

**Safe, Accountable, Flexible, Efficient Transportation Equity Act:
A Legacy for Users**

A Summary of Highway Provisions

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Overview

On August 10, 2005, the President signed into law the **Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users** (SAFETEA-LU). With guaranteed funding for highways, highway safety, and public transportation totaling \$244.1 billion, SAFETEA-LU represents the largest surface transportation investment in our Nation's history. The two landmark bills that brought surface transportation into the 21st century—the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) and the Transportation Equity Act for the 21st Century (TEA-21)—shaped the highway program to meet the Nation's changing transportation needs. SAFETEA-LU builds on this firm foundation, supplying the funds and refining the programmatic framework for investments needed to maintain and grow our vital transportation infrastructure.

SAFETEA-LU addresses the many challenges facing our transportation system today – challenges such as improving safety, reducing traffic congestion, improving efficiency in freight movement, increasing intermodal connectivity, and protecting the environment – as well as laying the groundwork for addressing future challenges. SAFETEA-LU promotes more efficient and effective Federal surface transportation programs by focusing on transportation issues of national significance, while giving State and local transportation decision makers more flexibility for solving transportation problems in their communities.

SAFETEA-LU continues a strong fundamental core formula program emphasis coupled with targeted investment, featuring:

Safety – SAFETEA-LU establishes a new core Highway Safety Improvement Program that is structured and funded to make significant progress in reducing highway fatalities. It creates a positive agenda for increased safety on our highways by almost doubling the funds for infrastructure safety and requiring strategic highway safety planning, focusing on results. Other programs target specific areas of concern, such as work zones, older drivers, and pedestrians, including children walking to school, further reflect SAFETEA-LU's focus on safety.

Equity –The new Equity Bonus Program has three features – one tied to Highway Trust Fund contributions and two that are independent. First, building on TEA-21's Minimum Guarantee concept, the Equity Bonus program ensures that each State's return on its share of contributions to the Highway Trust Fund (in the form of gas and other highway taxes) is at least 90.5 percent in 2005 building toward a minimum 92 percent relative rate of return by 2008. In addition, every State is guaranteed a specified rate of growth over its average annual TEA-21 funding level, regardless of its Trust Fund contributions. Selected States are guaranteed a share of apportionments and High Priority Projects not less than the State's average annual share under TEA-21.

Innovative finance – SAFETEA-LU makes it easier and more attractive for the private sector to participate in highway infrastructure projects, bringing new ideas and resources to the table. Innovative changes such as eligibility for private activity bonds, additional flexibility to use

tolling to finance infrastructure improvements, and broader TIFIA and SIB loan policies, will all stimulate needed private investment.

Congestion Relief -- Tackling one of the most difficult transportation issues facing us today -- congestion -- SAFETEA-LU gives States more flexibility to use road pricing to manage congestion, and promotes real-time traffic management in all States to help improve transportation security and provide better information to travelers and emergency responders.

Mobility & Productivity -- SAFETEA-LU provides a substantial investment in core Federal-aid programs, as well as programs to improve interregional and international transportation, address regional needs, and fund critical high-cost transportation infrastructure projects of national and regional significance. Improved freight transportation is addressed in a number of planning, financing, and infrastructure improvement provisions throughout the Act.

Efficiency -- The Highways for LIFE pilot program in SAFETEA-LU will advance longer-lasting highways using innovative technologies and practices to speed up the construction of efficient and safe highways and bridges.

Environmental Stewardship -- SAFETEA-LU retains and increases funding for environmental programs of TEA-21, and adds new programs focused on the environment, including a pilot program for nonmotorized transportation and Safe Routes to School. SAFETEA-LU also includes significant new environmental requirements for the Statewide and Metropolitan Planning process.

Environmental Streamlining -- SAFETEA-LU incorporates changes aimed at improving and streamlining the environmental process for transportation projects. These changes, however, come with some additional steps and requirements on transportation agencies. The provisions include a new environmental review process for highways, transit, and multimodal projects, with increased authority for transportation agencies, but also increased responsibilities (e.g., a new category of "participating agencies" and notice and comment related to defining project purpose and need and determining the alternatives). A 180-day statute of limitations is added for litigation, but it is pegged to publication of environmental actions in the Federal Register, which will require additional notices. Limited changes are made to Section 4(f). There are several delegations of authority to States, including delegation of Categorical Exclusions for all states, as well as a 5-state delegation of the USDOT environmental review authority under NEPA and other environmental laws. The air quality conformity process is improved with changes in the frequency of conformity determinations and conformity horizons.

Investment

Authorizations and Guaranteed Spending Levels

SAFETEA-LU continues the TEA-21 concept of guaranteed funding, keyed to Highway Trust Fund (Highway Account) receipts. In essence, the guaranteed amount is a floor -- it defines the least amount of the authorizations that may be spent. Federal-aid Highway program (FAHP) authorizations in SAFETEA-LU total \$193.1 billion (net of an \$8.5 billion rescission scheduled for September 30, 2009). Adding in the \$100 million per year authorized in title 23 for

Emergency Relief, authorizations for the FAHP total \$193.6 billion. Within total authorizations, the amount guaranteed for the FAHP is estimated to be \$193.2 billion.

If overall discretionary budget caps were in place (not so at the time of enactment of SAFETEA-LU), highway and highway safety programs would be protected by a “firewall” from having to compete with other discretionary programs for room within those caps. The highway category firewall is established based on assumptions about future receipts to the Highway Account of the Highway Trust Fund. Beginning with FY 2007, when newer projections of receipts and actual receipts become available, the highway category firewall is adjusted accordingly. To smooth out the effects of any adjustments, the calculated adjustment will be split over two years. When the firewall is adjusted, equal adjustments are made to highway contract authority (called Revenue Aligned Budget Authority) and the Federal-aid highway obligation limitation.

