

“(ii) ELEMENTS CONCERNING THE FAMILY MEMBER WITH CURRENT OR FORMER EMPLOYMENT STATUS.—

“(I) The name of the person in the individual’s family who has current or former employment status with the employer.

“(II) That person’s social security insurance number.

“(III) The number or other identifier assigned by the plan to that person.

“(IV) The periods of coverage for that person under the plan.

“(V) The employment status of that person (current or former) during those periods of coverage.

“(VI) The classes (of that person’s family members) covered under the plan.

“(iii) PLAN ELEMENTS.—

“(I) The items and services covered under the plan.

“(II) The name and address to which claims under the plan are to be sent.

“(iv) ELEMENTS CONCERNING THE EMPLOYER.—

“(I) The employer’s name.

“(II) The employer’s address.

“(III) The employer identification number of the employer.

“(D) USE OF IDENTIFIERS.—The administrator of a group health plan shall utilize a unique identifier for the plan in providing information under subparagraph (A) and in other transactions, as may be specified by the Secretary, related to the provisions of this subsection. The Secretary may provide to the administrator the unique identifier described in the preceding sentence.

“(E) PENALTY FOR NONCOMPLIANCE.—Any entity that knowingly and willfully fails to comply with a requirement imposed by the previous subparagraphs shall be subject to a civil money penalty not to exceed \$1,000 for each incident of such failure. The provisions of section 1128A (other than subsections (a) and (b)) shall apply to a civil money penalty under the previous sentence in the same manner as those provisions apply to a penalty or proceeding under section 1128A(a).”

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall take effect 180 days after the date of the enactment of this Act.

(c) MODIFICATION TO FOREIGN TAX CREDIT CARRYBACK AND CARRYOVER PERIODS.—

(1) IN GENERAL.—Section 904(c) (relating to limitation on credit) is amended—

(A) by striking “in the second preceding taxable year,” and

(B) by striking “or fifth” and inserting “fifth, sixth, or seventh”.

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to credits arising in taxable years beginning after December 31, 2001.

(d) LIMITATIONS ON WELFARE BENEFIT FUNDS OF 10 OR MORE EMPLOYER PLANS.—

(1) BENEFITS TO WHICH EXCEPTION APPLIES.—Section 419A(f)(6)(A) (relating to exception for 10 or more employer plans) is amended to read as follows:

“(A) IN GENERAL.—This subpart shall not apply to a welfare benefit fund which is part of a 10 or more employer plan if the only benefits provided through the fund are 1 or more of the following:

“(i) Medical benefits.

“(ii) Disability benefits.

“(iii) Group term life insurance benefits which do not provide for any cash surrender value or other money that can be paid, assigned, borrowed, or pledged for collateral for a loan.

The preceding sentence shall not apply to any plan which maintains experience-rating

arrangements with respect to individual employers.”

(2) LIMITATION ON USE OF AMOUNTS FOR OTHER PURPOSES.—Section 4976(b) (defining disqualified benefit) is amended by adding at the end the following new paragraph:

“(5) SPECIAL RULE FOR 10 OR MORE EMPLOYER PLANS EXEMPTED FROM PREFUNDING LIMITS.—For purposes of paragraph (1)(C), if—

“(A) subpart D of part I of subchapter D of chapter 1 does not apply by reason of section 419A(f)(6) to contributions to provide 1 or more welfare benefits through a welfare benefit fund under a 10 or more employer plan, and

“(B) any portion of the welfare benefit fund attributable to such contributions is used for a purpose other than that for which the contributions were made,

then such portion shall be treated as reverting to the benefit of the employers maintaining the fund.”

(3) EFFECTIVE DATE.—The amendments made by this subsection shall apply to contributions paid or accrued after the date of the enactment of this Act, in taxable years ending after such date.

DEPARTMENT OF TRANSPORTATION AND RELATED AGENCIES APPROPRIATIONS ACT, 2000

MOYNIHAN AMENDMENTS NOS. 738–860

(Ordered to lie on the table.)

Mr. MOYNIHAN submitted 123 amendments intended to be proposed by him to the bill (S. 1143) making appropriations for the Department of Transportation and related agencies for the fiscal year ending September 30, 2000, and for other purposes; as follows:

AMENDMENT NO. 738

At the appropriate place, insert:

SEC. 3. STATE AUTHORITY OVER CRUISES-TOWNSHIP.

Section 5 of the Act entitled “An Act to prohibit transportation of gambling devices in interstate and foreign commerce”, approved January 2, 1951 (15 U.S.C. 1175), (popularly known as the “Johnson Act”) is amended—

(1) in subsection (b)(2)(A), by striking “enacted” and inserting “in effect”; and

(2) by adding at the end the following:

“(d) NO PREEMPTION OF STATE LAWS.—Nothing in this section shall be construed to preempt the law of any State, the District of Columbia, Indian tribe (as that term is defined in section 4(e) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b(e)), or possession of the United States.”

AMENDMENT NO. 739

At the appropriate place in title III, insert the following:

SEC. 3. TRANSFER OF MOTOR CARRIER SAFETY FUNCTIONS FROM THE FEDERAL HIGHWAY ADMINISTRATION TO THE NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION.

(a) TRANSFER OF FUNCTIONS FROM FEDERAL HIGHWAY ADMINISTRATION.—Section 104(c) of title 49, United States Code, is amended—

(1) in paragraph (1), by adding “and” at the end;

(2) by striking paragraph (2); and

(3) by redesignating paragraph (3) as paragraph (2).

(b) TRANSFER OF FUNCTIONS TO NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION.—Section 105(c) of title 49, United States Code, is amended—

(1) in paragraph (1), by striking “and” at the end;

(2) by redesignating paragraph (2) as paragraph (3); and

(3) by inserting after paragraph (1) the following:

“(2) duties and powers related to motor carrier safety vested in the Secretary by chapters 5 and 315; and”.

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—Subject to paragraph (2), the amendments made by this section shall take effect on the date that is 180 days after the date of enactment of this Act.

(2) ACTIONS BY THE SECRETARY OF TRANSPORTATION.—The Secretary of Transportation may take such action as may be necessary to ensure the orderly transfer of the duties and powers related to motor carrier safety vested in the Secretary by chapters 5 and 315 of title 49, United States Code, and employees carrying out such duties and power, from the Federal Highway Administration to the National Highway Traffic Safety Administration.

AMENDMENT NO. 740

On page 91, between lines 9 and 10, insert the following:

TITLE —HIGHWAY TAX EQUITY AND SIMPLIFICATION

SEC. 1. SHORT TITLE.

This title may be cited as the “Highway Tax Equity and Simplification Act of 1999”.

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—Congress finds that—

(1) Congress should enact legislation to correct the distribution of the tax burden among the various classes of persons using the Federal-aid highways, or otherwise deriving benefits from such highways;

(2) the most recent highway cost allocation study by the Department of Transportation found that owners of heavy trucks significantly underpay Federal highway user fees relative to the costs such vehicles impose on such highways, while owners of lighter trucks and cars overpay such fees;

(3) pavement wear and tear is directly correlated with axle-weight loads and distance traveled, and to the maximum extent possible, Federal highway user fees should be structured based on this fundamental fact of use and resulting cost;

(4) the current Federal highway user fee structure is not based on this fundamental fact of use and resulting cost; to the contrary—

(A) the 12-percent excise tax applied to the sales of new trucks has no significant relationship to pavement damage or road use and does the poorest job of improving tax equity,

(B) the heavy vehicle use tax does not equitably apply to heavy trucks (such tax is capped with respect to trucks weighing over 75,000 pounds) and does not vary by annual mileage, thus 2 heavy trucks traveling 10,000 miles and 100,000 miles, respectively, pay the same heavy vehicle use tax, and

(C) diesel fuel taxes do a poor job recovering pavement costs because such taxes only increase marginally with weight increases while pavement damage increases exponentially with weight, and increasing the rates for diesel fuel will not resolve this fundamental flaw;

(5) truck taxes based on a combination of the weight of vehicles and the distance such trucks travel provide greater equity than a tax based on either of these 2 factors alone; and

(6) the States generally have in place mechanisms for verifying the registered weight of trucks and the miles such trucks travel.

(b) PURPOSES.—The purposes of this title are—

(1) to replace the heavy vehicle use tax and all other Federal highway user charges (except fuel taxes) with a Federal weight-distance tax which is designed to yield at least equal revenues for highway purposes and to provide equity among highway users; and

(2) to provide that such a tax be administered in cooperation with the States.

SEC. 3. REPEAL AND REDUCTION OF CERTAIN HIGHWAY TRUST FUND TAXES.

(a) REPEAL OF HEAVY VEHICLE USE TAX.—Subchapter D of chapter 36 of the Internal Revenue Code of 1986 (relating to tax on use of certain vehicles) is repealed.

(b) REPEAL OF TAX ON HEAVY TRUCKS AND TRAILERS SOLD AT RETAIL.—Section 4051(c) of the Internal Revenue Code of 1986 (relating to termination) is amended by striking “October 1, 2005” and inserting “July 1, 2000”.

(c) REPEAL OF TAX ON TIRES.—Section 4071(d) of the Internal Revenue Code of 1986

(relating to termination) is amended by striking “October 1, 2005” and inserting “July 1, 2000”.

(d) REDUCTION OF TAX RATE ON DIESEL FUEL TO EQUAL RATE ON GASOLINE.—Section 4081(a)(2)(A)(iii) of the Internal Revenue Code of 1986 (relating to rates of tax) is amended by striking “24.3 cents” and inserting “18.3 cents”.

(e) CONFORMING AMENDMENTS.—

(1) Section 4221(a) of the Internal Revenue Code of 1986 (relating to certain tax-free sales) is amended by striking “October 1, 2005” and inserting “July 1, 2000”.

(2) Subchapter A of chapter 62 of such Code (relating to place and due date for payment of tax) is amended by striking section 6156.

(3) The table of sections for subchapter A of chapter 62 of such Code is amended by striking the item relating to section 6156.

(4) Section 9503(b)(1) of such Code (relating to transfer to Highway Trust Fund of amounts equivalent to certain taxes) is amended by striking subparagraphs (B) and (C) and by redesignating subparagraphs (D) and (E) as subparagraphs (B) and (C), respectively

SEC. 4. TAX ON USE OF CERTAIN VEHICLES BASED ON WEIGHT-DISTANCE RATE.

(a) IN GENERAL.—Chapter 36 of the Internal Revenue Code of 1986, as amended by section

3(a), is amended by adding at the end the following:

“Subchapter D—Tax on Use of Certain Vehicles

“Sec. 4481. Imposition of tax.

“Sec. 4482. Definitions.

“Sec. 4483. Exemptions.

“Sec. 4484. Cross references.

“SEC. 4481. IMPOSITION OF TAX.

“(a) IMPOSITION OF TAX.—

“(1) IN GENERAL.—A tax is hereby imposed on the use of any highway motor vehicle (either in a single unit or combination configuration) which, together with the semitrailers and trailers customarily used in connection with highway vehicles of the same type as such highway motor vehicle, has a taxable gross weight of over 25,000 pounds at the rate of—

“(A) the cents per mile rate specified in the table contained in paragraph (2), or

“(B) in the case of a highway motor vehicle with a taxable gross weight in excess of the weight for the highest rate specified in such table for such vehicle, the cents per mile rate specified in paragraph (3).

“(2) RATE SPECIFIED IN TABLE.—The table contained in this paragraph is as follows:

| Taxable Gross Weight in Thousands of Pounds | Cents Per Mile | | | | | | | | |
|---|--------------------|--------------------|---------------------|--------------------|--------------------|--------------------|--------------------|--------------------|---------------------|
| | 2-axle single unit | 3-axle single unit | 4-axle+ single unit | 3-axle combination | 4-axle combination | 5-axle combination | 6-axle combination | 7-axle combination | 8-axle+ combination |
| Over 25 to 30 | 0.50 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| Over 30 to 35 | 1.00 | 0.25 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| Over 35 to 40 | 3.00 | 0.50 | 0.00 | 0.50 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| Over 40 to 45 | 5.00 | 1.50 | 0.50 | 1.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| Over 45 to 50 | 8.00 | 3.00 | 1.00 | 1.50 | 0.25 | 0.00 | 0.00 | 0.00 | 0.00 |
| Over 50 to 55 | 12.00 | 6.00 | 2.00 | 2.50 | 0.50 | 0.25 | 0.00 | 0.00 | 0.00 |
| Over 55 to 60 | 21.00 | 10.00 | 4.00 | 3.50 | 1.00 | 0.50 | 0.00 | 0.00 | 0.00 |
| Over 60 to 65 | 30.00 | 17.00 | 7.00 | 5.00 | 2.50 | 1.00 | 0.25 | 0.00 | 0.00 |
| Over 65 to 70 | ..... | 25.00 | 10.00 | 7.50 | 4.00 | 2.00 | 0.50 | 0.00 | 0.00 |
| Over 70 to 75 | ..... | 33.00 | 14.00 | 11.00 | 5.50 | 3.00 | 1.25 | 0.00 | 0.00 |
| Over 75 to 80 | ..... | 41.00 | 19.00 | 17.00 | 7.50 | 3.75 | 2.00 | 0.00 | 0.00 |
| Over 80 to 85 | ..... | 50.00 | 24.00 | 25.00 | 13.00 | 7.00 | 4.00 | 0.50 | 0.00 |
| Over 85 to 90 | ..... | ..... | 30.00 | ..... | 19.00 | 11.00 | 6.00 | 1.00 | 0.00 |
| Over 90 to 95 | ..... | ..... | 36.00 | ..... | 25.00 | 15.00 | 8.50 | 1.50 | 0.25 |
| Over 95 to 100 | ..... | ..... | 42.00 | ..... | ..... | 20.00 | 11.00 | 2.00 | 0.50 |
| Over 100 to 105 | ..... | ..... | 50.00 | ..... | ..... | 25.00 | 14.00 | 3.50 | 1.00 |
| Over 105 to 110 | ..... | ..... | ..... | ..... | ..... | 30.00 | 17.00 | 5.00 | 2.00 |
| Over 110 to 115 | ..... | ..... | ..... | ..... | ..... | 35.00 | 20.00 | 7.00 | 3.00 |
| Over 115 to 120 | ..... | ..... | ..... | ..... | ..... | ..... | 23.00 | 9.00 | 4.00 |
| Over 120 to 125 | ..... | ..... | ..... | ..... | ..... | ..... | 26.00 | 11.00 | 6.00 |
| Over 125 to 130 | ..... | ..... | ..... | ..... | ..... | ..... | 29.00 | 13.00 | 8.00 |
| Over 130 to 135 | ..... | ..... | ..... | ..... | ..... | ..... | 32.00 | 15.00 | 10.00 |
| Over 135 to 140 | ..... | ..... | ..... | ..... | ..... | ..... | 35.00 | 17.00 | 12.00 |
| Over 140 to 145 | ..... | ..... | ..... | ..... | ..... | ..... | ..... | 19.00 | 14.00 |
| Over 145 to 150 | ..... | ..... | ..... | ..... | ..... | ..... | ..... | 21.00 | 16.00 |

“(3) RATE SPECIFIED IN PARAGRAPH.—The cents per mile rate specified in this paragraph is as follows:

“(A) In the case of any single unit highway motor vehicle with 2 or more axles or any combination highway motor vehicle with 3 or 4 axles, the highest rate specified in the table contained in paragraph (2) for such vehicle, plus 10 cents per mile for each 5000 pounds (or fraction thereof) in excess of the taxable gross weight for such highest rate.

“(B) In the case of any combination highway motor vehicle with 5 or 6 axles, the highest rate specified in the table contained in paragraph (2) for such vehicle, plus 5 cents per mile for each 5000 pounds (or fraction thereof) in excess of the taxable gross weight for such highest rate.

“(C) In the case of any combination highway motor vehicle with 7 or more axles, the highest rate specified in the table contained in paragraph (2) for such vehicle, plus 2 cents

per mile for each 5000 pounds (or fraction thereof) in excess of the taxable gross weight for such highest rate.

“(b) DETERMINATION OF NUMBER OF AXLES.—For purposes of this section—

“(1) IN GENERAL.—The total number of axles with respect to any highway motor vehicle shall be determined without regard to any variable load suspension axle, except if such axle meets the requirements of paragraph (2).

“(2) ELIGIBILITY REQUIREMENTS.—The requirements of this paragraph are as follows:

“(A) All controls with respect to the variable load suspension axle are located outside of and inaccessible from the driver’s compartment of the highway motor vehicle.

“(B) The gross axle weight rating of all such axles with respect to the highway motor vehicle shall conform to the greater of—

“(i) the expected loading of the suspension of such vehicle, or

“(ii) 9,000 pounds.

“(3) VARIABLE LOAD SUSPENSION AXLE DEFINED.—The term ‘variable load suspension axle’ means an axle upon which a load may be varied voluntarily while the highway motor vehicle is enroute, whether by air, hydraulic, mechanical, or any combination of such means.

“(4) TERMINATION OF EXCEPTION.—The exception under paragraph (1) shall not apply after June 30, 2004.

“(c) DETERMINATION OF MILES.—

“(1) USE OF CERTAIN TOLL FACILITIES EXCLUDED.—For purposes of this section, the number of miles any highway motor vehicle is used shall be determined without regard to the miles involved in the use of a facility described in paragraph (2).

“(2) TOLL FACILITY.—A facility is described in this paragraph if such facility is a highway, bridge, or tunnel, the use of which is subject to a toll.

“(d) BY WHOM PAID.—The tax imposed by this section shall be paid by the person in whose name the highway motor vehicle is, or is required to be, registered under the law of the State or contiguous foreign country in which such vehicle is, or is required to be, registered, or, in case the highway motor vehicle is owned by the United States, by the agency or instrumentality of the United States operating such vehicle.

“(e) TIME FOR PAYING TAX.—The time for paying the tax imposed by subsection (a) shall be the time prescribed by the Secretary by regulations.

“(f) PERIOD TAX IN EFFECT.—The tax imposed by this section shall apply only to use before October 1, 2005.

“SEC. 4482. DEFINITIONS.

“(a) HIGHWAY MOTOR VEHICLE.—For purposes of this subchapter, the term ‘highway motor vehicle’ means any motor vehicle which is a highway vehicle.

“(b) TAXABLE GROSS WEIGHT.—For purposes of this subchapter—

“(1) IN GENERAL.—Except as provided in paragraph (2), the term ‘taxable gross weight’ means, when used with respect to any highway motor vehicle, the maximum weight at which the highway motor vehicle is legally authorized to operate under the laws of the State in which it is registered.

“(2) SPECIAL PERMITS.—If a State allows a highway motor vehicle to be operated for any period at a maximum weight which is greater than the weight determined under paragraph (1), its taxable gross weight for such period shall be such greater weight.

“(c) OTHER DEFINITIONS AND SPECIAL RULE.—For purposes of this subchapter—

“(1) STATE.—The term ‘State’ means a State and the District of Columbia.

“(2) USE.—The term ‘use’ means use in the United States on the public highways.

“SEC. 4483. EXEMPTIONS.

“(a) STATE AND LOCAL GOVERNMENT EXEMPTION.—Under regulations prescribed by the Secretary, no tax shall be imposed by section 4481 on the use of any highway motor vehicle by any State or any political subdivision of a State.

“(b) EXEMPTION FOR UNITED STATES.—The Secretary may authorize exemption from the tax imposed by section 4481 as to the use by the United States of any particular highway motor vehicle, or class of highway motor vehicles, if the Secretary determines that the imposition of such tax with respect to such use will cause substantial burden or expense which can be avoided by granting tax exemption and that full benefit of such exemption, if granted, will accrue to the United States.

“(c) CERTAIN TRANSIT-TYPE BUSES.—Under regulations prescribed by the Secretary, no tax shall be imposed by section 4481 on the use of any bus which is of the transit type (rather than of the intercity type) by a person who, for the last 3 months of the preceding year (or for such other period as the Secretary may by regulations prescribe for purposes of this subsection), met the 60-percent passenger fare revenue test set forth in section 6421(b)(2) (as in effect on the day before the day of the enactment of the Energy Tax Act of 1978) as applied to the period prescribed for the purposes of this subsection.

“(d) TERMINATION OF EXEMPTIONS.—Subsections (a) and (c) shall not apply on and after October 1, 2005.

“SEC. 4484. CROSS REFERENCES.

“(1) For penalties and administrative provisions applicable to this subchapter, see subtitle F.

“(2) For exemption for uses by Indian tribal governments (or their subdivisions), see section 7871.”

(b) ADMINISTRATION OF TAX.—To the maximum extent possible, the Secretary of the Treasury shall administer the tax imposed by section 4481 of the Internal Revenue Code of 1986 (as added by this section)—

(1) in cooperation with the States and in coordination with State administrative and reporting mechanisms, and

(2) through the use of the International Registration Plan and the International Fuel Tax Agreement.

SEC. 5. COOPERATIVE TAX EVASION EFFORTS.

The Secretary of Transportation is authorized to use funds authorized for expenditure under section 143 of title 23, United States Code, and administrative funds deducted under 104(a) of such title 23, to develop automated data processing tools and other tools or processes to reduce evasion of the tax imposed by section 4481 of the Internal Revenue Code of 1986 (as added by section 4(a)). These funds may be allocated to the Internal Revenue Service, States, or other entities.

SEC. 6. STUDY.

(a) IN GENERAL.—The Secretary of Transportation, in consultation with the Secretary of the Treasury, shall conduct a study of—

(1) the tax equity of the various Federal taxes deposited into the Highway Trust Fund,

(2) any modifications to the tax rates specified in section 4481 of the Internal Revenue Code of 1986 (as added by section 4(a)) to improve tax equity, and

(3) the administration and enforcement under subsection (e) of the tax imposed by section 4481 of the Internal Revenue Code of 1986 (as so added).

(b) REPORT.—Not later than July 1, 2002, and July 1 of every fourth year thereafter, the Secretary of Transportation shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a report on the study conducted under subsection (a) together with—

(1) recommended tax rate schedules developed under subsection (a)(2), and

(2) such recommendations as the Secretary may deem advisable to make the administration and enforcement described in subsection (a)(3) more equitable.

SEC. 7. EFFECTIVE DATE AND FLOOR STOCK REFUNDS.

(a) EFFECTIVE DATE.—The amendments made by this title shall take effect on July 1, 2000.

(b) FLOOR STOCK REFUNDS.—

(1) IN GENERAL.—If—

(A) before July 1, 2000, tax has been imposed under section 4071 or 4081 of the Internal Revenue Code of 1986 on any article, and

(B) on such date such article is held by a dealer and has not been used and is intended for sale,

there shall be credited or refunded (without interest) to the person who paid such tax (hereafter in this subsection referred to as the “taxpayer”) an amount equal to the excess of the tax paid by the taxpayer over the amount of such tax which would be imposed on such article had the taxable event occurred on such date.

(2) TIME FOR FILING CLAIMS.—No credit or refund shall be allowed or made under this subsection unless—

(A) claim therefore is filed with the Secretary of the Treasury before January 1, 2001, and

(B) in any case where an article is held by a dealer (other than the taxpayer) on July 1, 2000—

(i) the dealer submits a request for refund or credit to the taxpayer before October 1, 2000, and

(ii) the taxpayer has repaid or agreed to repay the amount so claimed to such dealer or has obtained the written consent of such dealer to the allowance of the credit or the making of the refund.

(3) EXCEPTION FOR ARTICLES HELD IN RETAIL STOCKS.—No credit or refund shall be allowed under this subsection with respect to any article in retail stocks held at the place where intended to be sold at retail.

(4) DEFINITIONS.—For purposes of this subsection, the terms “dealer” and “held by a dealer” have the respective meanings given to such terms by section 6412 of such Code; except that the term “dealer” includes a producer.

(5) CERTAIN RULES TO APPLY.—Rules similar to the rules of subsections (b) and (c) of section 6412 of such Code shall apply for purposes of this subsection.

AMENDMENT NO. 741

On page 91, between lines 9 and 10, insert the following:

SEC. 3. NATIONAL STANDARD TO PROHIBIT OPERATION OF MOTOR VEHICLES BY INTOXICATED INDIVIDUALS.

(a) IN GENERAL.—Subchapter I of chapter 1 of title 23, United States Code, is amended by adding at the end the following:

“§ 165. National standard to prohibit operation of motor vehicles by intoxicated individuals

“(a) WITHHOLDING OF APPORTIONMENTS FOR NONCOMPLIANCE.—

“(1) FISCAL YEAR 2003.—The Secretary shall withhold 5 percent of the amount required to be apportioned to any State under each of paragraphs (1), (3), and (4) of section 104(b) on October 1, 2002, if the State does not meet the requirements of paragraph (3) on that date.

“(2) SUBSEQUENT FISCAL YEARS.—The Secretary shall withhold 10 percent (including any amounts withheld under paragraph (1)) of the amount required to be apportioned to any State under each of paragraphs (1), (3), and (4) of section 104(b) on October 1, 2003, and on October 1 of each fiscal year thereafter, if the State does not meet the requirements of paragraph (3) on that date.

“(3) REQUIREMENTS.—A State meets the requirements of this paragraph if the State has enacted and is enforcing a law providing that an individual who has an alcohol concentration of 0.08 percent or greater while operating a motor vehicle in the State is guilty of the offense of driving while intoxicated (or an equivalent offense that carries the greatest penalty under the law of the State for operating a motor vehicle after having consumed alcohol).

“(b) PERIOD OF AVAILABILITY; EFFECT OF COMPLIANCE AND NONCOMPLIANCE.—

“(1) PERIOD OF AVAILABILITY OF WITHHELD FUNDS.—

“(A) FUNDS WITHHELD ON OR BEFORE SEPTEMBER 30, 2004.—Any funds withheld under subsection (a) from apportionment to any State on or before September 30, 2004, shall remain available until the end of the third fiscal year following the fiscal year for which the funds are authorized to be appropriated.

“(B) FUNDS WITHHELD AFTER SEPTEMBER 30, 2004.—No funds withheld under this section from apportionment to any State after September 30, 2004, shall be available for apportionment to the State.

“(2) APPORTIONMENT OF WITHHELD FUNDS AFTER COMPLIANCE.—If, before the last day of the period for which funds withheld under subsection (a) from apportionment are to remain available for apportionment to a State under paragraph (1)(A), the State meets the requirements of subsection (a)(3), the Secretary shall, on the first day on which the State meets the requirements, apportion to the State the funds withheld under subsection (a) that remain available for apportionment to the State.

“(3) PERIOD OF AVAILABILITY OF SUBSEQUENTLY APPORTIONED FUNDS.—

“(A) IN GENERAL.—Any funds apportioned under paragraph (2) shall remain available for expenditure until the end of the third fiscal year following the fiscal year in which the funds are so apportioned.

“(B) TREATMENT OF CERTAIN FUNDS.—Sums not obligated at the end of the period referred to in subparagraph (A) shall lapse.

“(4) EFFECT OF NONCOMPLIANCE.—If, at the end of the period for which funds withheld under subsection (a) from apportionment are available for apportionment to a State under paragraph (1)(A), the State does not meet the requirements of subsection (a)(3), the funds shall lapse.”.

(b) CONFORMING AMENDMENT.—The analysis for subchapter I of chapter 1 of title 23, United States Code, is amended by adding at the end the following:

“165. National standard to prohibit operation of motor vehicles by intoxicated individuals.”.

AMENDMENT NO. 742

At the appropriate place in title III, insert the following:

SEC. 3. TRANSFER OF FUNCTION FROM FEDERAL HIGHWAY ADMINISTRATION.

Section 104(c) of title 49, United States Code, is amended by inserting “and” after the semicolon at the end of paragraph (1), by striking paragraph (2), and by redesignating paragraph (3) as paragraph (2).

SEC. 2. TRANSFER OF FUNCTION TO NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION.

Section 105(c) of title 49, United States Code, is amended by striking “and” at the end of paragraph (1), by redesignating paragraph (2) as paragraph (3), and by inserting after paragraph (1) the following:

“(2) duties and powers related to motor carrier safety vested in the Secretary by chapters 5 and 315 of this title; and”.

SEC. 3. EFFECTIVE DATE.

The amendments made by sections 1 and 2 of this Act shall take effect on the 180th day following the date of enactment of this Act; except that the Secretary of Transportation may take such action as may be necessary to ensure the orderly transfer of the duties and powers related to motor carrier safety vested in the Secretary by chapters 5 and 315 of title 49, United States Code, and employees carrying out such duties and powers, from the Federal Highway Administration to the National Highway Traffic Safety Administration.

AMENDMENT NO. 743

At the appropriate place in title III, insert the following:

SEC. 3. (a) IN GENERAL.—Section 845(a) of title 18, United States Code, is amended—

(1) in paragraph (4), by adding “and” at the end; and

(2) by striking paragraph (5) and redesignating paragraph (6) as paragraph (5).

AMENDMENT NO. 744

On page 91, between lines 9 and 10, insert the following:

SEC. 3. FEDERAL LANDS HIGHWAYS PROGRAM.

Section 1101(8) of the Transportation Equity Act for the 21st Century (112 Stat. 112) is amended—

(1) by striking “each of fiscal years 1999 through 2003” each place it appears and inserting “fiscal year 1999”; and

(2) by adding at the end the following:

“(E) APPORTIONMENT TO ALL STATES.—For apportionment equally among the 50 States, for use for any activity for which funds may be made available from the Highway Trust Fund, \$706,000,000 for each of fiscal years 2000 through 2003.”.

AMENDMENT NO. 745

On page 91, between lines 9 and 10, insert the following:

SEC. 342. (a) STUDY.—The Secretary of the Treasury shall undertake a study of the following issues:

(1) FACTORS IN STATE ALLOCATION FORMULAS.—

(A) IN GENERAL.—The various factors described in subparagraph (B) used in State allocation formulas included in current Federal assistance programs and possible alternative factors described in subparagraph (C), including an analysis of the strengths and weaknesses of such factors and formulas.

(B) CURRENT FACTORS.—Factors described in this subparagraph include—

(i) rolling 3-year average of State per capita income,

(ii) State total taxable resources,

(iii) per capita income squared,

(iv) poverty population, including poverty population 5–17 years old, poverty population under 21, families with incomes between 130 percent and 185 percent of poverty level, children below 130 percent of poverty level, households below 150 percent of poverty level, and rural population in poverty, and

(v) population receiving benefits under a State program funded under part A of title IV of the Social Security Act, adult population receiving such benefits, children 5–17 years old in families above poverty level receiving such benefits.

(C) ALTERNATIVE FACTORS.—Factors described in this subparagraph include—

(i) State gross domestic product,

(ii) the representative tax system,

(iii) the inclusion of user fees in factors based on tax collections,

(iv) poverty measures which reflect State cost-of-living, and

(v) a more accurate measure of State fiscal capacity than State per capita income.

(2) FISCAL CONDITION AND CAPACITY.—The long-term outlook for the fiscal condition and fiscal capacity of Federal, State, and local governments.

(3) IMPACT OF PAYMENTS DEFICIT.—The impact on a State’s economy of running a persistent balance of payments deficit with the Federal Government.

(4) MEASURES LEADING TO MORE EQUITABLE RETURNS ON TAX DOLLARS.—Measures, including changes to allocation formulas, which would provide that each State’s return on each Federal tax dollar, including direct payments to individuals, grants to State and local government, procurement, salaries and wages, and other Federal spending, is at least \$0.95.

(5) IMPACT OF OTHER FACTORS.—The impacts of the cyclical nature of the economy and other factors, such as employment, on the expenditures, needs, and fiscal capacities of Federal, State, and local governments.

(6) RESPONSIVENESS OF DISTRIBUTION OF FEDERAL ASSISTANCE.—The responsiveness of the distribution of Federal assistance to—

(A) the cyclical nature of the economy and other factors identified under paragraph (5),

(B) the fiscal capacities of State and local governments,

(C) the need for services of State and local governments, and

(D) cost-of-living and cost-of-government differentials.

(7) ADMINISTRATION OF ALLOCATION FORMULAS.—The mathematical models, underlying data, and administration of Federal grant formulas, including the formulas examined under paragraph (1).

(b) STUDY PLAN.—The Secretary of the Treasury, in consultation with the Secretary of Commerce, the Comptroller General of the United States, and recognized organizations of elected officials of State and local governments, including regional organizations of such officials and officials of States that may receive substantially reduced funding under alternative methods of allocating Federal assistance, shall develop a plan for the completion of the study required by subsection (a). Such plan may provide for the participation of such individuals and organizations in the conduct of the study.

(c) REPORT OF STUDY.—Upon completion of the study required by subsection (a), the Secretary of the Treasury shall solicit the views of the persons and organizations with whom the Secretary was required to consult by subsection (b) and shall append such views to a final report to the President and Congress. Such report shall be submitted not later than June 30, 2000.

(d) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated and is hereby appropriated \$5,000,000 to carry out this section.

AMENDMENT NO. 746

On page 20, at the beginning of line 20, insert the following: “*Provided further*, That, notwithstanding any other provision of law, the portion of the funds made available by section 112 of the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999 (112 Stat. 2681–544), that is unobligated as of the date of enactment of this Act shall be apportioned equally among the States (other than the State referred to in that section) for use for any activity for which funds may be made available from the Highway Trust Fund.”.

AMENDMENT NO. 747

At the appropriate place in title III, insert the following:

SEC. 3. EQUITABLE ALLOCATION OF FUNDING UNDER NATIONAL AERONAUTICS AND SPACE ADMINISTRATION PROGRAMS.

(a) DEFINITIONS.—In this section—

(1) ADMINISTRATOR.—The term “Administrator” means the Administrator of the National Aeronautics and Space Administration.

(2) AGENCY EXPENDITURE.—The term “agency expenditure” means any payment made by the Administrator to a State, a political subdivision of a State, or any other public or private person or entity in a State in the form of—

(A) a grant or other form of financial assistance;

(B) a payment under a contract; compensation of an employee or consultant; or

(C) any other form.

(3) EQUITABLE STATE ALLOCATION.—The term “equitable State allocation”, with respect to a State and fiscal year, means the amount determined under subsection (c)(1) for the State and fiscal year.

(4) STATE.—The term “State” means each of the States, the District of Columbia, and the Commonwealth of Puerto Rico.

(5) STATE DOLLAR CONTRIBUTION TO THE FEDERAL GOVERNMENT.—The term “State dollar contribution to the Federal Government”, with respect to a State and fiscal year, means the amount of revenues under the Internal Revenue Code of 1986 collected from, and the amount of user fees paid or any other payments made to the Federal Government by, all public and private persons or entities in the State during the fiscal year.

(6) STATE PERCENTAGE CONTRIBUTION TO THE FEDERAL GOVERNMENT.—The term “State percentage contribution to the Federal Government”, with respect to a State and fiscal year, means the proportion, expressed as a percentage, that—

(A) the State dollar contribution to the Federal Government by the State; bears to

(B) the aggregate of the State dollar contributions to the Federal Government by all of the States for the fiscal year.

(b) DETERMINATIONS.—Not later than 30 days after the close of each fiscal year—

(1) the Secretary of the Treasury shall report to the Administrator the amount of revenues under the Internal Revenue Code of 1986 collected in each State during the fiscal year; and

(2) the Administrator shall determine the State dollar contribution to the Federal Government and the State percentage contribution to the Federal Government by each State for the fiscal year.

(c) EQUITABLE STATE ALLOCATION.—

(1) IN GENERAL.—Notwithstanding any other provision of law, the Administrator—

(A) shall make agency expenditures in each State in each fiscal year under each program administered by the Administrator, in an amount that is not less than the product obtained by multiplying—

(i) 90 percent of the amount that is equal to the aggregate amount of agency expenditures to be made under that program in all of the States for the fiscal year; by

(ii) the State percentage contribution to the Federal Government by the State for the fiscal year; or

(B) if making agency expenditures in a State in the amount determined under subparagraph (A) under any program is not practicable, shall make the requisite amount of funding available for use in the State under—

(i) other programs administered by the Administrator; or

(ii) transfer funds to the Secretary of Transportation to fund programs that apportion funds to States that are administered by the Secretary under title 23 or 49 of the United States Code.

(2) IMPLEMENTATION.—If, but for this section, the Administrator would make agency expenditures in a State in an amount that is less than the amount of the equitable State allocation, the Administrator shall reduce the amounts of agency expenditures to be made in States in which agency expenditures in more than the amounts of the equitable State allocations would be made, pro rata, by the amount necessary to enable the Administrator to make agency expenditures in the State in the full amount of its equitable State allocation.

AMENDMENT NO. 748

On page 91, between lines 9 and 10, insert the following:

SEC. 3 . . . EQUITABLE ALLOCATION OF FUNDING UNDER BUREAU OF LAND MANAGEMENT PROGRAMS.

(a) DEFINITIONS.—In this section:

(1) AGENCY EXPENDITURE.—The term “agency expenditure” means any payment made by the Secretary to a State, a political subdivision of a State, or any other public or private person or entity in a State, in the form of—

(A) a share of revenues received from Federal land management activity;

(B) a grant or other form of financial assistance;

(C) a payment under a contract;

(D) compensation of an employee or consultant; or

(E) any other form.

(2) EQUITABLE STATE ALLOCATION.—The term “equitable State allocation”, with respect to a State and fiscal year, means the amount determined under subsection (c)(1) for the State and fiscal year.

(3) SECRETARY.—The term “Secretary” means the Secretary of the Interior.

(4) STATE.—The term “State” means each of the States, the District of Columbia, and the Commonwealth of Puerto Rico.

(5) STATE DOLLAR CONTRIBUTION TO THE FEDERAL GOVERNMENT.—The term “State dollar contribution to the Federal Government”, with respect to a State and fiscal year, means the amount of revenues under the Internal Revenue Code of 1986 collected from, and the amount of user fees paid or any other payments made to the Federal Government by, all public or private persons or entities in the State during the fiscal year.

(6) STATE PERCENTAGE CONTRIBUTION TO THE FEDERAL GOVERNMENT.—The term “State percentage contribution to the Federal Government”, with respect to a State and fiscal year, means the proportion, expressed as a percentage, that—

(A) the State dollar contribution to the Federal Government by the State; bears to

(B) the aggregate of the State dollar contributions to the Federal Government by all States for the fiscal year.

(b) DETERMINATIONS.—Not later than 30 days after the end of each fiscal year—

(1) the Secretary of the Treasury shall report to the Secretary the amount of revenues under the Internal Revenue Code of 1986 collected in each State during the fiscal year;

(2) the Secretary shall determine with respect to the Department of the Interior, and the head of each other Federal agency shall report to the Secretary with respect to the agency, the amount of user fees paid or any other payments made to the agency by all public or private persons or entities in each State during the fiscal year; and

(3) the Secretary shall determine the State dollar contribution to the Federal Government and the State percentage contribution to the Federal Government by each State for the fiscal year.

(c) EQUITABLE STATE ALLOCATION.—

(1) IN GENERAL.—Notwithstanding any other provision of law, the Secretary—

(A) shall make agency expenditures in each State in each fiscal year under each program administered by the Secretary, acting through the Director of the Bureau of Land Management, in an amount that is not less than the product obtained by multiplying—

(i) 90 percent of the amount that is equal to the aggregate amount of agency expenditures to be made under that program in all States for the fiscal year; by

(ii) the State percentage contribution to the Federal Government by the State for the fiscal year; or

(B) if making agency expenditures in a State in the amount determined under subparagraph (A) under any program is not

practicable, shall make the requisite amount of funding available for use in the State under other programs administered by the Secretary.

