

IMPLEMENTATION OF THE FAST ACT

HEARING

BEFORE THE

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION UNITED STATES SENATE

ONE HUNDRED FOURTEENTH CONGRESS

SECOND SESSION

JUNE 8, 2016

Printed for the use of the Committee on Commerce, Science, and Transportation



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SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED FOURTEENTH CONGRESS

SECOND SESSION

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IMPLEMENTATION OF THE FAST ACT

WEDNESDAY, JUNE 8, 2016

U.S. SENATE,
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
Washington, DC.

The Committee met, pursuant to notice, at 2:34 p.m. in room SR-253, Russell Senate Office Building, Hon. John Thune, Chairman of the Committee, presiding.

Present: Senators Thune [presiding], Nelson, Fischer, Klobuchar, Schatz, Peters, Heller, Cantwell, Ayotte, Blumenthal, Sullivan, Moran, Daines, Wicker, McCaskill, Booker, and Gardner.

OPENING STATEMENT OF HON. JOHN THUNE, U.S. SENATOR FROM SOUTH DAKOTA

The CHAIRMAN. Good afternoon. This hearing will come to order.

Mr. Secretary, welcome. Great to have you here. Thanks for joining us to discuss the implementation of the FAST Act. We've just passed the 6-month anniversary of the enactment of the first long-term highway bill in more than a decade, and after 36 short-term extensions, the FAST Act provides the certainty and reforms necessary to improve our Nation's infrastructure and spur economic growth.

The FAST Act was a significant bipartisan achievement showing once again the Senate is back to work for the American people. This committee's work, which accounted for more than half of the text of the bill, helped to enhance safety, increase transparency, reform regulatory structures, and improve planning for free, with reforms covering everything from railroads to cars, and truck to ports, as well as research and technology, this legislation was a true team effort to reduce congestion, protect passengers, and improve our Nation's multimodal supply chain.

Each member of the Committee contributed to the success of the FAST Act. Senator Fischer drafted the FMCSA reforms. Senators Wicker and Booker formed a bipartisan team to reauthorize Amtrak and rail safety and infrastructure programs. Senators Blunt, Heller, and Manchin contributed provisions to streamline the permitting process for rail projects. And Senator Cantwell made major contributions on freight transportation. Senators Ayotte, Heller, McCaskill, and Klobuchar all made significant contributions to the NHTSA titles.

The FAST Act contains many provisions that protect lives on our Nation's roadways by improving highway traffic safety and promoting greater consumer awareness and corporate responsibility for vehicle safety. For instance, I'm pleased that the Motor Vehicle

Safety Whistleblower Act is now the law of the land. This law, which I introduced with Ranking Member Nelson and others, incentivizes employees to blow the whistle when manufacturers sit on important safety information.

Other provisions in the bill also sought to address a lack of confidence in NHTSA's handling of recent recalls by creating strong incentives for the agency to get its house in order. In the wake of the recall over the GM ignition switch defect, the Inspector General published a scathing report identifying serious lapses at NHTSA, including questions about the agency's ability to identify and investigate safety problems.

Following the incentives in the FAST Act, I understand that NHTSA has made some progress implementing the reforms called for by the Inspector General, closing 8 of its 17 recommendations. Clearly, there is more work to be done, however, and you can expect continued pressure from this committee to increase agency efficiency.

I'm also proud of the impaired driving provisions that we worked to enact. The law adds a new grant to states that provide 24/7 sobriety programs, a program which originated in South Dakota, while maintaining a grant for states with stronger ignition interlock laws. I'm pleased that the Department seems to be listening to stakeholder concerns about the implementation of highway safety grants, but the Department needs to improve its partnership with the states on highway safety and provide greater flexibility so that states can tackle their own unique highway safety challenges.

As I noted, in addition to vehicle safety, the FAST Act includes a rail title sponsored by Senators Wicker and Booker that reforms Amtrak to improve its services and finances, overhauls the Railroad Rehabilitation and Improvement Financing program to make it more efficient and accessible, and, most importantly, raises the bar on rail safety.

I commend the Department for its thoughtful approach in defining Amtrak's new account structure and its expeditious action to meet the deadlines set in law. While some of the RRIF program reforms are tied up with the creation of the Innovative Finance Bureau, I hope the Department can nonetheless take quick action to increase the transparency of the program, repay credit risk premiums, and provide stakeholders with greater certainty concerning eligibility and program terms.

On rail safety, I look forward to FRA's forthcoming actions to implement the grade crossing requirements of the FAST Act, including the distribution of model action plans in risk data to States. In 2015, 244 individuals died at railroad crossings, the second most common cause of railroad-related fatalities after trespassing. I strongly encourage FRA to provide states with comprehensive and detailed education enforcement and engineering strategies to reduce grade crossing accident risk. I expect this will entail collaboration across the Department and with stakeholders on the more effective uses of Section 130 program funds.

I also look forward to the FRA's forthcoming actions to implement my amendment requiring cameras on passenger trains, fulfilling a longstanding NTSB recommendation in helping railroads better monitor crews and track conditions. This is just one of sev-

eral FAST Act requirements to increase rail safety as positive train control is fully and safely implemented. In addition to new safety measures, the FAST Act provided \$199 million in dedicated funding to states and commuter railroads to accelerate the deployment of this important safety technology.

I think it's also important to know that this bill builds upon freight planning efforts from the previous short-term authorization, MAP-21, to ensure that freight planning is truly multimodal. Highways bring freight to our stores and our doors, but railroads and ports bring goods to our shores and across the country. Recognizing that our transportation system is a network dependent on each element ensures that planning considers the whole supply chain from farm to truck, to rail to port. The Port Performance Working Group will ensure that we achieve efficiencies at our ports by capturing and analyzing performance metrics.

Our economic competitiveness is dependent on our ability to compete with our foreign competitors, and if our corn is more expensive because our transportation is more expensive, that means our competitors are going to win.

Mr. Secretary, I would like to close by thanking you and the Department for your commitment to meeting the deadlines set in the FAST Act. The Committee understands that this comprehensive legislation includes many new program reforms, safety mandates and reports, and we greatly appreciate your efforts thus far to help this legislation deliver for the American people.

There is much work to be done over the next four and a half years, and this committee will conduct rigorous oversight to ensure the success of these vital transportation programs, but we really are off to a good start. The FAST Act, as implemented and as this Congress works to send to the President and FAA, pipeline safety, and myriad reauthorization in the near future, I would like to thank you personally for your continued partnership in improving all aspects of our Nation's transportation network. It's been great to work with you and your team, and I think we have achieved some very meaningful and long-lasting results. So thank you, Mr. Secretary, it's great to have you here.

We look forward to hearing from you, and at this moment, I'll flip it to our Ranking Member, the Senator from Florida.

**STATEMENT OF HON. BILL NELSON,
U.S. SENATOR FROM FLORIDA**

Senator NELSON. Thank you, Mr. Chairman. Thank you for having the Secretary here. And I'll echo what the Chairman has said with regard to the FAST Act that otherwise we refer to as the "highway bill," but it has got a lot of other things in it other than highways, including the \$11 billion to improve freight across all types of transportation and an additional \$8 billion to repair the Nation's passenger rail network. You all are going to distribute a lot of this money through these grants, and for the economic engine of the country to keep purring along, we've got to keep the engine of transportation going.

Now, Mr. Secretary, one area that we've got to do better is vehicle safety. Over the last couple of years we have seen the saga play out on the Takata airbag recall, and it's unbelievable. It's up now

in excess of 70 million vehicles being recalled just in this country because of defective Takata airbags that have killed over a score of people and have injured hundreds.

A part of the work this committee has released is a report just last week that assessed the automakers' progress in recalling and replacing defective Takata airbag inflators. And I would like, Mr. Chairman, to insert in the record the 14 companies that we wrote seeking this information, and I'll tell about that information that we received a little later.

The CHAIRMAN. OK. Without objection.
[The letters referred to follow:]



Mr. Ludwig Willisch
Chief Executive Officer and President
BMW of North America, LLC
300 Chestnut Ridge Road
Woodcliff Lake, NJ 07677

Dear Mr. Willisch:

For more than a year, the U.S. Senate Committee on Commerce, Science, and Transportation has been investigating numerous issues surrounding the defective Takata airbag crisis. Recently, on February 23, 2016, Committee minority staff released an addendum to a June 2015 Takata report. The addendum, titled "Total Recall: Internal Documents Detail Takata's Broken Safety Culture and the Need for a More Effective Recall Process," revealed widespread manipulation of airbag inflator test data by Takata employees, with some occurring after the recalls began.¹ These findings only serve to bolster my concerns over the potential danger posed by all Takata ammonium nitrate-based inflators.

The Takata airbag recalls now involve 14 auto manufacturers and millions of U.S. vehicles. The most recent expansion of the recalls brought the total number of recalled inflators to more than 28 million.² As of February 12, 2016, the National Highway Traffic Safety Administration reported that over 7 million inflators had been repaired, including about 4 million driver-side inflators and 3 million passenger-side inflators.³ While this represents important progress, these figures also reveal that 75% of recalled defective Takata inflators may still be on the road today.

Accordingly, I write to request more information on the efforts by BMW of North America (BMW) to substitute each recalled inflator with a safe replacement. News reports state that Takata's competitors are now producing the majority of the replacement inflators, which is welcome news.⁴ However, I am concerned that, in some instances, we are still replacing defective inflators with new Takata inflators that contain the same dangerous ammonium nitrate-based propellant and therefore may need to be replaced again. I understand that, because of the

¹ Senate Committee on Commerce, Science, and Transportation (Minority Staff), *Total Recall: Internal Documents Detail Takata's Broken Safety Culture and the Need for a More Effective Recall Process*, 114th Cong. (2016).

² National Highway Traffic Safety Administration, Recall 16E-006 (Jan. 25, 2016); National Highway Traffic Safety Administration, Recall 16E-005 (Jan. 25, 2016); National Highway Traffic Safety Administration, Recall 16V-036 (Jan. 22, 2016).

³ National Highway Traffic Safety Administration, Recalls Spotlight Takata Air Bag Recalls (Feb. 12, 2016) (online at www.safercar.gov/takata/index.html).

⁴ See e.g., *Autoliv, Daicel, TRW Gain From Takata's Recall Troubles*, *Automotive News* (Feb. 29, 2016).

Mr. Ludwig Willisch
 March 9, 2016
 Page 2

role time plays in degrading the propellant, this "interim remedy" may decrease the risk of death or injury, but I worry that this remedy increases consumer confusion and concern. Additionally, I am troubled by the fact that some auto manufacturers may be selling new vehicles with potentially defective Takata inflators that will also need to be replaced in the future.

To help the Committee understand the various issues surrounding the ongoing recalls of defective Takata airbags, please provide the following information:

1. What is the total number of vehicles and inflators currently under recall for defective Takata airbags?
2. What is BMW's current total nationwide recall completion rate for all outstanding recalls of vehicles with Takata airbags? What is BMW's current recall completion rate in high heat and humidity states?
3. To date, how many defective inflators have been replaced?
 - a. Of these replacements, how many are Takata's ammonium nitrate-based inflators?
 - b. Of the replacement inflators manufactured by Takata, how many contain a desiccant?
 - c. Of these replacements, how many are manufactured by a supplier other than Takata? If multiple suppliers, provide the name of each supplier and the total number of replacement inflators manufactured by each supplier.
4. Provide a description of BMW's current supply of replacement inflators. Please include:
 - a. The total number of available replacement inflators;
 - b. The number and percentage of replacement inflators that are Takata's ammonium nitrate-based inflators;
 - c. The number and percentage of replacement inflators manufactured by Takata that contain a desiccant;
 - d. The number and percentage of replacement inflators that are manufactured by a supplier other than Takata. If multiple suppliers, provide the name of each supplier and the total number of replacement inflators manufactured by each supplier.
5. Does BMW currently have any contracts with Takata for the supply of ammonium nitrate-based replacement inflators? If yes, how many additional Takata ammonium nitrate-based inflators – beyond the current supply – will be supplied under each contract and when does each contract expire? Please also provide a breakdown of how many of these replacement inflators will contain a desiccant.

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March 9, 2016
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6. Does BMW currently have any contracts with Takata for the supply of ammonium nitrate-based inflators that are now being or will be installed in new vehicles? If yes, how many Takata ammonium nitrate-based inflators will be supplied under each contract and when does each contract expire? Please also provide a breakdown of how many of these new ammonium nitrate-based inflators contain or will contain a desiccant.
7. Provide a list of any new vehicles BMW currently offers for sale or is contemplating for future sale that contain airbags with Takata's ammonium nitrate-based inflators. Please include model, model year, total number of vehicles, and whether these vehicles contain desiccated or non-desiccated ammonium nitrate-based inflators.

I ask that you provide this information by April 1, 2016. Thank you for your prompt assistance with this matter.

Sincerely,



BILL NELSON
Ranking Member

cc: The Honorable John Thune, Chairman

JOHN THUNE, SOUTH DAKOTA, CHAIRMAN

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United States Senate

COMMITTEE ON COMMERCE, SCIENCE,
 AND TRANSPORTATION

WASHINGTON, DC 20510-6125

WEBSITE: <http://commerce.senate.gov>

March 9, 2016

Mr. Michael Horn
 President and Chief Executive Officer
 Volkswagen Group of America
 2200 Ferdinand Porsche Dr.
 Herndon, VA 20171

Dear Mr. Horn:

For more than a year, the U.S. Senate Committee on Commerce, Science, and Transportation has been investigating numerous issues surrounding the defective Takata airbag crisis. Recently, on February 23, 2016, Committee minority staff released an addendum to a June 2015 Takata report. The addendum, titled "Total Recall: Internal Documents Detail Takata's Broken Safety Culture and the Need for a More Effective Recall Process," revealed widespread manipulation of airbag inflator test data by Takata employees, with some occurring after the recalls began.¹ These findings only serve to bolster my concerns over the potential danger posed by all Takata ammonium nitrate-based inflators.

The Takata airbag recalls now involve 14 auto manufacturers and millions of U.S. vehicles. The most recent expansion of the recalls brought the total number of recalled inflators to more than 28 million.² As of February 12, 2016, the National Highway Traffic Safety Administration reported that over 7 million inflators had been repaired, including about 4 million driver-side inflators and 3 million passenger-side inflators.³ While this represents important progress, these figures also reveal that 75% of recalled defective Takata inflators may still be on the road today.

Accordingly, I write to request more information on the efforts by Volkswagen Group of America (Volkswagen) to substitute each recalled inflator with a safe replacement. News reports state that Takata's competitors are now producing the majority of the replacement inflators, which is welcome news.⁴ However, I am concerned that, in some instances, we are still replacing defective inflators with new Takata inflators that contain the same dangerous ammonium nitrate-based propellant and therefore may need to be replaced again. I understand

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Mr. Michael Horn
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that, because of the role time plays in degrading the propellant, this "interim remedy" may decrease the risk of death or injury, but I worry that this remedy increases consumer confusion and concern. Additionally, I am troubled by the fact that some auto manufacturers may be selling new vehicles with potentially defective Takata inflators that will also need to be replaced in the future.

To help the Committee understand the various issues surrounding the ongoing recalls of defective Takata airbags, please provide the following information:

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 - c. Of these replacements, how many are manufactured by a supplier other than Takata? If multiple suppliers, provide the name of each supplier and the total number of replacement inflators manufactured by each supplier.
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I ask that you provide this information by April 1, 2016. Thank you for your prompt assistance with this matter.

Sincerely,

A handwritten signature in black ink that reads "Bill Nelson". The signature is fluid and cursive, with the first name "Bill" and last name "Nelson" clearly distinguishable.

BILL NELSON
Ranking Member

cc: The Honorable John Thune, Chairman

JOHN TOLAN, SENIOR COUNSEL, CHAIRMAN

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United States Senate

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WASHINGTON, DC 20510-6125

WEBSITE: <http://commerce.senate.gov>

March 9, 2016

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 Chief Executive Officer
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 601 Lexington Avenue, 49th Floor
 New York, NY 10022

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Mr. James Lentz
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Sincerely,



BILL NELSON
Ranking Member

cc: The Honorable John Thune, Chairman

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United States Senate
 COMMITTEE ON COMMERCE, SCIENCE,
 AND TRANSPORTATION
 WASHINGTON, DC 20510-6125
 Website: <http://commerce.senate.gov>

March 9, 2016

Mr. Tomomi Nakamura
 Chairman and Chief Executive Officer
 Subaru of America, Inc.
 2235 Route 70 West
 Cherry Hill, NJ 08002

Dear Mr. Nakamura:

For more than a year, the U.S. Senate Committee on Commerce, Science, and Transportation has been investigating numerous issues surrounding the defective Takata airbag crisis. Recently, on February 23, 2016, Committee minority staff released an addendum to a June 2015 Takata report. The addendum, titled "Total Recall: Internal Documents Detail Takata's Broken Safety Culture and the Need for a More Effective Recall Process," revealed widespread manipulation of airbag inflator test data by Takata employees, with some occurring after the recalls began.¹ These findings only serve to bolster my concerns over the potential danger posed by all Takata ammonium nitrate-based inflators.

The Takata airbag recalls now involve 14 auto manufacturers and millions of U.S. vehicles. The most recent expansion of the recalls brought the total number of recalled inflators to more than 28 million.² As of February 12, 2016, the National Highway Traffic Safety Administration reported that over 7 million inflators had been repaired, including about 4 million driver-side inflators and 3 million passenger-side inflators.³ While this represents important progress, these figures also reveal that 75% of recalled defective Takata inflators may still be on the road today.

Accordingly, I write to request more information on the efforts by Subaru of America, Inc. (Subaru) to substitute each recalled inflator with a safe replacement. News reports state that Takata's competitors are now producing the majority of the replacement inflators, which is welcome news.⁴ However, I am concerned that, in some instances, we are still replacing defective inflators with new Takata inflators that contain the same dangerous ammonium nitrate-based propellant and therefore may need to be replaced again. I understand that, because of the

¹ Senate Committee on Commerce, Science, and Transportation (Minority Staff), *Total Recall: Internal Documents Detail Takata's Broken Safety Culture and the Need for a More Effective Recall Process*, 114th Cong. (2016).

