SECTION-BY-SECTION ANALYSIS

SURFACE TRANSPORTATION SAFETY ACT OF 1997

SECTION 2 sets forth the short title and table of contents for titles IX through XIV of the National Economic Crossroads Transportation Efficiency Act of 1997, and specifies that references in the Act to amendments of sections or other provisions are considered to be amendments to title 49, United States Code, unless otherwise specified.

SECTION 3 would provide express statutory authority for the Department and its agencies to use appropriated funds to provide for the honorary recognition of individuals and organizations, not affiliated with the Federal Government, who significantly contribute to the success of Departmental programs, missions, or operations.

While honorary and of nominal monetary value, these awards for transportation safety and other contributions to the objectives of the Department and its agencies can provide substantial incentives to improve safety and other programs. The proposal would authorize the Office of the Secretary and the operating administrations within the Department to purchase award items, authorize other means of honorary recognition, and authorize the use of appropriated and other funds available to pay for expenses incurred.

Congress, the President, and many Federal agencies currently have

statutory authority to furnish awards and provide other means of honorary recognition of private individuals and organizations. For example, similar authority is vested in:

- the Congressional Award Board, to provide medals and scholarships to youths demonstrating initiative, achievement, and excellence in the areas of public service, personal development, and physical fitness (2 U.S.C. 801, et seq.);

- the President, to award a National Technology Medal to individuals or companies that have made outstanding contributions to the promotion of technology for the improvement of the economic, environmental, or social well-being of the United States (15 U.S.C. 3711);

- the Secretary of Agriculture, to make cash awards to individuals for excellence in teaching food and agricultural science at a college or university (7 U.S.C. 3152(g));

- the Department of the Interior (DOI), to provide nonmonetary awards of nominal value to private individuals and organizations that make contributions to DOI programs (43 U.S.C. 1473b); and

- the National Aeronautics and Space Administration (NASA) Administrator, for monetary awards to persons for scientific or technical contributions to NASA determined to have significant value in the conduct of aeronautical and space activities (42 U.S.C. 2458).

These provisions typically include authorization for expenditures from available funds and appropriations for the award items and for other honorary recognition, as would be the case for this proposal.

TITLE IX. TRAFFIC SAFETY

Section 9001, Amendment to Title 23, U.S. Code, amends section 402 of the title by adding at the end a new subsection (p), "Transfer of Funds and Performance Option: Primary Safety Belt Use."

The Department strongly supports primary enforcement of safety belt use laws. The Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) provided incentive grants over a 3-year period for safety belt use laws. Incentive grants for primary enforcement of safety belt use laws are proposed in Title II of the Department's "National Economic Crossroads Transportation Efficiency Act of 1997."

From 1982 through 1995, the Department estimates that over 75,000 lives were saved by safety belts. Safety belt use is much higher, on average, in States that provide for primary enforcement of their belt use laws. In States with "secondary" safety belt use laws, a motorist may be ticketed for failure to wear a safety belt only if there is a separate basis for stopping the motorist, such as the violation of a separate traffic law. This hampers enforcement of the law. In States with primary laws, a citation can be issued solely because of a failure to wear safety belts.

A 1995 analysis of the National Highway Traffic Safety Administration's Fatal Analysis Reporting System (FARS) data on restraint use among fatally injured occupants of motor vehicles shows that primary enforcement is the most important aspect of a safety belt use law affecting the rate of safety belt use. For virtually all States with a primary enforcement law, statistically significant increases associated with the presence of such a law were detected using several different methods. The analysis suggests that the increase in use rates attributable to the enactment of a primary enforcement law is at least 15 percentage points. This increase in safety belt use translates into a 5.9 percent decline in fatalities in a State that authorizes primary enforcement of the law. In California and Louisiana, States that recently upgraded their laws to allow for primary enforcement, safety belt use increased by 13 and 17 percentage points, respectively.

Subsection 402(p) includes 6 paragraphs. The following analysis describes each of these paragraphs.

Subsection 402(p)(1), "Transfer," provides as follows:

If, by the last day of fiscal year 2002, a State has not enacted and had in continuous effect a primary enforcement safety belt use law described in subsection (m) of section 402, the Secretary is directed to transfer 1-1/2 percent of the funds apportioned to the State for highway construction for fiscal year 2003 under each of paragraphs (1), (3), and (5)(B) of section 104(b) of title 23 to the apportionment of the State under section 402 of title 23. These transferred funds may be used only for occupant protection programs.

If, by the last day of any fiscal year beginning after September 30, 2002, a State has not enacted and had in continuous effect a primary enforcement safety belt use law described in subsection (m), the Secretary is directed to transfer 3 percent of the funds apportioned to the State for the succeeding fiscal year under each of paragraphs (1), (3), and (5)(B) of section 104(b) of title 23 to the apportionment of the State under section 402 of title 23. These transferred funds may be used only for occupant protection programs.

Subsection (p)(2), "Federal Share," sets the Federal share of the cost of any project carried out under section 402 of title 23 with funds transferred to the apportionment of section 402 at 100 percent.

Subsection (p)(3), "Transfer of Obligation Authority," addresses issues related to the transfer of funds under this subsection. With respect to obligation authority related to such a transfer, if the Secretary transfers under this subsection any funds to the apportionment of a State under section 402 of title 23 for a fiscal year, the Secretary is directed to allocate an amount of obligation authority distributed for such fiscal year to the State for Federal-aid highways and highway construction programs for carrying out only projects under section 402. This allocation is to be determined by multiplying (1) the amount of funds transferred to the apportionment of section 402 of the State under section 402 for such fiscal year, by (2) the ratio of the amount of obligation authority distributed for such fiscal year to the State for its Federal-aid highways and highway construction programs to the total of the sums apportioned to the State for its Federal-aid highways and highway construction programs (excluding sums not subject to any obligation limitation) for such fiscal year.

Subsection (p)(4), “Limitation on Applicability of Highway Safety Obligations, ” provides that, notwithstanding any other provision of law, no limitation on the total of obligations for highway safety programs under section 402 of title 23 would apply to funds transferred under this subsection to State apportionment of section 402.

Subsection (p)(5), "Performance Option," provides that paragraph (1) of this subsection shall not apply to a State in a fiscal year beginning after September 30, 2002, if the Secretary certifies before each such fiscal year that the State has a statewide safety belt use rate of 85 percent or higher in both front outboard seating positions in all passenger motor vehicles, as defined in subsection (m) of section 402. The State would be required to document its safety belt use rate by conducting an annual survey that conforms to guidelines issued by the Secretary ensuring that measurements are accurate and representative. The Secretary is directed to use this survey and may use additional surveys or other relevant information as necessary in deciding whether to certify that the State's safety belt use rate is 85 percent or higher.

Subsection (p)(6), “Definition, ” provides a definition for “safety belt.”

Section 9002, Amendments to Chapter 301 of Title 49, U.S. Code ("Motor Vehicle Safety"), contains seven subsections.

Subsection 9002(a) amends 49 U.S.C. 30113(d) (“Exemptions”), to enable the Secretary of Transportation to determine, on a case by case

basis, in specified areas, the appropriate number of a manufacturer's motor vehicles that may qualify for a temporary exemption from compliance with a Federal motor vehicle safety standard during any 12-

month period.

Currently, section 30113(d) authorizes the Secretary to grant such an exemption for only up to 2,500 of a manufacturer's vehicles in each of three areas:

- The exemption would facilitate the development or field evaluation of new safety features that provide a level of safety equivalent to or exceeding the level of safety established in each standard from which an exemption is sought; or

- The exemption would facilitate the development or field evaluation of low-

  emission characteristics and would not unreasonably degrade the safety of such vehicle; or

- Compliance with the standard would prevent a manufacturer from selling a vehicle whose overall level of safety is equivalent to or exceeds the overall level of safety of nonexempted vehicles.

The Department does not believe there is a valid basis for limiting these exemptions to no more than 2,500 of a manufacturer's vehicles in each of these areas. On the contrary, we believe the limitation of 2,500

vehicles per year may

be much too low to provide manufacturers with sufficient economic and marketing incentives to undertake the kind of extensive, real world evaluations of potential safety improvements the exemption is intended to encourage. Increasing this number -- with the caveat that the exemption would only be granted to test innovations to increase safety above the level provided by current standards or to improve energy efficiency without any degradation of safety -- would correct this.

One particularly important reason for this provision is advanced air bags. Many of the new technologies being considered for advanced air bags will shut the system off or greatly modify the deployment under certain conditions. While none of the changes would compromise safety, some of these concepts may not meet all the specific provisions of concern for “passive” restraint regulations, for example, under certain circumstances. It is important to be able to evaluate these new technologies that could ultimately enhance safety, in relatively large numbers to obtain statistically valid and meaningful field experience on a timely basis. Accordingly, to make the provision a more effective mechanism for encouraging safety innovations, the bill would amend section 30113(d) to give the Secretary the authority to determine, on a case by case basis, in specified areas, the appropriate number of a manufacturer's motor vehicles that may qualify for a temporary exemption from compliance with a Federal motor vehicle safety standard during any 12-month period.