(2) IMPLEMENTATION.—If, but for this section, the Secretary would make agency expenditures in a State in an amount that is less than the amount of the equitable State allocation, the Secretary shall reduce the amounts of agency expenditures to be made in States in which agency expenditures in more than the amounts of the equitable State allocations would be made, pro rata, by the amount necessary to enable the Secretary to make agency expenditures in the State in the full amount of its equitable State allocation.

AMENDMENT NO. 749

On page 91, between lines 9 and 10, insert the following:

SEC. 3 . . . EQUITABLE ALLOCATION OF FUNDING UNDER FOREST SERVICE PROGRAMS.

(a) DEFINITIONS.—In this section:

(1) AGENCY EXPENDITURE.—The term “agency expenditure” means any payment made by the Secretary to a State, a political subdivision of a State, or any other public or private person or entity in a State, in the form of—

(A) a share of revenues received from Federal land management activity;

(B) a grant or other form of financial assistance;

(C) a payment under a contract;

(D) compensation of an employee or consultant; or

(E) any other form.

(2) EQUITABLE STATE ALLOCATION.—The term “equitable State allocation”, with respect to a State and fiscal year, means the amount determined under subsection (c)(1) for the State and fiscal year.

(3) SECRETARY.—The term “Secretary” means the Secretary of Agriculture.

(4) STATE.—The term “State” means each of the States, the District of Columbia, and the Commonwealth of Puerto Rico.

(5) STATE DOLLAR CONTRIBUTION TO THE FEDERAL GOVERNMENT.—The term “State dollar contribution to the Federal Government”, with respect to a State and fiscal year, means the amount of revenues under the Internal Revenue Code of 1986 collected from, and the amount of user fees paid or any other payments made to the Federal Government by, all public or private persons or entities in the State during the fiscal year.

(6) STATE PERCENTAGE CONTRIBUTION TO THE FEDERAL GOVERNMENT.—The term “State percentage contribution to the Federal Government”, with respect to a State and fiscal year, means the proportion, expressed as a percentage, that—

(A) the State dollar contribution to the Federal Government by the State; bears to

(B) the aggregate of the State dollar contributions to the Federal Government by all States for the fiscal year.

(b) DETERMINATIONS.—Not later than 30 days after the end of each fiscal year—

(1) the Secretary of the Treasury shall report to the Secretary the amount of revenues under the Internal Revenue Code of 1986 collected in each State during the fiscal year;

(2) the Secretary shall determine with respect to the Department of Agriculture, and the head of each other Federal agency shall report to the Secretary with respect to the agency, the amount of user fees paid or any other payments made to the agency by all public or private persons or entities in each State during the fiscal year; and

(3) the Secretary shall determine the State dollar contribution to the Federal Government and the State percentage contribution to the Federal Government by each State for the fiscal year.

(c) **EQUITABLE STATE ALLOCATION.**—

(1) **IN GENERAL.**—Notwithstanding any other provision of law, the Secretary—

(A) shall make agency expenditures in each State in each fiscal year under each program administered by the Secretary, acting through the Chief of the Forest Service, in an amount that is not less than the product obtained by multiplying—

(i) 90 percent of the amount that is equal to the aggregate amount of agency expenditures to be made under that program in all States for the fiscal year; by

(ii) the State percentage contribution to the Federal Government by the State for the fiscal year; or

(B) if making agency expenditures in a State in the amount determined under subparagraph (A) under any program is not practicable, shall make the requisite amount of funding available for use in the State under other programs administered by the Secretary.

(2) **IMPLEMENTATION.**—If, but for this section, the Secretary would make agency expenditures in a State in an amount that is less than the amount of the equitable State allocation, the Secretary shall reduce the amounts of agency expenditures to be made in States in which agency expenditures in more than the amounts of the equitable State allocations would be made, pro rata, by the amount necessary to enable the Secretary to make agency expenditures in the State in the full amount of its equitable State allocation.

AMENDMENT NO. 750

At the appropriate place in title III, insert the following:

SEC. 3. EQUITABLE ALLOCATION OF AIRPORT IMPROVEMENT PROGRAM FUNDING.

(a) **DEFINITIONS.**—In this section:

(1) **AIRPORT AND AIRWAY TRUST FUND.**The term “Airport and Airway Trust Fund” means the trust fund established under section 9502 of the Internal Revenue Code of 1986.

(2) **EQUITABLE STATE ALLOCATION.**—The term “equitable State allocation”, with respect to a State and fiscal year, means the amount determined under subsection (c)(1) for the State and fiscal year.

(3) **SECRETARY.**—The term “Secretary” means the Secretary of Transportation.

(4) **STATE.**—The term “State” means each of the States, the District of Columbia, and the Commonwealth of Puerto Rico.

(5) **STATE DOLLAR CONTRIBUTION TO THE AIRPORT AND AIRWAY TRUST FUND.**—The term “State dollar contribution to the Airport and Airway Trust Fund”, with respect to a State and fiscal year, means the amount of funds equal to the amounts transferred to the Airport and Airway Trust Fund under section 9502 of the Internal Revenue Code of 1986 that are equivalent to the taxes described in section 9502(b) of the Internal Revenue Code of 1986 that are collected in that State.

(6) **STATE PERCENTAGE CONTRIBUTION TO THE AIRPORT AND AIRWAY TRUST FUND.**—The term “State percentage contribution to the Airport and Airway Trust Fund”, with respect to a State and fiscal year, means the proportion, expressed as a percentage, that the State dollar contribution to the Airport and Airway Trust Fund bears to the aggregate of the State dollar contributions to the Airport

and Airway Trust Fund collected from all of the States for the fiscal year.

(b) **DETERMINATIONS.**—Not later than 30 days after the close of each fiscal year—

(1) the Secretary of the Treasury shall report to the Secretary the amount equal to the amount of taxes collected in each State during the fiscal year that are transferred to the Airport and Airway Trust Fund; and

(2) the Secretary shall determine the State dollar contribution to the Airport and Airway Trust Fund and State percentage contribution to the Airport and Airway Trust Fund of each State for the fiscal year.

(c) **EQUITABLE STATE ALLOCATION.**—

(1) **IN GENERAL.**—

(A) **ALLOCATION.**—Notwithstanding any other provision of law, each State shall be entitled to receive under each program administered by the Secretary for which funds are authorized to be transferred from the Airport and Airway Trust Fund, an amount for a fiscal year that is not less than 90 percent of the amount that is equal to the aggregate amount to be paid under that program to all of the States for the fiscal year (adjusted for any administrative costs referred to in section 9502(d)(1)(C) of the Internal Revenue Code of 1986) multiplied by the State percentage contribution to the Airport and Airway Trust Fund for the fiscal year.

(B) **RULE OF CONSTRUCTION.**—Nothing in this section is intended to permit a use of amounts made available to a State under this section in a manner that does not meet the applicable requirements of part B of subtitle VII of title 49, United States Code.

(2) **IMPLEMENTATION.**—If, but for this section, a State would be entitled to receive less than the amount of its equitable State allocation under a program administered by the Secretary, the Secretary shall deduct from the amounts to be paid to States that would be entitled to receive more than the equitable State allocations for those States, pro rata, the amount necessary to enable the Secretary to pay the State the full amount of its equitable State allocation.

AMENDMENT NO. 751

On page 80, line 11 strike “.” and insert: “*Provided further*, for any state to receive funding under this provision it must match the Federal funding made available under this provision with a commensurate amount of State funding: *Provided further*, notwithstanding any other provision of law, no funds made available under this provision shall be eligible for use on any title 23 programs.”

AMENDMENT NO. 752

At the appropriate place in title III, insert the following:

SEC. 3. (a) IN GENERAL.—Section 127(a) of title 23, United States Code, is amended—

(1) by striking “With respect to the State of Colorado, vehicles designed to carry 2 or more precast concrete panels shall be considered to be a non-divisible load.”; and

(2) by striking “The State of Louisiana may allow, by special permit” and all that follows through the end of the subsection.

(b) Section 1212 of the Transportation Equity Act for the 21st Century (112 Stat. 194) is amended by striking subsection (d).

AMENDMENT NO. 753

On page 80, line 11 strike “.” and insert: “*Provided further*, for any state to receive funding under this provision it must match the Federal funding made available under this provision with a commensurate amount of State funding: *Provided further*, notwithstanding any other provision of law, no funds

made available under this provision shall be eligible for use on any title 23 programs.”

AMENDMENT NO. 754

At the appropriate place in title III, insert the following:

SEC. 3. (a) IN GENERAL.—Section 127(a) of title 23, United States Code, is amended—

(1) by striking “With respect to the State of Colorado, vehicles designed to carry 2 or more precast concrete panels shall be considered to be a non-divisible load.”; and

(2) by striking “The State of Louisiana may allow, by special permit” and all that follows through the end of the subsection.

(b) Section 1212 of the Transportation Equity Act for the 21st Century (112 Stat. 194) is amended by striking subsection (d).

AMENDMENT NO. 755

On page 80, strike line 1 and all that follows through page 81, line 11.

AMENDMENT NO. 756

On page 2, line 6 strike “\$1,900,000” and insert “\$5,000,000.”

AMENDMENT NO. 757

On page 10 line 5 insert the following: “U.S. Coast Guard Air Facility (AIRFAC) Long Island”

For necessary expenses, not otherwise provided for, for the operation and maintenance of the AIRFAC Long Island, \$2,900,000.

AMENDMENT NO. 758

Beginning on page 80, strike line 1 and all that follows through page 81, line 2 and insert:

“Section 321. Notwithstanding any provision of law, no state shall receive of the total budgetary resources made available by this Act to carry 49 U.S.C. 5307, 5309, 5310, and 5311, a percentage less than that state’s percentage of the total annual ridership of programs funded by this Act to carry out 49 U.S.C. 5307, 5309, 5310, and 5311: *Provided further*, That the Secretary of Transportation will use ridership figures of the previous fiscal year in the determination of each state’s ridership percentage.”

AMENDMENT NO. 759

On page 80, line 6 strike “12.5 percent” and insert “50 percent.”

AMENDMENT NO. 760

On page 80, line 2 strike “12.5 percent” and insert “75 percent.”

AMENDMENT NO. 761

At the appropriate place in title II, insert the following:

“**REIMBURSEMENT FOR SALARIES AND EXPENSES.**—The National Transportation Safety Board shall reimburse the State of New York and local counties in New York during the period beginning on June 12, 1997, and ending on September 30, 2000, an aggregate amount equal to \$6,059,000 for costs (including salaries and expenses) incurred in connection with the crash of TWA Flight 800.”

AMENDMENT NO. 762

On page 2, line 9 strike “\$600,000.” and insert “1,500,000”

AMENDMENT NO. 763

On page 9, line 25 strike “\$12,450,000” and insert “\$25,000,000”

AMENDMENT NO. 764

On page 19, line 22 strike “\$20,000,000” and insert “\$100,000,000.”

AMENDMENT NO. 765

On page 69, line 9 strike "100" and insert "107."

AMENDMENT NO. 766

On page 4, line 4, strike "\$1,222,000" and insert "\$2,500,000."

AMENDMENT NO. 767

On page 4, line 10, strike "\$7,200,000" and insert "\$12,500,000."

AMENDMENT NO. 768

On page 4, line 7, strike "\$5,100,000" and insert "\$12,500,000."

AMENDMENT NO. 769

On page 5, line 25, strike "\$2,900,000, of which \$2,635,000 shall remain available" and insert "\$12,500,000, of which \$11,300,000 shall remain available".

AMENDMENT NO. 770

On page 17, line 7, strike ".25 percent" and insert "7 percent".

AMENDMENT NO. 771

On page 20, line 16, strike "\$6,000,000" and all that follows through "and" on line 17.

AMENDMENT NO. 772

On page 25, line 1, strike "\$2,000,000" and insert "\$12,500,000".

AMENDMENT NO. 773

On page 29, line 13, strike "\$571,000,000" and insert "\$650,000,000".

AMENDMENT NO. 774

On page 82, line 23, strike "210 miles" and insert "1,000 miles".

AMENDMENT NO. 775

On page 34, line 2, following "projects," insert: "giving primary consideration to those projects located in states with the highest state expenditures on public transportation,".

AMENDMENT NO. 776

On page 20, line 3, strike "\$31,000,000" and insert "35,000,000".

AMENDMENT NO. 777

On page 67, line 19, strike "\$1,000,000" and insert "2,000,000".

AMENDMENT NO. 778

On page 20, line 18, strike "\$5,000,000" and insert "\$10,400,000".

AMENDMENT NO. 779

Beginning on page 86, strike line 5 and all that follows through page 87, line 7.

AMENDMENT NO. 780

On page 63, line 13, strike "\$11,496,000" and insert "\$12,500,000".

AMENDMENT NO. 781

On page 3, line 5, strike "\$45,000" and insert "\$60,000".

AMENDMENT NO. 782

On page 84, line 11, strike "12 per centum" and insert "50 per centum".

AMENDMENT NO. 783

On page 83, line 19, strike "80 percent" and insert "50 percent".

AMENDMENT NO. 784

On page 15, line 25, strike "\$150,000,000" and insert "\$173,000,000".

AMENDMENT NO. 785

On page 19, line 16, strike "\$391,450,000" and insert "\$641,450,000".

AMENDMENT NO. 786

On page 55, line 12, strike "' and insert the following in lieu thereof:
"Rochester Central Bus facility, New York; Long Beach Central Bus Facility, New York; Broome County Buses and Related Equipment, New York:".

AMENDMENT NO. 787

Beginning on page 34, strike line 4 and all that follows through page 35, line 12.

AMENDMENT NO. 788

On page 38, strike lines 12 and 13.

AMENDMENT NO. 789

On page 38, strike lines 16 and 17.

AMENDMENT NO. 790

On page 39, strike lines 8 and 9.

AMENDMENT NO. 791

On page 41, strike lines 12 and 17.

AMENDMENT NO. 792

On page 54, strike lines 17 and 18.

AMENDMENT NO. 793

On page 56, strike lines 19 and 20.

AMENDMENT NO. 794

Beginning on page 57, strike lines 23 and all that follows through page 58, line 8.

AMENDMENT NO. 795

On page 58, strike lines 13 and 19.

AMENDMENT NO. 796

Beginning on page 59, strike line 5 and all that follows through page 60, line 4.

AMENDMENT NO. 797

On page 78, strike lines 16 and 23.

AMENDMENT NO. 798

On page 83, line 17, strike "\$950,000," and insert "\$1,500,000".

AMENDMENT NO. 799

Beginning on page 78, strike line 24 and all that follows through page 79, line 4.

AMENDMENT NO. 800

Beginning on page 84, strike line 15 and all that follows through page 85, line 11.

AMENDMENT NO. 801

On page 66, line 22, strike "\$4,500,000" and insert "\$5,000,000".

AMENDMENT NO. 802

On page 41, strike line 24.

AMENDMENT NO. 803

On page 42, strike lines 3 through 5.

AMENDMENT NO. 804

On page 42, strike lines 23 and 24.

AMENDMENT NO. 805

On page 43, strike lines 3 and 4.

AMENDMENT NO. 806

On page 43, strike lines 5 and 6.

AMENDMENT NO. 807

On page 43, strike lines 7 and 8.

AMENDMENT NO. 808

On page 43, strike lines 18 and 19.

AMENDMENT NO. 809

On page 44, strike lines 5 and 6.

AMENDMENT NO. 810

On page 53, strike line 1.

AMENDMENT NO. 811

On page 55, strike line 12.

AMENDMENT NO. 812

On page 55, strike lines 10 and 11.

AMENDMENT NO. 813

On page 55, strike lines 8 and 9.

AMENDMENT NO. 814

On page 55, strike line 7.

AMENDMENT NO. 815

On page 55, strike lines 5 and 6.

AMENDMENT NO. 816

On page 55, strike lines 3 and 4.

AMENDMENT NO. 817

On page 55, strike lines 1 and 2.

AMENDMENT NO. 818

On page 54, strike lines 17 and 18.

AMENDMENT NO. 819

On page 54, strike lines 15 and 16.

AMENDMENT NO. 820

On page 54, strike lines 13 and 14.

AMENDMENT NO. 821

On page 54, strike line 12.

AMENDMENT NO. 822

On page 54, strike line 11.

AMENDMENT NO. 823

On page 54, strike lines 9 and 10.

AMENDMENT NO. 824

On page 54, strike lines 7 and 8.

AMENDMENT NO. 825

On page 54, strike lines 5 and 6.

AMENDMENT NO. 826

On page 54, strike lines 3 and 4.

AMENDMENT NO. 827

On page 54, strike line 1.

AMENDMENT NO. 828

On page 53, strike lines 24 and 25.

AMENDMENT NO. 829

On page 53, strike lines 22 and 23.

AMENDMENT NO. 830

On page 53, strike line 21.

AMENDMENT NO. 831

On page 53, strike lines 19 and 20.

AMENDMENT NO. 832
On page 53, strike line 18.

AMENDMENT NO. 833
On page 53, strike lines 16 and 17.

AMENDMENT NO. 834
On page 53, strike lines 14 and 15.

AMENDMENT NO. 835
On page 53, strike lines 12 and 13.

AMENDMENT NO. 836
On page 53, strike lines 10 and 11.

AMENDMENT NO. 837
On page 53, strike lines 8 and 9.

AMENDMENT NO. 838
On page 53, strike lines 6 and 7.

AMENDMENT NO. 839
On page 53, strike lines 3 and 4.

AMENDMENT NO. 840
On page 53, strike line 2.

AMENDMENT NO. 841
On page 52, strike line 25.

AMENDMENT NO. 842
On page 52, strike line 24.

AMENDMENT NO. 843
On page 52, strike lines 23.

AMENDMENT NO. 844
On page 52, strike lines 21 and 22.

AMENDMENT NO. 845
On page 52, strike lines 19 and 20.

AMENDMENT NO. 846
On page 52, strike lines 17 and 18.

AMENDMENT NO. 847
On page 52, strike lines 15 and 16.

AMENDMENT NO. 848
On page 52, strike line 14.

AMENDMENT NO. 849
On page 52, strike lines 12 and 13.

AMENDMENT NO. 850
On page 52, strike lines 10 and 11.

AMENDMENT NO. 851
On page 52, strike lines 8 and 9.

AMENDMENT NO. 852
On page 52, strike lines 4 and 5.

AMENDMENT NO. 853
On page 52, strike line 3.

AMENDMENT NO. 854
On page 52, strike lines 1 and 2.

AMENDMENT NO. 855
On page 51, strike lines 23 and 24.

AMENDMENT NO. 856
On page 51, strike lines 21 and 22.

AMENDMENT NO. 857
On page 51, strike lines 17 and 18.

AMENDMENT NO. 858
On page 51, strike line 16.

AMENDMENT NO. 859
On page 51, strike line 8.

AMENDMENT NO. 860
On page 51, strike lines 6 and 7.

FEINSTEIN AMENDMENTS NOS. 861–904
(Ordered to lie on the table.)
Mrs. FEINSTEIN submitted 44 amendments intended to be proposed by her to the bill, S. 1143, supra; as follows:

AMENDMENT NO. 861
On page 80, line 2, strike “12.5 percent” and insert “16 percent”.

AMENDMENT NO. 862
On page 80, line 4, strike “5309”.

AMENDMENT NO. 863
On page 80, strike lines 1 through 11 and redesignate the following sections accordingly.

AMENDMENT NO. 864
On page 80, line 2, strike “12.5” and insert “15.8”.
On page 91, after line 9, insert the following new Section:
SEC. 342. Section 5336 of title 49, United States Code, is amended—
(1) in subsection (b)(2), by striking “33.29 percent” and inserting “53.29 percent”;
(2) in subsection (c), by striking “66.71 percent” and inserting “46.71 percent”;
(3) in subsection (c)(1), by striking “73.39 percent” and inserting “83.39 percent”; and
(4) in subsection (c)(2), by striking “26.61 percent” and inserting “16.61 percent”.

AMENDMENT NO. 865
On page 80, line 11, insert after “apportionments” the following: “*Provided further*, That the limitation set forth in this section shall not apply to a State if the Secretary of Transportation determines that such a State has transit capital and operating funding needs that are in excess of the funding that would be provided pursuant to the 12.5 percent limitation”.

AMENDMENT NO. 866
On page 80, line 11, insert after “apportionments” the following: “: *Provided further*, That the limitation set forth in this section shall not apply to a State if the total annual transit trips in such State is equal to 12.5 percent or more of the total annual transit trips in all States”.

AMENDMENT NO. 867
On page 80, line 11, insert after “apportionments” the following: “: *Provided further*, That the limitation set forth in this section shall not apply to a State if the total net project cost of all new fixed guideway projects in final design or construction in such State is equal to 12.5 percent or more of the total net project cost of all new fixed guideway projects in final design or construction in all States”.

AMENDMENT NO. 868
On page 80, line 11, insert after “apportionments” the following: “: *Provided further*, That the limitation set forth in this section

shall not apply to any State in which public transportation authority has entered into a Consent Decree that arises out of litigation commenced in Federal Court under title VI of the Civil Rights Act of 1964 and that results in the increased expenditure of public funds for bus services”.

AMENDMENT NO. 869
On page 80, strike lines 1 through 11 and insert the following:
SEC 321. Notwithstanding any other provision of law, no State’s share of the total budget resources made available by this Act to carry out 49 U.S.C. 5307, 5309, 5310, and 5311 shall exceed the ratio that the total annual transit directional route miles in such State bears to the total annual transit directional route miles in all States: *Provided*, That for purposes of this calculation the Federal Transit Administration shall include the appropriate state distribution of the funding provided to urbanized areas: *Provided further*, That the amounts recovered from such reductions shall be distributed equally: *Provided further*, That such reductions and increases shall be made only to the formula apportionments.

AMENDMENT NO. 870
On page 80, strike lines 1 through 11 and insert the following:
SEC 321. Notwithstanding any other provision of law, no State’s share of the total budget resources made available by this Act to carry out 49 U.S.C. 5307, 5309, 5310, and 5311 shall exceed the ratio that the total net project cost of all fixed guideway projects in final design or construction in such State bears to the total net project cost of such projects in all States: *Provided*, That for purposes of this calculation the Federal Transit Administration shall include the appropriate state distribution of the funding provided to urbanized areas: *Provided further*, That the amounts recovered from such reductions shall be distributed equally: *Provided further*, That such reductions and increases shall be made only to the formula apportionments.

AMENDMENT NO. 871
On page 80, strike lines 1 through 11 and insert the following:
SEC 321. Notwithstanding any other provision of law, no State’s share of the total budget resources made available by this Act to carry out 49 U.S.C. 5307, 5309, 5310, and 5311 shall exceed the ratio that the total annual transit trips in such State bears to the total annual transit trips in all States: *Provided*, That for purposes of this calculation the Federal Transit Administration shall include the appropriate state distribution of the funding provided to urbanized areas: *Provided further*, That the amounts recovered from such reductions shall be distributed equally: *Provided further*, That such reductions and increases shall be made only to the formula apportionments.

AMENDMENT NO. 872
On page 34, strike line 7.
On page 35, strike lines 15 and 16.
On page 35, strike line 25.
On page 36, strike line 1.
On page 38, strike lines 16 and 17.
On page 39, strike lines 8 and 9.
On page 39, strike line 24 and 25.
On page 41, strike lines 13 through 17.
On page 46, strike lines 1 and 2.
On page 46, strike lines 7 through 10.
On page 54, strike line 2.
On page 59, strike line 22.

AMENDMENT NO. 873

On page 91, after line 9, insert the following new Section:

SEC. 342. Section 104(b)(1)(A) of title 23, United States Code, relating to the National Highway System Program, is amended by striking "25 percent" in clause (i) and inserting "10 percent" and by striking "35 percent" in clause (ii) and inserting "50 percent".

AMENDMENT NO. 874

On page 91, after line 9, insert the following new Section:

SEC. 342. Section 104(b)(3)(A) of title 23, United States Code, relating to the Surface Transportation Program, is amended by striking "25 percent" in clause (i) and inserting "10 percent" and by striking "40 percent" in clause (ii) and inserting "55 percent".

AMENDMENT NO. 875

On page 91, after line 9, insert the following new Section:

SEC. 342. Section 104(b)(4) of title 23, United States Code, relating to the Interstate Maintenance Program, is amended by striking "33½ percent" in subparagraph (A) and inserting "23½ percent" and by striking "33½ percent" in subparagraph (B) and inserting "43½ percent".

AMENDMENT NO. 876

On page 91, after line 9, insert the following new Section:

SEC. 342. Section 104(b)(3)(A) of title 23, United States Code, relating to the Congestion Mitigation and Air Quality Improvement Program, is amended—

- (1) in subparagraph (B)(i), by striking "0.8" and inserting "0.6";
- (2) in subparagraph (B)(vi), by striking "1.4" and inserting "1.6";
- (3) in subparagraph (C)(i), by striking "1.2" and inserting "1.4"; and
- (4) in subparagraph (D), by striking "½ of 1 percent" and inserting "¼ of 1 percent".

AMENDMENT NO. 877

On page 91, after line 9, insert the following new Section:

SEC. 342. Section 104(e) of title 23, United States Code, relating to the Highway Bridge Program, is amended by adding the end of thereof the following new sentence: "Notwithstanding any other provision of this subsection, the ratio which the amount of funding apportioned to a State under this section in any fiscal year bears the amount of such funding apportioned to all States in such year shall not exceed 110 percent of the ratio which the population in such State bears to the population in all States."

AMENDMENT NO. 878

On page 91, after line 9, insert the following new Section:

SEC. 342. Section 114(e) of title 23, United States Code, is amended by striking "more than 10 per centum or less than 0.25 per centum" and inserting "more than 15 per centum or less than 0.10 per centum".

AMENDMENT NO. 879

At the appropriate place, insert the following:

SEC. _____. Notwithstanding any other provision of law, amounts made available under this Act for grants and loans for capital projects to replace, rehabilitate, and purchase buses and related equipment and to

construct bus-related facilities under section 5309 of title 49, United States Code, shall be allocated among States on a pro rata basis, based on the mass transit ridership of each State, as compared to the total mass transit ridership of the United States, as determined by the Federal Transit Administration.

AMENDMENT NO. 880

At the appropriate place, insert the following:

SEC. _____. Notwithstanding any other provision of law, amounts made available under this Act for grants and loans for capital projects to replace, rehabilitate, and purchase buses and related equipment and to construct bus-related facilities under section 5309 of title 49, United States Code, shall be allocated among States on a pro rata basis, based on the population of each State, as compared to the total population of the United States, based on the most recent population statistics compiled by the Bureau of the Census of the Department of Commerce.

AMENDMENT NO. 881

At the appropriate place, insert the following:

SEC. _____. Notwithstanding any other provision of law, amounts made available under this Act for grants and loans for capital projects for new fixed guideway systems and extensions to existing fixed guideway systems under section 5309 of title 49, United States Code, shall be allocated among States on a pro rata basis, based on the population of each State, as compared to the total population of the United States, based on the most recent population statistics compiled by the Bureau of the Census of the Department of Commerce.

AMENDMENT NO. 882

On page 91, between lines 9 and 10, insert the following:

SEC. 3. OBLIGATION OF CONGESTION MITIGATION AND AIR QUALITY IMPROVEMENT PROGRAM FUNDS.

Notwithstanding any other provision of this Act or any other law, for fiscal year 2000, funds described in section 1101(a)(5) of the Transportation Equity Act for the 21st Century (112 Stat. 112) shall be available for obligation, at the discretion of the Administrator of the Environmental Protection Agency, for the purpose of carrying out any activity that the Administrator is authorized to carry out under any law.

AMENDMENT NO. 883

On page 91, between lines 9 and 10, insert the following:

SEC. 3. APPORTIONMENT OF HIGHWAY FUNDS.

(a) DEFINITIONS.—In this section:
 (1) HIGHWAY FUNDS.—The term "highway funds" means the total apportionments made available for fiscal year 2000 under sections 104(b), 104(f), 105, 117, 144, and 206 of title 23, United States Code, and section 201 of the Appalachian Regional Development Act of 1965 (40 U.S.C. App.).

(2) PERISHABLE AGRICULTURAL COMMODITY.—The term "perishable agricultural commodity" has the meaning given the term in section 1(b) of the Perishable Agricultural Commodities Act, 1930 (7 U.S.C. 499a(b)).

(3) STATE.—The term "State" means any of the 50 States and the District of Columbia.

(b) APPORTIONMENT.—Notwithstanding any other provision of this Act or any other law, the highway funds shall be apportioned among the States in the ratio that—

(1) the quantity of perishable agricultural commodities produced in the State during the most recent year for which data are available (as determined by the Secretary of Agriculture); bears to

(2) the quantity of perishable agricultural commodities produced in all States during that year (as determined by the Secretary of Agriculture).

AMENDMENT NO. 884

On page 91, between lines 9 and 10, insert the following:

SEC. 3. MAXIMUM HIGHWAY FUNDS APPORTIONMENT TO EACH STATE.

(a) DEFINITIONS.—In this section:

(1) HIGHWAY FUNDS.—The term "highway funds" means the total apportionments made available for fiscal year 2000 under sections 104(b), 104(f), 105, 117, 144, and 206 of title 23, United States Code, and section 201 of the Appalachian Regional Development Act of 1965 (40 U.S.C. App.).

(2) STATE.—The term "State" means any of the 50 States and the District of Columbia.

(b) DETERMINATION OF RATIO.—For each State, the Secretary of Transportation shall determine the ratio that—

(1) the population of the State (as determined using the latest available annual estimates prepared by the Secretary of Commerce); bears to

(2) the population of all States (as determined using the latest available annual estimates prepared by the Secretary of Commerce).

(c) MAXIMUM APPORTIONMENT.—Notwithstanding any other provision of this Act or any other law, a State shall not receive an amount of highway funds that is greater than the State's percentage of the estimated tax payments attributable to highway users in all States paid into the Highway Trust Fund (other than the Mass Transit Account) in the latest fiscal year for which data are available.

(d) REDISTRIBUTION OF HIGHWAY FUNDS.—The amount of highway funds made available by application of subsection (c) shall be redistributed among the States in the ratio determined under subsection (b).

AMENDMENT NO. 885

On page 91, between lines 9 and 10, insert the following:

SEC. 3. MAXIMUM HIGHWAY FUNDS APPORTIONMENT TO EACH STATE.

(a) DEFINITIONS.—In this section:

(1) HIGHWAY FUNDS.—The term "highway funds" means the total apportionments made available for fiscal year 2000 under sections 104(b), 104(f), 105, 117, 144, and 206 of title 23, United States Code, and section 201 of the Appalachian Regional Development Act of 1965 (40 U.S.C. App.).

(2) STATE.—The term "State" means any of the 50 States and the District of Columbia.

(b) DETERMINATION OF RATIO.—For each State, the Secretary of Transportation shall determine the ratio that—

(1) the population of the State (as determined using the latest available annual estimates prepared by the Secretary of Commerce); bears to

(2) the population of all States (as determined using the latest available annual estimates prepared by the Secretary of Commerce).

(c) MAXIMUM APPORTIONMENT.—Notwithstanding any other provision of this Act or any other law, a State shall not receive an amount of highway funds that is greater than the amount obtained by multiplying—

(1) the amount that is equal to 120 percent of the amount of highway funds made available to all States; by

(2) the ratio determined under subsection (b) for the State.

(d) **REDISTRIBUTION OF HIGHWAY FUNDS.**—The amount of highway funds made available by application of subsection (c) shall be redistributed among the States in the ratio determined under subsection (b).

AMENDMENT No. 886

On page 80, line 11, insert after “apportionments” the following: “: *Provided further*, That the limitation set forth in this section shall not apply unless authorized by the appropriate authorization committees.

AMENDMENT No. 887

On page 91, between lines 9 and 10, insert the following:

SEC. 3 . . . APPORTIONMENT OF HIGHWAY FUNDS.

(a) **DEFINITIONS.**—In this section:
(1) **HIGHWAY FUNDS.**—The term “highway funds” means the total apportionments made available for fiscal year 2000 under sections 104(b), 104(f), 105, 117, 144, and 206 of title 23, United States Code, and section 201 of the Appalachian Regional Development Act of 1965 (40 U.S.C. App.).

(2) **STATE.**—The term “State” means any of the 50 States and the District of Columbia.

(b) **APPORTIONMENT.**—Notwithstanding any other provision of this Act or any other law, the highway funds shall be apportioned among the States in the ratio that—

(1) the percentage of transit riders in each state during the most recent year for which data are available (as determined by the Secretary of Transportation); bears to

(2) the national totals of transit riders (as determined by the Secretary of Transportation).

AMENDMENT No. 888

On page 91, between lines 9 and 10, insert the following:

SEC. 3 . . . APPORTIONMENT OF HIGHWAY FUNDS.

(a) **DEFINITIONS.**—In this section:
(1) **HIGHWAY FUNDS.**—The term “highway funds” means the total apportionments made available for fiscal year 2000 under sections 104(b), 104(f), 105, 117, 144, and 206 of title 23, United States Code, and section 201 of the Appalachian Regional Development Act of 1965 (40 U.S.C. App.).

(2) **STATE.**—The term “State” means any of the 50 States and the District of Columbia.

(b) **APPORTIONMENT.**—Notwithstanding any other provision of this Act or any other law, the highway funds shall be apportioned among the States in the ratio that—

(1) the amount of coastline of each state—excluding Alaska and Hawaii during the most recent year for which data are available (as determined by the Secretary of Commerce); bears to

(2) the amount of coastline of all States—excluding Alaska and Hawaii—during that year (as determined by the Secretary of Commerce).

AMENDMENT No. 889

On page 91, between lines 9 and 10, insert the following:

SEC. 3 . . . APPORTIONMENT OF HIGHWAY FUNDS.

(a) **DEFINITIONS.**—In this section:
(1) **HIGHWAY FUNDS.**—The term “highway funds” means the total apportionments made available for fiscal year 2000 under sec-

tions 104(b), 104(f), 105, 117, 144, and 206 of title 23, United States Code, and section 201 of the Appalachian Regional Development Act of 1965 (40 U.S.C. App.).

(2) **STATE.**—The term “State” means any of the 50 States and the District of Columbia.

(b) **APPORTIONMENT.**—Notwithstanding any other provision of this Act or any other law, the highway funds shall be apportioned among the States in the ratio that—

(1) the number of registered vehicles in each state during the most recent year for which data are available (as determined by the Secretary of Transportation); bears to

(2) the number of registered vehicles in all States during that year (as determined by the Secretary of Transportation).

AMENDMENT No. 890

On page 91, between lines 9 and 10, insert the following:

SEC. 3 . . . APPORTIONMENT OF HIGHWAY FUNDS.

(a) **DEFINITIONS.**—In this section:
(1) **HIGHWAY FUNDS.**—The term “highway funds” means the total apportionments made available for fiscal year 2000 under sections 104(b), 104(f), 105, 117, 144, and 206 of title 23, United States Code, and section 201 of the Appalachian Regional Development Act of 1965 (40 U.S.C. App.).

(2) **STATE.**—The term “State” means any of the 50 States and the District of Columbia.

(b) **APPORTIONMENT.**—Notwithstanding any other provision of this Act or any other law, the highway funds shall be apportioned among the States in the ratio that—

(1) the number of licensed drivers in each state during the most recent year for which data are available (as determined by the Secretary of Transportation); bears to

(2) the number of licensed drivers in all States during that year (as determined by the Secretary of Transportation).

AMENDMENT No. 891

On page 91, between lines 9 and 10, insert the following:

SEC. 3 . . . APPORTIONMENT OF HIGHWAY FUNDS.

(a) **DEFINITIONS.**—In this section:
(1) **HIGHWAY FUNDS.**—The term “highway funds” means the total apportionments made available for fiscal year 2000 under sections 104(b), 104(f), 105, 117, 144, and 206 of title 23, United States Code, and section 201 of the Appalachian Regional Development Act of 1965 (40 U.S.C. App.).

(2) **STATE.**—The term “State” means any of the 50 States and the District of Columbia.

(b) **APPORTIONMENT.**—Notwithstanding any other provision of this Act or any other law, the highway funds shall be apportioned among the States in the ratio that—

(1) the amount of combined tons of imports and exports that arrive and depart the United States from each state during the most recent year for which data are available (as determined by the Secretary of Commerce); bears to

(2) the amount of combined tons of imports and exports that arrive and depart the United States from all States during that year (as determined by the Secretary of Commerce).

AMENDMENT No. 892

On page 91, between lines 9 and 10, insert the following:

SEC. 3 . . . APPORTIONMENT OF HIGHWAY FUNDS.

(a) **DEFINITIONS.**—In this section:
(1) **HIGHWAY FUNDS.**—The term “highway funds” means the total apportionments

made available for fiscal year 2000 under sections 104(b), 104(f), 105, 117, 144, and 206 of title 23, United States Code, and section 201 of the Appalachian Regional Development Act of 1965 (40 U.S.C. App.).

(2) **STATE.**—The term “State” means any of the 50 States and the District of Columbia.

(b) **APPORTIONMENT.**—Notwithstanding any other provision of this Act or any other law, the highway funds shall be apportioned among the States in the ratio that—

(1) the number of vehicle occupants who comply with passenger restraint laws in each state during the most recent year for which data are available (as determined by the Secretary of Transportation); bears to

(2) the number of vehicle occupants who comply with passenger restraint laws in all States during that year (as determined by the Secretary of Transportation).

AMENDMENT No. 893

On page 91, between lines 9 and 10, insert the following:

SEC. 3 . . . APPORTIONMENT OF HIGHWAY FUNDS.

(a) **DEFINITIONS.**—In this section:
(1) **HIGHWAY FUNDS.**—The term “highway funds” means the total apportionments made available for fiscal year 2000 under sections 104(b), 104(f), 105, 117, 144, and 206 of title 23, United States Code, and section 201 of the Appalachian Regional Development Act of 1965 (40 U.S.C. App.).

(2) **STATE.**—The term “State” means any of the 50 States and the District of Columbia.

(b) **APPORTIONMENT.**—Notwithstanding any other provision of this Act or any other law, the highway funds shall be apportioned among the States in the ratio that—

(1) the amount, as a percentage, spent of its own money on highway spending by each state during the most recent year for which data are available (as determined by the Secretary of Transportation); bears to

(2) the amount, as a percentage, spent of its own money on highway spending by all States during that year (as determined by the Secretary of Transportation).

AMENDMENT No. 894

On page 91, between lines 9 and 10, insert the following:

SEC. 3 . . . OBLIGATION OF SURFACE TRANSPORTATION PROGRAM

Notwithstanding any other provision of this Act or any other law, for fiscal year 2000, funds described in section 1101(a)(4) of the Transportation Equity Act for the 21st Century (112 Stat. 112) shall be available for obligation, at the discretion of the Secretary of Transportation, for the purpose of carrying out any activity that the Secretary is authorized to carry out under any law.

AMENDMENT No. 895

On page 91, between lines 9 and 10, insert the following:

SEC. 3 . . . OBLIGATION OF NATIONAL HIGHWAY SYSTEM

Notwithstanding any other provision of this Act or any other law, for fiscal year 2000, funds described in section 1101(a)(2) of the Transportation Equity Act for the 21st Century (112 Stat. 112) shall be available for obligation, at the discretion of the Secretary of Transportation, for the purpose of carrying out any activity that the Secretary is authorized to carry out under any law.