² National Highway Traffic Safety Administration, Recall 16E-006 (Jan. 25, 2016); National Highway Traffic Safety Administration, Recall 16E-005 (Jan. 25, 2016); National Highway Traffic Safety Administration, Recall 16V-036 (Jan. 22, 2016).

³ National Highway Traffic Safety Administration, *Recalls Spotlight Takata Air Bag Recalls* (Feb. 12, 2016) (online at www.safercar.gov/rs/takata/index.html).

⁴ See e.g., *Autoliv, Daicel, TRW Gain From Takata's Recall Troubles*, *Automotive News* (Feb. 29, 2016).

Mr. Tomomi Nakamura
March 9, 2016
Page 2

role time plays in degrading the propellant, this “interim remedy” may decrease the risk of death or injury, but I worry that this remedy increases consumer confusion and concern. Additionally, I am troubled by the fact that some auto manufacturers may be selling new vehicles with potentially defective Takata inflators that will also need to be replaced in the future.

To help the Committee understand the various issues surrounding the ongoing recalls of defective Takata airbags, please provide the following information:

1. What is the total number of vehicles and inflators currently under recall for defective Takata airbags?
2. What is Subaru's current total nationwide recall completion rate for all outstanding recalls of vehicles with Takata airbags? What is Subaru's current recall completion rate in high heat and humidity states?
3. To date, how many defective inflators have been replaced?
 - a. Of these replacements, how many are Takata's ammonium nitrate-based inflators?
 - b. Of the replacement inflators manufactured by Takata, how many contain a desiccant?
 - c. Of these replacements, how many are manufactured by a supplier other than Takata? If multiple suppliers, provide the name of each supplier and the total number of replacement inflators manufactured by each supplier.
4. Provide a description of Subaru's current supply of replacement inflators. Please include:
 - a. The total number of available replacement inflators;
 - b. The number and percentage of replacement inflators that are Takata's ammonium nitrate-based inflators;
 - c. The number and percentage of replacement inflators manufactured by Takata that contain a desiccant;
 - d. The number and percentage of replacement inflators that are manufactured by a supplier other than Takata. If multiple suppliers, provide the name of each supplier and the total number of replacement inflators manufactured by each supplier.
5. Does Subaru currently have any contracts with Takata for the supply of ammonium nitrate-based replacement inflators? If yes, how many additional Takata ammonium nitrate-based inflators – beyond the current supply – will be supplied under each contract and when does each contract expire? Please also provide a breakdown of how many of these replacement inflators will contain a desiccant.

Mr. Tomomi Nakamura
March 9, 2016
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6. Does Subaru currently have any contracts with Takata for the supply of ammonium nitrate-based inflators that are now being or will be installed in new vehicles? If yes, how many Takata ammonium nitrate-based inflators will be supplied under each contract and when does each contract expire? Please also provide a breakdown of how many of these new ammonium nitrate-based inflators contain or will contain a desiccant.
7. Provide a list of any new vehicles Subaru currently offers for sale or is contemplating for future sale that contain airbags with Takata's ammonium nitrate-based inflators. Please include model, model year, total number of vehicles, and whether these vehicles contain desiccated or non-desiccated ammonium nitrate-based inflators.

I ask that you provide this information by April 1, 2016. Thank you for your prompt assistance with this matter.

Sincerely,


BILL NELSON
Ranking Member

cc: The Honorable John Thune, Chairman

JOHN THUNE, SOUTH DAKOTA, CHAIRMAN

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 MIKE BLUMENTHAL, CONNECTICUT
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March 9, 2016

Mr. José Muñoz
 Chairman
 Nissan North America, Inc.
 One Nissan Way
 Franklin, TN 37067

Dear Mr. Muñoz:

For more than a year, the U.S. Senate Committee on Commerce, Science, and Transportation has been investigating numerous issues surrounding the defective Takata airbag crisis. Recently, on February 23, 2016, Committee minority staff released an addendum to a June 2015 Takata report. The addendum, titled "Total Recall: Internal Documents Detail Takata's Broken Safety Culture and the Need for a More Effective Recall Process," revealed widespread manipulation of airbag inflator test data by Takata employees, with some occurring after the recalls began.¹ These findings only serve to bolster my concerns over the potential danger posed by all Takata ammonium nitrate-based inflators.

The Takata airbag recalls now involve 14 auto manufacturers and millions of U.S. vehicles. The most recent expansion of the recalls brought the total number of recalled inflators to more than 28 million.² As of February 12, 2016, the National Highway Traffic Safety Administration reported that over 7 million inflators had been repaired, including about 4 million driver-side inflators and 3 million passenger-side inflators.³ While this represents important progress, these figures also reveal that 75% of recalled defective Takata inflators may still be on the road today.

Accordingly, I write to request more information on the efforts by Nissan North America, Inc. (Nissan) to substitute each recalled inflator with a safe replacement. News reports state that Takata's competitors are now producing the majority of the replacement inflators, which is welcome news.⁴ However, I am concerned that, in some instances, we are still replacing defective inflators with new Takata inflators that contain the same dangerous ammonium nitrate-based propellant and therefore may need to be replaced again. I understand that, because of the

¹ Senate Committee on Commerce, Science, and Transportation (Minority Staff), *Total Recall: Internal Documents Detail Takata's Broken Safety Culture and the Need for a More Effective Recall Process*, 114th Cong. (2016).

² National Highway Traffic Safety Administration, Recall 16E-006 (Jan. 25, 2016); National Highway Traffic Safety Administration, Recall 16E-005 (Jan. 25, 2016); National Highway Traffic Safety Administration, Recall 16V-036 (Jan. 22, 2016).

³ National Highway Traffic Safety Administration, Recalls Spotlight Takata Air Bag Recalls (Feb. 12, 2016) (online at www.safercar.gov/rs/takata/index.html).

⁴ See e.g., *Autoliv, Daicel, TRW Gain From Takata's Recall Troubles*, *Automotive News* (Feb. 29, 2016).

Mr. José Muñoz
 March 9, 2016
 Page 2

role time plays in degrading the propellant, this "interim remedy" may decrease the risk of death or injury, but I worry that this remedy increases consumer confusion and concern. Additionally, I am troubled by the fact that some auto manufacturers may be selling new vehicles with potentially defective Takata inflators that will also need to be replaced in the future.

To help the Committee understand the various issues surrounding the ongoing recalls of defective Takata airbags, please provide the following information:

1. What is the total number of vehicles and inflators currently under recall for defective Takata airbags?
2. What is Nissan's current total nationwide recall completion rate for all outstanding recalls of vehicles with Takata airbags? What is Nissan's current recall completion rate in high heat and humidity states?
3. To date, how many defective inflators have been replaced?
 - a. Of these replacements, how many are Takata's ammonium nitrate-based inflators?
 - b. Of the replacement inflators manufactured by Takata, how many contain a desiccant?
 - c. Of these replacements, how many are manufactured by a supplier other than Takata? If multiple suppliers, provide the name of each supplier and the total number of replacement inflators manufactured by each supplier.
4. Provide a description of Nissan's current supply of replacement inflators. Please include:
 - a. The total number of available replacement inflators;
 - b. The number and percentage of replacement inflators that are Takata's ammonium nitrate-based inflators;
 - c. The number and percentage of replacement inflators manufactured by Takata that contain a desiccant;
 - d. The number and percentage of replacement inflators that are manufactured by a supplier other than Takata. If multiple suppliers, provide the name of each supplier and the total number of replacement inflators manufactured by each supplier.
5. Does Nissan currently have any contracts with Takata for the supply of ammonium nitrate-based replacement inflators? If yes, how many additional Takata ammonium nitrate-based inflators – beyond the current supply – will be supplied under each contract and when does each contract expire? Please also provide a breakdown of how many of these replacement inflators will contain a desiccant.

Mr. José Muñoz
March 9, 2016
Page 3

6. Does Nissan currently have any contracts with Takata for the supply of ammonium nitrate-based inflators that are now being or will be installed in new vehicles? If yes, how many Takata ammonium nitrate-based inflators will be supplied under each contract and when does each contract expire? Please also provide a breakdown of how many of these new ammonium nitrate-based inflators contain or will contain a desiccant.
7. Provide a list of any new vehicles Nissan currently offers for sale or is contemplating for future sale that contain airbags with Takata's ammonium nitrate-based inflators. Please include model, model year, total number of vehicles, and whether these vehicles contain desiccated or non-desiccated ammonium nitrate-based inflators.

I ask that you provide this information by April 1, 2016. Thank you for your prompt assistance with this matter.

Sincerely,



BILL NELSON
Ranking Member

cc: The Honorable John Thune, Chairman

JOHN THUNE, SENATE CHIEF OF STAFF

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March 9, 2016

Mr. Ryujiro Kobashi
 President and Chief Executive Officer
 Mitsubishi Motors North America, Inc.
 6400 Katella Avenue
 Suite Cypress, CA 90630

Dear Mr. Kobashi:

For more than a year, the U.S. Senate Committee on Commerce, Science, and Transportation has been investigating numerous issues surrounding the defective Takata airbag crisis. Recently, on February 23, 2016, Committee minority staff released an addendum to a June 2015 Takata report. The addendum, titled "Total Recall: Internal Documents Detail Takata's Broken Safety Culture and the Need for a More Effective Recall Process," revealed widespread manipulation of airbag inflator test data by Takata employees, with some occurring after the recalls began.¹ These findings only serve to bolster my concerns over the potential danger posed by all Takata ammonium nitrate-based inflators.

The Takata airbag recalls now involve 14 auto manufacturers and millions of U.S. vehicles. The most recent expansion of the recalls brought the total number of recalled inflators to more than 28 million.² As of February 12, 2016, the National Highway Traffic Safety Administration reported that over 7 million inflators had been repaired, including about 4 million driver-side inflators and 3 million passenger-side inflators.³ While this represents important progress, these figures also reveal that 75% of recalled defective Takata inflators may still be on the road today.

Accordingly, I write to request more information on the efforts by Mitsubishi Motors North America, Inc. (Mitsubishi) to substitute each recalled inflator with a safe replacement. News reports state that Takata's competitors are now producing the majority of the replacement inflators, which is welcome news.⁴ However, I am concerned that, in some instances, we are still replacing defective inflators with new Takata inflators that contain the same dangerous ammonium nitrate-based propellant and therefore may need to be replaced again. I understand

¹ Senate Committee on Commerce, Science, and Transportation (Minority Staff), *Total Recall: Internal Documents Detail Takata's Broken Safety Culture and the Need for a More Effective Recall Process*, 114th Cong. (2016).

² National Highway Traffic Safety Administration, Recall 16E-006 (Jan. 25, 2016); National Highway Traffic Safety Administration, Recall 16E-005 (Jan. 25, 2016); National Highway Traffic Safety Administration, Recall 16V-036 (Jan. 22, 2016).

³ National Highway Traffic Safety Administration, *Recalls Spotlight Takata Air Bag Recalls* (Feb. 12, 2016) (online at www.safercar.gov/rs/takata/index.html).

⁴ See e.g., *Autoliv, Daicel, TRW Gain From Takata's Recall Troubles*, *Automotive News* (Feb. 29, 2016).

Mr. Ryujiro Kobashi
March 9, 2016
Page 2

that, because of the role time plays in degrading the propellant, this "interim remedy" may decrease the risk of death or injury, but I worry that this remedy increases consumer confusion and concern. Additionally, I am troubled by the fact that some auto manufacturers may be selling new vehicles with potentially defective Takata inflators that will also need to be replaced in the future.

To help the Committee understand the various issues surrounding the ongoing recalls of defective Takata airbags, please provide the following information:

1. What is the total number of vehicles and inflators currently under recall for defective Takata airbags?
2. What is Mitsubishi's current total nationwide recall completion rate for all outstanding recalls of vehicles with Takata airbags? What is Mitsubishi's current recall completion rate in high heat and humidity states?
3. To date, how many defective inflators have been replaced?
 - a. Of these replacements, how many are Takata's ammonium nitrate-based inflators?
 - b. Of the replacement inflators manufactured by Takata, how many contain a desiccant?
 - c. Of these replacements, how many are manufactured by a supplier other than Takata? If multiple suppliers, provide the name of each supplier and the total number of replacement inflators manufactured by each supplier.
4. Provide a description of Mitsubishi's current supply of replacement inflators. Please include:
 - a. The total number of available replacement inflators;
 - b. The number and percentage of replacement inflators that are Takata's ammonium nitrate-based inflators;
 - c. The number and percentage of replacement inflators manufactured by Takata that contain a desiccant;
 - d. The number and percentage of replacement inflators that are manufactured by a supplier other than Takata. If multiple suppliers, provide the name of each supplier and the total number of replacement inflators manufactured by each supplier.
5. Does Mitsubishi currently have any contracts with Takata for the supply of ammonium nitrate-based replacement inflators? If yes, how many additional Takata ammonium nitrate-based inflators – beyond the current supply – will be supplied under each contract and when does each contract expire? Please also provide a breakdown of how many of these replacement inflators will contain a desiccant.

Mr. Ryujiro Kobashi
March 9, 2016
Page 3

6. Does Mitsubishi currently have any contracts with Takata for the supply of ammonium nitrate-based inflators that are now being or will be installed in new vehicles? If yes, how many Takata ammonium nitrate-based inflators will be supplied under each contract and when does each contract expire? Please also provide a breakdown of how many of these new ammonium nitrate-based inflators contain or will contain a desiccant.
7. Provide a list of any new vehicles Mitsubishi currently offers for sale or is contemplating for future sale that contain airbags with Takata's ammonium nitrate-based inflators. Please include model, model year, total number of vehicles, and whether these vehicles contain desiccated or non-desiccated ammonium nitrate-based inflators.

I ask that you provide this information by April 1, 2016. Thank you for your prompt assistance with this matter.

Sincerely,

BILL NELSON
Ranking Member

cc: The Honorable John Thune, Chairman

JOHN THUNE, SOUTH DAKOTA, CHAIRMAN

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Website: <http://commerce.senate.gov>

March 9, 2016

Mr. Dietmar Exler
 President and Chief Executive Officer
 Mercedes-Benz USA, LLC
 303 Perimeter Center North
 Suite 202
 Atlanta, GA 30346

Dear Mr. Exler:

For more than a year, the U.S. Senate Committee on Commerce, Science, and Transportation has been investigating numerous issues surrounding the defective Takata airbag crisis. Recently, on February 23, 2016, Committee minority staff released an addendum to a June 2015 Takata report. The addendum, titled "Total Recall: Internal Documents Detail Takata's Broken Safety Culture and the Need for a More Effective Recall Process," revealed widespread manipulation of airbag inflator test data by Takata employees, with some occurring after the recalls began.¹ These findings only serve to bolster my concerns over the potential danger posed by all Takata ammonium nitrate-based inflators.

The Takata airbag recalls now involve 14 auto manufacturers and millions of U.S. vehicles. The most recent expansion of the recalls brought the total number of recalled inflators to more than 28 million.² As of February 12, 2016, the National Highway Traffic Safety Administration reported that over 7 million inflators had been repaired, including about 4 million driver-side inflators and 3 million passenger-side inflators.³ While this represents important progress, these figures also reveal that 75% of recalled defective Takata inflators may still be on the road today.

Accordingly, I write to request more information on the efforts by Mercedes-Benz USA, LLC (Mercedes-Benz) to substitute each recalled inflator with a safe replacement. News reports state that Takata's competitors are now producing the majority of the replacement inflators, which is welcome news.⁴ However, I am concerned that, in some instances, we are still replacing defective inflators with new Takata inflators that contain the same dangerous

¹ Senate Committee on Commerce, Science, and Transportation (Minority Staff), *Total Recall: Internal Documents Detail Takata's Broken Safety Culture and the Need for a More Effective Recall Process*, 114th Cong. (2016).

² National Highway Traffic Safety Administration, Recall 16E-006 (Jan. 25, 2016); National Highway Traffic Safety Administration, Recall 16E-005 (Jan. 25, 2016); National Highway Traffic Safety Administration, Recall 16V-036 (Jan. 22, 2016).

³ National Highway Traffic Safety Administration, Recalls Spotlight Takata Air Bag Recalls (Feb. 12, 2016) (online at www.safercar.gov/rs/takata/index.html).

⁴ See e.g., *Autoliv, Daicel, TRW Gain From Takata's Recall Troubles*, *Automotive News* (Feb. 29, 2016).

Mr. Dietmar Exler
 March 9, 2016
 Page 2

ammonium nitrate-based propellant and therefore may need to be replaced again. I understand that, because of the role time plays in degrading the propellant, this "interim remedy" may decrease the risk of death or injury, but I worry that this remedy increases consumer confusion and concern. Additionally, I am troubled by the fact that some auto manufacturers may be selling new vehicles with potentially defective Takata inflators that will also need to be replaced in the future.

To help the Committee understand the various issues surrounding the ongoing recalls of defective Takata airbags, please provide the following information:

1. What is the total number of vehicles and inflators currently under recall for defective Takata airbags?
2. What is Mercedes-Benz's current total nationwide recall completion rate for all outstanding recalls of vehicles with Takata airbags? What is Mercedes-Benz's current recall completion rate in high heat and humidity states?
3. To date, how many defective inflators have been replaced?
 - a. Of these replacements, how many are Takata's ammonium nitrate-based inflators?
 - b. Of the replacement inflators manufactured by Takata, how many contain a desiccant?
 - c. Of these replacements, how many are manufactured by a supplier other than Takata? If multiple suppliers, provide the name of each supplier and the total number of replacement inflators manufactured by each supplier.
4. Provide a description of Mercedes-Benz's current supply of replacement inflators. Please include:
 - a. The total number of available replacement inflators;
 - b. The number and percentage of replacement inflators that are Takata's ammonium nitrate-based inflators;
 - c. The number and percentage of replacement inflators manufactured by Takata that contain a desiccant;
 - d. The number and percentage of replacement inflators that are manufactured by a supplier other than Takata. If multiple suppliers, provide the name of each supplier and the total number of replacement inflators manufactured by each supplier.
5. Does Mercedes-Benz currently have any contracts with Takata for the supply of ammonium nitrate-based replacement inflators? If yes, how many additional Takata ammonium nitrate-based inflators – beyond the current supply – will be supplied under each contract and when does each contract expire? Please also provide a breakdown of how many of these replacement inflators will contain a desiccant.

