



COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE

THE SURFACE TRANSPORTATION AUTHORIZATION ACT OF 2009

A BLUEPRINT FOR INVESTMENT AND REFORM

Presented by

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OFFICE OF THE SECRETARY

OFFICE OF INTERMODALISM

**OFFICE OF THE SECRETARY
OFFICE OF INTERMODALISM
METROPOLITAN MOBILITY AND ACCESS PROGRAM**

BACKGROUND

Since the Interstate Highway System was developed in 1956, significant changes have occurred in the United States: the U.S. population has almost doubled, increasing from 169 million to 300 million, and gross domestic product (GDP) has exploded, increasing from \$345 billion to \$14.3 trillion. Imports to the United States have tripled and exports have doubled since 1970. In 2006, there were more than three trillion vehicle miles traveled, five times the level in 1955. This figure is roughly double the nation's total mileage traveled in 1980, and more than four times the total mileage traveled in 1957, the Interstate's first year.

The combination of these demographic changes, economic growth, and shifts in land use and development patterns has led to increased congestion in every community in the nation. According to the Texas Transportation Institute's *2007 Urban Mobility Report*, the wasted fuel and time resulting from this congestion has translated into a total congestion cost of \$78.2 billion in 2005 – \$5.1 billion higher than in 2004. The report also states that congestion causes the average peak-period traveler to spend an extra 38 hours of travel time, 26 gallons of fuel, and amounts to a cost of \$710 per traveler. According to the report, in the 14 largest urban areas in the nation, the amount of travel delay grew approximately 350 percent from 1982 to 2005. The average driver in 28 metropolitan areas experienced 40 or more hours of delay in 2005. In 1982, only Los Angeles drivers experienced that level of congestion and delay.¹

Accidents and traffic delays cost Americans more than \$365 billion a year – \$1 billion a day – or \$1,200 for every man, woman, and child. This growing congestion has also undermined U.S. business competitiveness by increasing logistics costs. Truck transportation accounts for \$671 billion, or 77 percent, of transportation costs, and spending on trucking rose 6.1 percent from 2006 to 2007. The logistics cost relating to intercity trucking reached \$455 billion in 2007. Overall, logistics costs accounted for 10.1 percent of the GDP in 2008, up from 8.8 percent in 2004, a \$412 billion increase in four short years.

In addition to economic and quality of life costs, congestion significantly undermines the environmental sustainability of communities. With the transportation sector responsible for a third of the greenhouse gases emitted by the United States, reducing congestion and expanding transportation options can reduce highway-related pollution.

The U.S. surface transportation system involves a national network of facilities serving the mobility needs of the entire country. Localized congestion often has effects that ripple across the nation. The interconnected nature of the network and the broad nationwide impacts of regionalized congestion require a national response. With the nation's population expected to grow to 420 million by 2050 and freight volumes expected to grow by 70 percent by 2020, a national strategy to develop the intermodal network is necessary to support the nation's economic competitiveness, and improve environmental sustainability, quality of life, and livability of communities.

¹ Texas Transportation Institute, *The 2007 Urban Mobility Report* (2007).

SURFACE TRANSPORTATION AUTHORIZATION ACT

The Surface Transportation Authorization Act establishes a new, mode-neutral discretionary program to assist large, congested metropolitan regions in addressing congestion and expanding accessibility. The program provides funding for congestion relief plans designed to increase mobility and accessibility of people and freight in major metropolitan areas.

The Surface Transportation Authorization Act includes the following major reforms to address metropolitan mobility and access:

- ***Establishes a mode-neutral program to provide congestion relief and expanded mobility and accessibility***
 - Provides Federal assistance, through the Metropolitan Mobility and Access (MMA) program, to major metropolitan areas;
 - Distributes funds based on population and travel time delay criteria developed by the U.S. Department of Transportation (DOT), in coordination with the Transportation Research Board of the National Research Council (TRB), and an evaluation of metropolitan mobility plans developed by metropolitan regions; and
 - Provides a stream of payments to metropolitan regions through multi-year financing agreements to implement metropolitan mobility plans.

- ***Requires development and approval of mobility plans to address metropolitan congestion and accessibility***
 - Requires submission of metropolitan mobility plans for DOT approval to receive Federal funding under this program; and
 - Mandates that mobility plans articulate the region's comprehensive strategies for addressing surface transportation congestion and its impacts, including expanded highway and transit capacity, and a range of congestion relief strategies, such as improved transit operations, and congestion pricing.

- ***Leverages additional investment through the use of Federal innovative financial tools***
 - Offers metropolitan regions access to loans, credit assistance, and other non-grant financial support.

- ***Establishes accountability for recipients of MMA funds***
 - Provides significant flexibility to metropolitan areas in developing plans to enhance mobility, but holds recipients of Federal assistance under the program accountable for meeting specific performance measures over the life of their metropolitan mobility plans; and

- Requires the Secretary of Transportation (Secretary) to withhold additional project approvals for recipients that fail to meet the objectives and milestones in the plan.

➤ *Allows metropolitan regions flexibility in implementing tolls while ensuring protection of the public interest*

- Allows for the inclusion of tolling and congestion pricing in metropolitan mobility plans; and
- Subjects plans utilizing tolls to review and approval by a new DOT Office of Public Benefit.

**OFFICE OF THE SECRETARY
OFFICE OF INTERMODALISM
PROJECTS OF NATIONAL SIGNIFICANCE**

BACKGROUND

Under current law, surface transportation programs rely primarily on formula capital apportionments to States. This structure can accommodate most local or State surface transportation projects. However, it is often poorly suited to address or fund critical transportation infrastructure projects, such as projects at major freight gateways or on significant travel corridors, which provide broadly-disbursed benefits but impose substantial localized costs. Such projects are critical to the health and welfare of the national economy, but often impossible to fund through traditional State funding apportionments.

In recognition of the challenges facing these projects, the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) (P.L. 109-59) included three new national and regional infrastructure programs:

- ***The Projects of Regional and National Significance (PNRS) program*** provides funding for high-cost transportation projects of national or regional importance to the surface transportation system. The PNRS statute authorized the Secretary to provide discretionary grants through a competitive, merit-based selection process and required the Secretary to establish regulations for project selection. However, the statute also designated specific projects toward which the Secretary should allocate all of the authorized funding. Consequently, while DOT has issued its final PNRS rule, it has had no opportunity to competitively select projects under the program.
- ***The National Corridor Infrastructure Improvement Program (NCIIP)*** provides funding for construction of highway projects in corridors of national significance to promote economic growth and international or interregional trade. Like PNRS, NCIIP authorized the Secretary to competitively select and fund projects through the use of merit-based criteria, but SAFETEA-LU designated projects toward which all program funding should be allocated. Therefore, DOT has not been able to competitively select NCIIP projects.
- ***The Coordinated Border Infrastructure (CBI) program*** provides funding for projects that improve the safe movement of motor vehicles across the land borders between the United States, Canada, and Mexico. In contrast to the PNRS and NCIIP programs, the CBI program did not include designated projects, but rather apportioned funds to border States through a statutory formula.

In a February 2009 report, the U.S. Government Accountability Office (GAO) recommended that Congress consider enhancing the existing PNRS, NCIIP, and CBI programs by “implementing a criteria-based, competitive project selection process and working with the Secretary

of Transportation to ... help these programs meet priorities and achieve the highest possible return on Federal investments.”²

SURFACE TRANSPORTATION AUTHORIZATION ACT

The Surface Transportation Authorization Act makes major reforms to provide Federal assistance to critical high-cost transportation infrastructure facilities that generate national benefits, but cannot easily be addressed or funded through State-level apportionments of Federal-aid highway funding. The Act:

- ***Consolidates PNRS, NCIIP, and CBI into a new discretionary Projects of National Significance (PNS) program***
 - Targets funding to projects of national, rather than regional, significance;
 - Allows broad multi-modal eligibility to fund highway projects, transit projects, freight rail, projects that benefit highway users, and intermodal projects; and
 - Provides predictable and sustainable funding through a multi-year full funding grant agreement (FFGA), similar to those currently used for New Starts transit projects.

- ***Funds projects through an open, competitive, and merit-based selection process***
 - Requires the Secretary to conduct a national solicitation for project applications;
 - Provides discretionary grants to projects selected on the basis of merit; and
 - Evaluates projects based on their likely national economic, mobility, and safety benefits, their use of new technologies, and the degree to which they supplement Federal grants with other funding sources and finance methods.

- ***Increases accountability through plans, performance targets, and post-project evaluation and reporting***
 - Requires the submission of financial plans, project management plans, and schedules;
 - Directs PNS FFGAs to include quantifiable performance outcomes that the project must achieve within two years after the date of project completion, with the Secretary negotiating appropriate outcomes for each project;
 - Requires recipients of funding to conduct and report on the results of before-and-after studies that compare predicted to actual project outcomes; and
 - Provides oversight through annual DOT reports to Congress and an independent review by the TRB.

² GAO, *Surface Transportation: Clear Federal Role and Criteria-Based Selection Process Could Improve Three National and Regional Infrastructure Programs* (2009).

**OFFICE OF THE SECRETARY
OFFICE OF INTERMODALISM
NATIONAL INFRASTRUCTURE BANK**

BACKGROUND

The gap between the investment levels needed to maintain and improve the nation's surface transportation system and current levels of investment by all levels of government and the private sector has grown significantly over the past decades. Failures to make the necessary level of investments to preserve and upgrade the surface transportation system have led to mounting maintenance backlogs, rising costs to complete projects, and a worsening user experience due to the deterioration in condition and performance of the system.

Congress established the National Surface Transportation Policy and Revenue Study Commission (Policy Commission) under SAFETEA-LU and charged it with determining the future needs of the surface transportation system. The Policy Commission's report, *Transportation for Tomorrow*,³ identified a significant surface transportation investment gap, and called for an annual investment of between \$225 and \$340 billion – by all levels of government and the private sector – over the next 50 years to upgrade all modes of surface transportation (highways, bridges, public transit, freight rail, and intercity passenger rail) to a state of good repair.

Congress also created the National Surface Transportation and Infrastructure Financing Commission (Finance Commission) to analyze future highway and transit needs and make recommendations on alternative approaches to funding and financing investments in our surface transportation system. The Finance Commission's report found that an annual investment of \$200 billion by all levels of government was necessary to maintain and improve the nation's highway and transit infrastructure systems. The report found a Federal highway and transit investment gap that totals nearly \$400 billion in 2010-2015, and grows to about \$2.3 trillion through 2035.⁴

Meanwhile, the current annual capital investment from all sources in all modes of surface transportation is just \$85 billion. At the Federal level, the current surface transportation program levels would spend \$331 billion over the next six years. The Committee believes that a six-year program of \$450 billion is needed, and when combined with the reforms in this proposal, the program will provide system users with a greater return on the investment they make to improve and expand the surface transportation network.

Filling this substantial investment gap will require the use of innovative financing mechanisms that are able to leverage an increased level of infrastructure investment by the Federal government using sizable State and local government and private investments. To maximize the limited resources available for addressing surface transportation needs, the Committee's proposal includes provisions to increase the investment in infrastructure through the creation of a National Infrastructure Bank (Bank).

³ Policy Commission, *Transportation for Tomorrow* (2007) (Policy Commission Report).

⁴ Financing Commission, *Paving our Way – A New Framework for Transportation Finance* (2009).

SURFACE TRANSPORTATION AUTHORIZATION ACT

The Surface Transportation Authorization Act creates a new Bank within DOT, administered by the Office of Intermodalism, to provide additional investment to supplement current Federal revenues and to allow the Federal Government to leverage additional resources to invest in our most critical transportation assets. The Bank is governed by a Board of Directors, and chaired by the Secretary.

The Bank will finance a wide variety of transportation projects, including highway, transit, rail, intermodal freight projects, and seaports, and supplement the normal surface transportation program's investment in the system. To accomplish this, the Surface Transportation Authorization Act:

➤ ***Establishes a National Infrastructure Bank***

- Finances the Bank through the U.S. Treasury Department;
- Operates the Bank like a larger version of the existing Transportation Infrastructure Finance and Innovation Act (TIFIA) program, with additional authorities;
- Provides the Bank with authority to cover the estimated long-term net cost to the Federal Government of the loans, and loan guarantees, made by the Bank (i.e., subsidy cost); and
- Requires the Bank to repay the U.S. Treasury Department over time using principal and interest collected from the borrower.

➤ ***Attracts Private Capital to Invest in Surface Transportation Projects***

- Provides credit assistance, including secured loans, loan guarantees, and standby lines of credit, to finance infrastructure projects;
- Requires that secured loans be direct Federal loans to project sponsors;
- Provides full-faith-and-credit guarantees by the Federal Government to institutional investors that make loans through the Bank; and
- Offers standby lines of credit that represent secondary sources of funding in the form of contingent Federal loans and, if needed, to supplement project revenues during the projects' start-up years.

➤ ***Provides Assistance to MMA, PNS, and High-Speed Rail***

- Gives priority to large capital infrastructure projects that promise significant national or regional economic benefits;
- Provides funding assistance for congestion relief plans (a group of projects and plans) recommended by the Office of Intermodalism that are designed to increase mobility and accessibility of people and freight in metropolitan regions as part of an approved metropolitan mobility plan;
- Provides funding assistance to PNS;
- Provides funding assistance for high-speed rail corridors;

- Allows for both public and private project sponsors to apply for financial assistance from the Bank, as long as projects are consistent with State and local transportation plans; and
- Allows projects seeking assistance from the Bank to also receive Federal grants from any DOT grant program for which the project is eligible. This includes the traditional DOT grant programs, as well as the new PNS, MMA, and Freight Improvement programs.

**OFFICE OF THE SECRETARY
OFFICE OF INTERMODALISM
COUNCIL ON INTERMODALISM**

BACKGROUND

Historically, Federal transportation policy and funding to improve transportation infrastructure have generally focused on individual modes of travel, rather than considering the transportation needs of an interconnected “intermodal” system. This modally stove-piped structure has, in many cases, impeded State and local agencies’ ability to carry out intermodal projects.

In the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA)(P.L. 102-240), Congress established a goal “to develop a National Intermodal Transportation System that is economically efficient, environmentally sound, provides the foundation for the Nation to compete in the global economy and will move people and goods in an energy efficient manner.” In support of this goal, ISTEA created within DOT an Office of Intermodalism, charged with coordinating Federal policy on intermodal transportation and initiating policies to promote efficient intermodal transportation in the United States. To lead this Office and elevate the profile of intermodal issues, ISTEA created the position of Deputy Associate Secretary. ISTEA also established within DOT an Intermodal Transportation Advisory Council, led by the Secretary and made up of the Department’s modal administrators (or their designees). Subsequent surface transportation authorization bills retained the basic ISTEA policy and programs related to intermodalism with some modifications, including eliminating a requirement that State DOTs develop intermodal management systems. Congress also eliminated the Deputy Associate Secretary position in 2002, shifting the intermodal portfolio to a newly-created Under Secretary for Policy.

The Norman Y. Mineta Research and Special Programs Improvement Act of 2004 (P.L. 108-426) transferred the Office of Intermodalism from the Secretary’s Office to the newly-created Research and Innovative Technology Administration (RITA). However, a 2007 GAO report reached the following conclusion:

The result of [moving the Office to RITA] is a blurred responsibility for coordinating DOT’s actions to address barriers and advancing intermodal policies ... No office or operating administration within the department is taking the lead in coordinating DOT actions to address intermodal barriers for both freight and passengers.⁵

Today, the Office of Intermodalism lacks financial resources, dedicated staff, and the capacity to sufficiently meet its statutorily-designated objectives. The Department’s Intermodal Council meets rarely, if at all.

⁵ GAO, *Intermodal Transportation: DOT Could Take Further Actions to Address Intermodal Barriers* (2007).

SURFACE TRANSPORTATION AUTHORIZATION ACT

The Surface Transportation Authorization Act re-establishes and strengthens the Office of Intermodalism within the Office of the Secretary to promote greater efficiency and provide a renewed focus on delivering intermodal solutions to the nation's surface transportation problems. The Act:

- ***Creates an Under Secretary of Transportation for Intermodalism***
 - Elevates the consideration of intermodal issues to the highest levels within the Department by creating an Under Secretary of Transportation for Intermodalism;
 - Gives the Under Secretary responsibility for the creation of a National Transportation Strategic Plan; and
 - Gives the Under Secretary control over project selection under the MMA and PNS programs (subject to the approval of the Council on Intermodalism).

- ***Revitalizes DOT's Council on Intermodalism***
 - Revitalizes DOT's Council on Intermodalism, headed by the Secretary and comprised of the Under Secretary for Intermodalism and each of the modal administrators, with non-voting members from the U.S. Army Corps of Engineers and the Coast Guard;
 - Requires the Council to meet at least monthly, advise the Secretary on policies on intermodal transportation, and approve the Under Secretary's recommendations for funding projects under the MMA and PNS programs; and
 - Directs Administrators to participate in the Council, rather than sending lower-level designees on their behalf.