AMENDMENT No. 896

On page 91, between lines 9 and 10, insert the following:

SEC. 3 . OBLIGATION OF BRIDGE PROGRAM

Notwithstanding any other provision of this Act or any other law, for fiscal year 2000, funds described in section 1101(a)(3) of the Transportation Equity Act for the 21st Century (112 Stat. 112) shall be available for obligation, at the discretion of the Secretary of Transportation, for the purpose of carrying out any activity that the Secretary is authorized to carry out under any law.

AMENDMENT No. 897

On page 91, between lines 9 and 10, insert the following:

SEC. 3 . OBLIGATION OF INTERSTATE MAINTENANCE PROGRAM

Notwithstanding any other provision of this Act or any other law, for fiscal year 2000, funds described in section 1101(a)(1) of the Transportation Equity Act for the 21st Century (112 Stat. 112) shall be available for obligation, at the discretion of the Secretary of Transportation, for the purpose of carrying out any activity that the Secretary is authorized to carry out under any law.

AMENDMENT No. 898

On page 91, between lines 9 and 10, insert the following:

SEC. 3 . OBLIGATION OF RECREATIONAL TRAILS PROGRAM

Notwithstanding any other provision of this Act or any other law, for fiscal year 2000, funds described in section 1101(a)(7) of the Transportation Equity Act for the 21st Century (112 Stat. 112) shall be available for obligation, at the discretion of the Secretary of Transportation, for the purpose of carrying out any activity that the Secretary is authorized to carry out under any law.

AMENDMENT No. 899

At the appropriate place in title III, insert the following:

SEC. 3 . Notwithstanding any other provision of law, including section 47114 of title 49, United States Code (relating to apportionments to States), beginning with fiscal year 2000, the Secretary of Transportation shall allocate to each State, from the funds authorized to be appropriated from the Airport and Airway Trust Fund established under section 9502 of the Internal Revenue Code of 1986 for airport planning and airport development under section 47104 of title 49, United States Code, pursuant to section 48103 of that title, an amount that bears the same ratio to the total amount available for apportionment as the total population of the State bears to the total population of the United States.

AMENDMENT No. 900

At the appropriate place in title III, insert the following:

SEC. 3 . Notwithstanding any other provision of law, including section 47114 of title 49, United States Code (relating to apportionments to States), beginning with fiscal year 2000, the Secretary of Transportation shall allocate to each State, from the funds authorized to be appropriated from the Airport and Airway Trust Fund established under section 9502 of the Internal Revenue Code of 1986 for airport planning and airport development under section 47104 of title 49, United States Code, pursuant to section 48103 of that title, an amount that bears the same ratio to the total amount available for apportionment as the total boardings of passengers of air transportation for the preceding fiscal year (as that term is defined in section 40102 of that title) of the State bears

to the total number of such boardings in the United States for that fiscal year.

AMENDMENT No. 901

At the appropriate place in title III, insert the following:

SEC. 3 . Notwithstanding any other provision of law, including section 47114 of title 49, United States Code (relating to apportionments to States), beginning with fiscal year 2000, the Secretary of Transportation shall allocate to each State, from the funds authorized to be appropriated from the Airport and Airway Trust Fund established under section 9502 of the Internal Revenue Code of 1986 for airport planning and airport development under section 47104 of title 49, United States Code, pursuant to section 48103 of that title, an amount that bears the same ratio to the total amount available for apportionment as the total takeoffs and landings of passengers of air transportation for the preceding fiscal year (as that term is defined in section 40102 of that title) of the State bears to the total number of such takeoffs and landings in the United States for that fiscal year.

AMENDMENT No. 902

At the appropriate place in title III, insert the following:

SEC. 3 . Notwithstanding any other provision of law, including section 44502 of title 49, United States Code (relating to general facilities and personnel authority), beginning with fiscal year 2000, the Secretary of Transportation shall allocate to each State, from the funds authorized to be appropriated from the Airport and Airway Trust Fund established under section 9502 of the Internal Revenue Code of 1986 for general facilities under section 44502 of title 49, United States Code, pursuant to section 48101 of that title, an amount that bears the same ratio to the total amount available for apportionment as the total population of the State bears to the total population of the United States.

AMENDMENT No. 903

At the appropriate place in title III, insert the following:

SEC. 3 . Notwithstanding any other provision of law, including section 44502 of title 49, United States Code (relating to general facilities and personnel authority), beginning with fiscal year 2000, the Secretary of Transportation shall allocate to each State, from the funds authorized to be appropriated from the Airport and Airway Trust Fund established under section 9502 of the Internal Revenue Code of 1986 for general facilities under section 44502 of title 49, United States Code, pursuant to section 48101 of that title, an amount that bears the same ratio to the total amount available for apportionment as the total boardings of passengers of air transportation for the preceding fiscal year (as that term is defined in section 40102 of that title) of the State bears to the total number of such boardings in the United States for that fiscal year.

AMENDMENT No. 904

At the appropriate place in title III, insert the following:

SEC. 3 . Notwithstanding any other provision of law, including section 44502 of title 49, United States Code (relating to general facilities and personnel authority), beginning with fiscal year 2000, the Secretary of Transportation shall allocate to each State, from the funds authorized to be appropriated from the Airport and Airway Trust Fund es-

tablished under section 9502 of the Internal Revenue Code of 1986 for general facilities under section 44502 of title 49, United States Code, pursuant to section 48101 of that title, an amount that bears the same ratio to the total amount available for apportionment as the total takeoffs and landings of passengers of air transportation for the preceding fiscal year (as that term is defined in section 40102 of that title) of the State bears to the total number of such takeoffs and landings in the United States for that fiscal year.

BOXER AMENDMENTS NOS. 905-951

(Ordered to lie on the table.)

Mrs. BOXER submitted 47 amendments intended to be proposed by her to the bill, S. 1143, *supra* as follows:

AMENDMENT No. 905

On page 20, at the beginning of line 20, insert the following: "Provided further, That, notwithstanding any other provision of law, the portion of the funds made available by section 112 of the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999 (112 Stat. 2681-544), that is unobligated as of the date of enactment of this Act shall be apportioned equally among the States (other than the State referred to in that section) and the District of Columbia for use for any activity for which funds may be made available under section 5307, 5309, 5310, or 5311 of title 49, United States Code:".

AMENDMENT No. 906

On page 20, at the beginning of line 20, insert the following: "Provided further, That, notwithstanding any other provision of law, the portion of the funds made available by section 112 of the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999 (112 Stat. 2681-544), that is unobligated as of the date of enactment of this Act shall be apportioned equally among the States of California and New York for use for any activity for which funds may be made available under section 5307, 5309, 5310, or 5311 of title 49, United States Code:".

AMENDMENT No. 907

On page 20, at the beginning of line 20, insert the following: "Provided further, That, notwithstanding any other provision of law, the portion of the funds made available by section 112 of the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999 (112 Stat. 2681-544), that is unobligated as of the date of enactment of this Act shall be distributed in the manner described in section 110 of title 23, United States Code (as added by section 1105(a) of the Transportation Equity Act for the 21st Century (112 Stat. 130)):".

AMENDMENT No. 908

On page 20, at the beginning of line 20, insert the following: "Provided further, That, notwithstanding any other provision of law, the portion of the funds made available by section 112 of the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999 (112 Stat. 2681-544), that is unobligated as of the date of enactment of this Act shall be made available to carry out section 5308 of title 49, United States Code:".

AMENDMENT No. 909

On page 20, at the beginning of line 20, insert the following: "Provided further, That, notwithstanding any other provision of law, the portion of the funds made available by

section 112 of the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999 (112 Stat. 2681-544), that is unobligated as of the date of enactment of this Act shall be made available to carry out section 5506 of title 49, United States Code.”

AMENDMENT No. 910

On page 20, at the beginning of line 20, insert the following: “*Provided further*, That, notwithstanding any other provision of law, the portion of the funds made available by section 112 of the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999 (112 Stat. 2681-544), that is unobligated as of the date of enactment of this Act shall be made available to carry out section 5309 of title 49, United States Code.”

AMENDMENT No. 911

On page 30, line 13, insert before the period the following: “: *Provided further*, That, notwithstanding any other provision of law, the portion of the funds made available by section 112 of the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999 (112 Stat. 2681-544), that is unobligated as of the date of enactment of this Act shall be available for these purposes”.

AMENDMENT No. 912

On page 20, at the beginning of line 20, insert the following: “*Provided further*, That, notwithstanding any other provision of law, the portion of the funds made available by section 352 of the Department of Transportation and Related Agencies Appropriations Act, 1999 (112 Stat. 2681-476), that is unobligated as of the date of enactment of this Act shall be made available to carry out section 5506 of title 49, United States Code.”

AMENDMENT No. 913

On page 91, between lines 9 and 10, insert the following:

SEC. 3 . REPEAL OF CERTAIN AUTHORITY.

Section 365 of the Department of Transportation and Related Agencies Appropriations Act, 1999 (112 Stat. 2681-477), is repealed.

AMENDMENT No. 914

On page 33, line 22, insert before the colon the following: “: *Provided further*, That, notwithstanding any other provision of law, the portion of the funds made available by line items 5 through 16 of the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999 (112 Stat. 2681-454), that is unobligated as of the date of enactment of this Act shall be distributed equally between the States of California and New York”.

AMENDMENT No. 915

On page 69, strike lines 8 through 13.

AMENDMENT No. 916

On page 20, at the beginning of line 20, insert the following: “*Provided further*, That, notwithstanding any other provision of law, the portion of the funds made available by section 112 of the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999 (112 Stat. 2681-544), that is unobligated as of the date of enactment of this Act shall be apportioned equally among the States and the District of Columbia for use for any activity for which funds may be made available under section 5307, 5309, 5310, or 5311 of title 49, United States Code.”

AMENDMENT No. 917

On page 80, strike lines 1 through 11.

AMENDMENT No. 918

On page 13, lines 12 through 14, strike “*Provided further*, That none of the funds in this Act shall be available for new applicants for the second career training program.”

AMENDMENT No. 919

On page 21, at the beginning of line 1, insert “*Provided further*, That, notwithstanding the preceding proviso, a State shall not receive funds made available under the preceding proviso if the State receives a distribution of amounts recovered from reductions under section 321”.

AMENDMENT No. 920

On page 91, between lines 9 and 10, insert the following:

SEC. 3 . CONDITION ON RECEIPT OF TRANSPORTATION FUNDS.

Notwithstanding any other provision of law, a State shall not receive funds made available by this Act if the State received an exemption from the application of Federal environmental laws to a highway extension linked to a private toll bridge project under section 365 of the Department of Transportation and Related Agencies Appropriations Act, 1999 (112 Stat. 2681-477).

AMENDMENT No. 921

On page 80, line 9, insert before the colon the following: “: *Provided further*, That no State may receive any funding increase by operation of this section if the State has any funds made available by section 112 of the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999 (112 Stat. 2681-544) that are unobligated as of the date of enactment of this Act”.

AMENDMENT No. 922

On page 80, line 11, insert before the period the following: “: *Provided further*, That, notwithstanding any other provision of law, if any such funding reduction is made with respect to the State of California, that State shall receive an amount equal to the amount made available to that State by section 112 of the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999 (112 Stat. 2681-544) that is unobligated as of the date of enactment of this Act”.

AMENDMENT No. 923

On page 62, line 20, insert before the period the following: “: *Provided further*, That no State shall receive any funds under this heading if the State receives a funding increase by operation of section 321 of this Act”.

AMENDMENT No. 924

On page 80, line 4, insert before the colon the following: “, unless the State also has more than 12.5 percent of the passenger miles reported by the Federal Transit Administration”.

AMENDMENT No. 925

On page 17, line 2, before the period, insert the following: “: *Provided further*, That the amount that a State would otherwise receive under this heading shall be reduced by any amount that the State receives in accordance with section 321 of this Act to carry out sections 5307, 5309, 5310, and 5311 of title 49, United States Code”.

AMENDMENT No. 926

On page 80, line 2, strike “12.5 percent” and insert “16 percent”.

AMENDMENT No. 927

On page 80, line 4, strike “5309”.

AMENDMENT No. 928

On page 80, line 2, strike “12.5” and insert “15.8”.

On page 91, after line 9, insert the following new Section:

SEC. 342. Section 5336 of title 49, United States Code, is amended—

(1) in subsection (b)(2), by striking “33.29 percent” and inserting “53.29 percent”;

(2) in subsection (c), by striking “66.71 percent” and inserting “46.71 percent”;

(3) in subsection (c)(1), by striking “73.39 percent” and inserting “83.39 percent”; and

(4) in subsection (c)(2), by striking “26.61 percent” and inserting “16.61 percent”.

AMENDMENT No. 929

On page 80, line 11, insert after “apportionments” the following:

“: *Provided further*, That the limitation set forth in this section shall not apply to a State if the Secretary of Transportation determines that such State has transit capital and operating funding needs that are in excess of the funding that would be provided pursuant to the 12.5 percent limitation”.

AMENDMENT No. 930

On page 80, line 11, insert after “apportionments” the following:

“: *Provided further*, That the limitation set forth in this section shall not apply to a State if the total annual trips in such State is equal to 12.5 percent or more of the total annual transit trips in all States”.

AMENDMENT No. 931

On page 80, line 11, insert after “apportionments” the following:

“: *Provided further*, That the limitation set forth in this section shall not apply to any State in which a public transportation authority has entered into a Consent Decree that arises out of litigation commenced in Federal court under title VI of the Civil Rights Act of 1964 and that results in the increased expenditure of public funds for bus services”.

AMENDMENT No. 932

Page 80, line 11, insert after “apportionments” the following:

“: *Provided further*, That the limitation set forth in this section shall not apply to a State if the total net project cost of all new fixed guideway projects in final design or construction in such State is equal to 12.5 percent or more of the total net project cost of all new fixed guideway projects in final design or construction in all States”.

AMENDMENT No. 933

Page 80, strike lines 1 through 11 and insert the following:

SEC. 321. Notwithstanding any other provision of law, no State's share of the total budget resources made available by this Act to carry out 49 U.S.C. 5307, 5309, 5310, and 5311 shall exceed the ratio that the total annual transit directional route miles in such State bears to the total annual transit directional route miles in all States: *Provided*, That for purposes of this calculation the Federal Transit Administration shall include the appropriate state distribution of the funding provided to urbanized areas: *Provided further*, That the amounts recovered from such reductions shall be distributed equally: *Provided further*, That such reductions and increases shall be made only to the formula apportionments.

AMENDMENT NO. 934

Page 80, strike lines 1 through 11 and insert the following:

SEC. 321. Notwithstanding any other provision of law, no State's share of the total budget resources made available by this Act to carry out 49 U.S.C. 5307, 5309, 5310, and 5311 shall exceed the ratio that the total net project cost of all fixed guideway projects in final design or construction in such State bears to the total net project cost of such projects in all States: *Provided*, That for purposes of this calculation the Federal Transit Administration shall include the appropriate State distribution of the funding provided to urbanized areas: *Provided further*, That the amounts recovered from such reductions shall be distributed equally: *Provided further*, That such reductions and increases shall be made only to the formula apportionments.

AMENDMENT NO. 935

Page 80, strike lines 1 through 11 and insert the following:

SEC. 321. Notwithstanding any other provision of law, no State's share of the total budget resources made available by this Act to carry out 49 U.S.C. 5307, 5309, 5310, and 5311 shall exceed the ratio that the total annual transit trips in such State bears to the total annual transit trips in all States: *Provided*, That for purposes of this calculation the Federal Transit Administration shall include the appropriate State distribution of the funding provided to urbanized areas: *Provided further*, That the amounts recovered from such reductions shall be distributed equally: *Provided further*, That such reductions and increases shall be made only to the formula apportionments.

AMENDMENT NO. 936

Page 34, strike line 7.
Page 35, strike lines 15 and 16.
Page 35, strike line 25.
Page 36, strike line 1.
Page 38, strike lines 16 and 17.
Page 39, strike line 8 and 9.
Page 39, strike lines 24 and 25.
Page 41, strike lines 13 through 17.
Page 46, strike lines 1 and 2.
Page 46, strike lines 7 through 10.
Page 54, strike line 2.
Page 59, strike line 22.

AMENDMENT NO. 937

Page 91, after line 9, insert the following new Section:

SEC. 342 Section 104(b)(1)(A) of title 23, United States Code, relating to the National Highway System program, is amended by striking "25 percent" in clause (i) and inserting "10 percent" and by striking "35 percent" in clause (ii) and inserting "50 percent".

AMENDMENT NO. 938

Page 91, after line 9, insert the following new Section:

SEC. 342. Section 104(b)(3)(A) of title 23, United States Code, relating to the Surface Transportation Program, is amended by striking "25 percent" in clause (i) and inserting "10 percent" and by striking "35 percent" in clause (ii) and inserting "55 percent".

AMENDMENT NO. 939

Page 91, after line 9, insert the following new Section:

SEC. 342. Section 104(b)(4) of title 23, United States Code, relating to the Interstate Maintenance Program, is amended by striking

"33 $\frac{1}{3}$ percent" in subparagraph (A) and inserting "23 $\frac{1}{3}$ percent" and by striking "33 $\frac{1}{3}$ percent" in subparagraph (B) and inserting "43 $\frac{1}{3}$ percent".

AMENDMENT NO. 940

Page 91, after line 9, insert the following new Section:

SEC. 342. Section 104(b)(2) of title 23, United States Code, relating to the Congestion Mitigation and Air Quality Improvement Program, is amended—

- (1) in subparagraph (B)(i), by striking "0.8" and inserting "0.6";
- (2) in subparagraph (B)(vi), by striking "1.4" and inserting "1.6";
- (3) in subparagraph (C)(i), by striking "1.2" and inserting "1.4"; and
- (4) in subparagraph (D), by striking "1/2 of 1 percent" and inserting "1.4 of 1 percent".

AMENDMENT NO. 941

Page 91, after line 9, insert the following new Section:

SEC. 342. Section 144(e) of title 23, United States Code, relating to the Highway Bridge Program, is amended by adding at the end thereof the following new sentence: "Notwithstanding any other provision of this subsection, the ratio which the amount of funding apportioned to a State under this section in any fiscal year bears to the amount of such funding apportioned to all States in such year shall not exceed 110 percent of the ratio which the population in such State bears to the population in all States."

AMENDMENT NO. 942

Page 91, after line 9, insert the following new Section:

SEC. 342. Section 104(b)(2) of title 23, United States Code, relating to the Congestion Mitigation and Air Quality Improvement Program, is amended in subparagraph (B)(vi), by striking "1.4" and inserting "1.6".

AMENDMENT NO. 943

Page 91, after line 9, insert the following new Section:

SEC. 342. Section 104(b)(2) of title 23, United States Code, relating to the Congestion Mitigation and Air Quality Improvement Program, is amended in subparagraph (C)(i), by striking "1.2" and inserting "1.4".

AMENDMENT NO. 944

Page 91, after line 9, insert the following new Section:

SEC. 342. Section 104(b)(2) of title 23, United States Code, relating to the Congestion Mitigation and Air Quality Improvement Program, is amended in subparagraph (D), by striking "1/2 of 1 percent" and inserting "1/4 of 1 percent".

AMENDMENT NO. 945

On page 44, line 15, insert the following: "Los Angeles/City of El Segundo Douglas Street Green Line connection;"

AMENDMENT NO. 946

On page 61, line 1, strike the word "Sepulveda" and insert "El Segundo".

AMENDMENT NO. 947

On page 44, line 15, insert the following: "Los Angeles/City of El Segundo Douglas Street Green Line connection;"

On page 61, line 1-2, strike the following: "Los Angeles/City of Sepulveda Douglas Street Green Line connection;"

AMENDMENT NO. 948

On page 20, line 11, after the colon, insert

"and 5,000,000 shall be made available to carry out section 1207(c)(1)(C) of Public Law 105-178:"

AMENDMENT NO. 949

On page 91, after line 11, insert the following new section:

SEC. 342. TRANSPORTATION EQUITY FOR FERRY SERVICES.

(a) FINDINGS.—Congress finds that (1) The San Francisco Bay Area Regional Ferry Plan contains two phases. The first phase of the Plan is devoted to the existing ferry services operating on the Bay. The second phase considers the feasibility of new origins and destinations for passenger ferry services and institutional arrangements to best operate the ferry services on the Bay.

(2) This study is a result of initiatives to improve ferry service in the Bay Area and to develop better ways of evaluating ferry proposals. These include Senate Bill 2169 (Kopp, 1990), which suggests preparation of a Bay Area ferry plan by the Metropolitan Transportation Commission, and Proposition 116, a 1990 initiative which included \$30,000,000 in capital funding for ferry improvement projects, including \$10,000,000 dedicated for Vallejo service.

(3) Ferry transit has played a significant role in San Francisco Bay for almost 150 years. Vessels which brought people during gold rush days were utilized for San Francisco-Sacramento and cross-bay service. Eclipsed by highway and bridge construction during the 1930's, a faster generation of ferries are once more becoming valuable cross-bay connectors offering alternatives to congestion in some corridors, and as emergency alternatives to these same highways and bridges.

(4) The summary of Phase 1 of the Plan includes (1) goals and objectives for the region's ferry services, (2) description of current ferry services, (3) an evaluation of the existing ferry services, and (4) recommendations to improve the existing ferry services. Funding has been secured for many of the recommended improvements (e.g., vessel purchases and terminal improvements), which will be implemented over the next few years and are expected to significantly increase ferry ridership in the Bay Area.

(5) The summary of Phase 2 of the Plan includes (1) a detailed evaluation of and recommendations for potential new ferry routes throughout the region, and (2) an evaluation of and recommendations for institutional arrangements to best operate ferry services. The evaluation of new routes analyzes the expected performance and the implementation steps needed for potential new services. An important factor for all Phase 2 services is that current services consume all existing funding available.

(6) Any implementation of Phase 2 requires additional new revenue sources.

(7) As regional and local agencies look to the future of the San Francisco Bay Area, goals include transportation mobility, transit coordination, clean air, fully accessible transit, reduction in dependence on the automobile, emergency preparedness transit alternatives, access to recreation and tourism, energy-saving transportation, and environmentally superior and cost-effective alternatives to new highway construction. When applied to the appropriate corridors, ferries can provide the means for achieving all of these regional objectives.

(7) Experience in other metropolitan areas of North America is indicating increasing utilization of ferries for commute and non-commute travel, particularly in New York, Boston, Vancouver, and Seattle. Goals and

objectives vary, but providing attractive alternatives to congested highways and transit linkages are universal, as are goals to reduce the use of automobiles in congested central cities.

(8) A set of goals and policies for Bay Area ferry service are proposed based on the regional transportation and air quality goals, and experience with ferry service in other areas. In sum, the proposed goals are to enhance regional mobility and support regional planning policies, create a transit option that is an attractive alternative to the automobile, offer a transit option that can be initiated in a timely environmentally benign, and cost effective manner, provide transit service that operates efficiently and reduces the need for high cost alternative transportation investments, provide ferry service that is reliable, safe, and fully accessible and develop terminals that are consistent with local and regional plans.

(9) The Plan has developed a comprehensive set of criteria to evaluate the existing services and potential new ferry services. It is important to have a set of evaluation criteria in place for two purposes.

(10) First, criteria are essential for the evaluation of competing proposals for ferry service, where operating and capital funds are limited. Second, the criteria are important for the evaluation of ferry service as a temporary or permanent alternative to other transportation investments such as building a new bridge, widening a freeway, or building an alternative transit project.

(11) This list of criteria can also act as a checklist for consideration when ferries are proposed as traffic mitigation or emergency service providers.

(12) Golden Gate Bridge, Highway, and Transportation District's (GGBHTD) and Red & White both serve Sausalito, but at different times of the day. Geographically, Sausalito is ideally suited for the six mile commute to San Francisco. The terminal facilities in Sausalito are spartan and not accessible to persons with disabilities.

(13) Golden Gate's eleven mile Larkspur to San Francisco route is the most integrated and efficient ferry system in the Bay Area. Three large, medium speed ferries, operating from well engineered terminal facilities, provide very nearly a shuttle service from Marin County to San Francisco. Of approximately 2,000 daily Marin County ferry commuters, the Larkspur service carries 1,400 of them. The two mile Larkspur Channel with its wake restriction is a significant constraint to Larkspur service, and present PM peak period traffic conditions preclude greater use of autos for terminal access.

(14) Like Sausalito, Tiburon has ideal geographic conditions, but rudimentary terminal facilities. Red & white operates non-subsidized service between Tiburon and San Francisco, providing commuter service to downtown San Francisco via the Ferry Building (Pier 1/2) and non-commute service to Fisherman's Wharf.

(15) Subsidized ferry service has been provided from Oakland and Alameda to San Francisco since the 1989 Loma Prieta earthquake. Seventy five percent of the riders are commuters and most of these come from Alameda where the facilities have just been substantially improved. The service is currently provided by a leased vessel which is slow in both loading and crossing. While commute times from Alameda are competitive with auto, bus and BART, the Oakland service is not.

(16) Red & White provides subsidized service to Vallejo in the longest current Bay

Area ferry route. The single commute trips in the morning and afternoon are essentially full, while the three non-commute round trips in between account for nearly an equal number of passengers. As is the case in Larkspur, a two mile wake restricted channel adds extra time to the Vallejo commute. The current vessels make the trip in about 70 minutes.

(17) The findings of the evaluation of the existing services fall into three main categories: travel time of ferry services is not competitive with the automobile, frequency of ferry services are not adequate and ferry terminal facilities do not offer basic amenities or adequate accessibility.

(18) The current commute time between Sausalito and San Francisco is 30 minutes, which is not competitive with the automobile.

(19) The terminal facilities in Sausalito do not provide adequate accessibility to persons with disabilities. The terminal facilities do not meet published guidelines for barrier free access in the areas of gangway slope, tactile makings for the sight impaired, and protective railing on floats.

(20) The current Larkspur to San Francisco service is well conceived and provides excellent shoreside facilities. The terminals, both in Larkspur and San Francisco, are well designed for passenger flow, passenger safety, and passenger comfort.

(21) The ferry commute time between Larkspur and San Francisco is excessive (45 minutes), which is not competitive with the automobile.

(22) The access into and out of the parking lot at the Larkspur terminal is not adequate. On the return trips from San Francisco it can take up to 15 minutes to get out of the parking lot, which significantly adds to overall travel time.

(23) The Red & White ferry service to Tiburon is efficient and could accommodate increased patronage.

(24) The terminal facilities in Tiburon do not provide adequate accessibility to persons with disabilities or covered passenger waiting areas.

(25) The total ridership on the Alameda/Oakland service has been increasing. Approximately 70% of commute period ridership is from Alameda.

(26) Alameda shows strong potential as a commute terminal.

(27) With a short channel speed restricted zone, auto commute time is significantly longer than the current ferry travel time of 20 minutes.

(28) The Oakland terminal has limited residential access to the ferry terminal, which results in limited commute trips. However, midday and weekend service from Oakland is and is expected to continue to be productive.

(29) The current vessel on the Alameda/Oakland service is not suitable, both by loading arrangement (accessibility) and speed for commuter service from Alameda and Oakland.

(30) Given the traffic congestion on I-80, Vallejo is an excellent candidate for high speed ferry service.

(31) The current service consists of one commute trip each day, which does not provide adequate capacity or a real commute option for commuters from Solano County.

(32) Ferry travel time between Vallejo and San Francisco is approximately 65-70 minutes, which is marginally competitive with the automobile.

(33) The Pier 1/2 terminal facility in San Francisco is served by the ferry services from Alameda, Oakland, Tiburon, and

Vallejo. The Pier 1/2 terminal facility is deficient in a number of areas, including:

(34) Ramps and floats are not adequately accessible to persons with disabilities.

(35) There is not adequate sheltered passenger waiting area.

(36) There is no area for convenient and easily accessible connecting bus service, so that ferry passengers can easily transfer to buses servicing Union Square, the Civic Center, and the City's various institutions.

(37) The recommended ferry service improvement plan for the existing services is based on: (1) a plan to resolve the service deficiencies identified in the evaluation of the existing services, and (2) a service plan that supports ridership projections.

(38) In order to carry out one of the major goals of the Plan that the recommendations lead to the implementation of improved services, the plan set out parameters in developing the recommended service improvement plan.

(39) The major parameters/guidelines used in developing the service improvement plan are as follows: a plan that could be implemented, accounts for the current planning of the individual operators, and can be financed (operating and capital), maximizes ridership in relation to funding investment, provides incremental approach to service improvements, coordinate ferry services to extent possible with other transit services.

(40) In general, the major service and capital improvement recommendations in the plan include interlining some of the existing services, so in a sense there are three routes provided: a Larkspur-San Francisco-Sausalito route, an Oakland-Alameda-San Francisco-Tiburon route and a Vallejo to San Francisco route; purchasing five to six new high speed catamarans; constructing terminal improvements at Pier 1/2 in San Francisco, and in Vallejo, Sausalito and Tiburon; and improving the current feeder bus services to all of the ferry terminals.

(41) The recommended service improvement plan for GGBHTD's Larkspur and Sausalito services include purchasing two high speed catamarans to operate on the Larkspur and Sausalito services, operating a 68 weekday trip schedule (38 Larkspur-San Francisco, 30 Sausalito San Francisco), compared to 46 at present. Hourly midday service would encourage peak hour patronage because of the additional flexibility. This service plan would allow the district to operate 15 to 30 minute headways between Larkspur and San Francisco during the a.m. peak period as opposed to the 30 to 40 minute headways currently being provided, reduce the travel time between Larkspur and San Francisco from the current 45 to 50 minutes down to 30 minutes, which is faster than the automobile between the Larkspur area and San Francisco, allow the District to provide a total of 45% more service in about the same number of operating hours as currently being operated, due to the faster vessels. Therefore, the total operating cost for the increased service level is not that much more than for the current operations, improve parking access to/from the Larkspur ferry terminal (The City of Larkspur is currently improving the access into/out of the terminal), and improving terminal facilities in Sausalito.

(42) It is estimated that this service plan will generate 7,000 daily riders on the Sausalito and Larkspur services compared to about 5,500 riders at present. Service would begin upon the delivery of new, fast vessels and the 1994-95 fiscal year would represent the first full year of operation.

(43) The recommended service improvement plan for the Tiburon-Alameda-Oakland services includes the purchase of two high speed catamarans to provide service on one continuous route between Oakland-Alameda-San Francisco and Tiburon, operating 64 weekday trips compared to 37 on the two routes at present, including hourly service during the midday. This service plan would use vessels more efficiently—one high speed vessel will have difficulty maintaining hourly headways between Oakland-Alameda-San Francisco.

(44) While one vessel would have slack time in operating hourly headways between Tiburon and San Francisco, it will provide more commute service between Alameda and San Francisco, which has the most potential of the three locations for ridership gains. The commute service level for Oakland and Tiburon would remain about the same as it is now.

(45) Improvements to feeder bus services are proposed, including both rerouted Alameda buses and better service to the Tiburon terminal.

(46) It is estimated with this level of service that ridership on these services would increase about from about 1,500 daily riders to over 2,600 daily riders. However, given that Red & White Fleet operates un-subsidized service to Tiburon, some type of coordination between those entities or some type of different institutional arrangement would have to be worked out before this service improvement could be implemented. Given this, at this time, the Plan is recommending that initially one high speed vessel be purchased for the Alameda-Oakland-San Francisco service and the Tiburon service remain unchanged.

(47) The recommended service improvement plan for the Vallejo-San Francisco service includes purchase and operation of two high speed vessels on a 28 day weekday trip schedule in contrast with six trips at present, (this service plan would reduce the one way travel time between Vallejo and San Francisco to about 55 minutes, compared to about a 65 to 70 minute travel time on that service now), provide three to four a.m. commute trips (compared to the one a.m. commute trip currently provided), construct an intermodal facility in Vallejo, and improve local connecting bus services and connecting bus services from locations throughout Solano County.

(48) With this service level and anticipated growth in Solano County, the Plan projects that ridership on the Vallejo service would increase significantly—from about 800 riders per day to about 2,500 riders per day. Expanded service is expected to begin in 1994 and the 1994-95 fiscal year would represent the first full year of operation.

(49) The recommended service improvement plan for the Pier ½ terminal facility are: provision of an adequate number of ferry slips (these slips should accommodate the required number of peak period vessels in an efficient and convenient method), central control over the ferry docking facilities in San Francisco by the Port Commission to ensure that any potential provider of viable ferry service has access to a convenient and coordinated facility, provision of barrier free accessibility for disabled persons to all ferry docks, provision of a convenient passenger environment sheltered from poor weather and featuring comfortable waiting areas, provision of convenient and easily accessible connecting bus service.

(50) The plan looked at a number of different vessel types to operate the rec-

ommended service levels. Including conventional monohulls, catamarans, hydrofoils, hovercrafts and surface effect ships.

(51) The vessel types were evaluated on a number of factors including, capital and operating cost, speed, size of the vessel, comfort, reliability, accessibility and ability to be build in the U.S.

(52) Several vessels exist which meet the requirements developed for the individual routes. At the time of bid, other possibilities may exist, but in 1991 the supply of adequate high speed, high capacity boats is limited.

(53) To operate the recommended service plan for the Vallejo and Larkspur services, vessels capable of around 35 knots (38 mph), are necessary to provide transit speeds that are competitive with the automobile. The recommended vessels for these services are either the 37 meter Westamarin catamaran from Norway or the 35(S) meter Incat design from Australia. Both vessels can be build in the U.S., although to date neither has, are capable of appropriate commute speeds, represent existing proven technology and are suitable for all sea and climatic conditions. It is recommended that the GGBHTD and City of Vallejo jointly procure vessels, which result in ship-builder economies of scale and lower costs to the public. The cost of each vessel is projected at \$5-5.5 million.

(54) At this time, it is recommended that initially one new vessel be purchased for the Alameda/Oakland-San Francisco service, pending resolution of institutional issues with the Tiburon service and pending successful testing of Alameda service. It appears that this arrangement can be achieved, it is recommended that a second vessel be procured to operate the service. A 25-26 knot vessel is recommended for the Alameda/Oakland service—an estimated cost of \$2.5-3 million per vessel.

(55) The Plan recommends that the Alameda, Oakland, and Vallejo ferry services continue to be operated by private ferry operators under contract to public agencies. The public agencies would purchase and own the recommended vessels and contract out the operations of those vessels to a private operator(s). It is believed that the free market provides a powerful incentive to the private sector to make a profit and that this motivation can be harnessed to increase overall system productivity.

(56) The Plan evaluated 17 potential ferry routes throughout the Bay Area. The routes that were evaluated were determined by review of past and current ferry service proposals and the routes evaluated as part of MTC's Bay Crossing Study. Considerations were also given to the potential to interline routes—either making multiple stops or alternating service routes with a single vessel in order to gain greater efficiency in the utilization of vessels and crew. While commute routes are the primary focus for this analysis, consideration has also been given to recreational ferry services, facilitation of bicycle access, accommodation of freight, and emergency preparedness capabilities of ferry services. Each of the potential routes was evaluated on number of criteria, including projected patronage levels, financial performance (e.g. cost per passenger), environmental impacts, and capital and operating costs and requirements.

(57) A key factor regarding implementation of new services is that operating and capital subsidy funds for transportation projects are extremely limited. In general, there are limited capital funds available for new projects; however, existing operating funds are used to their maximum. In fact,

many transit operators in the region are reducing their services due to the lack of operating support. Therefore, a crucial component of implementing any new ferry service is securing additional fund sources.

(58) The evaluation criteria were assessed individually and as a whole for each route. For example, if a particular route did not perform well on a certain criteria (e.g. no facilities in Place), but performed well on all other criteria, it could be given favorable consideration. At the same time, there could be one criteria (e.g. major environmental issues or other planned transit improvements in the same corridor) that could override other more favorable factors and make the route not feasible. Based on this analysis, the routes were grouped into the three categories, as follows:

(59) Four routes are recommended for further consideration in this Plan. Further study does not represent a recommendation for implementation at this time, but preparation of a more detailed consideration in the regional plan to determine the feasibility of implementation. The four routes are:

- Port Sonoma/Marin—San Francisco
- Martinez—San Francisco
- Berkeley/Albany—San Francisco
- Alameda (Bay Farm Island)—San Francisco

(60) These routes are the best performing routes in terms of patronage and financial performance. All of the routes are projected to recover more than 50% of their costs from the farebox and require subsidy levels that are consistent with other transbay transit services in the region. Major adverse environmental concerns (dredging, wake impact) are not expected with these services.

(61) Port Sonoma-Marin-San Francisco: Of the routes evaluated, this route is projected to have the highest ridership (438 passengers for three A.M. peak departures) and the best financial performance. Ferry travel time (one-way) is projected at about 45 to 50 minutes, which is about 30 minutes faster than driving between Novato and San Francisco (single occupant auto). This service has been proposed by a private organization as a mitigation to a development in the Bel Marin Keys area. The developer has indicated that it will at least partially fund the service. No dredging or major wake impacts are expected due to this service.

(62) Martinez-San Francisco: Ridership projections for this route are 250 peak passengers for one A.M. peak departure. Ferry travel time (one-way) is projected to be about 55 minutes, which is about 30 minutes faster than driving between Martinez and San Francisco (single occupant auto). The Martinez area does not have a high level of other transit options to San Francisco. No dredging or major wake impacts are expected due to this service.

(63) Berkeley/Albany-San Francisco: Morning peak patronage is expected to exceed 270 passengers for three peak trips. The Golden Gate Fields option at Gilman Street promises stronger midday patronage and also serves portions of Berkeley and Albany that are not well served by other transbay transit. It is estimated that on race days total daily ridership would be approximately 1,200 passengers per day for this 20 minute crossing. There would be some dredging needed at the Golden Gate Fields terminal location.

(64) Alameda (Bay Farm Island)-San Francisco: This service was implemented in March, 1992. The proposed service has docking facilities in-place in Alameda and in San Francisco. A.M. peak ridership is expected to

be 217 passengers for three 23 minute trips; current ridership is about 75% of projections. The route is currently supported by a private development firm. No dredging or major wake impacts are expected due to this service.

(64) The routes in this category do not perform as well as the routes recommended for further evaluation. Given limited operating resources, these routes are not recommended for further evaluation at this time, but are worthy of future consideration as circumstances change. These circumstances include population increases near terminal facilities, delays or elimination of other planned transportation improvements, ability to provide lower cost ferry service, and new sources of operating subsidies. The routes recommended in this category are Richmond-San Francisco, San Leandro-San Francisco, Rodeo-San Francisco.

(65) In general, these routes are projected to recover less than 50% of their costs from the farebox and require subsidy levels that are between \$3.00 and \$5.00 per passenger, which is higher than existing transbay transit services in the region.

(66) Richmond-San Francisco: Of the routes in this group the Richmond service using the Point Richmond docking site has the best overall performance. Projected ridership is about 240 A.M. peak riders generating about a 41% farebox recovery ratio; the subsidy per passenger is projected to be \$3.40 per passenger. The major limiting factors for a Richmond service are that patronage is constrained because at this time there is no midday travel generator and there are good commute services between central Richmond and San Francisco provided by AC Transit and BART. Bus services and shared ride auto travel is expected to improve between Richmond and San Francisco with the planned construction of high occupancy vehicle (HOV) lanes on Interstate 80 between Richmond and the San Francisco Bay Bridge. Also, during the construction project period, a number of transit improvements are planned for the I-80 corridor as mitigation measures. As the I-80 improvement project begins and mitigation measures are implemented and evaluated, it is recommended that the City work with Caltrans to determine if there is the need and available mitigation funding to consider ferry service from Richmond as a mitigation project. The City of Richmond has indicated that the commercial and industrial base in Richmond is growing and further developments are expected. As residential and commercial densities grow in the terminal areas, ferry patronage would be expected to increase which would enhance the feasibility of ferry service from Richmond. MTC will be assisting the transit operators in the I-80 corridor to develop a long range finance plan for transit services in the corridor. It is recommended that the City of Richmond participate in these planning efforts so that ferry services between Richmond and San Francisco can be further considered as a long-term transit project for the I-80 corridor. Additionally, the East Bay Regional Park District has expressed interest in examining alternate uses for the Point Richmond docking facility (e.g. shared ferry maintenance facility, etc.). It is recommended that the Park District and City explore alternate uses of these facilities in conjunction with the proposed Ferry Consortium.

