propelled or towed motor vehicle used on a highway in interstate commerce to transport passengers or property when the vehicle (1) has a gross vehicle weight rating or gross combination weight rating, or gross vehicle weight or gross combination weight, of 4,536 kg (10,001 pounds) or more, whichever is greater; or (2) is designed or used to transport more than 8 passengers (including the driver) for compensation; or (3) is designed or used to transport more than 15 passengers, including the driver, and is not used to transport passengers for compensation; or (4) is used in transporting material found by the Secretary of Transportation to be hazardous under 49 U.S.C. 5103 and transported in a quantity requiring placarding under regulations prescribed by the Secretary under 49 CFR, subtitle B, chapter I, subchapter C.

³FMCSA, "Large Truck and Bus Crash Facts 2008" March 2010 (<http://ai.fmcsa.dot.gov/CarrierResearchResults/PDFs/LargeTruckandBusCrashFacts2008.pdf>)

motor carrier or motorcoach carrier based upon the carrier's ability to meet and maintain compliance with FMCSA's safety fitness standards; drug and alcohol testing; commercial driver's license (CDL) standards; maintenance of crash records and reports; hours of service (HOS) rules; inspection, repair, and maintenance of vehicles; and other factors. FMCSA also targets educational messages to carriers, commercial drivers, and the public and partners with stakeholders, including Federal, State, and local enforcement agencies, the motor carrier industry, safety groups, and organized labor on efforts to reduce bus and truck-related crashes.

Compliance, Safety, Accountability

FMCSA ensures that carriers comply with safety regulations primarily through on-site safety reviews of carriers already in the industry and safety audits of carriers that have recently started operations. Safety reviews and audits help FMCSA determine whether carriers are complying with safety regulations and, if not, take enforcement action against them, including placing carriers out of service. However, FMCSA and State law enforcement agencies are dwarfed by the size of the industry and, as a result, are only able to conduct compliance reviews on a very small percentage of carriers, about 2 percent each year.

FMCSA is implementing a new approach under its Compliance, Safety, Accountability (CSA) initiative to measure safety and compliance, determine safety fitness, recommend and apply interventions, and track and evaluate safety improvements for both carriers and individual drivers. Under this approach, a measurement system (computer algorithm) would use safety data inputs to rate the safety performance of carriers and individual drivers. FMCSA expects that CSA would provide safety benefits by enabling it: (1) to increase its reach by assessing whether most motor carriers and drivers are safe and holding them accountable by regularly determining their safety fitness; (2) to enhance its investigative and enforcement actions through the greater use of less resource-intensive interventions; and (3) to improve its ability to identify safety deficiencies through better use of data. FMCSA was set to deploy its CSA system in 2010, but full implementation has been delayed for a variety of reasons.

Motor Carrier Registration Process and Reincarnated Carriers

A person is required to obtain operating authority from FMCSA before operating a CMV to transport cargo or passengers in interstate commerce. If FMCSA approves the application, applicants are issued conditional operating authority and are subject to a comprehensive new entrant safety audit not later than 18 months after beginning operation. If FMCSA determines before the end of this probationary period that the carrier is not operating safely, it may suspend or revoke the carrier's registration.

Data shows that new motor carriers have more pronounced patterns of critical violations of safety regulations, far more acute violations, and higher accident rates in the first year of operation. However, FMCSA's application process relies on educational and technical assistance materials to improve the operations of motor carriers before they begin operation, and the agency has no way to determine if a motor carrier is complying with the Federal Motor Carrier Safety Regulations (FMCSRs) until the safety audit occurs.

The National Transportation Safety Board (NTSB) has found that FMCSA's application process lacks meaningful safeguards to ensure that a motor carrier is aware of, understands, and has a safety management system in place to comply with the FMCSRs. The NTSB has recommended that all persons seeking operating authority demonstrate their safety fitness prior to obtaining new entrant operating authority by, at a minimum: (1) passing an examination demonstrating their knowledge of the FMCSRs; (2) submitting a comprehensive plan documenting that the motor carrier has management systems in place to ensure compliance with the FMCSRs; and (3) passing a FMCSA safety audit, including vehicle inspections.⁴

It has become a common practice in the motor carrier industry in recent years for motor carriers to submit a new application for registration, often under a new legal name, following a determination by the Secretary of Transportation (Secretary) that the carrier is not able to comply with the FMCSA's CMV safety regulations. Historically, when the motor carrier's attempt to mask or conceal this history of noncompliance through "reincarnation" has been discovered, the Secretary's authority to revoke or suspend the "new" registration based upon the compliance history of the predecessor motor carrier has been unclear.

FMCSA Safety Grants

FMCSA provides funding to the 50 States, the District of Columbia, and the American Territories through ten separate grant programs, each with different safety objectives and emphasis. The largest of these grant programs is the Motor Carrier Safety Assistance Program Basic and Incentive grant program, which assists States in developing or implementing national programs for the uniform enforcement of Federal and State rules and regulations concerning motor safety.

Electronic On-Board Recorders

To reduce the instances of CMV-related accidents that are the result of fatigued drivers, FMCSA regulates the number of hours a truck driver may drive. By many accounts, truck driver compliance with the HOS regulations is poor, and the existing system to track the numbers of hours driven by drivers is complicated, easily-manipulated, expensive, and cumbersome to maintain and audit. To improve compliance, many motor carriers employ electronic on-board recorders (EOBRs), which are electronic recording devices typically installed in truck power units ("cabs"), to track compliance with the HOS regulations.

On February 1, 2010, FMCSA issued a notice of proposed rule-making to require certain motor carriers operating CMVs in interstate commerce to use EOBRs to document their drivers' HOS. Under this proposal, all motor carriers subject to the HOS rules would be required to use EOBRs to systematically and effectively monitor their drivers' compliance with the HOS requirements.

Drug and Alcohol Testing

FMCSA is responsible to enforce the regulations that require commercial drivers to be tested for drugs and alcohol. However, ensuring that all commercial drivers are tested is a substantial task,

⁴ NTSB Safety Recommendation H-03-02

given the large number of commercial motor carrier companies registered with the Federal Government. In 2008, the Government Accountability Office (GAO) reported weaknesses in FMCSA's drug testing program and recommended the establishment of a national database and clearinghouse of drug and alcohol testing information to enable more thorough checking of drivers' past test results and reduce the number of drivers who test positive and continue to drive.⁴ Earlier this year, Senator Pryor introduced S. 754, the Safe Roads Act, which would implement GAO's recommendation to establish this national database. S. 754 would authorize FMCSA to develop and deploy the database and clearinghouse; require medical review officers, employers and other service agents to report positive results from drug or alcohol tests to FMCSA; and require employers to check the database prior to hiring prospective employees.

Motor Coach Safety and Enforcement

While motorcoach transportation overall is safe, the high-occupancy of motorcoaches often means a serious motorcoach crash would result in a significant number of fatal or serious injuries, particularly when occupants are ejected. Between 2000 and 2009, there were 338 motorcoaches involved in fatal crashes, of which 48 had at least one fatality to a motorcoach occupant. For comparison, annually there are approximately 4,000 large trucks involved in fatal crashes, 18,000 passenger cars involved in fatal crashes, and 18,000 light trucks involved in fatal crashes. During the period between 2000 and 2009, approximately 16 fatalities have occurred each year to motorcoach occupants (including drivers and passengers).

Earlier this year, Senators Brown and Hutchison introduced S. 453, the Motorcoach Enhanced Safety Act of 2011, to improve the safety of commercial over-the-road motorcoach operations by addressing the predominant factors impacting safety: the condition of the vehicle, the qualifications and physical condition of the driver, and the safety practices of the motorcoach company. The Committee on Commerce, Science, and Transportation reported that bill on November 9, 2011.

B. BACKGROUND AND NEEDS ON SURFACE TRANSPORTATION AND FREIGHT POLICY

The safe, efficient, and convenient movement of people and goods depends on a vibrant transportation system. Our Nation has built vast systems of roads, airways, railways, transit systems, pipelines, ports, and waterways that facilitate commerce and improve our quality of life. However, these systems are under considerable strain due to increasing congestion and the costs of maintaining and improving the systems. This strain is expected to increase as the demand to move people and goods grows resulting from population growth, technological change, and increased globalization of the economy. DOT implements national transportation policy and administers most Federal transportation programs. Its responsibilities are considerable and reflect the extraordinary scale, use, and impact of the Nation's transportation systems. DOT has multiple

⁴GAO-08-600, "Motor Carrier Safety: Improvements to Drug Testing Programs Could Better Identify Illegal Drug Users and Keep them off the Road," May 2008.

missions, primarily focusing on mobility and safety, that are carried out by several operating administrations.

There is a widespread understanding that the surface transportation programs authorized in the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) (119 Stat. 1144) do not effectively address the transportation challenges the Nation faces. As a result, many transportation stakeholders have called for a fundamental reexamination of the Nation's surface transportation programs: (1) to have well-defined goals with direct links to an identified Federal interest and Federal role; (2) to institute processes to make grantees more accountable by establishing more performance-based links between funding and program outcomes; and (3) to institute tools and approaches that emphasize the return on the Federal investment.

As part of this reexamination, transportation stakeholders have called for a more clearly defined Federal role to improve freight mobility and an alignment of Federal investments with economically significant national benefits through a comprehensive national strategy for freight transportation. This national strategy should include defining the Federal role and national interests in freight transportation, including economically-based and objective criteria to identify areas of national significance for freight transportation and to determine whether Federal funds are required in those areas.

A number of factors contribute to constrained freight mobility and, together, these factors have significant adverse impacts. First, growing freight transportation demand decreases freight mobility. Volumes of goods shipped by trucks and railroads, for example, are projected to increase by 98 percent and 88 percent, respectively, by 2035. Second, the capacity of our transportation system is constrained by other factors, including the cost of surmounting geographic barriers, such as mountain ranges and waterways, population density, and urban land-use development patterns. Third, freight mobility is limited by inefficiencies in how infrastructure is used, such as poor road signal timing and prices paid by users that do not align with infrastructure costs, resulting in congestion. The widening gap between the volumes of goods and available system capacity is increasing transportation congestion. Constrained freight mobility has adverse economic costs for consumers, shippers, and carriers, as well as in urban centers where congestion exacerbates environmental pollution and increases health risks, such as respiratory illnesses. Although freight transportation stakeholders have advanced projects and proposals to enhance freight mobility by building new infrastructure and increasing system efficiency, public planners face several challenges when advancing freight improvement projects. These challenges include competition from nonfreight projects for public funds and community support in the planning process, lack of coordination among various government entities and private sector stakeholders, and limited or restricted availability of public funds available for freight transportation. Compounding these challenges facing State and local transportation planners is that the Federal Government is not well positioned to enhance freight mobility due to the absence of a clear Federal strategy and role for freight transportation, an outmoded Federal approach to transportation planning and funding, and the

unsustainability of planned Federal transportation funding. When combined, these challenges and factors hinder the ability of public sector agencies to effectively address freight mobility and highlight the need to reassess the appropriate Federal role and strategy in developing, selecting, and funding transportation investments, including those for freight transportation.

SUMMARY OF PROVISIONS

S. 1950, the Commercial Motor Vehicle Safety Enhancement Act of 2011 (CMVSEA) would reauthorize DOT's truck and bus safety programs that are administered by FMCSA and improve the safety of the CMV industry by enacting reforms focused on three themes: (1) ensuring the safest motor carriers and drivers are able to enter the industry; (2) improving the safety laws and regulations that govern drivers and vehicles that operate in the industry; and (3) providing FMCSA and States the enforcement tools they need to remove unsafe and unfit drivers and carriers from the industry. Below is a summary of the provisions included in the bill.

CMVSEA would improve FMCSA's registration process by requiring an applicant to pass a safety proficiency examination and submission of a safety management plan as a precondition for operating authority. FMCSA currently does not require a demonstration of knowledge of Federal requirements before a carrier begins operating. The proficiency examination would allow FMCSA to evaluate the applicant's knowledge of FMCSA's safety regulations. Additionally, the requirement for applicants to submit a safety management plan would demonstrate the person has management systems in place to ensure compliance with FMCSA's safety regulations.

CMVSEA would direct FMCSA to complete its current rule-making to require EOBRS on all CMVs used in interstate commerce and subject to HOS to document their drivers' compliance with HOS. This requirement would improve compliance with the HOS regulations and thereby help reduce the risk of fatigue-related CMV accidents.

CMVSEA would improve FMCSA's ability to crack down on "reincarnated carriers" by enhancing FMCSA's authority to revoke their operating authority and requiring new operators to disclose all relationships with other motor carriers over the past 5 years as a condition of receiving operating authority. This provision would help DOT get unsafe carriers off the road by preventing them from "reincarnating" as a new carrier to avoid being held accountable for operating unsafely.

CMVSEA incorporates S. 754, the Safe Roads Act, which would direct FMCSA to establish an electronic "clearinghouse" for records relating to alcohol and controlled substances testing of CMV operators. This clearinghouse would improve both CMV operators' and their employers' compliance with FMCSA alcohol and controlled substances testing program and would provide employers information about a driver before hiring the driver. The bill would also require employers to be updated on the driving status of their employees to prevent a person from operating a CMV with a revoked or suspended CDL.

CMVSEA would provide statutory language to support FMCSA's implementation of CSA. CSA is FMCSA's new safety initiative to

improve truck and bus safety by employing a new enforcement and compliance model that would allow FMCSA and its State partners to contact a larger number of carriers earlier in order to address safety problems before crashes occur.

CMVSEA would consolidate FMCSA's grant programs into three primary programs: CSA, Driver Safety, and Data and Technology grants. These changes would allow for greater flexibility, diverse participation, and the ability to redirect funds based on national, State, and local needs.

CMVSEA would direct DOT to report on the safety performance and infrastructure impacts of allowing trucks that exceed the Federal truck size and weight limits to operate on the National Highway System. The bill would also require DOT to compile the State laws that allow a segment of the National Highway System to accommodate trucks that operate in excess of the Federal truck size and weight limits.

CMVSEA would also create a new competitive grant program for freight-specific, multi-modal infrastructure projects to complement other existing grant making programs to meet the policy, objectives, and goals of the S. 371, the Focusing Resources, Economic Investment, and Guidance to Help Transportation (FREIGHT) Act of 2011. This multi-year grant program would fund freight-specific projects, such as port infrastructure improvements, freight rail capacity expansion, and highway projects that improve access to freight facilities.

CMVSEA would establish a comprehensive national surface transportation system policy to develop a comprehensive national surface transportation system that advances the national interest and defense, interstate and foreign commerce, the efficient and safe interstate mobility of people and goods, and the protection of the environment. The Secretary would be responsible to carry out this policy.

CMVSEA would also establish a national freight transportation policy that would improve the efficiency, operation, and security of the national transportation system to move freight by leveraging investments and promoting partnerships that advance interstate and foreign commerce, promote economic competitiveness and job creation, improve the safe and efficient mobility of goods, and protect the public health and the environment.

Finally, CMVSEA would establish an Office of Freight Planning and Development in the Office of the Secretary, along with an Assistant Secretary of Freight Planning and Development to head it. The Office of Freight Planning and Development would support DOT's work on the National Freight Strategic Plan and help coordinate Federal funding to assist with the movement of freight.

LEGISLATIVE HISTORY

S. 1950 was introduced on December 7, 2011, by Senators Lautenberg, Rockefeller, and Pryor and referred to the Committee on Commerce, Science, and Transportation. On December 14, 2011, the Committee met in open Executive Session and, by a recorded vote, ordered S. 1950 reported with an amendment (in the nature of a substitute).

Title IV of S. 1950 incorporates S. 754, the Safe Roads Act, which would implement GAO's recommendation to establish a national

database and clearinghouse of drug and alcohol testing information. S. 754 was introduced on April 7, 2011, by Senators Pryor, Boozman, Snowe, Vitter, and Wicker and referred to the Committee on Commerce, Science, and Transportation. S. 754 was previously introduced in the 111th Congress as S. 1113, the Safe Roads Act of 2009.

Title VII of S. 1950 incorporates certain provisions of S. 453, the Motorcoach Enhanced Safety Act of 2011. S. 453 was introduced on March 2, 2011, by Senators Sherrod Brown and Hutchison, and cosponsored by Senators Schumer, Gillibrand, Lautenberg, Blumenthal, Rockefeller, Webb, and Warner. The Committee on Commerce, Science, and Transportation met in open Executive Session and, by voice vote, ordered S. 453 reported favorable as amended, with an amendment (in the nature of a substitute) on May 5, 2011.

Title XII of S. 1950 incorporates certain provisions of S. 371, the FREIGHT Act. S. 371 was introduced on February 2, 2011, by Senators Lautenberg, Cantwell, and Murray. Senator Rockefeller was added as a cosponsor on July 25, 2011. S. 371 was previously introduced in the 111th Congress as S. 3629, the Focusing Resources, Economic Investment, and Guidance to Help Transportation Act of 2010.

The Commerce, Science, and Transportation's Subcommittee on Surface Transportation and Merchant Marine Infrastructure, Safety, and Security held an oversight hearing on bus safety on March 25, 2011, and held a hearing on proposals to reauthorize FMCSA and its programs on July 21, 2011.

With some modifications, the provisions of S. 1950 were enacted into law as Title II of Division C of the Moving Ahead for Progress in the 21st Century Act of 2012 (126 Stat. 776), which was signed into law on July 6, 2012.

ESTIMATED COSTS

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

S. 1950—Commercial Motor Vehicle Safety Enhancement Act of 2011

Summary: S. 1950 would extend the authority for programs administered by the Federal Motor Carrier Safety Administration (FMCSA) within the Department of Transportation (DOT) and would establish a DOT grant program to build infrastructure for the transportation of freight goods. The bill would set the amount of contract authority (the authority to incur obligations in advance of appropriations, a mandatory form of budget authority) for FMCSA programs at \$562 million for 2012 and \$564 million for 2013.

Consistent with the rules in the Balanced Budget and Emergency Deficit Control Act for constructing the baseline, CBO assumes that the budget authority provided by the bill for 2013, the last year of the authorization, would continue at the same rate in each of the following years. CBO estimates that enacting the bill would result in baseline contract authority totaling \$5.6 billion

over the 2012–2022 period—an increase of \$127 million above the amounts of contract authority for motor carrier safety programs currently projected in CBO’s current baseline for the 2012–2022 period.

CBO expects that most spending for the motor carrier safety programs will continue to be controlled by limits on annual obligations set in appropriation acts. Consequently, the changes in contract authority would not increase mandatory expenditures.

Enacting S. 1950 would affect revenues; therefore, pay-as-you-go procedures apply. The bill would require FMCSA to charge a fee for the use of a proposed new clearinghouse for drug and alcohol information and to impose fees to cover the cost of federal safety audits that would be performed for certain bus operations. The bill also could result in the collection of additional civil penalties because it would increase the penalties that FMCSA could impose for violations of certain regulations. CBO estimates that enacting the bill would increase revenues by \$56 million annually, beginning in 2013.

S. 1950 would not authorize an obligation limitation level for the contract authority provided in the legislation. However, for this estimate of discretionary spending, CBO assumes that the obligation limitation for the affected programs would equal the amount of contract authority provided. The obligation limitation for 2012, which was enacted in the Consolidated and Further Continuing Appropriations Act, 2012 (Public Law 112–55), was about \$11 million less than the amount assumed for S. 1950. The bill also would establish a grant program within DOT to build infrastructure for the transportation of freight goods. Assuming enactment of the estimated obligation limitations for 2012 and 2013 and appropriation of the amounts estimated to be necessary for the grant program, CBO estimates that implementing the bill would cost \$920 million over the 2012–2017 period.

S. 1950 contains intergovernmental and private-sector mandates, as defined in the Unfunded Mandates Reform Act (UMRA), on driving schools and entities that employ drivers. The bill would impose additional intergovernmental mandates by preempting state, local, and tribal laws and regulations. CBO estimates that the costs to comply with the intergovernmental mandates would fall below the annual threshold for such mandates (\$73 million in 2012, adjusted annually for inflation). The bill also would impose private-sector mandates on owners and operators of commercial vehicles (including motorcoaches), brokers for motor carriers, coordinators of freight shipments, medical examiners, and others. Because of uncertainty about the nature and scope of regulations to be established under the bill, CBO cannot determine whether the aggregate cost of the mandates in the bill would exceed the annual threshold established in UMRA for private-sector mandates (\$146 million in 2012, adjusted annually for inflation).

CBO has not reviewed section 706(a) of the bill for intergovernmental or private-sector mandates. Section 4 of UMRA excludes from the application of that act any legislative provisions that enforce statutory rights that prohibit discrimination. CBO has determined that the provisions of section 706(a) fall within that exclusion because they involve compliance with the Americans with Disabilities Act of 1990.

Estimated cost to the Federal Government: The estimated budgetary impact of S. 1950 is shown in the following table. The costs of this legislation fall within budget function 400 (transportation).

	By fiscal year, in millions of dollars—						
	2012	2013	2014	2015	2016	2017	2012–2017
CHANGES IN DIRECT SPENDING							
Budget Authority ^a	11	13	13	13	13	13	76
Estimated Outlays	0	0	0	0	0	0	0
CHANGES IN REVENUES							
Estimated Revenues ^b	0	56	56	56	56	56	280
CHANGES IN SPENDING SUBJECT TO APPROPRIATION							
FMCSA:							
Estimated Obligation Limitation ^c	11	564	0	0	0	0	575
Estimated Outlays	5	255	250	18	13	6	547
Freight Grant Program:							
Estimated Authorization Level	200	200	0	0	0	0	400
Estimated Outlays	0	20	88	108	70	50	336
Other Authorized Programs:							
Estimated Authorization Level	8	8	7	7	7	0	37
Estimated Outlays	3	8	8	8	7	3	37
Total Changes:							
Estimated Budgetary Resources	219	772	7	7	7	0	1,012
Estimated Outlays	8	283	346	134	90	59	920

Notes: FMCSA = Federal Motor Carrier Safety Administration.

^aS. 1950 would provide about \$5.6 billion in contract authority over the 2012–2022 period—\$127 million more than the amount projected in CBO's baseline.

^bCBO estimates that enacting S. 1950 would raise \$560 million in revenues over the 2012–2022 period.

^cEstimated discretionary outlays reflect use of funds under the 2012 and 2013 obligation limitations estimated by CBO. (Outlays stemming from additional contract authority shown in the table would be authorized in future legislation that cover the period after 2013).

Basis of Estimate:

Direct spending

S. 1950 would provide budget authority (in the form of contract authority) of \$562 million in 2012 and \$564 million in 2013 for programs administered by FMCSA, including grants to increase the safety of motor carrier operations. The bill would consolidate certain grant programs within FMCSA and expand the available uses of that contract authority.

Additional uses would include providing grants to develop certain data systems and establishing a clearinghouse to track the results of tests performed on commercial vehicle drivers to detect the use of controlled substances or alcohol.

Under current law, contract authority totaling \$276 million is available to FMCSA through March 31, 2012. Consistent with the rules in the Balanced Budget and Emergency Deficit Control Act for constructing its baseline, CBO assumes that funding provided for the first six months of 2012 will continue at the same rate through the rest of this year (for a total level of \$551 million in contract authority) and in each subsequent year. Because of those baseline construction rules, CBO estimates that enacting the bill would add \$11 million (\$562 million less \$551 million) of contract authority to the baseline in 2012 and \$13 million (\$564 million less \$551 million) annually over the 2013–2022 period. That funding level represents an increase of about \$127 million above the total amounts of contract authority for FMCSA programs currently projected in CBO's baseline through 2022.

Spending subject to appropriation

Spending Subject to the Obligation Limitation. CBO expects that the contract authority provided in the bill would be controlled by limitations on obligations set in annual appropriation acts. The bill does not authorize an obligation limitation level, however, CBO's estimate of discretionary spending under this legislation assumes that obligation limitations equal to the contract authority provided in the bill would be provided. (Historically, the Congress has set obligation limitation for FMCSA programs at or near the level of contract authority). For this estimate, CBO did not project additional discretionary authority past fiscal year 2013, the end of the authorization period covered by S. 1950. Because the 2012 obligation limitation has already been enacted, CBO's estimate of the cost of this bill for 2012 is the difference between that limit (\$555 million) and the amount of contract authority provided in S. 1950 (\$562 million). We estimate that the obligation limitation for 2013 would be \$564 million. As a result, CBO estimates that implementing those provisions of the legislation would cost \$547 million over the 2012–2017 period.

Freight Grant Program. Title XII would establish a grant program that would be administered by a proposed new Office for Freight Planning within DOT. Under current law, freight projects are eligible to receive other competitive grants administered by DOT. Based on the number of freight projects that received grants through that program, CBO estimates that the bill would make available \$200 million per year for projects to improve the infrastructure for freight transportation. Assuming appropriation of the amounts estimated to be necessary, CBO estimates that enacting this provision would cost \$336 million over the 2012–2017 period.

Other Authorized Programs. Title VII would require FMCSA and the National Highway Traffic Safety Administration (NHTSA) within DOT to establish new safety standards and regulations for most interstate buses, complete research projects on the safety of interstate buses, and create a new training curriculum for operators of interstate buses. Based on information from FMCSA and NHTSA, CBO estimates that implementing those provisions would cost \$37 million over the 2012–2017 period, assuming appropriation of the necessary amounts.

Revenues

CBO estimates that enacting S. 1950 would increase revenues by \$56 million annually, beginning in 2013. Those revenues would come primarily from fees paid to use a proposed drug and alcohol clearinghouse and from new fees on bus carriers.

Fees for Use of the Drug and Alcohol Clearinghouse. Title IV would allow FMCSA to charge for the use of a drug and alcohol clearinghouse administered by the agency. Potential employers of motor carrier operators would be required to check the status of drivers in the clearinghouse. Based on information from the agency, CBO estimates that FMCSA would charge fees totaling about \$55 million per year, beginning in 2013.

Fees for New Bus Carriers. Title VIII would allow FMCSA to charge certain new bus carriers a fee of \$1,200 for safety audits that must be completed before the company would be allowed to operate. Under provisions of the bill, those amounts would be depos-

ited in the Highway Trust Fund. Based on information from the agency, about 1,000 carriers apply annually for operating permits. Thus, CBO estimates that enacting the provision would increase revenues by \$1 million annually, beginning in 2013.

Other Civil Penalties. Enacting the bill could result in the collection of additional civil penalties because it would increase the amount that FMCSA could impose for violations of certain regulations. However, CBO estimates that such collections would likely be small, and the effect on revenues would be insignificant.

Pay-As-You-Go Considerations: The Statutory Pay-As-You-Go Act of 2010 establishes budget-reporting and enforcement procedures for legislation affecting direct spending or revenues. The net changes in revenues that are subject to those pay-as-you-go procedures are shown in the following table.

CBO ESTIMATE OF PAY-AS-YOU-GO EFFECTS FOR S. 1950, THE COMMERCIAL MOTOR VEHICLE SAFETY ENHANCEMENT ACT OF 2011, AS ORDERED REPORTED BY THE SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION ON DECEMBER 14, 2011

	By fiscal year, in millions of dollars—												
	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2012–2017	2012–2022
	NET INCREASE OR DECREASE (–) IN THE DEFICIT												
Statutory Pay-As-You-Go Impact	0	–56	–56	–56	–56	–56	–56	–56	–56	–56	–56	–280	–560

Intergovernmental and private-sector impact: S. 1950 contains intergovernmental and private-sector mandates, as defined in UMRA, on driving schools and entities that employ drivers. The bill would impose additional intergovernmental mandates by preempting state, local, and tribal laws and regulations. CBO estimates that the costs to comply with the intergovernmental mandates would fall below the annual threshold for such mandates (\$73 million in 2012, adjusted annually for inflation). The bill also would impose private-sector mandates on owners and operators of commercial vehicles (including motorcoaches), brokers for motor carriers, coordinators of freight shipments, medical examiners, and others. Because of uncertainty about the nature and scope of regulations to be established under the bill, CBO cannot determine whether the aggregate cost of the mandates in the bill would exceed the annual threshold established in UMRA for private-sector mandates (\$146 million in 2012, adjusted annually for inflation).

CBO has not reviewed section 706(a) of the bill for intergovernmental or private-sector mandates. Section 4 of UMRA excludes from the application of that act any legislative provisions that enforce statutory rights that prohibit discrimination. CBO has determined that the provisions of section 706(a) fall within that exclusion because they involve compliance with the Americans with Disabilities Act of 1990.

Previous CBO estimate: CBO transmitted a cost estimate for S. 453, the Motorcoach Enhanced Safety Act of 2011, as ordered reported by the Senate Committee on Commerce, Science, and Transportation on May 5, 2011. That bill contained a number of provisions contained in title VII of S. 1950. CBO’s cost estimates of those similar provisions are the same for each piece of legislation.

Estimate prepared by: Federal Costs: Sarah Puro; Impact on State, Local, and Tribal Governments: Ryan Miller; Impact on the Private Sector: Vi Nguyen.

Estimate approved by: Theresa Gullo; Deputy Assistant Director for Budget Analysis.

REGULATORY IMPACT STATEMENT

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

NUMBER OF PERSONS COVERED

S. 1950 is intended to improve CMV safety and to reauthorize FMCSA. The bill affects FMCSA and other entities already subject to FMCSA rules and regulations, and therefore the number of persons covered should be consistent with the current levels of individuals impacted under the provisions that are addressed in the bill.

ECONOMIC IMPACT

The bill would authorize from the Highway Trust Fund (other than the Mass Transit Account) \$562.2 million in fiscal year (FY) 2012 and \$563.3 million in FY 2013 in appropriations for FMCSA programs. These funding levels are a 1.1 percent year over year increase above the FY 2011 authorized level and are not expected to have an inflationary impact on the Nation's economy.

PRIVACY

This bill would not have any adverse impact on the personal privacy of individuals.

PAPERWORK

S. 1950 contains a number of provisions that could result in a significant decrease in paperwork requirements for meeting and administering motor carrier and motorcoach safety regulations. Most notably, the requirement for the Secretary to issue regulations that would require all interstate commercial vehicles to be equipped with an EOBR device not later than 1 year after the date of enactment of this Act. DOT has estimated that this mandate would result in \$1.965 billion in annual paperwork reduction, due to drivers no longer having to manually complete paper logbooks, which is the current method of tracking HOS. The paperwork burden related to HOS compliance is second only to the burden of filing Federal taxes each year. S. 1950 would also amend requirements for State participation in the CDL program by adding a requirement to develop and maintain the capacity to receive electronic copies of the medical certificates prepared by certified medical examiners for each holder of a CDL issued by that State who operates or intends to operate in interstate commerce. When enacted, this requirement would result in a significant paperwork reduction from the current system of paper medical certificates. Beyond the significant paperwork reductions that should result from

S. 1950, any additional paperwork burdens from other provisions in the Act would be minimal.

CONGRESSIONALLY DIRECTED SPENDING

In compliance with paragraph 4(b) of rule XLIV of the Standing Rules of the Senate, the Committee provides that no provisions contained in the bill, as reported, meet the definition of congressionally directed spending items under the rule.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title.

The short title of this bill is the Commercial Motor Vehicle Safety Enhancement Act of 2011.

Section 2. Table of contents.

This section includes the table of contents for the bill.

Section 3. Definition.

This section would define all references to the “Secretary” as being to the Secretary of Transportation.

Section 4. References to title 49, United States Code.

This section would clarify that any reference to a section or other provision in the bill is in reference to a section or other provision of title 49, United States Code, unless otherwise expressly provided.

TITLE I — COMMERCIAL MOTOR VEHICLE REGISTRATION

Section 101. Registration of motor carriers.

This section would make conforming amendments to the general registration requirements for CMVs under section 13902 of title 49, United States Code. This section would also include three new requirements as a precondition for being registered: (1) successfully completing a written proficiency examination to demonstrate knowledge of commercial motor carrier safety regulations; (2) submitting a management plan that documents how the carrier will comply with CMV safety regulations; and (3) disclosing any relationship involving common stock, common ownership, common management, or common familial relationship between that person and any other motor carrier, freight forwarder, or broker, if the relationship occurred in the five-year period preceding the date of the filing of the application for registration. This section would make conforming amendments to the general registration requirements for motor vehicles under section 13902 of title 49, United States Code.

Section 102. Safety fitness of new operators.

This section would reduce the length of time from 18 months to 12 months of a registrant completing registration for the Secretary to conduct safety reviews. This section would also require providers of motorcoach services to undergo a pre-authorization safety audit within 90 days of registering, and would require newly registered

motorcoach companies to be subject to monitoring for 12 months before acquiring permanent authority.

Section 103. Reincarnated carriers.

This section would authorize the Secretary, after notice and an opportunity for a proceeding, to withhold, suspend, amend, or revoke a motor carrier's registration if the carrier failed to disclose an adverse safety history or other facts relevant to its past regulatory compliance. This section would provide authority to take similar action where the Secretary finds that within the previous 5 years the carrier: (1) was closely related to another motor carrier with a poor compliance history; or (2) is the successor to a carrier who, within the five-year period prior to the filing of the application for registration, did not comply with safety regulations. This section would also make conforming changes.

Section 104. Financial responsibility requirements.

This section would require the Secretary to complete, not later than 180 days after enactment of this Act, a comprehensive review of the minimum financial responsibility requirements for motor carriers, motorcoaches, freight forwarders, and brokers. Within 180 days of the review, the Secretary would initiate a rulemaking to increase the minimum financial requirements, and would have the option of issuing a final rule or, if a final rule is not appropriate, providing a written explanation to Congress as to why the Secretary is not issuing a final rule. This section would direct the Secretary to review the appropriateness of the minimum levels of financial responsibility every 2 years after enactment of this Act.

Section 105. USDOT number registration requirement.

This section would require all motor carriers that operate CMVs in interstate commerce to apply for a USDOT number before beginning operations. This section would authorize the Secretary to refuse or revoke a USDOT number to an applicant that is unfit, unwilling, or unable to comply with the safety regulations; or is a close affiliate or successor to such a carrier. This section would require the Secretary to provide notice and an opportunity for a proceeding if the Secretary proposes to withhold registration for an applicant. This provision would also authorize the Secretary to revoke or suspend a USDOT number if the motor carrier fails or refuses to submit to a new entrant safety audit. This section would require employers or motor carriers to update their registrations annually, as well as within 30 days of the change of certain essential information. This section would make conforming changes.

Section 106. Registration fee system.

This section would authorize FMCSA to increase, by regulation, the registration fee currently authorized by statute above the current statutory maximum of \$300. The current maximum of \$300 is not sufficient to cover administrative costs.

Section 107. Registration update.

This section would add new provisions to require motor carriers, freight forwarders, and brokers to update their registrations annually, as well as within 30 days of the change of certain essential

information. This section would not require a rulemaking but would authorize the Secretary to determine what periodic registration updates are necessary and to publish that determination in the Federal Register or on a DOT web site. The Committee is providing this authority to help prevent motor carriers from reregistering as a different entity in order to avoid civil penalties or out of service orders and expects this authority to be exercised in a manner that meets this purpose.

Section 108. Increased penalties for operating without registration.

This section would increase penalties for operating without registration to help deter motor carriers seeking to avoid the registration requirement. It would raise the minimum penalty per day for general reporting and recordkeeping violations from \$500 to \$1,000. This section would change the minimum penalty for passenger carriers operating without registration to a minimum penalty of \$25,000. The same penalty amount would apply to foreign carriers. The section would increase the fine for operating without registration to \$10,000 per violation. The section would increase the minimum penalty for transporting hazardous wastes without necessary registration to \$25,000.

Section 109. Revocation of registration for imminent hazard.

This section would authorize the Secretary to revoke the registration of any motor carrier determined to be an imminent hazard.

Section 110. Revocation of registration and other penalties for failure to respond to subpoena.

This section would increase the civil penalties for motor carriers, motor carriers of migrant workers, and private motor carriers that disobey a subpoena or requirement of the Secretary to produce witnesses or records. It would also authorize the Secretary to suspend, amend, or revoke the registration of a motor carrier, broker, or freight forwarder for failing to obey an administrative subpoena.

Section 111. Fleetwide out of service order for operating without required registration.

This section would authorize the Secretary to place out of service the operations of a motor carrier discovered operating vehicles without the required registration, or operating beyond the scope of the registration granted.

Section 112. Motor carrier and officer patterns of safety violations.

This section would authorize the Secretary to withhold, suspend, amend, or revoke the registration of a motor carrier, employer, or owner or operator if the Secretary determines that two or more motor carriers, employers, or owners use common ownership, management, and control or a common familial relationship to enable them to avoid compliance or mask non-compliance; or a company had engaged in a pattern or practice of avoiding compliance or concealing or masking noncompliance within the preceding 60 months.

This section also would authorize the Secretary to take steps against those who exercised controlling influence over the operations of the motor carrier, employer, or owner or operator. The

Secretary would be required to demonstrate that an officer of a motor carrier, an employer, or an owner or operator engaged in a pattern of violating regulations on CMV safety or has assisted a motor carrier, an employer, or an owner in avoiding compliance. These sanctions would consist of temporary or permanent suspension of any individual registration and a temporary bar on association with any registered motor carrier.

Section 113. Federal successor standard.

This section would authorize the Secretary to take enforcement and other action against successor companies of motor carriers, employers, and owners or operators where the Secretary determined that these motor carriers, employers, and owners or operators are acting unscrupulously to avoid Federal penalties and out of service orders. This section would codify a uniform Federal standard of factors and principles that have been articulated in judicial and administrative rulings on corporate successorship. Those factors and principles include consideration paid for assets purchased or transferred; dates of corporate creation and dissolution or termination of operations; commonality of ownership between the current and former company; commonality of officers and management personnel and their functions; identity of physical or mailing addresses, telephone numbers, fax numbers or e-mail addresses; identity of motor vehicle equipment; continuity of liability insurance policies; commonality of drivers and other employees; continuation of carrier facilities and other physical assets; continuity of nature and scope of operations, including customers for whom transportation is provided; advertising, corporate name, or other acts through which the company holds itself out to the public; and history of safety violations and pending orders or enforcement actions.

TITLE II — ENHANCED COMMERCIAL MOTOR VEHICLE SAFETY

Section 201. Repeal of commercial jurisdiction exception for brokers of motor carriers of passengers.

This section would provide the Secretary with jurisdiction over brokers for motor carriers of passengers.

Section 202. Bus rentals and definition of employer.

This section would close a loophole in the Secretary's jurisdiction over certain small bus operations by broadening the definition of "employer" to include companies that rent or lease vehicles if from the same location or as part of the same business, the company provides names or contact information of drivers, or holds itself out to the public as a charter bus company. This section would not apply to government drivers.

Section 203. Crashworthiness standards.

This section would direct the Secretary to complete not later than 18 months after enactment of this Act a comprehensive analysis on the need for crashworthiness standards on CMVs with a gross vehicle weight rating or gross vehicle weight of at least 26,001 pounds. This analysis would include an evaluation of the need for roof strength, pillar strength, air bags, and frontal and back wall standards for CMVs.

Section 204. Canadian safety rating reciprocity.

This section would authorize the Secretary to recognize a Canadian government-issued out of service order for a Canadian motor carrier, owner, or operator operating in the United States. This section would also authorize the Secretary to enter into future consultations and negotiations with an authorized Canadian regulatory agency to establish reciprocal recognition of each agency's motor carrier safety fitness rating determinations.

Section 205. State reporting of foreign driver convictions.

This section would require States to report convictions of Mexican and Canadian drivers to the Secretary.

Section 206. Authority to disqualify foreign commercial drivers.

This section would clarify that the Secretary has the authority to disqualify a driver licensed to operate a CMV by a jurisdiction outside of the United States. This would clarify the Secretary's authority to revoke or suspend a foreign driver's license for committing a disqualifying offense when the licensing jurisdiction fails to take action.

Section 207. Revocation of foreign motor carrier operating authority for failure to pay civil penalties.

This section would authorize the Secretary to suspend, amend, or revoke the operating authority of foreign carriers for regulatory noncompliance or failure to pay a civil penalty.

TITLE III — DRIVER SAFETY

Section 301. Electronic on-board recording devices.

This section would require the Secretary to issue regulations that would require all interstate commercial vehicles to be equipped with an EOBR device not later than 1 year after the date of enactment of this Act. This section would establish performance and design standards for EOBRs, including requiring that the EOBR be integrally-connected to the vehicle's engine, be tamper resistant, and be accessible to law enforcement during roadside inspections.

Section 302. Safety fitness.

This section would require the Secretary to incorporate into the CSA program a safety fitness rating methodology that assigns sufficient weight to adverse vehicle and driver performance based-data that elevate crash risks to warrant an unsatisfactory rating for a carrier and ensures that the data to support such assessments is accurate. This section would also direct the Secretary, not later than March 31, 2011, to take interim measures to implement a similar safety fitness rating methodology in its current safety rating system if the CSA program is not fully implemented.

Section 303. Driver medical qualifications.

This section would direct the Secretary to establish the national registry of medical examiners not later than 1 year after the date of enactment of this Act. It would also provide additional qualifications for a medical examiner to be listed on the national registry of medical examiners. This section would also provide for new over-

sight policies for the submission of physical examinations and medical certificates and the processing of the submissions by State licensing agencies. This section would amend the requirements for State participation in the CDL program by adding a requirement to develop and maintain the capacity to receive electronic copies of the medical certificates prepared by certified medical examiners for each holder of a CDL issued by that State who operates or intends to operate in interstate commerce. This section would make available up to \$1,000,000 in each of FY 2012 and FY 2013 from the funds provided in the Data and Technology grants to help the States pay for the information technology improvements needed to receive medical examiners' reports. The Committee expects the Secretary will be aggressive in implementing the medical requirements of this section.

Section 304. Commercial driver's license notification system.

This section would require motor carriers to inquire annually to ascertain the driving status of each driver it employs, and receive occurrence-based reports of changes in the status of a driver's record. This section would also direct the Secretary to issue minimum standards for driver notification systems, including standards for accuracy, consistency, and completeness of the information provided. This section would direct the Secretary to complete, within 2 years after enactment of this Act, recommendations and a plan for the development and implementation of a national driver notification system, and submit those recommendations and plan to the Committee on Commerce, Science, and Transportation of the Senate, and the Transportation and Infrastructure Committee of the House of Representatives.