- ***Strengthens and empowers the DOT's Office of Intermodalism***
 - Elevates the Office of Intermodalism from its current location in RITA to its original home in the Secretary's office;
 - Directs the Office to coordinate between operating administrations, reduce modal stovepipes and barriers, encourage intermodal transportation policies and practices, and lead the development of a national strategic transportation plan;
 - Grants the Office responsibility for working with State DOTs, regional planning authorities, groups representing multistate corridors or projects, and other relevant participants to develop a long-range National Transportation Strategic Plan; and
 - Gives the Office responsibility for implementing important intermodal programs, including the MMA and PNS programs and the Bank.

**OFFICE OF THE SECRETARY
OFFICE OF INTERMODALISM
NATIONAL TRANSPORTATION STRATEGIC PLAN**

BACKGROUND

In 1956, President Dwight D. Eisenhower provided a long-range strategic vision for the future of the nation's transportation system with his commitment to plan and fund an Interstate Highway System. Prior to President Eisenhower's commitment to development of a national system, transportation in the United States was inadequate, inefficient, and underfunded.

The situation today is no different. Every mode of our transportation system is unable to keep up with capacity demands and woefully under funded. The American Society of Civil Engineers estimates that the United States needs to invest \$2.2 trillion in Federal, State, and local funds over the next five years to improve our transportation system to meet the needs of our current population.

Growth in our nation's population and commerce has created capacity demands that have not been met and will continue to delay commerce, waste fuel, and frustrate the traveling public. If aviation traffic grows as expected, airline delays will increase by 62 percent by 2014. The railroad industry's market share of transporting freight is expecting to increase from 28 percent in 2000 to 57 percent in 2020. Highway infrastructure, as defined by the number of available highway miles, increased only 1.97 percent between 1980 and 2000. Yet, over this same timeframe, travel in passenger cars grew by 50 percent, and the number of miles that trucks traveled increased 95 percent. To maintain the existing level of transit service, an additional 26,000 buses and 5,500 rail vehicles would need to be purchased over the next 20 years. The amount of freight moving through our nation's 10 largest ports is expecting to grow by more than 370 percent in the next twenty years.

Since the completion of the Interstate Highway System, national transportation policy has lacked a strategic focus on development of an efficient, multimodal transportation system. Transportation planning occurs in a vacuum and begins with local and State plans that address mobility of people and freight within limited jurisdictional bounds. Some coordination between States exists to facilitate commerce, but little structure exists to create a national transportation system that is both multimodal and interconnected.

As already overloaded systems face increasing capacity demands and decreasing funding and revenue options, a focused Federal strategy for increasing mobility for both people and freight through efficient use of limited Federal funds will be vital. The development of a National Transportation Strategic Plan is needed to prevent haphazard development of inefficient systems that slow commerce and poorly serve the traveling public. A well-developed plan will justify increased investment in all modes of transportation by identifying specific projects that address existing problems in our transportation system.

SURFACE TRANSPORTATION AUTHORIZATION ACT

The Surface Transportation Authorization Act:

- ***Charges the Office of Intermodalism with developing a National Transportation Strategic Plan***
 - Using existing State long-range plans as the foundation for a comprehensive multimodal long-range national plan, the Office serves as an aggregator of plans.
- ***Better defines the Federal role in identifying and funding transportation projects***
 - Allows for a greater focus on projects that would have a significant national and regional impact;
 - Promotes a well-funded, adequately maintained, efficient, and interconnected transportation system that will increase mobility while making the best use of limited funds; and
 - Requires States to ensure interconnectivity by including all applicable transportation modes in the early stage of project development.
- ***Provides a long-range vision and a strategy for reaching our nation's transportation future.***
 - Sets forth a vision for long-term transportation investment; and
 - Provides a strategy to address specific inefficiencies in our current transportation system.

FEDERAL HIGHWAY ADMINISTRATION

**FEDERAL HIGHWAY ADMINISTRATION
CRITICAL ASSET INVESTMENT PROGRAM**

BACKGROUND

One of the most important Federal objectives for our nation's transportation system is keeping highways and bridges in a state of good repair. Unfortunately, the condition of our nation's infrastructure makes clear that there is still a lot of work to be done. Currently, many segments of the nation's surface transportation infrastructure are reaching -- or exceeding -- their useful design life. In fact, the Policy Commission Report identified the deterioration from aging and use as "one of the greatest threats to the Nation's surface transportation network."⁶ In addition to heavy usage and age, the report highlighted weather, air pollution, and the corrosive impact of road salt as having caused decay to various components of the transportation network. Maintaining the nation's surface transportation infrastructure is critical to ensuring that these assets will remain safe and reliable in the future.

According to 2008 data from the Bureau of Transportation Statistics, nearly 12 percent all bridges are classified as structurally deficient; in other words, roughly one of every eight bridges that our nation relies upon is structurally deficient. Of the 601,396 bridges in the United States, 151,394 bridges are deficient, including 71,461 structurally deficient bridges, and 79,933 functionally obsolete bridges.⁷ In addition, the current National Highway System (NHS) bridge investment backlog is estimated to be at least \$32.1 billion (in 2004 dollars), and one-half of all bridges in the United States were built before 1964. These facts demonstrate that there is a need for significant investment in our nation's bridges in the coming years.

The Federal Highway Administration's (FHWA) 2006 Conditions and Performance Report, which is based on 2004 data, includes data on pavement conditions. Based on this data, only 63 percent of lane miles of pavement on the NHS are in good condition.⁸ Of even more concern, just one-half of all vehicle miles traveled on the NHS are on pavements that are in good condition. The percentage of vehicle miles traveled on the NHS that are on pavements in poor condition is approximately nine percent.⁹ Therefore, significant investment will be needed in the coming years to improve the condition of the ride quality of our nation's highways.

A goal of the Federal-aid highway program is to keep our infrastructure in a state of good repair. However, the existing programs do not include performance standards that require States to demonstrate they are using Federal funds in a manner that results in improvements in the condition of our nation's roadways and bridges.

⁶ Policy Commission Report.

⁷ Structurally deficient bridges restrict traffic to light vehicles, require immediate rehabilitation to remain open. Functionally obsolete bridges are those with deck geometry, load carrying capacity, clearance, or approach roadway alignment that no longer meet the criteria for the system of which the bridge is a part.

⁸ "Good" condition is defined as roadways with an International Roughness Index (IRI) of less than 95.

⁹ "Poor" condition is defined as roadways with an IRI of greater than 170.

SURFACE TRANSPORTATION AUTHORIZATION ACT

The Surface Transportation Authorization Act consolidates the Highway Bridge Replacement and Rehabilitation (Highway Bridge), Interstate Maintenance (IM), and NHS programs into one streamlined Critical Asset Investment (CAI) program. The CAI program establishes national priorities and goals of bringing the NHS into a state of good repair and preserving that state of good repair. The CAI program also focuses Federal investment on preserving and improving the condition of roadways and highway bridges located on the NHS. Thus, the CAI program's function of ensuring that our nation's highways and bridges are in a state of good repair, and keeping them there, complements the capacity-building allowed for in other highway programs. Funding for the CAI program is apportioned to the States pursuant to a formula that reflects the extent, usage, and condition of each State's core highway system.

The Surface Transportation Authorization Act:

- ***Streamlines FHWA's programs by consolidating several existing programs into the new CAI program.***
 - Creates one fund with greater flexibility to allow States to ensure bridges and highways on the NHS are in a state of good repair;
 - Allows the use of funds for upgrading bridges located on the Federal-aid Highway System; and
 - Provides for the use of funds for the training of bridge inspectors, and for the inspection of any bridges in a State.

- ***Establishes new performance measures and targets***
 - Requires the Secretary to establish quantifiable performance targets for each State to reduce the deck area of bridges on the Interstate System and NHS that are classified as structurally deficient;
 - Directs the Secretary to establish quantifiable performance targets for each State to reduce the lane miles on the Interstate System and NHS that are in poor or fair condition; and
 - Adapts aggressive targets to State-specific circumstances by establishing in law minimum improvements that each State must achieve, but only in terms of percentage reductions of each State's current level of structurally deficient bridge deck area and lane miles in poor or fair condition.

- ***Fosters accountability through State plans for strategic investment of CAI funding***
 - Requires each State to develop a CAI investment plan that describes the State's strategy for using funding to meet its performance targets, and to submit an updated version of this plan to the DOT every two years; and
 - Directs DOT to review and approve State CAI plans.

➤ *Strengthens Federal oversight over States' use of CAI funding*

- Directs States to submit to DOT annual reports describing their use of CAI funding, project impacts, and progress toward meeting their performance targets; and
- Requires DOT to monitor each State's use of CAI funding, and to withhold project approvals if such use is inconsistent with the investment strategy set forth in the State's CAI plan.

**FEDERAL HIGHWAY ADMINISTRATION
CONGESTION MITIGATION AND AIR QUALITY IMPROVEMENT PROGRAM**

BACKGROUND

The Congestion Mitigation and Air Quality Improvement (CMAQ) Program provides funds to States for transportation projects to improve air quality and reduce congestion. First enacted in ISTEA, CMAQ was designed to assist States and metropolitan regions in meeting the transportation sector's goals established by the Clean Air Act Amendments of 1990 (P.L. 101-549) to help meet national air quality objectives.

CMAQ funds are apportioned to States based on formulas that take into account factors such as a State's attainment of National Ambient Air Quality Standards (nonattainment areas) and former nonattainment areas that are now in compliance (maintenance areas). Program funds are distributed based on a formula considering an area's population by county and the severity of its ozone and carbon monoxide problems within the nonattainment or maintenance area. Each State, however, is guaranteed a minimum apportionment of one-half percent of the year's total program funding, even if the State does not have any nonattainment or maintenance areas. States receiving a minimum apportionment can use CMAQ funds anywhere in the State for projects eligible for either CMAQ or the Surface Transportation Program (STP).

CMAQ funds can be used for a broad range of activities and transportation control measures, including: capital and operational assistance for new transit service; ride share and park and ride lots; pedestrian and bike projects; alternative fuel vehicles; diesel idling reduction and diesel retrofit; and marketing programs designed to educate the public about air quality issues and transportation alternatives. CMAQ funds cannot be utilized to build single occupancy vehicle lanes. However, construction of High Occupancy Vehicle (HOV) and High Occupancy Toll (HOT) lanes is permitted. CMAQ funds can be used to provide start up operational assistance for new transit services, intermodal facilities, and travel demand management strategies, and the incremental cost of expanding existing transit services. There is a three-year limit on the use of CMAQ funds for operating assistance. SAFETEA-LU added a new requirement that States and metropolitan planning organizations (MPOs) give priority in distributing CMAQ funds to diesel engine retrofits, and other cost-effective emissions reduction and congestion mitigation activities that provide air quality benefits.

SURFACE TRANSPORTATION AUTHORIZATION ACT

The Surface Transportation Authorization Act continues the CMAQ program to provide States and metropolitan areas with funding for projects and programs that assist in reduction of congestion and transportation-related emissions in areas classified as air quality nonattainment or maintenance areas. The Act includes reforms designed to ensure that CMAQ funds are targeted and distributed on the basis of need, and better aligns the receipt of funding with the degree of air quality challenges facing a State or metropolitan region.

The Surface Transportation Authorization Act reforms the CMAQ program by:

- ***Distributing CMAQ funds according to needs by targeting CMAQ funding at nonattainment and maintenance areas***
 - Continues to provide funding to States based on population and in relation to air quality challenges;
 - Requires States to invest their CMAQ funds proportionally in relation to emissions and air quality challenges within the State; and
 - Provides for the suballocation of CMAQ funds to large metropolitan areas that are classified as nonattainment and maintenance areas.

- ***Retains CMAQ programs' broad project eligibility***
 - Continues to provide significant flexibility in project selection, recognizing that different regions have different challenges and needs to address; and
 - Removes a provision requiring that priority be placed on diesel retrofit projects.

**FEDERAL HIGHWAY ADMINISTRATION
HIGHWAY SAFETY IMPROVEMENT PROGRAM**

BACKGROUND

Each year, the United States bears an enormous burden from motor vehicle crashes on our nation's highways. According to the National Highway Traffic Safety Administration (NHTSA), deaths and injuries resulting from motor vehicle crashes are the leading cause of death for Americans of every age from three to 34, and traffic fatalities account for more than 90 percent of transportation-related fatalities. In 2007, 41,059 people were killed and 2,491,000 people were injured in motor vehicle crashes, while another nearly 4.3 million crashes involved property damage.

Since the Federal Aid Highway Act of 1973 (P.L. 93-87), the Federal Government has provided States with categorical funding for use on infrastructure-related highway safety improvements. In 2005, SAFETEA-LU established a new core Highway Safety Improvement Program (HSIP). The overall purpose of HSIP is to achieve a significant reduction in traffic fatalities and serious injuries on all public roads through the implementation of infrastructure-related highway safety improvements. SAFETEA-LU authorized over \$5 billion in HSIP funding during fiscal years (FY) 2006 through 2009 – an average of \$1.26 billion per year, and nearly twice the amount of safety funding provided by the previous surface transportation authorization bill.

In addition to increasing safety funding, HSIP offered eligibility beyond traditional highway safety infrastructure projects to include activities such as safety conscious planning, roadway safety audits, and data system improvements. The program set aside \$220 million per year for projects to eliminate hazards at highway-rail grade crossings. HSIP set aside another \$90 million per year for projects on “high risk rural roads” (HRRR), which had to demonstrate accident rates for fatalities or incapacitating injuries that exceeded or were likely to exceed the statewide average for the respective functional class of roadway. Finally, HSIP required each State to develop a coordinated, data-driven strategic highway safety plan (SHSP) with statewide goals, objectives, and emphasis areas to provide a comprehensive framework for reducing highway fatalities and injuries on public roads.

In the years since the passage of SAFETEA-LU, certain aspects of HSIP – most notably, the SHSP – have proven valuable in coordinating and structuring States' safety programs. However, other aspects of the program, such as the HRRR and highway-rail crossing set-asides, have been less successful. As of the end of FY 2008, States had obligated just over half of their highway-rail grade crossing funding, and less than 25 percent of their available HRRR funding. In a 2008 report, the GAO highlighted challenges associated with the HSIP highway-rail grade crossings and HRRR set asides, stating that “the rail-highway crossing set-aside program does not target a key safety priority of some states and provides significant funding to some crossing areas that have relatively few fatalities,” and that “many states lack the roadway data needed to effectively implement the [HRRR] program.”¹⁰

¹⁰ GAO, *Highway Safety Improvement Program: Further Efforts Needed to Address Data Limitations and Better Align Funding with States' Top Safety Priorities* (2008).

SURFACE TRANSPORTATION AUTHORIZATION ACT

The Surface Transportation Authorization Act builds upon the success of HSIP by amending and reforming the program in a manner consistent with HSIP's core objectives and a continued strategic, data-driven approach to safety. The Act maintains HSIP as a core apportioned program, and provides HSIP funding to States based on a formula that considers the number of highway lane miles, volume of travel, and number of fatalities on each State's Federal-aid highway network. It retains HSIP's broad eligibility for funding safety projects and safety-related improvements to any public road, publicly-owned bicycle or pedestrian pathway, or highway-rail grade crossing. It maintains the HSIP's broad, strategic perspective, its incorporation of the four "Es" of safety (engineering, education, enforcement, and emergency medical services), and its requirement to involve a wide range of transportation, safety, and governmental organizations in plan development. It also continues to require States to advance their capabilities for traffic and safety data collection and analysis.

In addition to retaining the elements described above, the Surface Transportation Authorization Act reforms HSIP by:

- ***Establishing new performance measures and targets***
 - Requires the Secretary to establish quantifiable performance targets for each State to reduce fatalities and serious injuries on highways; and
 - Adapts aggressive targets to State-specific circumstances by establishing in law improvements each State must meet in relation to its current fatality and injury levels.
- ***Fostering accountability through State plans for strategic investment of HSIP funding***
 - Requires each State to develop an HSIP investment plan that describes the State's strategy for using funding to meet its performance targets, and to submit an updated version of this plan to DOT every two years; and
 - Requires DOT to review and approve State HSIP plans and to compel States without approved plans to dedicate more Federal highway funds to safety projects.
- ***Removing barriers to strategic use of program funding***
 - Eliminates the existing set-asides of dedicated portions of HSIP funding for use on highway-rail crossings and high risk rural roads, freeing States to use funding strategically in the areas of greatest safety need, consistent with their HSIP plans, and to obligate HSIP funds more easily.
- ***Strengthening Federal oversight over States' use of HSIP funding***
 - Directs States to submit to DOT annual reports describing their use of HSIP funding, project impacts, and progress toward meeting their performance targets; and
 - Requires DOT to monitor States' use of HSIP funding, and to withhold project approvals if a State disregards the investment strategy set forth in its HSIP plan.