Mr. Dietmar Exler
March 9, 2016
Page 3

6. Does Mercedes-Benz currently have any contracts with Takata for the supply of ammonium nitrate-based inflators that are now being or will be installed in new vehicles? If yes, how many Takata ammonium nitrate-based inflators will be supplied under each contract and when does each contract expire? Please also provide a breakdown of how many of these new ammonium nitrate-based inflators contain or will contain a desiccant.
7. Provide a list of any new vehicles Mercedes-Benz currently offers for sale or is contemplating for future sale that contain airbags with Takata's ammonium nitrate-based inflators. Please include model, model year, total number of vehicles, and whether these vehicles contain desiccated or non-desiccated ammonium nitrate-based inflators.

I ask that you provide this information by April 1, 2016. Thank you for your prompt assistance with this matter.

Sincerely,



BILL NELSON
Ranking Member

cc: The Honorable John Thune, Chairman

JOHN TOLSON, DEPUTY ATTORNEY GENERAL
 ROGER BROWN, MISSISSIPPI
 BOB BLOOM, MISSOURI
 MARCO RUBIO, FLORIDA
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 TULSI GABBARD, HAWAII
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 TONY GILM, NEW MEXICO
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United States Senate
 COMMITTEE ON COMMERCE, SCIENCE,
 AND TRANSPORTATION
 WASHINGTON, DC 20510-6125
 WEBSITE: <http://commerce.senate.gov>

March 9, 2016

Mr. Masahiro Moro
 President and Chief Executive Officer
 Mazda Motor of America, Inc.
 7755 Irvine Center Drive
 Irvine, CA 92618

Dear Mr. Moro:

For more than a year, the U.S. Senate Committee on Commerce, Science, and Transportation has been investigating numerous issues surrounding the defective Takata airbag crisis. Recently, on February 23, 2016, Committee minority staff released an addendum to a June 2015 Takata report. The addendum, titled "Total Recall: Internal Documents Detail Takata's Broken Safety Culture and the Need for a More Effective Recall Process," revealed widespread manipulation of airbag inflator test data by Takata employees, with some occurring after the recalls began.¹ These findings only serve to bolster my concerns over the potential danger posed by all Takata ammonium nitrate-based inflators.

The Takata airbag recalls now involve 14 auto manufacturers and millions of U.S. vehicles. The most recent expansion of the recalls brought the total number of recalled inflators to more than 28 million.² As of February 12, 2016, the National Highway Traffic Safety Administration reported that over 7 million inflators had been repaired, including about 4 million driver-side inflators and 3 million passenger-side inflators.³ While this represents important progress, these figures also reveal that 75% of recalled defective Takata inflators may still be on the road today.

Accordingly, I write to request more information on the efforts by Mazda Motor of America, Inc. (Mazda) to substitute each recalled inflator with a safe replacement. News reports state that Takata's competitors are now producing the majority of the replacement inflators, which is welcome news.⁴ However, I am concerned that, in some instances, we are still replacing defective inflators with new Takata inflators that contain the same dangerous ammonium nitrate-based propellant and therefore may need to be replaced again. I understand

¹ Senate Committee on Commerce, Science, and Transportation (Minority Staff), *Total Recall: Internal Documents Detail Takata's Broken Safety Culture and the Need for a More Effective Recall Process*, 114th Cong. (2016).

² National Highway Traffic Safety Administration, Recall 16E-006 (Jan. 25, 2016); National Highway Traffic Safety Administration, Recall 16E-005 (Jan. 25, 2016); National Highway Traffic Safety Administration, Recall 16V-036 (Jan. 22, 2016).

³ National Highway Traffic Safety Administration, Recalls Spotlight Takata Air Bag Recalls (Feb. 12, 2016) (online at www.safercar.gov/rs/takata/index.html).

⁴ See e.g., *Autoliv, Daicel, TRW Gain From Takata's Recall Troubles*, *Automotive News* (Feb. 29, 2016).

Mr. Masahiro Moro
 March 9, 2016
 Page 2

that, because of the role time plays in degrading the propellant, this "interim remedy" may decrease the risk of death or injury, but I worry that this remedy increases consumer confusion and concern. Additionally, I am troubled by the fact that some auto manufacturers may be selling new vehicles with potentially defective Takata inflators that will also need to be replaced in the future.

To help the Committee understand the various issues surrounding the ongoing recalls of defective Takata airbags, please provide the following information:

1. What is the total number of vehicles and inflators currently under recall for defective Takata airbags?
2. What is Mazda's current total nationwide recall completion rate for all outstanding recalls of vehicles with Takata airbags? What is Mazda's current recall completion rate in high heat and humidity states?
3. To date, how many defective inflators have been replaced?
 - a. Of these replacements, how many are Takata's ammonium nitrate-based inflators?
 - b. Of the replacement inflators manufactured by Takata, how many contain a desiccant?
 - c. Of these replacements, how many are manufactured by a supplier other than Takata? If multiple suppliers, provide the name of each supplier and the total number of replacement inflators manufactured by each supplier.
4. Provide a description of Mazda's current supply of replacement inflators. Please include:
 - a. The total number of available replacement inflators;
 - b. The number and percentage of replacement inflators that are Takata's ammonium nitrate-based inflators;
 - c. The number and percentage of replacement inflators manufactured by Takata that contain a desiccant;
 - d. The number and percentage of replacement inflators that are manufactured by a supplier other than Takata. If multiple suppliers, provide the name of each supplier and the total number of replacement inflators manufactured by each supplier.
5. Does Mazda currently have any contracts with Takata for the supply of ammonium nitrate-based replacement inflators? If yes, how many additional Takata ammonium nitrate-based inflators – beyond the current supply – will be supplied under each contract and when does each contract expire? Please also provide a breakdown of how many of these replacement inflators will contain a desiccant.

Mr. Masahiro Moro
March 9, 2016
Page 3

6. Does Mazda currently have any contracts with Takata for the supply of ammonium nitrate-based inflators that are now being or will be installed in new vehicles? If yes, how many Takata ammonium nitrate-based inflators will be supplied under each contract and when does each contract expire? Please also provide a breakdown of how many of these new ammonium nitrate-based inflators contain or will contain a desiccant.
7. Provide a list of any new vehicles Mazda currently offers for sale or is contemplating for future sale that contain airbags with Takata's ammonium nitrate-based inflators. Please include model, model year, total number of vehicles, and whether these vehicles contain desiccated or non-desiccated ammonium nitrate-based inflators.

I ask that you provide this information by April 1, 2016. Thank you for your prompt assistance with this matter.

Sincerely,


BILL NELSON
Ranking Member

cc: The Honorable John Thune, Chairman

JOHN THUNE, SOUTH CAROLINA, CHAIRMAN

ROGER WATERS, MISSISSIPPI
 BOB BLUNT, MISSOURI
 MARCO RUBIO, FLORIDA
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NEIL RODEL, STAFF DIRECTOR
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United States Senate
 COMMITTEE ON COMMERCE, SCIENCE,
 AND TRANSPORTATION
 WASHINGTON, DC 20510-6125
 Website: <http://commerce.senate.gov>

March 9, 2016

Mr. Takuji Yamada
 Chief Executive Officer and President
 American Honda Motor Co., Inc.
 1919 Torrance Blvd.
 Torrance, CA 90501

Dear Mr. Yamada:

For more than a year, the U.S. Senate Committee on Commerce, Science, and Transportation has been investigating numerous issues surrounding the defective Takata airbag crisis. Recently, on February 23, 2016, Committee minority staff released an addendum to a June 2015 Takata report. The addendum, titled "Total Recall: Internal Documents Detail Takata's Broken Safety Culture and the Need for a More Effective Recall Process,"¹ revealed widespread manipulation of airbag inflator test data by Takata employees, with some occurring after the recalls began.¹ These findings only serve to bolster my concerns over the potential danger posed by all Takata ammonium nitrate-based inflators.

The Takata airbag recalls now involve 14 auto manufacturers and millions of U.S. vehicles. The most recent expansion of the recalls brought the total number of recalled inflators to more than 28 million.² As of February 12, 2016, the National Highway Traffic Safety Administration reported that over 7 million inflators had been repaired, including about 4 million driver-side inflators and 3 million passenger-side inflators.³ While this represents important progress, these figures also reveal that 75% of recalled defective Takata inflators may still be on the road today.

Accordingly, I write to request more information on the efforts by American Honda Motor Company (Honda) to substitute each recalled inflator with a safe replacement. News reports state that Takata's competitors are now producing the majority of the replacement inflators, which is welcome news.⁴ However, I am concerned that, in some instances, we are still replacing defective inflators with new Takata inflators that contain the same dangerous ammonium nitrate-based propellant and therefore may need to be replaced again. I understand

¹ Senate Committee on Commerce, Science, and Transportation (Minority Staff), *Total Recall: Internal Documents Detail Takata's Broken Safety Culture and the Need for a More Effective Recall Process*, 114th Cong. (2016).

² National Highway Traffic Safety Administration, Recall 16E-006 (Jan. 25, 2016); National Highway Traffic Safety Administration, Recall 16E-005 (Jan. 25, 2016); National Highway Traffic Safety Administration, Recall 16V-036 (Jan. 22, 2016).

³ National Highway Traffic Safety Administration, *Recalls Spotlight Takata Air Bag Recalls* (Feb. 12, 2016) (online at www.safercar.gov/rs/takata/index.html).

⁴ See e.g., *Autoliv, Daicel, TRW Gain From Takata's Recall Troubles*, *Automotive News* (Feb. 29, 2016).

Mr. Takuji Yamada
 March 9, 2016
 Page 2

that, because of the role time plays in degrading the propellant, this "interim remedy" may decrease the risk of death or injury, but I worry that this remedy increases consumer confusion and concern. Additionally, I am troubled by the fact that some auto manufacturers may be selling new vehicles with potentially defective Takata inflators that will also need to be replaced in the future.

To help the Committee understand the various issues surrounding the ongoing recalls of defective Takata airbags, please provide the following information:

1. What is the total number of vehicles and inflators currently under recall for defective Takata airbags?
2. What is Honda's current total nationwide recall completion rate for all outstanding recalls of vehicles with Takata airbags? What is Honda's current recall completion rate in high heat and humidity states?
3. To date, how many defective inflators have been replaced?
 - a. Of these replacements, how many are Takata's ammonium nitrate-based inflators?
 - b. Of the replacement inflators manufactured by Takata, how many contain a desiccant?
 - c. Of these replacements, how many are manufactured by a supplier other than Takata? If multiple suppliers, provide the name of each supplier and the total number of replacement inflators manufactured by each supplier.
4. Provide a description of Honda's current supply of replacement inflators. Please include:
 - a. The total number of available replacement inflators;
 - b. The number and percentage of replacement inflators that are Takata's ammonium nitrate-based inflators;
 - c. The number and percentage of replacement inflators manufactured by Takata that contain a desiccant;
 - d. The number and percentage of replacement inflators that are manufactured by a supplier other than Takata. If multiple suppliers, provide the name of each supplier and the total number of replacement inflators manufactured by each supplier.
5. Does Honda currently have any contracts with Takata for the supply of ammonium nitrate-based replacement inflators? If yes, how many additional Takata ammonium nitrate-based inflators – beyond the current supply – will be supplied under each contract and when does each contract expire? Please also provide a breakdown of how many of these replacement inflators will contain a desiccant.

Mr. Takuji Yamada
March 9, 2016
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6. Does Honda currently have any contracts with Takata for the supply of ammonium nitrate-based inflators that are now being or will be installed in new vehicles? If yes, how many Takata ammonium nitrate-based inflators will be supplied under each contract and when does each contract expire? Please also provide a breakdown of how many of these new ammonium nitrate-based inflators contain or will contain a desiccant.
7. Provide a list of any new vehicles Honda currently offers for sale or is contemplating for future sale that contain airbags with Takata's ammonium nitrate-based inflators. Please include model, model year, total number of vehicles, and whether these vehicles contain desiccated or non-desiccated ammonium nitrate-based inflators.

I ask that you provide this information by April 1, 2016. Thank you for your prompt assistance with this matter.

Sincerely,



BILL NELSON
Ranking Member

cc: The Honorable John Thune, Chairman

JOHN THUNE, SOUTH DAKOTA, CHAIRMAN

BOBBY RAUBER, MISSISSIPPI
 BOB BLOOM, ARIZONA
 MARCO RUBIO, FLORIDA
 KELLY AUSTIN, NEW HAMPSHIRE
 TED CRUZ, TEXAS
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MIKE ROSEN, STAFF DIRECTOR
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United States Senate
 COMMITTEE ON COMMERCE, SCIENCE,
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 WASHINGTON, DC 20510-6125
 WEBSITE: <http://commerce.senate.gov>

March 9, 2016

Ms. Mary T. Barra
 Chairman & Chief Executive Officer
 General Motors Company
 300 Renaissance Center
 Detroit, MI 48265

Dear Ms. Barra:

For more than a year, the U.S. Senate Committee on Commerce, Science, and Transportation has been investigating numerous issues surrounding the defective Takata airbag crisis. Recently, on February 23, 2016, Committee minority staff released an addendum to a June 2015 Takata report. The addendum, titled "Total Recall: Internal Documents Detail Takata's Broken Safety Culture and the Need for a More Effective Recall Process," revealed widespread manipulation of airbag inflator test data by Takata employees, with some occurring after the recalls began.¹ These findings only serve to bolster my concerns over the potential danger posed by all Takata ammonium nitrate-based inflators.

The Takata airbag recalls now involve 14 auto manufacturers and millions of U.S. vehicles. The most recent expansion of the recalls brought the total number of recalled inflators to more than 28 million.² As of February 12, 2016, the National Highway Traffic Safety Administration reported that over 7 million inflators had been repaired, including about 4 million driver-side inflators and 3 million passenger-side inflators.³ While this represents important progress, these figures also reveal that 75% of recalled defective Takata inflators may still be on the road today.

Accordingly, I write to request more information on the efforts by General Motors Company (General Motors) to substitute each recalled inflator with a safe replacement. News reports state that Takata's competitors are now producing the majority of the replacement inflators, which is welcome news.⁴ However, I am concerned that, in some instances, we are still replacing defective inflators with new Takata inflators that contain the same dangerous ammonium nitrate-based propellant and therefore may need to be replaced again. I understand

¹ Senate Committee on Commerce, Science, and Transportation (Minority Staff), *Total Recall: Internal Documents Detail Takata's Broken Safety Culture and the Need for a More Effective Recall Process*, 114th Cong. (2016).

² National Highway Traffic Safety Administration, Recall 16E-006 (Jan. 25, 2016); National Highway Traffic Safety Administration, Recall 16E-005 (Jan. 25, 2016); National Highway Traffic Safety Administration, Recall 16V-036 (Jan. 22, 2016).

³ National Highway Traffic Safety Administration, *Recalls Spotlight Takata Air Bag Recalls* (Feb. 12, 2016) (online at www.safercar.gov/takata/index.html).

⁴ See e.g., *Autoliv, Daimler, TRW Gain From Takata's Recall Troubles*, *Automotive News* (Feb. 29, 2016).

Ms. Mary T. Barra
March 9, 2016

Page 2

that, because of the role time plays in degrading the propellant, this "interim remedy" may decrease the risk of death or injury, but I worry that this remedy increases consumer confusion and concern. Additionally, I am troubled by the fact that some auto manufacturers may be selling new vehicles with potentially defective Takata inflators that will also need to be replaced in the future.

To help the Committee understand the various issues surrounding the ongoing recalls of defective Takata airbags, please provide the following information:

1. What is the total number of vehicles and inflators currently under recall for defective Takata airbags?
2. What is General Motors' current total nationwide recall completion rate for all outstanding recalls of vehicles with Takata airbags? What is General Motors' current recall completion rate in high heat and humidity states?
3. To date, how many defective inflators have been replaced?
 - a. Of these replacements, how many are Takata's ammonium nitrate-based inflators?
 - b. Of the replacement inflators manufactured by Takata, how many contain a desiccant?
 - c. Of these replacements, how many are manufactured by a supplier other than Takata? If multiple suppliers, provide the name of each supplier and the total number of replacement inflators manufactured by each supplier.
4. Provide a description of General Motors' current supply of replacement inflators. Please include:
 - a. The total number of available replacement inflators;
 - b. The number and percentage of replacement inflators that are Takata's ammonium nitrate-based inflators;
 - c. The number and percentage of replacement inflators manufactured by Takata that contain a desiccant;
 - d. The number and percentage of replacement inflators that are manufactured by a supplier other than Takata. If multiple suppliers, provide the name of each supplier and the total number of replacement inflators manufactured by each supplier.
5. Does General Motors currently have any contracts with Takata for the supply of ammonium nitrate-based replacement inflators? If yes, how many additional Takata ammonium nitrate-based inflators – beyond the current supply – will be supplied under each contract and when does each contract expire? Please also provide a breakdown of how many of these replacement inflators will contain a desiccant.

Ms. Mary T. Barra
March 9, 2016
Page 3

6. Does General Motors currently have any contracts with Takata for the supply of ammonium nitrate-based inflators that are now being or will be installed in new vehicles? If yes, how many Takata ammonium nitrate-based inflators will be supplied under each contract and when does each contract expire? Please also provide a breakdown of how many of these new ammonium nitrate-based inflators contain or will contain a desiccant.
7. Provide a list of any new vehicles General Motors currently offers for sale or is contemplating for future sale that contain airbags with Takata's ammonium nitrate-based inflators. Please include model, model year, total number of vehicles, and whether these vehicles contain desiccated or non-desiccated ammonium nitrate-based inflators.