Revenue Aligned Budget Authority (RABA)

Beginning in FY 2007, authorizations for Federal-aid highway and highway safety construction programs funded from the Highway Account of the Highway Trust Fund and the Motor Carrier Safety Assistance Program (MCSAP) will be adjusted whenever the highway firewall amount is adjusted to reflect changed estimates of Highway Account receipts. The additional authorizations are called RABA because they serve to align budget authority with the revised revenue. The adjustments to authorizations will be made in the same amounts and in the same years as the adjustments to the firewalls

If the adjustment is an increase, a portion of the increase in authorizations is reserved for the Federal-aid highway and highway safety construction programs allocated by the Secretary of Transportation—programs that are not apportioned by statutory formula—and for the Motor Carrier Safety Assistance Program. The remainder of the increased funding is distributed to the States proportional to their shares of Federal-aid highway and highway safety construction apportionments from the Highway Account. If the RABA is positive for 2007, the first call on the additional funds will be to increase States’ return on contributions to the Highway Account of the Highway Trust Fund to 92%. A negative adjustment (reduction) is possible, but only if, as of October 1 of that year, the balance in the Highway Account is less than \$6 billion. [1105]

Administrative Expense

Unlike prior years, administrative expenses associated with the Federal-aid highway program and the Appalachian Development Highway System are provided as a separate authorization in SAFETEA-LU, not as a takedown from apportioned programs. [1103]

Obligation Ceiling

SAFETEA-LU establishes an annual obligation limitation, for the purpose of limiting highway spending each year. The highway obligation limitation applies to all programs within the overall Federal-aid highway program except Emergency Relief, \$639 million per year of the Equity Bonus, and funds for certain projects in legislation before 1998. A portion of each year’s limitation is reserved, or set aside, for administrative expenses and certain allocated programs, with the balance of the limitation being distributed to the States. Limitation set aside each year for certain programs—High Priority (demonstration) Projects, the Appalachian Development Highway System, Projects of National and Regional Significance, National Corridor Infrastructure Improvement program, Transportation Improvements, designated bridge projects, and \$2 billion of the Equity Bonus—does not expire if not used by the end of the fiscal year, but

instead is carried over into future years. The portion of the limitation set aside for research and technology programs may also be carried over, but only for three years. [1102]

Equity Bonus

Federal-aid highway funds for individual programs are apportioned by formula using factors relevant to the particular program. After those computations are made, additional funds are distributed to ensure that each State receives an amount based on equity considerations. In SAFETEA-LU, this provision is called the Equity Bonus (replaces TEA-21's Minimum Guarantee) and ensures that each State will be guaranteed a minimum rate of return on its share of contributions to the Highway Account of the Highway Trust Fund, and a minimum increase relative to the average dollar amount of apportionments under TEA-21, and that certain States will maintain the share of total apportionments they each received during TEA-21. An open-ended authorization is provided, ensuring that there will be sufficient funds to meet the objectives of the Equity Bonus.

Relative rate of return. Each State's share of apportionments from the Interstate Maintenance (IM), National Highway System (NHS), Bridge, Surface Transportation (STP), Highway Safety Improvement (HSIP), Congestion Mitigation and Air Quality Improvement (CMAQ), Metropolitan Planning, Appalachian Development Highway System, Recreational Trails, Safe Routes to School, Rail-Highway Grade Crossing, Coordinated Border Infrastructure programs, the Equity Bonus itself, along with High Priority Projects will be at least a specified percentage of that State's share of contributions to the Highway Account of the Highway Trust Fund. The specified percentage, referred to as a *relative rate of return*, is 90.5% for 2005 and 2006, 91.5% for 2007, and 92% for 2008 and 2009.

States with certain characteristics (e.g., low population density or total population, low median household income, high Interstate fatality rate, high indexed state motor fuel rate) are guaranteed a share of apportionments and High Priority Projects not less than the State's average annual share under TEA-21. In any given year, no State is to receive less than a specified percentage (117% for 2005, 118% for 2006, 119% for 2007, 120% for 2008, and 121% for 2009) of its average annual apportionments and High Priority Projects under TEA-21.

Administration of funds. All but \$2.639 billion annually of Equity Bonus funding is programmatically distributed among certain programs—Interstate Maintenance, National Highway System, Bridge, Congestion Mitigation and Air Quality Improvement, Surface Transportation Program, and Highway Safety Improvement Program. Amounts programmatically distributed to the programs take on the eligibilities of those programs. The remaining \$2.639 billion has the same eligibilities as STP funds, but is not subject to set-asides or suballocations. Of this remainder, \$639,000,000 is exempt from the obligation limitation and \$2 billion receives special no year limitation. [1104, 1102]

Tolling

SAFETEA-LU provides States with increased flexibility to use tolling, not only to manage congestion, but to finance infrastructure improvements as well. Following are programs available to States to toll on a pilot or demonstration basis --

- Under the new **Interstate System Construction Toll Pilot Program**, the Secretary may permit a State or compact of States to collect tolls on an Interstate highway, bridge, or

tunnel for the purpose of constructing Interstate highways. This program is limited to 3 projects in total (nationwide), and prohibits a participating State from entering into an agreement with a private person which would prevent the State from improving adjacent public roads to accommodate diverted traffic.

- The **Interstate System Reconstruction and Rehabilitation Toll Pilot Program** was established in TEA-21 to allow up to 3 Interstate tolling projects for the purpose of reconstructing or rehabilitating Interstate highway corridors that could not be adequately maintained or improved without the collection of tolls. SAFETEA-LU makes no revisions to the program, therefore it continues without change, as it was authorized for “a term to be determined by the Secretary, but not less than 10 years.” [PL 105-178, 1216(b)]
- The **Value Pricing Pilot Program** is continued, funded at \$59 million through 2009, to support the costs of implementing up to 15 variable pricing pilot programs nationwide to manage congestion and benefit air quality, energy use, and efficiency. A new set-aside totaling \$12 million through 2009 must be used for projects not involving highway tolls.
- The new **Express Lanes Demonstration Program** will allow a total of 15 demonstration projects through 2009 to permit tolling to manage high levels of congestion, reduce emissions in a nonattainment or maintenance area, or finance added Interstate lanes for the purpose of reducing congestion. A State, public authority, or public or private entity designated by a State may apply. Eligible toll facilities include existing toll facilities, existing HOV facilities, and a newly created toll lane. Tolls charged on HOV facilities under this program must use pricing that varies according to time of day or level of traffic; for non-HOV, variable pricing is optional. Automatic toll collection is required, and the Secretary must promulgate a final rule specifying requirements, standards, or performance specifications to ensure interoperability within 180 days.