**FEDERAL HIGHWAY ADMINISTRATION
METROPOLITAN AND STATEWIDE TRANSPORTATION PLANNING**

BACKGROUND

All Federally-funded highway and transit projects must emerge from a uniform, but locally-based planning process. States and metropolitan areas are required to develop transportation systems embracing various modes of transportation through the implementation of an intermodal “3C” planning process – a process that is continuing, comprehensive, and cooperative.

Currently, the metropolitan planning is funded through a reduction of 1.25 percent from the: STP, IM program, CMAQ, Highway Bridge program, and the NHS program. Metropolitan planning funds are distributed to the States based on the population in urbanized areas or portion of urbanized areas in the State compared to all States. The Statewide Planning and Research program is funded by a two percent set-aside from each State's apportionments for the IM, NHS, STP, CMAQ, Highway Bridge, and HSIP programs.

In urban areas with populations of more than 50,000, MPOs conduct the metropolitan transportation planning process, while State DOT's conduct the statewide process. MPOs and State DOT's must produce both long-range transportation plans that reflect the long-range (20-year minimum) intermodal vision for the metropolitan areas and the States, as well as short-term (four-year time horizon) transportation improvement plans that include specific transportation projects to be implemented in the State and metropolitan areas, and are consistent with the long-range plans. Although ISTEA greatly strengthened the role of MPOs in planning transportation projects by requiring that both the long-range and short-term metropolitan plans be fiscally constrained, Congress has not revisited the structure and role of MPOs since 1991.

The Policy Commission has stated that, overall, current transportation and land use policies are not well coordinated, and advocated for a greater emphasis on aligning such policies. Current planning requirements do not specifically require States and MPOs to consider projects and strategies to reduce America's carbon footprint and to encourage the development and expansion of sustainable transportation options. Nearly one third of all greenhouse gas emissions produced by the United States are generated by the transportation sector.

While some States and MPOs have strengthened their regional and rural planning capacity, greater collaboration with rural planning organizations (RPOs) is needed to fully address the national nature of the surface transportation system. Furthermore, even where RPOs are involved in a consultative manner in the transportation planning process, the Secretary is currently prohibited from reviewing the rural consultation process. Finally, no aspect of the transportation planning process is based on achieving performance goals, and there are no performance measures built into the current requirements.

SURFACE TRANSPORTATION AUTHORIZATION ACT

The Surface Transportation Authorization Act maintains and strengthens the metropolitan and statewide transportation planning requirements. The Act includes a number of reforms that will

increase the ability of metropolitan and local governments to access and benefit from both sub-allocated STP funding and transportation enhancement funds. The Act:

Metropolitan Planning

➤ *Reforms the MPO process*

- Increases the population threshold for mandatory MPO creation to 100,000, up from the current requirement that all areas with a population of at least 50,000 create MPOs, but allows those existing MPOs in smaller areas to remain in existence under the previous program requirements;
- Ensures increased participation by public transit officials in all MPOs; and
- Reforms the MPO certification process by requiring proportional voting on MPO boards as well as performance targets, and applies certification requirements to all MPOs serving areas with a population of more than 100,000.

➤ *Establishes new performance targets*

- Creates a national MPO database at DOT to collect information on MPO performance;
- Requires DOT to set transportation planning performance measures for MPOs;
- Sets minimum requirements for MPOs' performance measures;
- Requires MPOs to develop performance targets to meet the performance measures;
- Requires annual reporting documenting the degree to which MPOs are meeting performance targets; and
- Links performance management to MPO certification process.

➤ *Strengthens the planning process for the largest metropolitan areas*

- Requires "Blueprint" alternative scenario planning for metropolitan planning areas with populations of more than one million (or more than 500,000 for metropolitan areas wishing to receive MMA funding); and
- Blueprint planning techniques include, at a minimum, an assessment of the following:
 - land use patterns that support improved mobility and reduced dependency on single-occupant vehicle trips;
 - an adequate supply of housing for all income levels;
 - limited impacts on valuable farmland, natural resources, and air quality;
 - a reduction in greenhouse gas emissions;
 - an increase in water and energy conservation and efficiency; and
 - an increase in livable communities.

Statewide and Rural Planning

- ***Strengthens the role of rural agencies in the statewide process***
 - Recognizes RPOs that currently exist within the States;
 - Directs States to coordinate with existing RPOs and local officials in the statewide transportation planning process; and
 - Removes the provision added in the Transportation Equity Act for the 21st Century (P.L. 105-178) (TEA 21) prohibiting DOT from reviewing the rural consultation process.

- ***Establishes new performance targets***
 - Requires DOT to set transportation planning performance targets for States;
 - Sets minimum requirements for States' performance targets;
 - Requires States to develop performance targets to meet the performance targets;
 - Requires annual reporting documenting the degree to which States are meeting performance targets; and
 - Links performance management to statewide planning funds.

Expands Scope of Planning Process (includes emissions reductions and linkage to climate change)

- ***Includes new statements of general policy affirming that it is in the national interest to***
 - Reduce fuel consumption, reliance on foreign oil, impacts on the environment and greenhouse gas emissions; and
 - Encourage livability, sustainability, coordination, and connectivity.

- ***Expands the scope of the planning processes to require consideration of projects and strategies that will***
 - Increase sustainability, connectivity, and livability;
 - Reduce transportation-related greenhouse gas emissions, reliance on foreign oil, and the impacts of climate change;
 - Improve public health; and
 - Promote consistency among transportation, housing, and land use patterns.

- ***Creates an emissions reduction process that***
 - Requires the Environmental Protection Agency and DOT to set national emissions reduction goals, as well as standardized models and methodologies for use in developing emissions reduction targets;
 - Requires States and MPOs to develop emissions reduction targets and strategies designed to meet national goals as part of the transportation planning process;

- Sets minimum requirements for States' and MPOs' emissions reduction targets and strategies;
- Requires public notice of States' and MPOs' emissions reduction targets and strategies; and
- Links the emissions reduction requirements to performance measures and MPO certification.

**FEDERAL HIGHWAY ADMINISTRATION
SURFACE TRANSPORTATION PROGRAM**

BACKGROUND

Since ISTEA, the Federal Government has provided States with surface transportation funding through a flexible program that offers broad eligibility to fund a wide range of surface transportation activities. ISTEA first established the State Flexible Program, now the STP, which provided \$25 billion in funding over six fiscal years (1992-1997) to States through a formula based on each State's proportional contribution into the Highway Trust Fund (HTF). Subsequent surface transportation authorization bills have funded the STP at higher levels. Most recently, SAFETEA-LU authorized \$33 billion in STP funding over FY 2005-2009. STP funds may be used on a wider range of surface transportation projects than under almost any other Federal-aid highway program.

Over time, Congress has modified the formula for apportioning STP funding, so that it now takes into account not only each State's proportional share of HTF contributions, but also factors reflecting the extent and usage of each State's Federal-aid highway network. States are required to reserve 10 percent of STP funding for use on transportation enhancement (TE) activities, such as pedestrian and bicycle projects, highway beautification, and historic preservation. The STP requires each State to suballocate 55 percent of STP funding throughout the State based on the State-wide distribution of population. TE funds are not included within this suballocation. Therefore, States, rather than localities, currently control the use of all set-aside TE funding without any geographic restrictions.

In areas with populations less than 200,000, the State has primary control over the selection of projects on which suballocated funding is used. Areas larger than 200,000 are granted project selection authority. However, while the State is required to suballocate STP contract authority to these large urbanized areas each year, it is only required to provide them with the accompanying obligation limitation on a triennial basis.

SURFACE TRANSPORTATION AUTHORIZATION ACT

The Surface Transportation Authorization Act maintains STP largely in its current form, making no changes to either the formula by which funding is apportioned to States or the types of projects on which States may spend STP funding. The Act does, however, include a number of reforms to increase the ability of metropolitan and local governments to access and benefit from both suballocated STP funding and TE funds. The Act:

- *Allows metropolitan areas to use their suballocated STP funds as easily as States*
 - Provides major metropolitan areas with a more predictable stream of obligation limitation, increasing their ability to plan and implement their priorities on a predictable and timely basis.

- *Ensures local access to transportation enhancement funds*
 - Broadens the distribution of TE funds by replacing the “off-the-top” 10 percent TE set-aside with a rule that when States distribute TE funds throughout the State based on population, 10 percent of such funds in each area must be spent on TEs.

- *Requires broader consultation prior to spending STP funds in non-urbanized areas*
 - Requires States to consult with rural planning organizations prior to using suballocated STP funds in areas that such organizations represent.

**FEDERAL HIGHWAY ADMINISTRATION
FREIGHT IMPROVEMENT PROGRAM**

BACKGROUND

As the economy and population of the United States have grown, so too has the nation's dependence on surface transportation infrastructure. This is particularly true for the growth in freight movement. Since 1970, imports to the United States have more than tripled as a share of GDP, while exports have more than doubled. In 2002, U.S. freight carriers moved over 19 billion tons of freight valued at more than \$13 trillion, and traveled over 4.4 trillion ton-miles over the nation's transportation network. DOT estimates that by 2035, the volume of freight shipped on the U.S. intermodal transportation system will increase to 33.7 billion metric tons, worth more than \$38 trillion -- an increase of more than 48 percent.

Most highway-related freight projects, as well as some freight rail and freight intermodal projects, are currently eligible to receive funding under one or more existing Federal surface transportation programs. However, freight projects often face substantial barriers in seeking funding under these programs, as GAO highlighted in a 2008 report:

Although freight transportation stakeholders have advanced projects and proposals to enhance freight mobility ... public planners face several challenges when advancing freight improvement projects. These challenges include competition from nonfreight projects for public funds and community support in the planning process, lack of coordination among various government entities and private sector stakeholders, and limited or restricted availability of public funds available for freight transportation.¹¹

SAFETEA-LU contained a number of pilot programs that provided funding for various types of freight projects, and for improving State capacity to conduct freight planning. SAFETEA-LU also modified Federal loan, credit assistance, and bonding programs to increase the access of freight projects to sources of finance beyond Federal grants. However, it did not provide States with a dedicated source of freight transportation funding.

In 2007, the Policy Commission recommended that the Federal Government "return to its historic role of ensuring that the transportation needs of interstate commerce are met," and that Congress establish a new freight transportation program. The Policy Commission also recommended that DOT play a strong role in support of freight transportation by establishing a set of performance standards related to efficient management of freight movements.¹²

¹¹ GAO, *Freight Transportation: National Policy and Strategies Can Help Improve Freight Mobility* (2008).

¹² Policy Commission Report.

SURFACE TRANSPORTATION AUTHORIZATION ACT

In recognition of the critical Federal role in supporting interstate commerce and the nation's freight transportation system, the Surface Transportation Authorization Act establishes a new core apportioned Freight Improvement Program (FIP), which accomplishes the following objectives:

- ***Establishes a dedicated source of funding for freight-related highway projects***
 - Provides States with formula funding for projects that will improve freight mobility on the NHS and secondary freight routes.

- ***Requires States to consider their freight transportation needs in a strategic, statewide context***
 - Requires each State to develop a freight plan that comprehensively describes the State's current and long-range freight planning activities and investments; and
 - Directs each State to establish a freight advisory committee, with broad public and private membership, to advise the State on freight issues and aid in the development of the State's freight plan.

- ***Institutes new performance measures to focus State efforts on improving the speed and reliability of freight movement***
 - Mandates that DOT establish standardized quantifiable performance measures regarding the speed and reliability of freight movement and to work with States to set State-specific targets in relation to each measure; and
 - Requires each State to submit to DOT and publish annually a report documenting its progress toward meeting its performance targets.

- ***Requires States to inventory and assess the condition of secondary freight routes***
 - Requires each State to inventory its roads (apart from those on the NHS) of substantial economic or freight-related significance and to submit this inventory of "secondary freight routes" to DOT for approval;
 - Allows States to use FIP funds for projects on roads within an approved inventory of secondary freight routes; and
 - Requires each State to assess the current and projected future condition of its secondary freight routes, and to consider the condition and needs of these routes when developing its plan for use of FIP funding.

**FEDERAL HIGHWAY ADMINISTRATION
OFFICE OF PUBLIC BENEFIT, TOLLING REQUIREMENTS, AND PUBLIC -PRIVATE PARTNERSHIP
REQUIREMENTS**

BACKGROUND

Since the Federal-Aid Highway Act of 1956 (P.L. 84-627), the Federal surface transportation system has been constructed and operated predominantly on a publicly-financed basis, with the majority of U.S. highway projects designed, operated, and maintained by public sector transportation agencies. The typical highway project is financed with public (Federal, State, or local) funds. Private contractors may build the project, but once complete, the highway is usually operated and maintained by a State or local transportation agency.

The 1956 Act's general prohibition on tolling on Interstates and other Federally-assisted highways has served to shape the function and perception of the nation's "freeways." While this prohibition has been modified over time, it remains largely in effect, with tolling allowed on a case-by-case basis, under very specific conditions, as well as under a few more recently-enacted toll pilot programs. Additionally, some pre-existing toll roads (e.g., the Pennsylvania Turnpike) have been "grandfathered" into the Interstate System.

Since the late 1980s, increasing budgetary constraints on Federal, State and municipal governments have led public agencies to consider highway toll projects as a means of supplementing often limited transportation funding. These budgetary pressures have also led the public sector over the past few decades, to increasingly explore the use of public private partnership (PPP) agreements in transportation – contractual agreements formed between a public agency and a private sector entity -- that allow for greater private sector participation in the delivery and financing of transportation projects.

When carefully considered and appropriately structured, highway toll projects can generate a number of benefits, including the generation of revenues to support transportation projects that might otherwise not be financially viable. However, without sufficient public protections, toll projects hold the potential to impose costs on those least able to pay.

Under the right circumstances and conditions, PPP agreements can yield benefits. For example, where private financing is involved, PPPs can supplement—but not provide a substitute for --public investment in transportation improvements. However, as GAO stated in a 2008 report, "there are also potential costs and trade-offs – there is no 'free' money in [PPPs] and it is likely that tolls on a privately operated highway will increase to a greater extent than they would on a publicly operated toll road."¹³ GAO continues to believe that more rigorous up-front analysis of PPPs could better protect public interests.

To protect the integrity of the nation's surface transportation system and the public interest regarding trade and travel, the Federal surface transportation program requires strengthened public protections regarding highway toll projects and PPP agreements.

¹³ GAO, *Highway Public-Private Partnerships: More Rigorous Up-front Analysis Could Better Secure Potential Benefits and Protect the Public Interest* (2008).

SURFACE TRANSPORTATION AUTHORIZATION ACT

The Surface Transportation Authorization Act establishes a new Office of Public Benefit (OPB) to ensure that the utilization of tolls and PPPs enhances the nation's surface transportation network and provides maximum benefits to the public.

The Act:

- ***Establishes an OPB within the FHWA***
 - Provides national leadership in protecting the public interest in relation to highway toll projects and PPP agreements on Federal-aid highways;
 - Reviews and approves (or disapproves) State plans for toll rates on Federal-aid highways, methods for adjusting those tolls, and plans to mitigate toll impacts; and
 - Oversees new Federal requirements for PPP agreements on Federal-aid highways.
- ***Creates a one-stop shop for Federal toll authority***
 - Replaces the current patchwork of overlapping toll requirements and pilot programs with a single, centralized source of Federal toll authority.
- ***Keeps Interstates toll-free except under narrowly-defined circumstances***
- ***Where a Federal-aid Highway is tolled, requires transportation alternatives and public protections***
 - Restricts use of toll revenues to debt service, reasonable return on investment, operations and maintenance, and highway and transit transportation projects in the tolled corridor;
 - Prohibits toll concessions from including provisions preventing States from improving or expanding other roads located within the same corridor as a toll road;
 - Requires, prior to the implementation of tolls, public comment on the proposed tolling structure, consideration of toll impacts on interstate commerce and travel, and operational and transit improvements to address any projected travel diversion; and
 - Requires measures to mitigate the impacts of tolls on low-income travelers.
- ***Honors pre-existing commitments***
 - Maintains Federal toll authority for highways operating under current toll programs, provided that the toll project is operational or substantially underway.
- ***Requires public protections within PPP agreements***
 - Requires transparency in the development of a PPP agreement;

- Prohibits private entities that operate Federal-aid highways from restricting public access to use of those highways;
- Requires PPP agreements to allow the public to “buy back” the facility in the future (in exchange for fair market value compensation to the private partner); and
- Requires PPP agreements to include standards that the highway facility must meet, or be upgraded to, by the private partner by the end of the term of the agreement.

FEDERAL HIGHWAY ADMINISTRATION EXPEDITING PROJECT DELIVERY

BACKGROUND

According to the American Association of State Highway and Transportation Officials (AASHTO), a typical highway or transit projects can take 10 to 15 years from the beginning planning stages to completion of construction.¹⁴ During the various phases of the project delivery process—planning, environmental review, permitting, design, right-of-way acquisition, and construction—projects are often delayed with no coordinated mechanism to get the projects moving toward completion again. Time delays and inefficiencies in project delivery not only postpone needed improvements in our nation’s transportation infrastructure but also result in increases in the cost of projects.