I ask that you provide this information by April 1, 2016. Thank you for your prompt assistance with this matter.

Sincerely,



BILL NELSON
Ranking Member

cc: The Honorable John Thune, Chairman

COMMITTEE ON COMMERCE, SCIENCE,
AND TRANSPORTATION
WASHINGTON, DC 20510-6125
WEBSITE: <http://commerce.senate.gov>

Mr. Sergio Marchionne
Chairman and CEO
FCA US LLC
1000 Chrysler Drive
Auburn Hills, MI 48326

For more than a year, the U.S. Senate Committee on Commerce, Science, and Transportation has been investigating numerous issues surrounding the defective Takata airbag crisis. Recently, on February 23, 2016, Committee minority staff released an addendum to a June 2015 Takata report. The addendum, titled "Total Recall: Internal Documents Detail Takata's Broken Safety Culture and the Need for a More Effective Recall Process," revealed widespread manipulation of airbag inflator test data by Takata employees, with some occurring after the recalls began.¹ These findings only serve to bolster my concerns over the potential danger posed by all Takata ammonium nitrate-based inflators.

Accordingly, I write to request more information on the efforts by FCA US LLC (FCA) to substitute each recalled inflator with a safe replacement. News reports state that Takata's competitors are now producing the majority of the replacement inflators, which is welcome news.⁴ However, I am concerned that, in some instances, we are still replacing defective inflators with new Takata inflators that contain the same dangerous ammonium nitrate-based propellant and therefore may need to be replaced again. I understand that, because of the

⁴ See e.g., Autoliv, Daicel, TRW Gain From Takata's Recall Troubles, *Automotive News* (Feb. 29, 2016).

Mr. Sergio Marchionne
 March 9, 2016
 Page 2

role time plays in degrading the propellant, this "interim remedy" may decrease the risk of death or injury, but I worry that this remedy increases consumer confusion and concern. Additionally, I am troubled by the fact that some auto manufacturers may be selling new vehicles with potentially defective Takata inflators that will also need to be replaced in the future.

To help the Committee understand the various issues surrounding the ongoing recalls of defective Takata airbags, please provide the following information:

1. What is the total number of vehicles and inflators currently under recall for defective Takata airbags?
2. What is FCA's current total nationwide recall completion rate for all outstanding recalls of vehicles with Takata airbags? What is FCA's current recall completion rate in high heat and humidity states?
3. To date, how many defective inflators have been replaced?
 - a. Of these replacements, how many are Takata's ammonium nitrate-based inflators?
 - b. Of the replacement inflators manufactured by Takata, how many contain a desiccant?
 - c. Of these replacements, how many are manufactured by a supplier other than Takata? If multiple suppliers, provide the name of each supplier and the total number of replacement inflators manufactured by each supplier.
4. Provide a description of FCA's current supply of replacement inflators. Please include:
 - a. The total number of available replacement inflators;
 - b. The number and percentage of replacement inflators that are Takata's ammonium nitrate-based inflators;
 - c. The number and percentage of replacement inflators manufactured by Takata that contain a desiccant;
 - d. The number and percentage of replacement inflators that are manufactured by a supplier other than Takata. If multiple suppliers, provide the name of each supplier and the total number of replacement inflators manufactured by each supplier.
5. Does FCA currently have any contracts with Takata for the supply of ammonium nitrate-based replacement inflators? If yes, how many additional Takata ammonium nitrate-based inflators – beyond the current supply – will be supplied under each contract and when does each contract expire? Please also provide a breakdown of how many of these replacement inflators will contain a desiccant.

Mr. Sergio Marchionne
March 9, 2016
Page 3

6. Does FCA currently have any contracts with Takata for the supply of ammonium nitrate-based inflators that are now being or will be installed in new vehicles? If yes, how many Takata ammonium nitrate-based inflators will be supplied under each contract and when does each contract expire? Please also provide a breakdown of how many of these new ammonium nitrate-based inflators contain or will contain a desiccant.
7. Provide a list of any new vehicles FCA currently offers for sale or is contemplating for future sale that contain airbags with Takata's ammonium nitrate-based inflators. Please include model, model year, total number of vehicles, and whether these vehicles contain desiccated or non-desiccated ammonium nitrate-based inflators.

I ask that you provide this information by April 1, 2016. Thank you for your prompt assistance with this matter.

Sincerely,



BILL NELSON
Ranking Member

cc: The Honorable John Thune, Chairman

JOHN THUNE, SOUTH DAKOTA, CHAIRMAN

ROGER ANDERSON, MISSISSIPPI
BOB BLOOM, MISSISSIPPI
MARKED FURBER, FLORIDA
ALICIA MOULTON, NEW HAMPSHIRE
TED CRUZ, TEXAS
DAN FLORES, MICHIGAN
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RON JOHNSON, WISCONSIN
JOHN HELLER, NEVADA
JOHN HELLER, NEVADA
JOHN HELLER, NEVADA

BILL NELSON, FLORIDA
MIGUEL LUTTRELL, MISSISSIPPI
CLAYTON M. LUTTRELL, MISSISSIPPI
JOHN HELLER, NEVADA
JOHN HELLER, NEVADA
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MARK ROSEN, STAFF DIRECTOR
JOHN HELLER, STAFF DIRECTOR

United States Senate

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WASHINGTON, DC 20510-6125

Website: <http://commerce.senate.gov>

March 9, 2016

Mr. Mark Fields
President and Chief Executive Officer
Ford Motor Company
One American Road
Dearborn, MI 48126

Dear Mr. Fields:

For more than a year, the U.S. Senate Committee on Commerce, Science, and Transportation has been investigating numerous issues surrounding the defective Takata airbag crisis. Recently, on February 23, 2016, Committee minority staff released an addendum to a June 2015 Takata report. The addendum, titled "Total Recall: Internal Documents Detail Takata's Broken Safety Culture and the Need for a More Effective Recall Process," revealed widespread manipulation of airbag inflator test data by Takata employees, with some occurring after the recalls began.¹ These findings only serve to bolster my concerns over the potential danger posed by all Takata ammonium nitrate-based inflators.

The Takata airbag recalls now involve 14 auto manufacturers and millions of U.S. vehicles. The most recent expansion of the recalls brought the total number of recalled inflators to more than 28 million.² As of February 12, 2016, the National Highway Traffic Safety Administration reported that over 7 million inflators had been repaired, including about 4 million driver-side inflators and 3 million passenger-side inflators.³ While this represents important progress, these figures also reveal that 75% of recalled defective Takata inflators may still be on the road today.

Accordingly, I write to request more information on the efforts by Ford Motor Company (Ford) to substitute each recalled inflator with a safe replacement. News reports state that Takata's competitors are now producing the majority of the replacement inflators, which is welcome news.⁴ However, I am concerned that, in some instances, we are still replacing defective inflators with new Takata inflators that contain the same dangerous ammonium nitrate-based propellant and therefore may need to be replaced again. I understand that, because of the

¹ Senate Committee on Commerce, Science, and Transportation (Minority Staff), *Total Recall: Internal Documents Detail Takata's Broken Safety Culture and the Need for a More Effective Recall Process*, 114th Cong. (2016).

² National Highway Traffic Safety Administration, Recall 16E-006 (Jan. 25, 2016); National Highway Traffic Safety Administration, Recall 16E-005 (Jan. 25, 2016); National Highway Traffic Safety Administration, Recall 16V-036 (Jan. 22, 2016).

³ National Highway Traffic Safety Administration, Recalls Spotlight Takata Air Bag Recalls (Feb. 12, 2016) (online at www.safercar.gov/rs/takata/index.html).

⁴ See e.g., *Autoliv, Daicel, TRW Gain From Takata's Recall Troubles*, *Automotive News* (Feb. 29, 2016).

Mr. Mark Fields
 March 9, 2016
 Page 2

role time plays in degrading the propellant, this "interim remedy" may decrease the risk of death or injury, but I worry that this remedy increases consumer confusion and concern. Additionally, I am troubled by the fact that some auto manufacturers may be selling new vehicles with potentially defective Takata inflators that will also need to be replaced in the future.

To help the Committee understand the various issues surrounding the ongoing recalls of defective Takata airbags, please provide the following information:

1. What is the total number of vehicles and inflators currently under recall for defective Takata airbags?
2. What is Ford's current total nationwide recall completion rate for all outstanding recalls of vehicles with Takata airbags? What is Ford's current recall completion rate in high heat and humidity states?
3. To date, how many defective inflators have been replaced?
 - a. Of these replacements, how many are Takata's ammonium nitrate-based inflators?
 - b. Of the replacement inflators manufactured by Takata, how many contain a desiccant?
 - c. Of these replacements, how many are manufactured by a supplier other than Takata? If multiple suppliers, provide the name of each supplier and the total number of replacement inflators manufactured by each supplier.
4. Provide a description of Ford's current supply of replacement inflators. Please include:
 - a. The total number of available replacement inflators;
 - b. The number and percentage of replacement inflators that are Takata's ammonium nitrate-based inflators;
 - c. The number and percentage of replacement inflators manufactured by Takata that contain a desiccant;
 - d. The number and percentage of replacement inflators that are manufactured by a supplier other than Takata. If multiple suppliers, provide the name of each supplier and the total number of replacement inflators manufactured by each supplier.
5. Does Ford currently have any contracts with Takata for the supply of ammonium nitrate-based replacement inflators? If yes, how many additional Takata ammonium nitrate-based inflators – beyond the current supply – will be supplied under each contract and when does each contract expire? Please also provide a breakdown of how many of these replacement inflators will contain a desiccant.

Mr. Mark Fields
March 9, 2016
Page 3

6. Does Ford currently have any contracts with Takata for the supply of ammonium nitrate-based inflators that are now being or will be installed in new vehicles? If yes, how many Takata ammonium nitrate-based inflators will be supplied under each contract and when does each contract expire? Please also provide a breakdown of how many of these new ammonium nitrate-based inflators contain or will contain a desiccant.
7. Provide a list of any new vehicles Ford currently offers for sale or is contemplating for future sale that contain airbags with Takata's ammonium nitrate-based inflators. Please include model, model year, total number of vehicles, and whether these vehicles contain desiccated or non-desiccated ammonium nitrate-based inflators.

I ask that you provide this information by April 1, 2016. Thank you for your prompt assistance with this matter.

Sincerely,



BILL NELSON
Ranking Member

cc: The Honorable John Thune, Chairman

JOHN THUNE, SOUTH DAKOTA, CHAIRMAN

ROBERT WICK, MISSOURI
BOB CORKER, TENNESSEE
MARK ROSEN, FLORIDA
MEL MANKAMER, NEW HAMPSHIRE
TED CRUZ, TEXAS
JOE MANCHES, MARYLAND
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PAUL JOHNSON, MISSOURI
DEAN KELLEY, NEVADA
CORY GARDNER, COLORADO
STEVE DAINES, MONTANA

MIKE ROSEN, STAFF DIRECTOR
KATHY LUTY, ADMINISTRATIVE STAFF DIRECTOR

United States Senate
COMMITTEE ON COMMERCE, SCIENCE,
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WASHINGTON, DC 20510-6125
Website: <http://commerce.senate.gov>

March 9, 2016

Mr. Bernhard J. Glaser
Vice President and Managing Director
Daimler Vans USA
303 Perimeter Center North, Suite 202
Atlanta, GA 30346

Dear Mr. Glaser:

For more than a year, the U.S. Senate Committee on Commerce, Science, and Transportation has been investigating numerous issues surrounding the defective Takata airbag crisis. Recently, on February 23, 2016, Committee minority staff released an addendum to a June 2015 Takata report. The addendum, titled "Total Recall: Internal Documents Detail Takata's Broken Safety Culture and the Need for a More Effective Recall Process," revealed widespread manipulation of airbag inflator test data by Takata employees, with some occurring after the recalls began.¹ These findings only serve to bolster my concerns over the potential danger posed by all Takata ammonium nitrate-based inflators.

The Takata airbag recalls now involve 14 auto manufacturers and millions of U.S. vehicles. The most recent expansion of the recalls brought the total number of recalled inflators to more than 28 million.² As of February 12, 2016, the National Highway Traffic Safety Administration reported that over 7 million inflators had been repaired, including about 4 million driver-side inflators and 3 million passenger-side inflators.³ While this represents important progress, these figures also reveal that 75% of recalled defective Takata inflators may still be on the road today.

Accordingly, I write to request more information on the efforts by Daimler Vans USA (Daimler Vans) to substitute each recalled inflator with a safe replacement. News reports state that Takata's competitors are now producing the majority of the replacement inflators, which is welcome news.⁴ However, I am concerned that, in some instances, we are still replacing defective inflators with new Takata inflators that contain the same dangerous ammonium nitrate-based propellant and therefore may need to be replaced again. I understand that, because of the

¹ Senate Committee on Commerce, Science, and Transportation (Minority Staff), *Total Recall: Internal Documents Detail Takata's Broken Safety Culture and the Need for a More Effective Recall Process*, 114th Cong. (2016).

² National Highway Traffic Safety Administration, Recall 16E-006 (Jan. 25, 2016); National Highway Traffic Safety Administration, Recall 16E-005 (Jan. 25, 2016); National Highway Traffic Safety Administration, Recall 16V-036 (Jan. 22, 2016).

³ National Highway Traffic Safety Administration, Recalls Spotlight Takata Air Bag Recalls (Feb. 12, 2016) (online at www.safercar.gov/rs/takata/index.html).

⁴ See e.g., Autoliv, Daicel, TRW Gain From Takata's Recall Troubles, *Automotive News* (Feb. 29, 2016).

Mr. Bernhard J. Glaser
 March 9, 2016
 Page 2

role time plays in degrading the propellant, this "interim remedy" may decrease the risk of death or injury, but I worry that this remedy increases consumer confusion and concern. Additionally, I am troubled by the fact that some auto manufacturers may be selling new vehicles with potentially defective Takata inflators that will also need to be replaced in the future.

To help the Committee understand the various issues surrounding the ongoing recalls of defective Takata airbags, please provide the following information:

1. What is the total number of vehicles and inflators currently under recall for defective Takata airbags?
2. What is Daimler Vans' current total nationwide recall completion rate for all outstanding recalls of vehicles with Takata airbags? What is Daimler Vans' current recall completion rate in high heat and humidity states?
3. To date, how many defective inflators have been replaced?
 - a. Of these replacements, how many are Takata's ammonium nitrate-based inflators?
 - b. Of the replacement inflators manufactured by Takata, how many contain a desiccant?
 - c. Of these replacements, how many are manufactured by a supplier other than Takata? If multiple suppliers, provide the name of each supplier and the total number of replacement inflators manufactured by each supplier.
4. Provide a description of Daimler Vans' current supply of replacement inflators. Please include:
 - a. The total number of available replacement inflators;
 - b. The number and percentage of replacement inflators that are Takata's ammonium nitrate-based inflators;
 - c. The number and percentage of replacement inflators manufactured by Takata that contain a desiccant;
 - d. The number and percentage of replacement inflators that are manufactured by a supplier other than Takata. If multiple suppliers, provide the name of each supplier and the total number of replacement inflators manufactured by each supplier.
5. Does Daimler Vans currently have any contracts with Takata for the supply of ammonium nitrate-based replacement inflators? If yes, how many additional Takata ammonium nitrate-based inflators – beyond the current supply – will be supplied under each contract and when does each contract expire? Please also provide a breakdown of how many of these replacement inflators will contain a desiccant.

Mr. Bernhard J. Glaser
March 9, 2016
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6. Does Daimler Vans currently have any contracts with Takata for the supply of ammonium nitrate-based inflators that are now being or will be installed in new vehicles? If yes, how many Takata ammonium nitrate-based inflators will be supplied under each contract and when does each contract expire? Please also provide a breakdown of how many of these new ammonium nitrate-based inflators contain or will contain a desiccant.
7. Provide a list of any new vehicles Daimler Vans currently offers for sale or is contemplating for future sale that contain airbags with Takata's ammonium nitrate-based inflators. Please include model, model year, total number of vehicles, and whether these vehicles contain desiccated or non-desiccated ammonium nitrate-based inflators.

I ask that you provide this information by April 1, 2016. Thank you for your prompt assistance with this matter.

Sincerely,



BILL NELSON
Ranking Member

cc: The Honorable John Thune, Chairman

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United States Senate

COMMITTEE ON COMMERCE, SCIENCE,
 AND TRANSPORTATION

WASHINGTON, DC 20510-6125

WEBSITE: <http://commerce.senate.gov>

March 9, 2016

Mr. Martin Daum
 President and CEO
 Daimler Trucks North America LLC
 4747 N. Channel Avenue
 Portland, OR 97217

Dear Mr. Daum:

For more than a year, the U.S. Senate Committee on Commerce, Science, and Transportation has been investigating numerous issues surrounding the defective Takata airbag crisis. Recently, on February 23, 2016, Committee minority staff released an addendum to a June 2015 Takata report. The addendum, titled "Total Recall: Internal Documents Detail Takata's Broken Safety Culture and the Need for a More Effective Recall Process," revealed widespread manipulation of airbag inflator test data by Takata employees, with some occurring after the recalls began.¹ These findings only serve to bolster my concerns over the potential danger posed by all Takata ammonium nitrate-based inflators.

The Takata airbag recalls now involve 14 auto manufacturers and millions of U.S. vehicles. The most recent expansion of the recalls brought the total number of recalled inflators to more than 28 million.² As of February 12, 2016, the National Highway Traffic Safety Administration reported that over 7 million inflators had been repaired, including about 4 million driver-side inflators and 3 million passenger-side inflators.³ While this represents important progress, these figures also reveal that 75% of recalled defective Takata inflators may still be on the road today.

Accordingly, I write to request more information on the efforts by Daimler Trucks North America (Daimler Trucks) to substitute each recalled inflator with a safe replacement. News reports state that Takata's competitors are now producing the majority of the replacement inflators, which is welcome news.⁴ However, I am concerned that, in some instances, we are still replacing defective inflators with new Takata inflators that contain the same dangerous ammonium nitrate-based propellant and therefore may need to be replaced again. I understand

¹ Senate Committee on Commerce, Science, and Transportation (Minority Staff), *Total Recall: Internal Documents Detail Takata's Broken Safety Culture and the Need for a More Effective Recall Process*, 114th Cong. (2016).