(67) Rodeo-San Francisco: Projected ridership for service between Rodeo and San Francisco is about 250 A.M. peak rider for a one vessel service. Projected riders are fairly

high for this service because there are not good transit service options to San Francisco from the Rodeo, Crockett, and Pinole areas. The greatest limiting factor for a service from Rodeo is the need to widen and dredge the marina, build a dock, and provide parking, which is estimated to cost about \$4.0 million.

(68) San Leandro-San Francisco: Projected ridership for service between San Leandro and San Francisco is about 200 a.m. peak riders. The subsidy per passenger is projected to be \$4.77, which is significantly higher than other ferry services. Ridership for a San Leandro service is constrained because the major population centers in the area are east of I-880 and are served by the BART system, while the area near the marina is primarily industrial. Ferry service from San Leandro would only be feasible if higher density residential areas developed near the San Leandro marina.

(69) Based on the evaluation, the routes listed below are not feasible for ferry services. Ridership levels are projected to be low and for many of these areas there are other existing or planned transit services serving the same corridors. These routes are Benicia-San Francisco, Pittsburg-San Francisco, Redwood City-San Francisco, South San Francisco-San Francisco, Redwood City-San Leandro, Benicia-Martinez, and South San Francisco-San Leandro.

(70) In each case, the potential ridership was projected to be under 200 during the a.m. peak period, farebox recovery ratios were projected to be less than 35%, and the subsidy per passenger required to support the services is between \$6.00 and \$12.00 per passenger, which is significantly higher than current ferry services and other transbay transit services.

(71) Based on the preliminary analysis of airport, recreational and vehicle/freight ferry services, it appears there could be potential for these types of services, but a more thorough analysis of each type is needed. Therefore, it is recommended that MTC, Caltrans, the proposed Ferry Consortium and other interested parties should discuss and examine the need and the method to further evaluate ferry services related to ferry services feeding the San Francisco and Oakland airports, recreational ferry services, and vehicle, truck and freight movement ferry services.

(72) The Plan refined the patronage forecasting, service planning, vessel and facility analysis, and financial analysis for the four routes that were recommended for further evaluation: Port Sonoma-Marin to San Francisco, Martinez to San Francisco, Berkeley/Albany to San Francisco and Alameda/Bay Farm Island to San Francisco.

(73) One of the routes, the Bay Farm Island to San Francisco service, also known as the Harbor Bay Isle Ferry, recently initiated operation. This is a privately funded service intended to operate as a demonstration for at least three years. At the end of this period this service should be evaluated against the goals and objectives outlined in this study.

(74) Of the potential ferry services analyzed, service from Port Sonoma-Marin is found to be overall the most effective. A high speed ferry service from Port Sonoma would significantly reduce the travel time between the Port Sonoma/Novato area and San Francisco.

(75) The financial performance of the Port Sonoma-Marin service is also very good. The required subsidy per passenger trip is estimated to be about \$1.60 and the farebox recovery ratio for the Port Sonoma ferry serv-

ice is approximately 70%, which are both significantly better than most transit systems operating in the San Francisco Bay Area.

(76) The capital cost requirements for the service are significantly greater than the other ferry service analyzed in this report. The contributing factor is that this service requires two high speed vessels to be successful. The capital costs for the vessels and terminal improvements are projected to be about \$12.5 million, which is almost twice as much as any of the other services.

(77) At present there is not a midday market for the service. Lack of service during the midday could reduce commute ridership.

(78) Ferry service from Martinez would be effective. One way travel time between Martinez and San Francisco on the ferry service (55-60 minutes) is estimated to be 35% faster than by automobile (drive alone) and 29% faster than the combination of BART express bus and BART rail service.

(79) A major concern regarding the Martinez service is that the proposed level of service (one a.m. and one p.m. departure) does not offer enough of an option for commuters to sustain projected ridership for the long-term. The limited peak period service limits total ridership levels.

(80) There is not a midday market for the service between Martinez and San Francisco. Lack of service during the midday could reduce commute ridership, since returning during the midday is not an option for the commuter. To adequately use the vessel for this service, midday uses for the vessel should be explored.

(81) The Martinez service has the best financial performance and the lowest amount of operating subsidy required of the services analyzed. The required subsidy per passenger trip would be about \$1.30 and the estimated farebox recovery ratio for the Martinez ferry service is approximately 75%.

(82) Although its travel time is comparable to BART service and AC Transit express bus service between Berkeley/Albany and San Francisco, this service may be slightly less convenient because it does not offer as frequent service during peak periods.

(83) The Berkeley/Albany service is the only one of the services analyzed that offers a viable midday trip generator. The service would provide direct Golden Gate Fields racetrack access, which reduces traffic during the midday on I-80 and maximizes the use of the vessel and should help support the commute period riders by having the option of returning to their point of origin during the midday.

(84) The financial performance of the Berkeley/Albany service is not as good as the other new ferry services analyzed. The required subsidy per passenger trip is estimated to be about \$2.70 and the farebox recovery ratio for the Berkeley/Albany service is approximately 45%. The Berkeley/Albany service also requires the most annual operating subsidy of the services analyzed. It is estimated that this service will require about \$700,000 in annual subsidy support.

(85) The Harbor Bay Isle service is currently averaging about 310 total passengers per weekday day, which is about 100 daily riders less than anticipated by Harbor Bay Maritime and about 70% of the ridership projections in this plan.

(86) The current service is significantly faster than other modes of travel between Bay Farm Island and San Francisco. Current one way travel time, including access time, on the Harbor Bay service is approximately 30 minutes including access time, which is about 20 minutes faster than by automobile

(drive alone) and about 14 minutes faster than AC Transit express bus service. However, the ferry service is more costly to the passenger than AC Transit's express bus service.

(86) Based on projected ridership levels and the plan's estimate of costs (excludes vessel lease costs), the required subsidy per passenger is estimated to be about \$2.15 per passenger and the estimated farebox recovery ratio for the service is approximately 62%.

(87) Overall, all of the potential new services (Port Sonoma, Martinez and Berkeley/Albany) would represent a beneficial enhancement to the matrix of transportation options available in the Bay Area. While the new services would not have a large impact on San Francisco bound commute traffic, together with existing transit services they offer another viable option to the private automobile. The Alameda Bay FarmIsland/Harbor Bay service has expanded ridership levels from the City of Alameda without significantly diverting patronage from the pre-existing Alameda ferry service. AR of the services would: (1) be faster than autos; (2) provide new transit service without significant capital investment compared to alternatives; (3) provide an emergency preparedness option; and (4) take vehicles completely off of the bridge/highway system. Also, a few of the routes include opportunities for long-term private investment which is of critical importance during this period of greatly constrained public revenues. Private investment in ferries increases the overall economic viability of the services.

(88) However, the implementation of any of the new services relies on a number of outstanding factors. The most important include determining a project sponsor(s) to pursue the implementation of the services, and securing capital funds and long-term operating support for the services.

(89) The first step for a new service is to determine what entity or entities (local jurisdiction, private party, etc.) will implement and operate the services. This plan analyses the expected performance, the operating and capital needs, and the remaining implementation steps for each of the services. It will ultimately be up to the project sponsors to use this analysis and their own information to determine if the implementation of the ferry services are consistent with their plans and within current resources. At present, there are inadequate federal, state, and regional funds to support the operations of the new services without adversely affecting existing transit services.

(90) The report recommendations are presented as: (1) the step(s) on the part of the project sponsors that need to take place to begin implementation and/or continuation of the services; and (2) policy direction and role for the Metropolitan Transportation Commission (MTC) in the review, planning, and funding of new ferry services.

(91) The steps required for implementation of the potential services address the critical issues that will need to be resolved by the local jurisdictions/project sponsors for each route to determine their ultimate ability to be implemented. These issues include securing operating and capital funds for the services, completing access improvements to the terminals, finding sponsoring agencies to manage and operate the services, and securing required governmental approvals. Many of these issues hinge upon one another and most will need to be fully satisfied prior to investments in the services. It is recommended that MTC support and public fund investments in any of these services be con-

tingent upon completion and/or substantial progress being made on all of the outstanding implementation issues. For example, it would not be prudent to invest public funds into capital requirements (e.g. vessels purchases) for any service until required governmental approvals (e.g. BCDC, PUC, local jurisdiction approvals) or adequate operating funds have been secured. The implementation steps are outlined for each service below.

(92) Operating and Capital Financial Support: A commitment on the part of the private sponsor is needed for the required capital equipment and to support long term operations. The proposed sponsor's interest (Venture Corporation) is contingent upon approval of the Bel Marin Keys development. Without approval and construction of that project, Venture Corporation will not develop the system. If Venture Corporation does not exceed with its current plans, another public and/or private sponsor will be required to implement the service. Such entity will need to secure funding and obtain landing rights at Port Sonoma.

(93) Terminal Access: Access improvements are needed to the terminal facility (traffic light at the intersection of the marina access road and Highway 37) and additional traffic impact analysis would be needed to fully determine the traffic impacts on Lakeville Road and Highway 37 to determine other needed roadway improvements. The sponsor will need to discuss with GGBHTD re-routing and expanding its bus service to the proposed ferry terminal.

(94) Project Sponsor: The sponsor should contract the management of the service with the Golden Gate Bridge, Highway and Transportation District.

(95) Governmental Approvals: Approvals must be secured from Sonoma County, BCDC, and the Corps of Engineers for required terminal construction or any other required shoreside improvements.

(96) Operating and Capital Financial Support: A commitment of funding is needed from local jurisdictions/transit operation(s) for the required capital equipment (vessel and terminal construction) and to support long-term service operations.

(97) Terminal Access: Local jurisdictions and CCCTA will need to work together for CCCTA to extend buses to provide feeder bus service to the ferry terminal.

(98) Project Sponsor: Project sponsor(s) will need to be determined. Local jurisdictions will need to work with CCCTA to sponsor the service.

(99) Governmental Approvals: Approvals are needed from BCDC for required terminal construction, terminal parking use and improvements and any other shoreside improvements. The East Bay Regional Park District and City approvals are also required.

(100) Project Sponsor: Project sponsor(s) will need to be determined; it is recommended that AC Transit sponsor the service.

(101) Operating and Capital Financial Support: A commitment of funding is needed from local jurisdictions/transit operator(s) for the required capital (vessel and terminal construction), channel dredging costs, and to support long-term operations. Given that the midday service would serve patrons of Golden Gate Fields racetrack, local jurisdictions should work with Golden Gate Fields.

(102) Terminal Access: Local jurisdictions will need to work with AC Transit to reroute buses to provide feeder bus service to the ferry terminal.

(103) Governmental Approvals: Approvals must be secured from BCDC for required ter-

minial construction, dredging or any other shoreside improvements. Corps of Engineers approval will be needed for dredging and the protective breakwater. Because of the more complex facility approvals required in addition to construction, implementation of this route would take longer than others.

(104) The service has been implemented as a privately operated and funded service and is expected to remain so for at least three years. If Harbor Bay Maritime does not intend to operate and fund the service beyond the current agreement, a project sponsor(s) for the service will need to be determined. It has been indicated that the City of Alameda may consider taking over the operation and financing of the service after Harbor Bay's commitment. If the City is going to pursue the service, it is recommended that the first step to determine the continuation of this service be that the City of Alameda further evaluate the service based on its performance as a privately operated service over the next two years.

(105) Operating and Capital Financial Support: A commitment of long-term operating funding will be needed if Harbor Bay Maritime does not operate and fund the project beyond the current agreement.

(106) Potential service sponsors/operators should be required to participate in the proposed Ferry Consortium (see Institutional Analysis), to increase the level of coordination between services and identification of potential benefits of joint activity.

(107) MTC should require the long-term operating support be identified and secured for new services before any public fund investments (federal, state and regional funds) are granted for new services. It is recommended that existing funding not be diverted from other projects.

(108) MTC should require that other approvals (BCDC, U.S. Army Corp of Engineers, etc) and other identified service requirements (e.g. terminal access improvements) are in place prior to investments of public funds in the services.

(109) MTC should work with project sponsors/operators to find additional fund sources that can be used for capital and operating purposes. If new, stable operating fund sources are secured for transit service, these new ferry services should be considered for regional financing to add to the Bay Area transportation network.

(110) MTC should require inter-operator coordination for all new services, so that the potential ferry services operate in conjunction with planned feeder transit service. MTC could facilitate local jurisdictions and transit operators to exploring varying institutional arrangements to operate and manage the services.

(111) MTC should not be in a lead position on the implementation of the proposed services, but it should provide planning assistance and provide guidance on funding issues, where needed. Planning assistance could include further examination of ways vessels could be best utilized for ferry services on the Bay, including sharing vessels between services, interlining existing services with new points of origin, finding midday markets/uses for vessels used only during commute periods, and assessing the need for 'spare' vessels.

(112) MTC should require that project sponsors purchasing new vessels consider the ability to interchange parts with other vessels operating in the region and the coordination of maintenance activities as part of their vessel bid and specifications and vessel maintenance planning.

(113) MTC should work with regulatory agencies (BCDC, PUC and U.S. Army Corps of Engineers, PUC, U.S. Coast Guard) to make governmental approval process understandable, coordinated and as streamlined as possible.

(114) MTC, Caltrans, the proposed Ferry Consortium and other interested parties should participate in examining the need to further evaluate ferry services related to: (1) ferry services feeding the San Francisco and Oakland airports including serving the United Airlines maintenance/operational facilities, (2) ferry services as they relate to emergency preparedness, (3) recreational ferry services, and (4) vehicle, truck and freight movement ferry services.

(115) There are a number of opportunities to improve the planning and operation of ferry services on the Bay by coordinating and/or consolidating ferry service operations. Based on our review of the varying institutional arrangements, a two pronged approach is recommended to immediately improve the coordination, planning and operations of ferry services on the Bay:

(116) First, existing and potential publicly operated or funded ferry services should be institutionally merged with existing transit operators/ districts, where feasible; and

(117) Second, a consortium or working group of public and private ferry operators should be established. The consortium would include public and private ferry operators, ports, cities, connecting transit operators, and concerned citizens, who would meet on a regular basis to discuss policy, planning and operational objectives to advance and coordinate ferry services on the Bay.

(118) The combination of these options would facilitate bus/ferry coordination, faster and coordinate regional and sub-regional policy and planning for ferry services, and increase funding to the region and for ferry operations, and could be implemented readily and immediately.

(119) Although not recommended at this time, the possibility remains that some form of a regional ferry agency may eventually be both warranted and readily feasible. As described above, a regional ferry agency, either a JPA or a legislated regional ferry district could provide many operational improvements, such as coordinated maintenance and marketing, ability to share vessels between services to maximize labor efficiencies, and savings from consolidated vessel and equipment purchases. Therefore, it is further recommended that MTC in conjunction with the ferry operators further examine the opportunities that may exist with a regional ferry agency, especially as the network of ferry services grow on the Bay.

(120) This arrangement includes incorporating the operational and planning functions for the Bay's publicly operated ferry services into the existing operations of connecting bus services. This is already the situation for GGBH&TD and the City of Vallejo, which operate both the bus systems and ferry services within their respective service areas. For example, under this arrangement ferry services from the East Bay would be operated by AC Transit, or BART; services from Marin, Sonoma and San Francisco Counties would be operated by GGBH&TD or San Francisco Muni; and services started from San Mateo County would be operated by SamTrans.

(121) This arrangement limits the number of transit operators, thereby not duplicating transit planning and operational activities; facilitates better bus/ferry schedule and transfer connections; and allows ferry serv-

ices to be part of comprehensive transit planning activities.

(122) The Bay Ferry Consortium appears to be an immediately feasible option for ferry services. This arrangement would provide a forum for ferry operators to share information, be involved jointly in activities, coordinate planning and form regional objectives for ferry services. Initial consortium membership should include public and private ferry operators (GGBH&TD, Red & White Fleet, Blue & Gold Fleet, the Cities of Alameda, Vallejo, Oakland), MTC, BCDC, representatives of intermodal transit agencies which would connect with the ferries (MUNI, AC Transit, etc.), Caltrans, rider group representatives, and others as determined by the membership. The Consortium would be expected to meet as a committee of the whole quarterly or on an as needed basis.

(123) The activities of the consortium would be the basis for implementing the recommendations of the Regional Ferry Plan and for continued regional ferry planning. However, the major shortcoming of the consortium is that it does not have policy authority over individual ferry operators; therefore, the operators are not bound to follow the direction of the consortium. To offset this, it is recommended that the consortium be advisory to MTC on ferry issues.

(124) MTC already provides substantial operating and capital funds for ferry services and is responsible for certain coordination activities for transit systems in the region. The consortium should explicitly acknowledge the role of MTC as the lead agency in coordinating regional ferry planning and in reconciling differences and coordinating the activities of the individual ferry operators and other transit operators. While the concept of a consortium would be to establish mutually beneficial relationships between the parties providing ferry services, it is recommended that MTC make operator participation in the consortium a requirement for the receipt of operating and capital funding. This would give policy direction to and the ability to implement the recommendations of the consortium.

(125) The Regional Ferry Plan contains two phases. The first phase of the Plan is devoted to the existing ferry services operating on the Bay. The second phase considers the feasibility of new origin and destinations for passenger ferry services and institutional arrangements to best operate the ferry services on the Bay. Phase I of the Plan includes (1) goals and objectives for the region's ferry services, (2) description of current ferry services, (3) an evaluation of the existing ferry services, and (4) recommendations to improve the existing ferry services. Phase 2 of the Plan includes (1) a detailed evaluation of and recommendations for potential new ferry routes throughout the region, and (2) an evaluation of and recommendations for institutional arrangements to best operate ferry services.

(126) The City of Vallejo and the Metropolitan Transit Commission, in response to legislative mandate, bond issue direction, and local and regional transit plans, have jointly undertaken this Regional Ferry Plan to analyze existing ferry transit resources and to plan for new ferry services in San Francisco Bay. The two specific mandates for the study are Senate Bill 2169 (1990) and Proposition 116 from the June 1990 general election.

(127) The key legislation which shapes the San Francisco Bay Ferry Study is California Senate Bill No. 2169. Filed in response to the experience of the 1989 Loma Prieta Earthquake, and increasing interest in ferry tran-

sit by a variety of interests, including the Bay Area Water Transit Task Force, it is intended to give transit planners an evaluative tool in decision-making for ferry systems in the future.

(128) Senate Bill 2169 (Kopp, 1990) authorizes the Metropolitan Transportation Commission to develop and adopt a long-range plan implementing high-speed water transit on the bay. Its language indicates: "The commission may develop and adopt a long-range plan for implementing high-speed water transit on San Francisco Bay, including, but not limited to, all of the following:

"a. Policies and procedures for allocating capital and operating assistance from local, state, or federal funds.

"b. Criteria and standards for evaluating and selecting services to be funded with local, state, or federal funds, based upon, but not limited to fare box revenue to operating cost ratio, amount of subsidy per passenger and local financial support, local support in providing ground access, and impact on bridge traffic."

(129) The California Clean Air and Transportation Improvement Act of 1990 initiative measure, passed by the voters in June 1990, while primarily oriented to investment in rail improvements, contained an element for capital improvements to ferry service. This included the following sections:

"99646. Ten million dollars (\$10,000,000) shall be allocated to the City of Vallejo for expenditures on water-borne ferry vessels and terminal improvements.

"99651. Twenty million dollars (\$20,000,000) shall be allocated to fund a program of competitive grants to local agencies for the construction, improvement, acquisition, and other capital expenditures associated with water-borne ferry operations for the transportation of passengers or vehicles, or both."

(130) This study has been undertaken within the framework of existing regional transit and environmental Policies with the aim of establishing a short-term action plan for the implementation of expanded ferry service in San Francisco Bay and specifically for Vallejo. It builds on the 1985 High Speed Water Transit Study for the San Francisco Bay Area prepared by MTC.

(131) The recently completed San Francisco Bay Crossing Study (mandated by Senate Concurrent Resolution 20) also studied a ferry alternative including up to 17 terminals served by a fleet of fast ferries as an option to additional bridge or rail crossings of the Bay, but that study focused on a more conceptual approach and longer time frame for implementation than this current study which will evaluate more specific options and develop more refined implementation projects.

(132) Today's visitor to the San Francisco Bay area is never far away from the great recreational, scenic and working resource which is the Bay. From every hill, bridge or high-rise office building, the Bay is the focal point. Of the San Francisco work force of 570,000, some 130,000 commute into San Francisco each day for work over the Golden Gate and Bay Bridges, or on BART. An additional 3,500 commute by water over the Bay from Larkspur, Sausalita, Tiburon, Vallejo, Alameda and Oakland.

(133) Water transportation was the earliest mode used to cross San Francisco Bay. Rowboats, sailing craft and packets provided the first connections. Steam ferries appeared in 1847. Steamships bringing Gold Rush adventurers, such as the "New World", which arrived from New York in 1850, sailed in from the East Coast, and became part of the San

Francisco Bay and river ferry system. "New World", used in Sacramento service, was eventually sold to Oregon, but returned finally to Vallejo, where she provided ferry service until she was dismantled in 1879. These steamers provided the links that connected the early mining and farming communities.

(134) Transbay ferry service began in 1850, with the establishment of a route between San Francisco and the Oakland Estuary, served by the "Kangaroo". In 1852, Oakland granted what was to be the first Bay ferry franchise to a "reliable" operator of a public ferry. Over the last century and a half, up to thirty major cross-bay ferries existed, serving 29 destinations. The great period of ferry transit reached its peak in the 1930's when 60 million persons crossed the bay annually, along with 6 million autos.

(135) The Ferry Building was the second busiest transportation terminal in the world in the early 1930s. Each day, some 250,000 persons travelled through the Ferry Building to work or other destinations. Ferries made approximately 170 landings a day at this time, and the Ferry Building was served by trolley lines which left every 20 seconds for city destinations. Ferries to Oakland could carry 4,000 persons, and were designed to incorporate restaurants, shoe shine parlors, and luxury surroundings, including mohair hangings, teak chairs, hammered copper lighting fixtures, and leather chairs in the ladies lounges. The highly efficient Key Route ferry/train transfer at the Oakland Mole enabled 9,000 commuters to load and unload in less than 20 minutes.

(136) As in most cities in the United States, the building of bridges and tunnels and the expansion of the use of the train and then the automobile led to the demise of ferry routes. These same cities are now dealing with the result of suburban development patterns—severe bridge, highway and tunnel congestion, and, in some cases, the need to provide alternate transportation routes during reconstruction of these aging structures. In San Francisco, for example, the Golden Gate Bridge, Highway and Transportation District, which the state created in 1923 to construct the Golden Gate Bridge, recognized 32 years after its completion that increasing bridge congestion suggested a need for a wider choice of modes. Studies in the early 1970s recommended establishing an integrated system of buses, ferries, and park-and-ride facilities in an attempt to delay the need for a more costly second deck, tunnel, or additional bridge.

(137) After a series of vessel and terminal modifications, Bridge District ferry service from Larkspur to San Francisco now carries about 4,000 passengers a day, and continues to grow. Buses meet the ferries on peak commuter runs, and serve 12 Marin County routes. District ferry service to Sausalito carries some 1,700 passengers daily, both commuters and tourists.

(138) East Bay ferry service to San Francisco ended in 1958. With the temporary resumption of Berkeley-San Francisco ferry service during the 1979 BART Transbay Tube closure, Harbor Bay Island demonstrations, and, more recently, service to Vallejo, supplemental post earthquake service, and continuing Alameda/Oakland service, East Bay water transit access to San Francisco is gradually being restored.

(139) Throughout the world, more passengers are transported by ferry each day than by air. In the United States, the two largest ferry systems, Washington State (50,000 passengers per day) and Staten Island

(80,000 passengers per day) carry the bulk of United States' ferry commuters, even though there are over 275 separate ferry operations in the country. The "Wall Street Journal" estimated in a recent article that there were only 150,000 passengers travelling by ferry every day in the entire United States, which is equivalent to a day's ferry usage in the city of Lisbon, Portugal.

(140) Fast ferries (over 25 knots) have become key to successful ferry operations in many countries since World War II. Today, there are about 155 operators of fast ferries worldwide. (83) Of these, six are located in the United States. The three operators which provide commuter service (Washington State, Red & White Fleet, TNT) all use Incat catamarans. Because of US restrictions on foreign hulls, fast ferries have, with few exceptions, not been available for United States use. US manufacturers of fast vessels have chosen to focus on military applications with four exceptions: the Boeing Jetfoil (now only produced in Japan), glass-hulled planing craft, a demonstration Air Ride surface-effect vessel and the Incat catamaran of Australian design. Several US shipyards have licenses to build Scandinavian catamarans, British hovercraft and surface-effect vessels; these have not yet been constructed. New SWATH (small water area twin hull) craft in San Diego and Hawaii have generated interest in the marine community.

(141) During the 60's and 1970's, there were two high-speed ferry demonstrations on San Francisco Bay, utilizing a hydrofoil and an amphibious hovercraft. A year-long hovercraft demonstration served the Oakland and San Francisco Airports, and, according to the Port of Oakland's Air Cushion Vehicle Mass Transportation Demonstration Project Final Report' (April 1967), was favorably received by passengers. According to the 1984 UMTA review 'Existing and Former High Speed Water-borne Transportation Operations in the United States', the service, which was "the first use of hovercraft for a revenue service in the United States" carried 12,510 passengers during the year, with an overall load factor of 27.3 percent. Wind gusts, wave height, and vessel reliability adversely affected the particular vessel used. Hydrofoil service was demonstrated by the FMC Corporation in the early 1970s as a potential market opportunity.

(142) Additionally, a short-term demonstration with a surface-effect craft was put into place by Harbor Bay Maritime in 1985 from Bay Farm Island (Alameda) to San Francisco. This rigid sidewall, air cushion Hovermarine vessel was built in England, and required a Jones Act waiver to operate between two points in the Bay. Like the hovercraft, the speed of the service was attractive to riders. However, ride comfort was not acceptable. Harbor Bay Maritime intends to initiate regular ferry service during 1991 with a fast planing monohull to connect Bay Farm Island with the San Francisco Ferry Building.

(143) San Francisco Bay today has a ferry fleet of approximately twenty-five vessels, with a passenger capacity of 10,500 persons. Speeds range from 25 knots provided by the catamarans, to 12 knots, the speed of the harbor tour vessels. Seven of these vessels provide commuter transportation, and the remainder provide transportation to recreational and tourist destinations, or are dedicated to charter work. Each year, about two million commuter trips are made on San Francisco Bay. There are about one million tourist trips to Alacataz, Angel Island

(180,000 visitors a year), Vallejo, Sausalito, Tiburon, Alameda and Oakland each year. It is estimated that there are about two million harbor tour and charter passengers as well.

(144) The Red & White Fleet has been the chief private provider of commuter service, and operates both non-subsidized routes to Sausalito and Tiburon, as well as subsidized services to Vallejo and to Alameda and Oakland in the East Bay. Red & White also runs ferries to Angel Island State Park, tour service to Alcatraz under an agreement with the National Park Service, and provides mid-day connections to Vallejo.

(145) Other passenger vessel operators in San Francisco Bay in 1991 include Blue and Gold, which carries 300,000 tour visitors a year, and Hornblower Dining Yachts, which provides dinner and charter cruises on San Francisco Bay. The Angel Island Ferry provides a short connection between Tiburon and the Island, and carries about half of the 180,000 visitors each year. The California Parks Department has purchased a new 48-passenger crew boat 'Ayala' to serve park functions between Tiburon and Angel Island. Finally, a small crew boat, based in Vallejo, is used to transport refinery workers to Pacific Refinery's terminal off Rodeo. Mare Island ferry service carried Shipyard workers between Vallejo and the Island until 1988.

(146) During the 1989 Loma Prieta Earthquake recovery period, Caltrans, the Metropolitan Transportation Commission, the City of Vallejo, and other East Bay communities participated in an extension of commuter ferry services. The Golden Gate District also augmented service from Marin County. From a normal situation, where 6,000 persons travel by ferry each day, ferries met a demand of 20,000 riders each day while the Bay Bridge was closed to automobiles. Although ferry service expanded by more than 300% while the Bay Bridge was closed, commuter numbers dropped shortly after the restoration of bridge service. Realizing that an attractive, dependable, reliable, stress-free transportation mode exists, public interest in cross-bay ferries has grown since the earthquake.

(147) Along the waterfront in San Francisco, the Port of San Francisco is exploring new maritime uses for its property, and directing investment of earthquake emergency monies (from the Federal Highway Administration and Caltrans) into initial improvements of the ferry landing at Pier 1/2. Oakland and Alameda are also using similar funds for terminal improvements. Recent passage of Proposition 116 will make \$30 million available state-wide for investment in ferries and related infrastructure, with \$10 million targeted to the Vallejo-San Francisco ferry link. Caltrans, under its Traffic Mitigation Program for the reconstruction of the Cypress Street freeway in Oakland, has designated monies for ferry marketing and terminal improvements in Alameda and Oakland.

(148) Key legislators and individuals, agencies, such as the Metropolitan Transportation Commission, Caltrans, and the Golden Gate Bridge, Highway, and Transportation District, and key communities, such as Alameda, Oakland and Vallejo, have moved the Bay Area towards restoration of a greater San Francisco Bay ferry network. In addition, state legislative interest in decreased traffic congestion, regional interest in transit service coordination, and local efforts to promote waterfront development also contributed to desire for an overall ferry plan.

(149) The study team has conducted comprehensive interviews, reviewed existing

studies, policies, and legislation from San Francisco Bay and appropriate sources outside the Bay Area, and participated in public meetings in order to build the background from which to view this project. A review of ferry experiences—both historical and current—has provided unique hands-on perspectives. Ferry captains who deal each day with channel siltation and debris, herring and other fishing activity, high speed ferry technology in action, and the dilemmas of mixing commuter and tourist traffic added valuable observations to the study. Ferry operators, who continue to refine the day-to-day management and operations issues, and ferry commuters, who have made a definite transit mode choice, and who recognize the benefits and shortcomings of existing services, offered suggestions for future ferry service as well. Public agency planners and decision-makers generously shared their own transit and environmental plans, policies and objectives.

(150) A roster of those interviewed during the course of the study is appended to this report. Additionally, a bibliography is appended which lists historical volumes, as well as ferry and transit studies from the Bay Area, and others which seem appropriate from other cities and countries. These reports and policies have been collected and reviewed by the study team, and cited where appropriate. Other ferry system goals and service standards, terminal and vessel designs, lessons learned, and government policies can be found among these reports. Bay Area ferry and transit schedules have been collected and are incorporated into the analyses. Federal transportation documents, ferry system analyses and agency standards, and transportation texts have also been reviewed for relevant criteria, and extensive commuter surveys have been undertaken for the Phase I analysis.

(151) This section includes goals and policies and evaluation criteria for ferry services operating in the San Francisco Bay Area. They have been created based on three primary sources: transportation and related goals by Bay Area regional agencies, counties and cities; goals and policies of ferry operations elsewhere; and the views of key informants expressed in interviews.

(152) A description of ferry operations elsewhere, and associated goals, objectives, and policies is contained in Appendix B. The lessons learned from these operations include the fact that there is no single approach to initiating new ferry service. Congestion relief and alternatives to new bridge construction have been successfully implemented goals for several services. Intermodal connections have also been important components. Appropriate and reliable vessels, attention to vessel access, and attention to environmental constraints, particularly wake restraints, have been important. Finally, in order to compete for scarce public subsidy funds for transit service, it is important to develop cost-effective and efficient operations.

(153) Summarizing the goals, ferries on San Francisco Bay will be considered where they offer the potential to: improve mobility; alleviate bridge and highway congestion; provide a cost-effective, flexible, dependable, comfortable, attractive and safe mode of transportation that helps the region to meet air quality, energy consumption, and accessibility goals; and enhance tourism, recreation and regional economic development.

(154) Goal 1. Enhance regional mobility and support regional planning policies.

Policy 1. Ferry services must enhance mobility in congested corridors and help meet goals of Congestion Management Plans.

Policy 2. Ferry services should reduce the number of vehicles entering San Francisco.

Policy 3. Ferry service projects must help achieve regional air quality and environmental goals.

Policy 4. Ferries must provide a seamless network of interconnecting regional services with other public transit and para-transit programs.

Policy 5. A set of core ferry facilities and equipment suitable for rapid expansion should be available if alternative modes become inoperable as a result of natural or man-made disasters.

Policy 6. Ferry service alternatives should be considered for vehicles transporting hazardous materials or other vehicles that reduce the efficiency of the regional highway network.

Policy 7. Ferry services should support bikeway programs.

(155) Goal 2. Create a transit option that is an attractive alternative to the automobile.

Policy 1. Ferry service must be competitive with the automobile in travel time, cost, reliability and comfort.

Policy 2. Schedules, intermodal facilities, fare policy, and marketing must be oriented to provide a single integrated system.

Policy 3. A ferry system should provide an amenity and comfort level that win attract commuters, off-peak and weekend riders, and new riders unfamiliar with water transportation.

Policy 4. Ferry services should increase public access to recreational destinations.

Policy 5. Ferry and terminal concessions which enhance the ferry experience should be provided.

(156) Goal 3. Offer a transit option that can be initiated in a timely, environmentally benign, and cost effective manner.

Policy 1. Ferry vessels to be acquired for the Bay Area must be cost-effective and represent proven technology.

Policy 2. Public/private partnerships should be utilized, maintaining the most cost-effective role for each sector.

Policy 3. Terminals must be functional, attractive and cost-effective, while providing shelter, amenities, efficient access and egress, and adequate intermodal connections.

Policy 4. Improvements should be developed incrementally as required to meet ridership.

Policy 5. Ferry service should be expanded within the institutional framework of agencies that now exist.

Policy 6. The application/permit process for new ferry services should be simplified and coordinated by a single agency.

Policy 7. Ferry services must complement the navigational waterways of the Bay, reflecting draft, wake, speed, and harbor traffic constraints.

(157) Goal 4. Provide transit service that operates efficiently and reduces the need for high cost alternative transportation investments.

Policy 1. Ferry transit should be implemented to reduce or delay the need for high capital cost highway and transit projects where the projected fare box recovery ratio and subsidy per passenger indicate fiscal benefits.

Policy 2. Vessels selected should be of appropriate size and speed to meet the need, and of sufficient number to provide the desired schedule frequency.

Policy 3. Competitive bidding should be used to procure and operate boats efficiently.

Policy 4. Joint purchasing, service interlining, recreational sub-lets, and joint use of

spare equipment should be utilized to reduce system cost.

Policy 5. Local financial and in-kind support should be required for new and continuing ferry services.

(158) Goal 5. Provide ferry service that is reliable, safe, and fully accessible.

Policy 1. Require vessels of proven reliability and terminals compatible with the vessels.

Policy 2. Vessels must meet or exceed all Coast Guard safety requirements.

Policy 3. All terminals and vessels should meet all state and federal accessibility standards.

(159) Goal 6. Develop terminals that are consistent with local and regional plan.

Policy 1. Terminals must meet the requirements of the BCDC Plan, the Corps of Army Engineers permitting procedures, the Bikeways Program, transit coordination objectives, and accessibility standards.

Policy 2. Terminals must support local planning, economic development, tourism, regional marketing, environmental and design objectives.

Policy 3. Terminals should be developed as local (and regional where appropriate) transit hubs.

(160) It is important to have a set of criteria in place for two purposes. First, criteria are essential for the evaluation of competing proposals for ferry service, where operating and capital fund are limited. Second, the criteria are important for the evaluation of ferry service as a temporary or permanent alternative to other transportation investments such as building a new bridge, widening a freeway, or building an alternative transit project. This list of criteria can also act as a checklist for consideration when ferries are proposed as traffic mitigation or emergency service providers. Criteria are categorized into the following categories:

- Mobility/Performance
- Energy and Environment
- Socio-economic
- Financial
- Service
- Ease of Implementation

(b) of the funds appropriated under the heading "Federal-Aid Highways", \$5,000,000 shall be made available to carry out section 1207(c)(1) of Public Law 105-178."

AMENDMENT No. 950

Page 91, strike lines 10-12, and insert: "This Act may be cited as the 'No TEA for Two Department of Transportation and Related Appropriations Act, 2000'."

AMENDMENT No. 951

At the appropriate place in title III, insert the following:

SEC. 3 . TRANSFER OF MOTOR CARRIER SAFETY FUNCTIONS FROM THE FEDERAL HIGHWAY ADMINISTRATION TO THE NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION.

(a) TRANSFER OF FUNCTIONS FROM FEDERAL HIGHWAY ADMINISTRATION.—Section 104(c) of title 49, United States Code, is amended—

(1) in paragraph (1), by adding "and" at the end;

(2) by striking paragraph (2); and

(3) by redesignating paragraph (3) as paragraph (2).

(b) TRANSFER OF FUNCTIONS TO NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION.—Section 105(c) of title 49, United States Code, is amended—

(1) in paragraph (1), by striking "and" at the end;

(2) by redesignating paragraph (2) as paragraph (3); and

(3) by inserting after paragraph (1) the following:

“(2) duties and powers related to motor carrier safety vested in the Secretary by chapters 5 and 315; and”.

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—Subject to paragraph (2), the amendments made by this section shall take effect on the date that is 180 days after the date of enactment of this Act.

(2) ACTIONS BY THE SECRETARY OF TRANSPORTATION.—The Secretary of Transportation may take such action as may be necessary to ensure the orderly transfer of the duties and powers related to motor carrier safety vested in the Secretary by chapters 5 and 315 of title 49, United States Code, and employees carrying out such duties and power, from the Federal Highway Administration to the National Highway Traffic Safety Administration.

SCHUMER AMENDMENTS NOS. 952-1036

(Ordered to lie on the table.)

Mr. SCHUMER submitted 85 amendments intended to be proposed by him to the bill, S. 1143, supra; as follows:

AMENDMENT No. 952

On page 31, line 3, strike “\$29,500,000” and insert “\$28,000,000”.

On page 31, line 25, strike “\$1,500,000” and insert “\$3,000,000”.

AMENDMENT No. 953

On page 27, line 9, strike “\$1,000,000” and insert “\$999,000”.

On page 27, line 21, strike “\$22,364,000” and insert “\$22,365,000”.

AMENDMENT No. 954

On page 17, line 23, strike “\$370,000,000” and insert “\$365,500,000”.

On page 31, line 12, strike “\$1,000,000” and insert “\$1,500,000”.

AMENDMENT No. 955

On page 17, line 23, strike “\$370,000,000” and insert “\$363,000,000”.

On page 30, line 17, strike “\$21,000,000” and insert “\$27,000,000”.

AMENDMENT No. 956

On page 17, line 23, strike “\$370,000,000” and insert “\$350,000,000”.