Subsection 9002(b) amends 49 U.S.C. 30118 ("Notification of defects and noncompliance"), to streamline the regulatory process and reduce paperwork by allowing the Secretary discretion whether

to provide notice in the Federal Register and an opportunity for comments upon (1) deciding, on application of a manufacturer, that a defect or noncompliance is inconsequential to motor vehicle safety, and (2) granting the manufacturer an exemption from section 30118's notification requirements. Under current law, if a manufacturer petitions the Secretary for an exemption from its responsibility to notify vehicle owners of a defect or noncompliance on the ground that the defect or noncompliance is inconsequential, the Secretary may grant such an exemption only after notice in the Federal Register and opportunity for public comment. Experience with the exemption process has shown that, because most petitions relate to matters such as the size of lettering on labels, comments are rarely received.

Subsection 9002(c) amends 49 U.S.C. 30120(I)(1) (“Limitation on sale or lease”), to prohibit retailers of motor vehicle equipment from selling defective items of equipment. This provision closes a loophole that, though small, has potentially dangerous consequences. Current law prohibits any dealer of motor vehicles who receives a recall notice with respect to any item of vehicle equipment, in the dealer’s possession at the time of notification, from selling or leasing that product unless the defect is remedied or the recall order has been restrained or set aside. However, though current law prohibits a new car dealer from selling a defective item of replacement equipment, such as a headlight, it allows auto parts stores to sell such a defective item and allows retailers to continue to sell defective items -- even defective child safety seats. This proposal would close this loophole.

Subsection 9002(d) amends 49 U.S.C. 30123 ("Tires"), to repeal subsections (a) ("Labeling Requirement"), (b) ("Contents of Label"), and (c) ("Additional Information"). Under section 30123(a), the

Secretary must require manufacturers of pneumatic tires to "permanently and conspicuously" label their tires with specified information under section 30123(b) about the construction of the tires and the identity of the manufacturer. Section 30123(c) gives the Secretary discretionary authority to require that additional safety information be disclosed to a purchaser when a tire is sold. Although some of this information may be useful, subsections (a) and (b) of the current statute prevent the Secretary from amending the content requirements to delete obsolete requirements, while subsection (c) duplicates authority under 49 U.S.C. 322(a), which allows the Secretary to prescribe regulations to carry out any statutory duties and powers. Accordingly, repealing section 30123's labeling and information provisions would enhance the Secretary's ability to require essential information without compromising motor vehicle safety.

Subsection 9002(e) amends 49 U.S.C. 30127(g)(1) (“Report”) to clarify that the provision requiring the Secretary to submit reports on the effectiveness of occupant restraint systems, beginning on October 1, 1992 and “every 6 months” after that date through October 1, 2000, was codified incorrectly. Although the underlying statute (section 2508(e) of the Intermodal Surface Transportation Efficiency Act of 1991, Pub. L. 102-240; Dec. 18, 1991) used the word “biannually” in reference to the time frame for this report, the intended time frame for this report and the word reflecting that intention was “biennially,” i.e., occurring every two years. It is impossible to collect data in any meaningful amount and to evaluate and process it in a new report that is useful to Congress in a six-month time frame.

Subsection 9002(f) amends 49 U.S.C. Chapter 301 (“Motor Vehicle

Safety") to add at the end a new section 30148, "International motor vehicle safety outreach," which contains three subsections.

Subsection 30148(a), "Activities," would authorize the Secretary, in consultation with the Secretaries of State and Commerce where appropriate, to engage in activities that improve worldwide motor vehicle safety through various activities. Such activities would include: (1) promoting the adoption of international and national vehicle standards that are harmonized with, functionally equivalent to, or compatible with United States vehicle standards; (2) participating in efforts to foster an international acceptance of globally harmonized and/or functionally equivalent or compatible motor vehicle regulations and standards to otherwise improve international highway and motor vehicle safety; (3) promoting international cooperative programs for conducting research, development, demonstration projects, training, and other forms of technology transfer and exchange, including safety conferences, seminars, and/or expositions to enhance international motor vehicle safety; and (4) providing technical assistance to other countries relating to their adoption of United States vehicle regulations or standards functionally equivalent to U.S. vehicle standards.

Over the past few years, there has been growing concern expressed by officials of many countries about the need to harmonize motor vehicle regulations on a global basis. This subsection would clarify the Secretary of Transportation's authority to represent the United States in activities related to the process of harmonization.

Subsection 30148(b), "Cooperation," would authorize the Secretary, in carrying out the activities described in subsection

30148(a), to cooperate with appropriate United States government agencies, any State or local agency, and any authority, association, institution, corporation (profit or nonprofit), foreign government, multinational institution, or any other organization or person.

Subsection 30148(c), "Consideration," would direct the Secretary, in carrying out the activities described in subsection 30148(a), to ensure that these activities maintain or improve the level of safety of motor vehicles and motor vehicle equipment sold in the United States. Accordingly, the Secretary's harmonization activities would be pursued without any diminution of U.S. safety performance standards.

Section 9003, Amendments to 49 U.S.C. Chapter 323 ("Consumer Information"), contains two subsections.

Subsection 9003(a) amends 49 U.S.C. 32302 ("Passenger motor vehicle information"), to repeal subsection (c), "Insurance Cost Information." Subsection (c) requires the Secretary to prescribe regulations that require dealers of passenger motor vehicles to provide prospective buyers with information comparing insurance costs for different makes and models of passenger motor vehicles based on damage susceptibility and crashworthiness. Despite the expectations of Congress in enacting this provision, the auto insurance industry has continued to base its premiums primarily on factors other than the damage susceptibility and crashworthiness of automobiles. As result, the relationship between crashworthiness and damage susceptibility and insurance costs is so slight as to be of no value to prospective purchasers. Accordingly, this subsection

would repeal the requirement for that information.

Subsection 9003(b) repeals 49 U.S.C. 32303 ("Insurance information"). Section 32303 authorizes the Secretary to require insurers to make reports and to provide the Secretary with a broad range of insurance information. These reports and information may include crash claim information by make, model, and model year of passenger motor vehicles about repair costs and personal injury. As in the case of the insurance information to be supplied to prospective buyers, noted in subsection 9003(a) above, the information about crash claims has not proven to be useful in improving highway safety. In short, implementation of this provision imposes a cost on the insurers and on the Government, without corresponding benefit. Accordingly, in the interests of eliminating unnecessary statutory provisions, this subsection would repeal the authority to require this information.

Section 9004, Amendment to 49 U.S.C. Chapter 329 ("Automobile Fuel Economy") amends 49 U.S.C. 32907 ("Reports and tests of manufacturers") to amend paragraph (2) of subsection (a), "Manufacturer Reports," to eliminate the mid-model year report. Section 32907(a)(2) requires each manufacturer to report to the Secretary twice a year on whether it will comply with the applicable Corporate Average Fuel Economy (CAFE) standard for a model year and on actions it is taking to comply with the standard. The reports are due within 30 days of the beginning of the applicable model year and within 30 days after the middle of the model year. The mid-model year report has proven to be of no value in administering the CAFE program. Accordingly, this section proposes to delete this unnecessary reporting requirement.

Section 9005, Amendments to 49 U.S.C. Chapter 331 ("Theft Prevention"), contains two subsections.

Subsection 9005(a) amends 49 U.S.C. 33104 ("Designation of high theft vehicle lines and parts") to repeal paragraph (a)(6) of subsection (a), "Designation, Nonapplication, Selection, and Procedures," a provision that prevents the redesignation of high-theft lines. Under this provision, a line of passenger motor vehicles designated as a high-theft line must remain a high-theft line regardless of subsequent theft experience. Accordingly, this subsection would permit a line to be redesignated as not high-theft if the theft data support such a redesignation.

Subsection 9005(b) repeals 49 U.S.C. 33112 ("Insurance reports and information"). Section 33112 requires certain insurers of motor vehicles, as well as companies that sell or lease motor vehicles, to file annual reports with the Secretary on various insurance-related matters, including: any motor vehicle thefts and recoveries they have experienced over the past year; rating rules they used to establish premiums for comprehensive coverage; actions they took to reduce premiums for comprehensive coverage; and actions they took to reduce the theft of their vehicles. These reports have not proved useful in preventing motor vehicle theft. Because they impose a considerable paperwork burden on these insurers and, indirectly, on the public, without a corresponding benefit, this subsection would repeal the requirement for this information.

Section 9006 adds a new Chapter 307, “Titling and Control of Severely Damaged Passenger Motor Vehicles,” requiring the States

to use uniform definitions for titling severely damaged passenger motor vehicles and to adopt related control systems. The lack of uniformity in State laws on vehicle titling, registration, and salvage of used passenger motor vehicles increases the likelihood that the theft of these vehicles will go undetected. Further, this lack of uniformity in State laws permits unscrupulous sellers to sell these vehicles without disclosing that they have been severely damaged. Vehicles sold in this manner often have titles that have been "laundered" to remove such information. Removing salvage history from a vehicle's title aids sellers who intend to mislead potential buyers about the condition and the value of these vehicles. In addition, passenger motor vehicles that have been severely damaged, either through crashes or acts of nature such as floods, are often repaired without inspection and make their way back on the Nation's roads and highways -- posing a danger to the lives of their operators, passengers, pedestrians, and other motorists. The lack of a safety inspection for rebuilt salvage passenger vehicles clearly may pose a risk of death or serious injury. Likewise, an anti-theft inspection may ensure that these vehicles are not rebuilt with stolen parts.

Subsection 9006(a) sets out Chapter 307, which is comprised of 9 sections. The following analysis describes each of these sections.

Sec. 30701, Definitions, establishes uniform definitions concerning severely damaged passenger motor vehicles and their titles. The definitions provide a common means for uniformly dealing with the titling and control of severely damaged passenger motor vehicles by the States.