Section 305. Commercial motor vehicle operator training.

This section would require the Secretary to issue regulations to establish minimum entry-level training requirements for all CMV operators within 6 months of enactment of this Act. This section would require training programs address knowledge and skills for motor vehicle operation, provide specific requirements for hazardous materials endorsements, provide effective instruction, create a certificate system for meeting requirements, and require training providers to demonstrate that their training meets Federal standards. This section would establish national uniform standards for CDLs and require individuals to pass written and driving tests and present certification of driver training.

Section 306. Commercial driver's license program.

The section would require each State to submit a plan to the Secretary specifying a date by which all States shall operate CDL information systems that are compatible with the modernized information system and able to receive and submit conviction and disqualification data. This section would also mandate that each State implement, not later than 1 year after enactment of the Act, a system and practices for the exclusive electronic exchange of driver history record information, including postings, convictions, withdrawals, and disqualifications. This section would require the Secretary to issue guidance to assist States in complying with requirements that are critical to an effective State CDL program, and re-

quire each State to submit a plan of action to comply with the critical requirements by 2015.

Section 307. Commercial driver's license requirements.

This section would prohibit States from issuing CDLs to individuals who would immediately be disqualified from operating a CMV upon the issuance of the license. This section would clarify that an individual may be subject to disqualification by removing the requirement that the driver hold a CDL at the time a disqualifying offense is committed.

Section 308. Commercial motor vehicle driver information systems.

This section would condition the award of grant money upon a State's agreement to provide the Secretary electronic access to all State licensing status and driver history records.

Section 309. Disqualifications based on non-commercial motor vehicle operations.

This section would require the Secretary to disqualify an individual from operating a CMV if the individual is discovered operating a CMV after the individual's CDL has been revoked, suspended, or canceled. In addition, this section would require the Secretary to disqualify an individual if the individual is discovered operating a CMV after being disqualified based upon an offense committed while the individual was operating a non-CMV.

Section 310. Federal driver disqualifications.

This section would define the term "disqualification" as it relates to CDL enforcement, by connecting it to State or Federal determinations of fitness to drive. In addition, this section would require all disqualifications by a State to be reported to Federal authorities, and qualify the instances when States must impose disqualifications.

Section 311. Employer Responsibilities.

This section would make a motor carrier liable if the carrier allows an employee to operate a CMV when the employee has a CDL that is suspended, revoked, or canceled, or if the employee has more than one driver's license.

TITLE IV — SAFE ROADS ACT OF 2011

Section 401. Short title.

The short title for this title is the Safe Roads Act of 2011.

Section 402. National clearinghouse for controlled substance and alcohol test results of CMV operators.

This section would direct the Secretary to establish a national repository for records relating to alcohol and controlled substances testing of CMV operations. This section would allow a qualified and experienced private operator to operate and maintain the clearinghouse.

This section would clarify that clearinghouse records only be used to determine the qualifications of an individual for operating a CMV. The section would establish safeguards to protect the pri-

vacy of individuals to whom the information pertains and ensure that the information is not divulged to anyone not directly involved in evaluating the individual's qualifications to drive a CMV.

This section would provide that the Secretary may prohibit an employer from hiring a driver unless the Secretary has determined that during the preceding 3 years the driver did not test positive in violation of the regulations under title 49 of the Code of Federal Regulations, and did not refuse a test under those regulations. If a driver did test positive in violation of the regulations, an employer would only be able to hire the driver if the driver completed the return-to-duty process as required by those regulations.

This section would grant preemption authority to the Secretary in regard to the reporting of valid positive results or refusals to take alcohol screening and drug tests. This section would apply civil penalties to any violators of privacy. In addition, those who do not meet reporting requirements are subject to civil and criminal penalties.

Section 403. Drug and alcohol violation sanctions.

This section would allow the Secretary to require that States revoke, suspend, or cancel the license of an operator who has been found to have used alcohol or a controlled substance. In addition, the Secretary may permanently disqualify an individual from operating a commercial vehicle if an individual has used the vehicle to commit felonies or has used alcohol or a controlled substance three or more times.

Section 404. Authorization of appropriations.

This section would authorize up to \$5,000,000 to establish and implement the clearinghouse.

TITLE V — ENFORCEMENT

Section 501. Inspection demand and display of credentials.

This section would clarify the Secretary's authority to make a demand in writing to inspect a motor carrier or broker's land, buildings, equipment, and records. This would authorize representatives and contractors of FMCSA to display credentials and issue demands for records remotely, without requiring travel to the motor carrier's business location or otherwise meeting the motor carrier in person.

This section would authorize the Secretary to adopt, by rule-making, measures to place out of service, on a fleetwide basis, CMVs of foreign-domiciled motor carriers that fail or refuse to allow promptly the Secretary to inspect and copy any record or inspect and examine equipment, lands, buildings, and other property.

This section would clarify that the civil penalty for failing to allow promptly, upon demand, inspection and copying by the Secretary applies regardless of whether the demand is made in person or in writing.

Section 502. Out of service penalty for denial of access to records.

This section would allow the Secretary to place a motor carrier out of service for failure to provide access to the motor carrier's records in a timely manner.

Section 503. Penalties for violation of operation out of service orders.

This section would increase the maximum penalty against a motor carrier for the serious safety violation of continuing to operate following a determination of unfitness to \$25,000, and apply the fine to both individuals and motor carriers. This section would raise from \$16,000 to \$25,000 the penalty for violation of both hazardous materials and non-hazardous materials imminent hazard out of service orders.

Section 504. Minimum prohibition on operation for unfit carriers.

This section would prohibit carriers from operating for at least 10 days if the Secretary determines that a carrier failed to meet the safety fitness standard.

Section 505. Minimum out of service penalties.

This section would authorize the Secretary to establish by regulation minimum out of service periods as penalties. Such out of service penalties may not exceed 90 days in duration.

Section 506. Impoundment and immobilization of CMVs for imminent hazard.

This section would authorize the Secretary and certain State grantee officials to enforce imminent hazard out of service orders by taking temporary possession and control of a CMV subject to such order through towing and impounding. The Secretary or authorized State official may also place a “boot” or other locking device on the vehicle.

This section would require that an affected carrier be given the opportunity to access the cargo and to make alternative arrangements for its transportation. This section would require the Secretary to promulgate regulations on the use of impoundment as a way of enforcing additional out of service orders. This section would also define “impounding.”

Section 507. Increased penalties for evasion of regulations.

This section would increase penalties for intentional evasion of FMCSA safety and commercial regulations. This section would expand the scope of the penalty to apply to evasion of the Hazardous Materials Regulation and statutes.

Section 508. Failure to pay civil penalty as a disqualifying offense.

This section would authorize the Secretary to disqualify an individual, after that individual has been notified in writing and given an opportunity to respond, from operating a CMV when that individual has not paid a civil penalty previously assessed by the Secretary. This section would also impose a similar disqualification for drivers of vehicles between 10,001 and 26,000 pounds who do not hold CDLs.

Section 509. Violations relating to CMV safety regulation and operators.

This section would instruct the Secretary to issue monetary fines without regard to the motor carrier’s ability to pay.

Section 510. Emergency disqualification for imminent hazard.

This section would provide the Secretary with the authority to disqualify any driver whose continued operation of a CMV substantially increases the likelihood of death, serious injury or illness, or a substantial endangerment to health, property, or the environment.

Section 511. Intrastate operations of interstate motor carriers.

This section would clarify that a vehicle, a driver, or an employer prohibited from operating in interstate commerce because the vehicle, driver, or employer poses an imminent hazard to safety is also prohibited from operating a CMV in intrastate commerce. This section would also clarify that an owner or operator prohibited from operating in interstate commerce because of a failure to pay a civil penalty is also prohibited from operating a CMV in intrastate commerce.

Section 512. Enforcement of safety laws and regulations.

This section would clarify the Secretary's authority to bring civil actions to enforce the laws and regulations on safe operation of CMVs in interstate commerce, without geographical limitations.

Section 513. Disclosure to State and local law enforcement agencies.

This section would permit the disclosure of information from the Secretary to appropriate personnel of a State agency authorized to carry out commercial vehicle inspections.

TITLE VI — COMPLIANCE, SAFETY, ACCOUNTABILITY

Section 601. Comprehensive, Safety, Accountability.

This section would amend section 31102 of title 49, United States Code, to establish the CSA program, which would be an umbrella grant program consisting of current CMV safety enforcement. This umbrella grant program would preserve the fundamentals of the Motor Carrier Safety Assistance Program (MCSAP), the New Entrant Grant Program, and the Border Enforcement grant program. The section would also authorize the Secretary to use High Priority grants to assist States, local agencies, and other entities to improve household goods enforcement activities; assist local governments' enforcement of requirements related to CMV and passenger vehicle safety; and improve hazardous materials safety and security for CMV transportation. The High Priority grant program would also be modified to provide financial assistance for the safety data improvement program.

This section would amend MCSAP to allow each State to inspect vehicles transporting passengers at a location that has adequate food, shelter, and sanitation facilities for passengers during the inspection and subsequent required repairs. The current statutory exemption of motorcoaches from routine en route inspections reduces opportunities to discover safety violations, and the Committee is concerned that this exemption has prevented appropriate safety oversight over certain curbside and unscheduled carriers that have fewer locations where unscheduled inspections can be conducted compared with motorcoach carriers that use terminals. The Committee understands that a carrier's safety performance

cannot be assessed without inspections and that adequate inspection data is critical for the CSA program to properly evaluate a carrier's safety performance. The Committee expects this authority to be wielded in a manner that respects the business needs of the carrier while providing an opportunity to collect inspection data where appropriate.

This section would also amend the requirement that States maintain expenditures for CMV enforcement programs at a level at least equal to the average level of that expenditure for FY 2004 and FY 2005. This section would also authorize the Secretary to waive the maintenance of effort requirements for a fiscal year due to exceptional or uncontrollable circumstances, such as a major natural disaster or a significant shortfall in the budgetary resources of the State MCSAP agency.

This section would retain the 100 percent Federal share for the New Entrant Grant Program but would reduce the Federal share for the Border Enforcement grant program from the current 100 percent to at least 80 percent. The remaining CSA grant programs would require the Secretary to reimburse the States for at least 80 percent of the costs incurred for the programs.

Section 602. Performance and registration information systems management program.

This section would require the Secretary to establish and implement a process to cancel the motor vehicle registration and seize the registration plates of a company found to have knowingly allowed an employee to operate a vehicle in violation of an out of service notice. The Secretary would also be required to establish a process to reinstate plates after seizure.

Section 603. Commercial motor vehicle defined.

This section would amend the definition of "commercial motor vehicle" in section 31101(1) of title 49, United States Code, for consistency purposes. The definition would be revised to include all vehicles subject to the Secretary's safety jurisdiction. The current definition excludes a large number of passenger carriers otherwise subject to the Secretary's safety and commercial jurisdiction. The revised definition would be substantially the same as the definition in section 31132(1) of title 49, United States Code.

Section 604. Driver safety fitness ratings.

This section would require the Secretary to determine the safety fitness of CMV drivers, based upon an assigned rating, and to prohibit unfit drivers from operating in interstate commerce. This section would require that the procedure to determine the safety fitness of a CMV driver use specific requirements, methodology, and time frames for evaluation. Finally, this section would require the Secretary to develop probationary periods for drivers, a review period of a driver's compliance, and criteria for reinstatement for drivers.

Section 605. Uniform electronic clearance for CMV inspections.

This section would authorize the Secretary to withhold a portion of a State's MCSAP funds for using an electronic CMV inspection selection system that does not employ the Inspection Selection Sys-

tem that is in effect on the date of enactment of this Act. The section would permit the Secretary to award withheld grant funds if a State subsequently comes into substantial compliance with the electronic CMV inspection selection system methodology requirement.

Section 606. Authorization of appropriations.

This section would authorize funding for three umbrella grant programs: the CSA grant program, the safety data and technology grant program, and the driver safety grant program. This section would authorize \$249,717,000 for FY 2012 for the CSA grant programs, with \$168,388,000 of that amount allocated for MCSAP, and \$253,814,000 authorized for CSA grants in FY 2013, with \$171,813,000 of that amount allocated for MCSAP. The Secretary would develop criteria to allocate the remaining amounts among the remaining three grant programs under the CSA grant program. This section would also authorize \$30 million for the Data and Technology grant program (authorized under section 608 of the bill) for both FY 2012 and FY 2013. This section would authorize \$31 million for the Driver Safety grant program (authorized under section 609 of the bill) for both FY 2012 and FY 2013.

This section would increase the time available for obligation of the safety data and technology grants from 1 year to 3 years. It would increase the time available for obligation for driver safety grant program from 1 year to 2 years.

Section 607. High risk carrier reviews.

This section would update and codify a SAFETEA-LU provision requiring the Secretary to review motor carriers that are among the highest risk carriers for 2 consecutive months.

Section 608. Data and technology grants.

This section would establish the Data and Technology grant program, which would consolidate the Performance Registration and Information System Management (PRISM) grant program and the Commercial Vehicle Information Systems and Networks (CVISN) grant program. This section would also authorize the Secretary to provide financial assistance to a State for innovative technologies that improve CMV safety. The Federal share for this program would be at least 80 percent. The section would eliminate the statutory caps on amounts to be awarded States for activities under the CVISN grant program. It also would raise the Federal share from 50 percent to 80 percent.

Section 609. Driver safety grants.

This section would consolidate into a new Driver Safety grant program the following grant programs: the Commercial Driver's License Program Improvement (CDLPI) grant program; High Priority Activities grants; and the CMV Safety Operator grant program. It also would expand the program goals to permit the Secretary to award financial assistance to the States for an electronic notification system and CDL coordinators. This section would permit the Secretary to award financial assistance for electronic notification systems that would notify employers of a CMV operator in the event of a suspension or revocation of the operator's CDL.

Section 610. Commercial vehicle information systems and networks.

This section would direct the Secretary to submit a report not later than 6 months after the enactment of this Act to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives that would establish time frames and milestones for resuming the CVISN program and a strategic workforce plan to improve grant management.

TITLE VII — MOTORCOACH ENHANCED SAFETY ACT OF 2011

Section 701. Short title.

This section would establish that the name of this title is the Motorcoach Enhanced Safety Act of 2011.

Section 702. Definitions.

This section includes definitions for this title.

Section 703. Regulations for improved occupant protection, passenger evacuation, and crash avoidance.

This section would require that the Secretary, not later than 1 year after enactment, prescribe regulations requiring the installation of safety belts in motorcoaches at each designated seating position.

This section would also require the Secretary to prescribe regulations within 2 years requiring the following: improved roof standards for motorcoaches that improve the resistance of motorcoach roofs to deformation and intrusion; advanced glazing to be installed in each motorcoach portal to prevent ejection of passengers; and the equipage of motorcoaches with stability enhancing technology to reduce the number and frequency of rollover crashes among motorcoaches.

The section would require the Secretary to prescribe regulations within 3 years requiring motorcoaches to be equipped with direct tire pressure monitoring systems that warn the operator of a CMV when any tire exhibits a level of air pressure that is below a specified level of air pressure established by the Secretary.

Regulations prescribed under this section would apply to all motorcoaches manufactured more than 2 years after the date on which the regulation is published as a final rule. The section would allow the Secretary to require the retrofitting of existing motorcoaches based on an assessment of the feasibility, benefits, and costs of applying a regulation to them.

Section 704. Standards for improved fire safety.

This section would require the Secretary, not later than 18 months after enactment, to initiate rulemaking proceedings on: establishing requirements for fire hardening or fire resistance of motorcoach exterior components to prevent fire and smoke inhalation injuries to occupants; reviewing of Federal motor vehicle safety standards relating to flammability of interior materials; requiring technologies to prevent and mitigate the propagation of wheel well fires and reduce occupant deaths and injuries from such fires; requiring motorcoaches to be equipped with highly effective fire suppression systems that automatically respond to and suppress fires

in motorcoaches; requiring motorcoaches to be equipped with improved energy evacuation designs and emergency interior lighting systems; and examining the principle causes of motorcoach fires and vehicle design changes intended to reduce the number of motorcoach fires resulting from those principle causes.

Not later than 42 months after enactment of this Act, the Secretary would be required to issue final rules in the above rulemakings, or report to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Energy and Commerce of the House of Representatives as to why such new standards are not warranted.

Not later than 3 years after enactment, the Secretary would be required to issue a final rule to upgrade performance standards, or report to the appropriate congressional Committees as to why such standards are not warranted.

Section 705. Occupant protection, collision avoidance, fire causation, and fire extinguisher research and testing.

This section would require the Secretary, not later than 2 years after enactment, to complete research on: the need to install improved fire extinguishers or other readily available firefighting equipment in motorcoaches; enhanced compartmentalization safety countermeasures for motorcoaches, including enhanced seating designs, to reduce the risk of passengers being thrown from seats; enhanced occupant impact protection standards; and forward and lateral crash warning systems applications for motorcoaches.

Within 2 years of the completion of each research initiative, the Secretary would be required to issue a standard or regulation based on the results of that research if the Secretary determines that such a standards is warranted.

Section 706. Motorcoach registration.

This section would amend the motorcoach registration requirements under section 13902 of title 49, United States Code, to allow the Secretary to only register a motorcoach operator after that operator undergoes a pre-authorization safety audit that includes verification of: a drug and alcohol program; the operator's system of compliance with HOS rules; the ability to obtain required insurance; the driver qualifications, including the validity of each driver's CDL; the disclosure of common ownership or other relationship with another motor carrier or applicant over the past 5 years; the records of State inspections or Commercial Vehicle Safety Alliance Inspections for all vehicles; the safety management programs, including vehicle maintenance and repair programs; and the ability to comply with the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) and the Over-The-Road Bus Transportation Accessibility Act of 2007 (122 Stat. 2915). The pre-authorization safety audit would be required to be completed on-site not later than 90 days following the submission of an application for operating authority. This section would also require the applicant to complete an interview to review safety management controls and demonstrate proficiency in Federal safety rules and regulations through the successful completion of a written examination developed by the Secretary. The section contains a provision that would

require the Secretary to perform a safety audit of a motorcoach operator within 9 months of when the operator begins operations.

Section 707. Improved oversight of motorcoach service providers.

This section would require that the Secretary, not later than 3 years after enactment, determine the safety fitness of each provider of motorcoach services registered with FMCSA and assign a safety fitness rating to each such provider. The Secretary would be required to reassess each such rating less frequently than every 3 years.

The section would require the Secretary, not later than 1 year after enactment, to revise the safety fitness audit system of DOT to prevent motor carriers from operating if they put vehicles with mechanical problems on the road or unqualified drivers behind the wheels, as recommended by the NTSB recommendation H-99-6.

Section 708. Report on feasibility, benefits, and costs of establishing a system of certification of training programs.

This section would require the Secretary to submit a report describing the feasibility, benefits, and costs of establishing a system of certification of public and private schools and of motor carriers and motorcoach operators that provide motorcoach driver training.

Section 709. Report on driver's license requirements for 9- to 15-passenger vans.

Not later than 18 months after enactment, the Secretary would be required to submit a report to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Energy and Commerce of the House of Representatives that examines requiring a driver of a 9-15 passenger van operating in interstate commerce to have a CDL passenger-carrying endorsement and be tested in accordance with a drug and alcohol testing program under part 40 of title 49, Code of Federal Regulations.

Section 710. Event data recorders.

This section would require the Secretary to complete an evaluation of event data recorders to be used on motorcoaches. The bill would require the Secretary to issue standards and regulations not later than 2 years after finishing the evaluation.

Section 711. Safety inspection program for CMVs of passengers.

This section would require the Secretary, not later than 3 years after enactment, to complete a rulemaking proceeding to consider requiring States to conduct annual inspections of CMVs designed or used to transport passengers.

Section 712. Distracted driving.

This section would require the Secretary, not later than 1 year after enactment of this Act, to prescribe regulations that would prohibit the use of electronic or wireless devices by motorcoach operators in circumstances in which the Secretary determines that the use of such devices interferes with a driver's safe operation of a motorcoach. Use of such devices would be permitted if the Secretary determines that such use is necessary for safety reasons.

Section 713. Regulations.

This section would state that any standard or regulation prescribed in this section shall be prescribed according to the rule-making process established in section 553 of title 5, United States Code.

TITLE VIII — SAFE HIGHWAYS AND INFRASTRUCTURE PRESERVATION

Section 801. Comprehensive truck size and weight limits study.

This section would require the Secretary to commence a comprehensive study on truck size and weight limit not later than 90 days after enactment. The final report would be due not later than 2 years after the report commencing. The report would examine the safety performance and infrastructure impacts of allowing trucks that exceed the Federal truck size and weight limits to operate on the National Highway System

Section 802. Compilation of existing State truck size and weight laws.

This section would require the Secretary to compile a list of laws and decisions by a State to allow a segment of the National Highway System to accommodate trucks that operate in excess of the Federal truck size and weight limits.

TITLE IX — MISCELLANEOUS

Section 901. Detention time study.

This section would direct the Secretary, not later than 30 days after the date of enactment of this Act, to task the Motor Carrier Safety Advisory Committee (MCSAC) to study the extent to which detention time contributes to drivers violating HOS requirements and driver fatigue. This section would direct MCSAC to examine data collected from driver and vehicle inspections, and consult with CMV companies and drivers, shippers, and representatives of ports and other facilities where goods are loaded and unloaded, government officials, and other appropriate parties in conducting the study, and provide recommendations to the Secretary for addressing issues identified in the study. This section would direct the Secretary to provide a report to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives on the results of the study and any recommendations to address these results.

Section 902. Prohibition of coercion.

This section would prohibit motor carriers, shippers, receivers, and transportation intermediaries from coercing a driver to violate FMCSA safety regulations.

Section 903. Motor carrier safety advisory committee.

This section would specifically provide for the appointment of one or more individuals who represent a nonprofit employee labor group on MCSAC. In addition, the section would extend the duration of MCSAC until September 30, 2013.

Section 904. Waivers, exemptions, and pilot programs.

This section would correct an anomaly in FMCSA's authority to grant exceptions during emergencies by removing the requirement that the Secretary first provide notice and seek comment before granting an emergency waiver. This section would authorize the Secretary to publish medical exemption notices for a CMV operator on FMCSA's MedEx web site. This section would also require the Secretary to notify a State compliance and enforcement agency of a new exemption. This section would require the Secretary to ensure that FMCSA's homepage includes a clear and easily accessible link to the web site established to implement the requirements under this section.

Section 905. Transportation of horses.

This section would prohibit the transportation of horses in interstate commerce in a motor vehicle containing two or more levels stacked on top of one another. This section would also establish a civil penalty for any person that knowingly violates this section of at least \$100 but not more than \$500 for each violation.

TITLE X — HOUSEHOLD GOODS TRANSPORTATION

Section 1001. Additional registration requirements for household goods motor carriers.

This section would require an applicant seeking to register as a household goods motor carrier to successfully pass an examination established by the Secretary to demonstrate knowledge and intent to comply with all applicable Federal laws relating to consumer protection. In addition, this section would require the Secretary to conduct a consumer protection standards review within the first 18 months after a household goods motor carrier begins operation. This registration requirement is in addition to the requirements under section 101 of this Act.

Section 1002. Failure to give up possession of household goods.

This section would allow the Secretary to assign all or a portion of the penalties it receives to an aggrieved shipper. This section would provide the Secretary with explicit statutory authority to order the return of goods held hostage. Such an order would be enforceable in Federal court.

Section 1003. Settlement authority.

This section would authorize the Secretary to structure settlements of civil penalties by accepting lesser amounts of money, suspension of penalties, payment of penalties over time, or investment in training or other activities or equipment to improve regulatory compliance.

Section 1004. Household goods transportation assistance program.

This section would direct the Secretary to develop and implement a joint program between DOT and the household goods motor carrier industry to assist consumers in need of assistance with an interstate household goods hostage situation. This section would require the Secretary to issue an annual report on the joint program.

Section 1005. Household goods consumer education program.

This section would direct the Secretary to establish a task force to develop recommendations so that consumers are informed of Federal laws concerning household goods transportation by motor carrier, including recommendations to condense FMCSA's publication, "Your Rights and Responsibilities When You Move" into a format that is more easily accessible for consumers and on using other educational tools to inform the public of its rights in dealing with household goods motor carriers.

TITLE XI — TECHNICAL AMENDMENTS

Section 1101. Update of obsolete text.

This section would amend various provisions in chapters 311 and 313 of title 49, United States Code, and one provision in SAFETEA-LU by deleting obsolete directions for the Secretary to promulgate regulations by specifically designated dates or within specified time frames. These requirements to promulgate regulations or standards by specified deadlines have each been satisfied.

Section 1102. Correction of interstate commerce commission references.

This section would amend provisions of title 49, United States Code that currently refer to the former Interstate Commerce Commission and revise these provisions to refer to the successor Surface Transportation Board. This section would also update the statute to reflect DOT's licensing responsibilities. This section would also correct two cross-references.

Section 1103. Technical and conforming amendments.

This section would amend sections 14504a, 24305, 31103, and 31309 of title 49, United States Code to correct grammatical errors and statutory cross references.

TITLE XII — SURFACE TRANSPORTATION AND FREIGHT POLICY ACT OF 2011

Sec. 1201. Short title.

This section would establish the name of this title as the Surface Transportation and Freight Policy Act of 2011.

Section 1202. Establishment of a national surface transportation and freight policy.

This section would establish a comprehensive national surface transportation system policy that it is the policy of the United States to develop a comprehensive national surface transportation system that advances the national interest and defense, interstate and foreign commerce, the efficient and safe interstate mobility of people and goods, and the protection of the environment. The Secretary would be responsible for carrying out this policy. This section would state the objectives and goals of this policy.

This section would establish a national freight transportation policy to improve the efficiency, operation, and security of the national transportation system to move freight by leveraging investments and promoting partnerships that advance interstate and for-

eign commerce; promote economic competitiveness and job creation; improve the safe and efficient mobility of goods; and protect the public health and the environment. This section would establish objectives and goals of the freight policy.

Section 1203. Surface transportation and freight strategic plan.

This section also would direct the Secretary to implement a long-term National Surface Transportation and Freight Performance Plan that would be developed by the Secretary to achieve the policy, objectives, and goals of the surface transportation and freight policies, and would include certain evaluations to be included in the Plan.

Section 1204. Transportation investment data and planning tools.

This section would direct the Secretary, not later than 2 years after the date of enactment of this Act, to develop tools to support an outcome-oriented, performance-based approach to evaluate proposed freight-related and other transportation projects. This section would direct the Secretary to facilitate the collection of transportation-related data to support a broad range of evaluation methods and techniques to assist in transportation investment decisions.

This section would direct the Secretary to establish a pilot program to assist in the development of tools to support an outcome-oriented, performance-based approach to evaluate proposed freight-related and other transportation projects. This section would also direct the Secretary to conduct case studies to provide more detailed, in-depth analysis and data collection with respect to transportation programs; and to apply rigorous methods of measuring and addressing the effectiveness of program participants in achieving national transportation goals.

Section 1205. National freight infrastructure investment grants.

This section would establish a competitive grant program to provide financial assistance for capital investments in freight transportation infrastructure to States, political subdivisions of States, government-sponsored authorities and corporations, metropolitan planning organizations, and the District of Columbia. This section would specify the types of projects eligible for funding.

This section would provide competitive project selection criteria for the Secretary in determining who to award a grant under this section and give priority to projects that are able to demonstrate the highest system performance improvement relative to their benefit-cost analysis. The Federal share of a grant made under this section would not exceed 80 percent of the project's cost. The Secretary would be authorized to issue a letter of intent to an applicant for an eligible project and provide grant criteria to be able to receive a grant under this section.

Section 1206. Port infrastructure development initiative.

This section would permit a State to transfer funds appropriated or made available from title 23 or chapter 53 of title 49, United States Code to the Port Infrastructure Development Fund.

Section 1207. Office of Freight Planning and Development.

This section would create the Office of Freight Planning and Development in the Office of the Secretary, along with an Assistant Secretary of Freight Planning and Development to head it. The Office of Freight Planning and Development would support DOT's work on the National Freight Strategic Plan and help coordinate Federal funding to assist with the movement of freight.

Section 1208. Safety for motorized and nonmotorized users.

This section would require the Secretary to develop standards to ensure that the design of Federal transportation projects provides for adequate consideration of all users of the transportation network, including motorized and nonmotorized users. These standards would be due 2 years after enactment. This section would require each State's department of transportation to conform to Federal standards.

ROLLCALL VOTES IN COMMITTEE

Senator Hutchison offered an amendment, to the amendment (in the nature of a substitute) offered by Senator Lautenberg, to strike title XII regarding the Surface Transportation and Freight Policy Act of 2011. By rollcall vote of 11 yeas and 13 nays as follows, the amendment was defeated:

YEAS—11	NAYS—13
Mrs. Hutchison	Mr. Inouye ¹
Ms. Snowe	Mr. Kerry ¹
Mr. DeMint	Mrs. Boxer
Mr. Thune	Mr. Bill Nelson (FL)
Mr. Wicker	Ms. Cantwell
Mr. Isakson	Mr. Lautenberg
Mr. Blunt ¹	Mr. Pryor
Mr. Boozman ¹	Mrs. McCaskill
Mr. Toomey ¹	Ms. Klobuchar
Mr. Rubio	Mr. Udall (NM)
Ms. Ayotte	Mr. Warner ¹
	Mr. Begich ¹
	Mr. Rockefeller

¹By proxy

Senator DeMint offered an amendment, to the amendment (in the nature of a substitute) offered by Senator Lautenberg, to reduce the amounts authorized to be appropriated for the Federal Motor Carrier Safety Administration to the funding levels authorized for fiscal year 2008. By recorded vote of 11 yeas and 13 nays as follows, the amendment was defeated:

YEAS—11	NAYS—13
Mrs. Hutchison	Mr. Inouye ¹
Ms. Snowe	Mr. Kerry ¹
Mr. DeMint	Mrs. Boxer
Mr. Thune	Mr. Bill Nelson (FL)
Mr. Wicker	Ms. Cantwell
Mr. Isakson ¹	Mr. Lautenberg
Mr. Blunt	Mr. Pryor
Mr. Boozman	Mrs. McCaskill

Mr. Toomey¹
 Mr. Rubio
 Ms. Ayotte

Ms. Klobuchar
 Mr. Udall (NM)
 Mr. Warner¹
 Mr. Begich¹
 Mr. Rockefeller

¹By proxy

Senator Lautenberg offered an amendment (in the nature of a substitute) to insert title XII to improve the efficiency, operation, and security of the national transportation system to move freight by leveraging investments and promoting partnerships that advance interstate and foreign commerce, and for other purposes. By rollcall vote of 13 yeas and 11 nays, the amendment was adopted:

YEAS—13

Mr. Inouye¹
 Mr. Kerry¹
 Mrs. Boxer
 Mr. Bill Nelson (FL)
 Ms. Cantwell
 Mr. Lautenberg
 Mr. Pryor
 Mrs. McCaskill
 Ms. Klobuchar
 Mr. Udall (NM)
 Mr. Warner¹
 Mr. Begich¹
 Mr. Rockefeller

NAYS—11

Mrs. Hutchison
 Ms. Snowe
 Mr. DeMint
 Mr. Thune
 Mr. Wicker
 Mr. Isakson
 Mr. Blunt¹
 Mr. Boozman
 Mr. Toomey¹
 Mr. Rubio
 Ms. Ayotte

¹By proxy

CHANGES IN EXISTING LAW

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

TITLE 5. GOVERNMENT ORGANIZATION AND EMPLOYEES

PART III. EMPLOYEES

SUBPART D. PAY AND ALLOWANCES

CHAPTER 53. PAY RATES AND SYSTEMS

SUBCHAPTER II. EXECUTIVE SCHEDULE PAY RATES

§ 5315. Positions at level IV

Level IV of the Executive Schedule applies to the following positions, for which the annual rate of basic pay shall be the rate determined with respect to such level under chapter 11 of title 2, as adjusted by section 5318 of this title:

* * * * *
Assistant Secretaries of Transportation **[(4)]** (5).
* * * * *

TITLE 23. HIGHWAYS

CHAPTER 4. HIGHWAY SAFETY

§ 413. Safety for motorized and nonmotorized users

(a) *IN GENERAL.*—Not later than 2 years after the date of enactment of the Surface Transportation and Freight Policy Act of 2011, subject to subsection (b), the Secretary shall establish standards to ensure that the design of Federal surface transportation projects provides for the safe and adequate accommodation, in all phases of project planning, development, and operation, of all users of the transportation network, including motorized and nonmotorized users.

(b) *WAIVER FOR STATE LAW OR POLICY.*—The Secretary may waive the application of standards established under subsection (a) to a State that has adopted a law or policy that provides for the safe and adequate accommodation as certified by the State (or other grantee), in all phases of project planning and development, of users of the transportation network on federally funded surface transportation projects, as determined by the Secretary.

(c) *COMPLIANCE.*—

(1) *IN GENERAL.*—*Each State department of transportation shall submit to the Secretary, at such time, in such manner, and containing such information as the Secretary shall require, a report describing the implementation by the State of measures to achieve compliance with this section.*

(2) *DETERMINATION BY SECRETARY.*—*On receipt of a report under paragraph (1), the Secretary shall determine whether the applicable State has achieved compliance with this section.*

TITLE 46. SHIPPING

SUBTITLE V. MERCHANT MARINE

PART A. GENERAL

CHAPTER 503. ADMINISTRATIVE

§ 50302. Port development

(a) *GENERAL REQUIREMENTS.*—*With the objective of promoting, encouraging, and developing ports and transportation facilities in connection with water commerce over which the Secretary of Transportation has jurisdiction, the Secretary, in cooperation with the Secretary of the Army, shall—*

(1) *investigate territorial regions and zones tributary to ports, taking into consideration the economies of transportation by rail, water, and highway and the natural direction of the flow of commerce;*

(2) *investigate the causes of congestion of commerce at ports and applicable remedies;*

(3) *investigate the subject of water terminals, including the necessary docks, warehouses, and equipment, to devise and suggest the types most appropriate for different locations and for the most expeditious and economical transfer or interchange of passengers or property between water carriers and rail carriers;*

(4) *consult with communities on the appropriate location and plan of construction of wharves, piers, and water terminals;*

(5) *investigate the practicability and advantages of harbor, river, and port improvements in connection with foreign and coastwise trade; and*

(6) *investigate any other matter that may tend to promote and encourage the use by vessels of ports adequate to care for the freight that naturally would pass through those ports.*

(b) *SUBMISSION OF FINDINGS TO SURFACE TRANSPORTATION BOARD.*—*After an investigation under subsection (a), if the Secretary of Transportation believes that the rates or practices of a rail carrier subject to the jurisdiction of the Surface Transportation Board are detrimental to the objective specified in subsection (a), or that new rates or practices, new or additional port terminal facilities, or affirmative action by a rail carrier is necessary to promote that objective, the Secretary may submit findings to the Board for action the Board considers appropriate under existing law.*

(c) *PORT INFRASTRUCTURE DEVELOPMENT PROGRAM.*—

(1) ESTABLISHMENT OF PROGRAM.—The Secretary of Transportation, through the Maritime Administrator, shall establish a port infrastructure development program for the improvement of port facilities as provided in this subsection.

(2) AUTHORITY OF THE ADMINISTRATOR.—In order to carry out any project under the program established under paragraph (1), the Administrator may—

(A) receive funds provided for the project from Federal, non-Federal, and private entities that have a specific agreement or contract with the Administrator to further the purposes of this subsection;

(B) coordinate with other Federal agencies to expedite the process established under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) for the improvement of port facilities to improve the efficiency of the transportation system, to increase port security, or to provide greater access to port facilities;

(C) seek to coordinate all reviews or requirements with appropriate local, State, and Federal agencies; and

(D) provide such technical assistance to port authorities or commissions or their subdivisions and agents as needed for project planning, design, and construction.

(3) PORT INFRASTRUCTURE DEVELOPMENT FUND.—

(A) ESTABLISHMENT.—There is a Port Infrastructure Development Fund for use by the Administrator in carrying out projects under the port infrastructure development program. The Fund shall be available to the Administrator—

(i) to administer and carry out projects under the program;

(ii) to receive Federal, non-Federal, and private funds from entities which have specific agreements or contracts with the Administrator; and

(iii) to make refunds for projects that will not be completed.

(B) CREDITS.—There may be deposited into the Fund—

(i) funds from Federal, non-Federal, and private entities which have agreements or contracts with the Administrator and which shall remain in the Fund until expended or refunded; and

(ii) such amounts as may be appropriated or transferred, subject to subparagraph (C), to the Fund under this subsection.

[(C) TRANSFERS.—

[(i) IN GENERAL.—Subject to clauses (ii) and (iii), amounts appropriated or otherwise made available for any fiscal year for a marine facility or intermodal facility that includes maritime transportation may be transferred, at the option of the recipient of such amounts, to the Fund and administered by the Administrator as a component of a project under the program.

[(ii) PROHIBITION ON TRANSFERS.—Except as provided in clause (iii), no funds appropriated or made

available under title 23 or chapter 53 of title 49, United States Code, including funds from the Highway Trust Fund (section 9503(c) of the Internal Revenue Code of 1986), funds from the Mass Transit Account of the Highway Trust Fund (section 9503(e) of Internal Revenue Code of 1986), and funds provided for public transportation programs within the mass transit category (as defined in section 250(c)(4)(C) of the Balanced Budget and Emergency Deficit Control Act of 1985), shall be transferred into the Fund.

[(iii) EXCEPTION.—

[(I) IN GENERAL.—Amounts described in subclause (II) are eligible for transfer into the Fund if—

[(aa) the recipient of the amounts has a specific agreement or contract with the Administrator;

[(bb) the Department of Transportation agency that administers the amounts to be transferred has granted project approval for each component of the project that is to be funded using such amounts;

[(cc) the Department of Transportation agency that administers the amounts to be transferred and the Maritime Administration agree to the transfer through a signed Memorandum of Understanding; and

[(dd) the amounts will be used only to carry out the project for which funds were approved, and in accordance with any conditions governing the amounts under title 23 or chapter 53 of title 49, United States Code.

[(II) AMOUNTS DESCRIBED.—The amounts referred to in subclause (I) are amounts appropriated or made available—

[(aa) for loans, loan guarantees, or lines of credit under chapter 6 of title 23, United States Code, for a project eligible under such chapter to facilitate direct intermodal exchange, transfer, and access into and out of a port as defined under section 601(a)(8)(D)(iii) of such title, as in effect on the date of enactment of this subsection; or

[(bb) for projects under title XII of division A of the American Recovery and Reinvestment Act of 2009 (Public Law 111-5).]

(C) *TRANSFERS.—Amounts appropriated or otherwise made available for any fiscal year for a marine facility or intermodal facility that includes maritime transportation may be transferred, at the option of the recipient of such amounts, to the Fund and administered by the Administrator as a component of a project under the program.*

(D) *LIMITATION ON STATUTORY CONSTRUCTION.—Nothing in this section shall be construed to alter or otherwise af-*

fect existing authorities to conduct port infrastructure programs in Hawaii (as authorized by section 9008 of Public Law 109—59), Alaska (as authorized by section 10205 of Public Law 109—59), or Guam (as authorized by section 3512 of Public Law 110—417).

(4) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Fund such sums as may be necessary to carry out the program, taking into account amounts received under paragraph (3)(A)(ii).

TITLE 49. TRANSPORTATION

SUBTITLE I. DEPARTMENT OF TRANSPORTATION

CHAPTER 1. ORGANIZATION

§ 102. Department of Transportation

(a) The Department of Transportation is an executive department of the United States Government at the seat of Government.

(b) The head of the Department is the Secretary of Transportation. The Secretary is appointed by the President, by and with the advice and consent of the Senate.

(c) The Department has a Deputy Secretary of Transportation appointed by the President, by and with the advice and consent of the Senate. The Deputy Secretary—

(1) shall carry out duties and powers prescribed by the Secretary; and

(2) acts for the Secretary when the Secretary is absent or unable to serve or when the office of Secretary is vacant.

(d) The Department has an Under Secretary of Transportation for Policy appointed by the President, by and with the advice and consent of the Senate. The Under Secretary shall provide leadership in the development of policy for the Department, supervise the policy activities of Assistant Secretaries with primary responsibility for aviation, international, and other transportation policy development and carry out other powers and duties prescribed by the Secretary. The Under Secretary acts for the Secretary when the Secretary and the Deputy Secretary are absent or unable to serve, or when the offices of Secretary and Deputy Secretary are vacant.

(e) The Department has [4] 5 Assistant Secretaries and a General Counsel appointed by the President, by and with the advice and consent of the Senate. The Department also has an Assistant Secretary of Transportation for Administration appointed in the competitive service by the Secretary, with the approval of the President. They shall carry out duties and powers prescribed by the Secretary. An Assistant Secretary or the General Counsel, in the order prescribed by the Secretary, acts for the Secretary when the Secretary, Deputy Secretary, and Under Secretary of Transportation for Policy are absent or unable to serve, or when the offices of the Secretary, Deputy Secretary, and Under Secretary of Transportation for Policy are vacant.

(f) DEPUTY ASSISTANT SECRETARY FOR TRIBAL GOVERNMENT AFFAIRS.—

(1) ESTABLISHMENT.—In accordance with Federal policies promoting Indian self determination, the Department of Trans-

portation shall have, within the office of the Secretary, a Deputy Assistant Secretary for Tribal Government Affairs appointed by the President to plan, coordinate, and implement the Department of Transportation policy and programs serving Indian tribes and tribal organizations and to coordinate tribal transportation programs and activities in all offices and administrations of the Department and to be a participant in any negotiated rulemaking relating to, or having an impact on, projects, programs, or funding associated with the tribal transportation program.

(2) RESERVATION OF TRUST OBLIGATIONS.—

(A) RESPONSIBILITY OF SECRETARY.—In carrying out this title, the Secretary shall be responsible to exercise the trust obligations of the United States to Indians and Indian tribes to ensure that the rights of a tribe or individual Indian are protected.