The environmental review process for a highway or transit project may take up to four to six years to complete. In addition to the environmental review, other phases constitute a large part of the project delivery process, with up to nine years of the typical completion time for highway and transit projects consumed by the planning, design, and construction processes. The time to complete a project can be particularly long for projects that are large, complicated, or have controversial aspects.

In contrast to the long average project delivery time, there have been notable instances of much faster project delivery. Often these instances have been sparked by a catastrophic incident. Of particular note is the reconstruction of the I-35W bridge in Minnesota in just a little over 400 days after its tragic collapse. This project should be used as a model for how other projects across the country can be completed in a more expedited fashion. Besides the focus placed on the reconstruction due to its importance, other factors that contributed to the fast delivery of the I-35W bridge reconstruction included good communication between local, State, and Federal officials; use of a design-build contract; and use of accelerated bridge construction techniques. Therefore, while the singular focus that often occurs after a disaster is not possible to replicate for most projects, there are still broadly applicable lessons that can be learned from these instances that will serve to enhance the speed of all highway projects.

Steps have been taken in recent years to reduce the time of highway project delivery, particularly in streamlining the environmental review process. Examples of these steps include Executive Order 13274 on Environmental Streamlining and section 6002 of SAFETEA-LU, which makes environmental reviews for highway projects more efficient. Section 6002 permits environmental reviews to take place concurrently rather than sequentially. However, it is too early to assess whether the reforms in section 6002 will be effective in reducing the time it take to delivery a highway project. In addition, even if the section 6002 reforms are effective, the average speed for completing a highway project will still be far too slow. Therefore, there is clearly a need for more coordination in expediting project delivery and wider implementation of practices and techniques that serve to enhance the speed of project delivery. Additional measures to streamline the environmental review process that will compliment the reforms in Section 6002 are also warranted.

¹⁴ AASHTO, *Accelerating Project Delivery* (August 2007).

SURFACE TRANSPORTATION AUTHORIZATION ACT

The Surface Transportation Authorization Act takes significant measures to greatly reduce the time it takes to complete highway projects. Foremost, the Surface Transportation Authorization Act establishes the Office of Expedited Project Delivery (OEPD). In addition, the Act contains provisions that further streamline the environmental review process.

The OEPD is tasked with coordinating and expediting project delivery within the FHWA.¹⁵ There will be a particular focus on the largest and most complicated highway projects. The OEPD is located in the Office of the Administrator of the FHWA. The OEPD is headed by a Director in the Senior Executive Service. In addition, points of contact to work with the OEPD are identified in the Office of the Secretary, FHWA Federal-aid division offices, and FHWA headquarters offices. The OEPD will perform the following functions:

- ***Enhances the speed of project delivery for the largest and most complicated highway projects***
 - Monitors the project through the planning, environmental review, permitting, design, right-of-way acquisition, and construction stages;
 - Participates in the State's development of a schedule for environmental review;
 - Assists the State in developing a comprehensive schedule for the remainder of project delivery process after the environmental review is complete;
 - Promotes and assists in the use of practices and techniques that serve to enhance the speed of project delivery (such as the use of design-build procurement, accelerated construction techniques, and coordination of all parties involved in the project's delivery including parties in other Federal agencies); and
 - Works with the designated points of contact to expedite the project's delivery.

- ***Resolving obstacles to delivery of projects that are experiencing substantial delays***
 - Intervenes in any project that is experiencing substantial delays and gets the project back on track;
 - Identifies and resolves the obstacles that are causing the delays, including by working with the designated points of contact;
 - Coordinates relevant parties (State, DOT offices, other Federal agencies, etc.) to help resolve the delays;
 - Utilizes conflict resolution techniques, as appropriate, to help resolve the delays; and
 - Monitors the project after the delays are resolved to prevent future delays.

¹⁵ To enhance the speed of delivery of transit projects, there will be a separate OEPD within the Federal Transit Administration (FTA). The structure of the FTA OEPD and the duties of its Director will be similar to those outlined in this summary, except that the focus will be on New Start projects. The new FTA OEPD will complement the faster project delivery that will result from the simplifications of the Federal process for transit projects that are part of the reforms in the Surface Transportation Authorization Act.

- ***Providing national leadership to enhance the speed of project delivery***
 - Compiles and disseminates information on practices and techniques that enhance the speed of project delivery;
 - Promotes the use of practices and techniques that speed project delivery;
 - Serves as a clearinghouse among the States for best practices;
 - Coordinates the provision of technical assistance to States by other offices and parties on practices and techniques that enhance the speed of project delivery;
 - Provides support to the Office of the Secretary in relation to any interagency body regarding project delivery or streamlining environmental reviews.

- ***Engaging in intermodal coordination on expediting project delivery***
 - Coordinates with the FTA OEPD.

- ***Increasing Congressional oversight of project delivery***
 - Requires the OEPD to inform Congress of substantially delayed projects in quarterly reports;
 - Requires the Secretary to submit annual reports to Congress; and
 - Requires the GAO to report to Congress on project delivery.

The Act also refines and expands upon previous environmental streamlining efforts to help deliver infrastructure projects and programs more quickly with better outcomes. The environmental streamlining efforts in the Act include:

- ***Promotes Integrated Planning and Programmatic Approaches***
 - Promotes integrated planning by allowing environmental decisions made in the planning process to be incorporated into the environmental review process, subject to opportunity for interested parties to participate in the planning process; and
 - Encourages programmatic approaches by clarifying the authority for programmatic approaches and strategies when conducting environmental reviews.

- ***Efficient Environmental Reviews for Project Decision-making***
 - Increases efficiency of environmental review documentation by ensuring reasonable timeframes for issuance of records of decision following completion of the environmental impact statement.

- ***Clarifies state efforts to address future transportation needs***
 - Simplifies the procedure for Federal reimbursement for early acquisitions of rights-of-way after completion of the environmental review process; and

- Authorizes the Secretary to encourage corridor preservation to reduce project costs, project delay, and impacts on the community.

➤ ***Streamlining Roles in the Environmental Review Process***

- Continues the existing environmental delegation pilot program and makes any State eligible to participate as long as a State meets the requirements imposed in existing law.

**FEDERAL HIGHWAY ADMINISTRATION
OFFICE OF LIVABILITY**

BACKGROUND

Since the creation of the Interstate System in 1956, American surface transportation has been defined by the rise of personal motor vehicle travel, resulting in a fivefold increase in vehicle miles traveled between 1955 and 2005.

According to the Texas Transportation Institute, Americans annually waste 4.2 billion hours and 2.9 billion gallons of fuel while stuck in traffic, amounting to a \$78 billion congestion tax. In addition to the financial and quality of life costs, the nation's transportation sector is responsible for a third of the greenhouse gases emitted by the United States, and must play a role in any solution to the crisis of climate change.

While car travel will continue as the core of our surface transportation system, our network must give travelers options that go beyond the automobile. Public transit, walking, and bicycling take cars off the road, reduce congestion, lower our dependence on foreign oil, and lessen our greenhouse gas emissions. A system that provides modal choice provides benefits for all users.

In ISTEA, Congress began taking steps towards the creation of a multi-modal transportation system that included increased investment in transit and nonmotorized transportation, and established a goal "to develop a National Intermodal Transportation System that is economically efficient, environmentally sound, provides the foundation for the Nation to compete in the global economy and will move people and goods in an energy efficient manner."

Congress built on this goal in the following years and, in SAFETEA-LU, made a strong investment in sustainable transportation. SAFETEA-LU created the Safe Routes to School Program, which is designed to get kids walking and biking to school again, and the Nonmotorized Transportation Pilot Program, which supports the creation of nonmotorized infrastructure networks. SAFETEA-LU included over \$50 billion for public transportation, including the creation of new transit lines and the rehabilitation of existing facilities.

These investments have paid off. In 2008, even as gas prices declined from historically high levels, the American Public Transportation Association reported that public transit accounted for 10.7 billion passenger trips – a 52-year record. The most recent data for nonmotorized transportation, compiled by DOT in 2001, demonstrate that walking and biking account for 10 percent of all trips taken. Collectively, transit, walking, and cycling result in 5.6 billion gallons of fuel saved each year and reduced carbon dioxide emissions by 49 million metric tons.¹⁶ To continue these advancements and provide Federal leadership for sustainable transportation, the Surface Transportation Authorization Act creates a new entity within the DOT: the Office of Livability. This Office will be responsible for the successful administration and implementation of the DOT's key programs on livability and sustainability. These programs will increase modal choice, advance the creation of livable communities, and promote the integration of land use and planning.

¹⁶ See American Public Transportation Association, *2008 Public Transportation Fact Book* (2008); Rails-to-Trails Conservancy, *Active Transportation for America* (2008)

SURFACE TRANSPORTATION AUTHORIZATION ACT

The Surface Transportation Authorization Act creates the Office of Livability within the FHWA, which will bring focus and leadership to move alternative modes of transportation forward, and improve the livability and sustainability of the nation's communities. The Office of Livability:

- ***Provides leadership nationally and at DOT on issues pertaining to livability***
 - Provides leadership to expand surface transportation options; advance sustainable modes of transportation including transit, walking, and bicycling; enhance integrated planning to support the creation of livable communities; and serve as a clearinghouse of information and statistics related to livability and sustainability.

- ***Reforms livability and sustainability programs***
 - Requires the Office to administer the following programs: Safe Routes to Schools; Transportation Enhancements; Recreational Trails; Scenic Byways; and the U.S. Bicycle Route System; the Office will also be responsible for the finalization of the Nonmotorized Transportation Pilot Program and the dissemination of the results of the program;
 - Works collaboratively with other DOT offices that administer the following programs: Metropolitan Planning; Statewide Transportation Planning; Transit in Parks; and New Starts and Small Starts; and
 - Compiles and disseminates best practices and provides technical assistance related to the delivery of nonmotorized transportation projects; the development of livable communities and the integration of land use and transportation policies; transit-oriented development; comprehensive street design policies and principles and practical design standards; and implementation of the U.S. Bicycle Route System.

- ***Develops statistical and analytical capabilities***
 - Ensures a high standard of statistical and analytical capabilities related to the prevalence and benefits of sustainable transportation options; and
 - Transmits this information to the Congress on a biennial basis and makes this information widely available.

- ***Encourages and supports the adoption of comprehensive streets policies and principles***
 - Oversees implementation of the new requirement that all Federal-aid projects under title 23 consider comprehensive street design policies and principles and practical design standards; and
 - Establishes best practices, model legislation, and technical assistance to support States, regions, and localities in adopting and implementing comprehensive street design policies.

➤ *Establishes a U.S. Bicycle Route System*

- Creates a system for approval and designation of routes on a national system of bicycle routes.

FEDERAL TRANSIT ADMINISTRATION

**FEDERAL TRANSIT ADMINISTRATION
NEW START AND SMALL START PROGRAMS**

BACKGROUND

Ridership on public transportation is at record-breaking highs, in part because many new transit systems have been built during the last 30 years. More than 25 communities have constructed new light rail systems since the early 1980s, and countless more have extended existing rail and bus lines, providing increased mobility and access to the traveling public. These new transit capital projects would have been impossible without significant Federal investment and guidance to support the development of new transit services across the United States.

The Federal government's primary programs for funding these capital investments in new transit lines are the FTA's New Start and Small Start discretionary programs. A New Start (NS) is a larger project seeking more than \$75 million in Federal funds, while a Small Start (SS) is a transit capital project costing less than \$250 million and requesting less than \$75 million in Federal resources.

Unfortunately, the length of time it currently takes to successfully navigate the NS and SS programs has been steadily increasing, with more projects facing significant delays at the Federal level. In 1991, it took on average of only five years for a NS project to advance from the planning stages through the engineering and design phases to receive a grant. According to an October 2006 study by the New Starts Working Group, with support from the American Public Transportation Association, it now takes an average of 10 years to complete the NS process: a doubling of time over the previous 15 years.¹⁷ The length of time it takes to move a project through the process discourages many communities from applying for NS/SS funds.

Current law directs FTA to evaluate and rate proposed NS/SS projects based on a variety of factors: environmental benefits, economic development effects, mobility increases, land use plans, and cost and ridership estimates. FTA, however, has not been incorporating all of the congressionally-mandated evaluation criteria into the project evaluation process. Rather, FTA gives undue weight to a singular criterion – cost effectiveness – which considers time savings to users as the primary benefit of projects, while giving inadequate consideration to other important benefits that new transit projects bring to communities. FTA's insistence on funding NS/SS projects based almost entirely on a "cost-effectiveness index" (CEI) has compelled many communities to fund worthy transit projects – particularly streetcars – without any Federal resources, or to drastically scale back on their original system plans. In fact, FTA did not sign a grant agreement with any NS projects during calendar year 2008, even though approximately 300 NS projects were authorized in SAFETEA-LU.

¹⁷ New Starts Working Group/American Public Transportation Association, *Planning for the Future: New Starts Program Must Address Next Generation of Transit Projects* (2006).

SURFACE TRANSPORTATION AUTHORIZATION ACT

The Surface Transportation Authorization Act significantly restructures the NS/SS programs to speed project delivery and ensure that all of the benefits of the proposed transit projects are fully evaluated. These reforms will significantly reduce the extensive time and administrative burden that transit project sponsors face when attempting to successfully navigate the current FTA NS/SS grant process.

The Surface Transportation Authorization Act:

- ***Streamlines FTA's NS/SS program implementation by eliminating a variety of programmatic steps and requiring program reforms***
 - Consolidates current law, which requires proposed projects to sequentially advance through three separate application and approval phases – alternatives analysis, preliminary engineering, and final design – into a single, streamlined “project development” phase that requires only one application and approval;
 - Eliminates the requirement that projects complete a separate FTA alternatives analysis process in addition to the National Environmental Policy Act (NEPA) alternatives analysis;
 - Permits the current planning requirements and NEPA alternatives analysis to be sufficient to meet the FTA alternatives analysis;
 - Eliminates the requirement that NS and SS projects bifurcate preliminary engineering and final design phases of project development by establishing a single project development phase;
 - Directs the Secretary to use special warrants to advance NS and SS projects with certain criteria more quickly; and
 - Requires the Secretary to expedite all NS projects in conjunction with the newly-established OEPD.

- ***Equalizes the treatment of proposed transit projects and elevates the importance of the benefits that will occur in the community once the project is built***
 - Requires the FTA to consider all benefits of proposed projects in relation to the proposed Federal investment level;
 - Prohibits the use of the FTA's current CEI;
 - Eliminates the requirement that projects be rated based on “cost-effectiveness,” which considers time savings to users as the only benefit of projects;
 - Reinforces the multiple-measure approach to evaluating proposed projects of all mode types;
 - Requires FTA to weigh all benefits comparably, including economic development, energy savings, increased mobility and access, and congestion relief; and
 - Compares benefits of the proposed project to a no-action alternative, consistent with NEPA, rather than a NS/SS “enhanced baseline.”

**FEDERAL TRANSIT ADMINISTRATION
FIXED GUIDEWAY MODERNIZATION PROGRAM**

BACKGROUND

According to the FTA, the maintenance backlog for the nation's largest rail transit systems is nearly \$80 billion, with more than \$50 billion of that backlog concentrated in the seven largest rail systems.¹⁸ In the most recent Conditions and Performance Report, the DOT documents that over one-half of all urban rail transit stations are in substandard condition, and a 2008 FTA report finds that more than one-third of the total assets of the largest rail systems are in marginal or poor condition.

To address these critical rail maintenance needs, the Fixed Guideway Modernization (FGM) program provides Federal funding to urbanized areas for the maintenance and modernization of their fixed guideway transit systems. Under current law, FTA apportions FGM funding based on a complex, multi-tiered formula that was originally created to direct funding to the oldest and largest rail systems with the greatest capital maintenance needs. Over time, however, the program was expanded to fund many types of "fixed guideway" systems that have permanent, fixed infrastructure, including rail transit as well as dedicated bus lanes, ferry boats, HOV lanes, and even some HOT lanes that were originally HOV lanes, but now allow private single occupancy vehicle use. The program does not assign funding allocations based on the various types of fixed guideway system, but instead apportions funds based on both revenue vehicle and route miles within urbanized areas. Individual transit agencies are not always the designated recipient of funds, and fixed guideway systems in areas with fewer than 200,000 individuals are currently ineligible for the program, regardless of their maintenance needs.