Innovative Finance

To help close the gap between highway infrastructure investment needs and resources available from traditional sources, SAFETEA-LU includes the following provisions which, in addition to tolling options discussed above, will enhance innovative financing and encourage private sector investment --

- **Private Activity Bonds** -- To provide the opportunity for new sources of investment capital to finance our nation's transportation infrastructure system, SAFETEA-LU expands bonding authority for private activity bonds by adding highway facilities and surface freight transfer facilities to a list of other activities eligible for exempt facility bonds. Qualified projects, which must already be receiving Federal assistance, include surface transportation projects eligible under Title 23, international bridge or tunnel projects for which an international entity authorized under Federal or State law is responsible, and facilities for the transfer of freight from truck to rail or rail to truck (including any temporary storage facilities related to the transfers). These bonds are not subject to the general annual volume cap for private activity bonds for State agencies and other issuers, but are subject to a separate National cap of \$15 billion. [11143]

- **Transportation Infrastructure Finance and Innovation Act (TIFIA)** -- The TIFIA program provides Federal credit assistance to nationally or regionally significant surface transportation projects, including highway, transit and rail. This program was established in TEA-21 to fill market gaps and leverage substantial private co-investment by providing projects with supplemental or subordinate debt. SAFETEA-LU authorizes a total of \$610 million through 2009 to pay the subsidy cost (similar to a commercial bank's loan reserve requirement) of supporting Federal credit under TIFIA. To encourage broader use of TIFIA financing, the threshold required for total project cost is lowered to \$50 million (\$15 million for ITS projects), and eligibility is expanded to include public freight rail facilities or private facilities providing public benefit for highway users, intermodal freight transfer facilities, access to such freight facilities and service improvements to such facilities including capital investment for intelligent transportation systems (ITS). [1601]
- **State Infrastructure Banks (SIBS)** -- SAFETEA-LU establishes a new SIB program which allows **all** States, Puerto Rico, the District of Columbia, American Samoa, Guam, the Virgin Islands, and the Commonwealth of the Northern Mariana Islands to enter into cooperative agreements with the Secretary to establish infrastructure revolving funds eligible to be capitalized with Federal transportation funds authorized for fiscal years 2005-2009. This program gives States the capacity to increase the efficiency of their transportation investment and significantly leverage Federal resources by attracting non-Federal public and private investment. [1602]

Highway Trust Fund

Operation of the Highway Trust Fund

The Highway Trust Fund (HTF) is the source of funding for most of the programs in the Act. The HTF is composed of the Highway Account, which funds highway and intermodal programs, and the Mass Transit Account. Federal motor fuel taxes are the major source of income into the HTF.

During the time that SAFETEA-LU was being developed, a number of changes impacting the Highway Trust Fund were adopted in the American Jobs Creation Act of 2004. This Act replaced the reduced tax rates that applied to gasohol with a credit paid from the General Fund of the Treasury and ended the retention of a portion of the tax on gasohol by the General Fund. These actions, coupled with a number of provisions to reduce tax evasion, provided increased tax revenues to the Highway Trust Fund.

SAFETEA-LU extends the imposition of the highway-user taxes, generally at the rates that were in place when the legislation was enacted, through September 30, 2011. Provisions for full or partial exemption from highway-user taxes were also extended. Additionally, provision for deposit of almost all of the highway-user taxes into the HTF is extended through September 30, 2011.

Federal law regulates not only the imposition of the taxes, but also their deposit into and expenditure from the HTF. For the Highway Account, authority to expend from the HTF for programs under the Act and previous authorization acts is provided through September 29, 2009 generally and through September 30, 2009 for administrative expenditures. For the Mass Transit

Account, expenditures are authorized through September 30, 2009. After these dates, expenditures may be made only to liquidate obligations made before that date.

Highway Tax Compliance

Traditionally, the highway programs of the Federal government and most States depend on highway-user tax receipts as the principal source of funding. SAFETEA-LU continues the Highway Use Tax Evasion program, funded at \$127.1 million through 2009, to reduce motor fuel tax evasion. Funds may be used for inter-governmental enforcement efforts, including research and training, and for efforts of the Internal Revenue Service, including the development, operation, and maintenance of databases to support tax compliance efforts. No funding is allocated directly to the States, although States are permitted to use ¼ of 1 percent of their Surface Transportation Program funding for fuel tax evasion activities. Eligible activities are expanded to include efforts to address State-Indian tribe motor fuel tax issues and tax evasion issues associated with foreign imported fuel. A new memorandum of understanding with the Internal Revenue Service relating to the development and maintenance of electronic databases to support excise tax fuel reporting is required. [1115]

Improving Safety

SAFETEA-LU raises the stature of the highway safety program by establishing highway safety improvement as a core program, tied to strategic safety planning and performance. Despite reductions in the rate and actual number of fatalities in 2004, there were still more than 42,000 deaths on the Nation's highways. SAFETEA-LU devotes additional resources and supports innovative approaches to reducing highway fatalities and injuries.

Highway Safety Improvement Program (HSIP)

The highway safety improvement program is established as a core program, separately funded for the first time, with flexibility provided to allow States to target funds to their most critical safety needs. A total of \$5.1 billion is provided for 2006-2009. Of this amount, \$880 million is set aside for a separate distribution for the Railway-Highway Crossing program, with the remainder to be distributed by formula based on each State's lane miles, vehicle miles traveled, and number of fatalities; \$90 million is to be set aside annually for construction and operational improvements on high-risk rural roads. The HSIP requires States to develop and implement a strategic highway safety plan and submit annual reports to the Secretary that describe at least 5% of their most hazardous locations, progress in implementing highway safety improvement projects, and their effectiveness in reducing fatalities and injuries.