(B) PRESERVATION OF UNITED STATES RESPONSIBILITY.—Nothing in this title shall absolve the United States from any responsibility to Indians and Indian tribes, including responsibilities derived from the trust relationship and any treaty, executive order, or agreement between the United States and an Indian tribe.

(g) OFFICE OF CLIMATE CHANGE AND ENVIRONMENT.—

(1) ESTABLISHMENT.—There is established in the Department an Office of Climate Change and Environment to plan, coordinate, and implement—

(A) department-wide research, strategies, and actions under the Department's statutory authority to reduce transportation-related energy use and mitigate the effects of climate change; and

(B) department-wide research strategies and actions to address the impacts of climate change on transportation systems and infrastructure.

(2) CLEARINGHOUSE.—The Office shall establish a clearinghouse of solutions, including cost-effective congestion reduction approaches, to reduce air pollution and transportation-related energy use and mitigate the effects of climate change.

(h) OFFICE OF FREIGHT PLANNING AND DEVELOPMENT.—

(1) ESTABLISHMENT.—*There is established within the Office of the Secretary an Office of Freight Planning and Development. The Office shall—*

(A) *coordinate investment of Federal funding to improve the efficiency of the national transportation system to move freight consistent with the policy and objectives of section 313;*

(B) *facilitate communication among government, public, and private freight transportation stakeholders;*

(C) *support the Secretary in the development of the National Freight Transportation Strategic Plan; and*

(D) *carry out other duties, as prescribed by the Secretary.*

(2) ORGANIZATION.—*The head of the Office shall be the Assistant Secretary of Freight Planning and Development.*

[(h)] (i) The Department shall have a seal that shall be judicially recognized.

CHAPTER 3. GENERAL DUTIES AND POWERS

SUBCHAPTER I. DUTIES OF THE SECRETARY OF TRANSPORTATION

§ 303. National surface transportation policy

(a) *POLICY.*—*It is the policy of the United States to develop a comprehensive national surface transportation system that advances the national interest and defense, interstate and foreign commerce, the efficient and safe interstate mobility of people and goods, and the protection of the environment. The system shall be built, maintained, managed, and operated as a partnership between the Federal, State, and local governments and the private sector and shall be coordinated with the overall transportation system of the United States, including the Nation’s air, rail, pipeline, and water transportation systems. The Secretary of Transportation shall be responsible for carrying out this policy and for defining the Federal government’s role in the system.*

(b) *OBJECTIVES.*—*The objectives of the policy shall be to facilitate and advance—*

(1) *the improved accessibility and reduced travel times for persons and goods within and between nations, regions, States, and metropolitan areas;*

(2) *the safety and health of the public;*

(3) *the security of the Nation and the public;*

(4) *environmental protection;*

(5) *energy conservation and security, including reducing transportation-related energy use;*

(6) *international and interstate freight movement, trade enhancement, job creation, and economic development;*

(7) *responsible planning to address population distribution and employment and sustainable development;*

(8) *the preservation and adequate performance of system-critical transportation assets, as defined by the Secretary;*

(9) *reasonable access to the national surface transportation system for all system users, including rural communities;*

(10) *the sustainable, balanced, and adequate financing of the national surface transportation system; and*

(11) *innovation in transportation services, infrastructure, and technology.*

(c) *GOALS.*—

(1) *SPECIFIC GOALS.*—*The goals of the policy shall be—*

(A) *to reduce average per capita peak period travel times on an annual basis;*

(B) *to reduce national motor vehicle-related and truck-related fatalities by 50 percent by 2030;*

(C) *to reduce national surface transportation delays per capita on an annual basis;*

(D) *to improve the access to employment opportunities and other economic activities;*

(E) *to increase the percentage of system-critical surface transportation assets, as defined by the Secretary, that are in a state of good repair by 20 percent by 2030;*

(F) to improve access to public transportation, intercity passenger rail services, and non-motorized transportation where travel demand warrants;

(G) to reduce passenger and freight transportation infrastructure-related delays entering into and out of international points of entry on an annual basis;

(H) to increase travel time reliability on major freight corridors that connect major population centers to freight generators and international gateways on an annual basis;

(I) to ensure adequate transportation of domestic energy supplies and promote energy security;

(J) to maintain or reduce the percentage of gross domestic product consumed by transportation costs; and

(K) to reduce transportation-related impacts on the environment and on communities on an annual basis.

(2) **BASELINES.**—Not later than 2 years after the date of enactment of the Surface Transportation and Freight Policy Act of 2011, the Secretary shall develop baselines for the goals and shall determine appropriate methods of data collection to measure the attainment of the goals.

§ 304. National surface transportation and freight strategic performance plan

(a) **DEVELOPMENT.**—Not later than 2 years after the date of enactment of the Surface Transportation and Freight Policy Act of 2011, the Secretary of Transportation shall develop and implement a National Surface Transportation and Freight Performance Plan to achieve the policy, objectives, and goals set forth in sections 303 and 312 .

(b) **CONTENTS.**—The plan shall include—

(1) an assessment of the current performance of the national surface transportation system and an analysis of the system's ability to achieve the policy, objectives, and goals set forth in sections 303 and 312;

(2) an analysis of emerging and long-term projected trends, including economic and national trade policies, that will impact the performance, needs, and uses of the national surface transportation system, including the system to move freight;

(3) a description of the major challenges to effectively meeting the policy, objectives, and goals set forth in sections 303 and 312 and a plan to address such challenges;

(4) a comprehensive strategy and investment plan to meet the policy, objectives, and goals set forth in sections 303 and 312, including a strategy to develop the coalitions, partnerships, and other collaborative financing efforts necessary to ensure stable, reliable funding and completion of freight corridors and projects;

(5) initiatives to improve transportation modeling, research, data collection, and analysis, including those to assess impacts on public health, and environmental conditions;

(6) a plan for any reorganization of the Department of Transportation or its agencies necessary to meet the policy, objectives, and goals set forth in sections 303 and 312;

(7) guidelines to encourage the appropriate balance of means to finance the national transportation system to move freight to implement the plan and the investment plan proposed under paragraph (4); and

(8) a list of priority freight corridors and gateways to be improved and developed to meet the policy, objectives, and goals set forth in section 312.

(c) **CONSULTATION.**—In developing the plan required by subsection (a), the Secretary shall—

(1) consult with appropriate Federal agencies, local, State, and tribal governments, public and private transportation stakeholders, non-profit organizations representing transportation employees, appropriate foreign governments, and other interested parties;

(2) consider on-going Federal, State, and corridor-wide transportation plans;

(3) provide public notice and hearings and solicit public comments on the plan, and

(4) as appropriate, establish advisory committees to assist with developing the plan.

(d) **SUBMITTAL AND PUBLICATION.**—The Secretary shall—

(1) submit the completed plan to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives; and

(2) post the completed plan on the Department of Transportation's public web site.

(e) **PROGRESS REPORTS.**—The Secretary shall submit biennial progress reports on the implementation of the plan beginning 2 years after the date of submittal of the plan under subsection (d)(1). Each progress report shall—

(1) describe progress made toward fully implementing the plan and achieving the policies, objectives, and goals established under sections 303 and 312;

(2) describe challenges and obstacles to full implementation;

(3) describe updates to the plan necessary to reflect changed circumstances or new developments; and

(4) make policy and legislative recommendations the Secretary believes are necessary and appropriate to fully implement the plan.

(f) **DATA.**—The Secretary shall have the authority to conduct studies, gather information, and require the production of data necessary to develop or update this plan, consistent with Federal privacy standards.

(g) **IMPLEMENTATION.**—The Secretary shall—

(1) develop appropriate performance criteria and data collections systems for each Federal surface transportation program to evaluate:

(A) whether such programs are consistent with the policy, objectives, and goals established by sections 303 and 312; and

(B) how effective such programs are in contributing to the achievement of the policy, objectives, and goals established by sections 303 and 312;

(2) *using the criteria developed under paragraph (1), periodically evaluate each such program and provide the results to the public;*

(3) *based on the evaluation performed under paragraph (2), make any necessary changes or improvements to such programs to ensure such consistency and effectiveness;*

(4) *implement this section in a manner that is consistent with sections 302, 5503, 10101, and 13101 of this title and section 101 of title 23 to the extent that such sections do not conflict with the policy, objectives, and goals established by sections 303 and 312;*

(5) *review, update, and reissue all relevant surface transportation planning requirements to ensure that such requirements require that regional, State, and local surface transportation planning efforts funded with Federal funds are consistent with the policy, objectives, and goals established by this section; and*

(6) *require States and metropolitan planning organizations to annually report on the use of Federal surface transportation funds, including a description of—*

(A) *which projects and priorities were funded with such funds;*

(B) *the rationale and method employed for apportioning such funds to the projects and priorities; and*

(C) *how the obligation of such funds is consistent with or advances the policy, objectives, and goals established by sections 303 and 312.*

§ [303] 305. Policy on lands, wildlife and waterfowl refuges, and historic sites

(a) It is the policy of the United States Government that special effort should be made to preserve the natural beauty of the countryside and public park and recreation lands, wildlife and waterfowl refuges, and historic sites.

(b) The Secretary of Transportation shall cooperate and consult with the Secretaries of the Interior, Housing and Urban Development, and Agriculture, and with the States, in developing transportation plans and programs that include measures to maintain or enhance the natural beauty of lands crossed by transportation activities or facilities.

(c) APPROVAL OF PROGRAMS AND PROJECTS.—Subject to subsection (d), the Secretary may approve a transportation program or project (other than any project for a park road or parkway under section 204 of title 23) requiring the use of publicly owned land of a public park, recreation area, or wildlife and waterfowl refuge of national, State, or local significance, or land of an historic site of national, State, or local significance (as determined by the Federal, State, or local officials having jurisdiction over the park, area, refuge, or site) only if—

(1) there is no prudent and feasible alternative to using that land; and

(2) the program or project includes all possible planning to minimize harm to the park, recreation area, wildlife and waterfowl refuge, or historic site resulting from the use.

(d) DE MINIMIS IMPACTS.—

(1) REQUIREMENTS.—

(A) REQUIREMENTS FOR HISTORIC SITES.—The requirements of this section shall be considered to be satisfied with respect to an area described in paragraph (2) if the Secretary determines, in accordance with this subsection, that a transportation program or project will have a de minimis impact on the area.

(B) REQUIREMENTS FOR PARKS, RECREATION AREAS, AND WILDLIFE OR WATERFOWL REFUGES.—The requirements of subsection (c)(1) shall be considered to be satisfied with respect to an area described in paragraph (3) if the Secretary determines, in accordance with this subsection, that a transportation program or project will have a de minimis impact on the area. The requirements of subsection (c)(2) with respect to an area described in paragraph (3) shall not include an alternatives analysis.

(C) CRITERIA.—In making any determination under this subsection, the Secretary shall consider to be part of a transportation program or project any avoidance, minimization, mitigation, or enhancement measures that are required to be implemented as a condition of approval of the transportation program or project.

(2) HISTORIC SITES.—With respect to historic sites, the Secretary may make a finding of de minimis impact only if—

(A) the Secretary has determined, in accordance with the consultation process required under section 106 of the National Historic Preservation Act (16 U.S.C. 470f), that—

(i) the transportation program or project will have no adverse effect on the historic site; or

(ii) there will be no historic properties affected by the transportation program or project;

(B) the finding of the Secretary has received written concurrence from the applicable State historic preservation officer or tribal historic preservation officer (and from the Advisory Council on Historic Preservation if the Council is participating in the consultation process); and

(C) the finding of the Secretary has been developed in consultation with parties consulting as part of the process referred to in subparagraph (A).

(3) PARKS, RECREATION AREAS, AND WILDLIFE OR WATERFOWL REFUGES.—With respect to parks, recreation areas, or wildlife or waterfowl refuges, the Secretary may make a finding of de minimis impact only if—

(A) the Secretary has determined, after public notice and opportunity for public review and comment, that the transportation program or project will not adversely affect the activities, features, and attributes of the park, recreation area, or wildlife or waterfowl refuge eligible for protection under this section; and

(B) the finding of the Secretary has received concurrence from the officials with jurisdiction over the park, recreation area, or wildlife or waterfowl refuge.

§ [303a] 306. Development of water transportation

(a) POLICY.—It is the policy of Congress—

(1) to promote, encourage, and develop water transportation, service, and facilities for the commerce of the United States; and

(2) to foster and preserve rail and water transportation.

(b) DEFINITION.—In this section, “inland waterway” includes the Great Lakes.

(c) REQUIREMENTS.—The Secretary of Transportation shall—

(1) investigate the types of vessels suitable for different classes of inland waterways to promote, encourage, and develop inland waterway transportation facilities for the commerce of the United States;

(2) investigate water terminals, both for inland waterway traffic and for through traffic by water and rail, including the necessary docks, warehouses, and equipment, and investigate railroad spurs and switches connecting with those water terminals, to develop the types most appropriate for different locations and for transferring passengers or property between water carriers and rail carriers more expeditiously and economically;

(3) consult with communities, cities, and towns about the location of water terminals, and cooperate with them in preparing plans for terminal facilities;

(4) investigate the existing status of water transportation on the different inland waterways of the United States to learn the extent to which—

(A) the waterways are being used to their capacity and are meeting the demands of traffic; and

(B) water carriers using those waterways are interchanging traffic with rail carriers;

(5) investigate other matters that may promote and encourage inland water transportation; and

(6) compile, publish, and distribute information about transportation on inland waterways that the Secretary considers useful to the commercial interests of the United States.

§ [304] 307. Joint activities with the Secretary of Housing and Urban Development

(a) The Secretary of Transportation and the Secretary of Housing and Urban Development shall—

(1) consult and exchange information about their respective transportation policies and activities;

(2) carry out joint planning, research, and other activities;

(3) coordinate assistance for local transportation projects; and

(4) jointly study methods by which policies and programs of the United States Government can ensure that urban transportation systems most effectively serve both transportation needs of the United States and the comprehensively planned development of urban areas.

(b) The Secretaries shall report on April 1 of each year to the President, for submission to Congress, on their studies and other

activities under this section, including legislative recommendations they consider desirable.

§ [305] 308. Transportation investment standards and criteria

(a) Subject to sections 301-304 of this title, the Secretary of Transportation shall develop standards and criteria to formulate and economically evaluate all proposals for investing amounts of the United States Government in transportation facilities and equipment. Based on experience, the Secretary shall revise the standards and criteria. When approved by Congress, the Secretary shall prescribe standards and criteria developed or revised under this subsection. This subsection does not apply to—

- (1) the acquisition of transportation facilities or equipment by a department, agency, or instrumentality of the Government to provide transportation for its use;
- (2) an inter-oceanic canal located outside the 48 contiguous States;
- (3) defense features included at the direction of the Department of Defense in designing and constructing civil air, sea, or land transportation;
- (4) foreign assistance programs;
- (5) water resources projects; or
- (6) grant-in-aid programs authorized by law.

(b) A department, agency, or instrumentality of the Government preparing a survey, plan, or report that includes a proposal about which the Secretary has prescribed standards and criteria under subsection (a) of this section shall—

- (1) prepare the survey, plan, or report under those standards and criteria and on the basis of information provided by the Secretary on the—
 - (A) projected growth of transportation needs and traffic in the affected area;
 - (B) the relative efficiency of various modes of transportation;
 - (C) the available transportation services in the area; and
 - (D) the general effect of the proposed investment on existing modes of transportation and on the regional and national economy;
- (2) coordinate the survey, plan, or report—
 - (A) with the Secretary and include the views and comments of the Secretary; and
 - (B) as appropriate, with other departments, agencies, and instrumentalities of the Government, States, and local governments, and include their views and comments; and
- (3) send the survey, plan, or report to the President for disposition under law and procedure established by the President.

§ [306] 309. Prohibited discrimination

(a) In this section, “financial assistance” includes obligation guarantees.

(b) A person in the United States may not be excluded from participating in, be denied the benefits of, or be subject to discrimination under, a project, program, or activity because of race, color, na-

tional origin, or sex when any part of the project, program, or activity is financed through financial assistance under section 332 or 333 or chapter 221 or 249 of this title, section 211 or 216 of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 721, 726), or title V of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 821 et seq.).

(c) When the Secretary of Transportation decides that a person receiving financial assistance under a law referred to in subsection (b) of this section has not complied with that subsection, a Federal civil rights law, or an order or regulation issued under a Federal civil rights law, the Secretary shall notify the person of the decision and require the person to take necessary action to ensure compliance with that subsection.

(d) If a person does not comply with subsection (b) of this section within a reasonable time after receiving a notice under subsection (c) of this section, the Secretary shall take at least one of the following actions:

(1) direct that no more Federal financial assistance be provided the person.

(2) refer the matter to the Attorney General with a recommendation that a civil action be brought against the person.

(3) carry out the duties and powers provided by title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.).

(4) take other action provided by law.

(e) When a matter is referred to the Attorney General under subsection (d)(2) of this section, or when the Attorney General has reason to believe that a person is engaged in a pattern or practice violating this section, the Attorney General may begin a civil action in a district court of the United States for appropriate relief.

§ 307. Safety information and intervention in Interstate Commerce Commission proceedings

[(a) The Secretary of Transportation shall inspect promptly the safety compliance record in the Department of Transportation of each person applying to the Interstate Commerce Commission for authority to provide transportation or freight forwarder service. The Secretary shall report the findings of the inspection to the Commission.

[(b) When the Secretary is not satisfied with the safety record of a person applying for permanent authority to provide transportation or freight forwarder service, or for approval of a proposed transfer of permanent authority, the Secretary shall intervene and present evidence of the fitness of the person to the Commission in its proceedings.

[(c) When requested by the Commission, the Secretary shall—

[(1) provide the Commission with a complete report on the safety compliance of a carrier providing transportation or freight forwarder service subject to its jurisdiction;

[(2) provide promptly a statement of the safety record of a person applying to the Commission for temporary authority to provide transportation;

[(3) intervene and present evidence in a proceeding in which a finding of fitness is required; and

[(4) make additional safety compliance surveys and inspections the Commission decides are desirable to allow it to act on an application or to make a finding on the fitness of a carrier.]

§ [308] 310. Reports

(a) As soon as practicable after the end of each fiscal year, the Secretary of Transportation shall report to the President, for submission to Congress, on the activities of the Department of Transportation during the prior fiscal year.

(b) The Secretary shall submit to the President and Congress each year a report on the aviation activities of the Department. The report shall include—

(1) collected information the Secretary considers valuable in deciding questions about—

- (A) the development and regulation of civil aeronautics;
- (B) the use of airspace of the United States; and
- (C) the improvement of the air navigation and traffic control system; and

(2) recommendations for additional legislation and other action the Secretary considers necessary.

(c) The Secretary shall submit to Congress each year a report on the conditions of the public ports of the United States, including the—

- (1) economic and technological development of the ports;
- (2) extent to which the ports contribute to the national welfare and security; and
- (3) factors that may impede the continued development of the ports.

(d) [Repealed]

(e) (1) The Secretary shall submit to Congress in March 1998, and in March of each even-numbered year thereafter, a report of estimates by the Secretary on the current performance and condition of public mass transportation systems with recommendations for necessary administrative or legislative changes.

(2) In reporting to Congress under this subsection, the Secretary shall prepare a complete assessment of public transportation facilities in the United States. The Secretary also shall assess future needs for those facilities and estimate future capital requirements and operation and maintenance requirements for one-year, 5-year, and 10-year periods at specified levels of service.

§ [309] 311. High-speed ground transportation

(a) The Secretary of Transportation, in consultation with the Secretaries of Commerce, Energy, and Defense, the Administrator of the Environmental Protection Agency, the Assistant Secretary of the Army for Public Works, and the heads of other interested agencies, shall lead and coordinate Federal efforts in the research and development of high-speed ground transportation technologies in order to foster the implementation of magnetic levitation and high-

speed steel wheel on rail transportation systems as alternatives to existing transportation systems.

* * * * *

§ 312. National freight transportation policy.

(a) *NATIONAL FREIGHT TRANSPORTATION POLICY.*—*It is the policy of the United States to improve the efficiency, operation, and security of the national transportation system to move freight by leveraging investments and promoting partnerships that advance interstate and foreign commerce, promote economic competitiveness and job creation, improve the safe and efficient mobility of goods, and protect the public health and the environment.*

(b) *OBJECTIVES.*—*The objectives of the policy are—*

(1) *to target investment in freight transportation projects that strengthen the economic competitiveness of the United States with a focus on domestic industries and businesses and the creation and retention of high-value jobs;*

(2) *to promote and advance energy conservation and the environmental sustainability of freight movements;*

(3) *to facilitate and advance the safety and health of the public, including communities adjacent to freight movements;*

(4) *to provide for systematic and balanced investment to improve the overall performance and reliability of the national transportation system to move freight, including ensuring trade facilitation and transportation system improvements are mutually supportive;*

(5) *to promote partnerships between Federal, State, and local governments, the private sector, and other transportation stakeholders to leverage investments in freight transportation projects; and*

(6) *to encourage adoption of operational policies, such as intelligent transportation systems, to improve the efficiency of freight-related transportation movements and infrastructure.*

SUBCHAPTER II. ADMINISTRATIVE

§ 333. Responsibility for rail transportation unification and coordination projects

(a) The Secretary of Transportation may develop and make available to interested persons any plans, proposals, and recommendations for mergers, consolidations, reorganizations, and other unification or coordination projects for rail transportation (including arrangements for joint use of tracks and other facilities and acquisition or sale of assets) that the Secretary believes will result in a rail system that is more efficient and consistent with the public interest.

(b) To achieve a more efficient, economical, and viable rail system in the private sector, the Secretary, when requested by a rail carrier and under this section, may assist in planning, negotiating, and carrying out a unification or coordination of operations and facilities of at least 2 rail carriers.

(c) (1) The Secretary may conduct studies to determine the potential cost savings and possible improvements in the quality of rail

transportation that are likely to result from unification or coordination of at least 2 rail carriers, through—

- (A) elimination of duplicating or overlapping operations and facilities;
- (B) reducing switching operations;
- (C) using the shortest or more efficient and economical routes;
- (D) exchanging trackage rights;
- (E) combining trackage and terminal or other facilities;
- (F) upgrading tracks and other facilities used by at least 2 rail carriers;
- (G) reducing administrative and other expenses; and
- (H) other measures likely to reduce costs and improve rail transportation.

(2) When the Secretary requests information for a study under this section, a rail carrier shall provide the information requested. In carrying out this section, the Secretary may designate an officer or employee to get from a rail carrier information on the kind, quality, origin, destination, consignor, consignee, and routing of property. This information may be obtained without the consent of the consignor or consignee notwithstanding section 11904 of this title. When appropriate, the designated officer or employee has the powers described in section 203(c) of the Regional Rail Reorganization Act of 1973 to carry out this section, but a subpoena must be issued under the signature of the Secretary.

(d) (1) When requested by a rail carrier, the Secretary may hold conferences on and mediate disputes resulting from a proposed unification or coordination project. The Secretary may invite to a conference—

- (A) officers and directors of an affected rail carrier;
- (B) representatives of rail carrier employees who may be affected;
- (C) representatives of the [Interstate Commerce Commission] *Surface Transportation Board*;
- (D) State and local government officials, shippers, and consumer representatives; and
- (E) representatives of the Federal Trade Commission and the Attorney General.

(2) A person attending or represented at a conference on a proposed unification or coordination project is not liable under the antitrust laws of the United States for any discussion at the conference and for any agreements reached at the conference, that are entered into with the approval of the Secretary to achieve or determine a plan of action to carry out the unification or coordination project.

(e) When the approval of a proposal submitted by a rail carrier for a merger or other action is subject to the jurisdiction of the [Interstate Commerce Commission] *Surface Transportation Board* under section 11323(a) of this title, the Secretary may study the proposal to decide whether it satisfies section 11324(b) of this title. When the proposal is the subject of an application and proceeding before the [Commission] *Board*, the Secretary may appear in any proceeding related to the application.

CHAPTER 5. SPECIAL AUTHORITY

SUBCHAPTER I. POWERS

§ 504. Reports and records

(a) In this section—

(1) “association” means an organization maintained by or in the interest of a group of rail carriers, motor carriers, motor carriers of migrant workers, or motor private carriers that performs a service, or engages in activities, related to transportation of that carrier.

(2) “carrier” means a motor carrier, motor carrier of migrant workers, motor private carrier, and rail carrier.

(3) “lessor” means a person owning a railroad that is leased to and operated by a rail carrier, and a person leasing a right to operate as a motor carrier, motor carrier of migrant workers, or motor private carrier to another.

(4) “lessor” and “carrier” include a receiver or trustee of that lessor or carrier, respectively.

(b) (1) The Secretary of Transportation may prescribe the form of records required to be prepared or compiled under this section by—

(A) carriers and lessors; and

(B) a person furnishing cars or protective service against heat or cold to or for a rail carrier.

(2) The Secretary may require—

(A) carriers, lessors, associations, or classes of them as the Secretary may prescribe, to file annual, periodic, and special reports with the Secretary containing answers to questions asked by the Secretary; and

(B) a person furnishing cars or protective service against heat or cold to a rail carrier to file reports with the Secretary containing answers to questions about those cars or service.

(c) The Secretary, or an employee (and, in the case of a motor carrier, a contractor, or an *employee of the recipient of a grant issued under section 31102 of this title*) designated by the Secretary, may on demand and display of proper credentials, *in person or in writing*—

(1) inspect the equipment of a carrier or lessor; and

(2) inspect and copy any record of—

(A) a carrier, lessor, or association;

(B) a person controlling, controlled by, or under common control with a carrier, if the Secretary considers inspection relevant to that person’s relation to, or transaction with, that carrier; and

(C) a person furnishing cars or protective service against heat or cold to or for a rail carrier if the Secretary prescribed the form of that record.

(d) The Secretary may prescribe the time period during which records must be preserved by a carrier, lessor, and person furnishing cars or protective service.

(e) (1) An annual report shall contain an account, in as much detail as the Secretary may require, of the affairs of a carrier, lessor,

or association for the 12-month period ending on the 31st day of December of each year. The annual report shall be filed with the Secretary by the end of the 3d month after the end of the year for which the report is made unless the Secretary extends the filing date or changes the period covered by the report.

(2) The annual report and, if the Secretary requires, any other report made under this section shall be made under oath.

(f) No part of a report of an accident occurring in operations of a motor carrier, motor carrier of migrant workers, or motor private carrier and required by the Secretary, and no part of a report of an investigation of the accident made by the Secretary, may be admitted into evidence or used in a civil action for damages related to a matter mentioned in the report or investigation.

SUBCHAPTER II. PENALTIES

§ 521. Civil penalties

(a)

(1) A person required under section 504 of this title to make, prepare, preserve, or submit to the Secretary of Transportation a record about rail carrier transportation, that does not make, prepare, preserve, or submit that record as required under that section, is liable to the United States Government for a civil penalty of \$500 for each violation.

(2) A rail carrier, and a lessor, receiver, or trustee of that carrier, violating section 504(c)(1) of this title is liable to the Government for a civil penalty of \$100 for each violation.

(3) A rail carrier, a lessor, receiver, or trustee of that carrier, a person furnishing cars or protective service against heat or cold, and an officer, agent, or employee of one of them, required to make a report to the Secretary or answer a question, that does not make a report to the Secretary or does not specifically, completely, and truthfully answer the question, is liable to the Government for a civil penalty of \$100 for each violation.

(4) A separate violation occurs for each day a violation under this subsection continues.

(5) Trial in a civil action under this subsection is in the judicial district in which the rail carrier has its principal operating office or in a district through which the railroad of the rail carrier runs.

(b) VIOLATIONS RELATING TO COMMERCIAL MOTOR VEHICLE SAFETY REGULATION AND OPERATORS.—

(1) NOTICE.—

(A) IN GENERAL.—If the Secretary finds that a violation of a provision of subchapter III of chapter 311 (except sections 31138 and 31139) or section 31302, 31303, 31304, 31305(b), 31310(g)(1)(A), or 31502 of this title, or a violation of a regulation issued under any of those provisions, has occurred, the Secretary shall issue a written notice to the violator. Such notice shall describe with reasonable particularity the nature of the violation found and the provision which has been violated. The notice shall specify the proposed civil penalty, if any, and suggest actions which

might be taken in order to abate the violation. The notice shall indicate that the violator may, within 15 days of service, notify the Secretary of the violator's intention to contest the matter. In the event of a contested notice, the Secretary shall afford such violator an opportunity for a hearing, pursuant to section 554 of title 5 following which the Secretary shall issue an order affirming, modifying, or vacating the notice of violation.

(B) NONAPPLICABILITY TO REPORTING AND RECORDKEEPING VIOLATIONS.—Subparagraph (A) shall not apply to reporting and recordkeeping violations.

(2) CIVIL PENALTY.—

(A) IN GENERAL.—Except as otherwise provided in this subsection, any person who is determined by the Secretary, after notice and opportunity for a hearing, to have committed an act that is a violation of regulations issued by the Secretary under subchapter III of chapter 311 (except sections 31138 and 31139) or section 31502 of this title shall be liable to the United States for a civil penalty in an amount not to exceed \$10,000 for each offense. Notwithstanding any other provision of this section (except subparagraph (C)), no civil penalty shall be assessed under this section against an employee for a violation in an amount exceeding \$2,500.

(B) RECORDKEEPING AND REPORTING VIOLATIONS.—A person required to make a report to the Secretary, answer a question, or make, prepare, or preserve a record under section 504 of this title or under any regulation issued by the Secretary pursuant to subchapter III of chapter 311 (except sections 31138 and 31139) or section 31502 of this title about transportation by motor carrier, motor carrier of migrant workers, or motor private carrier, or an officer, agent, or employee of that person—

(i) who does not make that report, does not specifically, completely, and truthfully answer that question in 30 days from the date the Secretary requires the question to be answered, or does not make, prepare, or preserve that record in the form and manner prescribed by the Secretary, shall be liable to the United States for a civil penalty in an amount not to exceed \$1,000 for each offense, and each day of the violation shall constitute a separate offense, except that the total of all civil penalties assessed against any violator for all offenses related to any single violation shall not exceed \$10,000; or

(ii) who knowingly falsifies, destroys, mutilates, or changes a required report or record, knowingly files a false report with the Secretary, knowingly makes or causes or permits to be made a false or incomplete entry in that record about an operation or business fact or transaction, or knowingly makes, prepares, or preserves a record in violation of a regulation or order of the Secretary, shall be liable to the United States for a civil penalty in an amount not to exceed \$10,000

for each violation, if any such action can be shown to have misrepresented a fact that constitutes a violation other than a reporting or recordkeeping violation.

(C) VIOLATIONS PERTAINING TO CDLS.—Any person who is determined by the Secretary, after notice and opportunity for a hearing, to have committed an act which is a violation of section 31302, 31303, 31304, 31305(b), or 31310(g)(1)(A) of this title shall be liable to the United States for a civil penalty not to exceed \$2,500 for each offense.

(D) DETERMINATION OF AMOUNT.—The amount of any civil penalty, and a reasonable time for abatement of the violation, shall by written order be determined by the Secretary, taking into account the nature, circumstances, extent, and gravity of the violation committed and, with respect to the violator, the degree of culpability, history of prior offenses, [ability to pay,] effect on ability to continue to do business, and such other matters as justice and public safety may require. In each case, the assessment shall be calculated to induce further compliance.

[(E)] (E)(i) COPYING OF RECORDS AND ACCESS TO EQUIPMENT, LANDS, AND BUILDINGS.—A person subject to chapter 51 or a motor carrier, broker, freight forwarder, or owner or operator of a commercial motor vehicle subject to part B of subtitle VI who fails to allow promptly, upon demand, the Secretary (or an employee designated by the Secretary) to inspect and copy any record or inspect and examine equipment, lands, buildings and other property in accordance with sections 504(c), 5121(c), and 14122(b) shall be liable to the United States for a civil penalty not to exceed \$1,000 for each offense. Each day the Secretary is denied the right to inspect and copy any record or inspect and examine equipment, lands, buildings and other property shall constitute a separate offense, except that the total of all civil penalties against any violator for all offenses related to a single violation shall not exceed \$10,000. *In the case of a motor carrier, the Secretary may also place the violator's motor carrier operations out of service.* It shall be a defense to [such penalty] a penalty that the records did not exist at the time of the Secretary's request or could not be timely produced without unreasonable expense or effort. Nothing in this subparagraph amends or supersedes any remedy available to the Secretary under section 502(d), section 507(c), or any other provision of this title.

(ii) PLACE OUT OF SERVICE.—*The Secretary may by regulation adopt procedures for placing out of service the commercial motor vehicle of a foreign-domiciled motor carrier that fails to promptly allow the Secretary to inspect and copy a record or inspect equipment, land, buildings, or other property.*

(F) PENALTY FOR VIOLATIONS RELATING TO OUT OF SERVICE ORDERS.—*A motor carrier or employer (as defined in section 31132) that operates a commercial motor vehicle in commerce in violation of a prohibition on transportation*

under section 31144(c) of this title or an imminent hazard out of service order issued under subsection (b)(5) of this section or section 5121(d) of this title shall be liable for a civil penalty not to exceed \$25,000.

(3) The Secretary may require any violator served with a notice of violation to post a copy of such notice or statement of such notice in such place or places and for such duration as the Secretary may determine appropriate to aid in the enforcement of subchapter III of chapter 311 (except sections 31138 and 31139) or section 31302, 31303, 31304, 31305(b), or 31502 of this title, as the case may be.

(4) Such civil penalty may be recovered in an action brought by the Attorney General on behalf of the United States in the appropriate district court of the United States or, before referral to the Attorney General, such civil penalty may be compromised by the Secretary.

(5) (A) If, upon inspection or investigation, the Secretary determines that a violation of a provision of subchapter III of chapter 311 (except sections 31138 and 31139) or section 31302, 31303, 31304, 31305(b), or 31502 of this title or a regulation issued under any of those provisions, or combination of such violations, poses an imminent hazard to safety, the Secretary shall order a vehicle or employee operating such vehicle out of service, or order an employer to cease all or part of the employer's commercial motor vehicle operations. In making any such order, the Secretary shall impose no restriction on any employee or employer beyond that required to abate the hazard. Subsequent to the issuance of the order, opportunity for review shall be provided in accordance with section 554 of title 5, except that such review shall occur not later than 10 days after issuance of such order.

(B) In this paragraph, "imminent hazard" means any condition of vehicle, employee, or commercial motor vehicle operations which substantially increases the likelihood of serious injury or death if not discontinued immediately.

(C) *If an employee, vehicle, or all or part of an employer's commercial motor vehicle operations is ordered out of service under paragraph (5)(A), the commercial motor vehicle operations of the employee, vehicle, or employer that affect interstate commerce are also prohibited.*

(6) CRIMINAL PENALTIES.—

(A) IN GENERAL.—Any person who knowingly and willfully violates any provision of subchapter III of chapter 311 (except sections 31138 and 31139) or section 31502 of this title, or a regulation issued under any of those provisions shall, upon conviction, be subject for each offense to a fine not to exceed \$25,000 or imprisonment for a term not to exceed one year, or both, except that, if such violator is an employee, the violator shall only be subject to penalty if, while operating a commercial motor vehicle, the violator's activities have led or could have led to death or serious injury, in which case the violator shall be subject, upon conviction, for a fine not to exceed \$2,500.

(B) VIOLATIONS PERTAINING TO CDLS.—Any person who knowingly and willfully violates—

(i) any provision of section 31302, 31303(b) or (c), 31304, 31305(b), or 31310(g)(1)(A) of this title or a regulation issued under such section, or

(ii) with respect to notification of a serious traffic violation as defined under section 31301 of this title, any provision of section 31303(a) of this title or a regulation issued under section 31303(a),

shall, upon conviction, be subject for each offense to a fine not to exceed \$5,000 or imprisonment for a term not to exceed 90 days, or both.

(7) The Secretary shall issue regulations establishing penalty schedules designed to induce timely compliance for persons failing to comply promptly with the requirements set forth in any notices and orders under this subsection. *The penalties may include a minimum duration for any out of service period, not to exceed 90 days.*

(8) PROHIBITION ON OPERATION IN INTERSTATE COMMERCE AFTER NONPAYMENT OF PENALTIES.—

(A) IN GENERAL.—An owner or operator of a commercial motor vehicle against whom a civil penalty is assessed under this chapter or chapter 51, 149, or 311 of this title and who does not pay such penalty or fails to arrange and abide by an acceptable payment plan for such civil penalty may not operate in interstate commerce beginning on the 91st day after the date specified by order of the Secretary for payment of such penalty. This paragraph shall not apply to any person who is unable to pay a civil penalty because such person is a debtor in a case under chapter 11 of title 11, United States Code.

(B) ADDITIONAL PROHIBITION.—*A person prohibited from operating in interstate commerce under paragraph (8)(A) may not operate any commercial motor vehicle where the operation affects interstate commerce.*

[(B)] (C) REGULATIONS.—Not later than 12 months after the date of the enactment of this paragraph, the Secretary, after notice and an opportunity for public comment, shall issue regulations setting forth procedures for ordering commercial motor vehicle owners and operators delinquent in paying civil penalties to cease operations until payment has been made.

(9) Any aggrieved person who, after a hearing, is adversely affected by a final order issued under this section may, within 30 days, petition for review of the order in the United States Court of Appeals in the circuit wherein the violation is alleged to have occurred or where the violator has his principal place of business or residence, or in the United States Court of Appeals for the District of Columbia Circuit. Review of the order shall be based on a determination of whether the Secretary's findings and conclusions were supported by substantial evidence, or were otherwise not in accordance with law. No objection that has not been urged before the Secretary shall be considered by the court, unless reasonable grounds existed for fail-

ure or neglect to do so. The commencement of proceedings under this subsection shall not, unless ordered by the court, operate as a stay of the order of the Secretary.

(10) All penalties and fines collected under this section shall be deposited into the Highway Trust Fund (other than the Mass Transit Account).

(11) In any action brought under this section, process may be served without regard to the territorial limits of the district of the State in which the action is brought.

(12) In any proceeding for criminal contempt for violation of an injunction or restraining order issued under this section, trial shall be by the court, or, upon demand of the accused, by a jury, conducted in accordance with the provisions of rule 42(b) of the Federal Rules of Criminal Procedure.

(13) The provisions of this subsection shall not affect chapter 51 of this title or any regulation promulgated by the Secretary under chapter 51.

(14) As used in this subsection, the terms "commercial motor vehicle", "employee", "employer", and "State" have the meaning such terms have under section 31132 of this title.

(15) *IMPOUNDMENT OF COMMERCIAL MOTOR VEHICLES.—*

(A) *ENFORCEMENT OF IMMINENT HAZARD OUT-OF-SERVICE ORDERS.—*

(i) *The Secretary, or an authorized State official carrying out motor carrier safety enforcement activities under section 31102, may enforce an imminent hazard out-of-service order issued under chapters 5, 51, 131 through 149, 311, 313, or 315 of this title, or a regulation promulgated thereunder, by towing and impounding a commercial motor vehicle until the order is rescinded.*

(ii) *Enforcement shall not unreasonably interfere with the ability of a shipper, carrier, broker, or other party to arrange for the alternative transportation of any cargo or passenger being transported at the time the commercial motor vehicle is immobilized. In the case of a commercial motor vehicle transporting passengers, the Secretary or authorized State official shall provide reasonable, temporary, and secure shelter and accommodations for passengers in transit.*

(iii) *The Secretary's designee or an authorized State official carrying out motor carrier safety enforcement activities under section 31102, shall immediately notify the owner of a commercial motor vehicle of the impoundment and the opportunity for review of the impoundment. A review shall be provided in accordance with section 554 of title 5, except that the review shall occur not later than 10 days after the impoundment.*

(B) *ISSUANCE OF REGULATIONS.—The Secretary shall promulgate regulations on the use of impoundment or immobilization of commercial motor vehicles as a means of enforcing additional out-of-service orders issued under chapters 5, 51, 131 through 149, 311, 313, or 315 of this title, or a regulation promulgated thereunder. Regulations pro-*

mulgated under this subparagraph shall include consideration of public safety, the protection of passengers and cargo, inconvenience to passengers, and the security of the commercial motor vehicle.

(C) DEFINITION.—In this paragraph, the term “impoundment” or “impounding” means the seizing and taking into custody of a commercial motor vehicle or the immobilizing of a commercial motor vehicle through the attachment of a locking device or other mechanical or electronic means.

§ 524. Evasion of regulation of motor carriers

A person, or an officer, employee, or agent of that person, that by any means **[knowingly and willfully]** tries to evade regulation of motor carriers under this chapter, *chapter 51, subchapter III of chapter 311 (except sections 31138 and 31139) or section 31302, 31303, 31304, 31305(b), 31310(g)(1)(A), or 31502 of this title, or a regulation issued under any of those provisions*, shall be fined at least **[\$200 but not more than \$500]** *\$2,000 but not more than \$5,000* for the first violation and at least **[\$250 but not more than \$2,000]** *\$2,500 but not more than \$7,500* for a subsequent violation.

§ 525. Disobedience to **[subpenas] subpoenas**

A motor carrier, motor carrier of migrant workers, or motor private carrier not obeying a **[subpena]** *subpoena* or requirement of the Secretary of Transportation under this chapter to appear and testify or produce records shall be fined at least **[\$100]** *\$1,000* but not more than **[\$5,000]** *\$10,000*, imprisoned for not more than one year, or both. *The Secretary may withhold, suspend, amend, or revoke any part of the registration of a person required to register under chapter 139 for failing to obey a subpoena or requirement of the Secretary under this chapter to appear and testify or produce records.*

SUBTITLE III. GENERAL AND INTERMODAL PROGRAMS

CHAPTER 51. TRANSPORTATION OF HAZARDOUS MATERIAL

§ 5121. Administrative

(a) **GENERAL AUTHORITY.**—To carry out this chapter, the Secretary may investigate, conduct tests, make reports, issue subpoenas, conduct hearings, require the production of records and property, take depositions, and conduct research, development, demonstration, and training activities. Except as provided in subsections (c) and (d), after notice and an opportunity for a hearing, the Secretary may issue an order requiring compliance with this chapter or a regulation prescribed, or an order, special permit, or approval issued, under this chapter.