² National Highway Traffic Safety Administration, Recall 16E-006 (Jan. 25, 2016); National Highway Traffic Safety Administration, Recall 16E-005 (Jan. 25, 2016); National Highway Traffic Safety Administration, Recall 16V-036 (Jan. 22, 2016).

³ National Highway Traffic Safety Administration, Recalls Spotlight Takata Air Bag Recalls (Feb. 12, 2016) (online at www.safercar.gov/rs/takata/index.html).

⁴ See e.g., *Autoliv, Daicel, TRW Gain From Takata's Recall Troubles*, *Automotive News* (Feb. 29, 2016).

Mr. Martin Daum
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that, because of the role time plays in degrading the propellant, this "interim remedy" may decrease the risk of death or injury, but I worry that this remedy increases consumer confusion and concern. Additionally, I am troubled by the fact that some auto manufacturers may be selling new vehicles with potentially defective Takata inflators that will also need to be replaced in the future.

To help the Committee understand the various issues surrounding the ongoing recalls of defective Takata airbags, please provide the following information:

1. What is the total number of vehicles and inflators currently under recall for defective Takata airbags?
2. What is Daimler Trucks' current total nationwide recall completion rate for all outstanding recalls of vehicles with Takata airbags? What is Daimler Trucks' current recall completion rate in high heat and humidity states?
3. To date, how many defective inflators have been replaced?
 - a. Of these replacements, how many are Takata's ammonium nitrate-based inflators?
 - b. Of the replacement inflators manufactured by Takata, how many contain a desiccant?
 - c. Of these replacements, how many are manufactured by a supplier other than Takata? If multiple suppliers, provide the name of each supplier and the total number of replacement inflators manufactured by each supplier.
4. Provide a description of Daimler Trucks' current supply of replacement inflators. Please include:
 - a. The total number of available replacement inflators;
 - b. The number and percentage of replacement inflators that are Takata's ammonium nitrate-based inflators;
 - c. The number and percentage of replacement inflators manufactured by Takata that contain a desiccant;
 - d. The number and percentage of replacement inflators that are manufactured by a supplier other than Takata. If multiple suppliers, provide the name of each supplier and the total number of replacement inflators manufactured by each supplier.
5. Does Daimler Trucks currently have any contracts with Takata for the supply of ammonium nitrate-based replacement inflators? If yes, how many additional Takata ammonium nitrate-based inflators – beyond the current supply – will be supplied under each contract and when does each contract expire? Please also provide a breakdown of how many of these replacement inflators will contain a desiccant.

Mr. Martin Daum
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6. Does Daimler Trucks currently have any contracts with Takata for the supply of ammonium nitrate-based inflators that are now being or will be installed in new vehicles? If yes, how many Takata ammonium nitrate-based inflators will be supplied under each contract and when does each contract expire? Please also provide a breakdown of how many of these new ammonium nitrate-based inflators contain or will contain a desiccant.
7. Provide a list of any new vehicles Daimler Trucks currently offers for sale or is contemplating for future sale that contain airbags with Takata's ammonium nitrate-based inflators. Please include model, model year, total number of vehicles, and whether these vehicles contain desiccated or non-desiccated ammonium nitrate-based inflators.

I ask that you provide this information by April 1, 2016. Thank you for your prompt assistance with this matter.

Sincerely,



BILL NELSON
Ranking Member

cc: The Honorable John Thune, Chairman

Senator NELSON. What we find are some alarming facts, that the completion rates range from as high as 57 percent to less than 1 percent. These defective airbags are still being produced with the ammonium nitrate, and installed as replacement inflators in the recalled vehicles, meaning that millions of consumers are going to have to replace their airbags, not once, but twice. But the most shocking part is the discovery that four automobile makers out of all those letters that we sent, four responded, that we know of, that they're selling new cars with the defective airbags on a schedule to be recalled in 2 years. That means that a new car buyer is going and buying a new car and then they're going to find out that it has an airbag in it that's going to be on the recall list scheduled for 2 years from now.

That doesn't sound very good to me except the quandary that NHTSA finds itself in. It can't make enough of these replacement airbags, so it's going after the ones that they think are the most defective, which are the ones that the ammonium nitrate has sat around for several years, it has been exposed to heat and moisture. They can't produce enough of the airbags with the moisture absorber in the compound of ammonium nitrate that absorbs the moisture, so they're selling defective airbags in new cars.

What I'm going to be asking you is not only your ability through NHTSA to stop the sale of a car since the law says you can't sell it if it has a recall item, and in this case, it's going to be an item that is going to be recalled in 2 years. And at the very least, I'm going to ask you, Mr. Secretary, well, shouldn't we at least let the buyer know that they're going to have an airbag that's going to be recalled in 2 years if they're purchasing a new car? Because they're getting less than what they think they're purchasing if they're purchasing a brand new car that's got an airbag that is going to have to come in and get replaced.

So that's where I'll be going with my questions.

The CHAIRMAN. OK. Thank you, Senator Nelson.

Secretary, welcome. We love to hear from you. Please proceed and we'll then get into a chance to give our Members a chance to ask some questions, so thank you and welcome. It's good to have you here.

**STATEMENT OF HON. ANTHONY R. FOXX, SECRETARY,
U.S. DEPARTMENT OF TRANSPORTATION**

Secretary FOXX. Thank you, Mr. Chairman. And let me also respond in like manner to say to you and the Committee how much of a pleasure it has been to work with you through the last 3 years. You all have taken your roles extremely seriously, and the partnership has been very strong, so thank you very much.

Mr. Ranking Member and Members of the Committee, I want to thank you for inviting me to testify today regarding the Department's progress in implementing the FAST Act.

Mr. Chairman, when I was last before you, one of our points of discussion was the need for Congress to pass and provide for certainty to states and pass a long-term surface transportation bill. While the FAST Act is not everything we need, I want to thank you for heeding our Nation's and our Department's call by passing this bipartisan long-term measure. It has removed the cloud of uncer-

tainty hanging over our surface transportation system for the better part of a decade and is a down payment for building a 21st century transportation system.

I also want to applaud this committee for including for the first time intercity passenger rail programs in a comprehensive, multimodal surface transportation authorization bill.

Mr. Chairman, since the FAST Act was enacted last December, we have been laser-focused on distributing as much of the resources Congress has provided as possible to states and other grantees through formula dollars and discretionary opportunities. We have also identified five key program areas to focus our implementation efforts, and I'll talk about each of them in turn: safety, project delivery, freight, innovative finance, and research.

First, as you know, safety continues to be our top priority, and we have taken a number of steps to implement FAST Act provisions in this area as quickly as possible. For example, in March, we issued a rule that raises maximum fines against non-compliant auto manufacturers from \$35 million to \$105 million. We also moved quickly to solicit nominations for FMCSA's Motor Carrier Safety Assistance Program Working Group to analyze the formula for the program, which provides much needed support to State agencies.

In the coming months, we will seek public comment on new authority to prohibit rental car companies from knowingly renting vehicles that are subject to safety recalls. This provision gives NHTSA an important tool to protect the safety of U.S. motorists, as rental agencies operate some of the largest fleets in the country.

Second, in the area of project delivery, the FAST Act adopted a number of administration proposals to further speed the review and permitting processes while still protecting our Nation's environmental and historic treasures. Just last week, the public comment period opened to review FRA's survey of categorical exclusions used in railroad transportation projects. We also have a number of additional guidance and rulemaking documents under way to implement provisions that eliminate duplication of environmental reviews.

Third, there are a number of freight programs and related provisions in the FAST Act that address challenges outlined in our "Beyond Traffic" study released last year. As our study indicates, it is estimated that by the year 2045, freight volume will grow to 29 billion tons, an increase of 45 percent from 2014 levels. The freight programs in the FAST Act now provide for the first time dedicated Federal funding that will allow us to fund freight and highway projects, including multimodal projects, to deal with these growing needs. We just closed the application period for the freight and highway competitive program we call FASTLANE last month, which will provide \$759 million in grants for critical projects.

Fourth, I am pleased that Congress sought to build on the administration's successful Build America Investment Initiative by establishing a National Surface Transportation and Innovative Finance Bureau in the FAST Act. In the next few months, we will provide updated guidance for the RRIF program that incorporates changes provided for under the FAST Act, including revised application processing procedures and an application dashboard.

And, finally, something that goes hand-in-hand with all of the Department's efforts are research and innovation. In March, we began the competition for UTC grants, which allows students and faculty to work together toward innovative transportation solutions. We have received 212 applications for the 35 grants available. I'm proud of the work the Department has accomplished in such a short period of time, but this is just the beginning, and it would not be possible, I would like to repeat, without the work of this Congress on a bipartisan basis.

We will continue our aggressive schedule to execute the reforms you put into place, because if our Nation is going to have the type of transportation system tomorrow that is better than it is today, wasted time is something none of us can afford.

And so with that, Mr. Chairman, I want to thank you, and I look forward to your questions.

[The prepared statement of Secretary Foxx follows:]

PREPARED STATEMENT OF HON. ANTHONY R. FOXX, SECRETARY,
U.S. DEPARTMENT OF TRANSPORTATION

Chairman Thune, Ranking Member Nelson, and Members of the Committee, thank you for inviting me to testify today on our progress in implementing the Fixing America's Surface Transportation (FAST) Act.

Thank you for heeding our Nation's call and our Department's call by passing a long-term, bipartisan surface transportation bill that increases funding, provides much needed reforms, and removes the cloud of uncertainty hanging over our surface transportation system for the better part of a decade. While it is not everything we need, the FAST Act is a down-payment for building a 21st Century transportation system.

I also want to applaud this Committee for including, for the first time, intercity passenger rail programs in a comprehensive, multimodal surface transportation authorization bill. The FAST Act includes provisions to significantly improve the transparency of Amtrak funding and the delivery of its services, as well as authorizes three new competitive grant programs to improve the safety, efficiency, and reliability of passenger and freight rail systems. The Act also provides important safety provisions such as dedicated funding for implementing positive train control, a requirement for states to establish highway-rail grade crossing action plans, and a mandate to provide recording devices on passenger trains. We are pleased to see the inclusion of a rail title and have been hard at work implementing provisions not only in this title, but also throughout the FAST Act.

The FAST Act calls for the Department to implement a significant number of programs, rulemakings, guidance, notices and other measures, and we have made every effort to do so in a timely, open, and transparent way.

Since passage of the Act, we have engaged stakeholders and the public through roundtables, panels, on-line forums, and meetings on targeted topics, including the Transportation Infrastructure Finance and Innovation Act (TIFIA) loan program, project delivery, accessibility, planning, freight, and bicycle/pedestrian infrastructure. We also acted quickly to issue over fifty guidance documents, hundreds of questions and answers, and over fifty fact sheets that provide critical information regarding implementation of FAST programs and provisions. We have made progress toward initiating several FAST-related rulemakings, and we are also continuing our efforts related to Moving Ahead for Progress in the 21st Century (MAP-21) Act rulemakings.

We are committed to distributing as much available funding as possible to states and other grantees to maximize the impact of FAST nationwide. For example, in January, the Federal Highway Administration (FHWA) apportioned approximately \$40 billion to States. At the same time, we have worked tirelessly to issue funding opportunities for new grant programs established under the FAST Act.

In March, we began competition for the Nationally Significant Freight and Highway Projects grants, which we refer to as FASTLANE (Fostering Advancements in Shipping and Transportation for the Long-term Achievement of National Efficiencies), which will fund high-impact projects that address key challenges affecting the movement of people and freight. This year's FASTLANE competition will provide \$759 million in grants.

We also announced the availability of \$377.5 million over the next five years for grants to support solution-oriented transportation research at colleges and universities under the University Transportation Center (UTC) Program. We plan to announce these awards early this fall. These are just a few examples of FAST Act funding opportunities we are dedicated to providing this year.

Mr. Chairman, when the FAST Act was enacted last December, we identified five key program areas on which to focus our efforts—safety, project delivery, freight, innovative finance, and research. Today, I will provide an update of the progress we have made in these areas and more.

Safety

As you know, safety has and continues to be our top priority. We have taken a number of steps to implement FAST Act provisions in this area as quickly as possible. In January, we solicited nominations for the Federal Motor Carrier Safety Administration's (FMCSA) Motor Carrier Safety Assistance Program working group to analyze the formula for the program, which provides critically needed support to State agencies engaged in commercial motor vehicle safety related activities. The first meeting of the working group was held in April. Per the FAST Act, we also commissioned the National Academies to conduct a correlation study of the Compliance, Safety, Accountability (CSA) program, which is underway now.

In March, we issued a rule¹ that raises maximum fines against non-compliant auto manufacturers from \$35 million to \$105 million. In April, the National Highway Traffic Safety Administration (NHTSA) issued a report² on actions taken to increase public awareness of the dangers of drug-impaired driving. In May, we issued a rule³ to implement and provide funding under State highway safety grant programs, including the newly authorized 24/7 Sobriety Program Grants and the Non-Motorized Safety Grants.

In the upcoming months NHTSA will also be seeking public comment, as required, on a new authority to prohibit rental car companies from knowingly renting vehicles that are subject to safety recalls. This provision gives NHTSA an important tool to protect the safety of U.S. motorists, as rental agencies operate some of the largest fleets in the country. In the fall, we will administer a pilot program with State DMVs to require notification to owners about open safety recalls at the time of vehicle registration.

Project Delivery

The Department has been a leader in reducing the bureaucratic red tape that can stall and delay critical transportation projects from moving forward. The FAST Act adopted a number of Administration proposals to further speed the review and permitting processes while still protecting environmental and historic treasures. Building on prior work carried out with our Federal and State partners to improve the environmental review process, we have implemented several project delivery FAST provisions to date.

For example, we published an environmental checklist to help project sponsors identify potential project approval requirements; issued a memo on improving habitats for pollinators; and coordinated with other Federal agencies on aligning Federal reviews of potential historic sites.

This week, we will be soliciting public comment on the potential application of the FHWA and Federal Transit Administration (FTA) procedures for implementing the National Environmental Policy Act (NEPA) to railroad projects. Last week, we issued a notice providing the public an opportunity to review the Federal Railroad Administration's (FRA) survey of categorical exclusions used in railroad transportation projects and new categories of activities that may be appropriate for future categorical exclusions.

We also have a number of guidance and rulemaking documents underway to implement provisions that eliminate duplication of environmental reviews, align Federal environmental reviews across the Department, and improve State and Federal agency engagement in environmental reviews.

Freight

The FAST Act freight programs and related provisions provide an important opportunity to begin to address the many challenges outlined in our "Beyond Traffic"

¹ Notice of Increase in Civil Penalty for Violations of National Traffic and Motor Vehicle Safety Act, 81 Fed. Reg. 15413 (March 22, 2016)

² Report to Congress entitled "Increasing Public Awareness of the Dangers of Drug-Impaired Driving"

³ Uniform Procedures for State Highway Safety Grant Programs, 81 Fed. Reg. 32554 (May 23, 2016) (amending 23 C.F.R. Part 1300)

study, including inefficiencies in our Nation's freight system and the need for a stronger multimodal transportation system. As the study indicates, more than 10 million trucks moved more than 10 billion tons of freight across America's highways in 2014. It is estimated that by 2040 freight volume will grow to 29 billion tons—an increase of 45 percent. The freight formula program and freight and highway discretionary program in the Act will, for the first time, provide a dedicated source of Federal funding for freight projects, including multimodal projects.

In February, FHWA issued implementing guidance for the National Highway Freight Program, which provides much needed formula funds to states to improve efficient movement of freight on the National Highway Freight Network. As I mentioned earlier, we also began the competition for FASTLANE grants. We have received 212 applications totaling nearly \$9.8 billion for grants under this new program. This huge wave of interest in the first year of this program—with states and localities requesting over 13 times more funding than available—underscores the continuing need for infrastructure investment across the Nation.

This week we established an interim National Multimodal Freight Network and in the coming months we plan to issue several additional essential planning tools that will help inform multimodal freight transportation planning across the country, including State Freight Plan guidance and a final National Freight Strategic Plan.

Innovative Finance Bureau

Building on the Administration's successful Build America Investment Initiative, the FAST Act establishes a "National Surface Transportation and Innovative Finance Bureau" to align, coordinate, and consolidate aspects of the Department's existing surface transportation innovative finance programs. This new office will serve as a single point of contact and coordination for states, municipalities, and project sponsors looking to use Federal transportation expertise, apply for Federal transportation credit programs (including TIFIA and the Railroad Rehabilitation and Improvement Financing (RRIF)), and explore ways to access private capital in public-private partnerships. We are working diligently to develop a clear and comprehensive plan to stand up this new office soon. We have, and will continue, to provide you with updates on our progress.

In March, we announced the availability of \$1.435 billion in capital over five years for the TIFIA program. In the next few months we plan to issue updated guidance for the RRIF program that incorporates changes provided under the FAST Act, including revised application processing procedures and an application dashboard.

Research and Innovation Deployment

At the Department we continue to transform government for the 21st Century by conducting transportation research, harnessing innovation, and embracing technology that will improve people's lives. Many of the FAST Act research program funding and provisions provide opportunities for us to carry out this vision.

As I mentioned earlier, in March we began the competition for UTC grants which allows students and faculty to work together toward innovative solutions to the challenges that face our transportation system, such as those outlined in our "Beyond Traffic" study. We have received 212 applications for the 35 grants available and are reviewing those applications now.

We also began competition for \$60 million in grants for the Advanced Transportation and Congestion Management Technologies Deployment Program, to fund cutting-edge transportation improvement technologies that will improve safety, efficiency, system performance, and infrastructure return on investment. These awards may be used for projects that use real-time traveler information, traffic data collection and dissemination, vehicle-to-infrastructure communication and an array of other dynamic systems and intelligent transportation system technologies.