Sec. 30702, Titling disclosure requirements on the transfer of

passenger motor vehicles; duplicate titles, has two subsections. Subsection (a) establishes uniform titling disclosure requirements for passenger motor vehicles currently titled and in service. Until the uniform requirements for controlling damaged vehicles proposed by this bill are in place, the States are required, upon the transfer of the vehicle's ownership, to place a conspicuous mark on the title for such a vehicle, indicating whether the vehicle was previously issued a certificate of title or a nonrepairable motor vehicle certificate containing a damage brand and the State responsible for the brand.

Subsection (a) also directs the Secretary to issue a rule, as soon as practicable after the chapter's enactment, establishing the manner in which, and the date by which, a State must disclose on subsequent certificates of title, including a duplicate or replacement, (1) whether the vehicle was previously issued a certificate of title or a nonrepairable motor vehicle certificate containing a damage brand and the State responsible for the brand, and (2) the manner in which this information is to be retained by the State.

Subsection (b) establishes procedures for the issuance of duplicate or replacement titles. This provision will ensure that a duplicate or replacement title is issued only to the owner of the motor vehicle or a person that the owner has authorized to obtain a duplicate or replacement title. The controls apply, not only to damaged vehicles, but to all passenger motor vehicles to deter motor vehicle theft and fraud. To this end, the subsection prohibits over-the-counter issuance of a duplicate or replacement certificate of title to anyone other than the owner of the motor vehicle, and requires that the duplicate or replacement certificate of title be mailed to a requested address, when a power of attorney is exercised, and that a notification of this action be sent to the vehicle's owner. The subsection also directs the Secretary to issue a rule, as soon as practicable after the chapter's enactment, establishing the manner in which, and the date by which, a State must disclose on duplicate or

replacement certificates of title for passenger motor vehicles, (1) that the duplicate or replacement certificate of title is a duplicate, and (2) the manner in which this information is to be retained by the State.

Sec. 30703, Requirements for a salvage title and a nonrepairable motor vehicle certificate and their cancellation, has five subsections that establish uniform requirements for salvage titles, nonrepairable motor vehicle certificates, and procedures for their cancellation, to control severely damaged passenger motor vehicles from the time they incur such severe damage until they are either properly repaired or destroyed and removed from highway use.

Subsection (a) applies to insurance carriers. When the ownership of a severely damaged passenger motor vehicle is transferred to an insurance carrier, in accord with a damage settlement, and the damage to the vehicle requires that it be titled either as a salvage motor vehicle or a nonrepairable motor vehicle, the insurance carrier is required to apply to the State in which such a transfer takes place, within 15 days of the date of transfer (with all liens released), for a salvage title or a nonrepairable motor vehicle certificate. If the ownership of a severely damaged passenger motor vehicle is not transferred to an insurance carrier, in accord with a damage settlement, and the damage to the vehicle requires that it be titled either as a salvage motor vehicle or a nonrepairable motor vehicle, the insurance carrier is required to provide written notification to the owner (i) of the owner's obligation to apply for a salvage title or a nonrepairable motor vehicle certificate and also notify the State's office for titling motor vehicles that a salvage title or a nonrepairable motor vehicle certificate must be issued for the motor vehicle, or (ii) that the insurance carrier will withhold any payment on the damage settlement until the owner applies for a salvage title or a

nonrepairable motor vehicle certificate.

Subsection (b) applies to owners. When an insurance carrier is not involved in a damage settlement regarding a passenger motor vehicle that is damaged severely to the extent that it must be titled either as a salvage motor vehicle or a nonrepairable motor vehicle, or a person becomes the owner of such a motor vehicle, the owner is required, before the vehicle is repaired or its ownership is further transferred, to apply for a salvage title or a nonrepairable motor vehicle certificate, no later than 30 days after the date of the damage or its transfer, as appropriate.

Subsection (c) applies to lessees and lessors. For a leased passenger motor vehicle, the lessee is required to give a written notification to the lessor when the motor vehicle is severely damaged. In addition, if the leased passenger motor vehicle has been severely damaged so that it must be titled either as a salvage motor vehicle or a nonrepairable motor vehicle, the lessor is required to apply for a salvage title or nonrepairable motor vehicle certificate within 15 days after receiving the lessee's notification of the damage.

Subsection (d) applies to owners of severely damaged passenger motor vehicles when they are destroyed. When a passenger motor vehicle is destroyed by flattening, baling, shredding or other means, its owner is required to surrender its title or nonrepairable motor vehicle certificate to the State that issued it for permanent cancellation, no later than 30 days after the date of its destruction.

Subsection (e) directs the Secretary of Transportation to prescribe regulations to implement this section as soon as practicable after the enactment of this chapter.

Sec. 30704, Requirements for titling rebuilt salvage passenger

motor vehicles, directs the Secretary of Transportation to prescribe regulations to enable salvage passenger motor vehicles, for which a salvage title has been issued, to be licensed for use. Under these regulations, these vehicles are not eligible to be licensed for use in a State unless the State issues a rebuilt salvage title for it, indicating that: (1) the vehicle has met State inspection standards established in accord with regulations prescribed by the Secretary, pursuant to the inspection criteria of section 30705, and that a certificate of inspection that records this compliance on its face has been issued to the motor vehicle's owner; and (2) the vehicle's door jamb on the driver's side has secured on it a permanent label, stating "Rebuilt Salvage Motor Vehicle--

Inspections Passed," affixed by an inspection official of the State.

Sec. 30705, Inspection criteria for rebuilt salvage passenger motor vehicles, has three subsections, as follows.

Subsection (a) directs the Secretary of Transportation, as soon as practicable after the enactment of this chapter, to establish standards and procedures for the anti-theft inspection of rebuilt salvage passenger motor vehicles by State inspection systems. The anti-theft inspection includes the training of inspectors and equipment standards, to deter the use of stolen parts in the rebuilding and repair of salvage motor vehicles. This inspection must include requirements that direct the vehicle's owner to submit: (1) the salvage title for the motor vehicle; (2) a declaration of the damages to the motor vehicle and the replacement parts used in its repair, prior to its being repaired, as evidenced by bills of sale, invoices, or, if such documents are not available, other proofs of ownership; and (3) an affirmation that the declaration concerning damages to the vehicle and replacement parts used in repairing it is complete and accurate and, to the owner's knowledge, no stolen parts were used to

rebuild and repair it. This inspection also would include requirements directing that the State inspection system seize as contraband a passenger motor vehicle, a major part, or a major replacement part, required to be marked in accordance with Chapter 331 ("Theft Prevention") of this title, but has had its mark or vehicle identification number illegally altered, defaced, or falsified, and cannot be identified as having been obtained legally, as shown by bills of sale, invoices, or other ownership documents. Finally, the subsection directs the Secretary to coordinate with the Attorney General in carrying out the Secretary's duties under the subsection.

Subsection (b) directs the Secretary of Transportation, as soon as practicable after the enactment of this chapter, to establish standards and procedures for the safety inspection of rebuilt salvage passenger motor vehicles by State inspection systems. The safety inspection includes the training of inspectors and equipment standards, to reduce death and injuries attributable to failure or inadequate performance of rebuilt salvage passenger motor vehicles.

Subsection (c) requires the State inspections established and operated pursuant to this section to be self-sufficient, paid for by user fees collected and retained by the States.

Sec. 30706, Prohibited acts, prohibits a person from doing the following acts: (1) with intent to defraud, alter a certificate of title, including a duplicate or a replacement; (2) with intent to defraud, make or cause to be made any false statement on an application for a certificate of title, including a duplicate or a replacement; (3) fail to apply, within the prescribed time and manner, for either a salvage title or a nonrepairable motor vehicle certificate for a passenger motor vehicle when such an application is required; (4) fail to provide any written notification when such written notification is required; (5) fail to surrender a certificate of title or nonrepairable

motor vehicle certificate when such surrender is required; (6) alter, forge, or counterfeit a certificate of title, a certificate of inspection recording compliance with a State's inspection criteria for a rebuilt salvage passenger motor vehicle, or a State's permanent label, stating "Rebuilt Salvage Motor Vehicle--

Inspections Passed"; (7) falsify the results of, or provide false information in the course of, any inspection conducted pursuant to section 30705; (8) operate or introduce into commerce a salvage motor vehicle or a nonrepairable motor vehicle as a rebuilt salvage passenger motor vehicle; (9) conspire to violate this section or sections 30703, 30704, or 30705 of this chapter; or (10) fail to comply with applicable regulations prescribed by the Secretary of Transportation in carrying out this chapter.

Sec. 30707, Penalties and enforcement, has four subsections. Subsection (a) permits a civil penalty of up to $2,000 to be assessed for each violation of this chapter or a regulation prescribed or an order issued under this chapter, as defined in section 30706. A separate violation is committed with respect to each vehicle involved in the violation. No more than $100,000 may be assessed for a related series of violations. The Secretary of Transportation has responsibility for imposing a civil penalty, and the Attorney General for bringing a civil action to collect it. The titling requirements are intended to be enforced primarily by the States. In those infrequent situations when Federal enforcement is necessary, the Attorney General will have prosecutorial discretion in bringing cases. However, before referring a penalty claim to the Attorney General, the Secretary may compromise the amount of the penalty. Before compromising the amount of the penalty, the Secretary is directed to give the person charged with a violation an opportunity to establish that the violation did not occur. In determining the amount of the penalty, or the amount agreed upon in compromise, the Secretary is

directed to consider: (1) the nature, circumstances, extent, and gravity of the violation; (2) with respect to the violator, the degree of culpability, any history of prior violations, the ability to pay, and any effect on the ability to continue doing business; and (3) other matters that justice requires.