(b) **RECORDS, REPORTS, AND INFORMATION.**—A person subject to this chapter shall—

- (1) maintain records and property, make reports, and provide information the Secretary by regulation or order requires; and
- (2) make the records, property, reports, and information available for inspection when the Secretary undertakes an investigation or makes a request.

(c) INSPECTIONS AND INVESTIGATIONS.—

(1) IN GENERAL.—A designated officer, employee, or agent of the Secretary—

(A) may inspect and investigate, at a reasonable time and in a reasonable manner, records and property relating to a function described in section 5103(b)(1);

(B) except in the case of packaging immediately adjacent to its hazardous material contents, may gain access to, open, and examine a package offered for, or in, transportation when the officer, employee, or agent has an objectively reasonable and articulable belief that the package may contain a hazardous material;

(C) may remove from transportation a package or related packages in a shipment offered for or in transportation for which—

(i) such officer, employee, or agent has an objectively reasonable and articulable belief that the package may pose an imminent hazard; and

(ii) such officer, employee, or agent contemporaneously documents such belief in accordance with procedures set forth in guidance or regulations prescribed under subsection (e);

(D) may gather information from the offeror, carrier, packaging manufacturer or tester, or other person responsible for the package, to ascertain the nature and hazards of the contents of the package;

(E) as necessary, under terms and conditions specified by the Secretary, may order the offeror, carrier, packaging manufacturer or tester, or other person responsible for the package to have the package transported to, opened, and the contents examined and analyzed, at a facility appropriate for the conduct of such examination and analysis; and

(F) when safety might otherwise be compromised, may authorize properly qualified personnel to assist in the activities conducted under this subsection.

(2) DISPLAY OF CREDENTIALS.—An officer, employee, or agent acting under this subsection shall display proper credentials, *in person or in writing, when requested.*

(3) SAFE RESUMPTION OF TRANSPORTATION.—In instances when, as a result of an inspection or investigation under this subsection, an imminent hazard is not found to exist, the Secretary, in accordance with procedures set forth in regulations prescribed under subsection (e), shall assist—

(A) in the safe and prompt resumption of transportation of the package concerned; or

(B) in any case in which the hazardous material being transported is perishable, in the safe and expeditious resumption of transportation of the perishable hazardous material.

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CHAPTER 55. INTERMODAL TRANSPORTATION

SUBCHAPTER III. FINANCIAL ASSISTANCE

§ 5581. National freight infrastructure investment grants.

(a) *ESTABLISHMENT OF PROGRAM.*—The Secretary of Transportation shall establish a competitive grant program to provide financial assistance for capital investments that improve the efficiency of the national transportation system to move freight.

(b) *ELIGIBLE PROJECTS.*—An applicant is eligible for a grant under this section for—

- (1) a port development or improvement project;
 - (2) a multimodal terminal facility project;
 - (3) a land port of entry project;
 - (4) a freight rail improvement or capacity expansion project;
 - (5) an intelligent transportation system project primarily for freight benefit that reduces congestion or improves safety;
 - (6) a project that improves access to a port or terminal facility;
 - (7) a highway project to reduce congestion or improve safety;
- or
- (8) planning, preparation, or design of any project described in paragraph (1), (2), (3), (4), (5), (6), or (7).

(c) *PROJECT SELECTION CRITERIA.*—In determining whether to award a grant to an eligible applicant under this section, the Secretary shall consider the extent to which the project—

- (1) supports the objectives of the National Surface Transportation and Freight Performance Plan developed under section 304;
- (2) leverages Federal investment by encouraging non-Federal contributions to the project, including contributions from public-private partnerships;
- (3) improves the mobility of goods and commodities;
- (4) incorporates new and innovative technologies, including freight-related intelligent transportation systems;
- (5) improves energy efficiency or reduces greenhouse gas emissions;
- (6) helps maintain or protect the environment, including reducing air and water pollution;
- (7) reduces congestion;
- (8) improves the condition of the freight infrastructure, including bringing it into a state of good repair;
- (9) improves safety, including reducing transportation accidents, injuries, and fatalities;
- (10) demonstrates that the proposed project cannot be readily and efficiently realized without Federal support and participation; and
- (11) enhances national or regional economic development, growth, and competitiveness.

(d) *PRIORITY.*—The Secretary shall give priority to projects that have the highest system performance improvement relative to their benefit-cost analysis, as measured by the tools developed under section 1204 of the Surface Transportation and Freight Policy Act of 2011 and those that support domestic manufacturing of goods.

(e) *LETTERS OF INTENT.*—

(1) *IN GENERAL.*—The Secretary may issue a letter of intent to an applicant announcing an intention to obligate, for a major capital project under this section, an amount from future available budget authority specified in law that is not more than the amount stipulated as the financial participation of the Secretary in the project.

(2) *WRITTEN NOTICE.*—Not later than 30 days before issuing a letter under paragraph (1), the Secretary shall provide written notice of the proposed letter or agreement to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives. The Secretary shall include with the notification a copy of the proposed letter or agreement, the criteria used under subsection (c) for selecting the project for a grant award, and a description of how the project meets such criteria.

(3) *SUBJECT TO AVAILABILITY OF FUNDS.*—An obligation or administrative commitment may be made only when amounts are made available. Each letter of intent shall state that the contingent commitment is not an obligation of the Federal Government, and is subject to the availability of funds under Federal law and to Federal laws in force or enacted after the date of the contingent commitment.

(f) *FEDERAL SHARE OF NET PROJECT COST.*—

(1) *IN GENERAL.*—Based on engineering studies, studies of economic feasibility, and information on the expected use of equipment or facilities, the Secretary shall estimate the net project cost.

(2) *FEDERAL SHARE.*—The Federal share of a grant for the project shall not exceed 80 percent of the project net capital cost.

(3) *PRIORITY.*—The Secretary shall give priority in allocating future obligations and contingent commitments to incur obligations to grant requests seeking a lower Federal share of the project net capital cost.

(g) *COOPERATIVE AGREEMENTS.*—

(1) *IN GENERAL.*—An applicant may enter into an agreement with any public, private, or nonprofit entity to cooperatively implement any project funded with a grant under this subchapter.

(2) *FORMS OF PARTICIPATION.*—Participation by an entity under paragraph (1) may consist of—

(A) ownership or operation of any land, facility, vehicle, or other physical asset associated with the project;

(B) cost-sharing of any project expense or non-Federal share of the project cost, including in kind contributions;

(C) carrying out administration, construction management, project management, project operation, or any other management or operational duty associated with the project; and

(D) any other form of participation approved by the Secretary.

(h) *OVERSIGHT PROGRAM.*—

(1) *ESTABLISHMENT.*—

(A) *IN GENERAL.*—The Secretary shall establish an oversight program to monitor the effective and efficient use of funds authorized to carry out this section.

(B) *MINIMUM REQUIREMENT.*—At a minimum, the oversight program shall be responsive to all areas relating to financial integrity and project delivery.

(2) *FINANCIAL INTEGRITY.*—

(A) *FINANCIAL MANAGEMENT SYSTEMS.*—The Secretary shall perform annual reviews that address elements of the applicant's financial management systems that affect projects approved under subsection (a).

(B) *PROJECT COSTS.*—The Secretary shall develop minimum standards for estimating project costs and shall periodically evaluate the practices of applicants for estimating project costs, awarding contracts, and reducing project costs.

(3) *PROJECT DELIVERY.*—The Secretary shall perform annual reviews that address elements of the project delivery system of an applicant, which elements include 1 or more activities that are involved in the life cycle of a project from conception to completion of the project.

(4) *RESPONSIBILITY OF THE APPLICANTS.*—

(A) *IN GENERAL.*—Each applicant shall submit to the Secretary for approval such plans, specifications, and estimates for each proposed project as the Secretary may require.

(B) *APPLICANT SUBRECIPIENTS.*—The applicant shall be responsible for determining that a subrecipient of Federal funds under this section—

(i) has adequate project delivery systems for projects approved under this section; and

(ii) has sufficient accounting controls to properly manage such Federal funds.

(C) *PERIODIC REVIEW.*—The Secretary shall periodically review the monitoring of subrecipients by the applicant.

(5) *SPECIFIC OVERSIGHT RESPONSIBILITIES.*—Nothing in this section shall affect or discharge any oversight responsibility of the Secretary specifically provided for under this title or other Federal law.

(i) *MAJOR PROJECTS.*—

(1) *IN GENERAL.*—A recipient of a grant for a project under this section with an estimated total cost of \$500,000,000 or more, and a recipient for such other projects as may be identified by the Secretary, shall submit to the Secretary for each project—

(A) a project management plan; and

(B) an annual financial plan.

(2) *PROJECT MANAGEMENT PLAN.*—A project management plan shall document—

(A) the procedures and processes that are in effect to provide timely information to the project decisionmakers to effectively manage the scope, costs, schedules, and quality of, and the Federal requirements applicable to, the project; and

(B) *the role of the agency leadership and management team in the delivery of the project.*

(3) *FINANCIAL PLAN.—A financial plan shall—*

(A) *be based on detailed estimates of the cost to complete the project; and*

(B) *provide for the annual submission of updates to the Secretary that are based on reasonable assumptions, as determined by the Secretary, of future increases in the cost to complete the project.*

(j) *OTHER PROJECTS.—A recipient of Federal financial assistance for a project under this title with an estimated total cost of \$100,000,000 or more that is not covered by subsection (i) shall prepare an annual financial plan. Annual financial plans prepared under this subsection shall be made available to the Secretary for review upon the request of the Secretary.*

(k) *OTHER TERMS AND CONDITIONS.—The Secretary shall determine what additional grant terms and conditions are necessary and appropriate to meet the requirements of this section.*

(l) *REGULATIONS.—Not later than 1 year after the date of enactment of the Surface Transportation and Freight Policy Act of 2011, the Secretary shall prescribe regulations to implement this section.*

(m) *APPLICANT DEFINED.—In this subchapter, the term “applicant” includes a State, a political subdivision of a State, a metropolitan planning organization, government-sponsored authorities and corporations, and the District of Columbia.*

(n) *SECRETARIAL OVERSIGHT.—*

(1) *IN GENERAL.—The Secretary may use not more than 1 percent of amounts made available in a fiscal year for capital projects under this subchapter to enter into contracts to oversee the construction of such projects.*

(2) *PERMISSIBLE USES.—The Secretary may use amounts available under paragraph (1) to make contracts for safety, procurement, management, and financial compliance reviews and audits of a recipient of amounts under paragraph (1).*

(3) *COST.—The Federal Government shall pay the entire cost of carrying out a contract under this subsection.*

SUBTITLE IV. INTERSTATE TRANSPORTATION

PART A. RAIL

CHAPTER 109. LICENSING

§ 10903. **Filing and procedure for application to abandon or discontinue**

(a) (1) A rail carrier providing transportation subject to the jurisdiction of the Board under this part who intends to—

(A) abandon any part of its railroad lines; or

(B) discontinue the operation of all rail transportation over any part of its railroad lines, must file an application relating thereto with the Board. An abandonment or discontinuance may be carried out only as authorized under this chapter.

(2) When a rail carrier providing transportation subject to the jurisdiction of the Board under this part files an application, the application shall include—

(A) an accurate and understandable summary of the rail carrier’s reasons for the proposed abandonment or discontinuance;

(B) a statement indicating that each interested person is entitled to make recommendations to the Board on the future of the rail line; and

(C) (i) a statement that the line is available for subsidy or sale in accordance with section 10904 of this title, (ii) a statement that the rail carrier will promptly provide to each interested party an estimate of the annual subsidy and minimum purchase price, calculated in accordance with section 10904 of this title, and (iii) the name and business address of the person who is authorized to discuss the subsidy or sale terms for the rail carrier.

(3) The rail carrier shall—

(A) send by certified mail notice of the application to the chief executive officer of each State that would be directly affected by the proposed abandonment or discontinuance;

(B) post a copy of the notice in each terminal and station on each portion of a railroad line proposed to be abandoned or over which all transportation is to be discontinued;

(C) publish a copy of the notice for 3 consecutive weeks in a newspaper of general circulation in each county in which each such portion is located;

(D) mail a copy of the notice, to the extent practicable, to all shippers that have made significant use (as designated by the Board) of the railroad line during the 12 months preceding the filing of the application; and

(E) attach to the application filed with the Board an affidavit certifying the manner in which subparagraphs (A) through (D) of this paragraph have been satisfied, and certifying that subparagraphs (A) through (D) have been satisfied within the most recent 30 days prior to the date the application is filed.

(b) (1) Except as provided in subsection (d), abandonment and discontinuance may occur as provided in section 10904.

(2) The Board shall require as a condition of any abandonment or discontinuance under this section provisions to protect the interests of employees. The provisions shall be at least as beneficial to those interests as the provisions established under sections 11326(a) and [24706(c) of this title] 24706(c) of this title before May 31, 1998.

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PART B. MOTOR CARRIERS, WATER CARRIERS, BROKERS, AND FREIGHT FORWARDERS

CHAPTER 135. JURISDICTION

SUBCHAPTER I. MOTOR CARRIER TRANSPORTATION

§ 13506. Miscellaneous motor carrier transportation exemptions

(a) IN GENERAL.—Neither the Secretary nor the Board has jurisdiction under this part over—

(1) a motor vehicle transporting only school children and teachers to or from school;

(2) a motor vehicle providing taxicab service;

(3) a motor vehicle owned or operated by or for a hotel and only transporting hotel patrons between the hotel and the local station of a carrier;

(4) a motor vehicle controlled and operated by a farmer and transporting—

(A) the farmer's agricultural or horticultural commodities and products; or

(B) supplies to the farm of the farmer;

(5) a motor vehicle controlled and operated by a cooperative association (as defined by section 15(a) of the Agricultural Marketing Act (12 U.S.C. 1141j(a))) or by a federation of cooperative associations if the federation has no greater power or purposes than a cooperative association, except that if the cooperative association or federation provides transportation for compensation between a place in a State and a place in another State, or between a place in a State and another place in the same State through another State—

(A) for a nonmember that is not a farmer, cooperative association, federation, or the United States Government, the transportation (except for transportation otherwise exempt under this subchapter)—

(i) shall be limited to transportation incidental to the primary transportation operation of the cooperative association or federation and necessary for its effective performance; and

(ii) may not exceed in each fiscal year 25 percent of the total transportation of the cooperative association or federation between those places, measured by tonnage; and

(B) the transportation for all nonmembers may not exceed in each fiscal year, measured by tonnage, the total transportation between those places for the cooperative association or federation and its members during that fiscal year;

(6) transportation by motor vehicle of—

(A) ordinary livestock;

(B) agricultural or horticultural commodities (other than manufactured products thereof);

(C) commodities listed as exempt in the Commodity List incorporated in ruling numbered 107, March 19, 1958, Bureau of Motor Carriers, Interstate Commerce Commission,

other than frozen fruits, frozen berries, frozen vegetables, cocoa beans, coffee beans, tea, bananas, or hemp, or wool imported from a foreign country, wool tops and noils, or wool waste (carded, spun, woven, or knitted);

(D) cooked or uncooked fish, whether breaded or not, or frozen or fresh shellfish, or byproducts thereof not intended for human consumption, other than fish or shellfish that have been treated for preserving, such as canned, smoked, pickled, spiced, corned, or kippered products; and

(E) livestock and poultry feed and agricultural seeds and plants, if such products (excluding products otherwise exempt under this paragraph) are transported to a site of agricultural production or to a business enterprise engaged in the sale to agricultural producers of goods used in agricultural production;

(7) a motor vehicle used only to distribute newspapers;

(8) (A) transportation of passengers by motor vehicle incidental to transportation by aircraft;

(B) transportation of property (including baggage) by motor vehicle as part of a continuous movement which, prior or subsequent to such part of the continuous movement, has been or will be transported by an air carrier or (to the extent so agreed by the United States and approved by the Secretary) by a foreign air carrier; or

(C) transportation of property by motor vehicle in lieu of transportation by aircraft because of adverse weather conditions or mechanical failure of the aircraft or other causes due to circumstances beyond the control of the carrier or shipper;

(9) the operation of a motor vehicle in a national park or national monument;

(10) a motor vehicle carrying not more than 15 individuals in a single, daily roundtrip to commute to and from work;

(11) transportation of used pallets and used empty shipping containers (including intermodal cargo containers), and other used shipping devices (other than containers or devices used in the transportation of motor vehicles or parts of motor vehicles);

(12) transportation of natural, crushed, vesicular rock to be used for decorative purposes;

(13) transportation of wood chips; *or*

[(14) brokers for motor carriers of passengers, except as provided in section 13904(d); or]

[(15)] (14) transportation of broken, crushed, or powdered glass.

* * * * *

CHAPTER 139. REGISTRATION

§ 13902. Registration of motor carriers

(a) MOTOR CARRIER GENERALLY.—

[(1) IN GENERAL.—Except as provided in this section, the Secretary shall register a person to provide transportation subject to jurisdiction under subchapter I of chapter 135 of this

title as a motor carrier if the Secretary finds that the person is willing and able to comply with—

【(A) this part and the applicable regulations of the Secretary and the Board;

【(B)

【(i) any safety regulations imposed by the Secretary;

【(ii) the duties of employers and employees established by the Secretary under section 31135; and

【(iii) the safety fitness requirements established by the Secretary under section 31144;

【(C) the accessibility requirements established by the Secretary under subpart H of part 37 of title 49, Code of Federal Regulations, or such successor regulations to those accessibility requirements as the Secretary may issue, for transportation provided by an over-the-road bus; and

【(D) the minimum financial responsibility requirements established by the Secretary pursuant to sections 13906 and 31138.】

(1) *IN GENERAL.—Except as otherwise provided in this section, the Secretary of Transportation may not register a person to provide transportation subject to jurisdiction under subchapter I of chapter 135 as a motor carrier unless the Secretary determines that the person—*

(A) is willing and able to comply with—

(i) this part and the applicable regulations of the Secretary and the Board;

(ii) any safety regulations imposed by the Secretary;

(iii) the duties of employers and employees established by the Secretary under section 31135;

(iv) the safety fitness requirements established by the Secretary under section 31144;

(v) the accessibility requirements established by the Secretary under subpart H of part 37 of title 49, Code of Federal Regulations (or successor regulations), for transportation provided by an over-the-road bus; and

(vi) the minimum financial responsibility requirements established by the Secretary under sections 13906, 31138, and 31139;

(B) has submitted a comprehensive management plan documenting that the person has management systems in place to ensure compliance with safety regulations imposed by the Secretary;

(C) has disclosed any relationship involving common ownership, common management, common control, or common familial relationship between that person and any other motor carrier, freight forwarder, or broker, or any other applicant for motor carrier, freight forwarder, or broker registration, or a successor (as that term is defined under section 31153), if the relationship occurred in the 5-year period preceding the date of the filing of the application for registration; and

(D) after the Secretary establishes a written proficiency examination pursuant to section 101(b) of the Commercial

Motor Vehicle Safety Enhancement Act of 2011, has passed the written proficiency examination.

(2) **ADDITIONAL REGISTRATION REQUIREMENTS FOR HOUSEHOLD GOODS MOTOR CARRIERS.**—In addition to meeting the requirements of paragraph (1), the Secretary may register a person to provide transportation of household goods as a household goods motor carrier only after that person—

(A) provides evidence of participation in an arbitration program and provides a copy of the notice of the arbitration program as required by section 14708(b)(2);

(B) identifies its tariff and provides a copy of the notice of the availability of that tariff for inspection as required by **[section 13702(c);]** *section 13702(c); and*

[(C) provides evidence that it has access to, has read, is familiar with, and will observe all applicable Federal laws relating to consumer protection, estimating, consumers' rights and responsibilities, and options for limitations of liability for loss and damage; and]

(C) demonstrates, before being registered, through successful completion of a proficiency examination established by the Secretary, knowledge and intent to comply with applicable Federal laws relating to consumer protection, estimating, consumers' rights and responsibilities, and options for limitations of liability for loss and damage.

[(D) discloses any relationship involving common stock, common ownership, common management, or common familial relationships between that person and any other motor carrier, freight forwarder, or broker of household goods within 3 years of the proposed date of registration.]¹

(3) **CONSIDERATION OF EVIDENCE; FINDINGS.**—The Secretary shall consider, and to the extent applicable, make findings on any evidence demonstrating that the registrant is unable to comply with any applicable requirement of paragraph (1) or, in the case of a registrant to which paragraph (2) applies, paragraph (1) or (2).

(4) **WITHHOLDING.**—If the Secretary determines that a registrant under this section does not meet, or is not able to meet, any requirement of paragraph (1) or, in the case of a registrant to which paragraph (2) applies, paragraph (1) or (2), the Secretary shall withhold registration.

(5) **LIMITATION ON COMPLAINTS.**—The Secretary may hear a complaint from any person concerning a registration under this subsection only on the ground that the registrant fails or will fail to comply with this part, the applicable regulations of the Secretary and the Board (including the accessibility requirements established by the Secretary under subpart H of part 37 of title 49, Code of Federal Regulations, or such successor regulations to those accessibility requirements as the Secretary may issue, for transportation provided by an over-the-road bus), the safety regulations of the Secretary, or the safety fitness or minimum financial responsibility requirements of para-

¹ The amendments to paragraph (2) take effect 2 years after the date of enactment of the Commercial Motor Vehicle Safety Enhancement Act of 2011.

graph (1) of this subsection. In the case of a registration for the transportation of household goods as a household goods motor carrier, the Secretary may also hear a complaint on the ground that the registrant fails or will fail to comply with the requirements of paragraph (2) of this subsection.

(b) MOTOR CARRIERS OF PASSENGERS.—

(1) *ADDITIONAL REGISTRATION REQUIREMENTS FOR PROVIDERS OR MOTORCOACH SERVICES.*—*In addition to meeting the requirements under subsection (a)(1), the Secretary may not register a person to provide motorcoach services until after the person—*

(A) undergoes a preauthorization safety audit, including verification, in a manner sufficient to demonstrate the ability to comply with Federal rules and regulations, of—

(i) a drug and alcohol testing program under part 40 of title 49, Code of Federal Regulations;

(ii) the carrier's system of compliance with hours-of-service rules, including hours-of-service records;

(iii) the ability to obtain required insurance;

(iv) driver qualifications, including the validity of the commercial driver's license of each driver who will be operating under such authority;

(v) disclosure of common ownership, common control, common management, common familial relationship, or other corporate relationship with another motor carrier or applicant for motor carrier authority during the past 3 years;

(vi) records of the State inspections, or of a Level I or V Commercial Vehicle Safety Alliance Inspection, for all vehicles that will be operated by the carrier;

(vii) safety management programs, including vehicle maintenance and repair programs; and

(viii) the ability to comply with the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.), and the Over-the-Road Bus Transportation Accessibility Act of 2007 (122 Stat. 2915);

(B) has been interviewed to review safety management controls and the carrier's written safety oversight policies and practices; and

(C) through the successful completion of a written examination developed by the Secretary, has demonstrated proficiency to comply with and carry out the requirements and regulations described in subsection (a)(1).

(2) *PRE-AUTHORIZATION SAFETY AUDIT.*—*The pre-authorization safety audit required under paragraph (1)(A) shall be completed on-site not later than 90 days following the submission of an application for operating authority.*

(3) *FEE.*—*The Secretary may establish, under section 9701 of title 31, a fee of not more than \$1,200 for new registrants that as nearly as possible covers the costs of performing a preauthorization safety audit. Amounts collected under this subsection shall be deposited in the Highway Trust Fund (other than the Mass Transit Account).*

[(1)] (4) *REGISTRATION OF PRIVATE RECIPIENTS OF GOVERNMENTAL ASSISTANCE.*—*The Secretary shall register under sub-*

section (a)(1) a private recipient of governmental assistance to provide special or charter transportation subject to jurisdiction under subchapter I of chapter 135 as a motor carrier of passengers if the Secretary finds that the recipient meets the requirements of subsection (a)(1), unless the Secretary finds, on the basis of evidence presented by any person objecting to the registration, that the transportation to be provided pursuant to the registration is not in the public interest.

[(2)] (5) REGISTRATION OF PUBLIC RECIPIENTS OF GOVERNMENTAL ASSISTANCE.—

(A) CHARTER TRANSPORTATION.—The Secretary shall register under subsection (a)(1) a public recipient of governmental assistance to provide special or charter transportation subject to jurisdiction under subchapter I of chapter 135 as a motor carrier of passengers if the Secretary finds that—

(i) the recipient meets the requirements of subsection (a)(1); and

(ii) (I) no motor carrier of passengers (other than a motor carrier of passengers which is a public recipient of governmental assistance) is providing, or is willing to provide, the transportation; or

(II) the transportation is to be provided entirely in the area in which the public recipient provides regularly scheduled mass transportation services.

(B) REGULAR-ROUTE TRANSPORTATION.—The Secretary shall register under subsection (a)(1) a public recipient of governmental assistance to provide regular-route transportation subject to jurisdiction under subchapter I of chapter 135 as a motor carrier of passengers if the Secretary finds that the recipient meets the requirements of subsection (a)(1), unless the Secretary finds, on the basis of evidence presented by any person objecting to the registration, that the transportation to be provided pursuant to the registration is not in the public interest.

(C) TREATMENT OF CERTAIN PUBLIC RECIPIENTS.—Any public recipient of governmental assistance which is providing or seeking to provide transportation of passengers subject to jurisdiction under subchapter I of chapter 135 shall, for purposes of this part, be treated as a person which is providing or seeking to provide transportation of passengers subject to such jurisdiction.

[(3)] (6) INTRASTATE TRANSPORTATION BY INTERSTATE CARRIERS.—A motor carrier of passengers that is registered by the Secretary under subsection (a) is authorized to provide regular-route transportation entirely in one State as a motor carrier of passengers if such intrastate transportation is to be provided on a route over which the carrier provides interstate transportation of passengers.

[(4)] (7) PREEMPTION OF STATE REGULATION REGARDING CERTAIN SERVICE.—No State or political subdivision thereof and no interstate agency or other political agency of 2 or more States shall enact or enforce any law, rule, regulation, standard or other provision having the force and effect of law relating to

the provision of pickup and delivery of express packages, newspapers, or mail in a commercial zone if the shipment has had or will have a prior or subsequent movement by bus in intrastate commerce and, if a city within the commercial zone, is served by a motor carrier of passengers providing regular-route transportation of passengers subject to jurisdiction under subchapter I of chapter 135.

[(5)] (8) JURISDICTION OVER CERTAIN INTRASTATE TRANSPORTATION.—Subject to section 14501(a), any intrastate transportation authorized by this subsection shall be treated as transportation subject to jurisdiction under subchapter I of chapter 135 until such time as the carrier takes such action as is necessary to establish under the laws of such State rates, rules, and practices applicable to such transportation, but in no case later than the 30th day following the date on which the motor carrier of passengers first begins providing transportation entirely in one State under this paragraph.

[(6)] (9) SPECIAL OPERATIONS.—This subsection shall not apply to any regular-route transportation of passengers provided entirely in one State which is in the nature of a special operation.

[(7)] (10) SUSPENSION OR REVOCATION.—Intrastate transportation authorized under this subsection may be suspended or revoked by the Secretary under section 13905 of this title at any time.

[(8)] (11) DEFINITIONS.—In this subsection, the following definitions apply:

(A) PUBLIC RECIPIENT OF GOVERNMENTAL ASSISTANCE.—The term “public recipient of governmental assistance” means—

- (i) any State,
- (ii) any municipality or other political subdivision of a State,
- (iii) any public agency or instrumentality of one or more States and municipalities and political subdivisions of a State,
- (iv) any Indian tribe, and
- (v) any corporation, board, or other person owned or controlled by any entity described in clause (i), (ii), (iii), or (iv),

which before, on, or after January 1, 1996, received governmental assistance for the purchase or operation of any bus.

(B) PRIVATE RECIPIENT OF GOVERNMENT ASSISTANCE.—The term “private recipient of government assistance” means any person (other than a person described in subparagraph (A)) who before, on, or after January 1, 1996, received governmental financial assistance in the form of a subsidy for the purchase, lease, or operation of any bus.²

² The amendments to subsection (b) take effect 1 year after the date of enactment of the Commercial Motor Vehicle Safety Enhancement Act of 2011.

(c) RESTRICTIONS ON MOTOR CARRIERS COMICILED IN OR OWNED OR CONTROLLED BY NATIONALS OF A CONTIGUOUS FOREIGN COUNTRY.—

(1) PREVENTION OF DISCRIMINATORY PRACTICES.—If the President, or the delegate thereof, determines that an act, policy, or practice of a foreign country contiguous to the United States, or any political subdivision or any instrumentality of any such country is unreasonable or discriminatory and burdens or restricts United States transportation companies providing, or seeking to provide, motor carrier transportation to, from, or within such foreign country, the President or such delegate may—

(A) seek elimination of such practices through consultations; or

(B) notwithstanding any other provision of law, suspend, modify, amend, condition, or restrict operations, including geographical restriction of operations, in the United States by motor carriers of property or passengers domiciled in such foreign country or owned or controlled by persons of such foreign country.

(2) EQUALIZATION OF TREATMENT.—Any action taken under paragraph (1)(A) to eliminate an act, policy, or practice shall be so devised so as to equal to the extent possible the burdens or restrictions imposed by such foreign country on United States transportation companies.

(3) REMOVAL OR MODIFICATION.—The President, or the delegate thereof, may remove or modify in whole or in part any action taken under paragraph (1)(A) if the President or such delegate determines that such removal or modification is consistent with the obligations of the United States under a trade agreement or with United States transportation policy.

(4) PROTECTION OF EXISTING OPERATIONS.—Unless and until the President, or the delegate thereof, makes a determination under paragraph (1) or (3), nothing in this subsection shall affect—

(A) operations of motor carriers of property or passengers domiciled in any contiguous foreign country or owned or controlled by persons of any contiguous foreign country permitted in the commercial zones along the United States-Mexico border as such zones were defined on December 31, 1995; or

(B) any existing restrictions on operations of motor carriers of property or passengers domiciled in any contiguous foreign country or owned or controlled by persons of any contiguous foreign country or any modifications thereof pursuant to section 6 of the Bus Regulatory Reform Act of 1982.

(5) PUBLICATION; COMMENT.—Unless the President, or the delegate thereof, determines that expeditious action is required, the President shall publish in the Federal Register any determination under paragraph (1) or (3), together with a description of the facts on which such a determination is based and any proposed action to be taken pursuant to paragraph (1)(B) or (3), and provide an opportunity for public comment.

(6) DELEGATION TO SECRETARY.—The President may delegate any or all authority under this subsection to the Secretary, who shall consult with other agencies as appropriate. In accordance with the directions of the President, the Secretary may issue regulations to enforce this subsection.

(7) CIVIL ACTIONS.—Either the Secretary or the Attorney General may bring a civil action in an appropriate district court of the United States to enforce this subsection or a regulation prescribed or order issued under this subsection. The court may award appropriate relief, including injunctive relief.

(8) LIMITATION ON STATUTORY CONSTRUCTION.—This subsection shall not be construed as affecting the requirement for all foreign motor carriers and foreign motor private carriers operating in the United States to comply with all applicable laws and regulations pertaining to fitness, safety of operations, financial responsibility, and taxes imposed by section 4481 of the Internal Revenue Code of 1986.

(d) TRANSITION RULE.—

(1) IN GENERAL.—Pending the implementation of the rule-making required by section 13908, the Secretary may register a person under this section—

(A) as a motor common carrier if such person would have been issued a certificate to provide transportation as a motor common carrier under this subtitle on December 31, 1995; and

(B) as a motor contract carrier if such person would have been issued a permit to provide transportation as a motor contract carrier under this subtitle on such day.

(2) DEFINITIONS.—In this subsection, the terms “motor common carrier” and “motor contract carrier” have the meaning such terms had under section 10102 as such section was in effect on December 31, 1995.

(3) TERMINATION.—This subsection shall cease to be in effect on the transition termination date.

(e) PENALTIES FOR FAILURE TO COMPLY WITH REGISTRATION REQUIREMENTS.—In addition to other penalties available under law, motor carriers that fail to register their operations as required by this section or that operate beyond the scope of their registrations may be subject to the following penalties:

(1) OUT-OF-SERVICE ORDERS.—If, upon inspection or investigation, the Secretary determines that a **motor vehicle** *motor carrier* providing transportation requiring registration under this section is operating without a registration or beyond the scope of its registration, the Secretary may **order the vehicle** *order the motor carrier operations* out-of-service. Subsequent to the issuance of the out-of-service order, the Secretary shall provide an opportunity for review in accordance with section 554 of title 5, United States Code; except that such review shall occur not later than 10 days after issuance of such order.

(2) PERMISSION FOR OPERATIONS.—A person domiciled in a country contiguous to the United States with respect to which an action under subsection (c)(1)(A) or (c)(1)(B) is in effect and providing transportation for which registration is required under this section shall maintain evidence of such registration

in the motor vehicle when the person is providing the transportation. The Secretary shall not permit the operation in interstate commerce in the United States of any motor vehicle in which there is not a copy of the registration issued pursuant to this section.

(f) MODIFICATION OF CARRIER REGISTRATION.—

(1) IN GENERAL.—On and after the transition termination date, the Secretary—

(A) may not register a motor carrier under this section as a motor common carrier or a motor contract carrier;

(B) shall register applicants under this section as motor carriers; and

(C) shall issue any motor carrier registered under this section after that date a motor carrier certificate of registration that specifies whether the holder of the certificate may provide transportation of persons, household goods, other property, or any combination thereof.

(2) PRE-EXISTING CERTIFICATES AND PERMITS.—The Secretary shall redesignate any motor carrier certificate or permit issued before the transition termination date as a motor carrier certificate of registration. On and after the transition termination date, any person holding a motor carrier certificate of registration redesignated under this paragraph may provide both contract carriage (as defined in section 13102(4)(B)) and transportation under terms and conditions meeting the requirements of section 13710(a)(1). The Secretary may not, pursuant to any regulation or form issued before or after the transition termination date, make any distinction among holders of motor carrier certificates of registration on the basis of whether the holder would have been classified as a common carrier or as a contract carrier under—

(A) subsection (d) of this section, as that section was in effect before the transition termination date; or

(B) any other provision of this title that was in effect before the transition termination date.

(3) TRANSITION TERMINATION DATE DEFINED.—In this section, the term “transition termination date” means the first day of January occurring more than 12 months after the date of enactment of the Unified Carrier Registration Act of 2005.

(g) MOTOR CARRIER DEFINED.—In this section and sections 13905 and 13906, the term “motor carrier” includes foreign motor private carriers.

(h) UPDATE OF REGISTRATION.—*The Secretary may require a registrant to update its registration under this section periodically or not later than 30 days after a change in the registrant’s address, other contact information, officers, process agent, or other essential information, as determined by the Secretary.*

§ 13903. Registration of freight forwarders

(a) IN GENERAL.—The Secretary shall register a person to provide service subject to jurisdiction under subchapter III of chapter 135 as a freight forwarder if the Secretary finds that the person is fit, willing, and able to provide the service and to comply with

this part and applicable regulations of the Secretary and the Board.

(b) **REGISTRATION AS CARRIER REQUIRED.**—The freight forwarder may provide transportation as the carrier itself only if the freight forwarder also has registered to provide transportation as a carrier under this chapter.

(c) **UPDATE OF REGISTRATION.**—*The Secretary may require a freight forwarder to update its registration under this section periodically or not later than 30 days after a change in the freight forwarder's address, other contact information, officers, process agent, or other essential information, as determined by the Secretary.*

§ 13904. Registration of brokers

(a) **IN GENERAL.**—The Secretary shall register, subject to section 13906(b), a person to be a broker for transportation **[of property]** subject to jurisdiction under subchapter I of chapter 135, if the Secretary finds that the person is fit, willing, and able to be a broker for transportation and to comply with this part and applicable regulations of the Secretary.

(b) **REGISTRATION AS CARRIER REQUIRED.**—

(1) **IN GENERAL.**—The broker may provide the transportation itself only if the broker also has been registered to provide the transportation as a motor carrier under this chapter.

(2) **LIMITATION.**—This subsection does not apply to a motor carrier registered under this chapter or to an employee or agent of the motor carrier to the extent the transportation is to be provided entirely by the motor carrier, with other registered motor carriers, or with rail or water carriers.

(c) **REGULATIONS TO PROTECT SHIPPERS.**—Regulations of the Secretary applicable to brokers registered under this section shall provide for the protection of shippers by motor vehicle.

(d) **BOND AND INSURANCE.**—The Secretary may impose on brokers for motor carriers of passengers such requirements for bonds or insurance or both as the Secretary determines are needed to protect passengers and carriers dealing with such brokers.

(e) **UPDATE OF REGISTRATION.**—*The Secretary may require a broker to update its registration under this section periodically or not later than 30 days after a change in the broker's address, other contact information, officers, process agent, or other essential information, as determined by the Secretary.*

§ 13905. Effective periods of registration

(a) **PERSON HOLDING ICC AUTHORITY.**—Any person having authority to provide transportation or service as a motor carrier, freight forwarder, or broker under this title, as in effect on December 31, 1995, shall be deemed, for purposes of this part, to be registered to provide such transportation or service under this part.

(b) **PERSON REGISTERED WITH SECRETARY.**—

(1) **IN GENERAL.**—Except as provided in paragraph (2), any person having registered with the Secretary to provide transportation or service as a motor carrier or motor private carrier under this title, as in effect on January 1, 2005, but not having registered pursuant to section 13902(a), shall be treated, for

purposes of this part, to be registered to provide such transportation or service for purposes of sections 13908 and 14504a.

(2) EXCLUSIVELY INTRASTATE OPERATORS.—Paragraph (1) does not apply to a motor carrier or motor private carrier (including a transporter of waste or recyclable materials) engaged exclusively in intrastate transportation operations.

(c) IN GENERAL.—Except as otherwise provided in this part, each registration issued under section 13902, 13903, or 13904 shall be effective from the date specified by the Secretary and shall remain in effect for such period as the Secretary determines appropriate by regulation.

(d) SUSPENSION, AMENDMENTS, AND REVOCATIONS.—

[(1) IN GENERAL.—On application of the registrant, the Secretary may amend or revoke a registration. On complaint or on the Secretary's own initiative and after notice and an opportunity for a proceeding, the Secretary may (A) suspend, amend, or revoke any part of the registration of a motor carrier, broker, or freight forwarder for willful failure to comply with this part, an applicable regulation or order of the Secretary or of the Board (including the accessibility requirements established by the Secretary under subpart H of part 37 of title 49, Code of Federal Regulations, or such successor regulations to those accessibility requirements as the Secretary may issue, for transportation provided by an over-the-road bus), or a condition of its registration; and (B) suspend, amend, or revoke any part of the registration of a motor carrier, broker, or freight forwarder: (i) for failure to pay a civil penalty imposed under chapter 5, 51, 149, or 311 of this title; or (ii) for failure to arrange and abide by an acceptable payment plan for such civil penalty, within 90 days of the time specified by order of the Secretary for the payment of such penalty. Subparagraph (B) shall not apply to any person who is unable to pay a civil penalty because such person is a debtor in a case under chapter 11 of title 11, United States Code.]

(1) APPLICATIONS.—*On application of the registrant, the Secretary may amend or revoke a registration.*

(2) COMPLAINTS AND ACTIONS ON SECRETARY'S OWN INITIATIVE.—*On complaint or on the Secretary's own initiative and after notice and an opportunity for a proceeding, the Secretary may—*

(A) suspend, amend, or revoke any part of the registration of a motor carrier, foreign motor carrier, foreign motor private carrier, broker, or freight forwarder for willful failure to comply with—

(i) this part;

(ii) an applicable regulation or order of the Secretary or the Board, including the accessibility requirements established by the Secretary under subpart H of part 37 of title 49, Code of Federal Regulations (or successor regulations), for transportation provided by an over-the-road bus; or

(iii) a condition of its registration;

(B) withhold, suspend, amend, or revoke any part of the registration of a motor carrier, foreign motor carrier, for-

eign motor private carrier, broker, or freight forwarder for failure—

(i) *to pay a civil penalty imposed under chapter 5, 51, 149, or 311;*

(ii) *to arrange and abide by an acceptable payment plan for such civil penalty, not later than 90 days after the date specified by order of the Secretary for the payment of such penalty; or*

(iii) *for failure to obey a subpoena issued by the Secretary;*

(C) *withhold, suspend, amend, or revoke any part of a registration of a motor carrier, foreign motor carrier, foreign motor private carrier, broker, or freight forwarder following a determination by the Secretary that the motor carrier, broker, or freight forwarder failed to disclose, in its application for registration, a material fact relevant to its willingness and ability to comply with—*

(i) *this part;*

(ii) *an applicable regulation or order of the Secretary or the Board; or*

(iii) *a condition of its registration; or*

(D) *withhold, suspend, amend, or revoke any part of a registration of a motor carrier, foreign motor carrier, foreign motor private carrier, broker, or freight forwarder if the Secretary finds that—*

(i) *the motor carrier, broker, or freight forwarder is or was related through common ownership, common management, common control, or common familial relationship to any other motor carrier, broker, or freight forwarder, or any other applicant for motor carrier, broker, or freight forwarder registration that the Secretary determines is or was unwilling or unable to comply with the relevant requirements listed in section 13902, 13903, or 13904; or*

(ii) *the person is the successor, as defined in section 31153, to a person who is or was unwilling or unable to comply with the relevant requirements of section 13902, 13903, or 13904.*

(3) *LIMITATION.—Paragraph (2)(B) shall not apply to a person who is unable to pay a civil penalty because the person is a debtor in a case under chapter 11 of title 11.*

[(2)] (4) *REGULATIONS.—Not later than 12 months after the date of the enactment of this paragraph, the Secretary, after notice and opportunity for public comment, shall issue regulations to provide for the suspension, amendment, or revocation of a registration under this part for failure to pay a civil penalty as provided in [paragraph (1)(B)] paragraph (2)(B).*

(e) *PROCEDURE.—Except on application of the registrant, or if the Secretary determines that the registrant failed to disclose a material fact in an application for registration in accordance with subsection (d)(2)(C), the Secretary may revoke a registration of a motor carrier, freight forwarder, or broker, only after—*

(1) the Secretary has issued an order to the registrant under section 14701 requiring compliance with this part, a regulation of the Secretary, or a condition of the registration; and

(2) the registrant willfully does not comply with the order for a period of 30 days.