State Strategic Highway Safety Plans (SHSP). SHSPs will be used in the Highway Safety Improvement Program to identify and analyze highway safety problems and opportunities, include projects or strategies to address them, and evaluate the accuracy of data and the priority of proposed improvements. The SHSP must be based on accurate and timely safety data, consultation with safety stakeholders, and performance-based goals that address infrastructure and behavioral safety problems on all public roads. States are also required to develop an evaluation process to assess results and use the information to set priorities for highway safety improvements. The Governor or a responsible State agency approves the plan. States that do not develop a strategic plan by October 1, 2007, will be locked in at their FY 2007 HSIP apportionment level pending development of a plan. States with SHSPs have additional

flexibility to use up to 10% of their HSIP funds for behavioral and other safety projects if they meet rail grade crossing and infrastructure safety needs as defined in their SHSPs. [1401]

Safe Routes to School

This new program will enable and encourage primary and secondary school children to walk and bicycle to school. Both infrastructure-related and behavioral projects will be geared toward providing a safe, appealing environment for walking and biking that will improve the quality of our children's lives and support national health objectives by reducing traffic, fuel consumption, and air pollution in the vicinity of schools. [1404]

Work Zone Safety

A number of provisions to address the safety of motorists, pedestrians, and highway construction workers in highway construction work zones are included. A new grant program, funded at \$5 million per year beginning in 2006, will fund work zone safety training, and the National Work Zone Safety Information Clearinghouse is funded. In addition, for all Federal-aid projects, proper temporary traffic control devices must be installed and maintained in the work zone. Workers must wear high-visibility garments. [1110,1402,1409,1410]

Other Safety Issues

Other provisions address specific safety issues, including bicycle and pedestrian safety, improved traffic signs and pavement markings targeted to older drivers and pedestrians, and a study of the safety of toll collectors at toll facilities is authorized. Issues of concern to motorcyclists are to be addressed through the establishment of a Motorcyclist Advisory Council, and a motorcycle crash causation study. [1403, 1405,1411,1914, 5511]

Congestion Relief

One of the biggest transportation challenges facing us today is congestion. It is pervasive, affecting mobility and productivity, the environment, and our quality of life. Congestion has clearly grown -- it now affects more trips, more hours of the day and more of the transportation system. Fundamental in SAFETEA-LU are provisions aimed at reducing congestion, which will in turn save time and fuel, decrease vehicle emissions, lower transportation costs, allow more predictable and consistent travel times, and provide safer highways. While virtually all efforts to improve our highway infrastructure will have an impact on congestion, the following programs are designed primarily for the purpose of managing traffic to reduce congestion:

Real-Time System Management Information Program

Under this new program, the Secretary will establish a real-time system management information program to provide, in all States, the capability to monitor, in real-time, the traffic and travel conditions of the major highways of the U.S. and to share that information to improve the security of the transportation system, address congestion problems, support improved response to weather events and surface transportation incidents, and facilitate national and regional highway traveler information. Data exchange formats, to be established by the Secretary within 2 years, will ensure that data may readily be exchanged with State and local governments and the traveling public. States may use NHS, STP, and CMAQ funds for planning and deployment of

real-time monitoring elements. States will be able to use their State Planning and Research funds for planning of real-time monitoring elements. [1201,5205]

Road Pricing

SAFETEA-LU gives States more options for using road pricing to manage congestion. The Value Pricing Pilot program is continued, and a new Express Lanes Demonstration Program is authorized. Other tolling programs are primarily for the purpose of financing highway construction and reconstruction, but will help with congestion reduction as well. These include the new Interstate System Construction Toll Pilot and the continued Interstate System Reconstruction and Rehabilitation Toll Pilot. [1604]

For a more detailed description of all tolling programs, see the Innovative Financing section.

High Occupancy Vehicle (HOV) Lanes

SAFETEA-LU enhances and clarifies provisions governing the use and operation of HOV lanes. States are required to establish occupancy requirements for HOV lanes, with mandatory exemption for motorcycles and bicycles unless it creates a safety hazard, and optional exemptions for public transportation vehicles, low-emission and energy-efficient vehicles, and High Occupancy Toll (HOT) vehicles (otherwise-ineligible vehicles willing to pay a toll to use the facility). States are required to monitor, assess, and report on the operation of the facility to ensure that it does not become seriously degraded. [1121]

Maximizing Mobility

Financial stewardship and oversight

SAFETEA-LU provides greater emphasis on financial integrity, project delivery, and major project oversight. Annual reviews are required of State DOT financial management systems, minimum standards for estimating project costs are to be developed, and annual reviews of State project delivery systems are to be conducted. The \$1 billion threshold defining major projects is lowered to \$500million, and major projects are required to have project management plans in addition to the previously required finance plans. Finance plans are also required for projects exceeding \$100 million in total cost. These new provisions will strengthen oversight of projects and increase the accountability of the States' in the project delivery process. [1904]

National Highway System (NHS)

The National Highway System is a 163,000-mile system of significant rural and urban roads serving major population centers, international border crossings, intermodal transportation facilities, and major travel destinations. It includes the Interstate System, other urban and rural principal arterials, highways that provide motor vehicle access between the NHS and major intermodal transportation facilities, the defense strategic highway network, and strategic highway network connectors.