Within the Department we are working quickly to develop annual modal research plans, per the FAST Act, to provide a comprehensive research outlook for the upcoming year. We are also developing a 5-year transportation research and development strategic plan to guide future Federal transportation research and development activities.

Other Areas

Beyond our key program areas, we have made great strides in implementing other FAST Act provisions of interest to this Committee.

In February, we convened the Gulf Coast Working Group to identify an option and the steps needed to restore passenger rail service along the Gulf Coast region. A report from this working group will be provided later this fall.

We worked expeditiously to select members for the Port Performance Freight Statistics Working Group while ensuring the necessary balance of interests across the

many and varied actors in freight transportation. This working group will convene next month.

We will soon be issuing a notice seeking input for the pilot program that allows military personnel trained as commercial drivers between the ages of 18 and 21 to operate in interstate commerce. We will closely monitor the safety performance of drivers in the pilot program through a working group comprised of representatives from the armed forces, State driver licensing agencies, safety advocates, and industry stakeholders.

Conclusion

Thank you for the opportunity to appear before you today to update you on our progress so far. We are proud of the work we have accomplished in a short period of time, and we anticipate continuing our aggressive schedule to execute the reforms you put in to place. I look forward to answering your questions.

The CHAIRMAN. Thank you, Mr. Secretary.

And I'll lead off and then we'll open up to our Members in the order in which they arrived.

Your testimony noted that the Federal Railroad Administration is making progress on a number of important initiatives, from streamlining the permitting process to reforming the RRIF program, and I would like to get just a little bit more specific, if I might, about the expected implementation timelines. In particular, you mentioned that FRA plans to propose expedited NEPA procedures this week. Do you plan to finalize those procedures before the end of the year?

Secretary FOXX. That is my plan. Yes, sir.

The CHAIRMAN. OK. And when does the Department expect to have a functional Innovative Finance Bureau and what RRIF program reforms can be implemented as the Bureau is set up?

Secretary FOXX. We're using a belt-and-suspenders process by basically two-tracking everything and to get it up and running. I expect that we will have the Bureau office space up and going by the middle part of the summer. I also expect that we will issue a job description for the Executive Director of the Bureau as well.

So my goal is to have it fully operational no later than the end of the year, but you will see the rolling out of it steadily over the next 6 months.

The CHAIRMAN. OK. And can the RRIF reforms get going in the meantime?

Secretary FOXX. Yes. They actually already are underway. There's a lot of work to try to consolidate a lot of the program structures of the RRIF program and the TIFIA program so that they look more like each other. I think that work is already underway, and I think you'll start to see a steady rolling out of that on the outside as well.

The CHAIRMAN. Good. The 24/7 Sobriety Program and Impaired Driving Acts were something that the FAST Act made some significant reforms to and has a number of highway safety grants that provide more flexibility so the states can qualify for the grants and address their own unique highway safety challenges, and this new grant to aid states with a 24/7 Sobriety Program is something that we were very focused on while maintaining the All Offender Alcohol Ignition Interlock grant, so now you've got a program that's worked really well, proven to be effective, but we believe that this 24/7 Sobriety Program also is something that will enable states to

use all the tools that are in their toolbox to combat the significant problem of impaired driving.

And I think, as I have pointed out in the past, that South Dakota has been an innovator in creating the 24/7 Sobriety Program, and the RAND Corporation recently showed that such programs reduce both repeat DUI and domestic violence arrests at a county level.

So could you give us an update on the approach the Department is taking to work with the states to provide more flexibility as you go about the process of implementing these grants?

Secretary FOXX. Yes. On May 16 of this year, we issued an interim final rule on the Ignition Interlock and 24/7 Sobriety Program. At this point, a lot of the work we're doing on this is working with the states to get the word out so that they are aware of the flexibility they have. We will be doing that through the summer and the fall, but I expect it will have a very robust response, given the additional flexibility.

The CHAIRMAN. Great. Thank you. During consideration of the FAST Act, there were a number of Senators who were focused on supporting the needs of rural states. When implementing the law, the Department, I believe, should consider the burden of regulations on rural states in areas as the cost of implementing regulations on a per capita basis is higher. I'm told that current proposed performance rules would require all states to file reports for all parts of the national highway system, and the question really comes back to, do states really need to prepare reports to show, for example, that rural roads are operating at the posted speed limit? I mean, some of the reporting requirements seem to be a little bit extreme.

Secretary FOXX. I'll take a look at it, Senator, and perhaps maybe respond either in a QFR or in a letter back to you on some of the questions related to this.

The CHAIRMAN. Yes. I would just simply say that it seems to me at least that a more targeted approach to these reporting requirements would make some sense, and it would save money for investment in transportation as opposed to reporting. So I would encourage you, Mr. Secretary, as you look at those, to be more skeptical about how some of these proposed requirements may work and how they would impact rural areas of the country.

Finally, let me just talk a little bit about CSA. As you know, the DOT IG, the GAO, and even an internal DOT report included that the Compliance, Safety, and Accountability Program was badly in need of reform, and while there is broad support for the intent of the program, to focus limited enforcement efforts on the least safe truck companies, Congress expressed concerns about the quality of analysis used to develop scores for motor carriers. The FAST Act required the scores to be fixed before they could be publicly held out as safety data. And we appreciate that the scores were removed on the date of enactment and that the raw factual data was restored to the website in a timely fashion after adjustments to the website were made.

So the question is, when will the program be reformed so that the scores can be returned to the public website with confidence that the analysis is appropriate and represents the risk of an individual carrier?

Secretary FOXX. Based on our preliminary assessment, it's going to take a while to do a revised analysis of this, and I would expect it would have to be more like 2 years before that information will be posted.

The CHAIRMAN. OK. My time has expired.

Senator Nelson.

Senator NELSON. OK. Mr. Secretary, on what I had talked about before, back in March, we sent out letters to 14 automobile makers involved in the Takata recalls, and we said, "We want you to identify all the new models that are equipped with the defective Takata airbags that are offered for sale or are contemplated to being offered for sale." Now, some responded and some didn't, and we put that into a detailed report, which we released last week, but a bunch of them refused to answer whether they are currently selling new vehicles that contain the non-desiccated, or, in other words, the ones that don't have the moisture absorbent desiccant that has been mixed in with the ammonium nitrate.

This is a failure of informing consumers, and I think your regulator ought to be getting answers on this. Now, I can tell you, this Senator—and I think I can speak for a lot of Senators up here—intends to get answers, and that's why I put in the record the 14 letters that we have just asked again for complete disclosure of any new models with those defective airbags, and I'm expecting them to give us complete answers.

So now let me go to my question. Under current law, whether it's the law, whether it's the FAST Act, or whether it is the amended Takata Consent Order, do you have the authority to say, number one, "Stop selling a new car with a bag that is going to be recalled in 2 years?" And the second question is, "Do you, in fact, have the authority to require the disclosure to the buying consumer of that new car that has got a bag that's going to be recalled?"

Secretary FOXX. First of all, Senator, I want to thank you for your persistence and the dogged determination you have to get to the bottom of this. I share your frustration with Takata. We have been doggedly pursuing this issue from day one. We've gotten a Consent Order with Takata that we keep amending as the environment continues to change.

On the first question, we are bound by our authorities to act where there is clear evidence that an action can be taken, and absent that, it would be something of a Pyrrhic victory to recall vehicles without having the substantiation to be able to hold those recalls under the lawsuit. You would effectively find ourselves twisting in the wind on lawsuits before people would actually not have to be in those cars.

Senator NELSON. OK, let me interrupt you here then. What I think you're saying is that whereas the law says, because the Chairman and I put this in the FAST Act, it says that you cannot sell a new vehicle with a recalled item, but the fact that they are selling a new vehicle with an item that is going to be recalled in 2 years—

Secretary FOXX. Correct.

Senator NELSON.—you're saying you don't have the authority.

Secretary FOXX. That's correct.

Senator NELSON. OK. How about disclosure? How about the protection of the consuming public?

Secretary FOXX. Within our existing authorities, I do not believe we have that authority. I will ask our lawyers to confirm that for me, and I will share the answer with you. However, within the Consent Order, we've been able to obtain additional requirements from Takata that would not have otherwise been available to us, and so what I would like to do is to pursue getting that kind of disclosure requirement within the Consent Order and within the remedies that we've been able to obtain from Takata and so make those disclosures happen. I agree with you that these disclosures should happen to consumers before they are purchasing these new cars.

Senator NELSON. And, therefore, if your lawyers determine that you do not have that authority, then would you tell us what we do so that the buyer can beware, so that the buyer knows what they're buying?

Secretary FOXX. Yes.

Senator NELSON. If they're buying not the full package of what they think they're buying, they're buying something that they've got to go in and have recalled in 2 years.

Secretary FOXX. Yes. We will work together on this issue to get to the bottom of it, and I pledge that to you, sir.

Senator NELSON. Great. Will you also, please, help us if any of these automobile makers are dragging their feet, not responding to these 14 letters that we just sent out, will you help us?

Secretary FOXX. I'll help you. Yes, sir.

Senator NELSON. Maybe you ought to call a little prayer session with them.

[Laughter.]

Secretary FOXX. We did that back in January. Maybe we'll do it again.

Senator NELSON. Thank you, Mr. Secretary.

The CHAIRMAN. Thank you, Senator Nelson. Also good line of questioning there. Hopefully we can get some follow-up.

Senator Fischer.

STATEMENT OF HON. DEB FISCHER, U.S. SENATOR FROM NEBRASKA

Senator FISCHER. Thank you, Mr. Chairman.

Secretary Foxx, it's good to see you again, and I do thank you for your good leadership in this very critical area.

My first question is about the national freight policy, which we established in the FAST Act. And in order to remain competitive, we need to have a robust multimodal freight policy that enhances the efficiency of both our rural and our urban first and last mile connectors. In fact, DOT's National Freight Strategic Plan noted that freight flows across all modes will increase by 42 percent by the year 2040.

In your perspective, what is the status of the implementation of that National Strategic Freight Plan, and how do you think the states are doing at designating those very critical rural and urban corridors? And how is DOT providing any kind of assistance, tech-

nical assistance, to the states so that they can move forward quickly on that?

Secretary FOXX. Senator, first of all, I want to again thank you and this Congress for the focus on freight. This is an enormously important issue to our country, as you know. And what the FAST Act has done both on the policy side and on the resource side has really been to pivot the country toward focusing on this much more.

I want to speak on your question to two things. One is the formula-based freight program. We have provided guidance to the states as of this winter to help them understand how to access those resources, and our experience to this point has been there's a lot of interest and excitement at the State level to implement on the formula side of the effort. The comment period has closed, as I pointed out in my opening statement, for the discretionary freight program, which we will hope to make announcements on that program in the summertime, but our goal is to continue not only putting the resources out there, but things like the expedited permitting and the categorical exclusions and all of the work that's involved in trying to get projects teed up, we are moving on an accelerated basis, and we've made a lot of great progress. That's just two proof points.

Senator FISCHER. Good. I thank you for that. As you know, there are resources out there, and states like Nebraska I believe are ready to move on this so that we can start some good progress. And, as you know, one of the elements of the highway bill that I'm really pleased with are the regulatory reforms that I authored for the FMCSA, and that was to help with transparency and consistency, but also with the public being more involved in the rule-making on that.

I understand that next week the Department's Motor Carrier Safety Advisory Committee is going to hold a public meeting concerning the implementation of that Section 5203 of the FAST Act, and that would require the FMCSA to conduct a comprehensive review and assessment of all the regulatory guidance that's currently on the books.

In relation to this meeting, how does the FMCSA plan to continue the process of reviewing regulatory guidance so we can look at the consistency and the necessity and also creating greater transparency as we move into the future?

Secretary FOXX. I am also very pleased to report that the FMCSA has been conducting listening sessions throughout the country, and will continue to so, even above and beyond the commission that you just referenced. This is helping us understand the perspective of industry, understand the perspective of other stakeholders, and, frankly, I think it will inure to the benefit of not only our operational approaches, but perhaps even our policy and regulatory approaches going forward.

In addition to that, we have created a regulation evaluation division as of last year. This division is working to increase the use of available data, and has advanced the agency's effort to help to arrive at the best available solution on various regulatory and technical issues. We're also using that agency to increase transparency in our regulatory evaluations, which is also of great interest to our

stakeholders. We're also committed to an Advanced Notice of Proposed Rulemaking or proceeding with the negotiated rulemaking when considering major rules that require sufficient technical or scientific information. So these are just some of the process changes that we are working through in response to the language that you were good enough to put in the bill.

Senator FISCHER. Do you think that will help you to respond quicker to stakeholders when they are dealing with that so that the agency can have a formal response in a more timely manner?

Secretary FOXX. I think it will help us with speed—

Senator FISCHER. Time is money when it's building roads.

Secretary FOXX. Yes. I think it will help us with speed, and I also think it will help us with transparency because the more you are not communicating in a vacuum, the more people are constantly having communication with us, the less surprises there are on both sides, so I think it will be very helpful.

Senator FISCHER. Exactly. We want to see Commerce continue, and the FMCSA is important in making sure that our stakeholders are able to do that. Thank you, sir. It's good to see you.

Secretary FOXX. Thank you. Great seeing you.

Senator FISCHER. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Fischer.

Senator Klobuchar is up next.

**STATEMENT OF HON. AMY KLOBUCHAR,
U.S. SENATOR FROM MINNESOTA**

Senator KLOBUCHAR. Thank you very much, Mr. Chairman.

Thank you, Secretary Foxx.

Secretary FOXX. Thank you.

Senator KLOBUCHAR. I know you were there in spirit, but we just dedicated the overpass that you helped with, with the TIGER Grant. I know we talked about that. Congressman Emmer and I were there, and that's in his district, and it's going to save a lot of lives.

Secretary FOXX. That's great.

Senator KLOBUCHAR. It is the worst intersection in our state, so I want to thank you and the Department for that.

Some really fast questions here related to the FAST Act and the MAP-21 in the FAST Act and trying to reduce delays. What progress has DOT made to date in implementing the project delivery reforms in the FAST Act? How are they going to communicate with State governments? This question, I had talked to some of our State people, it's their question. And how do you plan to monitor and assess the effectiveness of the reforms?

Secretary FOXX. We're doing a number of things across a variety of modes, including FRA, FTA, and the Highway Division, but with the Highway Division specifically. On project delivery, we are looking at the expanded use of categorical exclusions. We have, through our bureau that was alluded to earlier, we are also working on speeding up the permitting process by incorporating more concurrent reviews in the work so that there are fewer documents flowing between agencies and government. We are using one table to make these decisions, which actually helps speed up the time.

Those are two of the proof points of what we're trying to accomplish, and there are many more, and I'd be happy to give you a more elaborate answer.

Senator KLOBUCHAR. Very good. And I just want to—I'm going to move on from the safety issues with rail, but we've just gotten a statewide rail director appointed who is coordinating these efforts, Arlene Tchourumoff, and so I hope your Department will work with her. I put a provision in there about the rail crossings, and obviously you and I have talked about this in the past, but it's something that continues to be of concern.

On Takata, I've been long calling for this recall. We had a woman in Minnesota that was blinded. She was a passenger in a car. My question there is just related to, How can we make sure consumers know what cars are under recall? What better job can we do with that? Because there are still people confused about what to do.

Secretary FOXX. We are working with the industry to ensure that when we have a consent order or a coordinated recall effort, that we are using every tool available to us and to the industry. And so I've got a long list here of various strategies that we're trying in relation to Takata that include a recall campaign of Safe Cars Save Lives, proactive use of Internet, social media. There are a lot of things that we're doing to try to get the word out in some unconventional ways. Our goal is 100 percent compliance, and we are now tiering and holding the manufacturers accountable when we do a recall and establish a consent order to get 100 percent compliance through that consent order.

Senator KLOBUCHAR. And one more, there is that issue of the replacement inflators. What more can we do to make sure that they are available as soon as possible?

Secretary FOXX. So the unfortunate reality is that there is only so much supply. I think some of the recall activity has actually triggered some additional suppliers to come out of the woodwork, so to speak, and as that supply comes online, we're just going to try to continue tiering it toward the risk as best we can. But I think we're doing everything we can within the universe of supply that's there, and hopefully we'll see more suppliers come into the market.

Senator KLOBUCHAR. Thank you. Last, distracted driving, I thank the Chairman and the Ranking Member for including the provision I had with Senator Hoeven. As you know, there was a huge, I know, big priority of yours as well as your predecessor. There were grants available to help states to educate drivers, that more and more of these deaths and injuries are occurring because of distracted driving. It has not slowed down, and yet we had a pot of money sitting there that no one could access, I guess only the state of Connecticut, Senator Blumenthal is in here right now, but that happened one year.

And so we made some changes to make it easier for the states to get in compliance so they can access this money, and I just want to make sure you knew that, as well as the Graduated Driver's License programs, we made some changes there. And I just thought you could comment in general on distracted driving.

Secretary FOXX. Yes, it continues to be a huge issue, and we're going to have to continue working particularly with our younger cohort of drivers, but it's really across all demographics. In May of this year, we issued an interim final rule implementing the FAST Act distracted driving grants, as you point out, so thank you for that.

Senator KLOBUCHAR. Thank you. You did that quickly. Thank you.

Secretary FOXX. Absolutely. There will be comprehensive distracted driving grants as well as special distracted driving grants that will be available to states, and we will move that money as expeditiously as possible.

Senator KLOBUCHAR. Thank you. I think timing is critical here, so I really appreciate it. Thank you for your good work, Secretary Foxx.

Secretary FOXX. Thank you.

The CHAIRMAN. Thank you, Senator Klobuchar.

Moving further west, Senator Schatz.

[Laughter.]

**STATEMENT OF HON. BRIAN SCHATZ,
U.S. SENATOR FROM HAWAII**

Senator SCHATZ. Thank you. As west as you can go.

Senator KLOBUCHAR. And way warmer.

[Laughter.]