On page 33, line 2, strike “\$60,000,000” and insert “\$80,000,000”.

AMENDMENT No. 957

On page 17, line 23, strike “\$370,000,000” and insert “\$368,250,000”.

On page 30, line 20, strike “\$5,250,000” and insert “\$7,000,000”.

AMENDMENT No. 958

On page 17, line 23, strike “\$370,000,000” and insert “\$369,800,000”.

On page 33, line 4, strike “\$1,960,800,000” and insert “\$1,961,000,000”.

AMENDMENT No. 959

On page 17, line 23, strike “\$370,000,000” and insert “\$368,600,000”.

On page 30, line 21, strike “\$4,000,000” and insert “\$5,400,000”.

AMENDMENT No. 960

On page 17, line 23, strike “\$370,000,000” and insert “\$369,990,000”.

On page 33, line 12, strike “\$2,451,000,000” and insert “\$2,461,000,000”.

AMENDMENT No. 961

On page 17, line 23, strike “\$370,000,000” and insert “\$369,789,000”.

On page 26, line 14, strike “\$91,789,000” and insert “\$92,000,000”.

AMENDMENT No. 962

On page 17, line 23, strike “\$370,000,000” and insert “\$364,500,000”.

On page 28, line 19, strike “\$20,500,000” and insert “\$26,000,000”.

AMENDMENT No. 963

On page 17, line 23, strike “\$370,000,000” and insert “\$369,232,000”.

On page 30, line 25, strike “\$49,632,000” and insert “\$50,400,000”.

AMENDMENT No. 964

On page 17, line 23, strike “\$370,000,000” and insert “\$369,100,000”.

On page 31, line 10, strike “\$1,500,000” and insert “\$2,400,000”.

AMENDMENT No. 965

On page 17, line 23, strike “\$370,000,000” and insert “\$369,600,000”.

On page 31, line 12, strike “\$1,000,000” and insert “\$1,400,000”.

AMENDMENT No. 966

On page 17, line 23, strike “\$370,000,000” and insert “\$369,850,000”.

On page 31, line 15, strike “\$250,000” and insert “\$400,000”.

AMENDMENT No. 967

On page 17, line 23, strike “\$370,000,000” and insert “\$369,000,000”.

On page 31, line 17, strike “\$3,000,000” and insert “\$4,000,000”.

AMENDMENT No. 968

On page 17, line 23, strike “\$370,000,000” and insert “\$369,000,000”.

On page 31, line 18, strike “\$3,000,000” and insert “\$4,000,000”.

AMENDMENT No. 969

On page 17, line 23, strike “\$370,000,000” and insert “\$369,000,000”.

On page 31, between lines 12 and 13, insert the following:

“New York, bus and garage equipment, \$1,000,000;”.

AMENDMENT No. 970

On page 17, line 23, strike “\$370,000,000” and insert “\$354,000,000”.

On page 29, between lines 8 and 9, insert the following:

STATEN ISLAND RAIL DEVELOPMENT

For the costs associated with construction of a connection between the Staten Island Railroad and the Chemical Coast Line in Union County, New Jersey, \$16,000,000, to remain available until expended: *Provided*, That the Port Authority of New York and New Jersey (or a designee thereof) shall provide matching funds from non-Federal sources on a dollar-for-dollar basis.

AMENDMENT No. 971

On page 28, line 20, insert before the period the following: “, of which \$250,000 shall be provided to the State of New York for a High Speed Rail Program Land Access Study”.

AMENDMENT No. 972

On page 28, line 20, insert before the period the following: “, of which \$250,000 shall be

made available to the State of New York for the Empire Corridor Advanced Train Control”.

AMENDMENT No. 973

On page 28, line 20, insert before the period the following: “, of which \$5,750,000 shall be made available to the State of New York for the Empire Corridor High Speed Safety Program”.

AMENDMENT No. 974

On page 17, line 23, strike “\$370,000,000” and insert “\$355,000,000”.

On page 31, line 20, strike “\$5,000,000” and insert “\$20,000,000”.

AMENDMENT No. 975

On page 17, line 23, strike “\$370,000,000” and insert “\$369,700,000”.

On page 21, in the table preceding line 1, insert before the item relating to “Kansas City, MO” the following:

| | |
|---|---------|
| Rochester ITS Evaluation and Integration Initiative, NY | 300,000 |
|---|---------|

AMENDMENT No. 976

On page 17, line 23, strike “\$370,000,000” and insert “\$366,000,000”.

On page 21, in the table preceding line 1, insert before the item relating to “Kansas City, MO” the following:

| | |
|------------------------------------|-----------|
| Statewide ITS Deployment, NY | 4,000,000 |
|------------------------------------|-----------|

AMENDMENT No. 977

On page 17, line 23, strike “\$370,000,000” and insert “\$366,200,000”.

On page 21, in the table preceding line 1, insert before the item relating to “Kansas City, MO” the following:

| | |
|---|-----------|
| Lower Hudson Multi-Operator Transit Communications Standards Implementation, NY | 3,800,000 |
|---|-----------|

AMENDMENT No. 978

On page 17, line 23, strike “\$370,000,000” and insert “\$366,000,000”.

On page 21, in the table preceding line 1, insert before the item relating to “Kansas City, MO” the following:

| | |
|---|-----------|
| Rural Transit Automated Vehicle Location System Network, NY | 4,000,000 |
|---|-----------|

AMENDMENT No. 979

On page 17, line 23, strike “\$370,000,000” and insert “\$360,000,000”.

On page 21, in the table preceding line 1, insert before the item relating to “Kansas City, MO” the following:

| | |
|--|------------|
| Capital District Regional Traffic Signal System Improvements, NY | 10,000,000 |
|--|------------|

AMENDMENT No. 980

On page 17, line 23, strike “\$370,000,000” and insert “\$367,500,000”.

On page 21, in the table preceding line 1, insert before the item relating to “Kansas City, MO” the following:

| | |
|---|-----------|
| Hudson Line High Speed Smart Rail/Highway Crossings | 2,500,000 |
|---|-----------|

AMENDMENT No. 981

On page 17, line 23, strike “\$370,000,000” and insert “\$365,000,000”.

On page 21, in the table preceding line 1, insert before the item relating to "Kansas City, MO" the following:

FDR Drive Traffic Management System 5,000,000

AMENDMENT No. 982

On page 17, line 23, strike "\$370,000,000" and insert "\$366,000,000".

On page 21, in the table preceding line 1, insert before the item relating to "Kansas City, MO" the following:

System Integration of Sub-regional ITS in New York City 4,000,000

AMENDMENT No. 983

On page 17, line 23, strike "\$370,000,000" and insert "\$365,000,000".

On page 21, in the table preceding line 1, insert before the item relating to "Kansas City, MO" the following:

Cross Westchester Expressway Advanced Transportation Management System, Westchester County 5,000,000

AMENDMENT No. 984

On page 17, line 23, strike "\$370,000,000" and insert "\$367,500,000".

On page 21, in the table preceding line 1, insert before the item relating to "Kansas City, MO" the following:

Long Island Railroad Grade Crossing Expansion 2,500,000

AMENDMENT No. 985

On page 17, line 23, strike "\$370,000,000" and insert "\$366,000,000".

On page 21, in the table preceding line 1, insert before the item relating to "Kansas City, MO" the following:

Capital District Smart Transit System, NY 4,000,000

AMENDMENT No. 986

On page 17, line 23, strike "\$370,000,000" and insert "\$366,000,000".

On page 21, in the table preceding line 1, insert before the item relating to "Kansas City, MO" the following:

New York State-Rural Transit Automated Vehicle Location System Network 4,000,000

AMENDMENT No. 987

On page 17, line 23, strike "\$370,000,000" and insert "\$368,500,000".

On page 21, in the table preceding line 1, and insert the following:

State of New York 1,500,000

AMENDMENT No. 988

On page 17, line 23, strike "\$370,000,000" and insert "\$368,000,000".

On page 21, in the table preceding line 1, insert before the item relating to "Kansas City, MO" the following:

Monroe County traffic operations center, NY 2,000,000

AMENDMENT No. 989

On page 17, line 23, strike "\$370,000,000" and insert "\$366,000,000".

On page 21, in the table preceding line 1, insert before the item relating to "Kansas City, MO" the following:

Statewide ITS Urban Integration, NY 4,000,000

AMENDMENT No. 990

On page 48, between lines 8 and 9, insert the following:

"Oneida County buses for bus consortium, New York".

AMENDMENT No. 991

On page 44, between lines 10 and 11, insert the following:

"Long Beach Central Bus Facility, New York".

AMENDMENT No. 992

On page 48, between lines 8 and 9, insert the following:

"Oneida County bus facilities, New York".

AMENDMENT No. 993

On page 50, between lines 8 and 9, insert the following:

"Rochester alternative fuel buses, New York".

AMENDMENT No. 994

On page 50, between lines 8 and 9, insert the following:

"Rochester Central Bus Facility, New York".

AMENDMENT No. 995

On page 52, between lines 24 and 25, insert the following:

"Staten Island Rapid Transit Demonstration, New York".

AMENDMENT No. 996

On page 53, between lines 2 and 3, insert the following:

"Suffolk County Automated Vehicle Locator System, New York".

AMENDMENT No. 997

On page 53, between lines 2 and 3, insert the following:

"Sullivan County coordinated public transportation, New York".

AMENDMENT No. 998

On page 53, between lines 11 and 12, insert the following:

"Tompkins County Transit Center, New York".

AMENDMENT No. 999

On page 53, between lines 15 and 16, insert the following:

"Town of Huntington paratransit vehicles, New York".

AMENDMENT No. 1000

On page 34, between lines 11 and 12, insert the following:

"Albany Paratransit Bus Facility and replacement vehicles, New York".

AMENDMENT No. 1001

On page 58, between lines 8 and 9, insert the following:

"Poughkeepsie Intermodal Project, New York".

AMENDMENT No. 1002

On page 54, between lines 24 and 25, insert the following:

"Westchester County, replace 40 commuter coaches, New York".

AMENDMENT No. 1003

On page 55, between lines 11 and 12, insert the following:

"Yonkers Intermodal Center, New York".

AMENDMENT No. 1004

On page 36, between lines 16 and 17, insert the following:

"Broome County, buses and related equipment, New York".

AMENDMENT No. 1005

On page 80, strike lines 1 through 11 and insert the following:

SEC. 321. MAXIMUM HIGHWAY APPORTIONMENT TO EACH STATE.

(a) DEFINITION OF STATE.—In this section, the term "State" means any of the 50 States and the District of Columbia.

(b) IN GENERAL.—Notwithstanding any other provision of law, no State shall receive more than \$120 per capita of the total budget resources made available by this Act to carry out sections 103(b), 105, 119, 133, 144, and 149 of title 23, United States Code.

(c) REDISTRIBUTION OF BUDGET RESOURCES.—The amount of funds made available by application of subsection (b) shall be redistributed equally among the States.

(d) AFFECTED APPORTIONMENTS.—Reductions and increases required under subsections (b) and (c) shall be made only to the formula apportionments under the sections referred to in subsection (b).

AMENDMENT No. 1006

On page 91, between lines 9 and 10, insert the following:

SEC. 3 REPEAL OF GUARANTEE OF 90.5 PERCENT RETURN.

Section 105 of title 23, United States Code, is amended by striking subsection (f).

AMENDMENT No. 1007

On page 91, between lines 9 and 10, insert the following:

SEC. 3 TERMINATION OF AIRPORT AND AIRWAY TRUST FUND.

(a) IN GENERAL.—Section 9502 of the Internal Revenue Code of 1986 (relating to the Airport and Airway Trust Fund) is repealed.

(b) CONFORMING AMENDMENT.—Paragraph (3) of section 9503(b) is repealed.

(c) EFFECTIVE DATE.—The repeals made by this section take effect on October 1, 1999.

AMENDMENT No. 1008

On page 91, between lines 9 and 10, insert the following:

SEC. 3 TERMINATION OF HIGHWAY TRUST FUND.

(a) IN GENERAL.—Section 9503 of the Internal Revenue Code of 1986 (relating to the Highway Trust Fund) is repealed.

(b) EFFECTIVE DATE.—The repeal made by subsection (a) takes effect on October 1, 1999.

AMENDMENT No. 1009

On page 91, between lines 9 and 10, insert the following:

SEC. 3 TERMINATION OF EXCISE TAX ON HIGHWAY MOTOR FUELS.

(a) IN GENERAL.—Section 4041 (other than subsections (c) and (d)(2)) and subpart A of part III of subchapter A of chapter 32 of the Internal Revenue Code of 1986 (relating to special fuels and gasoline) are repealed.

(b) EFFECTIVE DATE.—The repeals made by subsection (a) take effect on October 1, 1999.

AMENDMENT No. 1010

On page 91, between lines 9 and 10, insert the following:

SEC. 3 TERMINATION OF EXCISE TAX ON AVIATION FUELS.

(a) IN GENERAL.—Subsections (c) and (d)(2) of section 4041 and subpart B of part III of

subchapter A of chapter 32 of the Internal Revenue Code of 1986 (relating to aviation fuels) are repealed.

(b) EFFECTIVE DATE.—The repeals made by subsection (a) take effect on October 1, 1999.

AMENDMENT NO. 1011

On page 80, strike lines 1 through 11 and insert the following:

SEC. 321. SURFACE TRANSPORTATION.

(a) HIGH PRIORITY PROJECTS FLEXIBILITY.—Section 117 of title 23, United States Code, is amended by adding at the end the following:

“(i) USE OF OTHER FUNDS.—

“(1) IN GENERAL.—

“(A) PROJECTS ELIGIBLE FOR APPORTIONED FUNDS.—A State may use for a project under this section any funds apportioned under this title for which the project is eligible.

“(B) PROJECTS NOT ELIGIBLE FOR APPORTIONED FUNDS.—If a project under this section is not eligible for funds apportioned under this title, a State may use for the project funds apportioned to the State under section 104(b)(3), other than funds set aside or suballocated under section 133(d).

“(2) REIMBURSEMENT.—Apportioned funds used under paragraph (1) shall be reimbursed from amounts allocated for the project under this section in an amount equal to the amount used under paragraph (1), but not to exceed the total of the amounts allocated for the project under this section.”

(b) FUNDING FLEXIBILITY AND HIGH SPEED RAIL CORRIDORS.—

(1) ELIGIBILITY OF PASSENGER RAIL FOR HIGHWAY FUNDING.—

(A) NATIONAL HIGHWAY SYSTEM.—Section 103(b)(6) of title 23, United States Code, is amended by adding at the end the following:

“(Q) Acquisition, construction, reconstruction, and rehabilitation of, and preventative maintenance for, intercity rail passenger facilities and rolling stock.”

(B) SURFACE TRANSPORTATION PROGRAM.—Section 133(b)(2) of title 23, United States Code, is amended by inserting before the period at the end the following: “, rail, or a combination of bus and rail”.

(C) CONGESTION MITIGATION AND AIR QUALITY IMPROVEMENT PROGRAM.—Section 149(b) of title 23, United States Code, is amended—

(i) in paragraph (4), by striking “or” at the end;

(ii) in paragraph (5), by striking the period at the end and inserting “; or”; and

(iii) by adding at the end the following:

“(6) if the project or program will have air quality benefits through acquisition, construction, reconstruction, and rehabilitation of, and preventative maintenance for, intercity rail passenger facilities and rolling stock.”

(2) TRANSFER OF HIGHWAY AND TRANSIT FUNDS TO AMTRAK AND PUBLICLY-OWNED PASSENGER RAIL LINES.—Section 104(k) of title 23, United States Code, is amended—

(A) by redesignating paragraph (3) as paragraph (4);

(B) by inserting after paragraph (2) the following:

“(3) TRANSFER TO AMTRAK AND PUBLICLY-OWNED PASSENGER RAIL LINES.—Funds made available under this title or chapter 53 of title 49 and transferred to the National Railroad Passenger Corporation or to any publicly-owned intercity or intracity passenger rail line shall be administered by the Secretary in accordance with subtitle V of title 49, except that the provisions of this title or chapter 53 of title 49, as applicable, relating to the non-Federal share shall apply to the transferred funds.”; and

(C) in paragraph (4) (as redesignated by subparagraph (A)), by striking “paragraphs

(1) and (2)” and inserting “paragraphs (1) through (3)”.

(c) HISTORIC BRIDGES.—Section 144(o) of title 23, United States Code, is amended—

(1) in paragraph (3)—

(A) by inserting “amount of” before “costs eligible”; and

(B) by striking “subsection shall not” and inserting “subsection that are funded with funds made available to carry out this section shall not”; and

(2) in paragraph (4)—

(A) in the second sentence, by striking “up to an amount not to” and inserting “, except that the amount of reimbursable project costs that are funded with funds made available to carry out this section shall not”; and

(B) in the last sentence, by striking “title” and inserting “section”.

(d) ACCOUNTING SIMPLIFICATION.—Section 1102(c)(4) of the Transportation Equity Act for the 21st Century (23 U.S.C. 104 note; 112 Stat. 116) is amended by striking “\$2,000,000,000” each place it appears and inserting “\$2,161,000,000”.

AMENDMENT NO. 1012

Beginning on page 80, strike line 14 and all that follows through page 81, line 2, and insert the following:

(1) by striking the section heading and inserting the following:

“SEC. 3021. PILOT PROGRAM FOR INTERCITY PASSENGER RAIL SERVICE FUNDED FROM HIGHWAY TRUST FUND (OTHER THAN MASS TRANSIT ACCOUNT).”;

(2) in subsection (a)—

(A) by striking the first sentence and inserting “The Secretary shall establish a pilot program to determine the benefits of allowing States to use funds from the Highway Trust Fund (other than the Mass Transit Account) for intercity passenger rail service.”; and

(B) in the second sentence, by striking “Any” and all that follows through “United States Code” and inserting “The funds made available to the State of Oklahoma and the State of Vermont to carry out sections 5307 and 5311 of title 49, United States Code, and sections 133 and 149 of title 23, United States Code”;

(3) in subsection (b)(1), by striking “the Committee on Banking, Housing, and Urban Affairs” and inserting “the Committee on Environment and Public Works and the Committee on Commerce, Science, and Transportation”; and

(4) by adding at the end the following:

AMENDMENT NO. 1013

On page 69, strike lines 14 through 18.

AMENDMENT NO. 1014

On page 91, insert the following new section:

“SEC. . (a) None of the funds make available in this Act may be expended by an entity unless the entity agrees that in expending the funds the entity will comply with the Buy American Act (41 U.S.C. 10a–10c).

(b) SENSE OF THE CONGRESS; REQUIREMENT REGARDING NOTICE.—

(1) PURCHASE OF AMERICAN-MADE EQUIPMENT AND PRODUCTS.—In the case of any equipment or product that may be authorized to be purchased with financial assistance provided using funds made available in this Act, it is the sense of the Congress that entities receiving the assistance should, in expending the assistance, purchase only American-made equipment and products to the greatest extent practicable.

(2) NOTICE TO RECIPIENTS OF ASSISTANCE.—In providing financial assistance using funds made available in this Act, the head of each Federal agency shall provide to each recipient of the assistance a notice describing the statement made in paragraph (1) by Congress.

(c) PROHIBITION OF CONTRACTS WITH PERSONS FALSELY LABELING PRODUCTS AS MADE IN AMERICA.—If it has been finally determined by a court or Federal agency that any person intentionally affixed a label bearing a “Made in America” inscription, or any inscription with the same meaning, to any product sold in or shipped to the United States that is not made in the United States, the person shall be ineligible to receive any contract or subcontract made with funds made available in this Act, pursuant to the debarment, suspension, and ineligibility procedures described in sections 9.400 through 9.409 of title 48, Code of Federal Regulations.

AMENDMENT NO. 1015

On page 91, insert the following new section:

SEC. . (a) FINDINGS.—Congress finds that—

(1) the serious ground level ozone, noise, water pollution, and solid waste disposal problems attendant to airport operations require a thorough evaluation of all significant sources of pollution;

(2) the Clean Air Act (42 U.S.C. 7401 et seq.)—

(A) requires each State to reduce emissions contributing to ground level ozone problems and maintain those reductions; and

(B) requires the Administrator of the Environmental Protection Agency to study, in addition to other sources, the effects of sporadic, extreme noise (such as jet noise near airports) on public health and welfare;

(3) the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.) establishes a regulatory and enforcement program for discharges of wastes into water;

(4) the Safe Drinking Water Act (42 U.S.C. 300f et seq.) establishes primary drinking water standards and a ground water control program;

(5) the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.) regulates management and disposal of solid and hazardous waste;

(6) a study of air pollution problems in California—

(A) has determined that airports are significant sources of air pollution; and

(B) has led to the creation of an airport bubble concept; and

(7) the airport bubble concept is an approach that—

(A) treats an airport and the area within a specific radius around the airport as a single source of pollution that emits a range of pollutants, including air, noise, water, and solid waste; and

(B) seeks, by implementation of specific programs or regulations, to reduce the pollution from each source within the bubble and thereby reduce the overall pollution in that area.

(b) PURPOSE.—The purpose of this Act is to require the Administrator to conduct—

(1) a feasibility study for applying airport bubbles to airports as a method of assessing and reducing, where appropriate, air, noise, water, and solid waste pollution in and around the airports and improving overall environmental quality; and

(2) a study of air pollutant emission standards established by the Environmental Protection Agency for airplane engines to determine whether it is feasible and desirable to strengthen the standards.

SEC. . DEFINITIONS.

In this Act:

(1) **ADMINISTRATOR.**—The term “Administrator” means the Administrator of the Environmental Protection Agency.

(2) **AIRPORT BUBBLE.**—The term “airport bubble” means an area—

(A) in and around an airport (or other facility using aircraft) within which sources of pollution and levels of pollution from those sources are to be identified and reduced; and

(B) containing a variety of types of air, noise, water, and solid waste sources of pollution in which the aggregate of each type of pollutant from the respective sources is regulated as if the various sources were a single source.

SEC. . STUDY OF USING AIRPORT BUBBLES.

(a) **IN GENERAL.**—The Administrator shall conduct a study to determine the feasibility of regulating air, noise, water, and solid waste pollution from all sources in and around airports using airport bubbles.

(b) **WORKING GROUP.**—In conducting the study, the Administrator shall establish and consult with a working group comprised of—

(1) the Administrator of the Federal Aviation Administration (or a designee);

(2) the Secretary of Defense (or a designee);

(3) the Secretary of Transportation (or a designee);

(4) a representative of air quality districts;

(5) a representative of environmental research groups;

(6) a representative of State Audubon Societies;

(7) a representative of the Sierra Club;

(8) a representative of the Nature Conservancy;

(9) a representative of port authorities of States;

(10) an airport manager;

(11) a representative of commanding officers of military air bases and stations;

(12) a representative of the bus lines that serve airports who is familiar with the emissions testing and repair records of those buses, the schedules of those lines, and any problems with delays in service caused by traffic congestion;

(13) a representative of the taxis and limousines that serve airports who is familiar with the emissions testing and repair records of the taxis and limousines and the volume of business generated by the taxis and limousines;

(14) a representative of local law enforcement agencies or other entities responsible for traffic conditions in and around airports;

(15) a representative of the Air Transport Association;

(16) a representative of the Airports Council International-North America;

(17) a representative of environmental specialists from airport authorities; and

(18) a representative from an aviation union representing ground crews.

(c) **REQUIRED ELEMENTS.**—In conducting the study, the Administrator shall—

(1) collect, analyze, and consider information on the variety of stationary and mobile sources of air, noise, water, and solid waste pollution within airport bubbles around airports in the United States, including—

(A) aircraft, vehicles, and equipment that service aircraft (including main and auxiliary engines); and

(B) buses, taxis, and limousines that serve airports;

(2) study a statistically significant number of airports serving commercial aviation in a manner designed to obtain a representative sampling of such airports;

(3) consider all relevant information that is available, including State implementation

plans under the Clean Air Act (42 U.S.C. 7401 et seq.) and airport master plans;

(4) consider the air quality implications of airport and ground and in-flight aircraft operations, such as routing and delays;

(5) assess the role of airports in interstate and international travel and commerce and the environmental and economic impact of regulating airports as significant sources of air, noise, water, and solid waste pollution;

(6) propose boundaries of the areas to be included within airport bubbles;

(7) propose a definition of air pollutant emissions for airport bubbles that includes hydrocarbons, volatile organic compounds, and other ozone precursors targeted for reduction under Federal air pollution law;

(8) develop an inventory of each source of air, noise, water, and solid waste pollution to be regulated within airport bubbles and the level of reduction for each source;

(9) list and evaluate programs that might be implemented to reduce air, noise, water, and solid waste pollution within airport bubbles and the environmental and economic impact of each of the programs, including any changes to Federal or State law (including regulations) that would be required for implementation of each of the programs;

(10) evaluate the feasibility of regulating air, noise, water, and solid waste pollutants in and around airports using airport bubbles and make recommendations regarding which programs should be included in an effective implementation of airport bubble methodology; and

(11) address the issues of air and noise pollution source identification and regulation that are unique to military air bases and stations.

(d) **Report.**—Not later than 3 years after the date of enactment of this Act, the Administrator shall submit to Congress a report describing the results and recommendations of the study required by this section.

SEC. . STUDY OF EMISSION STANDARDS FOR AIRPLANE ENGINES.

(a) **In general.**—The Administrator shall conduct a study of air pollutant emission standards established by the Environmental Protection Agency for airplane engines to determine whether it is feasible and desirable to strengthen the standards.

(b) **Report.**—Not later than 2 years after the date of enactment of this Act, the Administrator shall submit to Congress a report describing the results and recommendations of the study required by this section.

SEC. . PROGRESS REPORTS.

Not later than 1 year after the date of enactment of this Act, and annually thereafter until the reports under sections 4 and 5 are submitted, the Administrator shall submit to Congress a report that details the progress being made by the Administrator in carrying out sections 4 and 5.

SEC. . REPORTING OF TOXIC CHEMICAL RELEASES.

(a) **In general.**—Not later than 180 days after the date of enactment of this Act, the Administrator shall promulgate regulations requiring each airport that regularly serves commercial or military jet aircraft to report, under section 313 of the Emergency Planning and Community Right-To-Know Act of 1986 (42 U.S.C. 11023) and section 6607 of the Pollution Prevention Act of 1990 (42 U.S.C. 13106), releases and other waste management activities associated with the manufacturing, processing, or other use of toxic chemicals listed under section 313 of the Emergency Planning and Community Right-

To-Know Act of 1986 (42 U.S.C. 11023), including toxic chemicals manufactured, processed, or otherwise used—

(1) during operation and maintenance of aircraft and other motor vehicles at the airport; and

(2) in the course of other airport and airline activities.

(b) **Treatment as a facility.**—For the purpose of subsection (a), an airport shall be considered to be a facility as defined in section 329 of the Emergency Planning and Community Right-To-Know Act of 1986 (42 U.S.C. 11049).

SEC. . FUNDING.

The Administrator shall carry out this Act using existing funds available to the Administrator.

AMENDMENT NO. 1016

On page 82, line 22, strike “\$200” and insert “\$90”.

AMENDMENT NO. 1017

On page 82, line 22, strike “\$200” and insert “\$100”.

AMENDMENT NO. 1018

On page 82, line 20, strike “70” and insert “60”.

AMENDMENT NO. 1019

On page 82, line 20, strike “70” and insert “300”.

AMENDMENT NO. 1020

On page 82, line 22, strike “\$200” and insert “\$140”.

AMENDMENT NO. 1021

On page 17, line 23, strike “\$370,000,000” and insert “\$341,000,000”.

On page 29, line 13, strike “\$571,000,000” and insert “\$600,000,000”.

AMENDMENT NO. 1022

On page 69, line 9, strike “100” and insert “115”.

AMENDMENT NO. 1023

On page 18, line 24, after “Code:”, insert the following: “*Provided further*, That none of the funds appropriated by this Act may be obligated or expended to fund the Office of Highway Policy Information.”.

AMENDMENT NO. 1024

On page 34, line 1, insert after “Appropriations” the following: “, the Committee on Banking, Housing, and Urban Affairs of the Senate, the Committee on Commerce, Science, and Transportation of the Senate, the Committee on Environment and Public Works of the Senate, and the Committee on Transportation and Infrastructure of the House of Representatives”.

AMENDMENT NO. 1025

On page 55, line 20, insert after “tions” the following: “, the Committee on Banking, Housing, and Urban Affairs of the Senate, and the Committee on Transportation and Infrastructure of the House of Representatives”.

AMENDMENT NO. 1026

On page 84, line 14, before the period, insert the following: “, the Committee on Banking, Housing, and Urban Affairs and the Committee on Commerce, Science, and Transportation of the Senate, and the Committee on

Transportation and Infrastructure of the House of Representatives”.

AMENDMENT NO. 1027

On page 27, strike lines 17 and 18 and insert the following:

proved by the Committee on Appropriations and the Committee on Commerce, Science, and Transportation of the Senate, and the Committee Appropriations and the Committee on Transportation and Infrastructure of the House of Representatives.

AMENDMENT NO. 1028

On page 27, line 16, strike “10 percent” and insert “85 percent”.

AMENDMENT NO. 1029

On page 35, strike line 25.

AMENDMENT NO. 1030

On page 35, strike lines 15 and 16.

AMENDMENT NO. 1031

On page 34, strike line 7.

AMENDMENT NO. 1032

On page 91, insert the following new section:

SEC. .

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. DESIGNATION OF DANIEL PATRICK MOYNIHAN STATION.

The Amtrak station to be constructed in the James A. Farley Post Office Building in New York, New York, shall be known and designated as the “Daniel Patrick Moynihan Station”.

SEC. 2. REFERENCES.

Any reference in a law, map, regulation, document, paper, or other record of the United States to the Amtrak station referred to in section 1 shall be deemed to be a reference to the “Daniel Patrick Moynihan Station”.

AMENDMENT NO. 1033

On page 91, insert the following new section:

SEC. .

SECTION 1. SHORT TITLE.

This Act may be cited as the “Acid Deposition and Ozone Control Act”.

SEC. 2. FINDINGS AND PURPOSES.

(A) FINDINGS.—Congress finds that—

(1) reductions of atmospheric nitrogen oxide and sulfur dioxide from utility plants, in addition to the reductions required under the Clean Air Act (42 U.S.C. 7401 et seq.), are needed to reduce acid deposition and its serious adverse effects on public health, natural resources, building structures, sensitive ecosystems, and visibility;

(2) nitrogen oxide and sulfur dioxide contribute to the development of fine particulates, suspected of causing human mortality and morbidity to a significant extent;

(3) regional nitrogen oxide reductions of 50 percent in the Eastern United States, in addition to the reductions required under the Clean Air Act, may be necessary to protect sensitive watersheds from the effects of nitrogen deposition;

(4) without reductions in nitrogen oxide and sulfur dioxide, the number of acidic lakes in the Adirondacks in the State of New York is expected to increase by up to 40 percent by 2040; and

(5) nitrogen oxide is highly mobile and can lead to ozone formation hundreds of miles from the emitting source.

(b) PURPOSES.—The purposes of this Act are—

(1) to recognize the current scientific understanding that emissions of nitrogen oxide and sulfur dioxide, and the acid deposition resulting from emissions of nitrogen oxide and sulfur dioxide, present a substantial human health and environmental risk;

(2) to require reductions in nitrogen oxide and sulfur dioxide emissions;

(3) to support the efforts of the Ozone Transport Assessment Group to reduce ozone pollution;

(4) to reduce utility emissions of nitrogen oxide by 70 percent from 1990 levels; and

(5) to reduce utility emissions of sulfur dioxide by 50 percent after the implementation of phase II sulfur dioxide requirements under section 405 of the Clean Air Act (42 U.S.C. 7651d).

SEC. 3. DEFINITIONS.

In this Act:

(1) ADMINISTRATOR.—The term “Administrator” means the Administrator of the Environmental Protection Agency.

(2) AFFECTED FACILITY.—The term “affected facility” means a facility with 1 or more combustion units that serve at least 1 electricity generator with a capacity equal to or greater than 25 megawatts.

(3) NO_x ALLOWANCE.—The term “NO_x allowance” means a limited authorization under section 4(3) to emit, in accordance with this Act, quantities of nitrogen oxide.

(4) MMBTU.—The term “mmBtu” means 1,000,000 British thermal units.

(5) PROGRAM.—The term “Program” means the Nitrogen Oxide Allowance Program established under section 4.

(6) STATE.—The term “State” means the 48 contiguous States and the District of Columbia.

SEC. 4. NITROGEN OXIDE ALLOWANCE PROGRAM.

(A) IN GENERAL.—

(1) ESTABLISHMENT.—Not later than 18 months after the date of enactment of this Act, the Administrator shall establish a program to be known as the “Nitrogen Oxide Allowance Program”.

(2) SCOPE.—The Program shall be conducted in the 48 contiguous States and the District of Columbia.

(3) NO_x ALLOWANCES.—

(A) ALLOCATION.—The Administrator shall allocate under paragraph (4)—

(i) for each of calendar years 2002 through 2004, 5,400,000 NO_x allowances; and

(ii) for calendar year 2005 and each calendar year thereafter, 3,000,000 NO_x allowances.

(B) USE.—Each NO_x allowance shall authorize an affected facility to emit—

(i) 1 ton of nitrogen oxide during each of the months of October, November, December, January, February, March, and April of any year; or

(ii) ½ ton of nitrogen oxide during each of the months of May, June, July, August, and September of any year.

(4) ALLOCATION.—

(A) DEFINITION OF TOTAL ELECTRIC POWER.—In this paragraph, the term “total electric power” means all electric power generated by utility and nonutility generators for distribution, including electricity generated from solar, wind, hydro power, nuclear power, cogeneration facilities, and the combustion of fossil fuel.

(B) ALLOCATION OF ALLOWANCES.—The Administrator shall allocate annual NO_x allowances to each of the States in proportion to the State’s share of the total electric power generated in all of the States.

(C) PUBLICATION.—The Administrator shall publish in the Federal Register a list of each State’s NO_x allowance allocation—

(i) by December 1, 2000, for calendar years 2002 through 2004;

(ii) by December 1, 2002, for calendar years 2005 through 2007; and

(iii) by December 1 of each calendar year after 2002, for the calendar year that begins 61 months thereafter.

(5) INTRASTATE DISTRIBUTION.—

(A) IN GENERAL.—A State may submit to the Administrator a report detailing the distribution of NO_x allowances of the State to affected facilities in the State—

(i) not later than September 30, 2001, for calendar years 2002 through 2004;

(ii) not later than September 30, 2003, for calendar years 2005 through 2012; and

(iii) not later than September 30 of each calendar year after 2013, for the calendar year that begins 61 months thereafter.

(B) ACTION BY THE ADMINISTRATOR.—If a State submits a report under subparagraph (A) not later than September 30 of the calendar year specified in subparagraph (A), the Administrator shall distribute the NO_x allowances to affected facilities in the State as detailed in the report.

(C) LATE SUBMISSION OF REPORT.—A report submitted by a State after September 30 of a specified year shall be of no effect.

(D) DISTRIBUTION IN ABSENCE OF A REPORT.—

(i) IN GENERAL.—Subject to subsection (e), if a State does not submit a report under subparagraph (A) not later than September 30 of the calendar year specified in subparagraph (A), the Administrator shall, not later than November 30 of that calendar year, distribute the NO_x allowances for the calendar years specified in subparagraph (A) to each affected facility in the State in proportion to the affected facility’s share of the total electric power generated in the State.

(ii) DETERMINATION OF FACILITY’S SHARE.—In determining an affected facility’s share of total electric power generated in a State, the Administrator shall consider the net electric power generated by the facility and the State to be—

(I) for calendar years 2002 through 2004, the average annual amount of electric power generated, by the facility and the State, respectively, in calendar years 1997 through 1999;

(II) for calendar years 2005 through 2012, the average annual amount of electric power generated, by the facility and the State, respectively, in calendar years 1999 through 2001; and

(III) for calendar year 2013 and each calendar year thereafter, the amount of electric power generated, by the facility and the State, respectively, in the calendar year 5 years previous to the year for which the determination is made.

(E) JUDICIAL REVIEW.—A distribution of NO_x allowances by the Administrator under subparagraph (D) shall not be subject to judicial review.

(b) NO_x ALLOWANCE TRANSFER SYSTEM.—

(1) IN GENERAL.—Not later than 18 months after the date of enactment of this Act, the Administrator shall promulgate a NO_x allowance system regulation under which a NO_x allowance allocated under this Act may be transferred among affected facilities and any other person.

(2) ESTABLISHMENT.—The regulation shall establish the NO_x allowance system under this section, including requirements for the allocation, transfer, and use of NO_x allowances under this Act.

(3) USE OF NO_x ALLOWANCES.—The regulation shall—

(A) prohibit the use (but not the transfer in accordance with paragraph (5)) of any NO_x

allowance before the calendar year for which the NO_x allowance is allocated; and

(B) provide that the unused NO_x allowances shall be carried forward and added to NO_x allowances allocated for subsequent years.

(4) CERTIFICATION OF TRANSFER.—A transfer of a NO_x allowance shall not be effective until a written certification of the transfer, signed by a responsible official of the person making the transfer, is received and recorded by the Administrator.

(c) NO_x ALLOWANCE TRACKING SYSTEM.—Not later than 18 months after the date of enactment of this Act, the Administrator shall promulgate regulations for issuing, recording, and tracking the use and transfer of NO_x allowances that shall specify all necessary procedures and requirements for an orderly and competitive functioning of the NO_x allowance system.

(d) PERMIT REQUIREMENTS.—A NO_x allowance allocation or transfer shall, on recordation by the Administrator, be considered to be a part of each affected facility's operating permit requirements, without a requirement for any further permit review or revision.

(e) NEW SOURCE RESERVE.—

(1) IN GENERAL.—For a State for which the Administrator distributes NO_x allowances under subsection (a)(5)(D), the Administrator shall place 10 percent of the total annual NO_x allowances of the State in a new source reserve to be distributed by the Administrator—

(A) for calendar years 2002 through 2005, to sources that commence operation after 1998;

(B) for calendar years 2006 through 2011, to sources that commence operation after 2000; and

(C) for calendar year 2012 and each calendar year thereafter, to sources that commence operation after the calendar year that is 5 years previous to the year for which the distribution is made.

(2) SHARE.—For a State for which the Administrator distributes NO_x allowances under subsection (a)(5)(D), the Administrator shall distribute to each new source a number of NO_x allowances sufficient to allow emissions by the source at a rate equal to the lesser of the new source performance standard or the permitted level for the full nameplate capacity of the source, adjusted pro rata for the number of months of the year during which the source operates.

(3) UNUSED NO_x ALLOWANCES.—

(A) IN GENERAL.—During the period of calendar years 2000 through 2005, the Administrator shall conduct auctions at which a NO_x allowance remaining in the new source reserve that has not been distributed under paragraph (2) shall be offered for sale.

(B) OPEN AUCTIONS.—An auction under subparagraph (A) shall be open to any person.

(C) CONDUCT OF AUCTION.—

(i) METHOD OF BIDDING.—A person wishing to bid for a NO_x allowance at an auction under subparagraph (A) shall submit (by a date set by the Administrator) to the Administrator (on a sealed bid schedule provided by the Administrator) an offer to purchase a specified number of NO_x Allowances at a specified price.

(ii) SALE BASED ON BID PRICE.—A NO_x Allowance auctioned under subparagraph (A) shall be sold on the basis of bid price, starting with the highest priced bid and continuing until all NO_x allowances for sale at the auction have been sold.