The NHS program is funded at \$30.5 billion through 2009. The formula to distribute funding is continued, based on lane-miles of principal arterials (excluding Interstate), vehicle-miles traveled on those arterials, diesel fuel used on the State's highways, and per capita principal arterial lane-miles. The Act expands eligibility of NHS funding to include environmental restoration and pollution abatement to minimize the impact of transportation projects, control of noxious weeds and aquatic noxious weeds, and establishment of native species. [6006]

Interstate Maintenance (IM)

The 46,000 mile Dwight D. Eisenhower National System of Interstate and Defense Highways retains a separate identity within the NHS. The IM program, established under ISTEA to provide for the on-going work necessary to preserve and improve Interstate highways, is retained. Authorizations totaling \$25.2 billion are provided through 2009, and will continue to be distributed by formula based on each State's lane-miles of Interstate routes open to traffic, vehicle-miles traveled on those routes, and contributions to the Highway Account of the Highway Trust Fund attributable to commercial vehicles. A total of \$500 million of authorized funds is available at the discretion of the Secretary for high-cost, ready-to-go IM projects.

Surface Transportation Program (STP)

The STP provides flexible funding that may be used by States and localities for projects on any Federal-aid highway, including the NHS, bridge projects on any public road, transit capital projects, and public bus terminals and facilities. The Act expands STP eligibilities to include advanced truck stop electrification systems, high accident/high congestion intersections, and environmental restoration and pollution abatement, control of noxious weeds and aquatic noxious weeds, and establishment of native species. A total of \$32.5 billion in STP funds is authorized through 2009. Funds will continue to be distributed among the States based on lane-miles of Federal-aid highways, total vehicle-miles traveled on those Federal-aid highways, and estimated contributions to the Highway Account of the HTF. [1113,6006]

Each State must set aside a portion of their STP funds (10 percent or the amount set aside in 2005, whichever is greater) for transportation enhancements activities. The set-aside of 10 percent previously required for safety construction activities (i.e., hazard elimination and rail-highway crossing improvements) is eliminated beginning in 2006, as these activities are funded separately under the new Highway Safety Improvement Program. [1113]

Bridge Program

The Bridge program is broadened in scope to include systematic preventative maintenance, and freed from the requirement that bridges must be considered "significantly important." A total of \$21.6 billion is authorized for this program through 2009 to enable States to improve the condition of their eligible highway bridges over waterways, other topographical barriers, other highways and railroads. The requirement that each State spend at least 15% of its bridge apportionment for bridges on public roads that are not Federal-aid highways (off-system bridges) is retained, but the 35% cap is removed. The discretionary bridge program is funded only through 2005; beginning in 2006, \$100 million is to be set aside annually to fund designated projects. [1114]

Federal Lands Highways Program (FLHP)

The Federal Lands Highways program authorizations thru 2009 total \$4.5 billion for Indian Reservation Roads (IRR), Park Roads and Parkways, Public Lands Highways (discretionary and Forest Highways), and Refuge Roads programs. FLHP funds can be used for transportation planning, research, engineering, and construction of highways, roads, parkways and transit facilities within public lands, national parks, and Indian reservations. In addition, FLHP funds can be used as the State/local match for most types of Federal-aid highway funded projects. New eligible uses of Public Lands Highways funds include up to \$20 million per year for maintenance of Forest Highways, \$1 million per year for signage identifying public hunting and

fishing access, and \$10 million by the Secretary of Agriculture to facilitate the passage of aquatic species beneath roads in the National Forest System.

SAFETEA-LU provides significant changes in the IRR program. IRR funding may be provided via a funding agreement in accordance with the Indian Self-Determination and Education Assistance Act to a requesting Indian tribal government(s) that has satisfactorily demonstrated financial stability and financial management to the Secretary. IRR funds shall only be expended on projects identified in a transportation improvement program approved by the Secretary. The Secretary, in cooperation with the Secretary of the Interior, is required to complete a comprehensive national inventory of transportation facilities that are eligible for assistance under the IRR program within 2 years of enactment of SAFETEA-LU. Up to 25% of a tribe's IRR program funds may now be used for the purpose of IRR system maintenance as defined in 25CFR170, although the Bureau of Indian Affairs (BIA) will retain primary responsibility for IRR maintenance programs through DOI appropriations. Funding for the BIA's program management and oversight expenses is provided, although this amount now includes BIA project-related administrative expenses. An Indian tribe may enter into a road maintenance agreement with a State to assume the responsibilities of the State for roads in and providing access to Indian reservations. A new position in DOT is established for a Deputy Assistant Secretary of Tribal Government Affairs. A total of \$70 million is authorized separately (no longer a set-aside) through 2009 for projects to replace structurally deficient or functionally obsolete IRR bridges. [1119]

Emergency Relief

The Emergency Relief (ER) program assists State and local governments with the expense of repairing serious damage to Federal-aid highways and roads on Federal Lands resulting from natural disasters or catastrophic failures. In addition to the permanent authorization of \$100 million annually, SAFETEA-LU authorizes such sums as may be necessary to be made available by appropriation from the General Fund to supplement the permanent authorization in years when Emergency Relief allocations exceed \$100 million. [1112]

Regional Programs

SAFETEA-LU provides funding to improve transportation and economic development of the following geographic regions:

- *Appalachia* – the **Appalachian Development Highway System Program** continues funding for the construction of the Appalachian corridor highways in 13 States to promote economic development and to establish a State-Federal framework to meet the needs of the region. [1116]
- *Delta* – the **Delta Region Transportation Development Program** provides a total of \$40 million over 5 years for multistate highway planning, development, and construction projects in the 8-State Delta region. In addition, the Secretary must enter into an agreement with the Delta Regional Authority within 180 days to conduct a comprehensive study of transportation assets and needs for all modes of transportation in the region; \$1 million is provided from the HTF to fund the study which is due 2 years after agreement is entered. [1308,1923]
- *Denali* -- the new **Denali Access System Program** in SAFETEA-LU provides \$60 million from the HTF through 2009 to fund planning, design, engineering, and construction for highways and other surface transportation infrastructure priorities for the

region, as determined by an advisory committee to be established within 3 months by the Denali Commission. [1960]

Corridors, Borders, and Ports

SAFETEA-LU provides funding totaling over \$2.8 billion to fund transportation projects of national interest to improve transportation at international borders, ports of entry, and in trade corridors.