(f) EXPEDITED PROCEDURE.—

(1) PROTECTION OF SAFETY.—Notwithstanding subchapter II of chapter 5 of title 5, the Secretary—

(A) may suspend the registration of a motor carrier, a freight forwarder, or a broker for failure to comply with requirements of the Secretary pursuant to section 13904(c) or 13906 or an order or regulation of the Secretary prescribed under those sections; and

(B) shall revoke the registration of a motor carrier that has been prohibited from operating in interstate commerce for failure to comply with the safety fitness requirements of section 31144.

[(2) IMMINENT HAZARD TO PUBLIC HEALTH.—Without regard to subchapter II of chapter 5 of title 5, the Secretary shall revoke the registration of a motor carrier of passengers if the Secretary finds that such carrier has been conducting unsafe operations which are an imminent hazard to public health or property.]

(2) IMMINENT HAZARD TO PUBLIC HEALTH.—Notwithstanding subchapter II of chapter 5 of title 5, the Secretary shall revoke the registration of a motor carrier if the Secretary finds that the carrier is or was conducting unsafe operations that are or were an imminent hazard to public health or property.

(3) NOTICE; PERIOD OF SUSPENSION.—The Secretary may suspend or revoke under this subsection the registration only after giving notice of the suspension or revocation to the registrant. A suspension remains in effect until the registrant complies with the applicable sections or, in the case of a suspension under paragraph (2), until the Secretary revokes the suspension.

§ 13908. Registration and other reforms

(a) ESTABLISHMENT OF UNIFIED CARRIER REGISTRATION SYSTEM.—The Secretary, in cooperation with the States, representatives of the motor carrier, motor private carrier, freight forwarder, and broker industries and after notice and opportunity for public comment, shall issue within 1 year after the date of enactment of the Unified Carrier Registration Act of 2005 regulations to establish an online Federal registration system, to be named the “Unified Carrier Registration System”, to replace—

(1) the current Department of Transportation identification number system, the single State registration system under section 14504;

(2) the registration system contained in this chapter and the financial responsibility information system under section 13906; and

(3) the service of process agent systems under sections 503 and 13304.

(b) **ROLE AS CLEARINGHOUSE AND DEPOSITORY OF INFORMATION.**—The Unified Carrier Registration System shall serve as a clearinghouse and depository of information on, and identification of, all foreign and domestic motor carriers, motor private carriers, brokers, freight forwarders, and others required to register with the Department of Transportation, including information with respect to a carrier's safety rating, compliance with required levels of financial responsibility, and compliance with the provisions of section 14504a. The Secretary shall ensure that Federal agencies, States, representatives of the motor carrier industry, and the public have access to the Unified Carrier Registration System, including the records and information contained in the System.

(c) **PROCEDURES FOR CORRECTING INFORMATION.**—Not later than 60 days after the effective date of this section, the Secretary shall prescribe regulations establishing procedures that enable a motor carrier to correct erroneous information contained in any part of the Unified Carrier Registration System.

(d) **FEE SYSTEM.**—The Secretary shall establish, under section 9701 of title 31, a fee system for the Unified Carrier Registration System according to the following guidelines:

(1) **REGISTRATION AND FILING EVIDENCE OF FINANCIAL RESPONSIBILITY.**—The fee for new registrants shall as nearly as possible cover the costs of processing the registration [but shall not exceed \$300].

(2) **EVIDENCE OF FINANCIAL RESPONSIBILITY.**—The fee for filing evidence of financial responsibility pursuant to this section shall not exceed \$10 per filing. No fee shall be charged for a filing for purposes of designating an agent for service of process or the filing of other information relating to financial responsibility.

(3) **ACCESS AND RETRIEVAL FEES.**—

(A) **IN GENERAL.**—Except as provided in subparagraph (B), the fee system shall include a nominal fee for the access to or retrieval of information from the Unified Carrier Registration System to cover the costs of operating and upgrading the System, including the personnel costs incurred by the Department and the costs of administration of the unified carrier registration agreement.

(B) **EXCEPTIONS.**—There shall be no fee charged under this paragraph—

(i) to any agency of the Federal Government or a State government or any political subdivision of any such government for the access to or retrieval of information and data from the Unified Carrier Registration System for its own use; or

(ii) to any representative of a motor carrier, motor private carrier, leasing company, broker, or freight forwarder (as each is defined in section 14504a) for the access to or retrieval of the individual information related to such entity from the Unified Carrier Registration System for the individual use of such entity.

(e) **USE OF FEES FOR UNIFIED CARRIER REGISTRATION SYSTEM.**—Fees collected under this section may be credited to the Department of Transportation appropriations account for purposes for

which such fees are collected and shall be available for expenditure for such purposes until expended.

(f) APPLICATION TO CERTAIN INTRASTATE OPERATIONS.—Nothing in this section requires the registration of a motor carrier, a motor private carrier of property, or a transporter of waste or recyclable materials operating exclusively in intrastate transportation not otherwise required to register with the Secretary under another provision of this title.

CHAPTER 141. OPERATIONS OF CARRIERS

SUBCHAPTER II. REPORTS AND RECORDS

§ 14122. **Records: form; inspection; preservation**

(a) FORM OF RECORDS.—The Secretary or the Board, as applicable, may prescribe the form of records required to be prepared or compiled under this subchapter by carriers and brokers, including records related to movement of traffic and receipts and expenditures of money.

(b) RIGHT OF INSPECTION.—The Secretary or Board, or an employee designated by the Secretary or Board, may on demand and display of proper credentials, *in person or in writing*—

(1) inspect and examine the lands, buildings, and equipment of a carrier or broker; and

(2) inspect and copy any record of—

(A) a carrier, broker, or association; and

(B) a person controlling, controlled by, or under common control with a carrier if the Secretary or Board, as applicable, considers inspection relevant to that person's relation to, or transaction with, that carrier.

(c) PERIOD FOR PRESERVATION OF RECORDS.—The Secretary or Board, as applicable, may prescribe the time period during which operating, accounting, and financial records must be preserved by carriers and brokers.

CHAPTER 145. FEDERAL-STATE RELATIONS

§ 14504a. **Unified Carrier Registration System plan and agreement**

* * * * *

(c) UNREASONABLE BURDEN.—For purposes of this section, it shall be considered an unreasonable burden upon interstate commerce for any State or any political subdivision of a State, or any political authority of two or more States—

(1) to enact, impose, or enforce any requirement or standards with respect to, or levy any fee or charge on, any motor carrier or motor private carrier providing transportation or service subject to jurisdiction under subchapter I of chapter 135 (in this section referred to as an “interstate motor carrier” and an “interstate motor private carrier”, respectively) in connection with—

(A) the registration with the State of the interstate operations of the motor carrier or motor private carrier;

(B) the filing with the State of information relating to the financial responsibility of a motor carrier or motor private carrier pursuant to sections 31138 or 31139;

(C) the filing with the State of the name of the local agent for service of process of the motor carrier or motor private carrier pursuant to [sections] section 503 or 13304; or

(D) the annual renewal of the intrastate authority, or the insurance filings, of the motor carrier or motor private carrier, or other intrastate filing requirement necessary to operate within the State if the motor carrier or motor private carrier is—

(i) registered under section 13902 or section 13905(b); and

(ii) in compliance with the laws and regulations of the State authorizing the carrier to operate in the State in accordance with section 14501(c)(2)(A); except with respect to—

(I) intrastate service provided by motor carriers of passengers that is not subject to the preemption provisions of section 14501(a);

(II) motor carriers of property, motor private carriers, brokers, or freight forwarders, or their services or operations, that are described in subparagraphs (B) and (C) of section 14501(c)(2)[.]; and

(III) the intrastate transportation of waste or recyclable materials by any carrier; or

(2) to require any interstate motor carrier or motor private carrier that also performs intrastate operations to pay any fee or tax which a carrier engaged exclusively in intrastate operations is exempt.

* * * * *

CHAPTER 147. ENFORCEMENT; INVESTIGATIONS; RIGHTS; REMEDIES

§ 14704. Rights and remedies of persons injured by carriers or brokers

(a) [IN GENERAL.—

(1) ENFORCEMENT OF ORDER.—A person injured] *ENFORCEMENT OF ORDER.*—A person injured because a carrier or broker providing transportation or service subject to jurisdiction under chapter 135 does not obey an order of the Secretary or the Board, as applicable, under this part, except an order for the payment of money, may bring a civil action to enforce that order under this subsection. A person may bring a civil action for injunctive relief for violations of sections 14102 [and 14103], 14103, and 14915(c).

[(2) DAMAGES FOR VIOLATIONS.—]

(b)(1) *OTHER VIOLATIONS.*—A carrier or broker providing transportation or service subject to jurisdiction under chapter 135 is liable for damages sustained by a person as a result of an act or omission of that carrier or broker in violation of this part.

[(b) LIABILITY AND DAMAGES FOR EXCEEDING TARIFF RATE.—A carrier]

(2) *EXCEEDING TARIFF RATE.*—A carrier providing transportation or service subject to jurisdiction under chapter 135 is liable to a person for amounts charged that exceed the applicable rate for transportation or service contained in a tariff in effect under section 13702.

* * * * *

§ 14705. Limitation on actions by and against carriers

(a) *IN GENERAL.*—A carrier providing transportation or service subject to jurisdiction under chapter 135 must begin a civil action to recover charges for transportation or service provided by the carrier within 18 months after the claim accrues.

(b) *OVERCHARGES.*—A person must begin a civil action to recover overcharges within 18 months after the claim accrues. If the claim is against a carrier providing transportation subject to jurisdiction under chapter 135 and an election to file a complaint with the Board or Secretary, as applicable, is made under section 14704(c)(1), the complaint must be filed within 3 years after the claim accrues.

(c) *DAMAGES.*—A person must file a complaint with the Board or Secretary, as applicable, to recover damages under section **[14704(b)] 14704(b)(2)** within 2 years after the claim accrues.

(d) *EXTENSIONS.*—The limitation periods under subsection (b) of this section are extended for 6 months from the time written notice is given to the claimant by the carrier of disallowance of any part of the claim specified in the notice if a written claim is given to the carrier within those limitation periods. The limitation periods under subsections (b) and (c) of this section are extended for 90 days from the time the carrier begins a civil action under subsection (a) to recover charges related to the same transportation or service, or collects (without beginning a civil action under that subsection) the charge for that transportation or service if that action is begun or collection is made within the appropriate period.

(e) *PAYMENT.*—A person must begin a civil action to enforce an order of the Board or Secretary against a carrier within 1 year after the date of the order.

(f) *GOVERNMENT TRANSPORTATION.*—This section applies to transportation for the United States Government. The time limitations under this section are extended, as related to transportation for or on behalf of the United States Government, for 3 years from the later of the date of—

- (1) payment of the rate for the transportation or service involved;
- (2) subsequent refund for overpayment of that rate; or
- (3) deduction made under section 3726 of title 31.

(g) *ACCRUAL DATE.*—A claim related to a shipment of property accrues under this section on delivery or tender of delivery by the carrier.

CHAPTER 149. CIVIL AND CRIMINAL PENALTIES

§ 14901. General civil penalties

(a) REPORTING AND RECORDKEEPING.—A person required to make a report to the Secretary or the Board, answer a question, or make, prepare, or preserve a record under this part concerning transportation subject to jurisdiction under subchapter I or III of chapter 135 or transportation by a foreign carrier registered under section 13902, or an officer, agent, or employee of that person that—

(1) does not make the report;

(2) does not specifically, completely, and truthfully answer the question;

(3) does not make, prepare, or preserve the record in the form and manner prescribed;

(4) does not comply with section 13901; or

(5) does not comply with section 13902(c);

is liable to the United States for a civil penalty of not less than **[\$500]** \$1,000 for each violation and for each additional day the violation continues; except that, in the case of a person **[who is not registered under this part to provide transportation of passengers,]** or an officer, agent, or employee of such person, that does not comply with section 13901 **[with respect to providing transportation of passengers,]** or section 13902(c) of this title the amount of the civil penalty shall not be less than **[\$2,000 for each violation and for each additional day the violation continues]** \$10,000 for each violation, or \$25,000 for each violation relating to providing transportation of passengers.

(b) TRANSPORTATION OF HAZARDOUS WASTES.—A person subject to jurisdiction under subchapter I of chapter 135, or an officer, agent, or employee of that person, and who is required to comply with section 13901 of this title but does not so comply with respect to the transportation of hazardous wastes as defined by the Environmental Protection Agency pursuant to section 3001 of the Solid Waste Disposal Act (but not including any waste the regulation of which under the Solid Waste Disposal Act has been suspended by Congress) shall be liable to the United States for a civil penalty **[not to exceed \$20,000]** not less than \$25,000 for each violation.

* * * * *

(h) SETTLEMENT OF HOUSEHOLD GOODS CIVIL PENALTIES.—*Nothing in this section shall be construed to prohibit the Secretary from accepting partial payment of a civil penalty as part of a settlement agreement in the public interest, or from holding imposition of any part of a civil penalty in abeyance.*

§ 14906. Evasion of regulation of carriers and brokers

A person, or an officer, employee, or agent of that person, that by any means tries to evade regulation provided under this part for carriers or brokers is liable to the United States for a civil penalty of **[\$200]** at least \$2,000 for the first violation and at least **[\$250]** \$5,000 for a subsequent violation, and may be subject to criminal penalties.

§ 14915. Penalties for failure to give up possession of household goods

(a) CIVIL PENALTY.—

(1) IN GENERAL.—Whoever is found holding a household goods shipment hostage is liable to the United States for a civil penalty of not less than \$10,000 for each violation. *The United States may assign all or a portion of the civil penalty to an aggrieved shipper. The Secretary of Transportation shall establish criteria upon which such assignments shall be made. The Secretary may order, after notice and an opportunity for a proceeding, that a person found holding a household goods shipment hostage return the goods to an aggrieved shipper.*

(2) EACH DAY, A SEPARATE VIOLATION.—Each day a carrier is found to have failed to give up possession of household goods may constitute a separate violation.

(3) SUSPENSION.—If the person found holding a shipment hostage is a carrier or broker, the Secretary may suspend for a period of not less than 12 months nor more than 36 months the registration of such carrier or broker under chapter 139. The force and effect of such suspension of a carrier or broker shall extend to and include any carrier or broker having the same ownership or operational control as the suspended carrier or broker.

(4) SETTLEMENT AUTHORITY.—*Nothing in this section shall be construed as prohibiting the Secretary from accepting partial payment of a civil penalty as part of a settlement agreement in the public interest, or from holding imposition of any part of a civil penalty in abeyance.*

(b) CRIMINAL PENALTY.—Whoever has been convicted of having failed to give up possession of household goods shall be fined under title 18 or imprisoned for not more than 2 years, or both.

(c) FAILURE TO GIVE UP POSSESSION OF HOUSEHOLD GOODS DEFINED.—For purposes of this section, the term “failed to give up possession of household goods” means the knowing and willful failure, in violation of a contract, to deliver to, or unload at, the destination of a shipment of household goods that is subject to jurisdiction under subchapter I or III of chapter 135 of this title, for which charges have been estimated by the motor carrier providing transportation of such goods, and for which the shipper has tendered a payment described in clause (i), (ii), or (iii) of section 13707(b)(3)(A).

SUBTITLE V. RAIL PROGRAMS

PART C. PASSENGER TRANSPORTATION

CHAPTER 243. AMTRAK

§ 24305. General authority

(a) ACQUISITION AND OPERATION OF EQUIPMENT AND FACILITIES.—

(1) Amtrak may acquire, operate, maintain, and make contracts for the operation and maintenance of equipment and facilities necessary for intercity and commuter rail passenger

transportation, the transportation of mail and express, and auto-ferry transportation.

(2) Amtrak shall operate and control directly, to the extent practicable, all aspects of the rail passenger transportation it provides.

(3) (A) Except as provided in subsection (d)(2), Amtrak may enter into a contract with a motor carrier of passengers for the intercity transportation of passengers by motor carrier over regular routes only—

(i) if the motor carrier is not a public recipient of governmental assistance, as such term is defined in ~~section 13902(b)(8)(A)~~ *section 13902(b)(11)(A)* of this title, other than a recipient of funds under section 5311 of this title;

(ii) for passengers who have had prior movement by rail or will have subsequent movement by rail; and

(iii) if the buses, when used in the provision of such transportation, are used exclusively for the transportation of passengers described in clause (ii).

(B) Subparagraph (A) shall not apply to transportation funded predominantly by a State or local government, or to ticket selling agreements.³

* * * * *

§ 24307. Special transportation

(a) REDUCED FARE PROGRAM.—Amtrak shall maintain a reduced fare program for the following:

(1) individuals at least 65 years of age.

(2) individuals (except alcoholics and drug abusers) who—

(A) have a physical or mental impairment that substantially limits a major life activity of the individual;

(B) have a record of an impairment; or

(C) are regarded as having an impairment.

(b) EMPLOYEE TRANSPORTATION.—

(1) In this subsection, “rail carrier employee” means—

(A) an active full-time employee of a rail carrier or terminal company and includes an employee on furlough or leave of absence;

(B) a retired employee of a rail carrier or terminal company; and

(C) a dependent of an employee referred to in clause (A) or (B) of this paragraph.

(2) Amtrak shall ensure that a rail carrier employee eligible for free or reduced-rate rail transportation on April 30, 1971, under an agreement in effect on that date is eligible, to the greatest extent practicable, for free or reduced-rate intercity rail passenger transportation provided by Amtrak under this part, if space is available, on terms similar to those available on that date under the agreement. However, Amtrak may apply to all rail carrier employees eligible to receive free or reduced-rate transportation under any agreement a single sys-

³ The amendment to this section takes effect 1 year after the date of enactment of the Commercial Motor Vehicle Safety Enhancement Act of 2011.

temwide schedule of terms that Amtrak decides applied to a majority of employees on that date under all those agreements. Unless Amtrak and a rail carrier make a different agreement, the carrier shall reimburse Amtrak at the rate of 25 percent of the systemwide average monthly yield of each revenue passenger-mile. The reimbursement is in place of costs Amtrak incurs related to free or reduced-rate transportation, including liability related to travel of a rail carrier employee eligible for free or reduced-rate transportation.

(3) This subsection does not prohibit the [Interstate Commerce Commission] *Surface Transportation Board* from ordering retroactive relief in a proceeding begun or reopened after October 1, 1981.

§ 24311. Acquiring interests in property by eminent domain

(a) GENERAL AUTHORITY.—

(1) To the extent financial resources are available, Amtrak may acquire by eminent domain under subsection (b) of this section interests in property—

(A) necessary for intercity rail passenger transportation, except property of a rail carrier, a State, a political subdivision of a State, or a governmental authority; or

(B) requested by the Secretary of Transportation in carrying out the Secretary's duty to design and build an intermodal transportation terminal at Union Station in the District of Columbia if the Secretary assures Amtrak that the Secretary will reimburse Amtrak.

(2) Amtrak may exercise the power of eminent domain only if it cannot—

(A) acquire the interest in the property by contract; or

(B) agree with the owner on the purchase price for the interest.

(b) CIVIL ACTIONS.—

(1) A civil action to acquire an interest in property by eminent domain under subsection (a) of this section must be brought in the district court of the United States for the judicial district in which the property is located or, if a single piece of property is located in more than one judicial district, in any judicial district in which any piece of the property is located. An interest is condemned and taken by Amtrak for its use when a declaration of taking is filed under this subsection and an amount of money estimated in the declaration to be just compensation for the interest is deposited in the court. The declaration may be filed with the complaint in the action or at any time before judgment. The declaration must contain or be accompanied by—

(A) a statement of the public use for which the interest is taken;

(B) a description of the property sufficient to identify it;

(C) a statement of the interest in the property taken;

(D) a plan showing the interest taken; and

(E) a statement of the amount of money Amtrak estimates is just compensation for the interest.

(2) When the declaration is filed and the deposit is made under paragraph (1) of this subsection, title to the property vests in Amtrak in fee simple absolute or in the lesser interest shown in the declaration, and the right to the money vests in the person entitled to the money. When the declaration is filed, the court may decide—

(A) the time by which, and the terms under which, possession of the property is given to Amtrak; and

(B) the disposition of outstanding charges related to the property.

(3) After a hearing, the court shall make a finding on the amount that is just compensation for the interest in the property and enter judgment awarding that amount and interest on it. The rate of interest is 6 percent a year and is computed on the amount of the award less the amount deposited in the court from the date of taking to the date of payment.

(4) On application of a party, the court may order immediate payment of any part of the amount deposited in the court for the compensation to be awarded. If the award is more than the amount received, the court shall enter judgment against Amtrak for the deficiency.

(c) AUTHORITY TO CONDEMN RAIL CARRIER PROPERTY INTERESTS.—

(1) If Amtrak and a rail carrier cannot agree on a sale to Amtrak of an interest in property of a rail carrier necessary for intercity rail passenger transportation, Amtrak may apply to the [Interstate Commerce Commission] *Surface Transportation Board* for an order establishing the need of Amtrak for the interest and requiring the carrier to convey the interest on reasonable terms, including just compensation. The need of Amtrak is deemed to be established, and the [Commission] *Board*, after holding an expedited proceeding and not later than 120 days after receiving the application, shall order the interest conveyed unless the [Commission] *Board* decides that—

(A) conveyance would impair significantly the ability of the carrier to carry out its obligations as a common carrier; and

(B) the obligations of Amtrak to provide modern, efficient, and economical rail passenger transportation can be met adequately by acquiring an interest in other property, either by sale or by exercising its right of eminent domain under subsection (a) of this section.

(2) If the amount of compensation is not determined by the date of the [Commission's] *Board's* order, the order shall require, as part of the compensation, interest at 6 percent a year from the date prescribed for the conveyance until the compensation is paid.

(3) Amtrak subsequently may reconvey to a third party an interest conveyed to Amtrak under this subsection or prior comparable provision of law if the [Commission] *Board* decides that the reconveyance will carry out the purposes of this part, regardless of when the proceeding was brought (including

a proceeding pending before a United States court on November 28, 1990).

CHAPTER 249. NORTHEAST CORRIDOR IMPROVEMENT PROGRAM

§ 24902. Goals and requirements

(a) **MANAGING COSTS AND REVENUES.**—Amtrak shall manage its operating costs, pricing policies, and other factors with the goal of having revenues derived each fiscal year from providing intercity rail passenger transportation over the Northeast Corridor route between the District of Columbia and Boston, Massachusetts, equal at least the operating costs of providing that transportation in that fiscal year.

(b) **PRIORITIES IN SELECTING AND SCHEDULING PROJECTS.**—When selecting and scheduling specific projects, Amtrak shall apply the following considerations, in the following order of priority:

(1) Safety-related items should be completed before other items because the safety of the passengers and users of the Northeast Corridor is paramount.

(2) Activities that benefit the greatest number of passengers should be completed before activities involving fewer passengers.

(3) Reliability of intercity rail passenger transportation must be emphasized.

(4) Trip-time requirements of this section must be achieved to the extent compatible with the priorities referred to in paragraphs (1)-(3) of this subsection.

(5) Improvements that will pay for the investment by achieving lower operating or maintenance costs should be carried out before other improvements.

(6) Construction operations should be scheduled so that the fewest possible passengers are inconvenienced, transportation is maintained, and the on-time performance of Northeast Corridor commuter rail passenger and rail freight transportation is optimized.

(7) Planning should focus on completing activities that will provide immediate benefits to users of the Northeast Corridor.

(c) **COMPATIBILITY WITH FUTURE IMPROVEMENTS AND PRODUCTION OF MAXIMUM LABOR BENEFITS.**—Improvements under this section shall be compatible with future improvements in transportation and shall produce the maximum labor benefit from hiring individuals presently unemployed.

(d) **AUTOMATIC TRAIN CONTROL SYSTEMS.**—A train operating on the Northeast Corridor main line or between the main line and Atlantic City shall be equipped with an automatic train control system designed to slow or stop the train in response to an external signal.

(e) **HIGH-SPEED TRANSPORTATION.**—If practicable, Amtrak shall establish intercity rail passenger transportation in the Northeast Corridor that carries out section 703(1)(E) of the Railroad Revitalization and Regulatory Reform Act of 1976 (Public Law 94-210, 90 Stat. 121).

(f) **EQUIPMENT DEVELOPMENT.**—Amtrak shall develop economical and reliable equipment compatible with track, operating, and mar-

keting characteristics of the Northeast Corridor, including the capability to meet reliable trip times under section 703(1)(E) of the Railroad Revitalization and Regulatory Reform Act of 1976 (Public Law 94-210, 90 Stat. 121) in regularly scheduled revenue transportation in the Corridor, when the Northeast Corridor improvement program is completed. Amtrak must decide that equipment complies with this subsection before buying equipment with financial assistance of the Government. Amtrak shall submit a request for an authorization of appropriations for production of the equipment.

(g) AGREEMENTS FOR OFF-CORRIDOR ROUTING OF RAIL FREIGHT TRANSPORTATION.—

(1) Amtrak may make an agreement with a rail freight carrier or a regional transportation authority under which the carrier will carry out an alternate off-corridor routing of rail freight transportation over rail lines in the Northeast Corridor between the District of Columbia and New York metropolitan areas, including intermediate points. The agreement shall be for at least 5 years.

(2) Amtrak shall apply to the [Interstate Commerce Commission] *Surface Transportation Board* for approval of the agreement and all related agreements accompanying the application as soon as the agreement is made. If the [Commission] *Board* finds that approval is necessary to carry out this chapter, the [Commission] *Board* shall approve the application and related agreements not later than 90 days after receiving the application.

(3) If an agreement is not made under paragraph (1) of this subsection, Amtrak, with the consent of the other parties, may apply to the [Interstate Commerce Commission] *Surface Transportation Board*. Not later than 90 days after the application, the [Commission] *Board* shall decide on the terms of an agreement if it decides that doing so is necessary to carry out this chapter. The decision of the [Commission] *Board* is binding on the other parties.

(h) COORDINATION.—

(1) The Secretary of Transportation shall coordinate—

(A) transportation programs related to the Northeast Corridor to ensure that the programs are integrated and consistent with the Northeast Corridor improvement program; and

(B) amounts from departments, agencies, and instrumentalities of the Government to achieve urban redevelopment and revitalization in the vicinity of urban rail stations in the Northeast Corridor served by intercity and commuter rail passenger transportation.

(2) If the Secretary finds significant noncompliance with this section, the Secretary may deny financing to a noncomplying program until the noncompliance is corrected.

(i) COMPLETION.—Amtrak shall give the highest priority to completing the program.

(j) APPLICABLE PROCEDURES.—No State or local building, zoning, subdivision, or similar or related law, nor any other State or local law from which a project would be exempt if undertaken by the Federal Government or an agency thereof within a Federal enclave

wherein Federal jurisdiction is exclusive, including without limitation with respect to all such laws referenced herein above requirements for permits, actions, approvals or filings, shall apply in connection with the construction, ownership, use, operation, financing, leasing, conveying, mortgaging or enforcing a mortgage of (i) any improvement undertaken by or for the benefit of Amtrak as part of, or in furtherance of, the Northeast Corridor Improvement Project (including without limitation maintenance, service, inspection or similar facilities acquired, constructed or used for high speed trainsets) or chapter 241, 243, or 247 of this title or (ii) any land (and right, title or interest created with respect thereto) on which such improvement is located and adjoining, surrounding or any related land. These exemptions shall remain in effect and be applicable with respect to such land and improvements for the benefit of any mortgagee before, upon and after coming into possession of such improvements or land, any third party purchasers thereof in foreclosure (or through a deed in lieu of foreclosure), and their respective successors and assigns, in each case to the extent the land or improvements are used, or held for use, for railroad purposes or purposes accessory thereto. This subsection shall not apply to any improvement or related land unless Amtrak receives a Federal operating subsidy in the fiscal year in which Amtrak commits to or initiates such improvement.

§ 24904. General authority

(a) GENERAL.—To carry out this chapter and the Regional Rail Reorganization Act of 1973 (45 U.S.C. 701 et seq.), Amtrak may—

(1) acquire, maintain, and dispose of any interest in property used to provide improved high-speed rail transportation under section 24902 of this title;

(2) acquire, by condemnation or otherwise, any interest in real property that Amtrak considers necessary to carry out the goals of section 24902;

(3) provide for rail freight, intercity rail passenger, and commuter rail passenger transportation over property acquired under this section;

(4) improve rail rights of way between Boston, Massachusetts, and the District of Columbia (including the route through Springfield, Massachusetts, and routes to Harrisburg, Pennsylvania, and Albany, New York, from the Northeast Corridor main line) to achieve the goals of section 24902 of providing improved high-speed rail passenger transportation between Boston, Massachusetts, and the District of Columbia, and intermediate intercity markets;

(5) acquire, build, improve, and install passenger stations, communications and electric power facilities and equipment, public and private highway and pedestrian crossings, and other facilities and equipment necessary to provide improved high-speed rail passenger transportation over rights of way improved under clause (4) of this subsection;

(6) make agreements with other carriers and commuter authorities to grant, acquire, or make arrangements for rail freight or commuter rail passenger transportation over, rights of way and facilities acquired under the Regional Rail Reorga-

nization Act of 1973 (45 U.S.C. 701 et seq.) and the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 801 et seq.); and

(7) appoint a general manager of the Northeast Corridor improvement program.

(b) COMPENSATORY AGREEMENTS.—Rail freight and commuter rail passenger transportation provided under subsection (a)(3) of this section shall be provided under compensatory agreements with the responsible carriers.

(c) COMPENSATION FOR TRANSPORTATION OVER CERTAIN RIGHTS OF WAY AND FACILITIES.—

(1) An agreement under subsection (a)(6) of this section shall provide for reasonable reimbursement of costs but may not cross-subsidize intercity rail passenger, commuter rail passenger, and rail freight transportation.

(2) If the parties do not agree, the [Interstate Commerce Commission] *Surface Transportation Board* shall order that the transportation continue over facilities acquired under the Regional Rail Reorganization Act of 1973 (45 U.S.C. 701 et seq.) and the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 801 et seq.) and shall determine compensation (without allowing cross-subsidization between commuter rail passenger and intercity rail passenger and rail freight transportation) for the transportation not later than 120 days after the dispute is submitted. The [Commission] *Board* shall assign to a rail carrier obtaining transportation under this subsection the costs Amtrak incurs only for the benefit of the carrier, plus a proportionate share of all other costs of providing transportation under this paragraph incurred for the common benefit of Amtrak and the carrier. The proportionate share shall be based on relative measures of volume of car operations, tonnage, or other factors that reasonably reflect the relative use of rail property covered by this subsection.

(3) This subsection does not prevent the parties from making an agreement under subsection (a)(6) of this section after the [Commission] *Board* makes a decision under this subsection.

SUBTITLE VI. MOTOR VEHICLE AND DRIVER PROGRAMS

PART A. GENERAL

CHAPTER 301. MOTOR VEHICLE SAFETY

SUBCHAPTER IV. ENFORCEMENT AND ADMINISTRATIVE

§ 30165. Civil penalty

(a) CIVIL PENALTIES.—

(1) IN GENERAL.—A person that violates any of section 30112, 30115, 30117 through 30122, 30123(d), 30125(c), 30127, [or 30141 through 30147] *30141 through 30147, or 31137*, or a regulation prescribed thereunder, is liable to the United States Government for a civil penalty of not more than \$5,000 for each violation. A separate violation occurs for each motor vehicle or item of motor vehicle equipment and for each failure or refusal to allow or perform an act required by any of those sec-

tions. The maximum penalty under this subsection for a related series of violations is \$15,000,000.

(2) SCHOOL BUSES.—

(A) IN GENERAL.—Notwithstanding paragraph (1), the maximum amount of a civil penalty under this paragraph shall be \$10,000 in the case of—

- (i) the manufacture, sale, offer for sale, introduction or delivery for introduction into interstate commerce, or importation of a school bus or school bus equipment (as those terms are defined in section 30125(a) of this title) in violation of section 30112(a)(1) of this title; or
- (ii) a violation of section 30112(a)(2) of this title.

(B) RELATED SERIES OF VIOLATIONS.—A separate violation occurs for each motor vehicle or item of motor vehicle equipment and for each failure or refusal to allow or perform an act required by that section. The maximum penalty under this paragraph for a related series of violations is \$15,000,000.

(3) SECTION 30166.—A person who violates section 30166 or a regulation prescribed under that section is liable to the United States Government for a civil penalty for failing or refusing to allow or perform an act required under that section or regulation. The maximum penalty under this paragraph is \$5,000 per violation per day. The maximum penalty under this paragraph for a related series of daily violations is \$15,000,000.

(b) COMPROMISE AND SETOFF.—

(1) The Secretary of Transportation may compromise the amount of a civil penalty imposed under this section.

(2) The Government may deduct the amount of a civil penalty imposed or compromised under this section from amounts it owes the person liable for the penalty.

(c) CONSIDERATIONS.—In determining the amount of a civil penalty or compromise, the appropriateness of the penalty or compromise to the size of the business of the person charged and the gravity of the violation shall be considered.

(d) SUBPENAS FOR WITNESSES.—In a civil action brought under this section, a subpoena for a witness may be served in any judicial district.

PART B. COMMERCIAL

CHAPTER 311. COMMERCIAL MOTOR VEHICLE SAFETY

SUBCHAPTER I. GENERAL AUTHORITY AND STATE GRANTS

§ 31101. Definitions

In this subchapter—

[(1) “commercial motor vehicle” means (except in section 31106) a self-propelled or towed vehicle used on the highways in commerce principally to transport passengers or cargo, if the vehicle—

[(A) has a gross vehicle weight rating or gross vehicle weight of at least 10,001 pounds, whichever is greater;

[(B) is designed to transport more than 10 passengers including the driver; or

[(C) is used in transporting material found by the Secretary of Transportation to be hazardous under section 5103 of this title and transported in a quantity requiring placarding under regulations prescribed by the Secretary under section 5103.]

(1) “commercial motor vehicle” means (except under section 31106) a self-propelled or towed vehicle used on the highways in commerce to transport passengers or property, if the vehicle—

(A) has a gross vehicle weight rating or gross vehicle weight of at least 10,001 pounds, whichever is greater;

(B) is designed or used to transport more than 8 passengers, including the driver, for compensation;

(C) is designed or used to transport more than 15 passengers, including the driver, and is not used to transport passengers for compensation; or

(D) is used in transporting material found by the Secretary of Transportation to be hazardous under section 5103 and transported in a quantity requiring placarding under regulations prescribed by the Secretary under section 5103.

(2) “employee” means a driver of a commercial motor vehicle (including an independent contractor when personally operating a commercial motor vehicle), a mechanic, a freight handler, or an individual not an employer, who—

(A) directly affects commercial motor vehicle safety in the course of employment by a commercial motor carrier; and

(B) is not an employee of the United States Government, a State, or a political subdivision of a State acting in the course of employment.

(3) “employer”—

(A) means a person engaged in a business affecting commerce that owns or leases a commercial motor vehicle in connection with that business, or assigns an employee to operate the vehicle in commerce; but

(B) does not include the Government, a State, or a political subdivision of a State.

(4) “State” means a State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, and the Northern Mariana Islands.

§ [31102. Grants to States]

§ 31102. Compliance, safety, and accountability grants

[(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.]

(a) *GENERAL AUTHORITY.*—Subject to this section, the Secretary of Transportation shall make and administer a compliance, safety, and accountability grant program to assist States, local governments, and other entities and persons with motor carrier safety and enforcement on highways and other public roads, new entrant safety audits, border enforcement, hazardous materials safety and security, consumer protection and household goods enforcement, and other programs and activities required to improve the safety of motor carriers as determined by the Secretary. The Secretary shall allocate funding in accordance with section 31104 of this title.

[(b) STATE PLAN PROCEDURES AND CONTENTS.—]

(b) MOTOR CARRIER SAFETY ASSISTANCE PROGRAM.—

(1) *PROGRAM GOAL.*—The goal of the Motor Carrier Safety Assistance Program is to ensure that the Secretary, States, local government agencies, and other political jurisdictions work in partnership to establish programs to improve motor carrier, commercial motor vehicle, and driver safety to support a safe and efficient surface transportation system by—

(A) making targeted investments to promote safe commercial motor vehicle transportation, including transportation of passengers and hazardous materials;

(B) investing in activities likely to generate maximum reductions in the number and severity of commercial motor vehicle crashes and fatalities resulting from such crashes;

(C) adopting and enforcing effective motor carrier, commercial motor vehicle, and driver safety regulations and practices consistent with Federal requirements; and

(D) assessing and improving statewide performance by setting program goals and meeting performance standards, measures, and benchmarks.

[(1)] (2) 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;

(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]** *demonstrate* 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;]

(M) ensures participation in appropriate Federal Motor Carrier Safety Administration systems and other information systems by all appropriate jurisdictions receiving Motor Carrier Safety Assistance Program funding;

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

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

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

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

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

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

(Q) provides that the State has established *and dedicated sufficient resources* to 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 non-commercial 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.]

(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, weigh station, rest stop, turnpike service area, or a location where adequate food, shelter, and sanitation facilities are available for passengers, and reasonable accommodation is available for passengers with disabilities; and

(Y) ensures that the State will transmit to its roadside inspectors the notice of each Federal exemption granted pursuant to section 31315(b) and provided to the State by the Secretary, including the name of the person granted the exemption and any terms and conditions that apply to the exemption.

[(2)] (3) 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. **]**

(4) MAINTENANCE OF EFFORT.—

(A) IN GENERAL.—A plan submitted by a State under paragraph (2) shall provide that the total expenditure of amounts of the lead State agency responsible for implementing the plan will be maintained at a level at least equal to the average level of that expenditure for FY 2004 and FY 2005.

(B) AVERAGE LEVEL OF STATE EXPENDITURES.—In estimating the average level of State expenditure under subparagraph (A), 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 State matching amounts used to receive Government financing under this subsection.

(C) WAIVER.—Upon the request of a State, the Secretary may waive or modify the requirements of this paragraph for 1 fiscal year, if the Secretary determines that a waiver is equitable due to exceptional or uncontrollable circumstances, such as a natural disaster or a serious decline in the financial resources of the State motor carrier safety assistance program agency.

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

(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) NEW ENTRANT SAFETY ASSURANCE PROGRAM.—

(1) PROGRAM GOAL.—*The Secretary may make grants to States and local governments for pre-authorization safety audits and new entrant motor carrier audits as described in section 31144(g).*

(2) RECIPIENTS.—*Grants made in support of this program may be provided to States and local governments.*

(3) FEDERAL SHARE.—*The Federal share of a grant made under this program is 100 percent.*

(4) ELIGIBLE ACTIVITIES.—*Eligible activities will be in accordance with criteria developed by the Secretary and posted in the Federal Register in advance of the grant application period.*

(5) DETERMINATION.—*If the Secretary determines that a State or local government is unable to conduct a new entrant motor carrier audit, the Secretary may use the funds to conduct the audit.*

(f) BORDER ENFORCEMENT.—

(1) *PROGRAM GOAL.*—The Secretary of Transportation may make a grant for carrying out border commercial motor vehicle safety programs and related enforcement activities and projects.

(2) *RECIPIENTS.*—The Secretary of Transportation may make a grant to an entity, State, or other person for carrying out border commercial motor vehicle safety programs and related enforcement activities and projects.

(3) *FEDERAL SHARE.*—The Secretary shall reimburse a grantee at least 80 percent of the costs incurred in a fiscal year for carrying out border commercial motor vehicle safety programs and related enforcement activities and projects.

(4) *ELIGIBLE ACTIVITIES.*—An eligible activity will be in accordance with criteria developed by the Secretary and posted in the Federal Register in advance of the grant application period.

(g) *HIGH PRIORITY INITIATIVES.*—

(1) *PROGRAM GOAL.*—The Secretary may make grants to carry 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—

(A) are national in scope;

(B) increase public awareness and education;

(C) target unsafe driving of commercial motor vehicles and non-commercial motor vehicles in areas identified as high risk crash corridors;

(D) improve consumer protection and enforcement of household goods regulations;

(E) improve the movement of hazardous materials safely and securely, including activities related to the establishment of uniform forms and application procedures that improve the accuracy, timeliness, and completeness of commercial motor vehicle safety data reported to the Secretary;

or

(F) demonstrate new technologies to improve commercial motor vehicle safety.

(2) *RECIPIENTS.*—The Secretary may allocate amounts to award grants to State agencies, local governments, and other persons for carrying out high priority activities and projects that improve commercial motor vehicle safety and compliance with commercial motor vehicle safety regulations in accordance with the program goals specified in paragraph (1).

(3) *FEDERAL SHARE.*—The Secretary shall reimburse a grantee at least 80 percent of the costs incurred in a fiscal year for carrying out the high priority activities or projects.

(4) *ELIGIBLE ACTIVITIES.*—An eligible activity will be in accordance with criteria that is—

(A) developed by the Secretary; and

(B) posted in the Federal Register in advance of the grant application period.

[(e)] (h) *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; and

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

§ 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)~~ *section 31102(b)(2)(E)* of this title 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)~~.

§ 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) \$106,000,000 for the period beginning on October 1, 2011, and ending on March 31, 2012.~~

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

~~[(c) REIMBURSEMENT FOR GOVERNMENT'S SHARE OF COSTS.—Amounts made available under subsection (a) of this section shall~~

be used to reimburse States proportionately for the United States Government's share of costs incurred.

[(d) GRANTS AS CONTRACTUAL OBLIGATIONS.—Approval by the Secretary of a grant to a State under section 31102 of this title is a contractual obligation of the Government for payment of the Government's share of costs incurred by the State in developing, implementing, or developing and implementing programs to enforce commercial motor vehicle regulations, standards, and orders.

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

[(f) ALLOCATION CRITERIA AND ELIGIBILITY.—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.