Subsection (b) establishes a criminal penalty for persons who knowingly and willfully violate this chapter or a regulation prescribed or an order issued under this chapter. The penalty for such violations includes fines under title 18, U.S. Code, imprisonment for not more than 3 years, or both. If the person is a corporation, the penalties of this subsection also apply to a director, officer, or individual agent of a corporation who knowingly and willfully authorizes, orders, or performs an act in violation of this chapter or a regulation prescribed or order issued under this chapter without regard to penalties imposed on the corporation.

Subsection (c) provides that, upon a civil action taken by the Attorney General, the U.S. district courts shall have jurisdiction to enjoin violations of this chapter or a regulation prescribed or an order issued under this chapter. Venue and service of process requirements are established, and subpoenas may extend into any other judicial district.

Subsection (d) provides that when a person violates this chapter or a regulation prescribed or an order issued under this chapter, the chief law enforcement officer of the State in which a violation occurs may bring a civil action to: (1) enjoin the violation; or (2) recover amounts for which the person is liable under section 30707 of this chapter for each person on whose behalf the action is brought. An action under this subsection may be brought in an appropriate U.S. district court or in a State court of competent jurisdiction, but must be brought no later than 2 years after the claim accrues.

Sec. 30708, Civil actions by private persons, has two subsections. Subsection (a) provides that a person who, with intent to defraud, violates this chapter or a regulation prescribed or an order issued under this chapter is liable for 3 times the actual damages or $1,500, whichever is greater.

Subsection (b) permits a private person defrauded by a violator of the requirements of this chapter or a regulation prescribed or an order issued under this chapter to bring a civil action to recover damages under this section in an appropriate U.S. district court or in another court of competent jurisdiction. The action must be brought no later than 2 years after the claim accrues. The court is directed to award costs and a reasonable attorney's fee to the person when a judgment is entered for that person.

Sec. 30709, Relationship to State law, provides that, with regard to State law, this chapter does not: (1) set forth the form of a State certificate of title, (2) affect a State law on titling, recordkeeping, inspection, or titling control procedures in connection with any passenger motor vehicle with intent to defraud, or (3) exempt a person from complying with such a State law on titling, record keeping, inspection, or titling control procedures in connection with any passenger motor vehicle with intent to defraud; except to the extent that those State laws are inconsistent with this chapter and its implementing regulations and orders, and then only to the extent of the inconsistency.

Subsection 9006(b) makes various conforming and technical amendments to Chapter 305 of Title 49 (“National Motor Vehicle Title Information System”), and to Chapter 331 of Title 49 (“Theft

Prevention”).

TITLE X. HAZARDOUS MATERIALS REAUTHORIZATION

SECTION 10001. This section contains the short title.

SECTION 10002. This section would add and modify definitions in chapter 51 of title 49 as indicated below.

The definition of "commerce" would be amended to include all trade or transportation on a United States-registered aircraft. This amendment would provide jurisdiction over hazardous materials activities being conducted on a U.S.-registered aircraft between two foreign points. Such jurisdiction would parallel U.S. and Department of Transportation jurisdiction over air safety aspects of those same flights. Assertion and exercise of that jurisdiction is necessary for the United States to carry out its obligations under the Chicago Convention.

The definitions of "hazmat employee" and "hazmat employer" would be amended to clarify the applicability of the training requirements in section 5107. To eliminate ambiguity in the current training requirements, the two definitions would be amended to clearly require hazmat training for self-employed persons. The two definitions also would be amended to clarify that containers and drums are types of packagings, by adding the words "or other" before the word "packagings."

The definition of "motor carrier" would be amended by clarifying that it includes a freight forwarder, as defined in section 10102 of title 49, only if the freight forwarder is performing a function related to highway transportation. Provisions applicable to motor carriers should not apply to freight forwarders performing functions not related to highway transportation.

A new definition would be added for "out-of-service order." This term, which would be used in a new subsection 5122(e), would be defined as a mandate that an aircraft, vessel, motor vehicle, train, other vehicle, or a part of any of these, not be moved until specified conditions have been met.

To clarify the meaning of terms used frequently in chapter 51, definitions would be added for "package" or "outside package," and "packaging." "Package" or "outside package" would be defined as a packaging plus its contents. "Packaging" would be defined as a receptacle and any other components or materials necessary for the receptacle to perform its containment function in conformance with the minimum packaging requirements established by the Secretary of Transportation.

Finally, the definition of "person" would be amended so that the requirements of chapter 51 apply to additional activities of government agencies and Indian tribes. They would be regulated not only when they offer hazardous materials in commerce or transport a hazardous material to further a commercial enterprise, but also when they manufacture, recondition, or test containers, drums, or other packagings represented as qualified for use in transporting hazardous

materials. Because those package-

related activities have the potential to affect the transportation of hazardous materials by other persons, regulation of those activities is appropriate to ensure that they are conducted in a safe manner.

SECTION 10003. This section would delete section 5106 and reserve that section. Because of the broad authority of the Secretary of Transportation, under section 5103(b), to prescribe regulations for the safe transportation of hazardous materials in intrastate, interstate, and foreign commerce, section 5106 is unnecessary. In addition, this section has the potential to create confusion about the respective responsibilities of the Department of Transportation, the Occupational Safety and Health Administration of the Department of Labor, and the Environmental Protection Agency. Therefore, it should be eliminated.

SECTION 10004. This section would amend section 5107(f)(2) by deleting the reference to section 5106, which is proposed to be eliminated.

SECTION 10005. This section would make miscellaneous changes to the registration provisions in section 5108.

To reduce registrants' reporting requirements, section 5108(b)(1)(C) would be amended by changing the registration statement. Instead of requiring the registrant to separately identify each registration-requiring activity that it conducts in each State, the new paragraph would only require the registrant to list each State in which it

transports or causes to be transported a hazardous material in a quantity and manner requiring registration.

Section 5108(c) would be simplified by requiring each person required to file a registration statement to do so annually in accordance with regulations issued by the Secretary of Transportation.

Section 5108(f) would be amended by correcting the cross-reference to a provision of the Freedom of Information Act from 5 U.S.C. 552(f) to 5 U.S.C. 552(b).

SECTION 10006. This section would amend section 5109 by replacing a premature requirement to establish a Federal permitting system with a pilot program that would consider alternative means of enhancing motor carrier transportation of hazardous materials. That section currently requires the Secretary to prescribe regulations establishing a safety permit program under which motor carriers of certain hazardous materials would be required to obtain a Federal permit. Because many States have different permit requirements for those carriers and in order to develop a coordinated Federal-State partnership in this area, the Federal Highway Administration (FHWA) conducted a study and a pilot project under section 5119 of title 49. The purpose of those activities was to determine the feasibility of developing a uniform permitting system that would enhance safety, meet the States' needs, and avoid unnecessary industry costs. These activities, however, revealed that a uniform permit system will not likely resolve different States' concerns that their needs will be met, and raises additional concerns related to unnecessary preemption and expenses of a parallel Federal

permitting system.

To address these concerns, this section would authorize the Secretary of Transportation to conduct an additional study to consider alternative means of enhancing safe hazardous materials transportation by motor carriers. The program would consider use of automated carrier assessments in lieu of safety permits. It would build upon the FHWA's Automated Safety Assessment Program, explore the use of advanced technology to monitor the safety performance of carriers, and examine the use of that technology to provide meaningful safety-related feedback to motor carriers.

SECTION 10007. This section would modify the requirement in section 5110(e) that shippers and carriers retain shipping papers for one year. Section 5110(e) presently requires retention for one year after the hazardous material to which a shipping paper applies is no longer in transportation. Because many shippers do not know whether or when the transportation ends, they do not know how long they are required to retain the shipping papers. Therefore, that section is being modified to provide for shipping paper retention for one year after the shipping paper is provided to the carrier.

SECTION 10008. Several technical amendments would be made to section 5115 to reflect the fact that the public sector training curriculum already has been developed and to focus the statutory provisions on updates to, not development of, the curriculum.

This section also would expand the public sector training curriculum to include response to crashes or incidents involving alternative fuel

vehicles. As the nation enhances protection of the environment in the transportation field, such as reducing motor vehicle-related air pollution, it is important that safety precautions keep abreast of those developments. Therefore, public sector employees should receive emergency response training on any unique hazards that may be encountered in responding to situations involving alternative fuel vehicles, including those powered by electricity, liquefied petroleum gas or compressed natural gas. As part of the curriculum, the training related to those vehicles would include the interplay between those vehicles and various types of hazardous materials that could be involved in incidents involving them.

SECTION 10009. This section would add a new subsection (l) to section 5116(a) providing the Secretary with authority to authorize States and Indian tribes to use up to 25 percent of their grant monies received under section 5116 to assist small businesses in complying with regulations issued by the Secretary under chapter 51. It also would clarify section 5116(e) by changing a reference to "Amounts of the State or tribe" to "Amounts received by the State or tribe." Subsection 5116(f) would be amended to consolidate the authority to monitor public sector emergency response planning and training with the Secretary of Transportation because, historically, DOT has been the only agency funded to carry out this function.

SECTION 10010. This section would change the term "exemption" to "special permit." The term "exemption" gives an erroneous impression that hazardous materials transportation under an exemption is being carried out without regulation, and the term "special permit" will appropriately convey that such transportation is required to be conducted in accordance with terms and conditions set by the Department of Transportation.