- A new **Coordinated Border Infrastructure Program** provides \$833 million in funding, to be distributed by formula, to expedite safe and efficient vehicle and cargo movement at or across the land border between the U.S. and Canada and the land border between the U.S. and Mexico. [1303]
- The **Freight Intermodal Distribution Pilot Program** provides \$30 million through 2009 for grants to facilitate intermodal freight transportation initiatives at the State and local level to relieve congestion and improve safety, and to provide capital funding to address infrastructure and freight distribution needs at inland ports and intermodal freight facilities. The Act names 6 projects, funded at \$5 million each. For each year through 2009, each of the 6 designated projects is to receive 20% of it's funding (\$1 million each). [1306]
- To further promote economic growth and international or interregional trade, the **National Corridor Infrastructure Improvement Program** provides \$1.948 billion in discretionary funding for construction of designated highway projects in corridors of national significance. [1302]
- For projects in **High-Priority Corridors on the National Highway System**, an authorization for such sums as may be necessary from the General Fund is provided (requires subsequent legislation). [1304]

Projects of National and Regional Significance

New in SAFETEA-LU is a program to fund transportation infrastructure projects that have relevance and produce benefits on a national or regional level. Benefits could include improving economic productivity, facilitating international trade, relieving congestion, and improving safety. Approximately \$1.8 billion from the HTF is provided through 2009 for designated projects. [1301]

Projects

In addition to projects identified in programs mentioned above and other project designations found throughout the Act, most are found in High Priority Projects [1701,1702,1703] and Transportation Improvements [1934]. While Transportation Improvements projects may seem similar to High Priority Projects, financial characteristics vary. No broad description can be made to characterize features such as distribution and availability of funds, obligation limitation, etc.

Improving Efficiency

A number of SAFETEA-LU provisions are aimed at improving efficiency in highway program and project delivery. From better planning and coordination to improved materials, contracting and construction, these provisions will support efforts to more efficiently advance a safer and more effective highway program, and strengthen stewardship and oversight.

Transportation Planning

In SAFETEA-LU, metropolitan and statewide transportation planning processes are continued, but changes are made in the planning process for surface transportation; some of these changes add flexibility and efficiency, while others add new consultation and environmental planning requirements. Safety and security are identified as separate items to be considered in both metropolitan and statewide planning processes. Consultation requirements for States and MPOs are significantly expanded. Requirements are added for plans to address environmental mitigation, improved performance, multimodal capacity, and enhancement activities; tribal, bicycle, pedestrian, and disabled interests are to be represented.

Metropolitan Planning – The policy for the metropolitan planning process is to promote consistency between transportation improvements and State and local planned growth and economic development patterns. The transportation improvement program (TIP) is to be updated at least every 4 years. The set-aside for Metropolitan Planning is increased to 1.25%, and a 30-day time limit for States to reimburse Metropolitan Planning Organizations is imposed. The long-range transportation plan and the TIP are to remain separate documents. [1107,6001]

Statewide Transportation Planning – The statewide planning process is to be coordinated with metropolitan planning and statewide trade and economic development planning activities. Two or more States may enter into planning agreements or compacts for cooperative efforts and mutual assistance. The statewide plan should include measures to ensure the preservation and most efficient use of the existing system. The State transportation improvement program (STIP) is to be updated at least every 4 years. [6001]

Highways for LIFE Pilot Program

To foster the use of new technologies and more efficient ways of building highways, this pilot program calls for the Secretary to provide leadership and incentives to demonstrate and promote state-of-the-art technologies, elevated performance standards, and new business practices in the highway construction process that result in improved safety, faster construction, reduced congestion from construction, and improved quality and user satisfaction. A total of \$75 million is authorized through 2009 for incentive grants, to fund up to 20% but not more than \$5 million of the total cost of a qualifying project. A maximum of 15 projects may receive incentive funds in a given fiscal year, but the goal is to approve and provide funds to at least 1 project in each State by 2009. A State may also use up to 10% of its IM, NHS, STP, and CMAQ funds for these projects; up to 100% Federal share is allowed. [1502]

Environmental Streamlining

SAFETEA-LU includes a number of changes aimed at streamlining the environmental review process, albeit with additional steps and responsibilities for transportation agencies.

- *Environmental review process.* . A new environmental review process is established for highways, transit, and multimodal projects. A new category of “participating agencies” is added, to allow more state, local, and tribal agencies a formal role and rights in the environmental process. After providing an opportunity for public and interagency involvement, DOT will define the project’s purpose and need, and establish a plan for coordinating public and agency participation. As early as practicable in the process, DOT is to provide an opportunity for a range of alternatives to be considered for a project. If any issue that could delay the process cannot be resolved within 30 days, DOT must notify Congress. A 180-day statute of limitations for lawsuits challenging Federal agency approvals is provided, but it will require a new step of publishing environmental decisions in the Federal Register.. [6002]
- *State assumption of responsibilities.* After entering into a Memorandum of Understanding with the Secretary, each State may assume responsibility for categorical exclusions, with FHWA in a programmatic monitoring role.. Another provision calls for the Secretary to establish a categorical exclusion, to the extent appropriate, for activities that support the deployment of intelligent transportation infrastructure and systems. [6004,6010]

SAFETEA-LU establishes a project delivery pilot program for 5 States (specified as Alaska, Ohio, Oklahoma, Texas, and California), allowing them to apply to USDOT to assume all USDOT environmental responsibilities under NEPA and other environmental laws (excluding the Clean Air Act and transportation planning requirements). This delegation authority is limited to highway projects, and it could be for specific projects within a State or a programmatic delegation. [6005]

A pilot program is established under which, during the first 3 years after enactment, the Secretary may allow up to 5 States to assume environmental responsibilities [including NEPA and 4(f)] for Recreational Trails and Transportation Enhancement projects. [6003]