(iii) NO MINIMUM PRICE.—A minimum price shall not be set for the purchase of a NO_x allowance auctioned under subparagraph (A).

(iv) REGULATIONS.—The Administrator, in consultation with the Secretary of the

Treasury, shall promulgate a regulation to carry out this paragraph.

(D) USE OF NO_x ALLOWANCES.—A NO_x allowance purchased at an auction under subparagraph (A) may be used for any purpose and at any time after the auction that is permitted for use of a NO_x allowance under this Act.

(E) PROCEEDS OF AUCTION.—The proceeds from an auction under this paragraph shall be distributed to the owner of an affected source in proportion to the number of allowances that the owner would have received but for this subsection.

(f) NATURE OF NO_x ALLOWANCES.—

(1) NOT A PROPERTY RIGHT.—A NO_x allowance shall not be considered to be a property right.

(2) LIMITATION OF NO_x ALLOWANCE.—Notwithstanding any other provision of law, the Administrator may terminate or limit a NO_x allowance.

(g) PROHIBITIONS.—

(1) IN GENERAL.—After January 1, 2000, it shall be unlawful—

(A) for the owner or operator of an affected facility to operate the affected facility in such a manner that the affected facility emits nitrogen oxides in excess of the amount permitted by the quantity of NO_x allowances held by the designated representative of the affected facility; or

(B) for any person to hold, use, or transfer a NO_x allowance allocated under this Act, except as provided under this Act.

(2) OTHER EMISSION LIMITATIONS.—Section 407 of the Clean Air Act (42 U.S.C. 7651f) is repealed.

(3) TIME OF USE.—A NO_x allowance may not be used before the calendar year for which the NO_x allowance is allocated.

(4) PERMITTING, MONITORING, AND ENFORCEMENT.—Nothing in this section affects—

(A) the permitting, monitoring, and enforcement obligations of the Administrator under the Clean Air Act (42 U.S.C. 7401 et seq.); or

(B) the requirements and liabilities of an affected facility under that Act.

(h) SAVINGS PROVISIONS.—Nothing in this section—

(1) affects the application of, or compliance with, the Clean Air Act (42 U.S.C. 7401 et seq.) for an affected facility, including the provisions related to applicable national ambient air quality standards and State implementation plans;

(2) requires a change in, affects, or limits any State law regulating electric utility rates or charges, including prudence review under State law;

(3) affects the application of the Federal Power Act (16 U.S.C. 791a et seq.) or the authority of the Federal Energy Regulatory Commission under that Act; or

(4) interferes with or impairs any program for competitive bidding for power supply in a State in which the Program is established.

SEC. 5. INDUSTRIAL SOURCE MONITORING.

Section 412(a) of the Clean Air Act (42 U.S.C. 7651k(a)) is amended in the first sentence by inserting “, or of any industrial facility with a capacity of 100 or more mmBtu's per hour.” after “The owner and operator of any source subject to this title”.

SEC. 6. EXCESS EMISSIONS PENALTY.

(a) IN GENERAL.—

(1) LIABILITY.—The owner or operator of an affected facility that emits nitrogen oxides in any calendar year in excess of the NO_x allowances the owner or operator holds for use for the facility for that year shall be liable for the payment of an excess emissions penalty.

(2) CALCULATION.—The excess emissions penalty shall be calculated by multiplying \$6,000 by the quantity that is equal to—

(A) the quantity of NO_x allowances that would authorize the nitrogen oxides emitted by the facility or the calendar year; minus

(B) the quantity of NO_x allowances that the owner or operator holds for use for the facility for that year.

(3) OVERLAPPING PENALTIES.—A penalty under this section shall not diminish the liability of the owner or operator of an affected facility for any fine, penalty, or assessment against the owner or operator for the same violation under any other provision of law.

(b) EXCESS EMISSIONS OFFSET.—

(1) IN GENERAL.—The owner or operator of a affected facility that emits nitrogen oxide during a calendar year in excess of the NO_x allowances held for the facility for the calendar year shall offset in the following calendar year a quantity of NO_x allowances equal to the number of NO_x allowances that would authorize the excess nitrogen oxides emitted.

(2) PROPOSED PLAN.—Not later than 60 days after the end of the year in which excess emissions occur, the owner or operator of an affected facility shall submit to the Administrator and the State in which the affected facility is located a proposed plan to achieve the offset required under paragraph (1).

(3) CONDITION OF PERMIT.—On approval of the proposed plan by the Administrator, as submitted, or as modified or conditioned by the Administrator, the plan shall be considered a condition of the operating permit for the affected facility without further review or revision of the permit.

(c) PENALTY ADJUSTMENT.—The Administrator shall annually adjust the amount of the penalty specified in subsection(a) to reflect changes in the Consumer Price Index for all urban consumers published by the Bureau of Labor Statistics.

SEC. 7. SULFUR DIOXIDE ALLOWANCE PROGRAM REVISIONS.

Section 402 of the Clean Air Act (42 U.S.C. 7651a) is amended by striking paragraph (3) and inserting the following:

“(3) ALLOWANCE.—The term ‘allowance’ means an authorization, allocated to an affected unit by the Administrator under this title, to emit, during or after a specified calendar year—

“(A) in the case of allowance allocated for calendar years 1997 through 2004, 1 ton of sulfur dioxide; and

“(B) in the case of allowances allocated for calendar year 2005 and each calendar year thereafter, ½ ton of sulfur dioxide.”.

SEC. 8. REGIONAL ECOSYSTEMS.

(a) REPORT.—

(1) IN GENERAL.—Not later than December 21, 2002, the Administrator shall submit to Congress a report identifying objectives for scientifically credible environmental indicators, as determined by the Administrator, that are sufficient to protect sensitive ecosystems of the Adirondack Mountains, mid-Appalachian Mountains, Rocky Mountains, and Southern Blue Ridge Mountains and water bodies of the Great Lakes, Lake Champlain, Long Island Sound, and the Chesapeake Bay.

(2) ACID NEUTRALIZING CAPACITY.—The report under paragraph (1) shall—

(A) include acid neutralizing capacity as an indicator; and

(B) identify as an objective under paragraph (1) the objective of increasing the proportion of water bodies in sensitive receptor areas with an acid neutralizing capacity greater than zero from the proportion identified in surveys begun in 1984.

(3) UPDATED REPORT.—Not later than December 31, 2008, the Administrator shall submit to Congress a report updating the report

under paragraph (1) and assessing the status and trends of various environmental indicators for the regional ecosystems referred to in paragraph (1).

(4) **REPORTS UNDER THE NATIONAL ACID PRECIPITATION ASSESSMENT PROGRAM.**—The reports under this subsection shall be subject to the requirements applicable to a report under section 103(j)(3)(E) of the Clean Air Act (42 U.S.C. 7403(j)(3)(E)).

(b) **REGULATIONS.**—

(1) **DETERMINATION.**—Not later than December 31, 2008, the Administrator shall determine whether emissions reductions under section 4 are sufficient to ensure achievement of the objectives stated in subsection (a)(1).

(2) **PROMULGATION.**—If the Administrator determines under paragraph (1) that emissions reductions under section 4 are not sufficient to ensure achievement of the objectives identified in subsection (a)(1), the Administrator shall promulgate, not later than 2 years after making the finding, such regulations, including modification of nitrogen oxide and sulfur dioxide allowance allocations or any such measure, as the Administrator determines are necessary to protect the sensitive ecosystems described in subsection (a)(1).

SEC. 9. GENERAL COMPLIANCE WITH OTHER PROVISIONS.

Except as expressly provided in this Act, compliance with this Act shall not exempt or exclude the owner or operator of an affected facility from compliance with any other law.

SEC. 10. MERCURY EMISSION STUDY AND CONTROL.

(a) **STUDY AND REPORT.**—The Administrator shall—

(1) study the practicality of monitoring mercury emissions from all combustion units that have a capacity equal to or greater than 250 mmBtu's per hour; and

(2) not later than 2 years after the date of enactment of this Act, submit to Congress a report on the results of the study.

(b) **REGULATIONS CONCERNING MONITORING.**—Not later than 1 year after the date of submission of the report under subsection (a), the Administrator shall promulgate a regulation requiring the reporting of mercury emissions from units that have a capacity equal to or greater than 250 mmBtu's per hour.

(c) **EMISSION CONTROLS.**—

(1) **IN GENERAL.**—Not later than 1 year after the commencement of monitoring activities under subsection (b), the Administrator shall promulgate a regulation controlling electric utility and industrial source emissions of mercury.

(2) **FACTORS.**—The regulation shall take into account technological feasibility, cost, and the projected reduction in levels of mercury emissions that will result from implementation of this Act.

SEC. 11. DEPOSITION RESEARCH BY THE ENVIRONMENTAL PROTECTION AGENCY.

(a) **IN GENERAL.**—The Administrator shall establish a competitive grant program to fund research related to the effects of nitrogen deposition on sensitive watersheds and coastal estuaries in the Eastern United States.

(2) **CHEMISTRY OF LAKES AND STREAMS.**—

(1) **INITIAL REPORT.**—Not later than September 30, 2001, the Administrator shall submit to the Committee on Environment and Public Works of the Senate and the Committee on Resources of the House of Representatives a report on the health and chemistry of lakes and streams of the Adirondacks that were subjects of the report

transmitted under section 404 of Public Law 101-549 (commonly known as the "Clean Air Act Amendments of 1990") (104 Stat. 2632).

(2) **FOLLOWING REPORT.**—Not later than 2 years after the date of the report under paragraph (1), the Administrator shall submit a report updating the information contained in the initial report.

(c) **AUTHORIZATION OF APPROPRIATIONS.**—There are authorized to be appropriated—

(1) to carry out subsection (a), \$1,000,000 for each of fiscal years 2000 through 2005; and

(2) to carry out subsection (b), \$1,000,000 for each of fiscal years 2000, 2001, 2007, and 2008.

AMENDMENT NO. 1034

At the end of the bill add the following:

TITLE ____—PATIENTS' BILL OF RIGHTS

SEC. 1. SHORT TITLE.

This title may be cited as the "Patients' Bill of Rights Act of 1999".

Subtitle A—Health Insurance Bill of Rights

CHAPTER 1—ACCESS TO CARE

SEC. 101. ACCESS TO EMERGENCY CARE.

(a) **COVERAGE OF EMERGENCY SERVICES.**—

(1) **IN GENERAL.**—If a group health plan, or health insurance coverage offered by a health insurance issuer, provides any benefits with respect to emergency services (as defined in paragraph (2)(B)), the plan or issuer shall cover emergency services furnished under the plan or coverage—

(A) without the need for any prior authorization determination;

(B) whether or not the health care provider furnishing such services is a participating provider with respect to such services;

(C) in a manner so that, if such services are provided to a participant, beneficiary, or enrollee by a nonparticipating health care provider without prior authorization by the plan or issuer, the participant, beneficiary, or enrollee is not liable for amounts that exceed the amounts of liability that would be incurred if the services were provided by a participating health care provider with prior authorization by the plan or issuer; and

(D) without regard to any other term or condition of such coverage (other than exclusion or coordination of benefits, or an affiliation or waiting period, permitted under section 2701 of the Public Health Service Act, section 701 of the Employee Retirement Income Security Act of 1974, or section 9801 of the Internal Revenue Code of 1986, and other than applicable cost-sharing).

(2) **DEFINITIONS.**—In this section:

(A) **EMERGENCY MEDICAL CONDITION BASED ON PRUDENT LAYPERSON STANDARD.**—The term "emergency medical condition" means a medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) such that a prudent layperson, who possesses an average knowledge of health and medicine, could reasonably expect the absence of immediate medical attention to result in a condition described in clause (i), (ii), or (iii) of section 1867(e)(1)(A) of the Social Security Act.

(B) **EMERGENCY SERVICES.**—The term "emergency services" means—

(i) a medical screening examination (as required under section 1867 of the Social Security Act) that is within the capability of the emergency department of a hospital, including ancillary services routinely available to the emergency department to evaluate an emergency medical condition (as defined in subparagraph (A)), and

(ii) within the capabilities of the staff and facilities available at the hospital, such further medical examination and treatment as are required under section 1867 of such Act to stabilize the patient.

(b) **REIMBURSEMENT FOR MAINTENANCE CARE AND POST-STABILIZATION CARE.**—In the case of services (other than emergency services) for which benefits are available under a group health plan, or under health insurance coverage offered by a health insurance issuer, the plan or issuer shall provide for reimbursement with respect to such services provided to a participant, beneficiary, or enrollee other than through a participating health care provider in a manner consistent with subsection (a)(1)(C) (and shall otherwise comply with the guidelines established under section 1852(d)(2) of the Social Security Act (relating to promoting efficient and timely coordination of appropriate maintenance and post-stabilization care of an enrollee after an enrollee has been determined to be stable), or, in the absence of guidelines under such section, such guidelines as the Secretary shall establish to carry out this subsection), if the services are maintenance care or post-stabilization care covered under such guidelines.

SEC. 102. OFFERING OF CHOICE OF COVERAGE OPTIONS UNDER GROUP HEALTH PLANS.

(a) **REQUIREMENT.**—

(1) **OFFERING OF POINT-OF-SERVICE COVERAGE OPTION.**—Except as provided in paragraph (2), if a group health plan (or health insurance coverage offered by a health insurance issuer in connection with a group health plan) provides benefits only through participating health care providers, the plan or issuer shall offer the participant the option to purchase point-of-service coverage (as defined in subsection (b)) for all such benefits for which coverage is otherwise so limited. Such option shall be made available to the participant at the time of enrollment under the plan or coverage and at such other times as the plan or issuer offers the participant a choice of coverage options.

(2) **EXCEPTION.**—Paragraph (1) shall not apply with respect to a participant in a group health plan if the plan offers the participant—

(A) a choice of health insurance coverage; and

(B) one or more coverage options that do not provide benefits only through participating health care providers.

(b) **POINT-OF-SERVICE COVERAGE DEFINED.**—In this section, the term "point-of-service coverage" means, with respect to benefits covered under a group health plan or health insurance issuer, coverage of such benefits when provided by a nonparticipating health care provider. Such coverage need not include coverage of providers that the plan or issuer excludes because of fraud, quality, or similar reasons.

(c) **CONSTRUCTION.**—Nothing in this section shall be construed—

(1) as requiring coverage for benefits for a particular type of health care provider;

(2) as requiring an employer to pay any costs as a result of this section or to make equal contributions with respect to different health coverage options; or

(3) as preventing a group health plan or health insurance issuer from imposing higher premiums or cost-sharing on a participant for the exercise of a point-of-service coverage option.

(d) **NO REQUIREMENT FOR GUARANTEED AVAILABILITY.**—If a health insurance issuer offers health insurance coverage that includes point-of-service coverage with respect to an employer solely in order to meet the requirement of subsection (a), nothing in section 2711(a)(1)(A) of the Public Health Service Act shall be construed as requiring

the offering of such coverage with respect to another employer.

SEC. 103. CHOICE OF PROVIDERS.

(a) **PRIMARY CARE.**—A group health plan, and a health insurance issuer that offers health insurance coverage, shall permit each participant, beneficiary, and enrollee to receive primary care from any participating primary care provider who is available to accept such individual.

(b) **SPECIALISTS.**—

(1) **IN GENERAL.**—Subject to paragraph (2), a group health plan and a health insurance issuer that offers health insurance coverage shall permit each participant, beneficiary, or enrollee to receive medically necessary or appropriate specialty care, pursuant to appropriate referral procedures, from any qualified participating health care provider who is available to accept such individual for such care.

(2) **LIMITATION.**—Paragraph (1) shall not apply to specialty care if the plan or issuer clearly informs participants, beneficiaries, and enrollees of the limitations on choice of participating providers with respect to such care.

SEC. 104. ACCESS TO SPECIALTY CARE.

(a) **OBSTETRICAL AND GYNECOLOGICAL CARE.**—

(1) **IN GENERAL.**—If a group health plan, or a health insurance issuer in connection with the provision of health insurance coverage, requires or provides for a participant, beneficiary, or enrollee to designate a participating primary care provider—

(A) the plan or issuer shall permit such an individual who is a female to designate a participating physician who specializes in obstetrics and gynecology as the individual's primary care provider; and

(B) if such an individual has not designated such a provider as a primary care provider, the plan or issuer—

(i) may not require authorization or a referral by the individual's primary care provider or otherwise for coverage of routine gynecological care (such as preventive women's health examinations) and pregnancy-related services provided by a participating health care professional who specializes in obstetrics and gynecology to the extent such care is otherwise covered, and

(ii) may treat the ordering of other gynecological care by such a participating health professional as the authorization of the primary care provider with respect to such care under the plan or coverage.

(2) **CONSTRUCTION.**—Nothing in paragraph (1)(B)(i) shall waive any requirements of coverage relating to medical necessity or appropriateness with respect to coverage of gynecological care so ordered.

(b) **SPECIALTY CARE.**—

(1) **SPECIALTY CARE FOR COVERED SERVICES.**—

(A) **IN GENERAL.**—If—

(i) an individual is a participant or beneficiary under a group health plan or an enrollee who is covered under health insurance coverage offered by a health insurance issuer,

(ii) the individual has a condition or disease of sufficient seriousness and complexity to require treatment by a specialist, and

(iii) benefits for such treatment are provided under the plan or coverage,

the plan or issuer shall make or provide for a referral to a specialist who is available and accessible to provide the treatment for such condition or disease.

(B) **SPECIALIST DEFINED.**—For purposes of this subsection, the term "specialist" means, with respect to a condition, a health care

practitioner, facility, or center (such as a center of excellence) that has adequate expertise through appropriate training and experience (including, in the case of a child, appropriate pediatric expertise) to provide high quality care in treating the condition.

(C) **CARE UNDER REFERRAL.**—A group health plan or health insurance issuer may require that the care provided to an individual pursuant to such referral under subparagraph (A) be—

(i) pursuant to a treatment plan, only if the treatment plan is developed by the specialist and approved by the plan or issuer, in consultation with the designated primary care provider or specialist and the individual (or the individual's designee), and

(ii) in accordance with applicable quality assurance and utilization review standards of the plan or issuer.

Nothing in this subsection shall be construed as preventing such a treatment plan for an individual from requiring a specialist to provide the primary care provider with regular updates on the specialty care provided, as well as all necessary medical information.

(D) **REFERRALS TO PARTICIPATING PROVIDERS.**—A group health plan or health insurance issuer is not required under subparagraph (A) to provide for a referral to a specialist that is not a participating provider, unless the plan or issuer does not have an appropriate specialist that is available and accessible to treat the individual's condition and that is a participating provider with respect to such treatment.

(E) **TREATMENT OF NONPARTICIPATING PROVIDERS.**—If a plan or issuer refers an individual to a nonparticipating specialist pursuant to subparagraph (A), services provided pursuant to the approved treatment plan (if any) shall be provided at no additional cost to the individual beyond what the individual would otherwise pay for services received by such a specialist that is a participating provider.

(2) **SPECIALISTS AS PRIMARY CARE PROVIDERS.**—

(A) **IN GENERAL.**—A group health plan, or a health insurance issuer, in connection with the provision of health insurance coverage, shall have a procedure by which an individual who is a participant, beneficiary, or enrollee and who has an ongoing special condition (as defined in subparagraph (C)) may receive a referral to a specialist for such condition who shall be responsible for and capable of providing and coordinating the individual's primary and specialty care. If such an individual's care would most appropriately be coordinated by such a specialist, such plan or issuer shall refer the individual to such specialist.

(B) **TREATMENT AS PRIMARY CARE PROVIDER.**—Such specialist shall be permitted to treat the individual without a referral from the individual's primary care provider and may authorize such referrals, procedures, tests, and other medical services as the individual's primary care provider would otherwise be permitted to provide or authorize, subject to the terms of the treatment plan (referred to in paragraph (1)(C)(i)).

(C) **ONGOING SPECIAL CONDITION DEFINED.**—In this paragraph, the term "special condition" means a condition or disease that—

(i) is life-threatening, degenerative, or disabling, and

(ii) requires specialized medical care over a prolonged period of time.

(D) **TERMS OF REFERRAL.**—The provisions of subparagraphs (C) through (E) of paragraph (1) apply with respect to referrals under subparagraph (A) of this paragraph in the same

manner as they apply to referrals under paragraph (1)(A).

(3) **STANDING REFERRALS.**—

(A) **IN GENERAL.**—A group health plan, and a health insurance issuer in connection with the provision of health insurance coverage, shall have a procedure by which an individual who is a participant, beneficiary, or enrollee and who has a condition that requires ongoing care from a specialist may receive a standing referral to such specialist for treatment of such condition. If the plan or issuer, or if the primary care provider in consultation with the medical director of the plan or issuer and the specialist (if any), determines that such a standing referral is appropriate, the plan or issuer shall make such a referral to such a specialist.

(B) **TERMS OF REFERRAL.**—The provisions of subparagraphs (C) through (E) of paragraph (1) apply with respect to referrals under subparagraph (A) of this paragraph in the same manner as they apply to referrals under paragraph (1)(A).

SEC. 105. CONTINUITY OF CARE.

(a) **IN GENERAL.**—

(1) **TERMINATION OF PROVIDER.**—If a contract between a group health plan, or a health insurance issuer in connection with the provision of health insurance coverage, and a health care provider is terminated (as defined in paragraph (3)), or benefits or coverage provided by a health care provider are terminated because of a change in the terms of provider participation in a group health plan, and an individual who is a participant, beneficiary, or enrollee in the plan or coverage is undergoing a course of treatment from the provider at the time of such termination, the plan or issuer shall—

(A) notify the individual on a timely basis of such termination, and

(B) subject to subsection (c), permit the individual to continue or be covered with respect to the course of treatment with the provider during a transitional period (provided under subsection (b)).

(2) **TREATMENT OF TERMINATION OF CONTRACT WITH HEALTH INSURANCE ISSUER.**—If a contract for the provision of health insurance coverage between a group health plan and a health insurance issuer is terminated and, as a result of such termination, coverage of services of a health care provider is terminated with respect to an individual, the provisions of paragraph (1) (and the succeeding provisions of this section) shall apply under the plan in the same manner as if there had been a contract between the plan and the provider that had been terminated, but only with respect to benefits that are covered under the plan after the contract termination.

(3) **TERMINATION.**—In this section, the term "terminated" includes, with respect to a contract, the expiration or nonrenewal of the contract, but does not include a termination of the contract by the plan or issuer for failure to meet applicable quality standards or for fraud.

(b) **TRANSITIONAL PERIOD.**—

(1) **IN GENERAL.**—Except as provided in paragraphs (2) through (4), the transitional period under this subsection shall extend for at least 90 days from the date of the notice described in subsection (a)(1)(A) of the provider's termination.

(2) **INSTITUTIONAL CARE.**—The transitional period under this subsection for institutional or inpatient care from a provider shall extend until the discharge or termination of the period of institutionalization and also shall include institutional care provided within a reasonable time of the date of termination of the provider status if the care

was scheduled before the date of the announcement of the termination of the provider status under subsection (a)(1)(A) or if the individual on such date was on an established waiting list or otherwise scheduled to have such care.

(3) PREGNANCY.—If—

(A) a participant, beneficiary, or enrollee has entered the second trimester of pregnancy at the time of a provider's termination of participation, and

(B) the provider was treating the pregnancy before date of the termination, the transitional period under this subsection with respect to provider's treatment of the pregnancy shall extend through the provision of post-partum care directly related to the delivery.

(4) TERMINAL ILLNESS.—If—

(A) a participant, beneficiary, or enrollee was determined to be terminally ill (as determined under section 1861(dd)(3)(A) of the Social Security Act) at the time of a provider's termination of participation, and

(B) the provider was treating the terminal illness before the date of termination, the transitional period under this subsection shall extend for the remainder of the individual's life for care directly related to the treatment of the terminal illness.

(c) PERMISSIBLE TERMS AND CONDITIONS.—A group health plan or health insurance issuer may condition coverage of continued treatment by a provider under subsection (a)(1)(B) upon the provider agreeing to the following terms and conditions:

(1) The provider agrees to accept reimbursement from the plan or issuer and individual involved (with respect to cost-sharing) at the rates applicable prior to the start of the transitional period as payment in full (or, in the case described in subsection (a)(2), at the rates applicable under the replacement plan or issuer after the date of the termination of the contract with the health insurance issuer) and not to impose cost-sharing with respect to the individual in an amount that would exceed the cost-sharing that could have been imposed if the contract referred to in subsection (a)(1) had not been terminated.

(2) The provider agrees to adhere to the quality assurance standards of the plan or issuer responsible for payment under paragraph (1) and to provide to such plan or issuer necessary medical information related to the care provided.

(3) The provider agrees otherwise to adhere to such plan's or issuer's policies and procedures, including procedures regarding referrals and obtaining prior authorization and providing services pursuant to a treatment plan (if any) approved by the plan or issuer.

(d) CONSTRUCTION.—Nothing in this section shall be construed to require the coverage of benefits which would not have been covered if the provider involved remained a participating provider.

SEC. 106. COVERAGE FOR INDIVIDUALS PARTICIPATING IN APPROVED CLINICAL TRIALS.

(a) COVERAGE.—

(1) IN GENERAL.—If a group health plan, or health insurance issuer that is providing health insurance coverage, provides coverage to a qualified individual (as defined in subsection (b)), the plan or issuer—

(A) may not deny the individual participation in the clinical trial referred to in subsection (b)(2);

(B) subject to subsection (c), may not deny (or limit or impose additional conditions on) the coverage of routine patient costs for items and services furnished in connection with participation in the trial; and

(C) may not discriminate against the individual on the basis of the enrollee's participation in such trial.

(2) EXCLUSION OF CERTAIN COSTS.—For purposes of paragraph (1)(B), routine patient costs do not include the cost of the tests or measurements conducted primarily for the purpose of the clinical trial involved.

(3) USE OF IN-NETWORK PROVIDERS.—If one or more participating providers is participating in a clinical trial, nothing in paragraph (1) shall be construed as preventing a plan or issuer from requiring that a qualified individual participate in the trial through such a participating provider if the provider will accept the individual as a participant in the trial.

(b) QUALIFIED INDIVIDUAL DEFINED.—For purposes of subsection (a), the term "qualified individual" means an individual who is a participant or beneficiary in a group health plan, or who is an enrollee under health insurance coverage, and who meets the following conditions:

(1)(A) The individual has a life-threatening or serious illness for which no standard treatment is effective.

(B) The individual is eligible to participate in an approved clinical trial according to the trial protocol with respect to treatment of such illness.

(C) The individual's participation in the trial offers meaningful potential for significant clinical benefit for the individual.

(2) Either—

(A) the referring physician is a participating health care professional and has concluded that the individual's participation in such trial would be appropriate based upon the individual meeting the conditions described in paragraph (1); or

(B) the participant, beneficiary, or enrollee provides medical and scientific information establishing that the individual's participation in such trial would be appropriate based upon the individual meeting the conditions described in paragraph (1).

(c) PAYMENT.—

(1) IN GENERAL.—Under this section a group health plan or health insurance issuer shall provide for payment for routine patient costs described in subsection (a)(2) but is not required to pay for costs of items and services that are reasonably expected (as determined by the Secretary) to be paid for by the sponsors of an approved clinical trial.

(2) PAYMENT RATE.—In the case of covered items and services provided by—

(A) a participating provider, the payment rate shall be at the agreed upon rate, or

(B) a nonparticipating provider, the payment rate shall be at the rate the plan or issuer would normally pay for comparable services under subparagraph (A).

(d) APPROVED CLINICAL TRIAL DEFINED.—

(1) IN GENERAL.—In this section, the term "approved clinical trial" means a clinical research study or clinical investigation approved and funded (which may include funding through in-kind contributions) by one or more of the following:

(A) The National Institutes of Health.

(B) A cooperative group or center of the National Institutes of Health.

(C) Either of the following if the conditions described in paragraph (2) are met:

(i) The Department of Veterans Affairs.

(ii) The Department of Defense.

(2) CONDITIONS FOR DEPARTMENTS.—The conditions described in this paragraph, for a study or investigation conducted by a Department, are that the study or investigation has been reviewed and approved through a system of peer review that the Secretary determines—

(A) to be comparable to the system of peer review of studies and investigations used by the National Institutes of Health; and

(B) assures unbiased review of the highest scientific standards by qualified individuals who have no interest in the outcome of the review.

(e) CONSTRUCTION.—Nothing in this section shall be construed to limit a plan's or issuer's coverage with respect to clinical trials.

SEC. 107. ACCESS TO NEEDED PRESCRIPTION DRUGS.

(a) IN GENERAL.—If a group health plan, or health insurance issuer that offers health insurance coverage, provides benefits with respect to prescription drugs but the coverage limits such benefits to drugs included in a formulary, the plan or issuer shall—

(1) ensure participation of participating physicians and pharmacists in the development of the formulary;

(2) disclose to providers and, disclose upon request under section 121(c)(6) to participants, beneficiaries, and enrollees, the nature of the formulary restrictions; and

(3) consistent with the standards for a utilization review program under section 115, provide for exceptions from the formulary limitation when a non-formulary alternative is medically indicated.

(b) COVERAGE OF APPROVED DRUGS AND MEDICAL DEVICES.—

(1) IN GENERAL.—A group health plan (or health insurance coverage offered in connection with such a plan) that provides any coverage of prescription drugs or medical devices shall not deny coverage of such a drug or device on the basis that the use is investigational, if the use—

(A) in the case of a prescription drug—

(i) is included in the labeling authorized by the application in effect for the drug pursuant to subsection (b) or (j) of section 505 of the Federal Food, Drug, and Cosmetic Act, without regard to any postmarketing requirements that may apply under such Act; or

(ii) is included in the labeling authorized by the application in effect for the drug under section 351 of the Public Health Service Act, without regard to any postmarketing requirements that may apply pursuant to such section; or

(B) in the case of a medical device, is included in the labeling authorized by a regulation under subsection (d) or (3) of section 513 of the Federal Food, Drug, and Cosmetic Act, an order under subsection (f) of such section, or an application approved under section 515 of such Act, without regard to any postmarketing requirements that may apply under such Act.

(2) CONSTRUCTION.—Nothing in this subsection shall be construed as requiring a group health plan (or health insurance coverage offered in connection with such a plan) to provide any coverage of prescription drugs or medical devices.

SEC. 108. ADEQUACY OF PROVIDER NETWORK.

(a) IN GENERAL.—Each group health plan, and each health insurance issuer offering health insurance coverage, that provides benefits, in whole or in part, through participating health care providers shall have (in relation to the coverage) a sufficient number, distribution, and variety of qualified participating health care providers to ensure that all covered health care services, including specialty services, will be available and accessible in a timely manner to all participants, beneficiaries, and enrollees under the plan or coverage. This subsection shall only

apply to a plan's or issuer's application of restrictions on the participation of health care providers in a network and shall not be construed as requiring a plan or issuer to create or establish new health care providers in an area.

(b) TREATMENT OF CERTAIN PROVIDERS.—The qualified health care providers under subsection (a) may include Federally qualified health centers, rural health clinics, migrant health centers, and other essential community providers located in the service area of the plan or issuer and shall include such providers if necessary to meet the standards established to carry out such subsection.

SEC. 109. NONDISCRIMINATION IN DELIVERY OF SERVICES.

(a) APPLICATION TO DELIVERY OF SERVICES.—Subject to subsection (b), a group health plan, and health insurance issuer in relation to health insurance coverage, may not discriminate against a participant, beneficiary, or enrollee in the delivery of health care services consistent with the benefits covered under the plan or coverage or as required by law based on race, color, ethnicity, national origin, religion, sex, age, mental or physical disability, sexual orientation, genetic information, or source of payment.

(b) CONSTRUCTION.—Nothing in subsection (a) shall be construed as relating to the eligibility to be covered, or the offering (or guaranteeing the offer) of coverage, under a plan or health insurance coverage, the application of any pre-existing condition exclusion consistent with applicable law, or premiums charged under such plan or coverage. Pursuant to section 192(b), except as provided in section 152, nothing in this subtitle shall be construed as requiring a group health plan or health insurance issuer to provide specific benefits under the terms of such plan or coverage.

CHAPTER 2—QUALITY ASSURANCE

SEC. 111. INTERNAL QUALITY ASSURANCE PROGRAM.

(a) REQUIREMENT.—A group health plan, and a health insurance issuer that offers health insurance coverage, shall establish and maintain an ongoing, internal quality assurance and continuous quality improvement program that meets the requirements of subsection (b).

(b) PROGRAM REQUIREMENTS.—The requirements of this subsection for a quality improvement program of a plan or issuer are as follows:

- (1) ADMINISTRATION.—The plan or issuer has a separate identifiable unit with responsibility for administration of the program.
- (2) WRITTEN PLAN.—The plan or issuer has a written plan for the program that is updated annually and that specifies at least the following:

- (A) The activities to be conducted.
- (B) The organizational structure.
- (C) The duties of the medical director.
- (D) Criteria and procedures for the assessment of quality.

(3) SYSTEMATIC REVIEW.—The program provides for systematic review of the type of health services provided, consistency of services provided with good medical practice, and patient outcomes.

(4) QUALITY CRITERIA.—The program—

- (A) uses criteria that are based on performance and patient outcomes where feasible and appropriate;
- (B) includes criteria that are directed specifically at meeting the needs of at-risk populations and covered individuals with chronic conditions or severe illnesses, including gender-specific criteria and pediatric-specific criteria where available and appropriate;

(C) includes methods for informing covered individuals of the benefit of preventive care and what specific benefits with respect to preventive care are covered under the plan or coverage; and

(D) makes available to the public a description of the criteria used under subparagraph (A).

(5) SYSTEM FOR REPORTING.—The program has procedures for reporting of possible quality concerns by providers and enrollees and for remedial actions to correct quality problems, including written procedures for responding to concerns and taking appropriate corrective action.

(6) DATA ANALYSIS.—The program provides, using data that include the data collected under section 112, for an analysis of the plan's or issuer's performance on quality measures.

(7) DRUG UTILIZATION REVIEW.—The program provides for a drug utilization review program in accordance with section 114.

(c) DEEMING.—For purposes of subsection (a), the requirements of—

(1) subsection (b) (other than paragraph (5)) are deemed to be met with respect to a health insurance issuer that is a qualified health maintenance organization (as defined in section 1310(c) of the Public Health Service Act); or

(2) subsection (b) are deemed to be met with respect to a health insurance issuer that is accredited by a national accreditation organization that the Secretary certifies as applying, as a condition of certification, standards at least as stringent as those required for a quality improvement program under subsection (b).

(d) VARIATION PERMITTED.—The Secretary may provide for variations in the application of the requirements of this section to group health plans and health insurance issuers based upon differences in the delivery system among such plans and issuers as the Secretary deems appropriate.

SEC. 112. COLLECTION OF STANDARDIZED DATA.

(a) IN GENERAL.—A group health plan and a health insurance issuer that offers health insurance coverage shall collect uniform quality data that include a minimum uniform data set described in subsection (b).

(b) MINIMUM UNIFORM DATA SET.—The Secretary shall specify (and may from time to time update) the data required to be included in the minimum uniform data set under subsection (a) and the standard format for such data. Such data shall include at least—

- (1) aggregate utilization data;
- (2) data on the demographic characteristics of participants, beneficiaries, and enrollees;
- (3) data on disease-specific and age-specific mortality rates and (to the extent feasible) morbidity rates of such individuals;
- (4) data on satisfaction (including satisfaction with respect to services to children) of such individuals, including data on voluntary disenrollment and grievances; and
- (5) data on quality indicators and health outcomes, including, to the extent feasible and appropriate, data on pediatric cases and on a gender-specific basis.

(c) AVAILABILITY.—A summary of the data collected under subsection (a) shall be disclosed under section 121(b)(9). The Secretary shall be provided access to all the data so collected.

(d) VARIATION PERMITTED.—The Secretary may provide for variations in the application of the requirements of this section to group health plans and health insurance issuers based upon differences in the delivery system among such plans and issuers as the Secretary deems appropriate.

(e) EXCEPTION FOR NON-MEDICAL, RELIGIOUS CARE PROVIDERS.—The requirements of subsection (a), insofar as they may apply to a provider of health care, do not apply to a provider that provides no medical care and that provides only a religious method of healing or religious nonmedical nursing care.

SEC. 113. PROCESS FOR SELECTION OF PROVIDERS.

(a) IN GENERAL.—A group health plan and a health insurance issuer that offers health insurance coverage shall, if it provides benefits through participating health care professionals, have a written process for the selection of participating health care professionals, including minimum professional requirements.

(b) VERIFICATION OF BACKGROUND.—Such process shall include verification of a health care provider's license and a history of suspension or revocation.

(c) RESTRICTION.—Such process shall not use a high-risk patient base or location of a provider in an area with residents with poorer health status as a basis for excluding providers from participation.

(d) NONDISCRIMINATION BASED ON LICENSURE.—

(1) IN GENERAL.—Such process shall not discriminate with respect to participation or indemnification as to any provider who is acting within the scope of the provider's license or certification under applicable State law, solely on the basis of such license or certification.

(2) CONSTRUCTION.—Paragraph (1) shall not be construed—

(A) as requiring the coverage under a plan or coverage of particular benefits or services or to prohibit a plan or issuer from including providers only to the extent necessary to meet the needs of the plan's or issuer's participants, beneficiaries, or enrollees or from establishing any measure designed to maintain quality and control costs consistent with the responsibilities of the plan or issuer; or

(B) to override any State licensure or scope-of-practice law.

(e) GENERAL NONDISCRIMINATION.—

(1) IN GENERAL.—Subject to paragraph (2), such process shall not discriminate with respect to selection of a health care professional to be a participating health care provider, or with respect to the terms and conditions of such participation, based on the professional's race, color, religion, sex, national origin, age, sexual orientation, or disability (consistent with the Americans with Disabilities Act of 1990).

(2) RULES.—The appropriate Secretary may establish such definitions, rules, and exceptions as may be appropriate to carry out paragraph (1), taking into account comparable definitions, rules, and exceptions in effect under employment-based non-discrimination laws and regulations that relate to each of the particular bases for discrimination described in such paragraph.

SEC. 114. DRUG UTILIZATION PROGRAM.

A group health plan, and a health insurance issuer that provides health insurance coverage, that includes benefits for prescription drugs shall establish and maintain, as part of its internal quality assurance and continuous quality improvement program under section 111, a drug utilization program which—

- (1) encourages appropriate use of prescription drugs by participants, beneficiaries, and enrollees and providers; and
- (2) takes appropriate action to reduce the incidence of improper drug use and adverse drug reactions and interactions.

SEC. 115. STANDARDS FOR UTILIZATION REVIEW ACTIVITIES.

(a) COMPLIANCE WITH REQUIREMENTS.—

(1) IN GENERAL.—A group health plan, and a health insurance issuer that provides health insurance coverage, shall conduct utilization review activities in connection with the provision of benefits under such plan or coverage only in accordance with a utilization review program that meets the requirements of this section.

(2) USE OF OUTSIDE AGENTS.—Nothing in this section shall be construed as preventing a group health plan or health insurance issuer from arranging through a contract or otherwise for persons or entities to conduct utilization review activities on behalf of the plan or issuer, so long as such activities are conducted in accordance with a utilization review program that meets the requirements of this section.

(3) UTILIZATION REVIEW DEFINED.—For purposes of this section, the terms "utilization review" and "utilization review activities" mean procedures used to monitor or evaluate the clinical necessity, appropriateness, efficacy, or efficiency of health care services, procedures or settings, and includes prospective review, concurrent review, second opinions, case management, discharge planning, or retrospective review.