In addition, this section would amend section 5117(a)(2) by changing the maximum effective period of a special permit from two years to four years. This change would eliminate a great deal of unnecessary industry application time and Government processing time involved in the present two-year renewal process. This proposed change evolved from President Clinton's Regulatory Reinvention Initiative.

The increased maximum effective period of time will have a positive impact on safety. It will enable RSPA staff to avoid time-consuming processing of routine renewals and instead focus attention on more significant exemption (special permit) issues. In addition, RSPA has at least two means of dealing with related safety issues. First, the time period for each special permit can be restricted to whatever period of time less than four years that is determined appropriate for safety purposes. Second, under recently amended regulations (49 CFR 107.121), RSPA may modify an exemption (special permit) if a related statute or regulation has been changed, and may modify, suspend, or terminate an exemption if the exemption no longer would provide the same level of safety as the regulations, the application was significantly or deliberately inaccurate or incomplete, or the exemption-holder has knowingly violated a regulation or the exemption in a manner demonstrating unfitness to conduct the activity authorized in the exemption.

SECTION 10011. This section would move three enforcement-related provisions from section 5121 (Administrative) to the more appropriate section 5122 (Enforcement).

SECTION 10012. This section would add a new subsection (c) to section 5121 authorizing the Secretary of Transportation to enter into grants, cooperative agreements, and other transactions to further the objectives of chapter 51 of title 49. Those objectives include the conduct of research, development, demonstration, risk assessment, emergency response planning, and training activities. Under the new provision, the Secretary would have express authority to enter into grants, agreements and transactions with a person, agency or instrumentality of the United States, a unit of State or local government, an Indian tribe, a foreign government (in coordination with the Department of State), an educational institution, or other entity.

SECTION 10013. This section would improve safety by clarifying and enhancing the inspection and enforcement authority of DOT officials and inspection personnel. First, section 5122(a) (current section 5121(a)), would be amended by adding "inspect" to the authorities of the Secretary. This addition will expressly state the authority of DOT inspectors to conduct routine inspections to ensure compliance with chapter 51, an authority that is implied by the existing language in that section.

This section also would add a new subsection 5122(d) authorizing DOT inspection personnel to open and examine contents of packages offered for or in transportation when the package is marked, labeled, certified, placarded or otherwise represented as containing a hazardous material or there is an objectively reasonable and articulable belief that the package may contain a hazardous material; take and analyze a sample of a material marked or represented as a hazardous material or for which there is an objectively reasonable and articulable belief that the material may be a hazardous material;

prevent transportation of a material until its hazardous qualities have been determined when there is an objectively reasonable and articulable belief than an imminent hazard may exist; and authorize properly qualified personnel to conduct the examination, sampling, or analysis of the material when safety might otherwise be compromised.

This improved inspection authority comports with the Fourth Amendment. The landmark decision, New York v. Burger, 482 U.S. 691 (1987), and its progeny adopted the administrative search doctrine permitting a regulatory agency with a substantial governmental interest to conduct warrantless inspections of "closely regulated" or "pervasively regulated" industries, provided that the agency's inspection program was reasonable. One case, United States v. V-1 Oil Co. , 63 F.3d 909 (9th Cir. 1995), cert. denied, _ U.S. _, 116 S.Ct. 1824 (1996), ruled that the transportation of hazardous materials is a "closely regulated" industry in upholding the Federal Railroad Administration's hazardous materials inspection program. The hazardous materials law circumscribes this industry, thus reducing the level of expectation of privacy of those businesses engaging in it. Therefore, persons offering or transporting packages identified as hazardous materials possess limited privacy interests, authorizing DOT inspection personnel to inspect these shipments.

Likewise, this legislation protects the constitutional rights of persons offering or transporting other types of shipments. The momentary "stop and search" of these packagings invoke minimally intrusive conduct necessary to carry out the purposes of the statute. *See* V-1 Oil Co. v. Means , 94 F.3d 1420 (10th Cir. 1996). Such a brief detention is valid provided that there is an objectively reasonable and articulable suspicion of a violation of the hazmat laws. *See* United

States v. McSwain , 29 F.3d 558 (10th Cir. 1994). Shipments containing undeclared or unreported hazardous materials violate the Hazardous Materials Regulations, thereby giving rise to an immediate inspection. DOT officers or inspectors would have to have a particularized and objective basis for suspecting a violation in order to open an unmarked package. *See* United States v. Cortez , 449 U.S. 411 (1981).

Finally, this section would add a new subsection 5122(e) authorizing the Secretary of Transportation to issue emergency orders when it is determined, by testing, inspection, investigation, or research, that an unsafe condition or practice, or combination of them, causes an emergency situation involving a hazard of death, personal injury, or significant harm to the environment. In those situations, the Secretary would be authorized to issue or impose restrictions, prohibitions, recalls, or out-of-service orders, without notice or the opportunity for a hearing, that may be necessary to abate the situation. The Secretary's action would have to be a written order describing the condition or practice, or combination of them, causing the emergency situation; stating the restrictions, prohibitions, recalls, or out-of-

service orders being issued or imposed; and prescribing standards and procedures for obtaining relief from the order. The Secretary would be required to provide for review of that action, with an opportunity for a hearing on the record, under the Administrative Procedure Act. If a petition for review is filed and action on the petition is not completed within 30 days after the petition was filed, the action will no longer be effective unless the Secretary determines in writing that the emergency situation still exists.

The authority provided to DOT officials and inspection personnel

under these new subsections is necessary to ensure the safe transportation of hazardous materials. Although the National Transportation Safety Board (NTSB) has not made its official findings, evidence presented at the NTSB hearings indicated that undeclared hazardous materials may have caused the loss of 110 lives on ValuJet 592 in the Florida Everglades on May 11, 1996. The shipping and transportation of undeclared or hidden hazardous materials is the most dangerous practice involved in hazardous materials transportation. Without notice of the existence and nature of hazardous materials, carriers are unable to verify that the materials are being transported in accordance with the Hazardous Materials Regulations and to take appropriate emergency response actions when a problem develops.

The ValuJet incident does not stand alone. In two other cases, airplanes could have been lost and people killed as the result of hidden hazardous materials in packagings shipped via United Parcel Service (UPS). In 1992, at Honolulu, Hawaii, a UPS contract pilot made an emergency landing after being impaired by fumes from an undeclared propane tank inside a wooden box. In 1991, at Ontario, California, an Ameriflight pilot was impaired by volatile fumes leaking from a UPS package in which a company had shipped an undeclared hazardous material (an adhesive).

In two earlier cases, many transportation employees required medical treatment due to exposure to leaking undeclared hazardous materials. In 1990, at Phoenix, Arizona, six America West Airlines employees were overcome by fumes from a package containing poisonous gas. In a 1989 incident at Ontario, California, 41 UPS personnel were treated after exposure to mercaptan gas, which had been shipped as a "valve."

The Federal Aviation Administration's (FAA) enforcement statistics demonstrate that undeclared hazardous materials are a frequent and increasing problem. The following data show FAA's 1993-1995 hazardous materials enforcement cases and the percentage of them that involved undeclared hazardous materials:

Year	Cases	Cases Involving Undeclared Hazmat	% Cases Involving Undeclared Hazmat
1993	895	420	47%
1994	1,029	656	64%
1995	726	516	71%

Furthermore, the problem of undeclared hazardous materials shipments is not limited to air transportation; it has been experienced in virtually every mode of transportation. These major incidents are merely representative of a more widespread problem. The following data from the Research and Special Program Administration's Hazardous Materials Information System (HMIS) indicate that there were hundreds of carrier-

reported incidents (usually releases of hazardous materials) involving undeclared or hidden hazardous materials. Specifically, from January 1990 through October 1996, there were approximately 872 carrier-reported incidents involving a release of undeclared hazardous materials, resulting in 110 deaths and 112 injuries. Because many incidents are unreported, including those in intrastate

highway transportation not required to be reported, these statistics understate the severity of problems caused by shipments of undeclared hazardous materials. In addition, these statistics cover only those shipments in which an incident occurred -- most likely only a small percentage of the total number of undeclared or hidden hazardous materials shipments.

The authorities being provided to DOT officials and inspection personnel would clarify their existing authority to deal with this problem by opening packagings, inspecting their contents, identifying likely hazardous materials, taking and analyzing samples of those materials, and taking or directing effective ameliorative or prohibitory actions to reduce, eliminate or prevent hazards and their serious potential consequences. For example, a hazardous materials inspector who directly observes a hazardous materials shipment that does not comply with the law may act to prevent movement of that shipment until it is brought into compliance, but it is increasingly important that this general authority be spelled out.

SECTION 10014. This section would amend the civil and criminal penalty provisions in sections 5123 and 5124. It would extend those provisions to cover violations of special permits or approvals issued by the Department to ensure that appropriate enforcement action can be taken against persons operating under and violating those special authorities. The amendment to section 5123 would implement the Federal Civil Penalties Inflation Act of 1990, 28 U.S.C. 2461 note, as amended by the Debt Collection Improvement Act of 1996 (Pub. L. 104-134), by increasing the maximum civil penalty from $25,000 to $27,500. In addition, section 5123 would be amended to add two criteria to the list of factors the Secretary must consider in determining the amount of a civil penalty: any good-faith efforts by

the violator to comply with the applicable requirements, and any economic benefit to the violator resulting from the violation.