With enactment of the TEA 21 in 1998, Congress further expanded the FGM program to allow fixed guideway systems that are at least seven years old to benefit from the funding formula, even though FTA has established that rail transit vehicles have a useful life that exceeds 35 years. As a result of allowing both younger and non-rail based transit systems to receive program funds, the proportion of FGM funds distributed to rail-based systems with the highest proportions of poor and marginal asset conditions has declined from over 90 percent in 1993 to less than 70 percent by 2006. Recently, the overall Federal transit investment has shifted away from the FGM program in favor of programs for new transit system construction. The nation's oldest and largest rail transit agencies carry nearly 60 percent of ridership and receive only 40 percent of all Federal transit funding.¹⁹

In recent hearings and reports, the National Transportation Safety Board (NTSB) stated its concern that investments in rail transit systems are not adequate to protect transit workers, passengers, and capital assets. FTA documents that present annual capital reinvestment rates are only 60 percent to 80 percent of that required to address both the existing rail maintenance backlog and normal replacement needs and affirms that maintaining the nation's transit rail systems in a state of good repair is essential to provide safe and reliable service to millions of daily riders. However, FTA currently approves expenditures of FGM funds for a wide range of eligible maintenance and

¹⁸ FTA, *Rail Modernization Study, Report to Congress* (2009).

¹⁹ FTA, *Transit State of Good Repair, Beginning the Dialogue* (2008).

modernization activities regardless of the degree to which the funds address specific asset deficiencies. Finally, and most importantly, the distribution of FGM program funding is not tied to the specific performance goal of achieving and maintaining a state of good repair among our nation's fixed guideway transit systems.

SURFACE TRANSPORTATION AUTHORIZATION ACT

The Surface Transportation Authorization Act recognizes the importance of maintaining and modernizing the nation's fixed guideway transit systems to achieve a state of good repair and thereby increase the reliability, ridership and energy efficiency of all transit systems.

The Surface Transportation Authorization Act:

➤ ***Simplifies the FGM Program***

- Replaces the current seven-tier formula with a streamlined FGM formula using readily available transit data that most closely aligns with maintenance needs;
- Recognizes that the ages of transit systems vary, and that maintenance needs differ according to age and mode type; and
- Removes the 200,000 population threshold, allowing fixed guideway systems in small communities to receive funds.

➤ ***Institutes new performance measures to bring fixed guideway transit systems to a state of good repair***

- Requires recipients of Federal assistance under the rail modernization program to meet state of good repair performance targets designed to improve the condition of tracks, stations and bridges, replace aging rolling stock fleets, and increase the energy efficiency of rolling stock, systems, and facilities;
- Holds grantees accountable to achieving performance targets by requiring annual plans detailing how recipients are using funding to improve asset conditions and achieve their targeted state of good repair; and
- Requires FTA to withhold individual project approvals from grantees that fail to submit an annual plan that provides for the realistic achievement of performance targets.

**FEDERAL TRANSIT ADMINISTRATION
URBAN AND RURAL FORMULA PROGRAMS**

BACKGROUND

The Urbanized Area Formula and the Rural Transit Formula are the primary means of addressing critical public transportation needs of the nation's transit providers. Data contained in the DOT's 2006 Conditions and Performance Report found a significant investment gap to maintain and improve transit systems and service. According to DOT, the annual investment gap is \$3.2 billion to maintain our transit systems and \$9.2 billion to begin to improve our transit systems.²⁰ The report called for an annual investment of \$15.8 billion (in constant 2004 dollars) to maintain transit systems at their current condition and level of performance. To improve the overall condition and performance of transit systems, the report calls for a combined annual investment of \$21.8 billion (in constant 2004 dollars).

Congress created the original Urbanized Area Formula program in the National Mass Transportation Assistance Act of 1974 (P.L. 93-503) and restructured it in the Surface Transportation Assistance Act of 1982 (P.L. 97-424). The program's purpose is to provide grants to urbanized areas (UZA) for public transportation capital investments and operating expenses. In areas of less than 200,000 individuals, both capital and operating costs are an eligible expense. In UZAs with populations of 200,000 or more, operating assistance is generally not an eligible expense. Funding is apportioned based on current levels of transit service and populations in each UZA, and is made available to designated recipients, which must be public bodies with the legal authority to receive and dispense Federal funds. Transit agencies, responsible local officials, such as MPOs, and publicly-owned operators of transit services are generally the designated recipients in UZAs with a population of 200,000, or over, while the Governor or Governor's designee is the designated recipient for urbanized areas between 50,000 and 200,000. The receipt of Urbanized Area Formula funds is not tied to any specific performance measures or goals.

FTA's Rural Transit Formula program provides formula funding to States for the purpose of supporting public transportation in areas with populations of less than 50,000. Funding is apportioned by a statutory formula that is based on the latest U.S. Census figures. Eighty percent of the statutory formula is based on the nonurbanized population of the States, while 20 percent of the formula is based on land area, but no State may receive more than five percent of the amount apportioned for land area. No aspect of the rural formula is based on actual transit ridership, such as bus or rail revenue vehicle-miles, route-miles or passenger-miles, as is the case with the urbanized area formula. Additionally, no aspect of the rural apportionment is based on achieving the program goals, and there are no performance measures built into the current program.

²⁰ According to DOT's 2006 Conditions and Performance report, Federal, State, and local capital expenditure for transit totaled \$12.6 billion in 2004. This amount is \$3.2 billion less than the annual expenditure needed to maintain transit systems, and \$9.2 billion less than the annual expenditure needed to improve transit systems.

SURFACE TRANSPORTATION AUTHORIZATION ACT

The Surface Transportation Authorization Act recognizes the importance of providing dedicated, targeted, and performance-based funding to transit systems in all areas of the country to provide the traveling public with access to multiple transit options. The Surface Transportation Authorization Act restructures the urbanized area and rural formula programs, and includes the following major reforms:

- *Institutes new performance measures for large urban, small urban, and rural transit providers*
 - Requires recipients of Federal assistance under the urban and rural formula programs to meet performance targets designed to improve the condition of transit systems, replace aging rolling stock fleets, increase transit ridership and system connectivity, and increase the energy efficiency of rolling stock, systems, and facilities;
 - Holds grantees accountable for achieving performance targets by requiring annual plans detailing how recipients are using funding to improve asset conditions and achieve their targeted levels of service; and
 - Requires FTA to withhold individual project approvals from grantees that fail to submit an annual plan that provides for the achievement of performance targets.

- *Increases the accountability of the smaller urban and rural transit providers by basing funding allocations in part on the level of transit services they provide*
 - Modifies the rural and small urban formulas to include actual transit ridership, such as bus or rail revenue vehicle-miles, route-miles or passenger-miles, as the urbanized area formula;
 - Increases funding directed toward small urban and rural transit services; and
 - Strengthens rural intercity bus networks by codifying current authority to use bus companies' capital costs as in-kind local match.

**FEDERAL TRANSIT ADMINISTRATION
COORDINATED ACCESS AND MOBILITY PROGRAM**

BACKGROUND

The ability to access personal or public transportation is fundamental for people to connect with employment opportunities, health and medical services, educational services, and the community at large. However, certain populations in the United States lack the ability to provide their own transportation or have difficulty accessing the public transportation services in their communities. These “transportation disadvantaged” persons may have an age-related condition, a disability, or income constraints. This is a sizeable and growing group. For example, according to the 2000 U.S. Census, 35.1 million people were over age 65, 44.5 million people were over age 21 and disabled, and 33.9 million people were living below the poverty line. Many within these populations face significant problems in accessing transportation.²¹

FTA has recognized the challenges of providing public transportation services to individuals transitioning from welfare to work, and has noted that older persons and persons with disabilities are in need of transit services that at a minimum meet – and in some cases go beyond – current transit services provided in response to the Americans with Disabilities Act (ADA). To address these critical transit access and mobility needs, Congress has created over time three separate and distinct programs at FTA: the Elderly Individuals and Individuals with Disabilities Formula Program; the Job Access and Reverse Commute (JARC) formula program; and the New Freedom Program.

The Elderly Individuals and Individuals with Disabilities Formula Program was established by the Urban Mass Transportation Assistance Act of 1970 (P.L. 91-453) to assure transit availability to elderly and disabled persons. Current recipients of Federal funds are private, non-profit corporations and associations providing public transportation services for elderly and disabled persons or public bodies coordinating such service or providing service where no non-profit service is available, through suballocation from State DOTs. Funds are apportioned by formula to States based on elderly and disabled population, with “fair and equitable” suballocation to subrecipients.

The JARC formula program was established by TEA 21 to improve job access for current and former welfare recipients and eligible low-income individuals. Recipients of Federal funds are local governmental authorities and agencies or nonprofit organizations selected by MPOs and States. Eligible expenditures include both capital and operating costs of providing transportation to job opportunities. Funds are apportioned by formula to UZAs and States based on the number of eligible low-income persons and welfare recipients in the UZA and State, with 60 percent of funds apportioned to UZAs with 200,000 or more population, 20 percent to States for use in UZAs with fewer than 200,000 population, and 20 percent to States for use in rural areas.

The New Freedom program was established by SAFETEA-LU to provide additional funding for transportation for persons with disabilities. Recipients of Federal funds are State or local public bodies, or agencies and nonprofit organizations. Eligible expenditures include capital

²¹GAO, *Transportation-Disadvantaged Populations: Some Coordination Efforts Among Programs Providing Transportation Services, but Obstacles Persist* (2003).

and operating costs of new transportation services and public transportation alternatives beyond those required by the ADA to assist persons with disabilities. Program funds are apportioned by formula based on a similar formula as the JARC program.

One of the greatest challenges in providing transportation services to elderly, low-income, and disabled individuals is coordinating the use of Federal resources that are stove piped into three separate programs providing similar services. Many Federal transit grant recipients have expressed concern to FTA that the costs of meeting the JARC program requirements outweigh the potential benefits from the new transit services supported by the relatively small amounts of available funds.²² In fact, obligation rates for these three separate access and mobility programs are among the lowest of all FTA programs, with many localities choosing to forfeit these formula dollars due to insufficient apportionments. These funding challenges are made more difficult by the fact that none of the programs include performance measures to ensure efficiency and accountability in the delivery of these important services.

SURFACE TRANSPORTATION AUTHORIZATION ACT

Recognizing the problems created by having three separate programs for providing transportation to transportation-disadvantaged populations, the Surface Transportation Authorization Act consolidates the current Elderly Individuals and Individuals with Disabilities Formula program, the JARC formula program, and the New Freedom program into a streamlined Coordinated Access and Mobility Program (CAMP). The consolidated program would encompass the constituent focus of the three current programs but provide both greater flexibility and accountability than exists under current programs.

The Surface Transportation Authorization Act establishes CAMP, and:

- ***Streamlines FTA's special access and mobility programs by consolidating three existing programs into one***
 - Apportions funds using a formula based on the following factors: population of elderly persons, population of disabled persons, and population of low-income persons in each UZA and State;
 - Allows States and UZAs to use CAMP funds for any activity that is currently eligible under each of the three separate programs;
 - Maintains the ratio of apportioning 60 percent of the funds directly to designated recipients in large UZAs with populations larger than 200,000; 20 percent to States for suballocation to designated recipients in small UZAs with populations of 50,000 to 200,000 persons; and 20 percent to States for use in rural areas; and
 - Reduces the administrative burden on both the grantees and FTA by creating a unified program application to achieve a variety of mobility and access goals.

²² FTA, *Report on the Job Access and Reverse Commute (JARC) Program* (2009).

➤ *Institutes new performance measures to require accountability in serving individuals with special needs*

- Requires recipients of Federal assistance under CAMP to meet performance targets designed to improve transit services provided to elderly, low-income, and disabled individuals;
- Holds grantees accountable to achieving performance targets by requiring annual plans detailing how recipients are using funding to improve service conditions and achieve their targets and goals; and
- Requires FTA to withhold plan approvals from grantees who fail to submit an annual plan that provides for the achievement of performance targets.

➤ *Sets minimum allocations when performance targets are not met*

- Establishes minimum programmatic allocations that each recipient must make if they fail to meet the performance goals of the program.

**FEDERAL TRANSIT ADMINISTRATION
INTERMODAL AND ENERGY EFFICIENT TRANSIT FACILITIES PROGRAM**

BACKGROUND

Historically, Federal transportation policy and surface transportation investment programs have focused on addressing the needs of individual modes rather than improving intermodal connectivity and linkages. Similarly, the current surface transportation programs do not place a priority on increasing energy efficiency or reducing reliance on carbon-producing oil.

With the passage of ISTEA in 1991, Congress established a policy for a National Intermodal Transportation System, defining it as “all forms of transportation in a unified, interconnected manner, including the transportation systems of the future, to reduce energy consumption and air pollution while promoting economic development and supporting the Nation’s preeminent position in international commerce.” Despite the establishment of this intermodal policy, a 2007 GAO report found limited Federal funding targeted toward intermodal projects as inhibiting intermodal transportation.²³

Under current surface transportation law, there exists neither an intermodal facilities program nor an energy-focused program to provide dedicated funding to intermodal and energy efficient transit projects. The Bus and Bus Facilities program does contain a small set-aside for intermodal terminal projects, but that authorization amounts to only three percent of transit facilities funding and less than three-tenths of a percent of the total Federal transit funding authorized in FY 2009. The American Reinvestment and Recovery Act of 2009 (Recovery Act) (P.L. 111-5) appropriated a small amount of funding for public transit agencies to make capital investments that will reduce the energy consumption and greenhouse gas emissions of their public transportation systems. This funding is temporary and must be authorized to become a viable tool to assist public transportation providers in addressing barriers to intermodal connectors and improving energy efficiency and sustainability.

SURFACE TRANSPORTATION AUTHORIZATION ACT

The Surface Transportation Authorization Act consolidates and strengthens the current intermodal facilities set-aside and the temporary energy efficiency transit grants by creating an Intermodal and Energy Efficient Transit Facilities Program (Intermodal and Energy Program). Under this consolidated discretionary program, transit projects must either be intermodal facilities that provide the traveling public with access to more than one mode of transportation, or projects that reduce the energy consumption or greenhouse gas emissions of public transportation systems and facilities.

²³ GAO, *Intermodal Transportation: DOT Could Take Further Actions to Address Intermodal Barriers* (2007).

The Surface Transportation Authorization Act:

- ***Establishes an enhanced Intermodal and Energy Program to place a focus on, and expand funding available for, intermodal and energy efficient projects***
 - Allows States and local governmental authorities to compete for discretionary FTA funding for projects that will help public transit agencies realize cost savings by reducing their energy consumption;
 - Provides funding for construction of intermodal passenger transit facilities; including intercity bus, intercity rail, and other intermodal and joint development transit facilities;
 - Provides funding for improvements to lighting, heating, cooling, or ventilation systems at existing public transportation stations and facilities; the purchase or retrofit of energy efficient rolling stock; improvements to energy distribution systems; and additional energy related capital investments; and
 - Directs FTA to give priority to project sponsors seeking energy grants based on the total energy savings or emissions reductions that are projected to result from the investment, and projected energy savings and emissions reductions as a percentage of the total energy usage and emissions of the public transit agency.

- ***Provides for a minimum funding amount for rural areas so that communities of all sizes will benefit from intermodal and energy efficient transit projects***
 - Directs the Secretary to set aside up to 5.5 percent of the Intermodal and Energy Program funds for projects in areas with populations of less than 50,000 individuals.

FEDERAL TRANSIT ADMINISTRATION TRANSIT IN THE PARKS PROGRAM

BACKGROUND

Congestion in and around popular national parks, wildlife refuges, national forests, and other Federal lands causes traffic delays and noise and air pollution that substantially detract from the visitor's experience and the protection of natural resources. In 2005, Congress established the Transit in the Parks Program to provide the public with a variety of travel options as an alternative to solo vehicular trips within and through these important protected areas. TEA 21 first authorized a study of transit needs in national parks and related public lands, and the program was made permanent in SAFETEA-LU. The goals of the program, as currently included in SAFETEA-LU, are to conserve natural, historical, and cultural resources; reduce congestion and pollution; improve visitor mobility and accessibility; enhance visitor experience; and ensure access for all, including persons with disabilities.

Transit in the Parks grants may be sought for planning or capital projects inside or in the vicinity of any Federally-owned or managed park, refuge, or recreational area that is open to the general public. Program funds may be used for transit vehicles and systems, such as buses, railcars, or intelligent transportation projects, as well as other types of alternative transportation appropriate to a park setting, such as waterborne transportation, bicycle, and pedestrian facilities. The program currently is one of the smallest discretionary transit programs, and is authorized at only \$25 million per year. However, demand far exceeds available funds. In FY 2006 and 2007, the program was able to fund only about half of the project proposals evaluated.²⁴

The program is currently administered by the FTA in partnership with the Department of the Interior (DOI), which requires FTA to develop cooperative arrangements with the DOI that provide for technical assistance, policy, and procedural guidance, and assistance in developing procedures and criteria for the planning, selection, and funding of projects, as well as program implementation and oversight. In short, nearly all aspects of program administration must be run through two Federal agencies, resulting in a dramatically slower grant award and project delivery timeframe. For example, the Transit in the Parks funds for FY 2008 were not announced until the beginning of FY 2009 and, to date, many of these funds have not yet been obligated.