Senator SCHATZ. Thank you, Mr. Chairman, and thank you, Secretary Foxx. I wanted to follow up with you on TIFIA financing for transit-oriented development. As you know, we reduced the dollar amount threshold for eligibility for TIFIA projects and also included as eligible projects TOD, and I wanted to get your view on how we are moving along in terms of finding projects that are appropriate. And I've heard some concerns expressed from the private sector about exactly what the eligibility requirements are, and I want to get your assurances that we're moving along and interpreting the statute in as flexible a manner as possible.

Secretary FOXX. Well, first of all, we are very, very excited about this new flexibility for our loan programs. FHWA released TIFIA guidance that clarifies that TOD investments are eligible under the FAST Act. We expect FRA to follow suit very shortly with the RRIF program. And so we don't have to date, any applications, but we've heard a lot of interest in this program. And if there is anyone who has a question, I would really urge that you or others direct them to our Build America Transportation Investment Center, which can help them figure out not only how to make use of that tool, but any of our other creative financing tools for transportation.

Senator SCHATZ. Great. Thank you very much. We've talked a lot about Complete Streets, and I really appreciate the Department's focus on transportation generally speaking, that it's not the Department of Highways or the Department of Rail, it is the Department of Transportation, and we really need to be thinking about how to move people around in as safe of a way as possible. And I've been working with Senator Heller and others on Complete Streets. And I wanted to first get your sense of how we're moving along. We

wanted something a little more prescriptive in the statute. We weren't able to achieve it, but, on the other hand, I think you've been able to work with mayors and transportation directors for State government and AARP and other stakeholders.

So if you can just give me a quick update on how we're moving along with respect to this because whether the statute read exactly how I wanted it to or in the compromised version, I think the key is implementation at the sort of administrator level. So I want to know how we're doing. And I know you have a special perspective having been a mayor.

Secretary FOXX. Yes, sir. I think we're moving along fairly well. We did initiate something called a "Safer People, Safer Streets" initiative, which has brought more than 200 mayors from across the country together to share best practices on how to implement essentially Complete Streets designs. Our Federal Highway Administration is also creating greater flexibility in the design of Federal aid highways so that there is at least the possibility that states and local governments can use those roadways in more innovative ways for all users. I think this is an area where it is not just the local governments, it's also the State and Federal governments that have to work together to lay out best practices, and all three levels of government will be involved in execution.

Senator SCHATZ. Sure. And if you're using FAST Act funding, you know, in urban Honolulu versus in South Dakota, obviously you're going to have a different set of priorities, and that's appropriate. I do want to recognize Senator Heller for his leadership on a bipartisan basis of trying to move this forward.

I have one concern that has been expressed to me, and it has to do with a rule proposed this spring which aims to establish measures of highway performance and congestion, and the concern is this: that all makes sense in a vacuum, but to the degree and extent that those metrics create an incentive that sort of ignores the question of multimodal, ignores potentially the question of location efficiency, and sort of to the extent that the Department is working on integrated multimodal transportation systems and being smart about all of this, that you don't want to create a rule which basically establishes a metric that says if you're a local DOT director, you say, look, that's all nice, they're encouraging us to do this, but they're paying us to do that, which is one more highway lane, one more boulevard lane, and thinking in terms of transportation and sort of, how can we sort of channel—I mean, I think of the old Army Corps of Engineers in terms of flood control, right? It was always blow as wide of a hole as you could and channelize and move that water through as quickly as possible.

Certainly there are instances where you want to move every car as quickly through a community as possible, but there are other instances where you want to actually encourage people to not take the trip because something is right next door nowadays. I know you understand that. I want you to take a look at that rule from that perspective.

Secretary FOXX. Will do, sir.

Senator SCHATZ. Thank you very much.

The CHAIRMAN. Thank you, Senator Schatz.

Senator Peters is up next.

**STATEMENT OF HON. GARY PETERS,
U.S. SENATOR FROM MICHIGAN**

Senator PETERS. Thank you, Mr. Chairman.

Secretary Foxx, it's always a pleasure to see you. Thank you for being here before us today.

The FAST Act does a lot to incentivize the development and deployment of very innovative transportation technologies, particularly in the space of automobiles, and I want to, before I go on with the questions, take a moment to thank you for your work in this area. You have been a real advocate for exploring how we can really fully utilize some of the exciting new technologies eventually leading to autonomous vehicles, and as you know, I sponsored a bill that was signed into law as part of the FAST Act that would allow states to use existing surface and highway transportation funds to invest in vehicle-to-vehicle infrastructure, the DSRC technology, which can help deliver really critical information to those vehicles on the road. It's going to help reduce traffic congestion, as we've heard from previous speakers, as well as dramatically reduce accidents.

Section 6004 of the highway bill also directs the Department of Transportation to provide grants to localities to establish advanced transportation and congestion management deployment sites, and I understand that solicitation process is going forward as we speak.

Secretary FOXX. Right.

Senator PETERS. And I also know that the Department of Transportation is finalizing its selection of the Smart Cities Challenge winner. And one of the criteria for the Challenge is to integrate advanced technologies in the management and operation of the city, which includes the deployment of connected and autonomous vehicle systems.

Mr. Secretary, what role do you see the vehicle-to-infrastructure DSRC technology, as well as other DSRC technologies, playing in the deployment sites and to the eventual DOT Smart City that will be granted?

Secretary FOXX. First of all, we are at the very edge of a wave of technology that will enter into the transportation space, and I think there are areas that we know are going to be areas of opportunity. The advent of connected cars, the advent of autonomous cars, I think those trends are coming, and they're unalterable in that sense, and so we have a responsibility to be ready for that.

The vehicle-to-infrastructure component follows along with that, and what that means is a lot of things. In some respects, you have some of that functionality today with coordinated signalization, but it also could, in the future, do things like your street lights are coordinated according to the movement of automobiles, and so when there is no automobile on the road, the street lights are dim, and when cars appear at a certain distance away, they come on, and that could create energy savings and not compromise safety.

So there are a lot of opportunities in this space. How they actually get deployed is one of the questions the Smart City Challenge is asking. We have tried not to be prescriptive with the cities to tell them you have to have your street lights coordinated, you have to do this, you have to do that, it's more a question of, What is the vision each city has and how does technology relate to that vision?

And so it has been an exciting opportunity to see 78 cities apply, to see 7 finalists, and to see this process moving forward, but I think this is the beginning of that conversation, not the end of it.

Senator PETERS. Right. Well, it is exciting, and I think a critical part of that is the ability for vehicles and infrastructure to communicate back and forth, which means having dedicated spectrum, and, as you know, there is some discussion as to whether or not the spectrum should be shared. Could you speak a little bit to how important it is to make sure that the spectrum is available and unfettered in these transportation systems?

Secretary FOXX. Yes. I think I can't understate or overstate how important it is to be very sure that spectrum sharing is safe. We are supportive of the safe movement of vehicles, and I think the thought process to this point has been to reserve the 5.9 band for connected vehicles with the thought being that if you shared it, you would compromise safety. We're now in the throes of a research project with the FCC to determine whether you could actually share spectrum safely, and if you can, I'm sure we'll be supportive of it, but we need to know before we do it, we don't need to do it before we know.

Senator PETERS. So you're actively coordinating with the FCC? Do you feel that that is working well?

Secretary FOXX. Yes, sir. There were some early hiccups perhaps on both ends, but I think we are in a very good place now and working well together.

Senator PETERS. Great. Well, it's great to hear.

Secretary FOXX. Sure.

Senator PETERS. Mr. Chairman, I have a few other questions I would like to submit for the record for the Secretary, but my time is expired.

Thank you, Mr. Secretary.

The CHAIRMAN. Thank you, Senator Peters. We'll make sure that those questions get submitted and hopefully responded to. Thank you.

The CHAIRMAN. Next up is Senator Heller.

**STATEMENT OF HON. DEAN HELLER,
U.S. SENATOR FROM NEVADA**

Senator HELLER. Mr. Chairman, thank you for holding this hearing.

And, Secretary Foxx, thank you also for taking time out of your busy schedule to be here today.

Secretary FOXX. Thank you.

Senator HELLER. We had the Las Vegas Metro Chamber of Commerce in town this week.

Secretary FOXX. Oh.

Senator HELLER. And they held a function last night in the Kennedy Caucus Room unlike a function I think have ever been held in that Caucus Room before, but it was kind of interesting, the dynamics of bringing the Las Vegas Chamber of Commerce into Washington, D.C. Las Vegas is a "can do" city: anything you want, anything you think can happen in that town, in that city, will happen. To have them come to Washington, D.C., where nothing happens, was quite a dynamic, and I would hope that they would come

more often, maybe they would have some influence on our city out here in Washington, D.C.

But here's my question, there are a couple hundred of them. And at that event last night, their interest, obviously, is that corridor, the I-11 corridor, legislation that I pushed in the FAST Act. And I don't have to tell you the importance of it, two of the largest cities in America, Phoenix and Las Vegas, without a freeway between them. And you can imagine the economic development that would occur in the Southwest if you could connect those two cities. And it's not just the connection between Las Vegas and Phoenix, but all the way down to Tucson and all the way up to the Canadian border, and that's the plan. They want to know, and I have to meet with them tomorrow. If you were meeting with them, I guarantee you the first question they're going to ask you is, "How long is it going to take to get that corridor between Phoenix and Las Vegas?" What's the answer to that? Today?

Secretary FOXX. Ooh.

[Laughter.]

Secretary FOXX. That's no pressure. You're meeting with them tomorrow?

Senator HELLER. That's the question I'm going to be asked.

Secretary FOXX. Senator, we understand the importance of this corridor, and your leadership on moving the process forward has been absolutely critical. And I'm sure you're aware that MAP-21 did provide a portion of it being designated. The FAST Act, as you point out through your efforts, designates the portion between Arizona and Nevada. There is a working group that we have been part of convening that is looking—I think the biggest constraint, to be honest with you, is not just the planning and the design, but it's also identifying the Federal and State funding sources for the project. And we're going to continue being at the table with Arizona and Nevada until we figure that out with them and in identifying flexibilities that may support the advancement of the I-11 corridor. So we are working with them. I think that something like a tiered NEPA analysis is currently under discussion. We are going to do everything we can to help move things forward. Getting the planning is part of it, but I think getting the resources in place is going to be the biggest challenge.

Senator HELLER. The first section of that is the Boulder City bypass, and that is taking Federal, State, and local dollars in order for that to occur. So I think Nevada, Boulder City, Las Vegas, they're doing everything they possibly can to get ahead of this thing. Tell me a little bit more about this working group. How do they prioritize these high-priority corridors, like the I-11 and other projects?

Secretary FOXX. Well, we always work based on what the local jurisdictions want to do, and in this case, you do have a demand that is coming from both states, and getting them coordinated and figuring out how to jointly plan a project of this magnitude and how to jointly go through the permitting process and using the levers we have to try to accelerate that, that's some of the work that is currently ongoing. Again, I think some of the biggest challenges are going to be each state looking at its complement of transportation projects and figuring out how it can fit in the resources to

do these projects. And, of course, where we have the ability to help on the funding end, we're going to be looking for ways to help out.

Senator HELLER. OK. OK. Because I'm just trying to figure out, is there any way of streamlining this process?

Secretary FOXX. Yes. Yes.

Senator HELLER. I'm sure that's what the working group is all about.

Secretary FOXX. Yes.

Senator HELLER. We've got to get through this NEPA program.

Secretary FOXX. Yes.

Senator HELLER. I guess the question is, is I don't have an answer yet.

[Laughter.]

Senator HELLER. Two years, 10 years, 20 years, how long does a project like—we haven't produced a new Federal highway to this extent in decades. I'm wondering—

Secretary FOXX. Yes. I would separate the planning and design elements from the funding element, and I would say that we can move as fast as the locals can move as they work through the alignment issues. We're already trying to help accelerate the NEPA process, and so we will continue doing that type of work. I think on the funding side of it, we are constrained by what we have available. The FAST Act does provide additional formula dollars to each state for freight projects. In theory, this could be considered for that. We have guidance that we put out this year. And to the extent our discretionary programs could support and help, we will obviously consider any opportunity to help.

Senator HELLER. Mr. Secretary, thank you for being here.

Secretary FOXX. Thank you.

Senator HELLER. Mr. Chairman, my time has expired.

The CHAIRMAN. Thank you, Senator Heller.

And, by the way, what does it take for one to get invited to the Las Vegas comes to the Capitol—

Senator HELLER. You were invited, Mr. Chairman. You were invited.

[Laughter.]

The CHAIRMAN. I thought maybe it was one of those what happens in the Caucus stays in the Caucus events.

Senator HELLER. Yes, yes. You had to be over 21 years of age.

[Laughter.]

Senator HELLER. Maybe you didn't meet that criteria.

[Laughter.]

The CHAIRMAN. All right. Next up is Senator Cantwell.

**STATEMENT OF HON. MARIA CANTWELL,
U.S. SENATOR FROM WASHINGTON**

Senator CANTWELL. Thank you, Mr. Chairman.

It's good to see you, Mr. Secretary. And thank you for all your leadership on freight and the FAST Act, and you've obviously brought that up, but certainly look forward to continuing to work on what is a very important tool for us to keep U.S. product moving and getting to its final destination, so thank you for that.

One area where I think that you and I may not have seen eye-to-eye in the past has definitely got an accentuation point put on

it just last Friday, and that is the Columbia Gorge rail derailment and explosion, and it seems to us like Lac-Mégantic just came to the Pacific Northwest, although everybody knows how much oil of Bakken crude is moving through the area. And so I've heard just since last Friday from practically every major city or region of our state about their concerns about the continued movement of this product. That's primarily because this product moves through every major—it goes through Spokane, it goes through the gorge, it goes to Vancouver, in some cases, all the way up to refineries, you know, in the northern part of our state through Seattle. So every community, because we have, just like the problem you're trying to fix on freight, you know, the rails are right there close to the ports, close to the urban centers.

So part of our challenge is the explosion and derailment that we saw on this gorge situation was the thermal-jacketed 1232s, so under your rule, they will take till I think something like 2025 to be basically phased out. More specifically, though, to me, because this issue of the product itself is not being properly regulated, the volatility of Bakken crude is over the standard by which almost every other thing is set. You know, people who are moving this product into pipelines set at Reid vapor pressure, which is the volatility of the product, below 10. The NYMEX market doesn't take contracts on product that—you know, unless they're 10 or below—and yet we're letting these shippers self-determine to ship Bakken crude at over 13 percent Reid vapor pressure, which means it's more volatile.

Now, the reason I bring this up is because even with your own analysis of these new tank cars, even the best tank cars that we're going to implement in the future, even the thermal-jacketed 117s, at more than 18 miles an hour, they still have a puncture, can have a puncture. So to me, while we're improving the rail safety, while we're improving the rail cars, we also have to improve and lower the volatility of this explosive product. We can't have this product shipping through tunnels in Seattle with our light rail transportation system. We can't have it right next to hotels in Vancouver. We can't have it going through neighborhoods of thousands of people in Spokane. We can't have a Lac-Mégantic in our state.

So I'm asking you, Will you consider an interim rule? You have the ability now to get the study done as it relates to the transportation bill to look at the volatility of this, and DOE and DOT are working together, but why not, given this most recent explosion, look at setting an interim rule on volatility given the hazards this material is showing to our communities across America, and certainly we just witnessed in our region of the Pacific Northwest?

Secretary Foxx. Senator, I want to first of all say that I actually feel the same sense of urgency that you do around this issue, and our Department has been working since the day I came in. Lac-Mégantic happened within just a few days of my taking office in this role, and it has been a real push almost every day. We've taken a bunch of actions, but I don't think we are at the end of the cycle of continuing work at this. I think we still have a lot of work to do here.

I would say on the stabilization/volatility issue that that is an issue that's within our sights. That's one of the reasons why we've

worked with the Department of Energy to formulate a study to understand the dimensions of this material and to have a definitive study out there that really allows us to set policy around it. I will certainly take your recommendation back to our staff and provide you with a formal response from the Department, but I'm taking any and all suggestions about how to deal with this going forward. I think we've made a lot of progress. We are safer today than we were 3 years ago. I hope that over the next several months and years we end up safer than we are today.

Senator CANTWELL. Well, I just think for us, we do not want to see a loss of life before we see a regulation of this vapor pressure, and with the volume of Bakken crude moving through our state, and as I said, every major population center, it's just too big of a risk not to have this product, which we wouldn't let a propane unregulated vehicle move through downtown Seattle with that vapor pressure. We're not treating natural gas the same way. The people who are moving this product in pipeline are demanding that it have a lower vapor pressure. So then why are we letting these trains just continue to move an explosive product through our community? And so while I appreciate all our efforts on the DOT and the lines that we're going to do to improve our rail system, I just think fundamentally we have to reduce this vapor pressure. So thank you for considering that and look forward to your formal response.

Secretary FOXX. Thank you. May I also just thank you for your leadership on freight as well, Senator. I doubt that we would have as much of the conversation if it hadn't been for your efforts. So thank you.

Senator CANTWELL. I think we all know freight can't wait.

[Laughter.]

Senator CANTWELL. Thank you.

The CHAIRMAN. Thank you, Senator Cantwell. And I mentioned in my opening remarks the work that you did on the freight components and aspects of this. And a lot of the reforms with regard to railcars and blankets and refitting the protective measures and safeguards that are in here will be helpful, and we're going to make sure that we work with the Department to ensure that those things get put in place in a timely way. So thank you.

Next up is Senator Ayotte.

**STATEMENT OF HON. KELLY AYOTTE,
U.S. SENATOR FROM NEW HAMPSHIRE**

Senator AYOTTE. Thank you, Chairman.

Secretary Foxx, as you know, New Hampshire recently welcomed the news that we received the TIFIA loan, a \$200 million TIFIA loan, and thank you for that, for the I-93 improvement project, which will widen 19.8 miles of Interstate 93 from two to four lanes between our largest city, Manchester, and to Salem, New Hampshire, which is right on the New Hampshire-Massachusetts border, so this is really important to our state's economy and to transportation in New Hampshire. So thank you for that.