Finally, the criminal penalty provision in section 5124 would be amended by adding a new subsection (b), to increase the criminal penalties for a person knowingly violating 49 U.S.C. 5104(b) or willfully violating chapter 51 or a regulation issued under that chapter, and thereby causing a release of hazardous material. Section 5104(b) concerns tampering with a package, vehicle, vessel, aircraft, or rail freight car used to transport hazardous materials. The penalty would be a fine under title 18, not more than twenty years imprisonment, or both. The need to deter intentional releases of hazardous materials is self-evident. Hazardous materials can have disastrous consequences to the environment and to members of the public exposed to the chemicals. This provision is an essential complement to the anti-terrorism provisions set forth in Title XIII of this bill.

SECTION 10015. This section would delete an unnecessary date in section 5125(b)(2).

SECTION 10016. This section would redesignate section 5127 as section 5128 and add a new section 5127 providing for judicial review of final orders issued under chapter 51. This provision establishes the appropriate judicial forum for review of final agency compliance, enforcement, and civil penalty orders, an issue on which the present law is silent. It covers orders issued by the Secretary of Transportation, the Commandant of the Coast Guard, and the Administrators of the Research and Special Programs Administration, the Federal Aviation Administration, and the Federal

Highway Administration. The Federal Railroad Administration is excluded because it already has an applicable judicial review provision (49 U.S.C. 20114(c)) applicable to its hazardous materials cases. The United States Court of Appeals for the District of Columbia or for the circuit in which a person seeking review resides or has its principal place of business would review the order. The petition for review must be filed within 60 days after issuance of the order unless the court finds reasonable grounds for a late filing. The section describes judicial procedures, the authority of the court, a requirement for prior objection, and review by the United States Supreme Court -- all provisions modeled on the statute providing for judicial review of Department of Transportation and Federal Aviation Administration aviation safety orders (section 46110 of title 49). The national transportation issues under chapter 51 similarly require the type of uniform decisionmaking that the Courts of Appeals can provide.

SECTION 10017. This section would amend the authorization of appropriations language in the redesignated section 5128. It would authorize $15,492,000 in appropriations for fiscal year 1998, consistent with the President's budget. It also would eliminate subsection (e) and make ancillary editorial changes. Subsection (e) concerns an authorization to the Secretary for fiscal year 1993 to carry out section 5119, and is no longer needed. Subsection (d)(3) would be amended to delete, as unnecessary, the authorization of funds to the Director of the National Institute of Environmental Health Sciences, the Secretary of Energy, the Administrator of the Environmental Protection Agency, and the Director of the Federal Emergency Management Agency.

TITLE XI. UNDERGROUND DAMAGE PREVENTION

SECTION 11001 sets forth the short title.

Section 11002 adds a new chapter 602 to Subtitle VIII of title 49. One of the major infrastructure issues confronting the Nation is the harm to public safety and the environment resulting from excavator damage to buried utilities. These underground facilities include natural gas and hazardous liquid pipelines, power lines, communication and fiber optic cables, and water and sewer systems. Between 1987 and 1996, third parties (usually excavators) caused at least 28% of all reported accidents to natural gas and hazardous liquid pipeline facilities. As a result of these accidents, 98 people lost their lives and 425 others were hospitalized. In addition to these human tragedies, approximately $143 million in property damages occurred, and 487,504 barrels of hazardous liquid were released into the environment. These incidents included a November 1996 gas explosion that killed 30 people and injured 42 others in Rio Piedras, Puerto Rico; a March 1994 gas pipeline rupture that caused a fire and explosion, destroyed eight buildings and displaced 1,500 tenants in Edison, New Jersey; and a March 1993 pipeline rupture that spilled 10,000 barrels of diesel fuel into the Potomac River at Reston, Virginia.

Third party damage has had a significant impact on aviation and other sectors of the economy. Two examples of many instances follow. In January 1995, a cut to fiber optic lines carrying Air Traffic Control signals completely closed Newark International Airport for a 24-hour period. In January 1991, a crew in Newark removing old phone cable severed fiber lines and thereby disrupted FAA communications in New York, Washington and Boston; caused lengthy flight delays; and blocked 60 percent of the long distance

calls into and out of New York City and shut down several commodities exchanges for most of the business day.

The most effective means of underground damage prevention would be an enhanced and improved one-call notification system operating at the State level. This bill provides for an underground damage prevention program based on four premises: (1) participation by virtually all underground facility operators; (2) use of a one-call system prior to excavating in virtually every case; (3) public awareness and education about the presence, value, and use of one-call systems; and (4) clear, appropriate, and easily enforced sanctions for failure to use the one-call system.

New section 60201 defines key terms used throughout the chapter and recognizes limited exceptions under which certain activities and certain excavators would not have to be included in State one-call programs.

For example, the term "excavation" would not include routine agricultural tilling that does not penetrate below 18 inches from the surface. Generally speaking, operators of underground facilities anticipate routine agricultural activities that occur on farmland and bury underground facilities to a depth of at least three feet. Thus, there is little risk to those facilities from routine tilling. This exception would not extend to deep tilling, or other activities that would be to a depth that could pose a risk to underground facilities.

The term "underground facility" would not include a pipeline providing services within a leasehold to the holder of the mineral

lease so long as the pipeline is rural and not located on a public thoroughfare. The operator of such a pipeline would not have to belong to a one-call system. This exception recognizes that no other parties would be on the property for the purpose of excavation without the knowledge of the operator.

One of the critical aspects of an effective State one-call notification system is a single, well-publicized telephone number. In many States, there is more than one one-call system with a different number for each. This multiplicity of systems and telephone numbers can lead to confusion and serves as a disincentive to excavators to seek out the one-call center covering the area of the intended excavation. Although it would be preferable that there be but a single one-call center in each State, as a minimum there should be only one telephone number that can link the excavator to the appropriate one-call center. In addition, in some cases an excavator from one State will undertake excavation in another State and may not know the one-call number for that State, and consequently may excavate without having first determined whether there are underground facilities in the area of the intended excavation.

One remedy for these situations is a national one-call number. New section 60202 would require the Secretary to explore the need for, and practicality of, a single nationwide toll-free telephone number to link the caller with the appropriate State one-call number for the area in which the excavation would take place.

New section 60203 contains the elements of a State one-call notification program that would establish an effective underground damage prevention program for the State and would make the State

eligible for a grant under new section 60205. The elements combine those factors that the damage prevention community agrees are critical for an effective program with the flexibility needed by States to address local conditions.

New section 60204 encourages a State to use a broad mix of sanctions for violations of its State program. For example, a State might include some form of ticketing or statutory limitations on tort actions for persons who fail to use available one-call notification systems. This will allow a State to choose those sanctions that will most encourage compliance within the State.

New section 60205 provides the Department of Transportation the authority necessary to make the grants that serve as the incentive for the States to undertake the development and improvement of one-call notification programs. At present, the Department is only authorized to make grants to State pipeline safety programs for purposes of carrying out the pipeline safety regulations, primarily as they apply to intrastate pipelines. Because in most States there is not a direct linkage between the pipeline safety program and the operation of one-call programs, it is necessary to assure that the States can receive funding for one-call programs under a variety of organizational and procedural models.

A State submitting a plan to the Department of Transportation setting forth how the State would develop a program meeting the elements of new section 60203, or improve an existing program to make it consistent with that section, would be eligible for a grant to fund the State's efforts to develop and implement the plan. Subject to appropriations made in advance, funds for fiscal years 1998 - 2000

would be available for the purposes of funding the development and improvement (not the operation and maintenance) of one-call programs in the States.

Section 60205(c) recognizes the fact that in some States there are in operation one-call programs which, although they do not have all of the features described in new section 60203, have a demonstrated record of achieving effective underground damage prevention. In such cases, the Secretary could, upon application by the State, determine that the State program is an acceptable alternative program, and the State would be eligible for grant funding under this section for necessary program improvements. The key element in the Secretary's determination would be the extent to which the alternative State program provides an equivalent level of safety and environmental protection. The reliability of underground facilities protected through one-call notification systems frequently plays an important role in public safety and protection of the environment. For example, the reliability of communication cables may be critical for emergency response.

Section 60205(d) would aid in the creation of a national information clearinghouse on the success of one-call in preventing excavation damage to underground facilities. Because this type of damage is so potentially destructive of vital energy and communication infrastructures, all levels of government and concerned constituent groups must have baseline data for determining what works best in controlling this damage. The development of "best practices" from successful programs will foster improved programs in other States. Finally, information on the number and location of excavation notifications can help government agencies that oversee the underground infrastructure to determine the level of risk to those

facilities and develop the best strategies for dealing with that risk.

A critical feature of the bill, and an essential element in achieving a desirable level of national consistency in one-call programs, is the development by the Department of a model State one-call program. As provided in new section 60206, the Department would develop, and periodically update, a model program. This would be done in consultation with the growing and increasingly effective one-call "community" of key constituent groups comprised of excavators, underground facility operators, State and local governments, and one-call centers (many of whom operate multiple centers in several States). There are several outstanding State programs from which to draw recommendations for a model program.

Among the areas a model program would address is recommendations on "best practices" in crafting and implementing one-call legislation. For example, a requirement that excavators call before they dig will be most effective if the system is convenient to use and is designed to avoid delaying the excavation. The timing of the calls, the timing of the marking, and certain notification when there are no underground facilities can avoid delays to excavators. These matters should be addressed in a model program.