- *Section 4(f).* Section 4(f) of the DOT Act prohibits projects on publicly owned parks, recreation areas, wildlife and waterfowl refuges , or historic sites unless there is no feasible and prudent alternative and all possible mitigation is used. SAFETEA-LU includes tightly circumscribed changes in 4(f). Under SAFETEA-LU, the Secretary has some flexibility to allow an exemption from 4(f) requirements if a program or project will have a “de minimis” impact on the area – i.e., there are no adverse effects of the project and the relevant State Historic Preservation Officer or other official with jurisdiction over a property concurs. The Secretary is to conduct a study evaluating the impact of the “de minimis” finding, and report to Congress no earlier than 4 years after enactment. The Interstate System is exempted from being treated as an historic resource under Section 4(f), unless the Secretary determines that individual elements possess national or exceptional historic significance and should receive protection. The Secretary is to conduct a rulemaking to clarify the 4(f) standard of “prudent and feasible” for alternatives. [6007, 6009]

Design-Build

To encourage more projects to use design-build contracting, SAFETEA-LU eliminates the \$50 million floor on the size of eligible contracts. Also, the Secretary must issue revised regulations that will allow transportation agencies to proceed with certain actions prior to receipt of final NEPA approval. This change will encourage public-private partnerships by allowing private sector partners to be involved in the project definition process. [1503]

Air Quality Conformity and Planning Process

Modifications intended to provide greater flexibility in transportation planning and air quality conformity, without reducing protection for air quality, include establishing a 4-year cycle for conformity determinations (unless the MPO revises the transportation plan TIP more frequently) and allowing conformity findings to be based on a 10-year horizon under certain circumstances. [6011]

Environmental Stewardship

Congestion Mitigation and Air Quality Improvement (CMAQ)

The CMAQ program, continued in SAFETEA-LU at a total funding level of \$8.6 billion through 2009, provides a flexible funding source to State and local governments for transportation projects and programs to help meet the requirements of the Clean Air Act. Funding is available for areas that do not meet the National Ambient Air Quality Standards (nonattainment areas) as well as former nonattainment areas that are now in compliance (maintenance areas). The formula for distribution of funds, which considers an area's population by county and the severity of its ozone and carbon monoxide problems within the nonattainment or maintenance area, with greater weight given to areas that are both carbon monoxide and ozone nonattainment/maintenance areas, is continued. SAFETEA-LU requires the Secretary to evaluate and assess the effectiveness of a representative sample of CMAQ projects, and maintain a database. [1808]

Recreational Trails

A total of \$370 million is provided through 2009 to continue this program to develop and maintain trails for recreational purposes that include pedestrian, equestrian, bicycling and non-motorized snow activities as well as off-road motorized vehicle activities. New eligibilities are provided, including construction and maintenance equipment, real estate costs, educational program costs, State administration costs, and assessment of trail conditions. [1109]

Transportation Enhancements

Transportation enhancement activities continue to be funded through a setaside of 10%, or the amount set aside in FY 2005, whichever is greater, from STP funds. [1113]

Transportation, Community, and System Preservation Program (TCSP)

The TCSP is intended to address the relationships among transportation, community, and system preservation plans and practices and identify private sector-based initiatives to improve those relationships. State and local governments, metropolitan planning organizations (MPOs), and tribal governments are eligible for discretionary grants, authorized at \$270 million through 2009, to carry out eligible projects to integrate transportation, community, and system preservation plans and practices. Funds must be equitably distributed to a diversity of populations and

geographic regions. A local match is required in accordance with section 120(b) of title 23, United States Code. Related is a new Community Enhancement study, funded at \$2 million from TCSP funds, which will examine the impact of well-designed transportation projects on communities. [1117,1925]

Scenic Byways

SAFETEA-LU authorizes a total of \$175 million through 2009 for technical assistance and grants to States and Indian tribes to develop scenic byways programs, and to implement projects on highways of outstanding scenic, historic, cultural, natural, recreational, and archaeological qualities designated as National Scenic Byways, All-American Roads, America's Byways, State scenic or Indian tribe scenic byways. Additional authority totaling \$13.5 million is provided to fund technical support and educational activities provided by the America's Byways Resource Center. [1802,1803]

National Historic Covered Bridge Preservation

Covered bridges eligible for listing on the National Register of Historic Places are eligible for rehabilitation, repair or preservation under this program. A total of \$40 million in discretionary funds is authorized through 2009. [1804]

Nonmotorized Transportation Pilot

SAFETEA-LU establishes a new program, authorized at a total of \$100 million through 2009, to fund pilot projects to construct a network of nonmotorized transportation infrastructure facilities in 4 designated communities. The purpose is to demonstrate the extent to which walking and bicycling can represent a major portion of the transportation solution in certain communities. [1807]

Other Environmental Provisions

The Secretary is to conduct a *Wildlife Vehicle Collision Reduction Study* of methods to reduce collisions between motor vehicles and wildlife, and report to Congress within 2 years on causes, impacts, and solutions. A manual of best practices is due 1 year after report to Congress. The Secretary is required to develop a training course for transportation professionals. [1119]

Research and Studies

SAFETEA-LU authorizes a total of \$2.271 billion for Title V programs through 2009, including Surface Transportation Research, Training and Education, Bureau of Transportation Statistics, University Transportation Research, ITS Research, ITS Deployment (2005 only) and the Transportation Technology Innovation and Demonstration Program (such sums as may be necessary from the General Fund). [5101] In contrast to TEA-21's programmatic flexibility for research, SAFETEA-LU directs all research funds to designated projects and initiatives. Obligations are limited to \$411 million per year for 2005-2009. [5102]

Following is a description of the highway elements of Title V research.

Surface Transportation Research Program

SAFETEA-LU establishes new principles and practices for Federal surface transportation research activities, to include all activities leading to technology development and transfer, as

well as the introduction of new and innovative ideas, practices, and approaches, through such mechanisms as field applications, education and training, and technical support.

The surface transportation research program addresses fundamental, long-term highway research aimed at significant research gaps, emerging issues with national implications, and research related to policy and planning. All research activities are to include a component of performance measurement and evaluation, should be outcome-based, and must be consistent with the research and technology development strategic plan. To best utilize available resources, the Secretary may cooperate with a State and an appropriate agency on a pooled-fund basis, and may directly initiate contracts and agreements to conduct joint transportation R&T efforts.