[(g) PAYMENT TO STATES FOR COSTS.—Each State shall submit vouchers for costs the State incurs under this section and section 31102 of this title. The Secretary shall pay the State an amount not more than the Government share of costs incurred as of the date of the vouchers.

[(h) INTRASTATE COMPATIBILITY.—The Secretary shall prescribe regulations specifying tolerance guidelines and standards for ensuring compatibility of intrastate commercial motor vehicle safety laws and regulations with Government motor carrier safety regulations to be enforced under section 31102(a) of this title. To the extent practicable, the guidelines and standards shall allow for maximum flexibility while ensuring the degree of uniformity that will not diminish transportation safety. In reviewing State plans and allocating amounts or making grants under section 153 of title 23, the Secretary shall ensure that the guidelines and standards are applied uniformly.

[(i) ADMINISTRATIVE EXPENSES.—

[(1) 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) \$122,072,000 for the period beginning on October 1, 2011, and ending on March 31, 2012.]

[(2) USE OF FUNDS.—The funds authorized by this subsection shall be used for personnel costs; administrative infrastructure; rent; information technology; programs for research and technology, information management, regulatory development, the administration of the performance and registration information system management, and outreach and education; other operating expenses; and such other expenses as may from time to time become necessary to implement statutory mandates of the Administration not funded from other sources.]

[(j) AVAILABILITY OF FUNDS; CONTRACT AUTHORITY.—

[(1) PERIOD OF AVAILABILITY.—The amounts made available under this section shall remain available until expended.]

[(2) INITIAL DATE OF AVAILABILITY.—Authorizations from the Highway Trust Fund (other than the Mass Transit Account) by this section shall be available for obligation on the date of their apportionment or allocation or on October 1 of the fiscal year for which they are authorized, whichever occurs first.]

[(3) CONTRACT AUTHORITY.—Approval by the Secretary of a grant with funds made available under this section imposes upon the United States a contractual obligation for payment of the Government's share of costs incurred in carrying out the objectives of the grant.]

[(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 2011 and \$7,500,000 for the period beginning on October 1, 2011, and ending on March 31, 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.]

[(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.】

§ 31104. Availability of amounts

(a) IN GENERAL.—There are authorized to be appropriated from Highway Trust Fund (other than the Mass Transit Account) for

Federal Motor Carrier Safety Administration programs the following:

- (1) **COMPLIANCE, SAFETY, AND ACCOUNTABILITY GRANTS UNDER SECTION 31102.—**
 - (A) \$249,717,000 for fiscal year 2012, provided that the Secretary shall set aside not less than \$168,388,000 to carry out the motor carrier safety assistance program under section 31102(b); and
 - (B) \$253,814,000 for fiscal year 2013, provided that the Secretary shall set aside not less than \$171,813,000 to carry out the motor carrier safety assistance program under section 31102(b).
- (2) **DATA AND TECHNOLOGY GRANTS UNDER SECTION 31109.—**
 - (A) \$30,000,000 for fiscal year 2012; and
 - (B) \$30,000,000 for fiscal year 2013.
- (3) **DRIVER SAFETY GRANTS UNDER SECTION 31313.—**
 - (A) \$31,000,000 for fiscal year 2012; and
 - (B) \$31,000,000 for fiscal year 2013.
- (4) **CRITERIA.—***The Secretary shall develop criteria to allocate the remaining funds under paragraphs (1), (2), and (3) for fiscal year 2013 and for each fiscal year thereafter not later than April 1 of the prior fiscal year.*
- (b) **AVAILABILITY AND REALLOCATION OF AMOUNTS.—**
 - (1) **ALLOCATIONS AND REALLOCATIONS.—***Amounts made available under subsection (a)(1) remain available until expended. Allocations to a State remain available for expenditure in the State for the fiscal year in which they are allocated and for the next fiscal year. Amounts not expended by a State during those 2 fiscal years are released to the Secretary for reallocation.*
 - (2) **REDISTRIBUTION OF AMOUNTS.—***The Secretary may, after August 1 of each fiscal year, upon a determination that a State does not qualify for funding under section 31102(b) or that the State will not expend all of its existing funding, reallocate the State's funding. In revising the allocation and redistributing the amounts, the Secretary shall give preference to those States that require additional funding to meet program goals under section 31102(b).*
 - (3) **PERIOD OF AVAILABILITY FOR DATA AND TECHNOLOGY GRANTS.—***Amounts made available under subsection (a)(2) remain available for obligation for the fiscal year and the next 2 years in which they are appropriated. Allocations remain available for expenditure in the State for 5 fiscal years after they were obligated. Amounts not expended by a State during those 3 fiscal years are released to the Secretary for reallocation.*
 - (4) **PERIOD OF AVAILABILITY FOR DRIVER SAFETY GRANTS.—***Amounts made available under subsection (a)(3) of this section remain available for obligation for the fiscal year and the next fiscal year in which they are appropriated. Allocations to a State remain available for expenditure in the State for the fiscal year in which they are allocated and for the following 2 fiscal years. Amounts not expended by a State during those 3 fiscal years are released to the Secretary for reallocation.*
 - (5) **REALLOCATION.—***The Secretary, upon a request by a State, may reallocate grant funds previously awarded to the State*

under a grant program authorized by section 31102, 31109, or 31313 to another grant program authorized by those sections upon a showing by the State that it is unable to expend the funds within the 12 months prior to their expiration provided that the State agrees to expend the funds within the remaining period of expenditure.

(c) **GRANTS AS CONTRACTUAL OBLIGATIONS.**—Approval by the Secretary of a grant under sections 31102, 31109, and 31313 is a contractual obligation of the Government for payment of the Government's share of costs incurred in developing and implementing programs to improve commercial motor vehicle safety and enforce commercial driver's license regulations, standards, and orders.

(d) **DEDUCTION FOR ADMINISTRATIVE EXPENSES.**—

(1) **IN GENERAL.**—On October 1 of each fiscal year or as soon after that as practicable, the Secretary may deduct, from amounts made available under—

(A) subsection (a)(1) for that fiscal year, not more than 1.5 percent of those amounts for administrative expenses incurred in carrying out section 31102 in that fiscal year;

(B) subsection (a)(2) for that fiscal year, not more than 1.4 percent of those amounts for administrative expenses incurred in carrying out section 31109 in that fiscal year; and

(C) subsection (a)(3) for that fiscal year, not more than 1.4 percent of those amounts for administrative expenses incurred in carrying out section 31313 in that fiscal year.

(2) **TRAINING.**—The Secretary may use at least 50 percent of the amounts deducted from the amounts made available under sections (a)(1) and (a)(3) to train non-Government employees and to develop related training materials to carry out sections 31102, 31311, and 31313 of this title.

(3) **CONTRACTS.**—The Secretary may use amounts deducted under paragraph (1) to enter into contracts and cooperative agreements with States, local governments, associations, institutions, corporations, and other persons, if the Secretary determines the contracts and cooperative agreements are cost-effective, benefit multiple jurisdictions of the United States, and enhance safety programs and related enforcement activities.

(e) **ALLOCATION CRITERIA AND ELIGIBILITY.**—

(1) On October 1 of each fiscal year or as soon as practicable after that date after making the deduction under subsection (d)(1)(A), the Secretary shall allocate amounts made available to carry out section 31102(b) for such fiscal year among the States with plans approved under that section. Allocation shall be made under the criteria prescribed by the Secretary.

(2) On October 1 of each fiscal year or as soon as practicable after that date and after making the deduction under subsection (d)(1)(B) or (d)(1)(C), the Secretary shall allocate amounts made available to carry out sections 31109(a) and 31313(b)(1).

(f) **INTRASTATE COMPATIBILITY.**—The Secretary shall prescribe regulations specifying tolerance guidelines and standards for ensuring compatibility of intrastate commercial motor vehicle safety laws and regulations with Government motor carrier safety regulations to

be enforced under section 31102(b). To the extent practicable, the guidelines and standards shall allow for maximum flexibility while ensuring a degree of uniformity that will not diminish transportation safety. In reviewing State plans and allocating amounts or making grants under section 153 of title 23, United States Code, the Secretary shall ensure that the guidelines and standards are applied uniformly.

(g) *WITHHOLDING AMOUNTS FOR STATE NONCOMPLIANCE.*—

(1) *IN GENERAL.*—Subject to criteria established by the Secretary, the Secretary may withhold up to 100 percent of the amounts a State is otherwise eligible to receive under section 31102(b) on October 1 of each fiscal year beginning after the date of enactment of the Commercial Motor Vehicle Safety Enhancement Act of 2011 and continuing for the period that the State does not comply substantially with a requirement under section 31109(b).

(2) *SUBSEQUENT AVAILABILITY OF WITHHELD FUNDS.*—The Secretary may make the amounts withheld in accordance with paragraph (1) available to a State if the Secretary determines that the State has substantially complied with a requirement under section 31109(b) not later than 180 days after the beginning of the fiscal year in which the amounts are withheld.

(h) *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 to pay administrative expenses of the Federal Motor Carrier Safety Administration—

(A) \$250,819,000 for fiscal year 2012; and

(B) \$248,523,000 for fiscal year 2013.

(2) *USE OF FUNDS.*—The funds authorized by this subsection shall be used for personnel costs, administrative infrastructure, rent, information technology, programs for research and technology, information management, regulatory development, the administration of the performance and registration information system management, outreach and education, other operating expenses, and such other expenses as may from time to time be necessary to implement statutory mandates of the Administration not funded from other sources. From the funds authorized by this subsection, the Secretary shall ensure that a review is completed on each motor carrier that demonstrates through performance data that it poses the highest safety risk. At a minimum, a review shall be conducted whenever a motor carrier is among the highest risk carriers for 2 consecutive months.

(i) *AVAILABILITY OF FUNDS.*—

(1) *PERIOD OF AVAILABILITY.*—The amounts made available under this section shall remain available until expended.

(2) *INITIAL DATE OF AVAILABILITY.*—Authorizations from the Highway Trust Fund (other than the Mass Transit Account) for this section shall be available for obligation on the date of their apportionment or allocation or on October 1 of the fiscal year for which they are authorized, whichever occurs first.

§ 31106. Information systems

(a) INFORMATION SYSTEMS AND DATA ANALYSIS.—

(1) IN GENERAL.—Subject to the provisions of this section, the Secretary shall establish and operate motor carrier, commercial motor vehicle, and driver information systems and data analysis programs to support safety regulatory and enforcement activities required under this title.

(2) NETWORK COORDINATION.—In cooperation with the States, the information systems under this section shall be coordinated into a network providing accurate identification of motor carriers and drivers, commercial motor vehicle registration and license tracking, and motor carrier, commercial motor vehicle, and driver safety performance data.

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

(A) identify and collect necessary motor carrier, commercial motor vehicle, and driver data;

(B) evaluate the safety fitness of motor carriers and drivers;

(C) develop strategies to mitigate safety problems and to use data analysis to address and measure the effectiveness of such strategies and related programs;

(D) determine the cost-effectiveness of Federal and State safety compliance and enforcement programs and other countermeasures;

(E) adapt, improve, and incorporate other information and information systems as the Secretary determines appropriate;

(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 person or employer is or was related, through common ownership, common management, common control, or common familial relationship, to any other person, employer, or any other applicant for registration under section 13902 or 31134.

(4) STANDARDS.—To implement this section, the Secretary shall prescribe technical and operational standards to ensure—

(A) uniform, timely, and accurate information collection and reporting by the States and other entities as determined appropriate by the Secretary;

(B) uniform Federal, State, and local policies and procedures necessary to operate the information system; and

(C) the reliability and availability of the information to the Secretary and States.

(b) PERFORMANCE AND REGISTRATION INFORMATION PROGRAM.—

(1) INFORMATION CLEARINGHOUSE.—The Secretary shall include, as part of the motor carrier information system authorized by this section, a program to establish and maintain a clearinghouse and repository of information related to State registration and licensing of commercial motor vehicles, the

registrants of such vehicles, and the motor carriers operating such vehicles. The clearinghouse and repository may include information on the safety fitness of each of the motor carriers and registrants and other information the Secretary considers appropriate, including information on motor carrier, commercial motor vehicle, and driver safety performance.

(2) DESIGN.—The program shall link Federal motor carrier safety information systems with State 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.]

(C) *establish and implement a process—*

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

(ii) to reinstate the vehicle registration or return the registration plates of the commercial motor vehicle, subject to sanctions under clause (i), if the Secretary permits such carrier to resume operations after the date of issuance of such 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.]

(c) [COMMERCIAL MOTOR VEHICLE DRIVER SAFETY PROGRAM.]

(1) IN GENERAL.—In coordination with the information system under section 31309, the Secretary is authorized to establish a

program to improve commercial motor vehicle driver safety. The objectives of the program shall include—

【(1)】 (A) enhancing the exchange of driver licensing information among the States, the Federal Government, and foreign countries;

【(2)】 (B) providing information to the judicial system on commercial motor vehicle drivers;

【(3)】 (C) evaluating any aspect of driver performance that the Secretary determines appropriate; and

【(4)】 (D) developing appropriate strategies and countermeasures to improve driver safety.

(2) *ACCESS TO RECORDS.*—*The Secretary may require a State, as a condition of an award of grant money under this section, to provide the Secretary access to all State licensing status and driver history records via an electronic information system, subject to section 2721 of title 18.*

(d) *COOPERATIVE AGREEMENTS, GRANTS, AND CONTRACTS.*—The Secretary may carry out this section either independently or in cooperation with other Federal departments, agencies, and instrumentalities, or by making grants to, and entering into contracts and cooperative agreements with, States, local governments, associations, institutions, corporations, and other persons.

【(e)】 (e)(1) *INFORMATION AVAILABILITY AND PRIVACY PROTECTION POLICY.*—The Secretary shall develop a policy on making information available from the information systems authorized by this section and section 31309. The policy shall be consistent with existing Federal information laws, including regulations, and shall provide for review and correction of such information in a timely manner.

(2) *IN GENERAL.*—*Notwithstanding any prohibition on disclosure of information in section 31105(h) or 31143(b) of this title or section 552a of title 5, the Secretary may disclose information maintained by the Secretary pursuant to chapters 51, 135, 311, or 313 of this title to appropriate personnel of a State agency or instrumentality authorized to carry out State commercial motor vehicle safety activities and commercial driver's license laws, or appropriate personnel of a local law enforcement agency, in accordance with standards, conditions, and procedures as determined by the Secretary. Disclosure under this section shall not operate as a waiver by the Secretary of any applicable privilege against disclosure under common law or as a basis for compelling disclosure under section 552 of title 5.*

【§ 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. *Data and technology grants*

(a) *GENERAL AUTHORITY.*—*The Secretary of Transportation shall establish and administer a data and technology grant program to assist the States with the implementation and maintenance of data*

systems. *The Secretary shall allocate the funds in accordance with section 31104.*

(b) *PERFORMANCE GOALS.—The Secretary may make a grant to a State to implement the performance and registration information system management requirements of section 31106(b) to develop, implement, and maintain commercial vehicle information systems and networks, and other innovative technologies that the Secretary determines improve commercial motor vehicle safety.*

(c) *ELIGIBILITY.—To be eligible for a grant to implement the requirements of section 31106(b), the State shall design a program that—*

(1) *links Federal motor carrier safety information systems with the State’s motor carrier information systems;*

(2) *determines 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*

(3) *denies, suspends, or revokes the commercial motor vehicle registrations of a motor carrier or registrant that was issued an operations out-of-service order by the Secretary.*

(d) *REQUIRED PARTICIPATION.—The Secretary shall require States that participate in the program under section 31106 to—*

(1) *comply with the uniform policies, procedures, and technical and operational standards prescribed by the Secretary under section 31106(b);*

(2) *possess or seek the authority to possess for a time period not 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*

(3) *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(j)(2)(C) for knowingly allowing or requiring an employee to operate such a commercial motor vehicle in violation of an out of service order.*

(e) *FEDERAL SHARE.—The total Federal share of the cost of a project payable from all eligible Federal sources shall be at least 80 percent.*

§ 31110. Withholding amounts for State noncompliance

(a) *FIRST FISCAL YEAR.—Subject to criteria established by the Secretary of Transportation, the Secretary may withhold up to 50 percent of the amount a State is otherwise eligible to receive under section 31102(b) on the first day of the fiscal year after the first fiscal year following the date of enactment of the Commercial Motor Vehicle Safety Enhancement Act of 2011 in which the State uses for at least 180 days an electronic commercial motor vehicle inspection selection system that does not employ a selection methodology approved by the Secretary.*

(b) *SECOND FISCAL YEAR.—The Secretary shall withhold up to 75 percent of the amount a State is otherwise eligible to receive under section 31102(b) on the first day of the fiscal year after the second fiscal year following the date of enactment of the Commercial Motor Vehicle Safety Enhancement Act of 2011 in which the State uses for at least 180 days an electronic commercial motor vehicle inspection*

selection system that does not employ a selection methodology approved by the Secretary.

(c) SUBSEQUENT AVAILABILITY OF WITHHELD FUNDS.—The Secretary may make the amounts withheld under subsection (a) or subsection (b) available to the State if the Secretary determines that the State has substantially complied with the requirement described under subsection (a) or subsection (b) not later than 180 days after the beginning of the fiscal year in which amounts were withheld.

SUBCHAPTER III. SAFETY REGULATION

§ 31132. Definitions

In this subchapter—

(1) “commercial motor vehicle” means a self-propelled or towed vehicle used on the highways in interstate commerce to transport passengers or property, if the vehicle—

(A) has a gross vehicle weight rating or gross vehicle weight of at least 10,001 pounds, whichever is greater;

(B) is designed or used to transport more than 8 passengers (including the driver) for compensation;

(C) is designed or used to transport more than 15 passengers, including the driver, and is not used to transport passengers for compensation; or

(D) is used in transporting material found by the Secretary of Transportation to be hazardous under section 5103 of this title and transported in a quantity requiring placarding under regulations prescribed by the Secretary under section 5103.

(2) “employee” means an operator of a commercial motor vehicle (including an independent contractor when operating a commercial motor vehicle), a mechanic, a freight handler, or an individual not an employer, who—

(A) directly affects commercial motor vehicle safety in the course of employment; and

(B) is not an employee of the United States Government, a State, or a political subdivision of a State acting in the course of the employment by the Government, a State, or a political subdivision of a State.

[(3) “employer”—

[(A) means a person engaged in a business affecting interstate commerce that owns or leases a commercial motor vehicle in connection with that business, or assigns an employee to operate it; but

[(B) does not include the Government, a State, or a political subdivision of a State.]

(3) “employer”—

(A) means a person engaged in a business affecting interstate commerce that—

(i) owns or leases a commercial motor vehicle in connection with that business, or assigns an employee to operate the commercial motor vehicle; or

(ii) offers for rent or lease a motor vehicle designed or used to transport more than 8 passengers, including the driver, and from the same location or as part of the

same business provides names or contact information of drivers, or holds itself out to the public as a charter bus company; but

(B) does not include the Government, a State, or a political subdivision of a State.

(4) “interstate commerce” means trade, traffic, or transportation in the United States between a place in a State and—

(A) a place outside that State (including a place outside the United States); or

(B) another place in the same State through another State or through a place outside the United States.

(5) “intrastate commerce” means trade, traffic, or transportation in a State that is not interstate commerce.

(6) “medical examiner” means an individual licensed, certified, or registered in accordance with regulations issued by the Federal Motor Carrier Safety Administration as a medical examiner.

(7) “regulation” includes a standard or order.

(8) “State” means a State of the United States, the District of Columbia, and, in sections 31136 and 31140-31142 of this title, a political subdivision of a State.

(9) “State law” includes a law enacted by a political subdivision of a State.

(10) “State regulation” includes a regulation prescribed by a political subdivision of a State.

(11) “United States” means the States of the United States and the District of Columbia.

§ 31134. Requirement for registration and USDOT number

(a) IN GENERAL.—Upon application, and subject to subsections (b) and (c), the Secretary shall register an employer or person subject to the safety jurisdiction of this subchapter. An employer or person may operate a commercial motor vehicle in interstate commerce only if the employer or person is registered by the Secretary under this section and receives a USDOT number. Nothing in this section shall preclude registration by the Secretary of an employer or person not engaged in interstate commerce. An employer or person subject to jurisdiction under subchapter I of chapter 135 of this title shall apply for commercial registration under section 13902 of this title.

(b) WITHHOLDING REGISTRATION.—The Secretary may withhold registration under subsection (a), after notice and an opportunity for a proceeding, if the Secretary determines that—

(1) the employer or person seeking registration is unwilling or unable to comply with the requirements of this subchapter and the regulations prescribed thereunder and chapter 51 and the regulations prescribed thereunder;

(2) the employer or person is or was related through common ownership, common management, common control, or common familial relationship to any other person or applicant for registration subject to this subchapter who is or was unfit, unwilling, or unable to comply with the requirements listed in subsection (b)(1); or

(3) *the person is the successor, as defined in section 31153, to a person who is or was unfit, unwilling, or unable to comply with the requirements listed in subsection (b)(1).*

(c) *REVOCATION OR SUSPENSION OF REGISTRATION.—The Secretary shall revoke the registration of an employer or person under subsection (a) after notice and an opportunity for a proceeding, or suspend the registration after giving notice of the suspension to the employer or person, if the Secretary determines that—*

(1) *the employer’s or person’s authority to operate pursuant to chapter 139 of this title would be subject to revocation or suspension under sections 13905(d)(1) or 13905(f) of this title;*

(2) *the employer or person is or was related through common ownership, common management, common control, or common familial relationship to any other person or applicant for registration subject to this subchapter that the Secretary determines is or was unfit, unwilling, or unable to comply with the requirements listed in subsection (b)(1);*

(3) *the person is the successor, as defined in section 31153, to a person the Secretary determines is or was unfit, unwilling, or unable to comply with the requirements listed in subsection (b)(1); or*

(4) *the employer or person failed or refused to submit to the safety review required by section 31144(g) of this title.*

(d) *PERIODIC REGISTRATION UPDATE.—The Secretary may require an employer to update a registration under this section periodically or not later than 30 days after a change in the employer’s address, other contact information, officers, process agent, or other essential information, as determined by the Secretary.*

§ 31135. Duties of employers and employees

(a) *IN GENERAL.—Each employer and employee shall comply with regulations on commercial motor vehicle safety prescribed by the Secretary of Transportation under this subchapter that apply to the employer’s or employee’s conduct.*

[(b) PATTERN OF NONCOMPLIANCE.—If the Secretary finds that an officer of a motor carrier engages or has engaged in a pattern or practice of avoiding compliance, or masking or otherwise concealing noncompliance, with regulations on commercial motor vehicle safety prescribed under this subchapter, while serving as an officer of any motor carrier, the Secretary may suspend, amend, or revoke any part of the motor carrier’s registration under section 13905.]

(b) *NONCOMPLIANCE.—*

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

(2) *PATTERN.—If the Secretary finds that a motor carrier, employer, or person engaged in a pattern or practice of avoiding compliance, or masking or otherwise concealing noncompliance,*

with regulations prescribed under this subchapter, the Secretary—

(A) may withhold, suspend, amend, or revoke any part of the motor carrier's, employer's, or person's registration in accordance with section 13905 or 31134; and

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

(3) OFFICERS.—If the Secretary finds, after notice and an opportunity for proceeding, that an officer of a motor carrier, employer, or owner or operator engaged in a pattern or practice of violating regulations prescribed under this subchapter, or assisted a motor carrier, employer, or owner or operator in avoiding compliance, or masking or otherwise concealing noncompliance, the Secretary may impose appropriate sanctions, subject to the limitations in paragraph (4), including—

(A) suspension or revocation of registration granted to the officer individually under section 13902 or 31134;

(B) temporary or permanent suspension or bar from association with any motor carrier, employer, or owner or operator registered under section 13902 or 31134; or

(C) any appropriate sanction approved by the Secretary.

(4) LIMITATIONS.—The sanctions described in subparagraphs (A) through (C) of subsection (b)(3) shall apply to—

(A) intentional or knowing conduct, including reckless conduct that violates applicable laws (including regulations); and

(B) repeated instances of negligent conduct that violates applicable laws (including regulations).

[(c) REGULATIONS.—Not later than 1 year after the date of enactment of this subsection, the Secretary shall by regulation establish standards to implement subsection (b).]

(c) AVOIDING COMPLIANCE.—For purposes of this section, “avoiding compliance” or “masking or otherwise concealing noncompliance” includes serving as an officer or otherwise exercising controlling influence over 2 or more motor carriers where—

(1) one of the carriers was placed out of service, or received notice from the Secretary that it will be placed out of service, following—

(A) a determination of unfitness under section 31144(b);

(B) a suspension or revocation of registration under section 13902, 13905, or 31144(g);

(C) issuance of an imminent hazard out of service order under section 521(b)(5) or section 5121(d); or

(D) notice of failure to pay a civil penalty or abide by a penalty payment plan; and

(2) one or more of the carriers is the “successor,” as that term is defined in section 31153, to the carrier that is the subject of the action in paragraph (1).

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

(1) MOTOR CARRIER.—The term “motor carrier” has the meaning such term has under section 13102.

(2) OFFICER.—The term “officer” means an owner, director, chief executive officer, chief operating officer, chief financial of-

ficer, safety director, vehicle maintenance supervisor, and driver supervisor of a motor carrier, regardless of the title attached to those functions, and any person, however designated, exercising controlling influence over the operations of a motor carrier.

§ 31136. United States Government regulations

(a) **MINIMUM SAFETY STANDARDS.**—Subject to section 30103(a) of this title, the Secretary of Transportation shall prescribe regulations on commercial motor vehicle safety. The regulations shall prescribe minimum safety standards for commercial motor vehicles. At a minimum, the regulations shall ensure that—

(1) commercial motor vehicles are maintained, equipped, loaded, and operated safely;

(2) the responsibilities imposed on operators of commercial motor vehicles do not impair their ability to operate the vehicles safely;

(3) the physical condition of operators of commercial motor vehicles is adequate to enable them to operate the vehicles safely and the periodic physical examinations required of such operators are performed by medical examiners who have received training in physical and medical examination standards and, after the national registry maintained by the Department of Transportation under section 31149(d) is established, are listed on such registry; **[and]**

(4) the operation of commercial motor vehicles does not have a deleterious effect on the physical condition of the operators**].**

(5) an operator of a commercial motor vehicle is not coerced by a motor carrier, shipper, receiver, or transportation intermediary to operate a commercial motor vehicle in violation of a regulation promulgated under this section, or chapter 51 or chapter 313 of this title.

* * * * *

【§ 31137. Monitoring device and brake maintenance regulations】

§ 31137. *Electronic on-board recording devices and brake maintenance regulations*

【(a) USE OF MONITORING DEVICES.—If the Secretary of Transportation prescribes a regulation about the use of monitoring devices on commercial motor vehicles to increase compliance by operators of the vehicles with hours of service regulations of the Secretary, the regulation shall ensure that the devices are not used to harass vehicle operators. However, the devices may be used to monitor productivity of the operators.**】**

(a) ELECTRONIC ON-BOARD RECORDING DEVICES.—Not later than 1 year after the date of enactment of the Commercial Motor Vehicle Safety Enhancement Act of 2011, the Secretary of Transportation shall prescribe regulations—

(1) requiring a commercial motor vehicle involved in interstate commerce and operated by a driver subject to the hours of service and the record of duty status requirements under part

395 of title 49, Code of Federal Regulations, be equipped with an electronic on-board recording device to improve compliance by an operator of a vehicle with hours of service regulations prescribed by the Secretary; and

(2) ensuring that an electronic on-board recording device is not used to harass a vehicle operator.

(b) **ELECTRONIC ON-BOARD RECORDING DEVICE REQUIREMENTS.**—

(1) **IN GENERAL.**—The regulations prescribed under subsection (a) shall—

(A) require an electronic on-board recording device—

(i) to accurately record commercial driver hours of service;

(ii) to record the location of a commercial motor vehicle;

(iii) to be tamper resistant; and

(iv) to be integrally synchronized with an engine's control module;

(B) allow law enforcement to access the data contained in the device during a roadside inspection; and

(C) apply to a commercial motor vehicle beginning on the date that is 2 years after the date that the regulations are published as a final rule.

(2) **PERFORMANCE AND DESIGN STANDARDS.**—The regulations prescribed under subsection (a) shall establish performance standards—

(A) defining a standardized user interface to aid vehicle operator compliance and law enforcement review;

(B) establishing a secure process for standardized—

(i) and unique vehicle operator identification;

(ii) data access;

(iii) data transfer for vehicle operators between motor vehicles;

(iv) data storage for a motor carrier; and

(v) data transfer and transportability for law enforcement officials;

(C) establishing a standard security level for an electronic on-board recording device and related components to be tamper resistant by using a methodology endorsed by a nationally recognized standards organization; and

(D) identifying each driver subject to the hours of service and record of duty status requirements under part 395 of title 49, Code of Federal Regulations.

(c) **CERTIFICATION CRITERIA.**—

(1) **IN GENERAL.**—The regulations prescribed by the Secretary under this section shall establish the criteria and a process for the certification of an electronic on-board recording device to ensure that the device meets the performance requirements under this section.

(2) **EFFECT OF NONCERTIFICATION.**—An electronic on-board recording device that is not certified in accordance with the certification process referred to in paragraph (1) shall not be acceptable evidence of hours of service and record of duty status requirements under part 395 of title 49, Code of Federal Regulations.

(d) *ELECTRONIC ON-BOARD RECORDING DEVICE DEFINED.*—*In this section, the term “electronic on-board recording device” means an electronic device that—*

(1) *is capable of recording a driver’s hours of service and duty status accurately and automatically; and*

(2) *meets the requirements established by the Secretary through regulation.*

[(b)] (e) *BRAKES AND BRAKE SYSTEMS MAINTENANCE REGULATIONS.*—[Not later than December 31, 1990, the Secretary shall prescribe] *The Secretary shall maintain regulations on improved standards or methods to ensure that brakes and brake systems of commercial motor vehicles are maintained properly and inspected by appropriate employees. At a minimum, the regulations shall establish minimum training requirements and qualifications for employees responsible for maintaining and inspecting the brakes and brake systems.*

§ 31144. Safety fitness of owners and operators

(a) *IN GENERAL.*—The Secretary shall—

(1) determine whether an owner or operator is fit to operate safely commercial motor vehicles, utilizing among other things the accident record of an owner or operator operating in interstate commerce and the accident record and safety inspection record of such owner or operator—

(A) in operations that affect interstate commerce within the United States; and

(B) in operations in Canada and Mexico if the owner or operator also conducts operations within the United States;

(2) periodically update such safety fitness determinations;

(3) make such final safety fitness determinations readily available to the public; and

(4) prescribe by regulation penalties for violations of this section consistent with section 521.

(b) *PROCEDURE.*—The Secretary shall maintain by regulation a procedure for determining the safety fitness of an owner or operator. The procedure shall include, at a minimum, the following elements:

(1) Specific initial and continuing requirements with which an owner or operator must comply to demonstrate safety fitness.

(2) A methodology the Secretary will use to determine whether an owner or operator is fit.

(3) Specific time frames within which the Secretary will determine whether an owner or operator is fit.

(c) *PROHIBITED TRANSPORTATION.*—

(1) *IN GENERAL.*—Except as provided in section 521(b)(5)(A) and this subsection, an owner or operator who the Secretary determines is not fit may not operate commercial motor vehicles in interstate commerce beginning on the 61st day after the date of such fitness determination and until the Secretary determines such owner or operator is fit, *and such period shall be for not less than 10 days.*

(2) OWNERS OR OPERATORS TRANSPORTING PASSENGERS.—With regard to owners or operators of commercial motor vehicles designed or used to transport passengers, an owner or operator who the Secretary determines is not fit may not operate in interstate commerce beginning on the 46th day after the date of such fitness determination and until the Secretary determines such owner or operator is fit, *and such period shall be for not less than 10 days.*

(3) OWNERS OR OPERATORS TRANSPORTING HAZARDOUS MATERIAL.—With regard to owners or operators of commercial motor vehicles designed or used to transport hazardous material for which placarding of a motor vehicle is required under regulations prescribed under chapter 51, an owner or operator who the Secretary determines is not fit may not operate in interstate commerce beginning on the 46th day after the date of such fitness determination and until the Secretary determines such owner or operator is fit, *and such period shall be for not less than 10 days.* A violation of this paragraph by an owner or operator transporting hazardous material shall be considered a violation of chapter 51, and shall be subject to the penalties in sections 5123 and 5124.

(4) SECRETARY'S DISCRETION.—Except for owners or operators described in paragraphs (2) and (3), the Secretary may allow an owner or operator who is not fit to continue operating for an additional 60 days after the 61st day after the date of the Secretary's fitness determination, if the Secretary determines that such owner or operator is making a good faith effort to become fit.

(5) TRANSPORTATION AFFECTING INTERSTATE COMMERCE.—Owners or operators of commercial motor vehicles prohibited from operating in interstate commerce pursuant to paragraphs (1) through (3) of this section may not operate any commercial motor vehicle that affects interstate commerce until the Secretary determines that such owner or operator is fit.

(d) DETERMINATION OF UNFITNESS BY STATE.—If a State that receives motor carrier safety assistance program funds under section 31102 determines, by applying the standards prescribed by the Secretary under subsection (b), that an owner or operator of a commercial motor vehicle that has its principal place of business in that State and operates in intrastate commerce is unfit under such standards and prohibits the owner or operator from operating such vehicle in the State, the Secretary shall prohibit the owner or operator from operating such vehicle in interstate commerce until the State determines that the owner or operator is fit.

(e) REVIEW OF FITNESS DETERMINATIONS.—

(1) IN GENERAL.—Not later than 45 days after an unfit owner or operator requests a review, the Secretary shall review such owner's or operator's compliance with those requirements with which the owner or operator failed to comply and resulted in the Secretary determining that the owner or operator was not fit.

(2) OWNERS OR OPERATORS TRANSPORTING PASSENGERS.—Not later than 30 days after an unfit owner or operator of commercial motor vehicles designed or used to transport passengers

requests a review, the Secretary shall review such owner's or operator's compliance with those requirements with which the owner or operator failed to comply and resulted in the Secretary determining that the owner or operator was not fit.

(3) OWNERS OR OPERATORS TRANSPORTING HAZARDOUS MATERIAL.—Not later than 30 days after an unfit owner or operator of commercial motor vehicles designed or used to transport hazardous material for which placarding of a motor vehicle is required under regulations prescribed under chapter 51, the Secretary shall review such owner's or operator's compliance with those requirements with which the owner or operator failed to comply and resulted in the Secretary determining that the owner or operator was not fit.

(f) PROHIBITED GOVERNMENT USE.—A department, agency, or instrumentality of the United States Government may not use to provide any transportation service an owner or operator who the Secretary has determined is not fit until the Secretary determines such owner or operator is fit.

(g) SAFETY REVIEWS OF NEW OPERATORS.—

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

(1) SAFETY REVIEW.—

(A) IN GENERAL.—*The Secretary shall require, by regulation, each owner and each operator transporting property granted new registration under section 13902 or 31134 to undergo a safety review not later than 12 months after the owner or operator, as the case may be, begins operations under such registration.*

(B) PROVIDERS OF MOTORCOACH SERVICES.—*The Secretary may register a person to provide motorcoach services under section 13902 or 31134 after the person undergoes a pre-authorization safety audit, including verification, in a manner sufficient to demonstrate the ability to comply with Federal rules and regulations, as described in section 13902. The Secretary shall continue to monitor the safety performance of each owner and each operator subject to this section for 12 months after the owner or operator is granted registration under section 13902 or 31134. The registration of each owner and each operator subject to this section shall become permanent after the motorcoach service provider is granted registration following a pre-authorization safety audit and the expiration of the 12 month monitoring period.*

(C) PRE-AUTHORIZATION SAFETY AUDIT.—*The Secretary may require, by regulation, that the pre-authorization safety audit under subparagraph (B) be completed on-site not*

*later than 90 days after the submission of an application for operating authority.*⁴

(2) **ELEMENTS.**—In the regulations issued pursuant to paragraph (1), the Secretary shall establish the elements of the safety review, including basic safety management controls. In establishing such elements, the Secretary shall consider their effects on small businesses and shall consider establishing alternate locations where such reviews may be conducted for the convenience of small businesses.

(3) **PHASE-IN OF REQUIREMENT.**—The Secretary shall phase in the requirements of paragraph (1) in a manner that takes into account the availability of certified motor carrier safety auditors.

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

(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 and up to \$14,500,000 for the period beginning on October 1, 2011, and ending on March 31, 2012, 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.

(6) **ADDITIONAL REQUIREMENTS FOR HOUSEHOLD GOODS MOTOR CARRIERS.**—

(A) *In addition to the requirements of this subsection, the Secretary shall require, by regulation, each registered household goods motor carrier to undergo a consumer protection standards review not later than 18 months after the household goods motor carrier begins operations under such authority.*

(B) **ELEMENTS.**—*In the regulations issued pursuant to subparagraph (A), the Secretary shall establish the elements of the consumer protections standards review, including basic management controls. In establishing the elements, the Secretary shall consider the effects on small businesses and shall consider establishing alternate loca-*

⁴ The amendment to section 31144(g)(1) takes effect 1 year after the date of enactment of the Commercial Motor Vehicle Safety Enhancement Act of 2011.

tions where such reviews may be conducted for the convenience of small businesses.⁵

(h) **RECOGNITION OF CANADIAN MOTOR CARRIER SAFETY FITNESS DETERMINATIONS.**—

(1) *If an authorized agency of the Canadian federal government or a Canadian Territorial or Provincial government determines, by applying the procedure and standards prescribed by the Secretary under subsection (b) or pursuant to an agreement under paragraph (2), that a Canadian employer is unfit and prohibits the employer from operating a commercial motor vehicle in Canada or any Canadian Province, the Secretary may prohibit the employer from operating such vehicle in interstate and foreign commerce until the authorized Canadian agency determines that the employer is fit.*

(2) *The Secretary may consult and participate in negotiations with authorized officials of the Canadian federal government or a Canadian Territorial or Provincial government, as necessary, to provide reciprocal recognition of each country's motor carrier safety fitness determinations. An agreement shall provide, to the maximum extent practicable, that each country will follow the procedure and standards prescribed by the Secretary under subsection (b) in making motor carrier safety fitness determinations.*

(i) **COMMERCIAL MOTOR VEHICLE DRIVERS.**—*The Secretary may maintain by regulation a procedure for determining the safety fitness of a commercial motor vehicle driver and for prohibiting the driver from operating in interstate commerce. The procedure and prohibition shall include the following:*

(1) *Specific initial and continuing requirements that a driver must comply with to demonstrate safety fitness.*

(2) *The methodology and continually updated safety performance data that the Secretary will use to determine whether a driver is fit, including inspection results, serious traffic offenses, and crash involvement data.*

(3) *Specific time frames within which the Secretary will determine whether a driver is fit.*

(4) *A prohibition period or periods, not to exceed 1 year, that a driver that the Secretary determines is not fit will be prohibited from operating a commercial motor vehicle in interstate commerce. The period or periods shall begin on the 46th day after the date of the fitness determination and continue until the Secretary determines the driver is fit or until the prohibition period expires.*

(5) *A review by the Secretary, not later than 30 days after an unfit driver requests a review, of the driver's compliance with the requirements the driver failed to comply with and that resulted in the Secretary determining that the driver was not fit. The burden of proof shall be on the driver to demonstrate fitness.*

(6) *The eligibility criteria for reinstatement, including the remedial measures the unfit driver must take for reinstatement.*

⁵ The amendment adding paragraph (6) to section 31144(g) takes effect 2 years after the date of enactment of the Commercial Motor Vehicle Safety Enhancement Act of 2011.

(j) *PERIODIC SAFETY REVIEWS OF PROVIDERS OF MOTORCOACH SERVICES.*—

(1) *SAFETY REVIEW.*—

(A) *IN GENERAL.*—*The Secretary shall—*

(i) *determine the safety fitness of all providers of motorcoach services registered with the Federal Motor Carrier Safety Administration; and*

(ii) *assign a safety fitness rating to each such provider.*

(B) *APPLICABILITY.*—*Subparagraph (A) shall apply—*

(i) *to any provider of motorcoach services registered with the Administration after the date of enactment of the Motorcoach Enhanced Safety Act of 2011 beginning not later than 2 years after the date of such registration; and*

(ii) *to any provider of motorcoach services registered with the Administration on or before the date of enactment of that Act beginning not later than 3 years after the date of enactment of that Act.*

(2) *PERIODIC REVIEW.*—*The Secretary shall establish, by regulation, a process for monitoring the safety performance of each provider of motorcoach services on a regular basis following the assignment of a safety fitness rating, including progressive intervention to correct unsafe practices.*

(3) *ENFORCEMENT STRIKE FORCES.*—*In addition to the enhanced monitoring and enforcement actions required under paragraph (2), the Secretary may organize special enforcement strike forces targeting providers of motorcoach services.*

(4) *PERIODIC UPDATE OF SAFETY FITNESS RATING.*—*In conducting the safety reviews required under this subsection, the Secretary shall reassess the safety fitness rating of each provider not less frequently than once every 3 years.*

(5) *MOTORCOACH SERVICES DEFINED.*—*In this subsection, the term “provider of motorcoach services” has the meaning given such term in section 702 of the Motorcoach Enhanced Safety Act of 2011.*

§ 31149. Medical program

(a) *MEDICAL REVIEW BOARD.*—

(1) *ESTABLISHMENT AND FUNCTION.*—*The Secretary of Transportation shall establish a Medical Review Board to provide the Federal Motor Carrier Safety Administration with medical advice and recommendations on medical standards and guidelines for the physical qualifications of operators of commercial motor vehicles, medical examiner education, and medical research.*

(2) *COMPOSITION.*—*The Medical Review Board shall be appointed by the Secretary and shall consist of 5 members selected from medical institutions and private practice. The membership shall reflect expertise in a variety of medical specialties relevant to the driver fitness requirements of the Federal Motor Carrier Safety Administration.*

(b) *CHIEF MEDICAL EXAMINER.*—*The Secretary shall appoint a chief medical examiner who shall be an employee of the Federal*

Motor Carrier Safety Administration and who shall hold a position under section 3104 of title 5, United States Code, relating to employment of specially qualified scientific and professional personnel, and shall be paid under section 5376 of title 5, United States Code, relating to pay for certain senior-level positions.