In addition, general issues of worker safety, whether the workers are excavators, persons who routinely work in the vicinity of the underground facility, or persons who mark the underground facilities should be addressed. For example, procedures for excavators to follow when underground facilities cannot be located and practices for marking on rail rights-of-way protect workers.

Another area best explored in a model program is allowable alternative approaches to notification and marking. For example, where there is an ongoing construction activity, excavation may occur periodically over an extended period

of time. There may be a good model for an alternative notification that is compatible with the existing one-call notification program and which provides the same level of safety. Similarly, there may be more comprehensive alternative systems that allow compatible notification and marking within limited circumstances. An example may be comprehensive one-call programs established by railroads that protect telecommunications cables and other underground facilities within their rights-of-

way. In a report entitled "Keeping the Network Alive and Well, Solving the Problem of Cable Dig-Ups," dated February 1996, the Alliance for Telecommunications Industry Solutions recognized the existence of high-quality, railroad-operated one-call systems.

A key feature of the model program would be a national public awareness and education program. The Department would forge a national partnership with the various one-call constituent groups for the establishment and execution of effective media and educational campaigns that would keep the benefits of one-call and the dangers of unreported excavation continually in the public's awareness. This effort could be tied closely to the concept of a national toll-free telephone number.

New section 60207 acknowledges the role of comprehensive one-call notification programs in pipeline damage prevention and provides for coordination of the Secretary's activities under this chapter with

other pipeline safety activities.

SECTION 11003. This section repeals as unnecessary the enumeration of criteria for a one-call notification system currently in pipeline safety law. The elements for a State program contained in this bill provide more flexibility to States and would result in more comprehensive damage prevention programs.

TITLE XII. SANITARY FOOD TRANSPORTATION

SECTIONS 12001 and 12002. These sections set forth the short title and findings for the Sanitary Food Transportation Act of 1997. This title reallocates responsibilities for food transportation safety among the Departments of Health and Human Services (HHS), Transportation, and Agriculture.

SECTION 12003. Subsection (a) of this section amends section 402 of the Federal Food, Drug, and Cosmetic Act (the Act) to provide that food is adulterated if transported in violation of safe transportation practices prescribed under new section 414 of the Act.

Subsection (b) adds to the Act a new section 414 with the following provisions:

Section 414(a) requires the Secretary of HHS to establish by regulation sanitary transportation practices to be followed by shippers, carriers, and others engaged in food transport. The

Secretary could prescribe practices relating to matters such as sanitation, packaging and protective measures; limitations on the use of vehicles; information sharing between shippers and carriers; and recordkeeping, reporting, and compliance with inspections.

Section 414(b) authorizes the Secretary to publish in the Federal Register (and amend as needed) lists of nonfood products that could render adulterated food products shipped simultaneously or subsequently in the same vehicle.

Section 414(c) authorizes the Secretary to waive all or part of the requirements of section 414, in appropriate circumstances, with respect to particular classes of persons, vehicles, food, or nonfood products.

Section 414(d) preempts State or local law concerning transportation of food that is not identical to section 414.

Section 414(e) requires the heads of other Federal agencies, including the Secretaries of Transportation and Agriculture and the Administrator of the Environmental Protection Agency, to assist the Secretary of HHS, upon request, in carrying out this section.

Section 414(f) defines terms used in this section.

Subsection (c) of section 203 adds to the Act a new section 703A, requiring persons subject to section 414 to cooperate with HHS

inspections of records required under section 414. It also includes a conforming amendment to section 703 of the Act.

Subsection (d) amends section 301 of the Act to make violations of requirements added by this section prohibited acts subject to the sanctions provided in chapter III of the Act.

SECTION 12004. This section revises the findings in chapter 57 of title 49, relating to sanitary food transportation, to recognize the appropriate roles of the Federal agencies concerned with food transportation. This section also requires the Secretary of Transportation, the Secretary of Agriculture, and the Administrator of the Environmental Protection Agency to assist the Secretary of HHS in carrying out food transportation responsibilities under Section 414 of the Federal Food, Drug, and Cosmetic Act. In addition, it requires the Secretary of Transportation to train Department of Transportation personnel who perform motor vehicle and railroad related safety inspections to identify practices and conditions that could pose a threat to food safety and to notify the Secretary of HHS and the Secretary of Agriculture of any instances of potential food contamination identified during those inspections.

SECTION 12005. This section makes the changes in law under the title align with the federal fiscal year, which is particularly important for the transfer of duties among different agencies.

TITLE XIII. RAIL AND MASS TRANSPORTATION ANTI-TERRORISM

SECTION 13001. Section 13001 provides that the title may be cited as the "Transportation Anti-Terrorism Act of 1997."

SECTION 13002. Section 13002 provides that the purpose of the Act is to protect the passengers and employees of railroad carriers and mass transportation systems and the movement of freight by railroad from terrorist attacks.

SECTION 13003. Subsection (a) would amend existing 18 U.S.C. 1992, dealing with wrecking trains, to create criminal sanctions for violent attacks against railroads, railroad employees and railroad passengers similar to sanctions currently provided for attacks against airlines, vessels on the high seas, motor carriers, and pipelines. See 18 U.S.C. 32 and 884(g)(1) (destruction of aircraft or aircraft facilities), 18 U.S.C. 33 (destruction of motor vehicles or motor vehicle facilities), 18 U.S.C. 2271-

8, 2280, 2281 (violence against maritime navigation), and 49 U.S.C. 60123 (damaging pipelines).

The need for strong criminal legislation to deter attacks against railroads is highlighted by the following examples of incidents that have occurred in recent years: on April 1, 1996, fire damage to a railroad trestle nearly resulted in the destruction of an Amtrak passenger train between Santa Fe, New Mexico and Las Vegas, Nevada (arson is suspected); on October 9, 1995, the intentional derailment of an Amtrak passenger train near Hyder, Arizona resulted in one death and seventy-eight injuries; on May 21, 1993, the intentional derailment of an Amtrak passenger train near Opa-

Locka, Florida resulted in the injury of six of the train's passengers and crewmembers; and on August 12, 1992, the intentional derailment of an Amtrak passenger train at Newport News, Virginia resulted in the injury of seventy of the train's passengers and crewmembers. Vandalism has also resulted runaway railroad cars, freight train derailments, which in at least one case resulted in a hazardous material spill, and the burning of railroad equipment.

The requisite federal jurisdictional showing has been reduced to maximize the deterrent effect of the statute. The existing wrecking trains statute is limited to terrorist acts against trains, engines, motor units or cars used, operated or employed in interstate or foreign commerce by any railroad or against various fixed facilities used in the operation of a railroad in interstate or foreign commerce. The amendment expands the coverage of the statute to include terrorist acts against railroad carriers engaged in or affecting interstate or foreign commerce, and any railroad carrier if the person travels, communicates, or transports materials across State lines in aid of the commission of such acts.

Subsection (a) of section 1992 incorporates the existing statutory prohibitions, with some modifications, and adds additional prohibitions. The first paragraph is similar to the existing section, which prohibits wrecking, derailing, or disabling railroad equipment, but adds a prohibition against setting fire to such equipment.

The second paragraph is similar to the existing section, which prohibits the placement of any explosive substance in, upon or near railroad equipment or other railroad property with the intent to derail, disable, or wreck a train or other railroad equipment, with

certain exceptions. First, paragraph two is limited to acts against railroad equipment; acts against other railroad property is covered in paragraph three. Second, to be consistent with existing federal criminal laws, the term “explosive substance” has been replaced with the term “destructive substance,” which is defined as any explosive substance, flammable material, infernal machine, or other chemical, mechanical, or radioactive device or matter of a combustible, contaminative, corrosive, or explosive nature. Third, a prohibition against the placement of a destructive device is added. The term “destructive device” is defined in subsection (d). Fourth, the intent to derail, disable, or wreck railroad equipment requirement is replaced with a requirement that the placement of the destructive substance or destructive device on the equipment be unauthorized, and with the. Fifth, since "destructive substance" could include hazardous material, this paragraph requires that the destructive substance be placed with the intent to endanger a passenger or employee, or with reckless disregard for the safety of human life.

The third paragraph is similar to the existing section with the following exceptions. First, the term “explosive substance” has been replaced with the term “destructive substance.” Second, a prohibition against the placement of a destructive device is added. Third, railroad signals are no longer covered by this paragraph but are covered in paragraph four. Fourth, the intent to derail, disable, or wreck requirement is replaced with a requirement of “knowing or having reason to know” such activity would likely derail, disable, or wreck railroad equipment.

The fourth paragraph makes punishable damaging or otherwise impairing a railroad signal system, including a train control system, a centralized dispatching system, or highway-railroad grade crossing

warning signal. The existing statute is limited to terrorist acts against signals, and would not cover, for example, an instance of an individual willfully damaging a computer located in a centralized dispatching facility in Fort Worth, Texas, for the purpose of creating a false proceed signal in Butte, Montana.

The fifth paragraph makes punishable acts which disable or incapacitate a locomotive engineer, conductor, or other railroad employee while they are operating or maintaining railroad equipment. There is no parallel provision in the existing statute. Despite the fact that these acts are less likely to occur in the railroad context than in other modes of transportation, the provision is, nevertheless, a necessary one. For example, it is possible that an individual could gain access to a locomotive engine and incapacitate a locomotive engineer in order to carry out a train robbery or to wreck the train. Alternatively, an individual might incapacitate a signal dispatcher, in order to reroute trains onto a collision course. These and similar acts would be covered by this provision.