SURFACE TRANSPORTATION AUTHORIZATION ACT

The Surface Transportation Authorization Act:

- ***Streamlines the Transit in the Parks Program***
 - Removes duplicative Federal agency roles by consolidating all program administration functions within FTA.

²⁴ FTA, *Guidance for Project Proposals, Alternative Transportation in Parks and Public Lands Program* (2008).

- *Increases the overall funding amount for eligible transit projects*

FEDERAL RAILROAD ADMINISTRATION

**FEDERAL RAILROAD ADMINISTRATION
HIGH-SPEED RAIL AND OTHER RAIL IMPROVEMENTS**

BACKGROUND

The Surface Transportation Authorization Act advances President Obama's bold, new vision for the advancement and development of high-speed rail in the United States, and builds upon the programs created by Congress in the Passenger Rail Investment and Improvement Act of 2008 (P.L. 110-432, Division B).

In the early 1960's, President John F. Kennedy challenged the American people to land a man on the moon by the end of the decade. At the time, the United States lagged woefully behind in the "Space Race." American ingenuity prevailed during the decade and the benefits received in technology, research, and innovations continue to pay extraordinary dividends to the United States and the entire world.

President Barack H. Obama has once again challenged the American people to use the ingenuity that is America in the same way that President John F. Kennedy had almost 50 years ago. President Obama's vision for high-speed rail will increase U.S. jobs, reduce hydrocarbon emissions from all transportation sources, increase economic competitiveness, and reduce dependence on foreign oil. As the national highway system helped create and drive our economy in the 20th century, the national high-speed rail system will help drive our economy in the 21st century.

At present, the United States lags woefully behind the rest of the world when it comes to developing alternative transportation choices. Japan, the nation that unveiled the world's first high-speed rail system in 1964, has a 1360 mile network and is already at work building a line that will connect Tokyo with Osaka at speeds of over 300 mph. France, which holds the world speed record for steel wheels-on-steel rail, when it achieved a speed of 357 mile per hour (mph) on a new high-speed train set in April 2007, used its high-speed rail system to pull entire regions from isolation, ignite growth, and remake quiet towns into thriving tourist destinations. After inaugurating its high-speed rail system in 1981, France developed a 1,180 mile network and plans to add another 1500 miles; the system currently carries a remarkable 100 million passengers annually.

Spain changed the demographics of entire regions with its high-speed rail line from Madrid to Seville, which opened in 1992. The line is so successful that more people travel between the two cities by rail than by car and airplane combined. Spain has planned a 6,200 mile high-speed rail network by 2020.

High-speed rail offers a safe, efficient, convenient, and affordable alternative that also promotes economic competitiveness, energy efficiency, and environmental quality. By comparison with the rest of the world, the only high-speed rail line in the United States is Amtrak's Acela line, which operates between Washington, D.C. and Boston. The Acela is capable of achieving speeds of up to 135 mph between Washington, D.C. and New York and 150 mph between New York and Boston, but usually averages considerably less on major sections of track. Amtrak averages 82 mph between Washington, D.C. and New York, and 66 mph between New York and Boston due to congestion, track, and other infrastructure conditions.

The Federal Railroad Administration (FRA), in its June 26, 2008 white paper, “The Analysis of the Benefits of High-Speed Rail on the Northeast Corridor” stated that in 2006 dollars, \$14 billion dollars invested would produce a net value benefit of \$16.3 billion dollars. Other benefits cited in the FRA study include a reduction in the congestion of the airspace and highways and reduced greenhouse gas emissions from aircraft and automobiles.

Since 1993, the United States has spent just a little over \$10 billion on passenger rail, a small fraction of what countries like France are spending annually. According to an April 2005 study on public budget contributions to railways, which was commissioned by the European Union, in 2003 alone, France invested \$10.6 billion (U.S. dollars converted from 2003 market Euro rates) in its rail system; Germany invested \$12.4 billion; Italy invested \$7.9 billion; the United Kingdom invested \$7.8 billion; the Netherlands invested \$2.5 billion; Austria invested \$2.3 billion; Switzerland invested \$1.9 billion; Sweden invested \$1.7 billion; Spain invested \$1.3 billion; and Denmark invested \$1.2 billion. Investments in Asia are outpacing the United States even more dramatically. For example, late last year, China announced that it plans to invest more than \$730 billion in its railways by 2012, a portion of which will be dedicated to its high-speed rail system, which carries more than 1.3 billion passengers annually. The investment plan calls for purchasing 1,000 high-speed trains that reach top speeds of 218 mph.

A robust, high-speed rail system will go a long way towards solving some of our nation’s economic, energy, environmental, and transportation challenges. These benefits, however, do not come without a price tag, and experience in other countries makes clear that a successful high-speed rail system will require a significant financial commitment. In 2007, the Passenger Rail Working Group of the Policy Commission reported that the total capital cost estimate of re-establishing the national intercity passenger rail network between now and 2050 is approximately \$357.2 billion or \$8.1 billion annually.

In 2008, the Passenger Rail Investment and Improvement Act authorized \$1.5 billion for high-speed rail, and established a process for incorporating the private sector in high-speed rail development. The Recovery Act provided \$8 billion in grants to States for development of intercity passenger and high-speed rail. The President’s budget proposes additional funding for each of the next five years.

The Surface Transportation Authorization Act advances President Obama’s vision for high-speed rail in America by providing increased funding – outside of the Highway Trust Fund – for planning and development of high-speed rail in corridors designated by the Secretary. The Act also makes high-speed rail development projects eligible for financing through the Bank, and creates a research, development, and demonstration program for high-speed rail technologies.

In addition to addressing high-speed rail, the Surface Transportation Authorization Act reauthorizes several programs, which provide funding for freight rail infrastructure improvements. The Rail Line Relocation program, authorized at \$350 million annually through fiscal year 2009, provides financial assistance to States for local rail line relocation and improvement projects for the purpose of mitigating the adverse effects of rail traffic on safety, motor vehicle traffic flow, community quality of life, and economic development. In addition, the capital grants program for Class II and Class III railroads, authorized at \$50 million annually, provides financing for rehabilitating, preserving, or improving railroad track (including roadbed, bridges, and related track structures) used primarily for freight transportation.

With respect to the Railroad Rehabilitation and Improvement Financing (RRIF) loan program, SAFETEA-LU made a number of changes intended to expand usage of the RRIF program. SAFETEA-LU increased the total authorization level from \$3.5 billion to \$35 billion; allowed rail shippers and commuter railroads, for the first time, to receive RRIF loans and loan guarantees; prohibited the Secretary from requiring an applicant for a direct loan or loan guarantee to provide collateral; prohibited the Secretary from requiring that an applicant seek financial assistance from another source before applying for a RRIF loan allowed the Secretary to defer payments on a loan for up to six years; and prohibited the Secretary from establishing any limit on the amount that could be used for one direct loan or loan guarantee.

SAFETEA-LU also required the Secretary to publish substantive criteria and standards used by the Secretary to determine whether to approve or disapprove applications. In addition, the Rail Safety Improvement Act of 2008 (P.L. 110-432, Division A) increased the repayment period from 25 years to 35 years, consistent with Transportation Infrastructure Finance and Innovation Act. All of this will stimulate investment in the nations' railroads while protecting the investment made by the American people.

On April 22, 2009, the Committee held a hearing on implementation of the RRIF program. A number of witnesses testified that the program was critical to helping States, local governments, and railroads invest in rail infrastructure improvements and rolling stock and suggested ways of improving the program and increasing its usage. Many of the suggestions offered by the witnesses are included in the Surface Transportation Authorization Act.

SURFACE TRANSPORTATION AUTHORIZATION ACT

The Surface Transportation Authorization Act:

➤ *Advances Congress' and President Obama's vision for high-speed rail in America*

- Provides funding for planning activities, including environmental assessments, feasibility studies, economic analyses, preliminary engineering and design, and preparation of financing plans and prospectuses, in high-speed rail corridors designated by the Secretary;
- Provides funding to States for developing high-speed rail in corridors designated by the Secretary;
- Authorizes the Secretary to conduct research, development, and demonstration of high-speed rail technologies and to undertake analyses supporting development of high-speed rail in the United States; and
- Makes high-speed rail development projects eligible for financing through the Bank.

➤ *Enhances the RRIF loan program*

- Authorizes the Secretary to reduce the interest paid on direct loans provided to State and local governments, interstate compacts, government sponsored authorities and

- Authorizes the Secretary to allow recipients of direct loans and loan guarantees to pay the credit risk premium over the life of the loan;
 - Allows recipients of direct loans and loan guarantees to provide private insurance, including bond insurance, in lieu of credit risk premiums; and
 - Requires recipients of direct loans and loan guarantees to comply with Buy America.
- ***Reauthorizes the Rail Line Relocation program, which provides financial assistance for local rail line relocation and improvement projects***
 - Provides financial assistance to States, political subdivisions of States, and government sponsored authorities and corporations, such as Joint Powers Boards, for local rail line relocation and improvement projects for the purpose of mitigating the adverse effects of rail traffic on safety, motor vehicle traffic flow, community quality of life, or economic development.
- ***Reauthorizes the capital grant program for short line and regional railroads***
 - Extends the current authorization for grants to short line and regional railroads for capital improvements. The grants can be used to rehabilitate, preserve, or improve railroad track (including roadbed, bridges, and related track structures such as sidings and switches) used primarily for freight transportation.
- ***Provides increased transparency for Buy America waivers***
 - Requires the Secretary to provide notice and comment through the Federal Register on any waivers of Buy America requested by Amtrak, consistent with Buy America requirements for grants to States for development of intercity passenger and high-speed rail projects; and
 - Requires transmission of a report to Congress on any Buy America waivers granted to Amtrak no later than December 31, 2012.
- ***Requires the Secretary to determine the optimum separation requirements between locomotives and rail cars containing hazardous material***
 - Requires the Secretary to conduct a study to determine the optimum separation requirements between locomotives and hazardous material cars, and to develop regulations based on the results of that study.
- ***Directs the Secretary to transmit a report on the conditions and performance of the rail system***
 - Requires the Secretary to transmit a report no later than December 31, 2010, and every fourth year thereafter, on the conditions and performance of the freight and intercity passenger rail system.

- *Makes technical corrections to the Rail Safety Improvement Act of 2008 and the Passenger Rail Investment and Improvement Act of 2008*

**NATIONAL HIGHWAY TRAFFIC
SAFETY ADMINISTRATION**

**NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION
HIGHWAY SAFETY PROGRAM**

BACKGROUND

The behavioral highway safety programs administered by the National Highway Traffic Safety Administration (NHTSA) are intended to reduce fatalities, injuries, and economic losses resulting from motor vehicle crashes. According to NHTSA, motor vehicle crashes are the leading cause of death for people of every age from three to 34, and traffic fatalities account for more than 90 percent of transportation-related fatalities. The annual number of traffic fatalities has remained relatively constant over the last 10 years. Each year, 42,500 people are killed and 2.5 million are seriously injured in motor vehicle crashes. The more than 6 million annual motor vehicle crashes cost an estimated \$289 billion related to deaths, injuries, property damage, productivity losses, medical bills, and other related costs.

SAFETEA–LU provided a total of \$3.4 billion from the Highway Trust Fund for NHTSA’s highway traffic safety formula and incentive grants programs. These programs provide grants to States to implement highway safety programs, and are carried out through a Federal, State and local partnership. With human error the cause of 93 percent of all motor vehicle crashes, NHTSA’s behavioral highway safety programs are vital to addressing critical highway safety issues.

Currently, there are a number of formula and incentive grant programs available to the States to improve highway safety. The section 402 program (23 U.S.C. § 402) provides grants to States to implement highway safety programs designed to reduce traffic crashes and resulting deaths, injuries, and property damage. Funds under this program are distributed to every State based on a formula that calculates population and public roadway miles. NHTSA oversees the use of 402 grant funds by requiring States to submit annual highway safety plans (HSP). The HSP must identify key State safety problems, and describe how a State plans to use its 402 grant funds to address these safety issues. While the HSPs are to be performance-based, GAO has found that NHTSA lacks sufficient performance measures to assess the effectiveness of the grant program.²⁵

To compliment the core formula program, there are five incentive-based grant programs. These programs target specific behavioral activities, such as intoxicated driving, occupant protection, child safety seat usage, and motorcycle safety. Distribution of grants under the incentive programs is based on States meeting certain eligibility criteria, and is not generally tied to State traffic safety performance. GAO has identified a number of challenges that limit the effectiveness of these programs, such as the lack of performance accountability, the inability of States to meet individual program eligibility requirements, the separate application processes for each program, and limited flexibility in using funds made available under these programs.²⁶

²⁵ GAO, *Traffic Safety: Grants Generally Address Key Safety Issues, Despite State Eligibility and Management Difficulties* (2008).

²⁶ *Id.*

SURFACE TRANSPORTATION AUTHORIZATION ACT

The Surface Transportation Authorization Act consolidates existing NHTSA highway safety formula and incentive grants into one combined grant program with a single application. The consolidated program would retain the existing partnership between the Federal government and States. Funding is apportioned to each State pursuant to formula. States would be required to submit annual performance-based safety plans, subject to NHTSA approval, that identify fatality and injury targets and measures, goals, and ways in which the funds will be spent. The Act provides NHTSA tools to ensure that States have an approved HSP, and achieve performance targets in implementing the plan.

The Surface Transportation Authorization Act restructures the NHTSA grant programs and includes the following major reforms:

- ***Consolidates and simplifies NHTSA grant and incentive programs into a single formula program***
 - Consolidates the five incentive-based grant programs into a single, formula-based program, which would provide funding to all States to implement highway safety countermeasures;
 - Apportions funds to States to target State-specific safety challenges in a manner consistent with its HSP. A portion of the funds States receive would be divided among three categorical areas: impaired driving, occupant protection, and motorcycle safety; and
 - Allows States to transfer categorical funds for each of the categorical areas that the State achieves its performance targets over a period of three consecutive years.

- ***Institutes new outcome-based performance targets into State HSP***
 - Requires every State to submit annual performance-based HSP plans to the Secretary to receive funding under this program;
 - Incorporates into the HSP specific performance targets established by the Secretary;
 - Requires the Secretary to review and approve the plans;
 - Results in the loss of discretion over the use of funds for States failing to submit a plan or to meet performance measures, and the Secretary having the authority to take such actions as are necessary to bring the State's performance plan into compliance; and
 - Provides NHTSA tools to ensure that States have an approved HSP, and achieve performance targets in implementing the plan.

PRIMARY ENFORCEMENT OF SEAT BELT LAWS AND USE OF IGNITION INTERLOCK DEVICES

BACKGROUND

According to NHTSA, approximately 42,500 lives are lost on the nation's roadways each year, accounting for a total of 90 percent of transportation-related fatalities. These traffic crashes take an enormous toll both on the families and friends impacted by the loss, and on the nation's economy, costing approximately \$289 billion a year. Significantly reducing this number will require bold action and a commitment to implementing the most effective safety solutions. To begin making substantial reductions in traffic fatalities, the issue of seat belt usage must be addressed.

Of the 26,642 passenger motor vehicle fatalities in 2007 for which restraint usage was known, 14,390 fatalities were individuals not wearing a seat belt. Conversely, seat belt usage is credited with saving 15,147 lives in 2007. This number could be further improved if the national seat belt usage rate was increased; according to NHTSA, this national average currently stands at 83 percent. If each State with a seat belt usage rate of less than 90 percent raised usage to that level, an estimated 1,652 lives could have been saved, 40,000 nonfatal injuries could have been prevented, and \$5.2 billion in cost savings could have been realized.²⁷

Primary enforcement of seat belt laws must play a role in reducing the number of unrestrained fatalities. Today, 29 States have enacted laws for primary enforcement of seat belts, which allow law enforcement officers to pull over and ticket drivers or passengers solely for not wearing a seat belt, without any other traffic offense having occurred.²⁸ During 2007, in States that had enacted primary enforcement of seat belt laws, the average seat belt usage was over 88 percent. In States with secondary enforcement or no adult seat belt law, the average seat belt use was just 79 percent.²⁹

In addition to addressing seat belt usage, significant reductions in the number of alcohol-impaired fatalities are essential to lowering the number of traffic fatalities that occur each year. In 2007, 12,998 people were killed in alcohol-related fatalities. Sixty-seven percent of these fatalities were drivers who were above the legal limit of blood alcohol concentration, 28 percent were other motor vehicle occupants, and six percent were non-occupants.³⁰

The use of ignition interlock devices, which require a breath test before a driver can start a vehicle, have been shown in multiple studies to reduce an individual's likelihood of recidivating by approximately 60 percent. These advanced technologies hold the promise of substantially lowering the number of alcohol-impaired fatalities that occur each year.

Currently, nine States require the installation of an ignition interlock for all first-time offenders; seven States require installation for offenders with particularly high blood alcohol

²⁷ NHTSA, *The Increase in Lives Saved, Injuries Prevented, and Cost Savings if Seat Belt Use Rose to At Least 90 Percent in All States* (2009).