(c) MEDICAL STANDARDS AND REQUIREMENTS.—

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

(A) establish, review, and revise—

(i) medical standards for operators of commercial motor vehicles that will ensure that the physical condition of operators of commercial motor vehicles is adequate to enable them to operate the vehicles safely; and

(ii) requirements for periodic physical examinations of such operators performed by medical examiners who have, at a minimum, self-certified that they have completed training in physical and medical examination standards and are listed on a national registry maintained by the Department of Transportation;

(B) require each such operator to have a current valid medical certificate;

(C) conduct periodic reviews of a select number of medical examiners on the national registry to ensure that proper examinations of such operators are being conducted;

[(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) not later than 1 year after enactment of the Commercial Motor Vehicle Safety Enhancement Act of 2011, develop requirements for a medical examiner to be listed in the national registry under this section, including—

(i) the completion of specific courses and materials;

(ii) certification, including self-certification, if the Secretary determines that self-certification is necessary for sufficient participation in the national registry, to verify that a medical examiner completed specific training, including refresher courses, that the Secretary determines necessary to be listed in the national registry;

(iii) an examination that requires a passing grade; and

(iv) demonstration of a medical examiner's willingness to meet the reporting requirements established by the Secretary;

(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 Fed-

eral 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) annually review the implementation of commercial driver's license requirements by not fewer than 10 States to assess the accuracy, validity, and timeliness of—

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

(ii) the processing of the submissions by State licensing agencies.⁶

(2) MONITORING PERFORMANCE.—The Secretary shall investigate patterns of errors or improper certification by a medical examiner. If the Secretary finds that a medical examiner has issued a medical certificate to an operator of a commercial motor vehicle who fails to meet the applicable standards at the time of the examination or that a medical examiner has falsely claimed to have completed training in physical and medical examination standards as required by this section, the Secretary may remove such medical examiner from the registry and may void the medical certificate of the applicant or holder.

(d) NATIONAL REGISTRY OF MEDICAL EXAMINERS.—The Secretary, acting through the Federal Motor Carrier Safety Administration—

(1) shall establish and maintain a current national registry of medical examiners who are qualified to perform examinations and issue medical certificates;

(2) shall remove from the registry the name of any medical examiner that fails to meet or maintain the qualifications established by the Secretary for being listed in the registry or otherwise does not meet the requirements of this section or regulation issued under this section;

(3) shall accept as valid only medical certificates issued by persons on the national registry of medical examiners; and

(4) may make participation of medical examiners in the national registry voluntary if such a change will enhance the safety of operators of commercial motor vehicles.

(e) REGULATIONS.—The Secretary shall issue such regulations as may be necessary to carry out this section.

§ 31151. Roadability

(a) INSPECTION, REPAIR, AND MAINTENANCE OF INTERMODAL EQUIPMENT.—

[(1) IN GENERAL.—Not later than 1 year after the date of enactment of this section, the Secretary of Transportation, after providing notice and opportunity for comment, shall issue regulations establishing a program to ensure that intermodal

⁶ The amendments to subparagraphs (E), (F), and (G) of section 31149(c)(1), United States Code, take effect on the date oversight policies and procedures are established under section 303(c)(2)(A) of the Commercial Motor Vehicle Safety Enhancement Act of 2011.

equipment used to transport intermodal containers is safe and systematically maintained.】

(1) *IN GENERAL.*—*The Secretary of Transportation shall maintain a program to ensure that intermodal equipment used to transport intermodal containers is safe and systematically maintained.*

(2) INTERMODAL EQUIPMENT SAFETY REGULATIONS.—The Secretary shall issue the regulations under this section as a subpart of the Federal motor carrier safety regulations.

(3) CONTENTS.—The regulations issued under this section shall include, at a minimum—

(A) a requirement to identify intermodal equipment providers responsible for the inspection and maintenance of intermodal equipment that is interchanged or intended for interchange to motor carriers in intermodal transportation;

(B) a requirement to match intermodal equipment readily to an intermodal equipment provider through a unique identifying number;

(C) a requirement that an intermodal equipment provider identified under subparagraph (A) systematically inspect, repair, and maintain, or cause to be systematically inspected, repaired, and maintained, intermodal equipment described in subparagraph (A) that is intended for interchange with a motor carrier;

(D) a requirement to ensure that each intermodal equipment provider identified under subparagraph (A) maintains a system of maintenance and repair records for such equipment;

(E) requirements that—

(i) a specific list of intermodal equipment components or items be identified for the visual or audible inspection of which a driver is responsible before operating the equipment over the road; and

(ii) the inspection under clause (i) be conducted as part of the Federal requirement in effect on the date of enactment of this section that a driver be satisfied that the intermodal equipment components are in good working order before the equipment is operated over the road;

(F) a requirement that a facility at which an intermodal equipment provider regularly makes intermodal equipment available for interchange have an operational process and space readily available for a motor carrier to have an equipment defect identified pursuant to subparagraph (E) repaired or the equipment replaced prior to departure;

(G) a program for the evaluation and audit of compliance by intermodal equipment providers with applicable Federal motor carrier safety regulations;

(H) a civil penalty structure consistent with section 521(b) of title 49, United States Code, for intermodal equipment providers that fail to attain satisfactory compliance with applicable Federal motor carrier safety regulations; and

(I) a prohibition on intermodal equipment providers from placing intermodal equipment in service on the public highways to the extent such providers or their equipment are found to pose an imminent hazard;

(J) a process by which motor carriers and agents of motor carriers shall be able to request the Federal Motor Carrier Safety Administration to undertake an investigation of an intermodal equipment provider identified under subparagraph (A) that is alleged to be not in compliance with the regulations under this section;

(K) a process by which equipment providers and agents of equipment providers shall be able to request the Administration to undertake an investigation of a motor carrier that is alleged to be not in compliance with the regulations issued under this section;

(L) a process by which a driver or motor carrier transporting intermodal equipment is required to report to the intermodal equipment provider or the provider's designated agent any actual damage or defect in the intermodal equipment of which the driver or motor carrier is aware at the time the intermodal equipment is returned to the intermodal equipment provider or the provider's designated agent;

(M) a requirement that any actual damage or defect identified in the process established under subparagraph (L) be repaired before the equipment is made available for interchange to a motor carrier and that repairs of equipment made pursuant to the requirements of this subparagraph and reports made pursuant to the subparagraph (L) process be documented in the maintenance records for such equipment; and

(N) a procedure under which motor carriers, drivers and intermodal equipment providers may seek correction of their motor carrier safety records through the deletion from those records of violations of safety regulations attributable to deficiencies in the intermodal chassis or trailer for which they should not have been held responsible.

[(4) DEADLINE FOR RULEMAKING PROCEEDING.—Not later than 120 days after the date of enactment of this section, the Secretary shall initiate a rulemaking proceeding for issuance of the regulations under this section.]

* * * * *

§ 31152. Disqualification for failure to pay

An individual assessed a civil penalty under this chapter, or chapters 5, 51, or 149 of this title, or a regulation issued under any of those provisions, who fails to pay the penalty or fails to comply with the terms of a settlement with the Secretary, shall be disqualified from operating a commercial motor vehicle after the individual is notified in writing and is given an opportunity to respond. A disqualification shall continue until the penalty is paid, or the individual complies with the terms of the settlement, unless the non-

payment is because the individual is a debtor in a case under chapter 11 of title 11, United States Code.

§ 31153. Federal successor standard

(a) **FEDERAL SUCCESSOR STANDARD.**—Notwithstanding any other provision of Federal or State law, the Secretary may take an action authorized under chapters 5, 51, 131 through 149, subchapter III of chapter 311 (except sections 31138 and 31139), or sections 31302, 31303, 31304, 31305(b), 31310(g)(1)(A), or 31502 of this title, or a regulation issued under any of those provisions, against a successor of a motor carrier (as defined in section 13102), a successor of an employer (as defined in section 31132), or a successor of an owner or operator (as that term is used in subchapter III of chapter 311), to the same extent and on the same basis as the Secretary may take the action against the motor carrier, employer, or owner or operator.

(b) **SUCCESSOR DEFINED.**—For purposes of this section, the term “successor” means a motor carrier, employer, or owner or operator that the Secretary determines, after notice and an opportunity for a proceeding, has 1 or more features that correspond closely with the features of another existing or former motor carrier, employer, or owner or operator, such as—

- (1) consideration paid for assets purchased or transferred;
- (2) dates of corporate creation and dissolution or termination of operations;
- (3) commonality of ownership;
- (4) commonality of officers and management personnel and their functions;
- (5) commonality of drivers and other employees;
- (6) identity of physical or mailing addresses, telephone, fax numbers, or e-mail addresses;
- (7) identity of motor vehicle equipment;
- (8) continuity of liability insurance policies;
- (9) commonality of coverage under liability insurance policies;
- (10) continuation of carrier facilities and other physical assets;
- (11) continuity of the nature and scope of operations, including customers;
- (12) commonality of the nature and scope of operations, including customers;
- (13) advertising, corporate name, or other acts through which the motor carrier, employer, or owner or operator holds itself out to the public;
- (14) history of safety violations and pending orders or enforcement actions of the Secretary; and
- (15) additional factors that the Secretary considers appropriate.

(c) **EFFECTIVE DATE.**—Notwithstanding any other provision of law, this section shall apply to any action commenced on or after the date of enactment of the Commercial Motor Vehicle Safety Enhancement Act of 2011 without regard to whether the violation that is the subject of the action, or the conduct that caused the violation, occurred before the date of enactment.

(d) **RIGHTS NOT AFFECTED.**—Nothing in this section shall affect the rights, functions, or responsibilities under law of any other De-

partment, Agency, or instrumentality of the United States, the laws of any State, or any rights between a private party and a motor carrier, employer, or owner or operator.

§ 31154. Enforcement of safety laws and regulations

(a) *IN GENERAL.*—The Secretary may bring a civil action to enforce this part, or a regulation or order of the Secretary under this part, when violated by an employer, employee, or other person providing transportation or service under this subchapter or subchapter I.

(b) *VENUE.*—In a civil action under subsection (a)—

(1) trial shall be in the judicial district in which the employer, employee, or other person operates;

(2) process may be served without regard to the territorial limits of the district or of the State in which the action is instituted; and

(3) a person participating with a carrier or broker in a violation may be joined in the civil action without regard to the residence of the person.

§ 31155. Regulation of the use of distracting devices in motorcoaches

(a) *IN GENERAL.*—Not later than 1 year after the date of enactment of the Motorcoach Enhanced Safety Act of 2011, the Secretary of Transportation shall prescribe regulations on the use of electronic or wireless devices, including cell phones and other distracting devices, by an individual employed as the operator of a motorcoach (as defined in section 702 of that Act).

(b) *BASIS FOR REGULATIONS.*—The Secretary shall base the regulations prescribed under subsection (a) on accident data analysis, the results of ongoing research, and other information, as appropriate.

(c) *PROHIBITED USE.*—Except as provided under subsection (d), the Secretary shall prohibit the use of the devices described in subsection (a) in circumstances in which the Secretary determines that their use interferes with a driver's safe operation of a motorcoach.

(d) *PERMITTED USE.*—The Secretary may permit the use of a device that is otherwise prohibited under subsection (c) if the Secretary determines that such use is necessary for the safety of the driver or the public in emergency circumstances.

CHAPTER 313. COMMERCIAL MOTOR VEHICLE OPERATORS

§ 31301. Definitions

In this chapter—

(1) “alcohol” has the same meaning given the term “alcoholic beverage” in section 158(c) of title 23.

(2) “commerce” means trade, traffic, and transportation—

(A) in the jurisdiction of the United States between a place in a State and a place outside that State (including a place outside the United States); or

(B) in the United States that affects trade, traffic, and transportation described in subclause (A) of this clause.

(3) “commercial driver’s license” means a license issued by a State to an individual authorizing the individual to operate a class of commercial motor vehicles.

(4) “commercial motor vehicle” means a motor vehicle used in commerce to transport passengers or property that—

(A) has a gross vehicle weight rating or gross vehicle weight of at least 26,001 pounds, whichever is greater, or a lesser gross vehicle weight rating or gross vehicle weight the Secretary of Transportation prescribes by regulation, but not less than a gross vehicle weight rating of 10,001 pounds;

(B) is designed to transport at least 16 passengers including the driver; or

(C) is used to transport material found by the Secretary to be hazardous under section 5103 of this title, except that a vehicle shall not be included as a commercial motor vehicle under this subclause if—

(i) the vehicle does not satisfy the weight requirements of subclause (A) of this clause;

(ii) the vehicle is transporting material listed as hazardous under section 306(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9656(a)) and is not otherwise regulated by the Secretary or is transporting a consumer commodity or limited quantity of hazardous material as defined in section 171.8 of title 49, Code of Federal Regulations; and

(iii) the Secretary does not deny the application of this exception to the vehicle (individually or as part of a class of motor vehicles) in the interest of safety.

(5) except in section 31306, “controlled substance” has the same meaning given that term in section 102 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 802).

(6) “Disqualification” means—

(A) *the suspension, revocation, or cancellation of a commercial driver’s license by the State of issuance;*

(B) *a withdrawal of an individual’s privilege to drive a commercial motor vehicle by a State or other jurisdiction as the result of a violation of State or local law relating to motor vehicle traffic control, except for a parking, vehicle weight, or vehicle defect violation;*

(C) *a determination by the Secretary that an individual is not qualified to operate a commercial motor vehicle; or*

(D) *a determination by the Secretary that a commercial motor vehicle driver is unfit under section 31144(g).*

[(6)] (7) “driver’s license” means a license issued by a State to an individual authorizing the individual to operate a motor vehicle on highways.

[(7)] (8) “employee” means an operator of a commercial motor vehicle (including an independent contractor when operating a commercial motor vehicle) who is employed by an employer.

[(8)] (9) “employer” means a person (including the United States Government, a State, or a political subdivision of a State) that owns or leases a commercial motor vehicle or assigns employees to operate a commercial motor vehicle.

[(9)] (10) “felony” means an offense under a law of the United States or a State that is punishable by death or imprisonment for more than one year.

[(10)] (11) “foreign commercial driver” means an individual licensed to operate a commercial motor vehicle by an authority outside the United States, or a citizen of a foreign country who operates a commercial motor vehicle in the United States.

[(10)] (12) “hazardous material” has the same meaning given that term in section 5102 of this title.

[(11)] (13) “motor vehicle” means a vehicle, machine, tractor, trailer, or semitrailer propelled or drawn by mechanical power and used on public streets, roads, or highways, but does not include a vehicle, machine, tractor, trailer, or semitrailer operated only on a rail line or custom harvesting farm machinery.

[(12)] (14) “serious traffic violation” means—

(A) excessive speeding, as defined by the Secretary by regulation;

(B) reckless driving, as defined under State or local law;

(C) a violation of a State or local law on motor vehicle traffic control (except a parking violation) and involving a fatality, other than a violation to which section 31310(b)(1)(E) or 31310(c)(1)(E) applies;

(D) driving a commercial motor vehicle when the individual has not obtained a commercial driver’s license;

(E) driving a commercial motor vehicle when the individual does not have in his or her possession a commercial driver’s license unless the individual provides, by the date that the individual must appear in court or pay any fine with respect to the citation, to the enforcement authority that issued the citation proof that the individual held a valid commercial driver’s license on the date of the citation;

(F) driving a commercial motor vehicle when the individual has not met the minimum testing standards—

(i) under section 31305(a)(3) for the specific class of vehicle the individual is operating; or

(ii) under section 31305(a)(5) for the type of cargo the vehicle is carrying; and

(G) any other similar violation of a State or local law on motor vehicle traffic control (except a parking violation) that the Secretary designates by regulation as serious.

[(13)] (15) “State” means a State of the United States and the District of Columbia.

[(14)] (16) “United States” means the States of the United States and the District of Columbia.

§ 31304. Employer responsibilities

[An employer]

(a) *IN GENERAL.*—An employer may not [knowingly] allow an employee to operate a commercial motor vehicle in the United

States during a period [in which] *that the employer knows or should reasonably know that the employee—*

(1) has a driver's license revoked, suspended, or canceled by a State, has lost the right to operate a commercial motor vehicle in a State, or has been disqualified from operating a commercial motor vehicle; or

(2) has more than one driver's license (except as allowed under section 31302 of this title).

(b) *DRIVER VIOLATION RECORDS.—*

(1) *PERIODIC REVIEW.—Except as provided in paragraph (3), an employer shall ascertain the driving record of each driver it employs—*

(A) *by making an inquiry at least once every 12 months to the appropriate State agency in which the driver held or holds a commercial driver's license or permit during such time period;*

(B) *by receiving occurrence-based reports of changes in the status of a driver's record from 1 or more driver record notification systems that meet minimum standards issued by the Secretary; or*

(C) *by a combination of inquiries to States and reports from driver record notification systems.*

(2) *RECORD KEEPING.—A copy of the reports received under paragraph (1) shall be maintained in the driver's qualification file.*

(3) *EXCEPTIONS TO RECORD REVIEW REQUIREMENT.—Paragraph (1) shall not apply to a driver employed by an employer who, in any 7-day period, is employed or used as a driver by more than 1 employer—*

(A) *if the employer obtains the driver's identification number, type, and issuing State of the driver's commercial motor vehicle license; or*

(B) *if the information described in subparagraph (A) is furnished by another employer and the employer that regularly employs the driver meets the other requirements under this section.*

(4) *DRIVER RECORD NOTIFICATION SYSTEM DEFINED.—In this section, the term “driver record notification system” means a system that automatically furnishes an employer with a report, generated by the appropriate agency of a State, on the change in the status of an employee's driver's license due to a conviction for a moving violation, a failure to appear, an accident, driver's license suspension, driver's license revocation, or any other action taken against the driving privilege.*

§ [31305. General driver fitness and testing]

§ 31305. General driver fitness, testing, and training

(a) *MINIMUM STANDARDS FOR TESTING AND FITNESS.—The Secretary of Transportation shall prescribe regulations on minimum standards for testing and ensuring the fitness of an individual operating a commercial motor vehicle. The regulations—*

(1) shall prescribe minimum standards for written and driving tests of an individual operating a commercial motor vehicle;

(2) shall require an individual who operates or will operate a commercial motor vehicle to take a driving test in a vehicle representative of the type of vehicle the individual operates or will operate;

(3) shall prescribe minimum testing standards for the operation of a commercial motor vehicle and may prescribe different minimum testing standards for different classes of commercial motor vehicles;

(4) shall ensure that an individual taking the tests has a working knowledge of—

(A) regulations on the safe operation of a commercial motor vehicle prescribed by the Secretary and contained in title 49, Code of Federal Regulations; and

(B) safety systems of the vehicle;

(5) shall ensure that an individual who operates or will operate a commercial motor vehicle carrying a hazardous material—

(A) is qualified to operate the vehicle under regulations on motor vehicle transportation of hazardous material prescribed under chapter 51 of this title;

(B) has a working knowledge of—

(i) those regulations;

(ii) the handling of hazardous material;

(iii) the operation of emergency equipment used in response to emergencies arising out of the transportation of hazardous material; and

(iv) appropriate response procedures to follow in those emergencies; and

(C) is licensed by a State to operate the vehicle after having first been determined under section 5103a of this title as not posing a security risk warranting denial of the license.

(6) shall establish minimum scores for passing the tests;

(7) shall ensure that an individual taking the tests *would not be subject to a disqualification under section 31310(g) of this title* and is qualified to operate a commercial motor vehicle under regulations prescribed by the Secretary and contained in title 49, Code of Federal Regulations, to the extent the regulations apply to the individual; and

(8) may require—

(A) issuance of a certification of fitness to operate a commercial motor vehicle to an individual passing the tests; and

(B) the individual to have a copy of the certification in the individual's possession when the individual is operating a commercial motor vehicle.

(b) REQUIREMENTS FOR OPERATING VEHICLES.—

(1) Except as provided in paragraph (2) of this subsection, an individual may operate a commercial motor vehicle only if the individual has passed written and driving tests that meet the minimum standards prescribed by the Secretary under sub-

section (a) of this section to operate the vehicle and has a commercial driver's license to operate the vehicle.

(2) The Secretary may prescribe regulations providing that an individual may operate a commercial motor vehicle for not more than 90 days if the individual—

(A) passes a driving test for operating a commercial motor vehicle that meets the minimum standards prescribed under subsection (a) of this section; and

(B) has a driver's license that is not suspended, revoked, or canceled.

(c) *STANDARDS FOR TRAINING.*—*Not later than 6 months after the date of enactment of the Commercial Motor Vehicle Safety Enhancement Act of 2011, the Secretary shall issue final regulations establishing minimum entry-level training requirements for an individual operating a commercial motor vehicle—*

(1) *addressing the knowledge and skills that—*

(A) *are necessary for an individual operating a commercial motor vehicle to safely operate a commercial motor vehicle; and*

(B) *must be acquired before obtaining a commercial driver's license for the first time or upgrading from one class of commercial driver's license to another class;*

(2) *addressing the specific training needs of a commercial motor vehicle operator seeking passenger or hazardous materials endorsements, including for an operator seeking a passenger endorsement training—*

(A) *to suppress motorcoach fires; and*

(B) *to evacuate passengers from motorcoaches safely;*

(3) *requiring effective instruction to acquire the knowledge, skills, and training referred to in paragraphs (1) and (2), including classroom and behind-the-wheel instruction;*

(4) *requiring certification that an individual operating a commercial motor vehicle meets the requirements established by the Secretary; and*

(5) *requiring a training provider (including a public or private driving school, motor carrier, or owner or operator of a commercial motor vehicle) that offers training that results in the issuance of a certification to an individual under paragraph (4) to demonstrate that the training meets the requirements of the regulations, through a process established by the Secretary.*

§ 31306. Alcohol and controlled substances testing

(a) *DEFINITION.*—*In this section and section 31306a, “controlled substance” means any substance under section 102 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 802) specified by the Secretary of Transportation.*

(b) *TESTING PROGRAM FOR OPERATORS OF COMMERCIAL MOTOR VEHICLES.*—

(1) (A) *In the interest of commercial motor vehicle safety, the Secretary of Transportation shall prescribe regulations that establish a program requiring motor carriers to conduct pre-employment, reasonable suspicion, random, and post-accident testing of operators of commercial motor vehicles for the use of a controlled substance in violation of law or a United States*

Government regulation and to conduct reasonable suspicion, random, and post-accident testing of such operators for the use of alcohol in violation of law or a United States Government regulation. The regulations shall permit such motor carriers to conduct preemployment testing of such employees for the use of alcohol.

(B) When the Secretary of Transportation considers it appropriate in the interest of safety, the Secretary may prescribe regulations for conducting periodic recurring testing of operators of commercial motor vehicles for the use of alcohol or a controlled substance in violation of law or a Government regulation.

(2) In prescribing regulations under this subsection, the Secretary of Transportation—

(A) shall require that post-accident testing of an operator of a commercial motor vehicle be conducted when loss of human life occurs in an accident involving a commercial motor vehicle; and

(B) may require that post-accident testing of such an operator be conducted when bodily injury or significant property damage occurs in any other serious accident involving a commercial motor vehicle.

(c) TESTING AND LABORATORY REQUIREMENTS.—In carrying out subsection (b) of this section, the Secretary of Transportation shall develop requirements that shall—

(1) promote, to the maximum extent practicable, individual privacy in the collection of specimens;

(2) for laboratories and testing procedures for controlled substances, incorporate the Department of Health and Human Services scientific and technical guidelines dated April 11, 1988, and any amendments to those guidelines, including mandatory guidelines establishing—

(A) comprehensive standards for every aspect of laboratory controlled substances testing and laboratory procedures to be applied in carrying out this section, including standards requiring the use of the best available technology to ensure the complete reliability and accuracy of controlled substances tests and strict procedures governing the chain of custody of specimens collected for controlled substances testing;

(B) the minimum list of controlled substances for which individuals may be tested; and

(C) appropriate standards and procedures for periodic review of laboratories and criteria for certification and revocation of certification of laboratories to perform controlled substances testing in carrying out this section;

(3) require that a laboratory involved in testing under this section have the capability and facility, at the laboratory, of performing screening and confirmation tests;

(4) provide that any test indicating the use of alcohol or a controlled substance in violation of law or a Government regulation be confirmed by a scientifically recognized method of testing capable of providing quantitative information about alcohol or a controlled substance;

(5) provide that each specimen be subdivided, secured, and labeled in the presence of the tested individual and that a part of the specimen be retained in a secure manner to prevent the possibility of tampering, so that if the individual's confirmation test results are positive the individual has an opportunity to have the retained part tested by a 2d confirmation test done independently at another certified laboratory if the individual requests the 2d confirmation test not later than 3 days after being advised of the results of the first confirmation test;

(6) ensure appropriate safeguards for testing to detect and quantify alcohol in breath and body fluid samples, including urine and blood, through the development of regulations that may be necessary and in consultation with the Secretary of Health and Human Services;

(7) provide for the confidentiality of test results and medical information (except information about alcohol or a controlled substance) of employees, except that this clause does not prevent the use of test results for the orderly imposition of appropriate sanctions under this section; and

(8) ensure that employees are selected for tests by non-discriminatory and impartial methods, so that no employee is harassed by being treated differently from other employees in similar circumstances.

(d) TESTING AS PART OF MEDICAL EXAMINATION.—The Secretary of Transportation may provide that testing under subsection (a) of this section for operators subject to subpart E of part 391 of title 49, Code of Federal Regulations, be conducted as part of the medical examination required under that subpart.

(e) REHABILITATION.—The Secretary of Transportation shall prescribe regulations establishing requirements for rehabilitation programs that provide for the identification and opportunity for treatment of operators of commercial motor vehicles who are found to have used alcohol or a controlled substance in violation of law or a Government regulation. The Secretary shall decide on the circumstances under which those operators shall be required to participate in a program. This section does not prevent a motor carrier from establishing a program under this section in cooperation with another motor carrier.

[(f)] (f)(1) SANCTIONS.—The Secretary of Transportation shall decide on appropriate sanctions for a commercial motor vehicle operator who is found, based on tests conducted and confirmed under this section, to have used alcohol or a controlled substance in violation of law or a Government regulation but who is not under the influence of alcohol or a controlled substance as provided in this chapter.

(2) ADDITIONAL SANCTIONS.—*The Secretary may require a State to revoke, suspend, or cancel the commercial driver's license of a commercial motor vehicle operator who is found, based on a test conducted and confirmed under this section, to have used alcohol or a controlled substance in violation of law until the commercial motor vehicle operator completes the rehabilitation process under subsection (e).*

(g) EFFECT ON STATE AND LOCAL GOVERNMENT REGULATIONS.—A State or local government may not prescribe or continue in effect

a law, regulation, standard, or order that is inconsistent with regulations prescribed under this section. However, a regulation prescribed under this section may not be construed to preempt a State criminal law that imposes sanctions for reckless conduct leading to loss of life, injury, or damage to property.

(h) **INTERNATIONAL OBLIGATIONS AND FOREIGN LAWS.**—In prescribing regulations under this section, the Secretary of Transportation—

(1) shall establish only requirements that are consistent with international obligations of the United States; and

(2) shall consider applicable laws and regulations of foreign countries.

(i) **OTHER REGULATIONS ALLOWED.**—This section does not prevent the Secretary of Transportation from continuing in effect, amending, or further supplementing a regulation prescribed before October 28, 1991, governing the use of alcohol or a controlled substance by commercial motor vehicle employees.

(j) **APPLICATION OF PENALTIES.**—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 controlled substance and alcohol test results of commercial motor vehicle operators

(a) **ESTABLISHMENT.**—

(1) **IN GENERAL.**—*Not later than 2 years after the date of enactment of the Safe Roads Act of 2011, the Secretary of Transportation shall establish a national clearinghouse for records relating to alcohol and controlled substances testing of commercial motor vehicle operators.*

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

(A) *to improve compliance with the Department of Transportation’s alcohol and controlled substances testing program applicable to commercial motor vehicle operators;*

(B) *to facilitate access to information about an individual before employing the individual as a commercial motor vehicle operator;*

(C) *to enhance the safety of our United States roadways by reducing accident fatalities involving commercial motor vehicles; and*

(D) *to reduce the number of impaired commercial motor vehicle operators.*

(3) **CONTENTS.**—*The clearinghouse shall function as a repository for records relating to the positive test results and test refusals of commercial motor vehicle operators and violations by such operators of prohibitions set forth in subpart B of part 382 of title 49, Code of Federal Regulations (or any subsequent corresponding regulations).*

(4) **ELECTRONIC EXCHANGE OF RECORDS.**—*The Secretary shall ensure that records can be electronically submitted to, and requested from, the clearinghouse by authorized users.*

(5) **AUTHORIZED OPERATOR.**—*The Secretary may authorize a qualified and experienced private entity to operate and maintain the clearinghouse and to collect fees on behalf of the Sec-*

retary under subsection (e). The entity shall establish, operate, maintain and expand the clearinghouse and permit access to driver information and records from the clearinghouse in accordance with this section.

(b) *DESIGN OF CLEARINGHOUSE.*—

(1) *USE OF FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION RECOMMENDATIONS.*—In establishing the clearinghouse, the Secretary shall consider—

(A) the findings and recommendations contained in the Federal Motor Carrier Safety Administration’s March 2004 report to Congress required under section 226 of the Motor Carrier Safety Improvement Act of 1999 (49 U.S.C. 31306 note); and

(B) the findings and recommendations contained in the Government Accountability Office’s May 2008 report to Congress entitled “Motor Carrier Safety: Improvements to Drug Testing Programs Could Better Identify Illegal Drug Users and Keep Them off the Road.”

(2) *DEVELOPMENT OF SECURE PROCESSES.*—In establishing the clearinghouse, the Secretary shall develop a secure process for—

(A) administering and managing the clearinghouse in compliance with applicable Federal security standards;

(B) registering and authenticating authorized users of the clearinghouse;

(C) registering and authenticating persons required to report to the clearinghouse under subsection (g);

(D) preventing the unauthorized access of information from the clearinghouse;

(E) storing and transmitting data;

(F) persons required to the clearinghouse under subsection (g) to timely and accurately submit electronic data to the clearinghouse;

(G) generating timely and accurate reports from the clearinghouse in response to requests for information by authorized users; and

(H) updating an individual’s record upon completion of the return-to-duty process described in title 49, Code of Federal Regulations.

(3) *EMPLOYER ALERT OF POSITIVE TEST RESULT.*—In establishing the clearinghouse, the Secretary shall develop a secure method for electronically notifying an employer of each additional positive test result or other noncompliance—

(A) for an employee, that is entered into the clearinghouse during the 7-day period immediately following an employer’s inquiry about the employee; and

(B) for an employee who is listed as having multiple employers.

(4) *ARCHIVE CAPABILITY.*—In establishing the clearinghouse, the Secretary shall develop a process for archiving all clearinghouse records, including the depositing of personal records, records relating to each individual in the database, and access requests for personal records, for the purposes of—

- (A) auditing and evaluating the timeliness, accuracy, and completeness of data in the clearinghouse; and
- (B) auditing to monitor compliance and enforce penalties for noncompliance.
- (5) **FUTURE NEEDS.**—
- (A) **INTEROPERABILITY WITH OTHER DATA SYSTEMS.**—In establishing the clearinghouse, the Secretary shall consider—
- (i) the existing data systems containing regulatory and safety data for commercial motor vehicle operators;
 - (ii) the efficacy of using or combining clearinghouse data with 1 or more of such systems; and
 - (iii) the potential interoperability of the clearinghouse with such systems.
- (B) **SPECIFIC CONSIDERATIONS.**—In carrying out subparagraph (A), the Secretary shall determine—
- (i) the clearinghouse's capability for interoperability with—
 - (I) the National Driver Register established under section 30302;
 - (II) the Commercial Driver's License Information System established under section 31309;
 - (III) the Motor Carrier Management Information System for preemployment screening services under section 31150; and
 - (IV) other data systems, as appropriate; and
 - (ii) any change to the administration of the current testing program, such as forms, that is necessary to collect data for the clearinghouse.
- (c) **STANDARD FORMATS.**—The Secretary shall develop standard formats to be used—
- (1) by an authorized user of the clearinghouse to—
 - (A) request a record from the clearinghouse; and
 - (B) obtain the consent of an individual who is the subject of a request from the clearinghouse, if applicable; and
 - (2) to notify an individual that a positive alcohol or controlled substances test result, refusing to test, and a violation of any of the prohibitions under subpart B of part 382 of title 49, Code of Federal Regulations (or any subsequent corresponding regulations), will be reported to the clearinghouse.
- (d) **PRIVACY.**—A release of information from the clearinghouse shall—
- (1) comply with applicable Federal privacy laws, including the fair information practices under the Privacy Act of 1974 (5 U.S.C. 552a);
 - (2) comply with applicable sections of the Fair Credit Reporting Act (15 U.S.C. 1681 et seq.); and
 - (3) not be made to any person or entity unless expressly authorized or required by law.
- (e) **FEES.**—
- (1) **AUTHORITY TO COLLECT FEES.**—Except as provided under paragraph (3), the Secretary may collect a reasonable, customary, and nominal fee from an authorized user of the clearinghouse for a request for information from the clearinghouse.

(2) *USE OF FEES.*—Fees collected under this subsection shall be used for the operation and maintenance of the clearinghouse.

(3) *LIMITATION.*—The Secretary may not collect a fee from an individual requesting information from the clearinghouse that pertains to the record of that individual.

(f) *EMPLOYER REQUIREMENTS.*—

(1) *DETERMINATION CONCERNING USE OF CLEARINGHOUSE.*—The Secretary shall determine if an employer is authorized to use the clearinghouse to meet the alcohol and controlled substances testing requirements under title 49, Code of Federal Regulations.

(2) *APPLICABILITY OF EXISTING REQUIREMENTS.*—Each employer and service agent shall comply with the alcohol and controlled substances testing requirements under title 49, Code of Federal Regulations.

(3) *EMPLOYMENT PROHIBITIONS.*—Beginning 30 days after the date that the clearinghouse is established under subsection (a), an employer shall not hire an individual to operate a commercial motor vehicle unless the employer determines that the individual, during the preceding 3-year period—

(A) if tested for the use of alcohol and controlled substances, as required under title 49, Code of Federal Regulations—

(i) did not test positive for the use of alcohol or controlled substances in violation of the regulations; or

(ii) tested positive for the use of alcohol or controlled substances and completed the required return-to-duty process under title 49, Code of Federal Regulations;

(B)(i) did not refuse to take an alcohol or controlled substance test under title 49, Code of Federal Regulations; or

(ii) refused to take an alcohol or controlled substance test and completed the required return-to-duty process under title 49, Code of Federal Regulations; and

(C) did not violate any other provision of subpart B of part 382 of title 49, Code of Federal Regulations (or any subsequent corresponding regulations).

(4) *ANNUAL REVIEW.*—Beginning 30 days after the date that the clearinghouse is established under subsection (a), an employer shall request and review a commercial motor vehicle operator's record from the clearinghouse annually for as long as the commercial motor vehicle operator is under the employ of the employer.

(g) *REPORTING OF RECORDS.*—

(1) *IN GENERAL.*—Beginning 30 days after the date that the clearinghouse is established under subsection (a), a medical review officer, employer, service agent, and other appropriate person, as determined by the Secretary, shall promptly submit to the Secretary any record generated after the clearinghouse is initiated of an individual who—

(A) refuses to take an alcohol or controlled substances test required under title 49, Code of Federal Regulations;

(B) tests positive for alcohol or a controlled substance in violation of the regulations; or

(C) violates any other provision of subpart B of part 382 of title 49, Code of Federal Regulations (or any subsequent corresponding regulations).

(2) *INCLUSION OF RECORDS IN CLEARINGHOUSE.*—The Secretary shall include in the clearinghouse the records of positive test results and test refusals received under paragraph (1).

(3) *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, as appropriate.

(4) *NOTIFICATION.*—The Secretary shall expeditiously notify an individual, unless such notification would be duplicative, when—

(A) a record relating to the individual is received by the clearinghouse;

(B) a record in the clearinghouse relating to the individual is modified or deleted, and include in the notification the reason for the modification or deletion; or

(C) a record in the clearinghouse relating to the individual is released to an employer and specify the reason for the release.

(5) *DATA QUALITY AND SECURITY STANDARDS FOR REPORTING AND RELEASING.*—The Secretary may establish additional requirements, as appropriate, to ensure that—

(A) the submission of records to the clearinghouse is timely and accurate;

(B) the release of data from the clearinghouse is timely, accurate, and released to the appropriate authorized user under this section; and

(C) an individual with a record in the clearinghouse has a cause of action for any inappropriate use of information included in the clearinghouse.

(6) *RETENTION OF RECORDS.*—The Secretary shall—

(A) retain a record submitted to the clearinghouse for a 5-year period beginning on the date the record is submitted;

(B) remove the record from the clearinghouse at the end of the 5-year period, unless the individual fails to meet a return-to-duty or follow-up requirement under title 49, Code of Federal Regulations; and

(C) retain a record after the end of the 5-year period in a separate location for archiving and auditing purposes.

(h) *AUTHORIZED USERS.*—

(1) *EMPLOYERS.*—The Secretary shall establish a process for an employer to request and receive an individual's record from the clearinghouse.

(A) *CONSENT.*—An employer may not access an individual's record from the clearinghouse unless the employer—

(i) obtains the prior written or electronic consent of the individual for access to the record; and

(ii) submits proof of the individual's consent to the Secretary.

(B) *ACCESS TO RECORDS.*—After receiving a request from an employer for an individual's record under subparagraph

(A), the Secretary shall grant access to the individual's record to the employer as expeditiously as practicable.

(C) *RETENTION OF RECORD REQUESTS.*—The Secretary shall require an employer to retain for a 3-year period—

(i) a record of each request made by the employer for records from the clearinghouse; and

(ii) the information received pursuant to the request.

(D) *USE OF RECORDS.*—An employer may use an individual's record received from the clearinghouse only to assess and evaluate the qualifications of the individual to operate a commercial motor vehicle for the employer.

(E) *PROTECTION OF PRIVACY OF INDIVIDUALS.*—An employer that receives an individual's record from the clearinghouse under subparagraph (B) shall—

(i) protect the privacy of the individual and the confidentiality of the record; and

(ii) ensure that information contained in the record is not divulged to a person or entity that is not directly involved in assessing and evaluating the qualifications of the individual to operate a commercial motor vehicle for the employer.

(2) *STATE LICENSING AUTHORITIES.*—The Secretary shall establish a process for the chief commercial driver's licensing official of a State to request and receive an individual's record from the clearinghouse if the individual is applying for a commercial driver's license from the State.

(A) *CONSENT.*—The Secretary may grant access to an individual's record in the clearinghouse under this paragraph without the prior written or electronic consent of the individual. An individual who holds a commercial driver's license shall be deemed to consent to such access by obtaining a commercial driver's license.

(B) *PROTECTION OF PRIVACY OF INDIVIDUALS.*—A chief commercial driver's licensing official of a State that receives an individual's record from the clearinghouse under this paragraph shall—

(i) protect the privacy of the individual and the confidentiality of the record; and

(ii) ensure that the information in the record is not divulged to any person that is not directly involved in assessing and evaluating the qualifications of the individual to operate a commercial motor vehicle.

(3) *NATIONAL TRANSPORTATION SAFETY BOARD.*—The Secretary shall establish a process for the National Transportation Safety Board to request and receive an individual's record from the clearinghouse if the individual is involved in an accident that is under investigation by the National Transportation Safety Board.

(A) *CONSENT.*—The Secretary may grant access to an individual's record in the clearinghouse under this paragraph without the prior written or electronic consent of the individual. An individual who holds a commercial driver's license shall be deemed to consent to such access by obtaining a commercial driver's license.

(B) *PROTECTION OF PRIVACY OF INDIVIDUALS.*—An official of the National Transportation Safety Board that receives an individual's record from the clearinghouse under this paragraph shall—

(i) protect the privacy of the individual and the confidentiality of the record; and

(ii) unless the official determines that the information in the individual's record should be reported under section 1131(e), ensure that the information in the record is not divulged to any person that is not directly involved with investigating the accident.

(4) *ADDITIONAL AUTHORIZED USERS.*—The Secretary shall consider whether to grant access to the clearinghouse to additional users. The Secretary may authorize access to an individual's record from the clearinghouse to an additional user if the Secretary determines that granting access will further the purposes under subsection (a)(2). In determining whether the access will further the purposes under subsection (a)(2), the Secretary shall consider, among other things—

(A) what use the additional user will make of the individual's record;

(B) the costs and benefits of the use; and

(C) how to protect the privacy of the individual and the confidentiality of the record.

(i) *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 determine whether the clearinghouse contains a record pertaining to the individual;

(B) to verify the accuracy of a record;

(C) to update an individual's record, including completing the return-to-duty process described in title 49, Code of Federal Regulations; and

(D) to determine whether the clearinghouse received requests for the individual's information.

(2) *DISPUTE PROCEDURE.*—The Secretary shall establish a procedure, including an appeal process, for an individual to dispute and remedy an administrative error in the individual's record.

(j) *PENALTIES.*—

(1) *IN GENERAL.*—An employer, employee, medical review officer, or service agent who violates any provision of this section shall be subject to civil penalties under section 521(b)(2)(C) and criminal penalties under section 521(b)(6)(B), and any other applicable civil and criminal penalties, as determined by the Secretary.

(2) *VIOLATION OF PRIVACY.*—The Secretary shall establish civil and criminal penalties, consistent with paragraph (1), for an authorized user who violates paragraph (2)(B) or (3)(B) of subsection (h).

(k) *COMPATIBILITY OF STATE AND LOCAL LAWS.*—

(1) *PREEMPTION.*—Except as provided under paragraph (2), any law, regulation, order, or other requirement of a State, po-

litical subdivision of a State, or Indian tribe related to a commercial driver's license holder subject to alcohol or controlled substance testing under title 49, Code of Federal Regulations, that is inconsistent with this section or a regulation issued pursuant to this section is preempted.