The sixth paragraph makes punishable acts intended to cause death or serious bodily injury to a railroad employee or passenger on the property of a railroad carrier. There is no parallel provision in the existing statute. Examples of acts that would be covered include gas attacks, and killing or seriously injuring railroad employees in a dispatching center.

The seventh paragraph makes punishable causing the release of a hazardous material being transported by rail freight car, including bulk and non-bulk freight, with the intent to endanger the safety of any person or with a reckless disregard for the safety of human life.

The eighth paragraph makes punishable conveying or causing to be conveyed false information, knowing the information to be false, concerning any act which would be prohibited by subsection (a), such as bomb threats or other similar acts. There is no parallel provision in the existing statute.

The ninth paragraph makes punishable attempts, threats, and conspiracies to do any of the acts described in paragraphs (1) through (8). The existing statute is limited to attempts to do acts proscribed by the statute.

The penalty for willfully committing any of the acts described in subsection (a) of section 1992 is a fine or imprisonment of not more than twenty years, or both; this is similar to the penalty provision in the existing statute. A person convicted of any crime prohibited by subsection (a) is also subject to:

- imprisonment of not less than thirty years or for life if the railroad train involved carried high-level radioactive waste or spent nuclear fuel at the time of the offense -- this is in the existing statute;
- life imprisonment if the railroad train involved was carrying passengers at the time of the offense -- there is no comparable provision in the existing statute; and
- life imprisonment or death if the offense has resulted in the death of any person -- this is in the existing statute.

Subsection (b) of section 1992 deals with the possession of firearms and other dangerous weapons; there is no comparable provision in the existing statute. The requisite federal jurisdictional showing is broad, and includes acts enumerated in paragraphs one through three that are committed against railroad carriers engaged in or affecting interstate or foreign commerce, and any railroad carrier if the person travels, communicates, or transports materials across State lines in aid of the commission of such acts.

Paragraph one prohibits, except for the circumstances enumerated in paragraph four, the possession or causing to be present any firearm or other dangerous weapon on board a railroad passenger train, and makes such an act punishable by a fine or imprisonment of not more than one year. The terms "firearm" and "dangerous weapon" are defined in subsection (d) of section 1992.

Paragraph two provides that anyone, with the intent that a firearm or dangerous weapon be used in the commission of a crime, knowingly possesses or causes to be present such firearm or dangerous weapon on board a railroad passenger train or in a railroad passenger terminal, or attempts to do so, shall be fined or imprisoned not more than five years, or both.

Paragraph three provides that a person who kills or attempts to kill a person in the course of a violation of paragraphs one or two, or in the course of an attack on a railroad passenger train or a railroad passenger terminal involving the use of a firearm or other dangerous weapon, shall be punishable as provided in 18 U.S.C. 1111, 1112,

and 1113.

Paragraph four permits the following groups of individuals to possess or cause to be present a firearm (and in the case of categories (A), (B), and (C), a dangerous weapon) on board a passenger train without violating paragraph one: (A) an officer, agent, or employee of the United States, a State, or a political subdivision thereof, while engaged in the lawful performance of official duties, who is authorized by law to engage in the transportation of people accused or convicted of crimes, or supervise the prevention, detection, investigation, or prosecution of any violation of law; (B) an officer, agent, or employee of the United States, a State, or a political subdivision thereof, while off duty, if such possession is authorized by law; (C) a Federal official or a member of the Armed Forces if such possession is authorized by law; and (D) an individual transporting a firearm on board a railroad passenger train (except a loaded firearm) in baggage not accessible to any passenger on board the train, if the railroad carrier was informed of the presence of the weapon prior to the firearm being placed on board the train.

Subsection (c) of section 1992 prohibits acts involving the propelling of objects at any locomotive or car of a train, which a reasonable person should know would likely cause personal injury, and makes such acts punishable by a fine or imprisonment for not more than five years, or both. If the offense results in the death of any person, the act is punishable by imprisonment for not more than twenty years. There is no parallel provision in the existing section.

Subsection (d) of section 1992 provides definitions for certain of the terms used in the section. For example, "railroad carrier" is defined

as that term is traditionally defined in the railroad safety laws (49 U.S.C. 20102(2)), as a person providing transportation by railroad. The term "railroad" is defined as in 49 U.S.C. 20102(1), to include transportation by means of conventional trains, new high-speed rail systems, magnetically levitated trains, as well as commuter or other short-haul railroad passenger service, but to exclude rapid transit operations in an urban area that are not connected to the general railroad system of transportation. Use of the term "serious bodily injury" from 18 U.S.C. 1365 is intended to help exclude minor altercations, such as a fist fight between two passengers, from coverage. "High-level radioactive waste" and "spent nuclear fuel" are defined are those terms are used in the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10101(12),(23)).

Subsection (b) modifies the analysis of chapter 97 of title 18, United States Code, to reflect the new title to section 1992.

SECTION 13004. Section 13004 creates a new section 1994 of title 18 to make punishable terrorist attacks against mass transportation systems. Currently, there are no federal laws specifically addressing terrorism of mass transportation systems. Section 1994 is designed to parallel, to the extent applicable, terrorist attacks against railroads (amendment to 18 U.S.C. 1992 in section 14003 of the bill). There are three principal differences between the two sections.

First, in section 1994, the phrase "rail grade-crossing warning signal" is used, whereas "highway-railroad grade crossing warning signal" is used in section 1992. Omitting the term "highway" makes it clear that this provision covers only tampering with signals for fixed rail mass transportation systems such as subways and light rail,

rather than covering all mass transportation signal systems, which would include, for example, highway traffic signals or flashing buoys.

Second, section 1994 defines "mass transportation" as that term is defined in 49 U.S.C. 5302(a)(7), including subways, buses, and vessels, but is expanded to include schoolbus, charter, and sightseeing transportation.

Third, section 1994 does not have a prohibition similar to the prohibition in section 1992(a)(7) dealing with the release of a hazardous material. Rail cars, unlike mass transportation vehicles or vessels, regularly transport large quantities of hazardous material, which could pose substantial safety risks to the public.

The need for strong criminal legislation to deter attacks against mass transportation systems is underscored by the following incidents: during the last two weeks of February 1997, there were several bomb threats against the ferry in Seattle (no bombs were discovered); on September 16, 1996, an improvised explosive device was discovered by a maintenance worker in a trash receptacle at Grand Central Station in New York (the device was safely exploded by the bomb squad); on November 26, 1995, two armed bandits squirted gasoline through the change tray of a subway token booth in Brooklyn and then ignited the gasoline causing the occupied booth to explode, resulting in the death of the toll booth clerk; in December 1994, a lone passenger boarded a subway in Manhattan carrying a bottle of gasoline which exploded, causing numerous injuries; on December 7, 1993, a lone gunman with an automatic weapon opened fire on board a rush hour Long Island Rail Road train, resulting in six

fatalities and seventeen injured commuters; and on February 26, 1993, a massive truck bomb exploded in the parking garage under New York's World Trade Center, causing damage to the subway running beneath the building, and resulting in six deaths and 1000 injuries.

SECTION 13005. Section 13005 provides that the Federal Bureau of Investigation (FBI) shall lead the investigation of all offenses under the Transportation Anti-Terrorism Act. The FBI is to cooperate with the National Transportation Safety Board and with the Department of Transportation in safety investigations by these agencies, and with the Treasury Department's Bureau of Alcohol, Tobacco and Firearms concerning an investigation regarding the possession of firearms and explosives.

TITLE XIV -- RAIL AND MASS TRANSPORTATION SAFETY

SECTION 14001. This section would clarify the Secretary's authority to ensure, when making grants or loans to or for the benefit of commuter railroads, that safety issues are addressed from the outset. The section would not affect fixed guideway systems not subject to Federal Railroad Administration's (FRA) safety jurisdiction, which are addressed by the Federal Transit Administration's (FTA) state safety oversight program. The section would affect only those operations subject to FRA's safety jurisdiction as railroads. FRA and FTA are already cooperating closely to ensure that federal funds are not used on rail projects that may pose safety hazards. This section would clarify the basis for that cooperation and help ensure that applicants for grants or loans

design their projects with the full knowledge that FTA, with FRA's assistance, will review each project's safety aspects. The increasing complexity of signal and train control systems; the near-term possibility of communications-based positive train control; the increasing frequency of rail lines being shared by a mix of commuter, freight, and long-haul passenger operators; and the imminence of FRA's passenger equipment safety regulations make it more necessary than ever that applicants for federal assistance for rail projects plan safety into their projects and that the Department ensure that they do so.

SECTION 14002. This section would amend 49 U.S.C. 20901(a) to eliminate the requirement that railroads file notarized monthly reports with the FRA regarding accidents and incidents on their properties. The notarization requirement causes unnecessary expense and delay, and is an obstacle to filing reports electronically. The requirement for monthly reports is unnecessarily rigid, particularly for small railroads and those who have no events to report. The amendment would allow the Secretary to specify the frequency with which reports must be filed, provide discretion to set different reporting requirements for different classes of railroads, and facilitate electronic filing and a corresponding reduction in paper filings.

SECTION 14003. VEHICLE WEIGHT LIMITATIONS -- MASS TRANSPORTATION BUSES.

Section 14003 extends the existing exemption from axle weight limitations for transit buses for six years, until January 1, 2003. Transit buses comprise significantly less than 1% of the vehicle

population and lighter buses are still under development. The extension is needed to allow additional time to develop and deploy lighter buses.