²⁸ Governors Highway Safety Association, *Seat Belt Laws* (2009).

²⁹ NHTSA, *Seat Belt Use in 2008 ---Use Rates in the States and Territories* (2009).

³⁰ NHTSA, *Alcohol-Impaired Driving* (2007).

concentration (typically considered to be .15 or above); three States require installation for repeat offenders; and one State requires it upon license reinstatement.³¹ Additionally, two States allow the offender the option to turn down the interlock for a hard license suspension, but charge the offender with a felony should that offender be pulled over while driving on a suspended license.

SURFACE TRANSPORTATION AUTHORIZATION ACT

To strengthen seat belt laws and use of ignition interlock devices, the Surface Transportation Authorization Act:

- *Penalizes States that have not enacted or are not enforcing a law providing for the primary enforcement of seat belt laws*

- *Provides penalties on States that have not enacted or are not enforcing a law requiring the installation of an ignition interlock device for all first-time alcohol-impaired driving offenders.*

³¹ Governors Highway Safety Association, *Drunk Driving Laws* (2009).

**FEDERAL MOTOR CARRIER
SAFETY ADMINISTRATION**

**FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION
MOTOR CARRIER SAFETY ASSISTANCE PROGRAM**

BACKGROUND

According to NHTSA, deaths and injuries resulting from motor vehicle crashes are the leading cause of death for people of every age from three to 34, and traffic fatalities account for more than 90 percent of transportation-related fatalities. In 2007, 41,059 people were killed and nearly 2.5 million people were injured in reported motor vehicle crashes, while another nearly 4.3 million crashes involved property damage. Of these fatalities and injuries, 4,808 people lost their lives and 101,000 were injured in reported crashes involving large trucks. There were an additional 322 fatalities in crashes involving buses.

The Motor Carrier Safety Assistance Program (MCSAP) provides Federal funding to States for motor carrier safety enforcement activities. Under current law, the Federal Motor Carrier Safety Administration (FMCSA) apportions MCSAP funds to States through four separately administered subprograms: Basic, Incentive, High Priority, and New Entrant programs.³² In addition, FMCSA administers the Border Enforcement Grant program to provide funds to States that share a land border with another country for border-specific commercial vehicle safety programs, projects, and enforcement activities.

In 1999, Congress significantly increased funding for MCSAP grants to States. From FY 2001 through 2007, MCSAP funding increased 30 percent. However, over this same period, little progress has been made in addressing the number of deaths and injuries in large truck and bus crashes in the United States; only a four percent reduction in fatalities has occurred.

A 2005 GAO report found that FMCSA's oversight of MCSAP is "inadequate" and, as a result, there is no assurance that States are meeting the goals of the program.³³ In addition, MCSAP allows States to use allocated funds for a wide range of eligible activities, regardless of performance and whether use of the funds address specific deficiencies, which vary by State. Furthermore, the existing Incentive program rewards States that improve in areas that should be required as part of a basic commercial motor vehicle safety program. Finally, MCSAP is not tied to the specific

³² The MCSAP Basic program provides grants to States for the development and implementation of programs to improve motor carrier safety and enforce Federal and State commercial motor vehicle safety laws. To receive funding, a State must submit an annual plan to demonstrate that the State is conducting safety activities in accordance with Federal requirements. The MCSAP Incentive program provides grants to States for good performance. A State's performance is evaluated in five weighted categories, which include fatality reduction, but also include basic elements such as timely data upload and whether States check the validity of a commercial driver's license during a roadside inspection. The MCSAP High Priority program provides grants to States for projects that are national in scope, including to increase public awareness and education and to demonstrate new technologies. The New Entrant program assists States in meeting a statutory mandate that all motor carriers granted new operating authority must have a safety review within 18 months of being in operation.

³³ GAO, *Large Truck Safety: Federal Enforcement Efforts Have Been Stronger Since 2000, but Oversight of State Grants Needs Improvement* (2005).

performance goal of reducing the number of fatalities and injuries that involve large trucks and buses.

SURFACE TRANSPORTATION AUTHORIZATION ACT

The Surface Transportation Authorization Act consolidates the Motor Carrier Safety Assistance Basic Program, the Border Enforcement Grant program, the New Entrant program, and the High Priority program into one streamlined MCSAP grant program to improve motor carrier, commercial motor vehicle, and driver safety through a partnership between the Federal government and States. Funding is apportioned to States pursuant to formula and States must submit a commercial motor vehicle safety plan for approval by FMCSA to receive funding.

The Surface Transportation Authorization Act:

- ***Streamlines FMCSA's programs by consolidating four programs into an enhanced MCSAP program***
 - Allows States to use MCSAP funds for activities to enhance commercial motor vehicle safety, including of new motor carriers and passenger carriers, in the following areas: driver and vehicle inspections, traffic enforcement, compliance reviews, public education and awareness, data collection, and enforcement of commercial motor vehicle size and weight laws; and
 - Directs FMCSA to consider whether a State has an international land border and has border-specific commercial vehicle enforcement needs in determining State apportionments.

- ***Institutes new performance measures to focus state motor carrier safety efforts on reducing the number of crashes and fatalities involving large trucks and buses***
 - Requires MCSAP funding to be used for investments in activities that will maximize reductions in large truck and bus crashes and related fatalities;
 - Directs the Secretary to publish guidance periodically on the effectiveness of enforcement activities and interventions in reducing such crashes and fatalities;
 - Mandates States to identify and enumerate specific targets for enforcement activities in their annual safety plans, and select activities that are most effective. States must make improvements over time: in every year that Federal funds increase, States must increase their targets for activities; and
 - Requires States to meet data timeliness, accuracy, and completeness standards as part of the approval process of a safety plan.

- ***Provides additional funding for States that successfully lower the number of crashes and fatalities involving large trucks and buses***
 - Restructures the MCSAP Incentive program to reward States that show significant reductions in the number of crashes and fatalities involving large trucks and buses; and

- Authorizes the Secretary to set aside up to 10 percent of MCSAP funds to provide incentive funding to top performing States in crash and fatality reductions during the prior fiscal year.
- *Institutes penalties for non-compliance with statutory requirements*
- *Increases FMSCA oversight*
 - Authorizes the Secretary to set aside a greater percentage of MCSAP funds to improve administration of the enhanced MCSAP program.

**FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION
COMMERCIAL DRIVER'S LICENSE GRANT PROGRAM**

BACKGROUND

Congress first established the Commercial Driver's License (CDL) in the Commercial Motor Vehicle Safety Act of 1986 (P.L. 99-570) to address the lack of minimum standards applicable to individuals operating large trucks or buses in most States. Prior to Federal CDL requirements, only 12 States required drivers to take a knowledge and skills test on the unique operations of commercial vehicles, and commercial drivers were able to hold licenses from multiple States, allowing drivers to mask poor driving records. Congress also directed the establishment of a database, the Commercial Driver's Licensing Information System (CDLIS), to ensure sharing of commercial driver licensing and conviction data among States in a timely manner.

Since 1992, all States have implemented CDL programs by requiring any operator of a vehicle over 26,000 pounds, or that haul hazardous material, or transports more than 16 passengers, to hold a CDL. The Motor Carrier Safety Improvement Act of 1999 (P.L. 106-159) substantially strengthened the CDL program by mandating that CDL holders are subject to lose their CDL for driving violations incurred in a non-commercial motor vehicle, and requiring that States verify whether an individual is medically fit to drive to obtain a CDL.

To implement these laws, FMCSA regulations set forth minimum standards for State CDL programs in a large number of areas. States are required, by statute, to meet all of these requirements. FMCSA conducts audits of States' CDL programs every three years. Audits result in reports documenting deficiencies in State programs, and according to the most recent audits, all States continue to have shortcomings in their programs. FMCSA does not rank deficiencies in States' programs based on their importance.

There is currently no link between FMCSA's oversight of CDL programs and funding distributed to States through the existing discretionary CDL grant program. FMCSA does not require that a State use funds to address shortcomings identified in its audits, or that improvements be undertaken in a specific order. States have come to view the CDL program as a project by project program, largely for technology upgrades, that do not necessarily address the most significant problems in a State's program.

If a State does not comply substantially with Federal requirements, FMCSA is required by statute to withhold up to five percent of highway funds in the next fiscal year. FMCSA is also required to decertify the State's CDL program if a State is in substantial noncompliance with Federal requirements. To date, FMCSA has not withheld highway funds from any State, nor has any State's CDL program been decertified.

SURFACE TRANSPORTATION AUTHORIZATION ACT

The Surface Transportation Authorization Act expands the existing CDL's grant program to provide assurance of funding for States to implement their CDL programs. In exchange for funding guarantees, the Act institutes prioritization of program improvements and ensures that States carry

out programs in accordance with Federal requirements. States must submit a comprehensive CDL program plan for approval by FMCSA to receive funding. Funding is apportioned to States pursuant to criteria developed by the Secretary, and each State with an approved plan receives at least one percent of total available funding.

The Surface Transportation Authorization Act:

- ***Ensures that all States will comply with the Federal CDL requirements by the end of the authorization period***
 - Requires States to develop a six-year plan outlining the actions the State must take to address any deficiencies or areas of noncompliance in its CDL program; and
 - Provides funding assurance to allow States to plan longer term projects.

- ***Institutes prioritization to ensure States first address the most critical deficiencies in their CDL programs***
 - Requires the Secretary to identify critical requirements, or those elements without which a State cannot have an effectively functioning CDL program;
 - Requires FMCSA to issue guidance on specific elements necessary to be in compliance with critical requirements and timeframes in which States must collect and share data;
 - Requires States to use their grant funding to meet all critical requirements before addressing any other requirements; and
 - Allows States in compliance with Federal requirements to have flexibility in the use of apportioned funds to invest in system upgrades and modernization, as well as innovative approaches to enhance the safety of commercial vehicle drivers.

- ***Directs FMCSA to annually compare State compliance levels***
 - Requires the Secretary to develop a tool to compare the relative level of compliance and the quality of CDL programs among States and publish the results.

- ***Provides additional funding for States that meet requirements to pursue employer notification systems***
 - Authorizes the Secretary to set aside up to 10 percent of grant program funds to provide additional funding to States in compliance with Federal requirements to implement a system to proactively notify an employer of a suspension or revocation of an employee's CDL.

- ***Strengthens sanctions by defining the conditions under which FMCSA must decertify a State's CDL program***

- Directs the Secretary to decertify a State CDL program that fails to meet any critical requirements by the end of the authorization period, provided that grant funding was made available to the State to address the requirement.
- *Increases State investment in CDL programs by requiring a State match*
 - Reduces the Federal share from 100 percent under the current grant program to 80 percent for the enhanced CDL grant program.
- *Increases FMSCA oversight*
 - Authorizes an administrative set aside of CDL grant program funds to improve administration of the enhanced CDL program.

**FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION
STRENGTHENING MOTOR CARRIER AND MOTORCOACH OVERSIGHT**

BACKGROUND

FMCSA is responsible for commercial motor vehicle safety, including trucks and buses. FMCSA oversees an industry of over 700,000 active motor carriers that employ over six million drivers. The vast majority of these operators are property-carrying motor carriers, or trucking companies. There are approximately 4,000 motorcoach companies operating interstate in the United States, which provided nearly 631 million passenger bus trips in 2005.

A motor carrier can gain entry into the industry by filing paper forms or applying online. A motor carrier can register and obtain a DOT number almost instantly. To also obtain interstate operating authority, the carrier must file proof of liability insurance, designate an agent for a legal process, and fill out forms that the carrier is “willing and able” to comply with the Secretary’s safety and accessibility regulations. FMCSA is required by statute to conduct safety reviews of new entrants, or newly-registered carriers, within the first 18 months of their operation. Prior to this safety review, a carrier may operate without any requirement that the carrier demonstrate knowledge of the safety requirements or compliance with such requirements.

After completion of a safety audit, a further comprehensive safety review is rare. Assessments of carriers’ compliance with safety and hazardous materials regulations occur through Compliance Reviews, or on-site examination of a motor carrier’s records and operations conducted by the agency and its State partners. FMCSA cannot conduct Compliance Reviews of all carriers annually due to resource constraints, and currently the agency conducts a Compliance Review of less than two percent of carriers annually.

A carrier receives one of three safety ratings as a result of a Compliance Review: satisfactory, conditional, or unsatisfactory. Given the low percentage of Compliance Reviews conducted each year, the majority of motor carriers registered with the agency are not assigned a safety rating. This is particularly problematic for motorcoach companies; without a current safety rating, it is difficult for consumers to make informed choices and select safe carriers.

To arrive at a safety rating, FMCSA assesses a motor carrier’s performance in six general areas or factors: general safety management, driver, operations, vehicle, accident rate, and hazardous materials. For a carrier to receive an overall rating of unsatisfactory, the carrier must have significant deficiencies, known as acute or critical violations, in at least two factors. A carrier can violate all regulations within one factor – such as all driver regulations, including hours of service, licensing, drug and alcohol testing, and other regulations – and still be permitted to operate. Not surprisingly, under the existing system, very few carriers receive unsatisfactory safety ratings as a result of a Compliance Review. In 2008, out of 15,955 reviews, only 667 carriers were rated unsatisfactory.

Even when FMCSA identifies problems that are egregious enough to warrant placing a carrier out of service under the current system, a carrier can evade making safety improvements or

paying penalties by shutting down and re-registering under a new company name, or “reincarnating”. In August 2008, a bus accident in Sherman, Texas, which claimed the lives of 17 people, highlighted this problem. The carrier in the accident has been shut down by FMCSA months before, but was back in business under a new name.

Roadside inspections provide an additional tool to oversee the safety of motor carriers. FMCSA and its State partners conducted 3.5 million such inspections in 2008. If a serious violation of vehicle, driver, or hazardous materials regulations is discovered as part of a roadside inspection, the motor carrier can be ordered out of service until the violation is corrected. In 2008, nationwide, 22.6 percent of vehicle inspections resulted in an out-of-service order, meaning that almost one-fourth of all commercial vehicles stopped were found to have safety deficiencies serious enough to be taken off the road. While roadside inspections are an effective tool to spot check the condition of vehicles, they do not provide an effective baseline to ensure all vehicles are periodically inspected. Currently, less than half the States have annual vehicle inspection requirements for commercial motor vehicles. Ensuring vehicle safety is particularly important for carriers who transport passengers to avoid accidents.

SURFACE TRANSPORTATION AUTHORIZATION ACT

The Surface Transportation Authorization Act strengthens the oversight of motor carriers, including motorcoach companies, by FMCSA and its State partners through the following provisions:

- ***Institutes a higher bar for entry into the industry by requiring motor carriers to demonstrate knowledge of safety regulations prior to receiving authority to operate***
 - Requires motor carriers to demonstrate knowledge, through a proficiency exam, of safety, accessibility, and financial responsibility requirements prior to being granted the authority to operate in interstate commerce by the Secretary.
- ***Requires additional review to identify and prevent “reincarnated” carriers***
 - Requires the Secretary to verify, prior to granting registration to a motor carrier, whether the applicant is or has been related, through common ownership, management, or familial relationship to another motor carrier within the past three years; and
 - Requires FMCSA to update its information systems to enable an automated check of possible relationships among carriers.
- ***Prioritizes new entrant safety audits of motorcoach companies and carriers hauling hazmat***
 - Directs the Secretary to prioritize new entrant safety audits of motorcoach companies and carriers who haul hazardous materials by conducting such audits on an accelerated schedule.

- *Amends compliance review process to focus on vehicles and drivers*
 - Requires FMCSA, within one year, to revise its safety fitness determination methodology to rate a carrier unsatisfactory if a compliance review reveals significant compliance problems with vehicle or driver fitness requirements, in accordance with an NTSB recommendation.

- *Strengthens oversight of motorcoach companies*
 - Requires FMCSA to conduct safety fitness determinations of, and assign a safety rating to, each motorcoach company registered with the agency by the end of the authorization period;
 - Ensures regular monitoring of the safety performance of motorcoach companies by FMCSA after the assignment of a safety rating;
 - Requires States, as a condition of receiving Motor Carrier Safety Assistance Program funding, to monitor the safety performance of motorcoach operators;
 - Establishes annual inspection programs for motorcoaches, and FMCSA periodic reviews of State safety inspection programs; and
 - Allows FMCSA to organize special enforcement strike forces targeting motorcoaches.

**FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION
IMPROVING COMMERCIAL DRIVER SAFETY**

BACKGROUND

Commercial motor vehicle drivers are subject to a number of Federal requirements to ensure their safe operation. Drivers are required to, among other things, hold a CDL, submit to drug and alcohol testing, demonstrate that they are physically qualified, and comply with regulations setting maximum daily and weekly on-duty and driving time, or hours of service.