(2) *APPLICABILITY.*—The preemption under paragraph (1) shall include—

(A) the reporting of valid positive results from alcohol screening tests and drug tests;

(B) the refusal to provide a specimen for an alcohol screening test or drug test; and

(C) other violations of subpart B of part 382 of title 49, Code of Federal Regulations (or any subsequent corresponding regulations).

(3) *EXCEPTION.*—A law, regulation, order, or other requirement of a State, political subdivision of a State, or Indian tribe shall not be preempted under this subsection to the extent it relates to an action taken with respect to a commercial motor vehicle operator's commercial driver's license or driving record as a result of the driver's—

(A) verified positive alcohol or drug test result;

(B) refusal to provide a specimen for the test; or

(C) other violations of subpart B of part 382 of title 49, Code of Federal Regulations (or any subsequent corresponding regulations).

(l) *DEFINITIONS.*—In this section—

(1) *AUTHORIZED USER.*—The term “authorized user” means an employer, State licensing authority, National Transportation Safety Board, or other person granted access to the clearinghouse under subsection (h).

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

(A) maintain a record about commercial driver's licenses issued by the State; and

(B) take action on commercial driver's licenses issued by the State.

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

(4) *COMMERCIAL MOTOR VEHICLE OPERATOR.*—The term “commercial motor vehicle operator” means an individual who—

(A) possesses a valid commercial driver's license issued in accordance with section 31308; and

(B) is subject to controlled substances and alcohol testing under title 49, Code of Federal Regulations.

(5) *EMPLOYER.*—The term “employer” means a person or entity employing, or seeking to employ, 1 or more employees (including an individual who is self-employed) to be commercial motor vehicle operators.

(6) *MEDICAL REVIEW OFFICER.*—The term “medical review officer” means a licensed physician who is responsible for—

(A) receiving and reviewing a laboratory result generated under the testing program;

(B) evaluating a medical explanation for a controlled substances test under title 49, Code of Federal Regulations; and

(C) interpreting the results of a controlled substances test.

(7) *SECRETARY*.—The term “Secretary” means the Secretary of Transportation.

(8) *SERVICE AGENT*.—The term “service agent” means a person or entity, other than an employee of the employer, who provides services to employers or employees under the testing program.

(9) *TESTING PROGRAM*.—The term “testing program” means the alcohol and controlled substances testing program required under title 49, Code of Federal Regulations.

§ 31307. Minimum training requirements for operators of longer combination vehicles

(a) *DEFINITION*.—In this section, “longer combination vehicle” means a vehicle consisting of a truck tractor and more than one trailer or semitrailer that operates on the Dwight D. Eisenhower System of Interstate and Defense Highways with a gross vehicle weight of more than 80,000 pounds.

(b) *REQUIREMENTS*.—[Not later than December 18, 1994, the Secretary of Transportation shall prescribe] *The Secretary shall maintain* regulations establishing minimum training requirements for operators of longer combination vehicles. The training shall include certification of an operator’s proficiency by an instructor who has met the requirements established by the Secretary.

§ 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 31305(c);*

(2) before a commercial driver’s license learner’s permit may be issued to an individual, the individual must pass a written test, that complies with the minimum standards prescribed by the Secretary under section 31305(a), on the operation of the commercial motor vehicle that the individual will be operating under the permit;

(3) the license or learner's permit be tamperproof to the maximum extent practicable and each license issued after January 1, 2001, include unique identifiers (which may include biometric identifiers) to minimize fraud and duplication; and

(4) the license or learner's permit contain—

(A) the name and address of the individual issued the license or learner's permit and a physical description of the individual;

(B) the social security account number or other number or information the Secretary decides is appropriate to identify the individual;

(C) the class or type of commercial motor vehicle the individual is authorized to operate under the license or learner's permit;

(D) the name of the State that issued the license or learner's permit; and

(E) the dates between which the license or learner's permit is valid.

§ 31309. Commercial driver's license information system

(a) GENERAL REQUIREMENT.—The Secretary of Transportation shall maintain an information system that will serve as a clearinghouse and depository of information about the licensing, identification, and disqualification of operators of commercial motor vehicles. The system shall be coordinated with activities carried out under section 31106. The Secretary shall consult with the States in carrying out this section.

(b) CONTENTS.—

(1) At a minimum, the information system under this section shall include for each operator of a commercial motor vehicle—

(A) information the Secretary considers appropriate to ensure identification of the operator;

(B) the name, address, and physical description of the operator;

(C) the social security account number of the operator or other number or information the Secretary considers appropriate to identify the operator;

(D) the name of the State that issued the license or learner's permit to the operator;

(E) the dates between which the license or learner's permit is valid; and

(F) whether the operator had a commercial motor vehicle driver's license or learner's permit revoked, suspended, or canceled by a State, lost the right to operate a commercial motor vehicle in a State for any period, or has been disqualified *by the State that issued the individual a commercial driver's license, or by the Secretary*, from operating a commercial motor vehicle.

(2) The information system under this section must accommodate any unique identifiers required to minimize fraud or duplication of a commercial driver's license or learner's permit under section ~~31308(2)~~ 31308(3).

(c) AVAILABILITY OF INFORMATION.—Information in the information system shall be made available and subject to review and cor-

rection in accordance with the policy developed under section 31106(e).

(d) FEE SYSTEM.—The Secretary may establish a fee system for using the information system. Fees collected under this subsection in a fiscal year shall equal as nearly as possible the costs of operating the information system in that fiscal year. The Secretary shall deposit fees collected under this subsection in the Highway Trust Fund (except the Mass Transit Account).

(e) MODERNIZATION PLAN.—

(1) IN GENERAL.—Not later than 120 days after the date of enactment of this subsection, the Secretary shall develop and publish a comprehensive national plan to modernize the information system under this section that—

(A) complies with applicable Federal information technology security standards;

(B) provides for the electronic exchange of all information including the posting of convictions;

(C) contains self auditing features to ensure that data is being posted correctly and consistently by the States;

(D) integrates the commercial driver's license and the medical certificate; and

(E) provides a schedule for modernization of the system.

(2) CONSULTATION.—The plan shall be developed in consultation with representatives of the motor carrier industry, State safety enforcement agencies, and State licensing agencies designated by the Secretary.

(3) STATE FUNDING OF FUTURE EFFORTS.—The plan shall specify that States will fund future efforts to modernize the commercial driver's information system.

(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.】

(A) *IN GENERAL.—The plan shall specify—*

(i) a date by which all States shall be operating commercial driver's license information systems that are compatible with the modernized information system under this section; and

(ii) that States must use the systems to receive and submit conviction and disqualification data.

(B) FACTORS TO CONSIDER.—In establishing the date under subparagraph (A), the Secretary shall consider the following:

(i) Availability and cost of technology and equipment needed to comply with subparagraph (A).

(ii) Time necessary to install, and test the operation of, such technology and equipment.

(5) IMPLEMENTATION.—The Secretary shall implement the plan developed under subsection (a) and modernize the information system under this section to meet the requirements of the plan.

(f) FUNDING.—At the Secretary’s discretion, a State may [use] *use, subject to section 31313(a)*, the funds made available to the State under section 31313 to modernize its commercial driver’s license information system to be compatible with the modernized information system under this section.

§ 31310. Disqualifications

(a) BLOOD ALCOHOL CONCENTRATION LEVEL.—In this section, the blood alcohol concentration level at or above which an individual when operating a commercial motor vehicle is deemed to be driving under the influence of alcohol is .04 percent.

(b) FIRST VIOLATION OR COMMITTING FELONY.—

(1) Except as provided in paragraph (2) of this subsection and subsection (c) of this section, the Secretary of Transportation shall disqualify from operating a commercial motor vehicle for at least one year an individual—

(A) committing a first violation of driving a commercial motor vehicle under the influence of alcohol or a controlled substance;

(B) committing a first violation of leaving the scene of an accident involving a commercial motor vehicle operated by the individual;

(C) using a commercial motor vehicle in committing a felony (except a felony described in subsection (d) of this section);

(D) committing a first violation of driving a commercial motor vehicle when the individual’s commercial driver’s license is revoked, suspended, or canceled based on the individual’s operation of a [commercial] motor vehicle or when the individual is disqualified from operating a commercial motor vehicle based on the individual’s operation of a commercial motor vehicle; or

(E) convicted of causing a fatality through negligent or criminal operation of a commercial motor vehicle.

(2) If the vehicle involved in a violation referred to in paragraph (1) of this subsection is transporting hazardous material required to be placarded under section 5103 of this title, the Secretary shall disqualify the individual for at least 3 years.

(c) SECOND AND MULTIPLE VIOLATIONS.—

(1) Subject to paragraph (2) of this subsection, the Secretary shall disqualify from operating a commercial motor vehicle for life an individual—

(A) committing more than one violation of driving a commercial motor vehicle under the influence of alcohol or a controlled substance;

(B) committing more than one violation of leaving the scene of an accident involving a commercial motor vehicle operated by the individual;

(C) using a commercial motor vehicle in committing more than one felony arising out of different criminal episodes;

(D) committing more than one violation of driving a commercial motor vehicle when the individual’s commercial driver’s license is revoked, suspended, or canceled based on

the individual's operation of a [commercial] motor vehicle or when the individual is disqualified from operating a commercial motor vehicle based on the individual's operation of a commercial motor vehicle;

(E) convicted of more than one offense of causing a fatality through negligent or criminal operation of a commercial motor vehicle; or

(F) committing any combination of single violations or use described in subparagraphs (A) through (E).

(2) The Secretary may prescribe regulations establishing guidelines (including conditions) under which a disqualification for life under paragraph (1) of this subsection may be reduced to a period of not less than 10 years.

[(d) CONTROLLED SUBSTANCE VIOLATIONS.—The Secretary shall disqualify from operating a commercial motor vehicle for life an individual who uses a commercial motor vehicle in committing a felony involving manufacturing, distributing, or dispensing a controlled substance, or possession with intent to manufacture, distribute, or dispense a controlled substance.]

(d) CONTROLLED SUBSTANCE VIOLATIONS.—The Secretary may permanently disqualify an individual from operating a commercial vehicle if the individual—

(1) uses a commercial motor vehicle in the commission of a felony involving manufacturing, distributing, or dispensing a controlled substance, or possession with intent to manufacture, distribute, or dispense a controlled substance; or

(2) uses alcohol or a controlled substance, in violation of section 31306, 3 or more times.

(e) SERIOUS TRAFFIC VIOLATIONS.—

(1) The Secretary shall disqualify from operating a commercial motor vehicle for at least 60 days an individual who, in a 3-year period, commits 2 serious traffic violations involving a commercial motor vehicle operated by the individual.

(2) The Secretary shall disqualify from operating a commercial motor vehicle for at least 120 days an individual who, in a 3-year period, commits 3 serious traffic violations involving a commercial motor vehicle operated by the individual.

(f) EMERGENCY DISQUALIFICATION.—

(1) LIMITED DURATION.—The Secretary shall disqualify an individual from operating a commercial motor vehicle for not to exceed 30 days if the Secretary determines that allowing the individual to continue to operate a commercial motor vehicle would create an imminent hazard (as such term is defined in section 521 or section 5102).

(2) AFTER NOTICE AND HEARING.—The Secretary shall disqualify an individual from operating a commercial motor vehicle for more than 30 days if the Secretary determines, after notice and an opportunity for a hearing, that allowing the individual to continue to operate a commercial motor vehicle would create an imminent hazard (as such term is defined in section 521 or section 5102).

(g) NONCOMMERCIAL MOTOR VEHICLE CONVICTIONS.—

(1) ISSUANCE OF REGULATIONS.—[Not later than 1 year after the date of the enactment of this Act, the] *The* Secretary shall

issue regulations providing for the disqualification by the Secretary from operating a commercial motor vehicle of an individual **【who holds a commercial driver's license and】** who has been convicted of—

(A) a serious offense involving a motor vehicle (other than a commercial motor vehicle) that has resulted in the revocation, cancellation, or suspension of the individual's license; or

(B) a drug or alcohol related offense involving a motor vehicle (other than a commercial motor vehicle).

(2) REQUIREMENTS FOR REGULATIONS.—Regulations issued under paragraph (1) shall establish the minimum periods for which the disqualifications shall be in effect, but in no case shall the time periods for disqualification for noncommercial motor vehicle violations be more stringent than those for offenses or violations involving a commercial motor vehicle. The Secretary shall determine such periods based on the seriousness of the offenses on which the convictions are based.

(h) DISQUALIFICATION FOR FAILURE TO PAY.—The Secretary shall disqualify from operating a commercial motor vehicle any individual who fails to pay a civil penalty within the prescribed period, or fails to conform to the terms of a settlement with the Secretary. A disqualification shall continue until the penalty is paid, or the individual conforms to the terms of the settlement, unless the non-payment is because the individual is a debtor in a case under chapter 11 of title 11, United States Code.

【(h)】 (i) STATE DISQUALIFICATION.—**【Notwithstanding subsections (b) through (g)】** *Notwithstanding subsections (b) through (h) of this section, the Secretary does not have to disqualify an individual from operating a commercial motor vehicle if the State that issued the individual a license authorizing the operation has disqualified the individual from operating a commercial motor vehicle under subsections (b) through (g). If the State has not disqualified the individual from operating a commercial vehicle under subsections (a) through (g), the State shall disqualify the individual if the Secretary determines under section 31144(g) that the individual is disqualified from operating a commercial motor vehicle.* Revocation, suspension, or cancellation of the license is deemed to be disqualification under this subsection.

【(i)】 (j) OUT-OF-SERVICE ORDERS.—

(1)

(A) To enforce section 392.5 of title 49, Code of Federal Regulations, the Secretary shall prescribe regulations establishing and enforcing an out-of-service period of 24 hours for an individual who violates section 392.5. An individual may not violate an out-of-service order issued under those regulations.

(B) The Secretary shall prescribe regulations establishing and enforcing requirements for reporting out-of-service orders issued under regulations prescribed under subparagraph (A) of this paragraph. Regulations prescribed under this subparagraph shall require at least that an operator of a commercial motor vehicle who is issued an out-of-service order to report the issuance to the individ-

ual's employer and to the State that issued the operator a driver's license.

(2) The Secretary shall prescribe regulations establishing sanctions and penalties related to violations of out-of-service orders by individuals operating commercial motor vehicles. The regulations shall require at least that—

(A) an operator of a commercial motor vehicle found to have committed a first violation of an out-of-service order shall be disqualified from operating such a vehicle for at least 180 days and liable for a civil penalty of at least \$2,500;

(B) an operator of a commercial motor vehicle found to have committed a 2d violation of an out-of-service order shall be disqualified from operating such a vehicle for at least 2 years and not more than 5 years and liable for a civil penalty of at least \$5,000;

(C) an employer that knowingly allows or requires an employee to operate a commercial motor vehicle in violation of an out-of-service order shall be liable for a civil penalty of not more than \$25,000; and

(D) an employer that knowingly and willfully allows or requires an employee to operate a commercial motor vehicle in violation of an out-of-service order shall, upon conviction, be subject for each offense to imprisonment for a term not to exceed one year or a fine under title 18, or both.

[(j)] (k) **GRADE-GROSSING VIOLATIONS.**—

(1) **SANCTIONS.**—The Secretary shall issue regulations establishing sanctions and penalties relating to violations, by persons operating commercial motor vehicles, of laws and regulations pertaining to railroad-highway grade crossings.

(2) **MINIMUM REQUIREMENTS.**—The regulations issued under paragraph (1) shall, at a minimum, require that—

(A) the penalty for a single violation is not less than a 60-day disqualification of the driver's commercial driver's license; and

(B) any employer that knowingly allows, permits, authorizes, or requires an employee to operate a commercial motor vehicle in violation of such a law or regulation shall be subject to a civil penalty of not more than \$10,000.

[(k)] (l) **FOREIGN COMMERCIAL DRIVERS.**—*A foreign commercial driver shall be subject to disqualification under this section.*

§ 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) The State shall adopt and carry out a program for testing and ensuring the fitness of individuals to operate commercial motor vehicles consistent with the minimum standards prescribed by the Secretary of Transportation under section 31305(a) of this title.

(2) The State may issue a commercial driver's license to an individual only if the individual passes written and driving

tests for the operation of a commercial motor vehicle that comply with the minimum standards.

(3) The State shall have in effect and enforce a law providing that an individual with a blood alcohol concentration level at or above the level established by section 31310(a) of this title when operating a commercial motor vehicle is deemed to be driving under the influence of alcohol.

(4) The State shall authorize an individual to operate a commercial motor vehicle only by issuing a commercial driver's license containing the information described in section 31308(3) of this title.

(5) [At least 60 days before issuing a commercial driver's license (or a shorter period the Secretary prescribes by regulation),] *Not later than the time period prescribed by the Secretary by regulation,* the State shall notify the Secretary or the operator of 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.

(6) Before issuing a commercial driver's license to an individual or renewing such a license, the State shall request from any other State that has issued a driver's license to the individual all information about the driving record of the individual.

(7) Not later than 30 days after issuing a commercial driver's license, the State shall notify the Secretary or the operator of the information system under section 31309 of this title, as the case may be, of the issuance.

(8) Not later than 10 days after disqualifying the holder of a commercial driver's license from operating a commercial motor vehicle (or after revoking, suspending, or canceling the license) for at least 60 days, the State shall notify the Secretary or the operator of the information system under section 31309 of this title, as the case may be, and the State that issued the license, of the disqualification, revocation, suspension, or cancellation, and the violation that resulted in the disqualification, revocation, suspension, or cancellation shall be recorded.

(9) If an individual violates a State or local law on motor vehicle traffic control (except a parking violation) and the individual—

(A) has a commercial driver's license issued by another State; or

(B) is operating a commercial vehicle without a commercial driver's license and has a driver's license issued by another State,

the State in which the violation occurred shall notify a State official designated by the issuing State of the violations not later than 10 days after the date the individual is found to have committed the violation.

(10) (A) The State may not issue a commercial driver's license to an individual during a period in which the individual is disqualified from operating a commercial motor vehicle or

the individual's driver's license is revoked, suspended, or canceled.

(B) The State may not issue a special license or permit (including a provisional or temporary license) to an individual who holds a commercial driver's license that permits the individual to drive a commercial motor vehicle during a period in which—

(i) the individual is disqualified from operating a commercial motor vehicle; or

(ii) the individual's driver's license is revoked, suspended, or canceled.

(11) The State may issue a commercial driver's license to an individual who has a commercial driver's license issued by another State only if the individual first returns the driver's license issued by the other State.

(12) The State may issue a commercial driver's license only to an individual who operates or will operate a commercial motor vehicle and is domiciled in the State, except that, under regulations the Secretary shall prescribe, the State may issue a commercial driver's license to an individual who operates or will operate a commercial motor vehicle and is not domiciled in a State that issues commercial drivers' licenses.

(13) The State shall impose penalties consistent with this chapter that the State considers appropriate and the Secretary approves for an individual operating a commercial motor vehicle.

(14) The State shall allow an individual to operate a commercial motor vehicle in the State if—

(A) the individual has a commercial driver's license issued by another State under the minimum standards prescribed by the Secretary under section 31305(a) of this title;

(B) the license is not revoked, suspended, or canceled; and

(C) the individual is not disqualified from operating a commercial motor vehicle.

(15) The State shall disqualify an individual from operating a commercial motor vehicle for the same reasons and time periods for which the Secretary shall disqualify the individual under subsections (b)-(e), (i)(1)(A) and (i)(2) of section 31310.

(16)

(A) Before issuing a commercial driver's license to an individual, the State shall request the Secretary for information from the National Driver Register maintained under chapter 303 of this title (after the Secretary decides the Register is operational) on whether the individual—

(i) has been disqualified from operating a motor vehicle (except a commercial motor vehicle);

(ii) has had a license (except a license authorizing the individual to operate a commercial motor vehicle) revoked, suspended, or canceled for cause in the 3-year period ending on the date of application for the commercial driver's license; or

(iii) has been convicted of an offense specified in section 30304(a)(3) of this title.

(B) The State shall give full weight and consideration to that information in deciding whether to issue the individual a commercial driver's license.

(17) The State shall adopt and enforce regulations prescribed by the Secretary under section 31310(j) of this title.

(18) The State shall maintain, as part of its driver information system, a record of each violation of a State or local motor vehicle traffic control law while operating a motor vehicle (except a parking violation) for each individual who holds a commercial driver's license. The record shall be available upon request to the individual, the Secretary, employers, prospective employers, State licensing and law enforcement agencies, and their authorized agents.

(19) The State shall—

(A) record in the driving record of an individual who has a commercial driver's license issued by the State; and

(B) make available to all authorized persons and governmental entities having access to such record, all information the State receives under paragraph (9) with respect to the individual and every violation by the individual involving a motor vehicle (including a commercial motor vehicle) of a State or local law on traffic control (except a parking violation), not later than 10 days after the date of receipt of such information or the date of such violation, as the case may be. The State may not allow information regarding such violations to be withheld or masked in any way from the record of an individual possessing a commercial driver's license.

(20) The State shall revoke, suspend, or cancel the commercial driver's license of an individual in accordance with regulations issued by the Secretary to carry out section 31310(g).

(21) By the date established by the Secretary under section 31309(e)(4), the State shall be operating a commercial driver's license information system that is compatible with the modernized commercial driver's license information system under section 31309.

(22) The State shall report a conviction of a foreign commercial driver by that State to the Federal Convictions and Withdrawal Database, or another information system designated by the Secretary to record the convictions. A report shall include—

(A) for a driver holding a foreign commercial driver's license—

(i) each conviction relating to the operation of a commercial motor vehicle; and

(ii) a non-commercial motor vehicle; and

(B) for an unlicensed driver or a driver holding a foreign non-commercial driver's license, each conviction for operating a commercial motor vehicle.

(23) Not later than 1 year after the date of enactment of the Commercial Motor Vehicle Safety Enhancement Act of 2011, the State shall implement a system and practices for the exclusive electronic exchange of driver history record information on the

system the Secretary maintains under section 31309, including the posting of convictions, withdrawals, and disqualifications.

(24) Not later than 1 year after the date of enactment of the Commercial Motor Vehicle Safety Enhancement Act of 2011, the State shall establish and maintain, as part of its driver information system, the capability to receive an electronic copy of a medical examiner's certificate, from a certified medical examiner, for each holder of a commercial driver's license issued by the State who operates or intends to operate in interstate commerce.

(b) STATE SATISFACTION OF REQUIREMENTS.—A State may satisfy the requirements of subsection (a) of this section that the State disqualify an individual from operating a commercial motor vehicle by revoking, suspending, or canceling the driver's license issued to the individual.

(c) NOTIFICATION.—Not later than 30 days after being notified by a State of the proposed issuance of a commercial driver's license to an individual, the Secretary or the operator of the information system under section 31309 of this title, as the case may be, shall notify the State whether the individual has a commercial driver's license issued by another State or has been disqualified from operating a commercial motor vehicle by another State or the Secretary.

(d) CRITICAL REQUIREMENTS.—

(1) IDENTIFICATION OF CRITICAL REQUIREMENTS.—After reviewing the requirements under subsection (a), including the regulations issued pursuant to subsection (a) and section 31309(e)(4), the Secretary shall identify the requirements that are critical to an effective State commercial driver's license program.

(2) GUIDANCE.—Not later than 180 days after the date of enactment of the Commercial Motor Vehicle Safety Enhancement Act of 2011, the Secretary shall issue guidance to assist States in complying with the critical requirements identified under paragraph (1). The guidance shall include a description of the actions that each State must take to collect and share accurate and complete data in a timely manner.

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

(1) IN GENERAL.—Not later than 180 days after the Secretary issues guidance under subsection (d)(2), a State shall submit a plan to the Secretary for complying with the requirements under this section during the period beginning on the date the plan is submitted and ending on September 30, 2016.

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

(A) the actions that the State will take to comply with the critical requirements identified under subsection (d)(1);

(B) the actions that the State will 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

(C) other actions that the State will take to comply with the requirements under 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). In establishing the schedule, the State shall prioritize the actions identified under paragraphs (2)(A) and (2)(B).

(B) *DEADLINE FOR COMPLIANCE WITH CRITICAL 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 critical requirements pursuant to subsection (d) not later than September 30, 2015.

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

(A) review each plan submitted under paragraph (1);

(B) approve a plan that the Secretary determines meets the requirements under this subsection and promotes the goals of this chapter; and

(C) disapprove a plan that the Secretary determines does not meet the requirements or does not promote the goals.

(5) *MODIFICATION OF DISAPPROVED PLANS.*—If the Secretary disapproves a plan under paragraph (4)(C), the Secretary shall—

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

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

(6) *PLAN UPDATES.*—The Secretary may require a State to review and update a plan, as appropriate.

(f) *ANNUAL COMPARISON OF STATE LEVELS OF COMPLIANCE.*—The Secretary shall annually—

(1) compare the relative levels of compliance by States with the requirements under subsection (a); and

(2) make the results of the comparison available to the public.

§ 31312. Decertification authority

(a) *IN GENERAL.*—If the Secretary of Transportation determines that a State is in substantial noncompliance with this chapter, the Secretary shall issue an order to—

(1) prohibit that State from carrying out licensing procedures under this chapter; and

(2) prohibit that State from issuing any commercial driver's licenses until such time the Secretary determines such State is in substantial compliance with this chapter.

(b) *DEADLINE FOR COMPLIANCE WITH CRITICAL REQUIREMENTS.*—Beginning on October 1, 2016, in making a determination under subsection (a), the Secretary shall consider a State to be in substantial noncompliance with this chapter if the Secretary determines that—

(1) the State is not complying with a critical requirement under section 31311(d)(1); and

(2) sufficient grant funding was made available to the State under section 31313(a) to comply with the requirement.

[(b)] (c) *EFFECT ON OTHER STATES.*—A State (other than a State subject to an order under subsection (a)) may issue a non-resident commercial driver's license to an individual domiciled in a State that is prohibited from such activities under subsection (a) if that

individual meets all requirements of this chapter and the non-resident licensing requirements of the issuing State.

[(c)] (d) PREVIOUSLY ISSUED LICENSES.—Nothing in this section shall be construed as invalidating or otherwise affecting commercial driver’s licenses issued by a State before the date of issuance of an order under subsection (a) with respect to the State.

§ [31313. Grants for commercial driver’s license program improvements

[(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 in-

clude 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.]

§ 31313. Driver safety grants

(a) *GENERAL AUTHORITY.—The Secretary shall make and administer a driver focused grant program to assist the States, local governments, entities, and other persons with commercial driver's license systems, programs, training, fraud detection, reporting of violations and other programs required to improve the safety of drivers as the Federal Motor Carrier Safety Administration deems critical. The Secretary shall allocate the funds for the program in accordance with section 31104.*

(b) *COMMERCIAL DRIVER'S LICENSE PROGRAM IMPROVEMENT GRANTS.—*

(1) *PROGRAM GOAL.—The Secretary of Transportation may make a grant to a State in a fiscal year—*

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

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

(C) *for 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;*

(D) *for commercial driver's license program coordinators;*

(E) *to implement or maintain a system to notify an employer of an operator of a commercial motor vehicle of the suspension or revocation of the operator's commercial driver's license consistent with the standards developed under*

section 304(b) of the Commercial Motor Vehicle Safety Enhancement Act of 2011; or

(F) to train operators of commercial motor vehicles, as defined under section 31301, and to train operators and future operators in the safe use of such vehicles. Funding priority for this discretionary grant program shall be to regional or multi-state educational or nonprofit associations serving economically distressed regions of the United States.

(2) PRIORITY.—The Secretary shall give priority, in making grants under paragraph (1)(B), to a State that will use the grants to achieve compliance with the requirements of the Motor Carrier Safety Improvement Act of 1999 (113 Stat. 1748), including the amendments made by the Commercial Motor Vehicle Safety Enhancement Act of 2011.

(3) RECIPIENTS.—The Secretary may allocate grants to State agencies, local governments, and other persons for carrying out activities and projects that improve commercial driver's license safety and compliance with commercial driver's license and commercial motor vehicle safety regulations in accordance with the program goals under paragraph (1) and that train operators on commercial motor vehicles. The Secretary may make a grant to a State to comply with section 31311 for commercial driver's license program coordinators and for notification systems.

(4) FEDERAL SHARE.—The Federal share of a grant made under this program shall be at least 80 percent, except that the Federal share of grants for commercial driver license program coordinators and training commercial motor vehicle operators shall be 100 percent.

§ 31315. Waivers, exemptions, and pilot programs

(a) **WAIVERS.**—The Secretary may grant a waiver that relieves a person from compliance in whole or in part with a regulation issued under this chapter or section 31136 if the Secretary determines that it is in the public interest to grant the waiver and that the waiver is likely to achieve a level of safety that is equivalent to, or greater than, the level of safety that would be obtained in the absence of the waiver—

(1) for a period not in excess of 3 months;

(2) limited in scope and circumstances; *and*

[(3) for nonemergency and unique events; and]

[(4)] (3) subject to such conditions as the Secretary may impose.

(b) **EXEMPTIONS.**—

(1) **IN GENERAL.**—Upon receipt of a request pursuant to paragraph (3), the Secretary of Transportation may grant to a person or class of persons an exemption from a regulation prescribed under this chapter or section 31136 if the Secretary finds such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption. An exemption may be granted for no longer than 2 years from its approval date and may be renewed upon application to the Secretary.

(2) **AUTHORITY TO REVOKE EXEMPTION.**—The Secretary shall immediately revoke an exemption if—

(A) the person fails to comply with the terms and conditions of such exemption;

(B) the exemption has resulted in a lower level of safety than was maintained before the exemption was granted; or

(C) continuation of the exemption would not be consistent with the goals and objectives of this chapter or section 31136, as the case may be.

(3) **REQUESTS FOR EXEMPTION.**—Not later than 180 days after the date of enactment of this section and after notice and an opportunity for public comment, the Secretary shall specify by regulation the procedures by which a person may request an exemption. Such regulations shall, at a minimum, require the person to provide the following information for each exemption request:

(A) The provisions from which the person requests exemption.

(B) The time period during which the requested exemption would apply.

(C) An analysis of the safety impacts the requested exemption may cause.

(D) The specific countermeasures the person would undertake to ensure an equivalent or greater level of safety than would be achieved absent the requested exemption.

(4) **NOTICE AND COMMENT.**—

(A) Upon receipt of a request. Upon receipt of an exemption request, the Secretary shall publish in the Federal Register (*or, in the case of a request for an exemption from the physical qualification standards for commercial motor vehicle drivers, post on a web site established by the Secretary to implement the requirements of section 31149*) a notice explaining the request that has been filed and shall give the public an opportunity to inspect the safety analysis and any other relevant information known to the Secretary and to comment on the request. This subparagraph does not require the release of information protected by law from public disclosure.

[(B) Upon granting a request. Upon granting a request for exemption, the Secretary shall publish in the Federal Register the name of the person granted the exemption, the provisions from which the person will be exempt, the effective period, and all terms and conditions of the exemption.]

(B) **UPON GRANTING A REQUEST.**—*Upon granting a request and before the effective date of the exemption, the Secretary shall publish in the Federal Register (or, in the case of an exemption from the physical qualification standards for commercial motor vehicle drivers, post on a web site established by the Secretary to implement the requirements of section 31149) the name of the person granted the exemption, the provisions from which the person is exempt, the effective period, and the terms and conditions of the exemption.*

(C) AFTER DENYING A REQUEST.—After denying a request for exemption, the Secretary shall publish in the Federal Register (*or, in the case of a request for an exemption from the physical qualification standards for commercial motor vehicle drivers, post on a web site established by the Secretary to implement the requirements of section 31149*) the name of the person denied the exemption and the reasons for such denial. The Secretary may meet the requirement of this subparagraph by periodically publishing in the Federal Register the names of persons denied exemptions and the reasons for such denials.

(5) APPLICATIONS TO BE DEALT WITH PROMPTLY.—The Secretary shall grant or deny an exemption request after a thorough review of its safety implications, but in no case later than 180 days after the filing date of such request.

(6) TERMS AND CONDITIONS.—The Secretary shall establish terms and conditions for each exemption to ensure that it will likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption. The Secretary shall monitor the implementation of the exemption to ensure compliance with its terms and conditions.

[(7) NOTIFICATION OF STATE COMPLIANCE AND ENFORCEMENT PERSONNEL.—Before granting a request for exemption, the Secretary shall notify State safety compliance and enforcement personnel, including roadside inspectors, and the public that a person will be operating pursuant to an exemption and any terms and conditions that will apply to the exemption.]

(7) NOTIFICATION OF STATE COMPLIANCE AND ENFORCEMENT PERSONNEL.—*Before the effective date of an exemption, the Secretary shall notify a State safety compliance and enforcement agency, and require the agency pursuant to section 31102(b)(1)(Y) to notify the State's roadside inspectors, that a person will be operating pursuant to an exemption and the terms and conditions that apply to the exemption.*

(c) PILOT PROGRAMS.—

(1) IN GENERAL.—The Secretary may conduct pilot programs to evaluate alternatives to regulations relating to, or innovative approaches to, motor carrier, commercial motor vehicle, and driver safety. Such pilot programs may include exemptions from a regulation prescribed under this chapter or section 31136 if the pilot program contains, at a minimum, the elements described in paragraph (2). The Secretary shall publish [in the Federal Register] a detailed description of each pilot program, including the exemptions to be considered, and provide notice and an opportunity for public comment before the effective date of the program.

(2) PROGRAM ELEMENTS.—In proposing a pilot program and before granting exemptions for purposes of a pilot program, the Secretary shall require, as a condition of approval of the project, that the safety measures in the project are designed to achieve a level of safety that is equivalent to, or greater than, the level of safety that would otherwise be achieved through compliance with the regulations prescribed under this chapter

or section 31136. The Secretary shall include, at a minimum, the following elements in each pilot program plan:

(A) A scheduled life of each pilot program of not more than 3 years.

(B) A specific data collection and safety analysis plan that identifies a method for comparison.

(C) A reasonable number of participants necessary to yield statistically valid findings.

(D) An oversight plan to ensure that participants comply with the terms and conditions of participation.

(E) Adequate countermeasures to protect the health and safety of study participants and the general public.

(F) A plan to inform State partners and the public about the pilot program and to identify approved participants to safety compliance and enforcement personnel and to the public.

(3) **AUTHORITY TO REVOKE PARTICIPATION.**—The Secretary shall immediately revoke participation in a pilot program of a motor carrier, commercial motor vehicle, or driver for failure to comply with the terms and conditions of the pilot program or if continued participation would not be consistent with the goals and objectives of this chapter or section 31136, as the case may be.

(4) **AUTHORITY TO TERMINATE PROGRAM.**—The Secretary shall immediately terminate a pilot program if its continuation would not be consistent with the goals and objectives of this chapter or section 31136, as the case may be.

(5) **REPORT TO CONGRESS.**—At the conclusion of each pilot program, the Secretary shall report to Congress the findings, conclusions, and recommendations of the program, including suggested amendments to laws and regulations that would enhance motor carrier, commercial motor vehicle, and driver safety and improve compliance with national safety standards.

(d) **PREEMPTION OF STATE RULES.**—During the time period that a waiver, exemption, or pilot program is in effect under this chapter or section 31136, no State shall enforce any law or regulation that conflicts with or is inconsistent with the waiver, exemption, or pilot program with respect to a person operating under the waiver or exemption or participating in the pilot program.

(e) **REPORT TO CONGRESS.**—*The Secretary shall submit an annual report to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives listing the waivers, exemptions, and pilot programs granted under this section, and any impacts on safety.*

(f) **WEB SITE.**—*The Secretary shall ensure that the Federal Motor Carrier Safety Administration web site includes a link to the web site established by the Secretary to implement the requirements under sections 31149 and 31315. The link shall be in a clear and conspicuous location on the home page of the Federal Motor Carrier Safety Administration web site and be easily accessible to the public.*

SUBTITLE X. MISCELLANEOUS

CHAPTER 805. MISCELLANEOUS

§ 80502. Transportation of animals

(a) CONFINEMENT.—

(1) Except as provided in this section, 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 transporting animals 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, may not confine animals in a vehicle or vessel for more than 28 consecutive hours without unloading the animals for feeding, water, and rest.

(2) Sheep may be confined for an additional 8 consecutive hours without being unloaded when the 28-hour period of confinement ends at night. Animals may be confined for—

(A) more than 28 hours when the animals cannot be unloaded because of accidental or unavoidable causes that could not have been anticipated or avoided when being careful; and

(B) 36 consecutive hours when the owner or person having custody of animals being transported requests, in writing and separate from a bill of lading or other rail form, that the 28-hour period be extended to 36 hours.

(3) Time spent in loading and unloading animals is not included as part of a period of confinement under this subsection.

(b) UNLOADING, FEEDING, WATERING, AND REST.—Animals being transported shall be unloaded in a humane way into pens equipped for feeding, water, and rest for at least 5 consecutive hours. The owner or person having custody of the animals shall feed and water the animals. When the animals are not fed and watered by the owner or person having custody, the rail carrier, express carrier, or common carrier (except by air or water), the receiver, trustee, or lessee of one of those carriers, or the owner or master of a vessel transporting the animals—

(1) shall feed and water the animals at the reasonable expense of the owner or person having custody, except that the owner or shipper may provide food;

(2) has a lien on the animals for providing food, care, and custody that may be collected at the destination in the same way that a transportation charge is collected; and

(3) is not liable for detaining the animals for a reasonable period to comply with subsection (a) of this section.

(c) NONAPPLICATION.—**[This section does not]** *Subsections (a) and (b) shall 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”—

(A) means a vehicle driven or drawn by mechanical power and manufactured primarily for use on public highways; and

(B) does not include a vehicle operated exclusively on a rail or rails.

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

(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]

(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.

(3) *CIVIL ACTION.*—On learning of a violation, 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.

MOTOR CARRIER SAFETY IMPROVEMENT ACT OF 1999

SEC. 210. MINIMUM REQUIREMENTS FOR APPLICANT MOTOR CARRIERS.

[49 U.S.C. 31144 note]

* * * * *

(b) The Secretary shall initiate a rulemaking to establish minimum requirements for applicant motor carriers, including foreign motor carriers, seeking Federal interstate operating authority to ensure applicant carriers are knowledgeable about applicable Federal motor carrier safety standards. As part of that rulemaking, the Secretary shall [consider the establishment of] *establish* a proficiency examination for applicant motor carriers as well as other requirements to ensure such applicants understand applicable safety regulations, *commercial regulations, and provisions of subpart H of part 37 of title 49, Code of Federal Regulations, or successor regulations before being granted operating authority.*

SAFE, ACCOUNTABLE, FLEXIBLE, EFFICIENT TRANSPORTATION EQUITY ACT: A LEGACY FOR USERS (SAFETEA-LU)

SEC. 4123. COMMERCIAL DRIVER'S LICENSE INFORMATION SYSTEM MODERNIZATION.

* * * * *

(f) **BASELINE AUDIT.**—[Not later than 1 year after the date of enactment of this Act, the] *The* Secretary, in consultation with the Inspector General of the Department of Transportation, shall perform a baseline audit of the information system maintained under section 31309 of title 49, United States Code. The audit shall include—

- (1) an assessment of the validity of data in the information system on a State-by-State basis;
- (2) an assessment of the extent to which convictions are validly posted on a driver's record;
- (3) recommendations to the Secretary on how to update the baseline audit annually to ensure that any shortcomings in the information system are addressed, and a methodology for conducting the update;
- (4) identification, on a State-by-State basis, of any actions that the Inspector General finds necessary to improve the integrity of data collected by the system and to ensure the proper posting of convictions; and
- (5) an analysis of amounts and use of the revenues derived from fees charged for use of the commercial driver's license information system.

[SEC. 4138. HIGH RISK CARRIER COMPLIANCE REVIEWS.

[49 U.S.C. 31144 note]

[From the funds authorized by section 31104(i) of title 49, United States Code, the Secretary shall ensure that compliance reviews are completed on motor carriers that have demonstrated through performance data that they pose the highest safety risk. At a minimum, a compliance review shall be conducted whenever a motor carrier is rated as category A or B for 2 consecutive months.]

SEC. 4144. MOTOR CARRIER SAFETY ADVISORY COMMITTEE.

[49 U.S.C. 31100 note]

(a) **ESTABLISHMENT AND DUTIES.**—The Secretary shall establish in the Federal Motor Carrier Safety Administration a motor carrier safety advisory committee. The committee shall—

- (1) provide advice and recommendations to the Administrator of the Federal Motor Carrier Safety Administration about needs, objectives, plans, approaches, content, and accomplishments of the motor carrier safety programs carried out by the Administration; and
- (2) provide advice and recommendations to the Administrator on motor carrier safety regulations.

(b) **MEMBERS, CHAIRMAN, PAY, AND EXPENSES.**—

- (1) **IN GENERAL.**—The committee shall be composed of not more than 20 members appointed by the Administrator from among individuals who are not employees of the Administra-

tion and who are specially qualified to serve on the committee because of their education, training, or experience. The members shall include representatives of the motor carrier industry, *nonprofit employee labor organizations representing commercial motor vehicle drivers*, safety advocates, and safety enforcement officials. Representatives of a single enumerated interest group may not constitute a majority of the members of the advisory committee.

(2) CHAIRMAN.—The Administrator shall designate the chairman of the committee.

(3) PAY.—A member of the committee shall serve without pay; except that the Administrator may allow a member, when attending meetings of the committee or a subcommittee of the committee, expenses authorized under section 5703 of title 5, relating to per diem, travel, and transportation expenses.

(c) SUPPORT STAFF, INFORMATION, AND SERVICES.—The Administrator shall provide support staff for the committee. On request of the committee, the Administrator shall provide information, administrative services, and supplies that the Administrator considers necessary for the committee to carry out its duties and powers.

(d) TERMINATION DATE.—Notwithstanding the Federal Advisory Committee Act (5 U.S.C. App.), the advisory committee shall terminate on **[March 31, 2012]** *September 30, 2013*.