(b) WRITTEN POLICIES AND CRITERIA.—

(1) WRITTEN POLICIES.—A utilization review program shall be conducted consistent with written policies and procedures that govern all aspects of the program.

(2) USE OF WRITTEN CRITERIA.—

(A) IN GENERAL.—Such a program shall utilize written clinical review criteria developed pursuant to the program with the input of appropriate physicians. Such criteria shall include written clinical review criteria described in section 111(b)(4)(B).

(B) CONTINUING USE OF STANDARDS IN RETROSPECTIVE REVIEW.—If a health care service has been specifically pre-authorized or approved for an enrollee under such a program, the program shall not, pursuant to retrospective review, revise or modify the specific standards, criteria, or procedures used for the utilization review for procedures, treatment, and services delivered to the enrollee during the same course of treatment.

(c) CONDUCT OF PROGRAM ACTIVITIES.—

(1) ADMINISTRATION BY HEALTH CARE PROFESSIONALS.—A utilization review program shall be administered by qualified health care professionals who shall oversee review decisions. In this subsection, the term "health care professional" means a physician or other health care practitioner licensed, accredited, or certified to perform specified health services consistent with State law.

(2) USE OF QUALIFIED, INDEPENDENT PERSONNEL.—

(A) IN GENERAL.—A utilization review program shall provide for the conduct of utilization review activities only through personnel who are qualified and, to the extent required, who have received appropriate training in the conduct of such activities under the program.

(B) PEER REVIEW OF SAMPLE OF ADVERSE CLINICAL DETERMINATIONS.—Such a program shall provide that clinical peers (as defined in section 191(c)(2)) shall evaluate the clinical appropriateness of at least a sample of adverse clinical determinations.

(C) PROHIBITION OF CONTINGENT COMPENSATION ARRANGEMENTS.—Such a program shall not, with respect to utilization review activities, permit or provide compensation or anything of value to its employees, agents, or contractors in a manner that—

(i) provides incentives, direct or indirect, for such persons to make inappropriate review decisions, or

(ii) is based, directly or indirectly, on the quantity or type of adverse determinations rendered.

(D) PROHIBITION OF CONFLICTS.—Such a program shall not permit a health care professional who provides health care services to an individual to perform utilization review activities in connection with the health care services being provided to the individual.

(3) ACCESSIBILITY OF REVIEW.—Such a program shall provide that appropriate personnel performing utilization review activities under the program are reasonably accessible by toll-free telephone during normal business hours to discuss patient care and allow response to telephone requests, and that appropriate provision is made to receive and respond promptly to calls received during other hours.

(4) LIMITS ON FREQUENCY.—Such a program shall not provide for the performance of utilization review activities with respect to a class of services furnished to an individual more frequently than is reasonably required to assess whether the services under review are medically necessary or appropriate.

(5) LIMITATION ON INFORMATION REQUESTS.—Under such a program, information shall be required to be provided by health care providers only to the extent it is necessary to perform the utilization review activity involved.

(d) DEADLINE FOR DETERMINATIONS.—

(1) PRIOR AUTHORIZATION SERVICES.—Except as provided in paragraph (2), in the case of a utilization review activity involving the prior authorization of health care items and services for an individual, the utilization review program shall make a determination concerning such authorization, and provide notice of the determination to the individual or the individual's designee and the individual's health care provider by telephone and in printed form, as soon as possible in accordance with the medical exigencies of the cases, and in no event later than 3 business days after the date of receipt of information that is reasonably necessary to make such determination.

(2) CONTINUED CARE.—In the case of a utilization review activity involving authorization for continued or extended health care services for an individual, or additional services for an individual undergoing a course of continued treatment prescribed by a health care provider, the utilization review program shall make a determination concerning such authorization, and provide notice of the determination to the individual or the individual's designee and the individual's health care provider by telephone and in printed form, as soon as possible in accordance with the medical exigencies of the cases, and in no event later than 1 business day after the date of receipt of information that is reasonably necessary to make such determination. Such notice shall include, with respect to continued or extended health care services, the number of extended services approved, the new total of approved services, the date of onset of services, and the next review date, if any.

(3) PREVIOUSLY PROVIDED SERVICES.—In the case of a utilization review activity involving retrospective review of health care services previously provided for an individual, the utilization review program shall make a determination concerning such services, and provide notice of the determination to the individual or the individual's designee and the individual's health care provider by tele-

phone and in printed form, within 30 days of the date of receipt of information that is reasonably necessary to make such determination.

(4) REFERENCE TO SPECIAL RULES FOR EMERGENCY SERVICES, MAINTENANCE CARE, AND POST-STABILIZATION CARE.—For waiver of prior authorization requirements in certain cases involving emergency services and maintenance care and post-stabilization care, see subsections (a)(1) and (b) of section 101, respectively.

(e) NOTICE OF ADVERSE DETERMINATIONS.—

(1) IN GENERAL.—Notice of an adverse determination under a utilization review program shall be provided in printed form and shall include—

(A) the reasons for the determination (including the clinical rationale);

(B) instructions on how to initiate an appeal under section 132; and

(C) notice of the availability, upon request of the individual (or the individual's designee) of the clinical review criteria relied upon to make such determination.

(2) SPECIFICATION OF ANY ADDITIONAL INFORMATION.—Such a notice shall also specify what (if any) additional necessary information must be provided to, or obtained by, the person making the determination in order to make a decision on such an appeal.

SEC. 116. HEALTH CARE QUALITY ADVISORY BOARD.

(a) ESTABLISHMENT.—The President shall establish an advisory board to provide information to Congress and the administration on issues relating to quality monitoring and improvement in the health care provided under group health plans and health insurance coverage.

(b) NUMBER AND APPOINTMENT.—The advisory board shall be composed of the Secretary of Health and Human Services (or the Secretary's designee), the Secretary of Labor (or the Secretary's designee), and 20 additional members appointed by the President, in consultation with the Majority and Minority Leaders of the Senate and House of Representatives. The members so appointed shall include individuals with expertise in—

(1) consumer needs;

(2) education and training of health professionals;

(3) health care services;

(4) health plan management;

(5) health care accreditation, quality assurance, improvement, measurement, and oversight;

(6) medical practice, including practicing physicians;

(7) prevention and public health; and

(8) public and private group purchasing for small and large employers or groups.

(c) DUTIES.—The advisory board shall—

(1) identify, update, and disseminate measures of health care quality for group health plans and health insurance issuers, including network and non-network plans;

(2) advise the Secretary on the development and maintenance of the minimum data set in section 112(b); and

(3) advise the Secretary on standardized formats for information on group health plans and health insurance coverage.

The measures identified under paragraph (1) may be used on a voluntary basis by such plans and issuers. In carrying out paragraph (1), the advisory board shall consult and cooperate with national health care standard setting bodies which define quality indicators, the Agency for Health Care Policy and Research, the Institute of Medicine, and other public and private entities that have expertise in health care quality.

(d) REPORT.—The advisory board shall provide an annual report to Congress and the President on the quality of the health care in the United States and national and regional trends in health care quality. Such report shall include a description of determinants of health care quality and measurements of practice and quality variability within the United States.

(e) SECRETARIAL CONSULTATION.—In serving on the advisory board, the Secretaries of Health and Human Services and Labor (or their designees) shall consult with the Secretaries responsible for other Federal health insurance and health care programs.

(f) VACANCIES.—Any vacancy on the board shall be filled in such manner as the original appointment. Members of the board shall serve without compensation but shall be reimbursed for travel, subsistence, and other necessary expenses incurred by them in the performance of their duties. Administrative support, scientific support, and technical assistance for the advisory board shall be provided by the Secretary of Health and Human Services.

(g) CONTINUATION.—Section 14(a)(2)(B) of the Federal Advisory Committee Act (5 U.S.C. App.; relating to the termination of advisory committees) shall not apply to the advisory board.

CHAPTER 3—PATIENT INFORMATION SEC. 121. PATIENT INFORMATION.

(a) DISCLOSURE REQUIREMENT.—

(1) GROUP HEALTH PLANS.—A group health plan shall—

(A) provide to participants and beneficiaries at the time of initial coverage under the plan (or the effective date of this section, in the case of individuals who are participants or beneficiaries as of such date), and at least annually thereafter, the information described in subsection (b) in printed form;

(B) provide to participants and beneficiaries, within a reasonable period (as specified by the appropriate Secretary) before or after the date of significant changes in the information described in subsection (b), information in printed form on such significant changes; and

(C) upon request, make available to participants and beneficiaries, the applicable authority, and prospective participants and beneficiaries, the information described in subsection (b) or (c) in printed form.

(2) HEALTH INSURANCE ISSUERS.—A health insurance issuer in connection with the provision of health insurance coverage shall—

(A) provide to individuals enrolled under such coverage at the time of enrollment, and at least annually thereafter, the information described in subsection (b) in printed form;

(B) provide to enrollees, within a reasonable period (as specified by the appropriate Secretary) before or after the date of significant changes in the information described in subsection (b), information in printed form on such significant changes; and

(C) upon request, make available to the applicable authority, to individuals who are prospective enrollees, and to the public the information described in subsection (b) or (c) in printed form.

(b) INFORMATION PROVIDED.—The information described in this subsection with respect to a group health plan or health insurance coverage offered by a health insurance issuer includes the following:

(1) SERVICE AREA.—The service area of the plan or issuer.

(2) BENEFITS.—Benefits offered under the plan or coverage, including—

(A) covered benefits, including benefit limits and coverage exclusions;

(B) cost sharing, such as deductibles, coinsurance, and copayment amounts, including any liability for balance billing, any maximum limitations on out of pocket expenses, and the maximum out of pocket costs for services that are provided by non participating providers or that are furnished without meeting the applicable utilization review requirements;

(C) the extent to which benefits may be obtained from nonparticipating providers;

(D) the extent to which a participant, beneficiary, or enrollee may select from among participating providers and the types of providers participating in the plan or issuer network;

(E) process for determining experimental coverage; and

(F) use of a prescription drug formulary.

(3) ACCESS.—A description of the following:

(A) The number, mix, and distribution of providers under the plan or coverage.

(B) Out-of-network coverage (if any) provided by the plan or coverage.

(C) Any point-of-service option (including any supplemental premium or cost-sharing for such option).

(D) The procedures for participants, beneficiaries, and enrollees to select, access, and change participating primary and specialty providers.

(E) The rights and procedures for obtaining referrals (including standing referrals) to participating and nonparticipating providers.

(F) The name, address, and telephone number of participating health care providers and an indication of whether each such provider is available to accept new patients.

(G) Any limitations imposed on the selection of qualifying participating health care providers, including any limitations imposed under section 103(b)(2).

(H) How the plan or issuer addresses the needs of participants, beneficiaries, and enrollees and others who do not speak English or who have other special communications needs in accessing providers under the plan or coverage, including the provision of information described in this subsection and subsection (c) to such individuals and including the provision of information in a language other than English if 5 percent of the number of participants, beneficiaries, and enrollees communicate in that language instead of English.

(4) OUT-OF-AREA COVERAGE.—Out-of-area coverage provided by the plan or issuer.

(5) EMERGENCY COVERAGE.—Coverage of emergency services, including—

(A) the appropriate use of emergency services, including use of the 911 telephone system or its local equivalent in emergency situations and an explanation of what constitutes an emergency situation;

(B) the process and procedures of the plan or issuer for obtaining emergency services; and

(C) the locations of (i) emergency departments, and (ii) other settings, in which plan physicians and hospitals provide emergency services and post-stabilization care.

(6) PERCENTAGE OF PREMIUMS USED FOR BENEFITS (LOSS-RATIOS).—In the case of health insurance coverage only (and not with respect to group health plans that do not provide coverage through health insurance coverage), a description of the overall loss-ratio for the coverage (as defined in accordance with rules established or recognized by the Secretary of Health and Human Services).

(7) PRIOR AUTHORIZATION RULES.—Rules regarding prior authorization or other review requirements that could result in noncoverage or nonpayment.

(8) GRIEVANCE AND APPEALS PROCEDURES.—All appeal or grievance rights and procedures under the plan or coverage, including the method for filing grievances and the time frames and circumstances for acting on grievances and appeals, who is the applicable authority with respect to the plan or issuer, and the availability of assistance through an ombudsman to individuals in relation to group health plans and health insurance coverage.

(9) QUALITY ASSURANCE.—A summary description of the data on quality collected under section 112(a), including a summary description of the data on satisfaction of participants, beneficiaries, and enrollees (including data on individual voluntary disenrollment and grievances and appeals) described in section 112(b)(4).

(10) SUMMARY OF PROVIDER FINANCIAL INCENTIVES.—A summary description of the information on the types of financial payment incentives (described in section 1852(j)(4) of the Social Security Act) provided by the plan or issuer under the coverage.

(11) INFORMATION ON ISSUER.—Notice of appropriate mailing addresses and telephone numbers to be used by participants, beneficiaries, and enrollees in seeking information or authorization for treatment.

(12) AVAILABILITY OF INFORMATION ON REQUEST.—Notice that the information described in subsection (c) is available upon request.

(c) INFORMATION MADE AVAILABLE UPON REQUEST.—The information described in this subsection is the following:

(1) UTILIZATION REVIEW ACTIVITIES.—A description of procedures used and requirements (including circumstances, time frames, and appeal rights) under any utilization review program under section 115, including under any drug formulary program under section 107.

(2) GRIEVANCE AND APPEALS INFORMATION.—Information on the number of grievances and appeals and on the disposition in the aggregate of such matters.

(3) METHOD OF PHYSICIAN COMPENSATION.—An overall summary description as to the method of compensation of participating physicians, including information on the types of financial payment incentives (described in section 1852(j)(4) of the Social Security Act) provided by the plan or issuer under the coverage.

(4) SPECIFIC INFORMATION ON CREDENTIALS OF PARTICIPATING PROVIDERS.—In the case of each participating provider, a description of the credentials of the provider.

(5) CONFIDENTIALITY POLICIES AND PROCEDURES.—A description of the policies and procedures established to carry out section 122.

(6) FORMULARY RESTRICTIONS.—A description of the nature of any drug formula restrictions.

(7) PARTICIPATING PROVIDER LIST.—A list of current participating health care providers.

(d) FORM OF DISCLOSURE.—

(1) UNIFORMITY.—Information required to be disclosed under this section shall be provided in accordance with uniform, national reporting standards specified by the Secretary, after consultation with applicable State authorities, so that prospective enrollees may compare the attributes of different issuers and coverage offered within an area.

(2) INFORMATION INTO HANDBOOK.—Nothing in this section shall be construed as preventing a group health plan or health insurance issuer from making the information under subsections (b) and (c) available to participants, beneficiaries, and enrollees

through an enrollee handbook or similar publication.

(3) **UPDATING PARTICIPATING PROVIDER INFORMATION.**—The information on participating health care providers described in subsection (b)(3)(C) shall be updated within such reasonable period as determined appropriate by the Secretary. Nothing in this section shall prevent an issuer from changing or updating other information made available under this section.

(e) **CONSTRUCTION.**—Nothing in this section shall be construed as requiring public disclosure of individual contracts or financial arrangements between a group health plan or health insurance issuer and any provider.

SEC. 122. PROTECTION OF PATIENT CONFIDENTIALITY.

Insofar as a group health plan, or a health insurance issuer that offers health insurance coverage, maintains medical records or other health information regarding participants, beneficiaries, and enrollees, the plan or issuer shall establish procedures—

(1) to safeguard the privacy of any individually identifiable enrollee information;

(2) to maintain such records and information in a manner that is accurate and timely, and

(3) to assure timely access of such individuals to such records and information.

SEC. 123. HEALTH INSURANCE OMBUDSMEN.

(a) **IN GENERAL.**—Each State that obtains a grant under subsection (c) shall provide for creation and operation of a Health Insurance Ombudsman through a contract with a not-for-profit organization that operates independent of group health plans and health insurance issuers. Such Ombudsman shall be responsible for at least the following:

(1) To assist consumers in the State in choosing among health insurance coverage or among coverage options offered within group health plans.

(2) To provide counseling and assistance to enrollees dissatisfied with their treatment by health insurance issuers and group health plans in regard to such coverage or plans and with respect to grievances and appeals regarding determinations under such coverage or plans.

(b) **FEDERAL ROLE.**—In the case of any State that does not provide for such an Ombudsman under subsection (a), the Secretary shall provide for the creation and operation of a Health Insurance Ombudsman through a contract with a not-for-profit organization that operates independent of group health plans and health insurance issuers and that is responsible for carrying out with respect to that State the functions otherwise provided under subsection (a) by a Health Insurance Ombudsman.

(c) **AUTHORIZATION OF APPROPRIATIONS.**—There are authorized to be appropriated to the Secretary of Health and Human Services such amounts as may be necessary to provide for grants to States for contracts for Health Insurance Ombudsmen under subsection (a) or contracts for such Ombudsmen under subsection (b).

(d) **CONSTRUCTION.**—Nothing in this section shall be construed to prevent the use of other forms of enrollee assistance.

CHAPTER 4—GRIEVANCE AND APPEALS PROCEDURES

SEC. 131. ESTABLISHMENT OF GRIEVANCE PROCESS.

(a) **ESTABLISHMENT OF GRIEVANCE SYSTEM.**—

(1) **IN GENERAL.**—A group health plan, and a health insurance issuer in connection with the provision of health insurance coverage, shall establish and maintain a system to pro-

vide for the presentation and resolution of oral and written grievances brought by individuals who are participants, beneficiaries, or enrollees, or health care providers or other individuals acting on behalf of an individual and with the individual's consent, regarding any aspect of the plan's or issuer's services.

(2) **SCOPE.**—The system shall include grievances regarding access to and availability of services, quality of care, choice and accessibility of providers, network adequacy, and compliance with the requirements of this subtitle.

(b) **GRIEVANCE SYSTEM.**—Such system shall include the following components with respect to individuals who are participants, beneficiaries, or enrollees:

(1) Written notification to all such individuals and providers of the telephone numbers and business addresses of the plan or issuer personnel responsible for resolution of grievances and appeals.

(2) A system to record and document, over a period of at least 3 previous years, all grievances and appeals made and their status.

(3) A process providing for timely processing and resolution of grievances.

(4) Procedures for follow-up action, including the methods to inform the person making the grievance of the resolution of the grievance.

(5) Notification to the continuous quality improvement program under section 111(a) of all grievances and appeals relating to quality of care.

SEC. 132. INTERNAL APPEALS OF ADVERSE DETERMINATIONS.

(a) **RIGHT OF APPEAL.**—

(1) **IN GENERAL.**—A participant or beneficiary in a group health plan, and an enrollee in health insurance coverage offered by a health insurance issuer, and any provider or other person acting on behalf of such an individual with the individual's consent, may appeal any appealable decision (as defined in paragraph (2)) under the procedures described in this section and (to the extent applicable) section 133. Such individuals and providers shall be provided with a written explanation of the appeal process and the determination upon the conclusion of the appeals process and as provided in section 121(b)(8).

(2) **APPEALABLE DECISION DEFINED.**—In this section, the term "appealable decision" means any of the following:

(A) Denial, reduction, or termination of, or failure to provide or make payment (in whole or in part) for a benefit, including a failure to cover an item or service for which benefits are otherwise provided because it is determined to be experimental or investigational or not medically necessary or appropriate.

(B) Failure to provide coverage of emergency services or reimbursement of maintenance care or post-stabilization care under section 101.

(C) Failure to provide a choice of provider under section 103.

(D) Failure to provide qualified health care providers under section 103.

(E) Failure to provide access to specialty and other care under section 104.

(F) Failure to provide continuation of care under section 105.

(G) Failure to provide coverage of routine patient costs in connection with an approval clinical trial under section 106.

(H) Failure to provide access to needed drugs under section 107(a)(3) or 107(b).

(I) Discrimination in delivery of services in violation of section 109.

(J) An adverse determination under a utilization review program under section 115.

(K) The imposition of a limitation that is prohibited under section 151.

(b) **INTERNAL APPEAL PROCESS.**—

(1) **IN GENERAL.**—Each group health plan and health insurance issuer shall establish and maintain an internal appeal process under which any participant, beneficiary, or enrollee, or any provider or other person acting on behalf of such an individual with the individual's consent, who is dissatisfied with any appealable decision has the opportunity to appeal the decision through an internal appeal process. The appeal may be communicated orally.

(2) **CONDUCT OF REVIEW.**—

(A) **IN GENERAL.**—The process shall include a review of the decision by a physician or other health care professional (or professionals) who has been selected by the plan or issuer and who has not been involved in the appealable decision at issue in the appeal.

(B) **AVAILABILITY AND PARTICIPATION OF CLINICAL PEERS.**—The individuals conducting such review shall include one or more clinical peers (as defined in section 191(c)(2)) who have not been involved in the appealable decision at issue in the appeal.

(3) **DEADLINE.**—

(A) **IN GENERAL.**—Subject to subsection (c), the plan or issuer shall conclude each appeal as soon as possible after the time of the receipt of the appeal in accordance with medical exigencies of the case involved, but in no event later than—

(i) 72 hours after the time of receipt of an expedited appeal, and

(ii) except as provided in subparagraph (B), 30 business days after such time (or, if the participant, beneficiary, or enrollee supplies additional information that was not available to the plan or issuer at the time of the receipt of the appeal, after the date of supplying such additional information) in the case of all other appeals.

(B) **EXTENSION.**—In the case of an appeal that does not relate to a decision regarding an expedited appeal and that does not involve medical exigencies, if a group health plan or health insurance issuer is unable to conclude the appeal within the time period provided under subparagraph (A)(ii) due to circumstances beyond the control of the plan or issuer, the deadline shall be extended for up to an additional 10 business days if the plan or issuer provides, on or before 10 days before the deadline otherwise applicable, written notice to the participant, beneficiary, or enrollee and the provider involved of the extension and the reasons for the extension.

(4) **NOTICE.**—If a plan or issuer denies an appeal, the plan or issuer shall provide the participant, beneficiary, or enrollee and provider involved with notice in printed form of the denial and the reasons therefore, together with a notice in printed form of rights to any further appeal.

(c) **EXPEDITED REVIEW PROCESS.**—

(1) **IN GENERAL.**—A group health plan, and a health insurance issuer, shall establish procedures in writing for the expedited consideration of appeals under subsection (b) in situations in which the application of the normal timeframe for making a determination could seriously jeopardize the life or health of the participant, beneficiary, or enrollee (including in the case of a child, development) or such an individual's ability to regain maximum function.

(2) **PROCESS.**—Under such procedures—

(A) the request for expedited appeal may be submitted orally or in writing by an individual or provider who is otherwise entitled to request the appeal;

(B) all necessary information, including the plan's or issuer's decision, shall be transmitted between the plan or issuer and the requester by telephone, facsimile, or other similarly expeditious available method; and

(C) the plan or issuer shall expedite the appeal if the request for an expedited appeal is submitted under subparagraph (A) by a physician and the request indicates that the situation described in paragraph (1) exists.

(d) DIRECT USE OF FURTHER APPEALS.—In the event that the plan or issuer fails to comply with any of the deadlines for completion of appeals under this section or in the event that the plan or issuer for any reason expressly waives its rights to an internal review of an appeal under subsection (b), the participant, beneficiary, or enrollee involved and the provider involved shall be relieved of any obligation to complete the appeal involved and may, at such an individual's or provider's option, proceed directly to seek further appeal through any applicable external appeals process.

SEC. 133. EXTERNAL APPEALS OF ADVERSE DETERMINATIONS.

(a) RIGHT TO EXTERNAL APPEAL.—

(1) IN GENERAL.—A group health plan, and a health insurance issuer offering group health insurance coverage, shall provide for an external appeals process that meets the requirements of this section in the case of an externally appealable decision described in paragraph (2). The appropriate Secretary shall establish standards to carry out such requirements.

(2) EXTERNALLY APPEALABLE DECISION DEFINED.—For purposes of this section, the term "externally appealable decision" means an appealable decision (as defined in section 132(a)(2)) if—

(A) the amount involved exceeds a significant threshold; or

(B) the patient's life or health is jeopardized (including, in the case of a child, development) as a consequence of the decision.

Such term does not include a denial of coverage for services that are specifically listed in plan or coverage documents as excluded from coverage.

(3) EXHAUSTION OF INTERNAL APPEALS PROCESS.—A plan or issuer may condition the use of an external appeal process in the case of an externally appealable decision upon completion of the internal review process provided under section 132, but only if the decision is made in a timely basis consistent with the deadlines provided under this chapter.

(b) GENERAL ELEMENTS OF EXTERNAL APPEALS PROCESS.—

(1) CONTRACT WITH QUALIFIED EXTERNAL APPEAL ENTITY.—

(A) CONTRACT REQUIREMENT.—Subject to subparagraph (B), the external appeal process under this section of a plan or issuer shall be conducted under a contract between the plan or issuer and one or more qualified external appeal entities (as defined in subsection (c)).

(B) RESTRICTIONS ON QUALIFIED EXTERNAL APPEAL ENTITY.—

(i) BY STATE FOR HEALTH INSURANCE ISSUERS.—With respect to health insurance issuers in a State, the State may provide for external review activities to be conducted by a qualified external appeal entity that is designated by the State or that is selected by the State in such a manner as to assure an unbiased determination.

(ii) BY FEDERAL GOVERNMENT FOR GROUP HEALTH PLANS.—With respect to group health plans, the appropriate Secretary may exercise the same authority as a State may exercise with respect to health insurance issuers under clause (i). Such authority may include requiring the use of the qualified external appeal entity designated or selected under such clause.

(iii) LIMITATION ON PLAN OR ISSUER SELECTION.—If an applicable authority permits more than one entity to qualify as a qualified external appeal entity with respect to a group health plan or health insurance issuer and the plan or issuer may select among such qualified entities, the applicable authority—

(I) shall assure that the selection process will not create any incentives for external appeal entities to make a decision in a biased manner; and

(II) shall implement procedures for auditing a sample of decisions by such entities to assure that no such decisions are made in a biased manner.

(C) OTHER TERMS AND CONDITIONS.—The terms and conditions of a contract under this paragraph shall be consistent with the standards the appropriate Secretary shall establish to assure there is no real or apparent conflict of interest in the conduct of external appeal activities. Such contract shall provide that the direct costs of the process (not including costs of representation of a participant, beneficiary, or enrollee) shall be paid by the plan or issuer, and not by the participant, beneficiary, or enrollee.

(2) ELEMENTS OF PROCESS.—An external appeal process shall be conducted consistent with standards established by the appropriate Secretary that include at least the following:

(A) FAIR PROCESS; DE NOVO DETERMINATION.—The process shall provide for a fair, de novo determination.

(B) DETERMINATION CONCERNING EXTERNALLY APPEALABLE DECISIONS.—A qualified external appeal entity shall determine whether a decision is an externally appealable decision and related decisions, including—

(i) whether such a decision involves an expedited appeal;

(ii) the appropriate deadlines for internal review process required due to medical exigencies in a case; and

(iii) whether such a process has been completed.

(C) OPPORTUNITY TO SUBMIT EVIDENCE, HAVE REPRESENTATION, AND MAKE ORAL PRESENTATION.—Each party to an externally appealable decision—

(i) may submit and review evidence related to the issues in dispute,

(ii) may use the assistance or representation of one or more individuals (any of whom may be an attorney), and

(iii) may make an oral presentation.

(D) PROVISION OF INFORMATION.—The plan or issuer involved shall provide timely access to all its records relating to the matter of the externally appealable decision and to all provisions of the plan or health insurance coverage (including any coverage manual) relating to the matter.

(E) TIMELY DECISIONS.—A determination by the external appeal entity on the decision shall—

(i) be made orally or in writing and, if it is made orally, shall be supplied to the parties in writing as soon as possible;

(ii) be binding on the plan or issuer;

(iii) be made in accordance with the medical exigencies of the case involved, but in no

event later than 60 days (or 72 hours in the case of an expedited appeal) from the date of completion of the filing of notice of external appeal of the decision;

(iv) state, in layperson's language, the basis for the determination, including, if relevant, any basis in the terms or conditions of the plan or coverage; and

(v) inform the participant, beneficiary, or enrollee of the individual's rights to seek further review by the courts (or other process) of the external appeal determination.

(c) QUALIFICATIONS OF EXTERNAL APPEAL ENTITIES.—

(1) IN GENERAL.—For purposes of this section, the term "qualified external appeal entity" means, in relation to a plan or issuer, an entity (which may be a governmental entity) that is certified under paragraph (2) as meeting the following requirements:

(A) There is no real or apparent conflict of interest that would impede the entity conducting external appeal activities independent of the plan or issuer.

(B) The entity conducts external appeal activities through clinical peers.

(C) The entity has sufficient medical, legal, and other expertise and sufficient staffing to conduct external appeal activities for the plan or issuer on a timely basis consistent with subsection (b)(3)(E).

(D) The entity meets such other requirements as the appropriate Secretary may impose.

(2) CERTIFICATION OF EXTERNAL APPEAL ENTITIES.—

(A) IN GENERAL.—In order to be treated as a qualified external appeal entity with respect to—

(i) a group health plan, the entity must be certified (and, in accordance with subparagraph (B), periodically recertified) as meeting the requirements of paragraph (1) by the Secretary of Labor (or under a process recognized or approved by the Secretary of Labor); or

(ii) a health insurance issuer operating in a State, the entity must be certified (and, in accordance with subparagraph (B), periodically recertified) as meeting such requirements by the applicable State authority (or, if the State has not established an adequate certification and recertification process, by the Secretary of Health and Human Services, or under a process recognized or approved by such Secretary).

(B) RECERTIFICATION PROCESS.—The appropriate Secretary shall develop standards for the recertification of external appeal entities. Such standards shall include a specification of—

(i) the information required to be submitted as a condition of recertification on the entity's performance of external appeal activities, which information shall include the number of cases reviewed, a summary of the disposition of those cases, the length of time in making determinations on those cases, and such information as may be necessary to assure the independence of the entity from the plans or issuers for which external appeal activities are being conducted; and

(ii) the periodicity which recertification will be required.

(d) CONTINUING LEGAL RIGHTS OF ENROLLEES.—Nothing in this subtitle shall be construed as removing any legal rights of participants, beneficiaries, enrollees, and others under State or Federal law, including the right to file judicial actions to enforce rights.

CHAPTER 5—PROTECTING THE DOCTOR-PATIENT RELATIONSHIP

SEC. 141. PROHIBITION OF INTERFERENCE WITH CERTAIN MEDICAL COMMUNICATIONS.

(a) PROHIBITION.—

(1) GENERAL RULE.—The provisions of any contract or agreement, or the operation of any contract or agreement, between a group health plan or health insurance issuer in relation to health insurance coverage (including any partnership, association, or other organization that enters into or administers such a contract or agreement) and a health care provider (or group of health care providers) shall not prohibit or restrict the provider from engaging in medical communications with the provider's patient.

(2) NULLIFICATION.—Any contract provision or agreement that restricts or prohibits medical communications in violation of paragraph (1) shall be null and void.

(b) RULES OF CONSTRUCTION.—Nothing in this section shall be construed—

(1) to prohibit the enforcement, as part of a contract or agreement to which a health care provider is a party, of any mutually agreed upon terms and conditions, including terms and conditions requiring a health care provider to participate in, and cooperate with, all programs, policies, and procedures developed or operated by a group health plan or health insurance issuer to assure, review, or improve the quality and effective utilization of health care services (if such utilization is according to guidelines or protocols that are based on clinical or scientific evidence and the professional judgment of the provider) but only if the guidelines or protocols under such utilization do not prohibit or restrict medical communications between providers and their patients; or

(2) to permit a health care provider to misrepresent the scope of benefits covered under the group health plan or health insurance coverage or to otherwise require a group health plan health insurance issuer to reimburse providers for benefits not covered under the plan or coverage.

(c) MEDICAL COMMUNICATION DEFINED.—In this section:

(1) IN GENERAL.—The term "medical communication" means any communication made by a health care provider with a patient of the health care provider (or the guardian or legal representative of such patient) with respect to—

(A) the patient's health status, medical care, or treatment options;

(B) any utilization review requirements that may affect treatment options for the patient; or

(C) any financial incentives that may affect the treatment of the patient.

(2) MISREPRESENTATION.—The term "medical communication" does not include a communication by a health care provider with a patient of the health care provider (or the guardian or legal representative of such patient) if the communication involves a knowing or willful misrepresentation by such provider.

SEC. 142. PROHIBITION AGAINST TRANSFER OF INDEMNIFICATION OR IMPROPER INCENTIVE ARRANGEMENTS.

(a) PROHIBITION OF TRANSFER OF INDEMNIFICATION.—

(1) IN GENERAL.—No contract or agreement between a group health plan or health insurance issuer (or any agent acting on behalf of such a plan or issuer) and a health care provider shall contain any provision purporting to transfer to the health care provider by in-

demnification or otherwise any liability relating to activities, actions, or omissions of the plan, issuer, or agent (as opposed to the provider).

(2) NULLIFICATION.—Any contract or agreement provision described in paragraph (1) shall be null and void.

(b) PROHIBITION OF IMPROPER PHYSICIAN INCENTIVE PLANS.—

(1) IN GENERAL.—A group health plan and a health insurance issuer offering health insurance coverage may not operate any physician incentive plan (as defined in subparagraph (B) of section 1876(i)(8) of the Social Security Act) unless the requirements described in subparagraph (A) of such section are met with respect to such a plan.

(2) APPLICATION.—For purposes of carrying out paragraph (1), any reference in section 1876(i)(8) of the Social Security Act to the Secretary, an eligible organization, or an individual enrolled with the organization shall be treated as a reference to the applicable authority, a group health plan or health insurance issuer, respectively, and a participant, beneficiary, or enrollee with the plan or organization, respectively.

SEC. 143. ADDITIONAL RULES REGARDING PARTICIPATION OF HEALTH CARE PROFESSIONALS.

(a) PROCEDURES.—Insofar as a group health plan, or health insurance issuer that offers health insurance coverage, provides benefits through participating health care professionals, the plan or issuer shall establish reasonable procedures relating to the participation (under an agreement between a professional and the plan or issuer) of such professionals under the plan or coverage. Such procedures shall include—

(1) providing notice of the rules regarding participation;

(2) providing written notice of participation decisions that are adverse to professionals; and

(3) providing a process within the plan or issuer for appealing such adverse decisions, including the presentation of information and views of the professional regarding such decision.

(b) CONSULTATION IN MEDICAL POLICIES.—A group health plan, and health insurance issuer that offers health insurance coverage, shall consult with participating physicians (if any) regarding the plan's or issuer's medical policy, quality, and medical management procedures.

SEC. 144. PROTECTION FOR PATIENT ADVOCACY.

(a) PROTECTION FOR USE OF UTILIZATION REVIEW AND GRIEVANCE PROCESS.—A group health plan, and a health insurance issuer with respect to the provision of health insurance coverage, may not retaliate against a participant, beneficiary, enrollee, or health care provider based on the participant's, beneficiary's, enrollee's or provider's use of, or participation in, a utilization review process or a grievance process of the plan or issuer (including an internal or external review or appeal process) under this subtitle.

(b) PROTECTION FOR QUALITY ADVOCACY BY HEALTH CARE PROFESSIONALS.—

(1) IN GENERAL.—A group health plan or health insurance issuer may not retaliate or discriminate against a protected health care professional because the professional in good faith—

(A) discloses information relating to the care, services, or conditions affecting one or more participants, beneficiaries, or enrollees of the plan or issuer to an appropriate public regulatory agency, an appropriate private accreditation body, or appropriate management personnel of the plan or issuer; or

(B) initiates, cooperates, or otherwise participates in an investigation or proceeding by such an agency with respect to such care, services, or conditions.

If an institutional health care provider is a participating provider with such a plan or issuer or otherwise receives payments for benefits provided by such a plan or issuer, the provisions of the previous sentence shall apply to the provider in relation to care, services, or conditions affecting one or more patients within an institutional health care provider in the same manner as they apply to the plan or issuer in relation to care, services, or conditions provided to one or more participants, beneficiaries, or enrollees; and for purposes of applying this sentence, any reference to a plan or issuer is deemed a reference to the institutional health care provider.

(2) GOOD FAITH ACTION.—For purposes of paragraph (1), a protected health care professional is considered to be acting in good faith with respect to disclosure of information or participation if, with respect to the information disclosed as part of the action—

(A) the disclosure is made on the basis of personal knowledge and is consistent with that degree of learning and skill ordinarily possessed by health care professionals with the same licensure or certification and the same experience;

(B) the professional reasonably believes the information to be true;

(C) the information evidences either a violation of a law, rule, or regulation, of an applicable accreditation standard, or of a generally recognized professional or clinical standard or that a patient is in imminent hazard of loss of life or serious injury; and

(D) subject to subparagraphs (B) and (C) of paragraph (3), the professional has followed reasonable internal procedures of the plan, issuer, or institutional health care provider established for the purpose of addressing quality concerns before making the disclosure.

(3) EXCEPTION AND SPECIAL RULE.—

(A) GENERAL EXCEPTION.—Paragraph (1) does not protect disclosures that would violate Federal or State law or diminish or impair the rights of any person to the continued protection of confidentiality of communications provided by such law.

(B) NOTICE OF INTERNAL PROCEDURES.—Subparagraph (D) of paragraph (2) shall not apply unless the internal procedures involved are reasonably expected to be known to the health care professional involved. For purposes of this subparagraph, a health care professional is reasonably expected to know of internal procedures if those procedures have been made available to the professional through distribution or posting.

(C) INTERNAL PROCEDURE EXCEPTION.—Subparagraph (D) of paragraph (2) also shall not apply if—

(i) the disclosure relates to an imminent hazard of loss of life or serious injury to a patient;

(ii) the disclosure is made to an appropriate private accreditation body pursuant to disclosure procedures established by the body; or

(iii) the disclosure is in response to an inquiry made in an investigation or proceeding of an appropriate public regulatory agency and the information disclosed is limited to the scope of the investigation or proceeding.

(4) ADDITIONAL CONSIDERATIONS.—It shall not be a violation of paragraph (1) to take an adverse action against a protected health care professional if the plan, issuer, or provider taking the adverse action involved

demonstrates that it would have taken the same adverse action even in the absence of the activities protected under such paragraph.

(5) NOTICE.—A group health plan, health insurance issuer, and institutional health care provider shall post a notice, to be provided or approved by the Secretary of Labor, setting forth excerpts from, or summaries of, the pertinent provisions of this subsection and information pertaining to enforcement of such provisions.

(6) CONSTRUCTIONS.—

(A) DETERMINATIONS OF COVERAGE.—Nothing in this subsection shall be construed to prohibit a plan or issuer from making a determination not to pay for a particular medical treatment or service or the services of a type of health care professional.

(B) ENFORCEMENT OF PEER REVIEW PROTOCOLS AND INTERNAL PROCEDURES.—Nothing in this subsection shall be construed to prohibit a plan, issuer, or provider from establishing and enforcing reasonable peer review or utilization review protocols or determining whether a protected health care professional has complied with those protocols or from establishing and enforcing internal procedures for the purpose of addressing quality concerns.

(C) RELATION TO OTHER RIGHTS.—Nothing in this subsection shall be construed to abridge rights of participants, beneficiaries, enrollees, and protected health care professionals under other applicable Federal or State laws.