There are more than six million licensed commercial drivers subject to Federal regulations. FMCSA and its State partners have limited inspectors and resources to enforce regulations over this large population of drivers. Loopholes in existing regulations and flaws in the process of verifying compliance also contribute to requirements not being robustly enforced, which increases highway fatalities and injuries for commercial vehicle drivers, their passengers, and the public.

It is currently possible for a commercial driver to “job-hop,” or change employers without disclosing past positive drug test results, particularly on pre-employment tests. The NTSB has identified lack of compliance with drug and alcohol regulations as a significant problem, and a 2004 Congressionally-mandated FMCSA report concluded that a national clearinghouse would be “the most cost effective and logical” solution.³⁴

Commercial vehicle drivers are required to obtain a valid medical examiners certificate indicating fitness to drive every two years. The NTSB has made eight recommendations to improve the medical program, including necessary actions to prevent fraudulent medical certificates. Currently, the medical certificate has no standard format, is readily available (including on FMCSA’s website), and its authenticity cannot be verified by inspectors at the roadside. Congress mandated in 1999 that FMCSA link drivers’ medical information with the CDL. FMCSA issued a final rule in December 2008 that required drivers, not medical examiners, provide medical examination certificates to State licensing agencies. Congress mandated in 2005 that FMCSA create a registry of certified medical examiners to ensure that only qualified medical personnel are conducting DOT physicals, but FMCSA has not yet established this registry.

ISTEA directed the Secretary to issue a rule on training requirements for entry-level commercial drivers. The final rule, published in 2004, focused on non-operational training areas and did not require behind the wheel training, despite the fact that a 1995 FHWA study³⁵ found that this is necessary for effective training. The rule was overturned in 2005 by the U.S. Court of Appeals for the District of Columbia due to the lack of requirements for behind the wheel training. While training is provided by many large motor carriers once an individual is hired, nearly 20 years after the passage of ISTEA, a driver does not have to have any training in the operation of a commercial motor vehicle prior to obtaining a CDL.

³⁴ FMCSA, *A Report to Congress on the Feasibility and Merits of Reporting Verified Positive Controlled Substance Test Results to the States and Require FMCSA-Regulated Employers to Query the State Databases Before Hiring a Commercial Drivers License (CDL) Holder* (2004).

³⁵ FHWA, *Assessing the Adequacy of Commercial Motor Vehicle Driver Training* (1995). Note that the FHWA Office of Motor Carriers was the predecessor agency to FMCSA.

In the United States, commercial motor vehicle drivers are subject to Federal limits on the number of hours they can drive and be on duty prior to being required to take a mandatory rest period. Drivers are required to record their hours-of-service (HOS) using paper logbooks that are easily falsified. Currently, all European Union countries require electronic on-board recorders (EOBRs) to track HOS compliance. EOBRs are devices that record the hours that commercial drivers operate and have the capability to record the time and distance a commercial motor vehicle has traveled; EOBRs that incorporate vehicle tracking capabilities can also identify a vehicle's route and speed. In 2007, FMCSA issued a proposed rule to only require EOBRs by companies with a pattern of HOS violations. The vast majority of motor carriers – more than 99 percent – would have been able to continue to use paper logbooks under the rule, which has not been finalized.

SURFACE TRANSPORTATION AUTHORIZATION ACT

The Surface Transportation Authorization Act improves commercial driver safety by:

- ***Establishing a drug and alcohol testing clearinghouse***
 - Requires the Secretary to establish a clearinghouse of positive drug and alcohol test results and refusals to test by commercial drivers;
 - Provides the Secretary enforcement and penalty authority over service agents, including Medical Review Officers and collection facilities; and
 - Prohibits employers from allowing an individual to drive or perform another safety-sensitive function until the employer verifies the individual has not violated the rules of the drug and alcohol testing program through a check of the clearinghouse.

- ***Mandating EOBRs to enforce hours-of-service regulations***
 - Requires the Secretary to prescribe regulations to require all commercial motor vehicles used by a motor carrier subject to the Secretary's hours of service regulations to be equipped with EOBRs.

- ***Instituting training requirements for commercial drivers prior to obtaining a CDL***
 - Requires the Secretary, within two years, to prescribe regulations to establish minimum training requirements, including behind-the-wheel instruction, for commercial motor vehicle drivers;
 - Directs the Secretary to develop specific requirements for drivers who transport passengers or hazardous materials;
 - Mandates that drivers complete training and obtain certification of completion prior to obtaining a CDL;
 - Requires the Secretary to establish a process to verify that curriculum offered by training providers meets the Secretary's requirements; and
 - Authorizes funds for commercial driver training grants once training requirements are finalized by the Secretary.

➤ *Improves oversight of commercial driver medical qualifications*

- Requires the establishment of the National Registry of Medical Examiners within one year;
- Requires medical examiners seeking to be included on the registry to complete specific courses and training established by the Secretary and pass an examination;
- Directs the Secretary to assess the accuracy, validity, and timeliness of submission of physical examination reports and medical certificates to States by drivers, and review the feasibility of requiring medical examiners to submit results of a medical examination directly to State licensing agencies; and
- Requires the Secretary to develop unique medical examination and certification forms to be used to conduct all examinations of commercial drivers.

➤ *Requires assessment of CDL passenger endorsement requirements*

- Requires FMCSA to review and assess the current knowledge and skill testing requirements for a CDL passenger endorsement to determine necessary improvements to the test to ensure the safety of motorcoach and other passenger operations.

**PIPELINE AND HAZARDOUS
MATERIALS SAFETY ADMINISTRATION**

**PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION
REAUTHORIZATION OF THE HAZARDOUS MATERIAL SAFETY PROGRAM**

BACKGROUND

Over the last decade, there have been 170,493 incidents involving the transportation of hazardous material, resulting in 138 fatalities, 2,825 injuries, and more than \$635 million in property damage. The incidents primarily occurred during unloading (99,964 incidents), while the package is in transit (30,007 incidents), or while loading (27,685 incidents). Other incidents occurred while the package was in storage (10,872 incidents) or were unreported. The top five causes of the incidents were: human error; improper preparation of the package for transportation; forklift operations; improper blocking and bracing; and package dropped.

The Pipeline and Hazardous Materials Safety Administration (PHMSA) is responsible for developing and enforcing regulations to ensure the safe movement of nearly 1.2 million daily shipments of hazardous material by all modes of transportation.

PHMSA regulations are applicable to any person who transports, ships, or causes to be transported or shipped, hazardous material, or who is involved with the manufacture or testing of hazardous material packaging or containers.

Under these regulations, each person who transports, or causes to be transported, hazardous material in commerce must comply with all applicable requirements of these regulations, or obtain a special permit or approval issued by PHMSA. These authorizations are issued to individuals and organizations following review of applications and safety analyses under conditions that are documented to be at least as safe as the applicable regulations or consistent with the public interest. Depending on the permit request, the exemption is for four or more years.

According to the DOT Inspector General, PHMSA has issued more than 4,500 special permits and 125,000 approvals since the inception of the program. Concerns have been raised about the ability of PHMSA to oversee and enforce the terms of special permits and approvals, given that PHMSA has 35 inspectors responsible for more than 300,000 entities. Concerns have also been raised about whether PHMSA is coordinating with the operating administrations before issuing special permits or approvals, in particular the Federal Aviation Administration (FAA).

The DOT Inspector General is conducting an audit of PHMSA to assess the effectiveness of PHMSA's policies and processes for reviewing and coordinating with the impacted operating administration before authorizing a special permit or approval. The Inspector General is also assessing PHMSA's and other operating administrations' oversight and enforcement of approved parties' compliance with the terms and conditions of special permits and approvals. The audit is not yet complete, but the DOT Inspector General noted its concern that PHMSA was issuing special permits to entire trade associations; meaning, the association would obtain the special permit, resulting in and all of their members being exempted from certain hazardous material regulations. Twelve trade associations have been approved for special permits.

Any person who offers for transportation or transports certain hazardous material in intrastate, interstate, or foreign commerce must register with DOT. DOT is required to collect an

annual fee with the registration, which ranges from \$250 to \$3,000 (the maximum fee was reduced from \$5,000 to \$3,000 in SAFETEA-LU). The fees fund the Hazardous Materials Emergency Preparedness (HMEP) grant program which helps States, local governments, and tribal governments to develop, improve, and implement emergency plans; train public sector hazardous materials emergency response employees to respond to accidents and incidents involving hazardous material; determine flow patterns of hazardous material through communities; and determine the need within a state for regional hazardous material emergency response teams. PHMSA estimates that the program provides more than two million emergency responders with initial training or periodic recertification training, including 250 paid firefighters, 850,000 volunteer firefighters, 725,000 law enforcement officers, and 500,000 emergency medical service providers.

There are five levels of hazardous material training, prescribed by the Occupational Safety and Health Administration (OSHA) and recommended by the National Fire Protection Association (NFPA): First Responder Awareness Level; First Responder Operations Level; Hazardous Materials Technician; Hazardous Materials Specialist; and On-Scene Incident Commander. Currently, the law does not require States, local governments, or tribal governments that receive HMEP grants to train fire fighters at a specific level. As a result, most fire fighters only receive Awareness Level training. Organizations representing fire fighters have recommended that States, local governments, and tribal governments that receive HMEP grants be required to train emergency responders at the Operations Level, at a minimum. A similar requirement exists for States that receive pipeline safety emergency response training grants.

PHMSA and organizations representing fire fighters have recommended that the Committee also focus on developing innovative methods for training the 850,000 volunteer firefighters across the United States, which are forced to balance the demands of families, full-time jobs, and the volunteer fire service. PHMSA has also recommended additional data collection and research and development to address fire fighter needs.

In addition to strengthening emergency response capabilities and information, the Surface Transportation Authorization Act focuses on a number of longstanding NTSB safety recommendations. Most notable are those dealing with the safety of transporting lithium batteries and the safety impact of transporting hazardous material in unprotected loading lines, called wetlines.

Lithium Batteries

With respect to lithium batteries, under current law, the FAA does not have the authority to regulate the transportation of hazardous material by air. Such authority resides with PHMSA.

According to PHMSA, more than 3.3 billion lithium cells and batteries were transported worldwide in 2008, representing an 83 percent increase since 2005. The marked increase in transportation of lithium batteries (some of which are counterfeit) combined with increasing market demand for higher-performing portable electronic devices requiring smaller, more powerful batteries present significant transportation safety challenges for Federal regulators.

On April 28, 1999, a fire erupted on two aircraft cargo pallets being off-loaded from a Northwest Airlines flight originating in Osaka, Japan. The two pallets involved in the fire contained 120,000 small, primary lithium batteries that were excepted by PHMSA from domestic and

international hazardous material safety regulations applicable to hazard communication and packaging. As a result of the incident, the NTSB concluded that lithium batteries present an unacceptable risk to aircraft and passengers that required immediate attention. Other incidents have occurred since that time.

In August 2007, PHMSA issued new requirements that tightened the safety standards governing the air transportation of both primary and secondary lithium batteries. In a letter dated December 17, 2007, to PHMSA, the NTSB stated that it was encouraged by these initiatives, but that other concerns remain. As a result of these and other incidents, the NTSB has issued several safety recommendations to PHMSA and the FAA regarding lithium batteries, many of which have not been implemented.

Wetlines

With respect to wetlines, prior to implementation of the Clean Air Act, the petroleum industry loaded cargo tanks from the top. However, following implementation of the Clean Air Act, the Environmental Protection Agency required that cargo tanks be equipped with vapor recovery systems. The petroleum industry chose to use bottom loading in conjunction with tank top vapor recovery as their method of compliance with the Clean Air Act. Industry chose bottom loading, in part, to prevent accidents and injuries resulting from falls off the top of the tank. Because all motor fuels must be metered for tax purposes, in implementing the new loading procedures the industry did not provide for a way to drain the product from the cargo tank piping back into the loading facility to maintain proper accounting for tax purposes. As a result, cargo tanks are currently operated with 30 to 50 gallons of gasoline in the external piping, known as wetlines. The problem: the external piping is designed to fail in an accident to protect the integrity of the cargo tank shell.

Since 1990, over 250 incidents have occurred involving wetlines. Concerns over the incidents prompted the NTSB to recommend that PHMSA prohibit the use of wetlines on all existing and new manufactured cargo tank trucks. In response, Sunoco voluntarily retrofitted its trucks to eliminate the use of wetlines for transporting hazardous material, such as fuel.

In May 2006, PHMSA published a cost-benefit analysis entitled “Hazardous Materials: Safety Requirements for External Product Piping on Cargo Tanks Transporting Flammable Liquids,” which considered the costs and benefits of requiring the installation of purging systems on new trucks, trucks manufactured on or after January 1, 2002, and all new and existing trucks. The analysis stated that the average cost for a non-welded purging system is between \$1772.50 and \$1,932.50 plus annual maintenance costs of between \$13.42 and \$16.42 per tank.

According to the analysis, at a three percent discount rate, the total benefit of installing such purging systems on new trucks was \$44,040,869 compared to costs of \$36,516,611; for trucks manufactured on or after January 1, 2002, \$64,471,092 in benefits compared to \$51,404,282 in costs. For all new and existing trucks, \$80,769,478 in benefits compared to \$72,771,443 in costs.

At a seven percent discount rate, the total benefit of installing such purging systems on new trucks was \$25,377,985 compared to costs of \$23,847,613; for trucks manufactured on or after January 1, 2002, \$38,902,738 in benefits compared to \$35,968,401. For all new and existing trucks, \$50,945,401 in benefits compared to \$53,595,422 in costs.

Following issuance of the cost-benefit analysis, PHMSA withdrew its rulemaking, stating that the benefits of installing the purging systems versus the costs essentially broke even. However, PHMSA left open the possibility of requiring the equipment to be installed on new manufactured tanks, noting that “[b]ased on the revised regulatory evaluation, we believe the benefits of a final rule prohibiting...wetlines only on newly constructed CTMVs (cargo tank motor vehicles) may slightly outweigh the costs.”

SURFACE TRANSPORTATION AUTHORIZATION ACT

The Surface Transportation Authorization Act reauthorizes the DOT’s hazardous materials safety program, and:

➤ ***Strengthens emergency response capabilities and information***

- Strengthens training for emergency responders by requiring States or Indian tribes that receive grants through the HMEP to train emergency responders at the Operations Level, at a minimum;
- Mandates the Secretary to conduct an assessment (and a pilot program based on the assessment) of the existing training capabilities of, and delivery methods available for the preparedness and training to, volunteer fire services personnel to safely respond to accidents and incidents involving the transportation of hazardous material;
- Requires the Secretary to establish and maintain a national hazardous materials fusion center to serve as a data and information network for emergency response providers, Federal, State, and local government agencies, and for-profit and nonprofit organizations that are engaged in hazardous material response;
- Ensures that the Secretary conducts research to develop appropriate techniques, training, and equipment necessary for public sector employees to respond to accidents and incidents involving the transportation or use in transportation of alternative technologies that utilize hazardous material, including biofuels, hybrid fuel cells, lithium batteries, and hydrogen fuel cells;
- Requires the Secretary to establish and maintain a system to collect data on the volume of hazardous material transported throughout the United States by all modes of transportation for the purpose of enhancing the planning and preparation of Federal, State, and local governments and emergency responders for incident response and management;
- Mandates the Secretary to establish minimum standards for persons who operate as hazardous material transportation emergency response information services; and
- Allows the Secretary to conduct three pilot projects to evaluate the feasibility and effectiveness of using paperless hazard communications systems.

➤ ***Increases the safety of transporting hazardous material***

- Requires the Administrator of PHMSA, in coordination with the FAA, to issue regulations that provide for the safe transportation of lithium cells and batteries and other energy producing devices that utilize hazardous material and have the potential to create a heat or fire hazard;

- Addresses problems with transporting hazardous material in unprotected product piping of cargo tank motor vehicles;
- Ensures that commercial motor vehicle operators registered to operate in Canada or Mexico will undergo criminal background checks in the United States and in the countries where the commercial motor vehicle operators are domiciled;
- Establishes a working group to improve PHMSA's data collection, analysis, and reporting, and requires the working group to develop an action plan and timeline for implementing such improvements, which will be reviewed by the DOT Inspector General and submitted to Congress; and
- Requires the Comptroller General to conduct a study on implementation of the Federal hazardous material safety permit program.

➤ *Strengthens enforcement of the hazardous material regulations*

- Establishes a program for training hazardous material inspectors and investigators;
- Provides the Secretary with enhanced authority to investigate an accident or incident involving the transportation of hazardous material;
- Authorizes the Secretary to impose a penalty on a person who obstructs or prevents the Secretary from carrying out inspections or investigations; and
- Increases the level of inspectors.

➤ *Authorizes the Secretary to conduct research and development aimed at reducing risks associated with the transportation of hazardous material and identifying and evaluating new technologies to facilitate the safe transportation of hazardous material*

➤ *Requires the Secretary to develop uniform procedures and forms for States to register, and issue permits to, persons who transport or cause to be transported hazardous material by motor vehicle*