Some specific features include strengthening and expanding the *operations element* in research, including provisions addressing transportation system management and operations, operational methodologies to reduce congestion, transportation security, and asset management. A set-aside of \$14 million per year for 2005-2009 is authorized for the *exploratory advanced research* program to address longer-term, higher-risk research, including highway infrastructure materials, health effects, safety, environment, data acquisition, and operational performance. The *long-term pavement performance* program, funded by a set-aside of \$10.12 million per year for 2005-2009, is continued; a set-aside of \$2.5 million per year will continue the *seismic research* program, with revised provisions for coordination with other agencies. The due date for the *Infrastructure Investment Needs Report* is set at July 31, 2006, and every two years thereafter, and the report must include any information necessary for comparison with conditions and measures in previous reports. The *Turner-Fairbank Highway Research Center* is authorized, and a new set-aside of \$12.5 million per year is established for 2006-2009 to fund *biobased research* of national importance. [5201]

Long-Term Bridge Research

The *Innovative Bridge Research and Deployment Program* is continued, with a new set-aside for high performance concrete bridge technology R&D. In addition, several new initiatives to address bridge life and performance include -- *Long-term Bridge Performance*, *High Performing Steel Bridge Research and Technology Transfer*, and *Steel Bridge Testing*. [5202]

Technology Deployment

SAFETEA-LU continues and expands efforts to accelerate the adoption of innovative technologies by the surface transportation community. Two new programs established are the *Innovative Pavement Research and Deployment* program, with a set-aside for research to improve NHS pavements, and the *Safety Innovation Deployment* program. Several demonstration projects and studies are authorized. [5203]

International Highway Transportation Outreach

This program is continued, funded at \$300,000 per year for 2005-2009 from Surface Transportation Research funds, and a new annual report to Congress is required. [5206]

Surface Transportation-Environmental Cooperative Research Program (STEP)

SAFETEA-LU establishes the STEP program, and sets aside \$16.9 million per year through 2009 to fund it. The program may be administered directly by USDOT or by the National Academy of Sciences. Research objectives are revised to reflect research strategic planning and stakeholder involvement. [5207]

Transportation Research and Development Strategic Planning

The Secretary is directed to develop a 5-year research and development strategic plan within 1 year of enactment, to be reviewed by the National Research Council, and report to Congress annually on R&D spending. [5208]

National Cooperative Freight Transportation Research Program

An advisory committee is to be selected to develop a national research agenda for this program, funded at \$3.75 million per year for 2006-2009 from Surface Transportation Research funds. [5209]

Future Strategic Highway Research Program

The Secretary, in consultation with the American Association of State Highway and Transportation Officials (AASHTO), is to establish and carry out this research program through the National Research Council (NRC). Program priorities are to be based on NRC Special Report 260, and funds totaling \$205 million through 2009 from Surface Transportation Research funds are authorized. [5210]

Other research initiatives funded from Surface Transportation Research funds include:

- *Transportation Safety Information Management System Project (TSIMS)*--To better collect, integrate, manage, and disseminate safety data, SAFETEA-LU provides \$2 million total for software development. [5501]
- *Surface Transportation Congestion Relief Solutions Research*-- SAFETEA-LU funds two research initiatives at a total of \$36 million through 2009 to assist States in addressing surface transportation congestion problems. [5502]
- *Advanced Travel Forecasting Procedures Program (TRANSIMS)* -- \$10.5 million in total through 2009 is authorized to continue deployment of this system. [5512]
- A host of research grants are authorized, including thermal imaging, transportation injury, technology transfer, Appalachian region inland ports, automobile accident injury, rural transportation, hydrogen-powered transportation, cold region and rural transportation, advanced vehicle technology, asphalt research, renewable transportation fuels. [5513]

Training and Education

The National Highway Institute (NHI) is continued, funded at \$9.6 million per year for 2005-2009, and course offerings are to be updated in the areas of asset management and the application of emerging technologies. The *Local Technical Assistance Program (LTAP)* is continued at a total of \$11.1 million per year for 2005- 2009, and the *Dwight D. Eisenhower Transportation Fellowships* are continued at \$2.2 million per year for 2005-2009. New training and education initiatives include -- *Garrett A. Morgan Technology and Transportation Education* program, funded at \$1.25 million for 2006-2009, the *Transportation Education Development Pilot* program, funded at \$1.875 million per year for 2006-2009, and a *Transportation Scholarship Opportunities Program* which provides authority for the establishment of scholarship and mentoring programs. Another new provision allows States to obligate IM, NHS, STP, CMAQ, and Bridge funds for training and other educational activities at 100% Federal share. To disseminate the results of the Surface Transportation Congestion Relief Solutions initiative, an annual set-aside of \$750,000 from Training and Education funds is authorized for 2006-2009. [5204]

Freight Planning Capacity Building

SAFETEA-LU authorizes a new program for research, training, and education to support enhancements in freight transportation planning, funded at \$875,000 per year for 2006-2009 from Training and Education funds. [5204]

Studies

To prepare for meeting future transportation infrastructure and financing needs, SAFETEA-LU authorizes a number of studies, including --

Future of Surface Transportation System Study -- The Secretary of Transportation will conduct a study of current condition and future needs of the surface transportation system and develop a conceptual plan with alternatives to ensure that the surface transportation system will continue to serve the Nation's needs. [1909]

Road User Fees Study—A total of \$12.5 million is authorized to fund a long-term field test of an approach to assessing highway use fees based on actual mileage driven by a specific vehicle on specific types of highways by use of an onboard computer. The study is to be performed by the Public Policy Center of the University of Iowa. [1919]

National Surface Transportation Infrastructure Financing Commission – The Commission is to complete a study on Highway Trust Fund revenues and the impacts of these revenues for future highway and transit needs. Among the considerations will be alternative approaches to generating revenues for the HTF. The Commission will develop a report recommending policies to achieve revenues for the HTF that will meet future needs. [11142]