(7) PROTECTED HEALTH CARE PROFESSIONAL DEFINED.—For purposes of this subsection, the term "protected health care professional" means an individual who is a licensed or certified health care professional and who—

(A) with respect to a group health plan or health insurance issuer, is an employee of the plan or issuer or has a contract with the plan or issuer for provision of services for which benefits are available under the plan or issuer; or

(B) with respect to an institutional health care provider, is an employee of the provider or has a contract or other arrangement with the provider respecting the provision of health care services.

CHAPTER 6—PROMOTING GOOD MEDICAL PRACTICE

SEC. 151. PROMOTING GOOD MEDICAL PRACTICE.

(a) PROHIBITING ARBITRARY LIMITATIONS OR CONDITIONS FOR THE PROVISION OF SERVICES.—

(1) IN GENERAL.—A group health plan, and a health insurance issuer in connection with the provision of health insurance coverage, may not arbitrarily interfere with or alter the decision of the treating physician regarding the manner or setting in which particular services are delivered if the services are medically necessary or appropriate for treatment or diagnosis to the extent that such treatment or diagnosis is otherwise a covered benefit.

(2) CONSTRUCTION.—Paragraph (1) shall not be construed as prohibiting a plan or issuer from limiting the delivery of services to one or more health care providers within a network of such providers.

(3) MANNER OR SETTING DEFINED.—In paragraph (1), the term "manner or setting" means the location of treatment, such as whether treatment is provided on an inpatient or outpatient basis, and the duration of treatment, such as the number of days in a hospital. Such term does not include the coverage of a particular service or treatment.

(b) NO CHANGE IN COVERAGE.—Subsection (a) shall not be construed as requiring coverage of particular services the coverage of which is otherwise not covered under the terms of the plan or coverage or from conducting utilization review activities consistent with this subsection.

(c) MEDICAL NECESSITY OR APPROPRIATENESS DEFINED.—In subsection (a), the term "medically necessary or appropriate" means, with respect to a service or benefit, a service or benefit which is consistent with generally accepted principles of professional medical practice.

SEC. 152. STANDARDS RELATING TO BENEFITS FOR CERTAIN BREAST CANCER TREATMENT.

(a) INPATIENT CARE.—

(1) IN GENERAL.—A group health plan, and a health insurance issuer offering group health insurance coverage, that provides medical and surgical benefits shall ensure that inpatient coverage with respect to the treatment of breast cancer is provided for a period of time as is determined by the attending physician, in his or her professional judgment consistent with generally accepted medical standards, in consultation with the patient, to be medically appropriate following—

(A) a mastectomy;

(B) a lumpectomy; or

(C) a lymph node dissection for the treatment of breast cancer.

(2) EXCEPTION.—Nothing in this section shall be construed as requiring the provision of inpatient coverage if the attending physician and patient determine that a shorter period of hospital stay is medically appropriate.

(b) PROHIBITIONS.—A group health plan, and a health insurance issuer offering group health insurance coverage in connection with a group health plan, may not—

(1) deny to a woman eligibility, or continued eligibility, to enroll or to renew coverage under the terms of the plan, solely for the purpose of avoiding the requirements of this section;

(2) provide monetary payments or rebates to women to encourage such women to accept less than the minimum protections available under this section;

(3) penalize or otherwise reduce or limit the reimbursement of an attending provider because such provider provided care to an individual participant or beneficiary in accordance with this section;

(4) provide incentives (monetary or otherwise) to an attending provider to induce such provider to provide care to an individual participant or beneficiary in a manner inconsistent with this section; or

(5) subject to subsection (c)(3), restrict benefits for any portion of a period within a hospital length of stay required under subsection (a) in a manner which is less favorable than the benefits provided for any preceding portion of such stay.

(c) RULES OF CONSTRUCTION.—

(1) Nothing in this section shall be construed to require a woman who is a participant or beneficiary—

(A) to undergo a mastectomy or lymph node dissection in a hospital; or

(B) to stay in the hospital for a fixed period of time following a mastectomy or lymph node dissection.

(2) This section shall not apply with respect to any group health plan, or any group health insurance coverage offered by a health insurance issuer, which does not provide benefits for hospital lengths of stay in connection with a mastectomy or lymph

node dissection for the treatment of breast cancer.

(3) Nothing in this section shall be construed as preventing a group health plan or issuer from imposing deductibles, coinsurance, or other cost-sharing in relation to benefits for hospital lengths of stay in connection with a mastectomy or lymph node dissection for the treatment of breast cancer under the plan (or under health insurance coverage offered in connection with a group health plan), except that such coinsurance or other cost-sharing for any portion of a period within a hospital length of stay required under subsection (a) may not be greater than such coinsurance or cost-sharing for any preceding portion of such stay.

(d) LEVEL AND TYPE OF REIMBURSEMENTS.—Nothing in this section shall be construed to prevent a group health plan or a health insurance issuer offering group health insurance coverage from negotiating the level and type of reimbursement with a provider for care provided in accordance with this section.

(e) EXCEPTION FOR HEALTH INSURANCE COVERAGE IN CERTAIN STATES.—

(1) IN GENERAL.—The requirements of this section shall not apply with respect to health insurance coverage if there is a State law (as defined in section 2723(d)(1) of the Public Health Service Act) for a State that regulates such coverage that is described in any of the following subparagraphs:

(A) Such State law requires such coverage to provide for at least a 48-hour hospital length of stay following a mastectomy performed for treatment of breast cancer and at least a 24-hour hospital length of stay following a lymph node dissection for treatment of breast cancer.

(B) Such State law requires, in connection with such coverage for surgical treatment of breast cancer, that the hospital length of stay for such care is left to the decision of (or required to be made by) the attending provider in consultation with the woman involved.

(2) CONSTRUCTION.—Section 2723(a)(1) of the Public Health Service Act and section 731(a)(1) of the Employee Retirement Income Security Act of 1974 shall not be construed as superseding a State law described in paragraph (1).

CHAPTER 7—DEFINITIONS

SEC. 191. DEFINITIONS.

(a) INCORPORATION OF GENERAL DEFINITIONS.—The provisions of section 2971 of the Public Health Service Act shall apply for purposes of this subtitle in the same manner as they apply for purposes of title XXVII of such Act.

(b) SECRETARY.—Except as otherwise provided, the term "Secretary" means the Secretary of Health and Human Services, in consultation with the Secretary of Labor and the Secretary of the Treasury and the term "appropriate Secretary" means the Secretary of Health and Human Services in relation to carrying out this subtitle under sections 2707 and 2753 of the Public Health Service Act, the Secretary of Labor in relation to carrying out this subtitle under section 714 of the Employee Retirement Income Security Act of 1974, and the Secretary of the Treasury in relation to carrying out this subtitle under chapter 100 and section 4980D of the Internal Revenue Code of 1986.

(c) ADDITIONAL DEFINITIONS.—For purposes of this subtitle:

(1) APPLICABLE AUTHORITY.—The term "applicable authority" means—

(A) in the case of a group health plan, the Secretary of Health and Human Services and the Secretary of Labor; and

(B) in the case of a health insurance issuer with respect to a specific provision of this subtitle, the applicable State authority (as defined in section 2791(d) of the Public Health Service Act), or the Secretary of Health and Human Services, if such Secretary is enforcing such provision under section 2722(a)(2) or 2761(a)(2) of the Public Health Service Act.

(2) **CLINICAL PEER.**—The term “clinical peer” means, with respect to a review or appeal, a physician (allopathic or osteopathic) or other health care professional who holds a non-restricted license in a State and who is appropriately credentialed in the same or similar specialty as typically manages the medical condition, procedure, or treatment under review or appeal and includes a pediatric specialist where appropriate; except that only a physician may be a clinical peer with respect to the review or appeal of treatment rendered by a physician.

(3) **HEALTH CARE PROVIDER.**—The term “health care provider” includes a physician or other health care professional, as well as an institutional provider of health care services.

(4) **NONPARTICIPATING.**—The term “nonparticipating” means, with respect to a health care provider that provides health care items and services to a participant, beneficiary, or enrollee under group health plan or health insurance coverage, a health care provider that is not a participating health care provider with respect to such items and services.

(5) **PARTICIPATING.**—The term “participating” means, with respect to a health care provider that provides health care items and services to a participant, beneficiary, or enrollee under group health plan or health insurance coverage offered by a health insurance issuer, a health care provider that furnishes such items and services under a contract or other arrangement with the plan or issuer.

SEC. 192. PREEMPTION; STATE FLEXIBILITY; CONSTRUCTION.

(a) **CONTINUED APPLICABILITY OF STATE LAW WITH RESPECT TO HEALTH INSURANCE ISSUERS.**—

(1) **IN GENERAL.**—Subject to paragraph (2), this subtitle shall not be construed to supersede any provision of State law which establishes, implements, or continues in effect any standard or requirement solely relating to health insurance issuers in connection with group health insurance coverage except to the extent that such standard or requirement prevents the application of a requirement of this subtitle.

(2) **CONTINUED PREEMPTION WITH RESPECT TO GROUP HEALTH PLANS.**—Nothing in this subtitle shall be construed to affect or modify the provisions of section 514 of the Employee Retirement Income Security Act of 1974 with respect to group health plans.

(b) **RULES OF CONSTRUCTION.**—Except as provided in section 152, nothing in this subtitle shall be construed as requiring a group health plan or health insurance coverage to provide specific benefits under the terms of such plan or coverage.

(c) **DEFINITIONS.**—For purposes of this section:

(1) **STATE LAW.**—The term “State law” includes all laws, decisions, rules, regulations, or other State action having the effect of law, of any State. A law of the United States applicable only to the District of Columbia shall be treated as a State law rather than a law of the United States.

(2) **STATE.**—The term “State” includes a State, the Northern Mariana Islands, any po-

litical subdivisions of a State or such Islands, or any agency or instrumentality of either.

SEC. 193. REGULATIONS.

The Secretaries of Health and Human Services, Labor, and the Treasury shall issue such regulations as may be necessary or appropriate to carry out this subtitle. Such regulations shall be issued consistent with section 104 of Health Insurance Portability and Accountability Act of 1996. Such Secretaries may promulgate any interim final rules as the Secretaries determine are appropriate to carry out this subtitle.

Subtitle B—Application of Patient Protection Standards to Group Health Plans and Health Insurance Coverage under Public Health Service Act

SEC. 201. APPLICATION TO GROUP HEALTH PLANS AND GROUP HEALTH INSURANCE COVERAGE.

(a) **IN GENERAL.**—Subpart 2 of part A of title XXVII of the Public Health Service Act, as amended by the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999 (Public Law 105-277), is amended by adding at the end the following new section:

“SEC. 2707. PATIENT PROTECTION STANDARDS.

“(a) **IN GENERAL.**—Each group health plan shall comply with patient protection requirements under subtitle A of the Patients’ Bill of Rights Act of 1999, and each health insurance issuer shall comply with patient protection requirements under such subtitle with respect to group health insurance coverage it offers, and such requirements shall be deemed to be incorporated into this subsection.

“(b) **NOTICE.**—A group health plan shall comply with the notice requirement under section 711(d) of the Employee Retirement Income Security Act of 1974 with respect to the requirements referred to in subsection (a) and a health insurance issuer shall comply with such notice requirement as if such section applied to such issuer and such issuer were a group health plan.”.

(b) **CONFORMING AMENDMENT.**—Section 2721(b)(2)(A) of the Public Health Service Act (42 U.S.C. 300gg–21(b)(2)(A)) is amended by inserting “(other than section 2707)” after “requirements of such subparts”.

SEC. 202. APPLICATION TO INDIVIDUAL HEALTH INSURANCE COVERAGE.

Subpart 3 of part B of title XXVII of the Public Health Service Act, as amended by the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999 (Public Law 105-277), is amended by adding at the end the following new section:

“SEC. 2753. PATIENT PROTECTION STANDARDS.

“(a) **IN GENERAL.**—Each health insurance issuer shall comply with patient protection requirements under subtitle A of the Patients’ Bill of Rights Act of 1999 with respect to individual health insurance coverage it offers, and such requirements shall be deemed to be incorporated into this subsection.

“(b) **NOTICE.**—A health insurance issuer under this part shall comply with the notice requirement under section 711(d) of the Employee Retirement Income Security Act of 1974 with respect to the requirements of such subtitle as if such section applied to such issuer and such issuer were a group health plan.”.

Subtitle C—Amendments to the Employee Retirement Income Security Act of 1974

SEC. 301. APPLICATION OF PATIENT PROTECTION STANDARDS TO GROUP HEALTH PLANS AND GROUP HEALTH INSURANCE COVERAGE UNDER THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974.

(a) **IN GENERAL.**—Subpart B of part 7 of subtitle B of title I of the Employee Retirement Income Security Act of 1974, as amended by the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999 (Public Law 105-277), is amended by adding at the end the following:

“SEC. 714. PATIENT PROTECTION STANDARDS.

“(a) **IN GENERAL.**—Subject to subsection (b), a group health plan (and a health insurance issuer offering group health insurance coverage in connection with such a plan) shall comply with the requirements of subtitle A of the Patients’ Bill of Rights Act of 1999 (as in effect as of the date of the enactment of such Act), and such requirements shall be deemed to be incorporated into this subsection.

“(b) **PLAN SATISFACTION OF CERTAIN REQUIREMENTS.**—

“(1) **SATISFACTION OF CERTAIN REQUIREMENTS THROUGH INSURANCE.**—For purposes of subsection (a), insofar as a group health plan provides benefits in the form of health insurance coverage through a health insurance issuer, the plan shall be treated as meeting the following requirements of subtitle A of the Patients’ Bill of Rights Act of 1999 with respect to such benefits and not be considered as failing to meet such requirements because of a failure of the issuer to meet such requirements so long as the plan sponsor or its representatives did not cause such failure by the issuer:

“(A) section 101 (relating to access to emergency care).

“(B) section 102(a)(1) (relating to offering option to purchase point-of-service coverage), but only insofar as the plan is meeting such requirement through an agreement with the issuer to offer the option to purchase point-of-service coverage under such section.

“(C) section 103 (relating to choice of providers).

“(D) section 104 (relating to access to specialty care).

“(E) section 105(a)(1) (relating to continuity in case of termination of provider contract) and section 105(a)(2) (relating to continuity in case of termination of issuer contract), but only insofar as a replacement issuer assumes the obligation for continuity of care.

“(F) section 106 (relating to coverage for individuals participating in approved clinical trials.)

“(G) section 107 (relating to access to needed prescription drugs).

“(H) section 108 (relating to adequacy of provider network).

“(I) Chapter 2 of subtitle A (relating to quality assurance).

“(J) section 143 (relating to additional rules regarding participation of health care professionals).

“(K) section 152 (relating to standards relating to benefits for certain breast cancer treatment).

“(2) **INFORMATION.**—With respect to information required to be provided or made available under section 121, in the case of a group health plan that provides benefits in the form of health insurance coverage through a health insurance issuer, the Secretary shall determine the circumstances

under which the plan is not required to provide or make available the information (and is not liable for the issuer's failure to provide or make available the information), if the issuer is obligated to provide and make available (or provides and makes available) such information.

“(3) GRIEVANCE AND INTERNAL APPEALS.—With respect to the grievance system and internal appeals process required to be established under sections 131 and 132, in the case of a group health plan that provides benefits in the form of health insurance coverage through a health insurance issuer, the Secretary shall determine the circumstances under which the plan is not required to provide for such system and process (and is not liable for the issuer's failure to provide for such system and process), if the issuer is obligated to provide for (and provides for) such system and process.

“(4) EXTERNAL APPEALS.—Pursuant to rules of the Secretary, insofar as a group health plan enters into a contract with a qualified external appeal entity for the conduct of external appeal activities in accordance with section 133, the plan shall be treated as meeting the requirement of such section and is not liable for the entity's failure to meet any requirements under such section.

“(5) APPLICATION TO PROHIBITIONS.—Pursuant to rules of the Secretary, if a health insurance issuer offers health insurance coverage in connection with a group health plan and takes an action in violation of any of the following sections, the group health plan shall not be liable for such violation unless the plan caused such violation:

“(A) section 109 (relating to non-discrimination in delivery of services).

“(B) section 141 (relating to prohibition of interference with certain medical communications).

“(C) section 142 (relating to prohibition against transfer of indemnification or improper incentive arrangements).

“(D) section 144 (relating to prohibition on retaliation).

“(E) section 151 (relating to promoting good medical practice).

“(6) CONSTRUCTION.—Nothing in this subsection shall be construed to affect or modify the responsibilities of the fiduciaries of a group health plan under part 4 of subtitle B.

“(7) APPLICATION TO CERTAIN PROHIBITIONS AGAINST RETALIATION.—With respect to compliance with the requirements of section 144(b)(1) of the Patients' Bill of Rights Act of 1999, for purposes of this subtitle the term ‘group health plan’ is deemed to include a reference to an institutional health care provider.

“(c) ENFORCEMENT OF CERTAIN REQUIREMENTS.—

“(1) COMPLAINTS.—Any protected health care professional who believes that the professional has been retaliated or discriminated against in violation of section 144(b)(1) of the Patients' Bill of Rights Act of 1999 may file with the Secretary a complaint within 180 days of the date of the alleged retaliation or discrimination.

“(2) INVESTIGATION.—The Secretary shall investigate such complaints and shall determine if a violation of such section has occurred and, if so, shall issue an order to ensure that the protected health care professional does not suffer any loss of position, pay, or benefits in relation to the plan, issuer, or provider involved, as a result of the violation found by the Secretary.

“(d) CONFORMING REGULATIONS.—The Secretary may issue regulations to coordinate the requirements on group health plans

under this section with the requirements imposed under the other provisions of this title.”.

(b) SATISFACTION OF ERISA CLAIMS PROCEDURE REQUIREMENT.—Section 503 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1133) is amended by inserting “(a)” after “SEC. 503.” and by adding at the end the following new subsection:

“(b) In the case of a group health plan (as defined in section 733) compliance with the requirements of chapter 4 (and section 115) of subtitle A of the Patients' Bill of Rights Act of 1999 in the case of a claims denial shall be deemed compliance with subsection (a) with respect to such claims denial.”.

(c) CONFORMING AMENDMENTS.—

(1) Section 732(a) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1185(a)) is amended by striking “section 711” and inserting “sections 711 and 714”.

(2) The table of contents in section 1 of the Employee Retirement Income Security Act of 1974, as amended by the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999 (Public Law 105-277), is amended by inserting after the item relating to section 713 the following new item:

“Sec. 714. Patient protection standards.”.

(3) Section 502(b)(3) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1132(b)(3)) is amended by inserting “(other than section 144(b))” after “part 7”.

SEC. 302. ERISA PREEMPTION NOT TO APPLY TO CERTAIN ACTIONS INVOLVING HEALTH INSURANCE POLICY-HOLDERS.

(a) IN GENERAL.—Section 514 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1144) is amended by adding at the end the following subsection:

“(e) PREEMPTION NOT TO APPLY TO CERTAIN ACTIONS ARISING OUT OF PROVISION OF HEALTH BENEFITS.—

“(1) IN GENERAL.—Except as provided in this subsection, nothing in this title shall be construed to invalidate, impair, or supersede any cause of action brought by a plan participant or beneficiary (or the estate of a plan participant or beneficiary) under State law to recover damages resulting from personal injury or for wrongful death against any person—

“(A) in connection with the provision of insurance, administrative services, or medical services by such person to or for a group health plan (as defined in section 733), or

“(B) that arises out of the arrangement by such person for the provision of such insurance, administrative services, or medical services by other persons.

“(2) EXCEPTION FOR EMPLOYERS AND OTHER PLAN SPONSORS.—

“(A) IN GENERAL.—Subject to subparagraph (B), paragraph (1) does not authorize—

“(i) any cause of action against an employer or other plan sponsor maintaining the group health plan or against an employee of such an employer or sponsor acting within the scope of employment, or

“(ii) a right of recovery or indemnity by a person against an employer or other plan sponsor (or such an employee) for damages assessed against the person pursuant to a cause of action under paragraph (1).

“(B) SPECIAL RULE.—Subparagraph (A) shall not preclude any cause of action described in paragraph (1) against an employer or other plan sponsor (or against an employee of such an employer or sponsor acting within the scope of employment) if—

“(i) such action is based on the employer's or other plan sponsor's (or employee's) exer-

cise of discretionary authority to make a decision on a claim for benefits covered under the plan or health insurance coverage in the case at issue; and

“(ii) the exercise by such employer or other plan sponsor (or employee of such authority) resulted in personal injury or wrongful death.

“(3) CONSTRUCTION.—Nothing in this subsection shall be construed as permitting a cause of action under State law for the failure to provide an item or service which is not covered under the group health plan involved.

“(4) PERSONAL INJURY DEFINED.—For purposes of this subsection, the term ‘personal injury’ means a physical injury and includes an injury arising out of the treatment (or failure to treat) a mental illness or disease.”.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to acts and omissions occurring on or after the date of the enactment of this Act from which a cause of action arises.

Subtitle D—Application to Group Health Plans under the Internal Revenue Code of 1986

SEC. 401. AMENDMENTS TO THE INTERNAL REVENUE CODE OF 1986.

Subchapter B of chapter 100 of the Internal Revenue Code of 1986 (as amended by section 1531(a) of the Taxpayer Relief Act of 1997) is amended—

(1) in the table of sections, by inserting after the item relating to section 9812 the following new item:

“Sec. 9813. Standard relating to patient freedom of choice.”; and

(2) by inserting after section 9812 the following:

“SEC. 9813. STANDARD RELATING TO PATIENTS' BILL OF RIGHTS.

“A group health plan shall comply with the requirements of subtitle A of the Patients' Bill of Rights Act of 1999 (as in effect as of the date of the enactment of such Act), and such requirements shall be deemed to be incorporated into this section.”.

Subtitle E—Effective Dates; Coordination in Implementation; Limitation

SEC. 501. EFFECTIVE DATES AND RELATED RULES.

(a) GROUP HEALTH COVERAGE.—

(1) IN GENERAL.—Subject to paragraph (2), the amendments made by sections 201(a), 301, and 401 (and subtitle A insofar as it relates to such sections) shall apply with respect to group health plans, and health insurance coverage offered in connection with group health plans, for plan years beginning on or after January 1, 2000 (in this section referred to as the “general effective date”).

(2) TREATMENT OF COLLECTIVE BARGAINING AGREEMENTS.—In the case of a group health plan maintained pursuant to 1 or more collective bargaining agreements between employee representatives and 1 or more employers ratified before the date of enactment of this Act, the amendments made by sections 201(a), 301, and 401 (and subtitle A insofar as it relates to such sections) shall not apply to plan years beginning before the later of—

(A) the date on which the last collective bargaining agreements relating to the plan terminates (determined without regard to any extension thereof agreed to after the date of enactment of this Act), or

(B) the general effective date.

For purposes of subparagraph (A), any plan amendment made pursuant to a collective bargaining agreement relating to the plan

which amends the plan solely to conform to any requirement added by this title shall not be treated as a termination of such collective bargaining agreement.

(b) **INDIVIDUAL HEALTH INSURANCE COVERAGE.**—The amendments made by section 202 shall apply with respect to individual health insurance coverage offered, sold, issued, renewed, in effect, or operated in the individual market on or after the general effective date.

(c) **TREATMENT OF RELIGIOUS NONMEDICAL PROVIDERS.**—

(1) **IN GENERAL.**—Nothing in this title (or the amendments made thereby) shall be construed to—

(A) restrict or limit the right of group health plans, and of health insurance issuers offering health insurance coverage, to include as providers religious nonmedical providers;

(B) require such plans or issuers to—

(i) utilize medically based eligibility standards or criteria in deciding provider status of religious nonmedical providers;

(ii) use medical professionals or criteria to decide patient access to religious nonmedical providers;

(iii) utilize medical professionals or criteria in making decisions in internal or external appeals regarding coverage for care by religious nonmedical providers; or

(iv) compel a participant or beneficiary to undergo a medical examination or test as a condition of receiving health insurance coverage for treatment by a religious nonmedical provider; or

(C) require such plans or issuers to exclude religious nonmedical providers because they do not provide medical or other required data, if such data is inconsistent with the religious nonmedical treatment or nursing care provided by the provider.

(2) **RELIGIOUS NONMEDICAL PROVIDER.**—For purposes of this subsection, the term “religious nonmedical provider” means a provider who provides no medical care but who provides only religious nonmedical treatment or religious nonmedical nursing care.

SEC. 502. COORDINATION IN IMPLEMENTATION.

Section 104(1) of Health Insurance Portability and Accountability Act of 1996 is amended by striking “this subtitle (and the amendments made by this subtitle and section 401)” and inserting “the provisions of part 7 of subtitle B of title I of the Employee Retirement Income Security Act of 1974, the provisions of parts A and C of title XXVII of the Public Health Service Act, chapter 100 of the Internal Revenue Code of 1986, and subtitle A of the Patients’ Bill of Rights Act of 1999”.

SEC. 503. LIMITATION.

Notwithstanding any other provision of law, the provisions of section 321 of this Act shall not apply and shall be considered null and void.

AMENDMENT NO. 1035

On page 80, strike lines 1 through 11 and insert the following:

SEC. 321. Section 701 of title 49, United States Code, is amended to read as follows:

“§ 701. Establishment of Board

“(a) **ESTABLISHMENT.**—There is established within the Department of Transportation the Surface Transportation Board referred to in this section as the ‘Board’.

“(b) **MEMBERSHIP.**—

“(1) **IN GENERAL.**—The Board shall consist of 11 members, to be appointed by the President, by and with the advice and consent of

the Senate. Not more than 6 members may be appointed from the same political party.

“(2) **QUALIFICATIONS OF MEMBERS.**—At any given time, at least 8 members of the Board shall be individuals with professional standing and demonstrated knowledge in the fields of transportation or transportation regulation, and at least 3 members shall be individuals with professional or business experience (including agriculture) in the private sector. The members of the Board shall be representative of the major rail-dependent regions of the United States.

“(3) **TERMS.**—

“(A) **IN GENERAL.**—The term of each member of the Board shall—

“(i) be 5 years; and

“(ii) begin when the term of the predecessor of that member ends.

“(B) **VACANCIES.**—An individual appointed to fill a vacancy occurring before the expiration of the term for which the predecessor of that individual was appointed, shall be appointed for the remainder of that term. When the term of office of a member ends, the member may continue to serve until a successor is appointed and qualified, but for a period not to exceed 1 year.

“(C) **REMOVAL.**—The President may remove a member for inefficiency, neglect of duty, or malfeasance in office.

“(4) **LIMITATION.**—

“(A) **IN GENERAL.**—Except as provided in subparagraph (B), no individual may serve as a member of the Board for more than 2 terms.

“(B) **EXCEPTIONS.**—Any individual who, as of the date of enactment of the Department of Transportation and Related Agencies Appropriations Act, 2000, is serving as a member of the Board for the remainder of a term for which that member was originally appointed to the Interstate Commerce Commission or is appointed to fill a vacancy occurring before the expiration of the term for which the predecessor of that individual was appointed, may not be appointed for more than 1 additional term.

“(5) **PROHIBITION.**—A member of the Board may not have a pecuniary interest in, hold an official relation to, or own stock in or bonds of, a carrier providing transportation by any mode and may not engage in another business, vocation, or employment.

“(6) **ADMINISTRATION.**—A vacancy in the membership of the Board does not impair the right of the remaining members to exercise all of the powers of the Board. The Board may designate a member to act as Chairman during any period in which there is no Chairman designated by the President.

“(c) **CHAIRMAN.**—

“(1) **IN GENERAL.**—There shall be at the head of the Board a Chairman, who shall be designated by the President from among the members of the Board. The Chairman shall receive compensation at the rate prescribed for level III of the Executive Schedule under section 5314 of title 5.

“(2) **RESPONSIBILITIES OF CHAIRMAN.**—Subject to the general policies, decisions, findings, and determinations of the Board, the Chairman shall be responsible for administering the Board. The Chairman may delegate the powers granted under this paragraph to an officer, employee, or office of the Board. The Chairman shall—

“(A) appoint and supervise, other than regular and full-time employees in the immediate offices of another member, the officers and employees of the Board, including attorneys to provide legal aid and service to the Board and its members, and to represent the Board in any case in court;

“(B) appoint the heads of offices with the approval of the Board;

“(C) distribute Board business among officers, employees, and offices of the Board;

“(D) prepare requests for appropriations for the Board and submit those requests to the President and Congress with the prior approval of the Board; and

“(E) supervise the expenditure of funds allocated by the Board for major programs and purposes.”.

AMENDMENT NO. 1036

On page 80, strike lines 1 through 11 and insert the following:

SEC. 321. AIRLINE COMPETITION.

(a) **DEFINITIONS.**—In this section:

(1) **AIR CARRIER.**—The term “air carrier” has the meaning given that term in section 40102(2) of title 49, United States Code.

(2) **AIRCRAFT.**—The term “aircraft” has the meaning given that term in section 40102(6) of title 49, United States Code.

(3) **AIRPORT.**—The term “airport” has the meaning given that term in section 40102(9) of title 49, United States Code.

(4) **ATTORNEY GENERAL.**—The term “Attorney General” means the Attorney General of the United States.

(5) **SECRETARY.**—The term “Secretary” means the Secretary of Transportation.

(b) **PREFERENCE FOR LOW-COMPETITION AIRPORTS.**—

(1) **DEFINITIONS.**—Section 41714(h) of title 49, United States Code, is amended—

(A) by redesignating paragraphs (3) and (4) as paragraphs (5) and (6), respectively; and

(B) by inserting after paragraph (2) the following:

“(3) **LARGE HUB AIRPORT.**—The term ‘large hub airport’ means an airport described in section 41714(d)(2).

“(4) **LOW-COMPETITION AIRPORT.**—The term ‘low-competition airport’ means an airport that—

“(A) is not a large hub airport; and

“(B) the Secretary determines has substantially—

“(i) less service than the average service at airports in the United States; or

“(ii) higher airfares than average airfares for airports in the United States.”.

(2) **PREFERENCE.**—Section 41714(c)(1) of title 49, United States Code, is amended by adding at the end the following: “In granting exemptions under this paragraph, the Secretary shall give preference to air transportation provided to low-competition airports that are located within a 500-mile radius of a high density airport.”.

(c) **UNFAIR COMPETITION.**—

(1) **GUIDELINES.**—Not later than 30 days after the date of enactment of this Act, the Secretary, in consultation with the Attorney General, shall issue regulations that define predatory practices and unfair methods of competition of air carriers for the purposes of applying this subsection to complaints of predatory practices or unfair methods of competition filed under section 41712 of title 49, United States Code, or any other applicable provision of law.

(2) **DETERMINATIONS REGARDING ACTIONS FILED.**—

(A) **ACTIONS FILED BEFORE THE DATE OF ENACTMENT OF THIS ACT.**—Not later than 9 months after the date of enactment of this Act, the Secretary shall complete action on any complaint alleging a predatory practice or unfair method of competition by an air carrier that was filed with the Secretary under section 41712 of title 49, United States Code, or any other applicable provision of law before the date of enactment of this Act.

(B) ACTIONS FILED ON OR AFTER THE DATE OF ENACTMENT OF THIS ACT.—

(i) IN GENERAL.—Not later than 90 days after a complaint alleging a predatory practice or unfair method of competition by an air carrier is filed with the Secretary under section 41712 of title 49, United States Code, or any other applicable provision of law, the Secretary shall make an initial finding concerning whether the practice that is the subject of the complaint constitutes a predatory practice or unfair method of competition.

(ii) APPLICABILITY.—Clause (i) shall apply to a complaint filed with the Secretary on or after the date of enactment of this Act.

(3) RESTRAINING ORDERS.—

(A) IN GENERAL.—In a manner consistent with section 41712 of title 49, United States Code, or any other applicable provision of law, the Secretary shall enjoin, pending final determination, any action of an air carrier that the Secretary finds to be a predatory practice or unfair method of competition under paragraph (2).

(B) PERIOD FOR TAKING ACTION.—The Secretary shall carry out the requirements of subparagraph (A) not later than 15 days after an initial finding is made with respect to a complaint under paragraph (2) (or if the initial finding is made before the date of enactment of this Act, not later than 15 days after the date of enactment of this Act).

(d) LIMITS ON COMPETITION IN AVIATION INDUSTRY.—Not later than 1 year after the date of enactment of this Act, and annually thereafter, the Secretary shall transmit to Congress a report concerning barriers to entry, predatory practices (including pricing), and other limits on competition in the aviation industry.

(e) PROVISIONS TO PREVENT INCREASED AIRCRAFT NOISE.—

(1) SECRETARIAL AUTHORITY UNDER THIS SECTION.—Nothing in this section or the amendments made by this section shall authorize the Secretary to take any action that would increase aircraft noise in any community in the vicinity of an airport.

(2) STAGE 4 NOISE LEVELS.—

(A) PROPOSED REGULATIONS.—Section 47523 of title 49, United States Code, is amended by adding at the end the following:

“(c) STAGE 4 NOISE LEVELS.—

“(1) PROPOSED REGULATIONS.—Not later than 1 year after the date of enactment of the Department of Transportation and Related Agencies Appropriations Act, 2000, the Secretary shall issue proposed regulations that—

“(A) establish, in a manner consistent with this chapter, stage 4 noise levels applicable to aircraft designated by the Secretary as stage 4 aircraft; and

“(B) provide for the implementation of the stage 4 noise level requirements by the date that is 36 months after the date of issuance of the proposed regulations.

“(2) CRITERIA FOR NOISE LEVELS.—The stage 4 noise levels established under this subsection shall—

“(A) provide for a significant reduction in the level of noise generated by aircraft; and

“(B) be consistent with the noise levels attainable through the use of the most effective noise control technology available for stage 3 aircraft (as that term is used under section 47524(c)), as of January 1, 1999.”

(2) LEGISLATIVE PROPOSALS.—At the same time as the Secretary issues proposed regulations under section 47523(c) of title 49, United States Code, as added by paragraph (1) of this subsection, the Secretary shall submit to Congress such proposed legislation (including amendments to chapter 475 of title

49, United States Code) as is necessary to ensure the implementation of stage 4 noise levels (as that term is used in such section 47523(c)).

(f) CLARIFICATION OF LEGAL STANDING.—Section 41713(b) of title 49, United States Code, is amended by adding at the end the following:

“(5) ACTIONS NOT BARRED.—This subsection shall not bar any cause of action brought against an air carrier by 1 or more private parties seeking to enforce any right under the common law of any State or under any State statute, other than a statute purporting to directly prescribe fares, routes, or levels of air transportation service.”

AGRICULTURE, RURAL DEVELOPMENT, FOOD AND DRUG ADMINISTRATION AND RELATED AGENCIES APPROPRIATIONS ACT, 2000

CLELAND AMENDMENT NO. 1037

(Ordered to lie on the table.)

Mr. CLELAND submitted an amendment intended to be proposed by him to the bill, S. 1233, supra; as follows:

At the appropriate place, insert the following:

SEC. ____ . REDESIGNATION OF NATIONAL SCHOOL LUNCH ACT AS RICHARD B. RUSSELL NATIONAL SCHOOL LUNCH ACT.—(a) IN GENERAL.—The first section of the National School Lunch Act (42 U.S.C. 1751 note) is amended by striking “National School Lunch Act” and inserting “Richard B. Russell National School Lunch Act”.

(b) CONFORMING AMENDMENTS.—The following provisions of law are amended by striking “National School Lunch Act” each place it appears and inserting “Richard B. Russell National School Lunch Act”:

(1) Sections 3 and 13(3)(A) of the Commodity Distribution Reform Act and WIC Amendments of 1987 (7 U.S.C. 612c note; Public Law 100-237).

(2) Section 404 of the Agricultural Act of 1949 (7 U.S.C. 1424).

(3) Section 201(a) of the Act entitled “An Act to extend the Agricultural Trade Development and Assistance Act of 1954, and for other purposes”, approved September 21, 1959 (7 U.S.C. 1431c(a); 73 Stat. 610).

(4) Section 211(a) of the Agricultural Trade Suspension Adjustment Act of 1980 (7 U.S.C. 4004(a)).

(5) Section 245A(h)(4)(A) of the Immigration and Nationality Act (8 U.S.C. 1255a(h)(4)(A)).

(6) Sections 403(c)(2)(C), 422(b)(3), 423(d)(3), 741(a)(1), and 742 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (8 U.S.C. 1613(c)(2)(C), 1632(b)(3), 1183a note, 42 U.S.C. 1751 note, 8 U.S.C. 1615; Public Law 104-193).

(7) Section 2243(b) of title 10, United States Code.

(8) Sections 404B(g)(1)(A), 404D(c)(2), and 404F(a)(2) of the Higher Education Act of 1965 (20 U.S.C. 1070a-22(g)(1)(A), 1070a-24(c)(2), 1070a-26(a)(2); Public Law 105-244).

(9) Section 231(d)(3)(A)(i) of the Carl D. Perkins Vocational Education Act (20 U.S.C. 2341(d)(3)(A)(i)).

(10) Section 1113(a)(5) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6313(a)(5)).

(11) Section 1397E(d)(4)(A)(iv)(II) of the Internal Revenue Code of 1986.

(12) Sections 254(b)(2)(B) and 263(a)(2)(C) of the Job Training Partnership Act (29 U.S.C. 1633(b)(2)(B), 1643(a)(2)(C)).

(13) Section 3803(c)(2)(C)(xiii) of title 31, United States Code.

(14) Section 602(d)(9)(A) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 474(d)(9)(A)).

(15) Sections 2(4), 3(1), and 301 of the Healthy Meals for Healthy Americans Act of 1994 (42 U.S.C. 1751 note; Public Law 103-448).

(16) Sections 3, 4, 7, 10, 13, 16(b), 17, and 19(d) of the Child Nutrition Act of 1966 (42 U.S.C. 1772, 1773, 1776, 1779, 1782, 1785(b), 1786, 1788(d)).

(17) Section 6580(b)(3) of the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9858m(b)(3)).

(18) Subsection (b) of the first section of Public Law 87-688 (48 U.S.C. 1666(b)).

(19) Section 10405(a)(2)(H) of the Omnibus Budget Reconciliation Act of 1989 (Public Law 101-239; 103 Stat. 2489).

NOTICE OF HEARING

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. CRAIG. Mr. President, I would like to announce for the public that a hearing has been scheduled before the Subcommittee on Forests and Public Land Management of the Senate Committee on Energy and Natural Resources.

The hearing will take place on Tuesday, July 13, 1999 at 2:30 p.m., in room SD-366 of the Dirksen Senate Office Building in Washington, D.C.

The purpose of this hearing is to receive testimony on S. 729, the National Monument Public Participation Act of 1999. A bill to ensure that Congress and the public have the right to participate in the declaration of national monuments on Federal land.

Those who wish to submit written statements should write to the Committee on Energy and Natural Resources, U.S. Senate, Washington, D.C. 20510. For further information, please call Mike Menge (202) 224-6170.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON AGRICULTURE, NUTRITION AND FORESTRY

Mr. THOMAS. Mr. President, I ask unanimous consent that the Committee on Agriculture, Nutrition, and Forestry, be allowed to meet during the session of the Senate on Thursday June 24, 1999. The purpose of this meeting will be to discuss agricultural issues related to a variety of trade topics

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS

Mr. THOMAS. Mr. President, I ask unanimous consent that the Committee on Banking, Housing, and Urban Affairs be authorized to meet during the session of the Senate on Thursday, June 24, 1999, to conduct a hearing on “Export Administration Act Reauthorization: Private Sector Views.”