Under the FAST Act, there was established the National Surface Transportation and Innovative Finance Bureau to help streamline the application process for states and local entities applying for and

obtaining Federal financing or assistance for large surface transportation projects. I know you briefly mentioned in your written statement DOT's work to get the Bureau up and running, but I wanted to—could you please provide a detailed update for the Committee regarding the Department's work to implement the National Surface Transportation and Innovative Finance Bureau? And have you been able to identify an Executive Director yet? And do you expect the Bureau will be operational by the end of the year?

Secretary FOXX. On the last question first, yes, I do expect it to be operational by the end of the year. We expect to open the doors of this new bureau in the middle part of the summer, and we actually have already gone through a pretty extensive exercise at identifying some of our existing resources, human and otherwise, that could be placed into the Bureau immediately. So this will be a steady ramping up over the course of the year, but it will start very strong the middle part of the summer.

In terms of the Executive Director, we have a solicitation out for an Executive Director, and we're hopeful to get that person on board before the end of the year.

Senator AYOTTE. Great. And once you get this up and running, and I'm glad to hear that's moving quickly, how would you—in thinking about this Bureau over the long term, how would you envision the Bureau supporting the work of our states and communities in moving forward with larger projects like I-93?

Secretary FOXX. Yes. You know, I think one of the biggest things that the Bureau is going to do is to bring our innovative financing resources under one roof and they'll be a one-stop shopping for the project sponsors at the State and local level as well as the private sector. In addition to that, you will find that projects that are moving within the Bureau are going to have a level, almost a sharper kind of level, of support as they move through other aspects of the project delivery, including the permitting and other spaces that have to be—

Senator AYOTTE. I'm sure states would like to have a Sherpa. That would be great.

Secretary FOXX. Yes, absolutely.

[Laughter.]

Secretary FOXX. I expect this is going to be a very successful effort. We have some very good early experience with the Build America Transportation Center that the President authorized us to do, and we're going to keep building on it with the Bureau.

Senator AYOTTE. Great. Thank you.

Secretary FOXX. Thank you.

Senator AYOTTE. I wanted to follow up, too, there have been health and safety concerns that have been raised related to the flammability standards for children's car seats, and wondered if you were aware of these concerns and what's being done to address them.

Secretary FOXX. NHTSA's safety standard for flammability currently does not require flame retardants. The flammability standard aims to afford adequate time for caregivers to help children escape a vehicle in the event of a fire. And we know that about 194,000 vehicle fires occur annually in the U.S. resulting in 300 fatalities and 1,250 injuries, and of these, 20 fatalities and 25 inju-

ries are children. We know also that foams used in child seats and vehicle seats can exacerbate a vehicle fire. Therefore, child seat materials, like motor vehicle seat materials, are required to prevent flames from spreading. NHTSA is initiating research today to better understand and evaluate the issues involved in this area, including flammability requirements and flame retardants for child restraints, and so that work is ongoing.

Senator AYOTTE. Very good. I know I only have a brief period left, but I wanted to follow up, one of the amendments I had on the FAST Act was focused on additional steps for NHTSA to take to support states and emphasizing the public dangers of drug-impaired driving. And in New Hampshire, we're just seeing, you know, as we are in other places in the country, a heroin epidemic and opiate epidemic, and I know that the data from the National Roadside Survey has recently shown that there actually has been an increase. Now, that data goes from 2007 to 2013 and 2014, but if New Hampshire is any measure, we're seeing even from 2014 up like this. So any brief thoughts on, you know, what we can do in terms of NHTSA's action and DOT thinking about drug-impaired driving and the challenges we're facing with it?

Secretary FOXX. This is on our radar screen. There is a lot of activity going on to study drug-impaired driving. I think the hardest—for us to crack is going to be, How do you set a standard? You have a standard for alcohol, for instance, but how would you—

Senator AYOTTE. And how do you measure it? Yes.

Secretary FOXX. Exactly. So this is work and research that is ongoing, but you have it on my word that we will work as expeditiously as we can to get answers.

Senator AYOTTE. Excellent. Thank you.

Secretary FOXX. Thank you.

The CHAIRMAN. Thank you, Senator Ayotte.

Senator Blumenthal.

**STATEMENT OF HON. RICHARD BLUMENTHAL,
U.S. SENATOR FROM CONNECTICUT**

Senator BLUMENTHAL. Thanks, Mr. Chairman.

I want to pursue the line of questioning that Senator Nelson raised and begin by saying I think the American public would be aghast and appalled that recalls have not been extended to cars on lots right now that they are buying that, in effect, are subject to the same safety defects as the cars under recall, or to put it differently, that they're buying defective cars simply because they haven't been told they're under recall. And if there is a need to change the law or start an education campaign, I say this to you, Mr. Secretary, because I know your heart is in the right place, and I respect immensely the higher standard of safety and diligence that you brought to the Department of Transportation during your tenure there, shouldn't the Consent Order be amended again right away or other tools used to stop the sale of these cars with these potentially deadly safety defects?

Secretary FOXX. We did have a bit of this colloquy before. I don't believe we have the authority to do that.

Senator BLUMENTHAL. Why not?

Secretary FOXX. Because the cars aren't recalled now.

Senator BLUMENTHAL. Why not put them under recall?

Secretary FOXX. Because we don't have the basis to do so.

Senator BLUMENTHAL. Why not?

Secretary FOXX. Because the evidence isn't there. In other words——

Senator BLUMENTHAL. Why not?

Secretary FOXX.—because it doesn't exist.

Senator BLUMENTHAL. Why not get it?

Secretary FOXX. We have a sense of what's unsafe, and that which is unsafe has been recalled, and we will continue. We've never said this Takata thing has been finalized. We are continuing to research and understand the dimensions of what's unsafe.

Senator BLUMENTHAL. These products are the very same ammonium nitrate airbags that have sent shafts and shards of metal into people's faces. That's why I say the American public would be aghast and appalled. And I sat at this very table and heard from Takata, not 10 years ago, but within the last couple of years, that they simply lacked enough parts and equipment to provide the substituted airbags that would be necessary, and I called then for them to share proprietary information with other airbag manufacturers so this recall could be done much more expeditiously, and it's as though that conversation never happened.

Secretary FOXX. I don't think that's true. I mean, this recall is the largest recall in this Nation's history.

Senator BLUMENTHAL. And I give you credit for it.

Secretary FOXX. It is the largest recall in the Nation's history, 70 million recalled. And, by the way, we don't know whether we're done yet. And if there is a way to use the concurrent Consent Order, to amend it, to ensure that people who are buying cars are notified, we are willing and hopeful to pursue that, but I don't think this is a closed book, but our agency, within existing authorities, has to use evidence available to us, and we do know that these cars will eventually be recalled, in which case the recalls will follow.

Senator BLUMENTHAL. I agree with you that they eventually will be recalled.

Secretary FOXX. Yes.

Senator BLUMENTHAL. And I take at face value the representation that you feel you lack sufficient authority now. I would like to pursue with you the potential for amending the Consent Order or interpreting creatively and aggressively your existing authority and for increasing that authority if necessary because I think it is vital to public safety and health, and I know you share——

Secretary FOXX. I do.

[Laughter.]

Senator BLUMENTHAL. This is not an adversarial meeting, trust me. I really do credit you and applaud you and thank you for your focus on this issue.

I want to shift to rail and again another area where you have been very importantly creative. We need to make long-term, robust investments, well beyond what we're doing now. I know you're working closely with my colleague Senator Booker and others from New Jersey and New York on a plan for the Hudson River tunnels. I'd like your commitment to work with me in developing a long-

term plan to rebuild the Northeast Corridor beyond just those tunnels, especially the aging bridges and tracks that we have in Connecticut, the need for positive train control. There's \$199 million in the measure that we've just passed. The Amtrak rail route has positive train control on all but the New York to New Haven portion of it, and I would like your commitment that you will work with me in applying those monies and that commitment to investment in that Northeast Corridor.

Secretary FOXX. Absolutely. And, by the way, on the other pieces that you mentioned on the Takata issue, I want to work with you on that, too. I mean, we all have a shared interest in making sure the American public is as safe as possible.

Senator BLUMENTHAL. I agree, sir.

Secretary FOXX. Good.

Senator BLUMENTHAL. Thank you so much, Mr. Secretary.

Secretary FOXX. Yes, sir. Thank you.

Senator BLUMENTHAL. And thanks for all your very diligent and dedicated work at the Department. Thank you.

Secretary FOXX. Thank you.

The CHAIRMAN. Thank you, Senator Blumenthal. And I appreciate the Secretary's commitment on that. It is somewhat remarkable that new cars are being sold. Granted, the airbags are not defective yet, and therefore the authority issue, and I appreciate the dilemma that you face about prioritizing those that present the greatest risk in public safety and health hazard at the moment and in starting there, but this is something that we're going to have to continually stay involved with.

Secretary FOXX. Yes.

The CHAIRMAN. Next up, Senator Sullivan.

**STATEMENT OF HON. DAN SULLIVAN,
U.S. SENATOR FROM ALASKA**

Senator SULLIVAN. Thank you, Mr. Chairman.

Mr. Secretary, good to see you again. And I really want to thank you for coming out to Anchorage, Alaska, and meeting with our Native leadership. It was an important meeting. I know they very much appreciate it.

I wanted to follow up on an issue that came up in that meeting and that I and Senator Murkowski and Don Young have subsequently written you about, and that's the issue, as you know, under the Alaska Native Claims Settlement Act of 1971, and then consistently several other Federal laws. It has been clear under Federal law that Alaska Native corporations are eligible to participate in the Disadvantaged Business Enterprise Program, as certified by the SBA, further, that DOT regulations have been implemented that recognize the ANC eligibility based on the certification of the SBA. And since 2009, SBA has recognized a self-certification process is appropriate for ANCs, given their consistent Federal law designation as minority and economically disadvantaged business enterprises.

What we discussed at Anchorage, what we followed up and wrote you about, is that there's this process now that's beginning where some of the states are not recognizing this SBA process that's creating kind of 50 different bureaucratic hurdles. And in response to

the letter that Congressman Young and Senator Murkowski and I sent you, you stated that DOT will consider guidance to states on the ANC participation, and we appreciate that, but your response noted that the Department has chosen not to recognize SBA's certification process, in particular, self-certification.

So, as you can imagine, this is a little confusing to me because your own regulations recognize SBA certification, and the SBA has recognized self-certification is appropriate, but then there seems to be a recent internal DOT policy change that doesn't recognize what the SBA is doing. So can you work with us to iron out that internal inconsistency? It certainly seems like there's something amiss where two Federal agencies are not talking from the same sheet of music. And in your development of guidance in consideration of this issue, I'd like your assurance to work with us to make sure that there is uniformity across the 50 states in recognition of ANC eligibility, which the SBA clearly already does, and Federal law, in a zillion different statutes, requires.

Secretary FOXX. We will work with you to clarify this absolutely. Yes.

Senator SULLIVAN. I know it was a big whine there, but we've been—and I know it's a little specific, but we did raise this in Anchorage, we raised it in a letter, and there just seems to be this internal inconsistency between the SBA Federal law and what you're doing.

Secretary FOXX. Good.

Senator SULLIVAN. So I appreciate your commitment on that.

Let me turn to another topic. Senator Blumenthal touched on it. And the Chairman and many others were focused on regulatory reform in terms of the implementation of the FAST Act. And, as a matter of fact, in a hearing several months ago, you and I talked about how long it takes to permit a bridge in America, which is a disaster, 6 to 7 years. Recent articles, one, and I would like to submit for the record, Mr. Chairman, a *Wall Street Journal* editorial called "The Highway to Bureaucratic Hell."

The CHAIRMAN. Without objection.

[The article referred to follows:]

Wall Street Journal—Sept. 11, 2015 6:59 p.m. ET

HIGHWAY TO BUREAUCRATIC HELL

Why it takes six years to build a road in America. And how to do it faster.

Anyone who rattled down highways replete with moon craters while traveling on Labor Day weekend knows: The government doesn't excel at managing roads. A major improvement would be bulldozing a permitting process that delays new public-works projects for up to a decade, and a new report from the nonpartisan group Common Good offers a road map.



PHOTO: MARK LENNIHAN/ASSOCIATED PRESS

In 2009, the Obama Administration air-dropped \$800 billion of taxpayer cash known as the stimulus package, but as of last year a piddling \$30 billion had been spent on transportation infrastructure. One reason the projects proved not as “shovel ready” as promised is that proposals must undergo extensive environmental and permitting reviews, which leave no tedium behind in part to avoid litigation.

No single official oversees the process, and agency turf wars are the norm. A project must comply with every federal, state and local outfit that declares itself relevant—Fish and Wildlife, the town fire department. A desalination plant in San Diego, for example, kicked off a permitting adventure in 2003 that lasted nine years and endured 14 legal challenges, which makes California’s failure at drought relief less of a mystery.

Another illustration is the Bayonne Bridge that connects New Jersey to Staten Island and at 150-feet tall blocks large cargo ships. The Port Authority of New York and New Jersey plans to raise the bridge height to 215 feet instead of blowing \$3 billion on, say, a new tunnel. As a reward for that rationality, it took six months to identify the lead agency for an environmental review that dragged on for some five years. The regulatory jibber jabber spanned 20,000 pages and included traffic flow studies for a bridge that already exists.

One irony is that delays mean more carbon energy use. Roughly 6 percent of energy pumped out for public consumption is wasted thanks to America’s super-annuated electricity grid. That works out to about 200 coal-burning power plants, the study notes. The same is true for congested roads, on which motorists guzzle gas in traffic while they wait the average six years for a major highway project to be approved.

The expense adds up: A six-year delay on public projects costs more than \$3.7 trillion, the report found. By the way, the amount needed to update dilapidated bridges, water pipes and so on over the next decade is half that, at \$1.7 trillion.

Common Good suggests building a process that shuttles projects through in a prompt two years. Environmental reviews should be handled by one designated official and kept to 300 pages; litigation should be restricted to the first 90 days after the permit is issued; the White House should be granted authority to appoint an agency as a “one-stop-shop” for interstate projects.

Congress could address the permitting morass this fall as part of the transportation bill, and the presidential candidates could include the issue and a horror story or two in their agendas for faster economic growth. It’s hard to imagine a more sensible and politically achievable idea—and one better suited to restoring public confidence that government can carry out its basic duties.

Senator SULLIVAN. And another one by Lawrence Summers from the *Boston Globe* called “Why Americans Don’t Trust Government.”
 The CHAIRMAN. Without objection.
 [The article referred to follows:]

Boston Globe—May 25, 2016

A LESSON ON INFRASTRUCTURE FROM THE ANDERSON BRIDGE FIASCO

By Lawrence H. Summers and Rachel Lipson

SOMETIMES SMALL stories capture large truths. So it is with the fiasco that is the repair of the Anderson Memorial Bridge, connecting Boston and Harvard Square. Rehabilitation of the 232-foot bridge began in 2012, at an estimated cost of about \$20 million; four years later, there is no end date in sight and the cost of the project is mushrooming, to \$26.5 million at last count.

This glacial pace of implementation does not reflect the intrinsic technical difficulty of the task. For comparison, the Anderson Bridge itself was originally completed in just 11 months in 1912. General George Patton constructed nearly 40 times as much bridging in six months as American soldiers crossed the Rhine to win World War II. And even modern-day examples abound; for instance, in 2011, 14 bridges in Medford were fixed in just 10 weekends. In contrast, the lapses exposed by the Anderson Bridge project hold key lessons for America’s broader inability to solve its infrastructure problems.

Repairing the Anderson Memorial Bridge so slowly has had large direct costs. Approximately 21,000 vehicles cross the bridge each day, along with 15,000 bus riders and thousands of cyclists and pedestrians and riders of Harvard shuttle buses. All have been delayed by the repairs, many substantially. With missing sidewalks and bike lanes, cyclists and pedestrians are physically endangered as well. And then there are the backups on the roads that connect to the bridge. If we value time lost to congestion at \$20 an hour and make no allowance for cyclists or delays on other arteries, the cost of delay so far has been \$40 million, or almost 100 percent more than the budgeted cost of the repairs. Meanwhile, because of time lost from the Anderson delays, the structurally deficient Western Avenue and River Street bridges (originally scheduled for rehabilitation under the state’s same \$3 billion Accelerated Bridge program) have missed their window for funding.

How, we ask, could our society have regressed to the point where a bridge that could be built in less than a year one century ago takes five times as long to repair today? Here are some of the reasons that have contributed to the delay:

In order to adhere to strict historical requirements overseen by the Massachusetts Historical Commission, the Massachusetts Department of Transportation had to order special bricks, cast by a company in Maine, to meet special size and appearance specifications from the bridge’s inception in 1912.

At the same time, extensive permitting and redesigns haven’t helped. For instance, once construction had already started on the bridge, the contractor, Barletta Heavy Division, discovered that an existing water main would need to be relocated. With the subsequent change order and additional Massachusetts Water Resources Authority permitting processes, an additional 357 days were tacked on to the original contract completion date.

To cap it off, after resisting for years the inclusion of pedestrian underpasses in bridge rehabilitation, MassDOT changed course in 2014 and agreed to revise the design so as not to preclude the construction of an underpass in the future. The contractor then had to move a major utility pipe so that an underpass could fit underneath; meanwhile, another 256 days of delay were added to the project. The entire project is now 22 months behind schedule.

Delay, then, is at one level the result of bureaucratic ineptitude and the promiscuous distribution of the power to hold things up. At another level, it is the failure of leadership to insist on reasonable accountability to meet reasonable deadlines. Perhaps, at a deeper level, it is the failure of citizenry to hold government accountable for reasonable performance—a failure that may in part reflect a lowering of expectations as trust in government declines. These themes, unfortunately, are not unique to the Anderson Bridge; they help illuminate why, despite our vast needs, the country has struggled to generate the necessary momentum to respond to pressing infrastructure demands. There is no reason to think the Anderson Bridge experience is extraordinary, locally or nationally. For evidence, just look at the \$255 million Longfellow Bridge repairs, recently delayed another two years due to historical complications, or the \$82 million effort to replace deteriorated and corroded steel

beams on the Commonwealth Avenue Bridge, just pushed back one more year because of design errors. Massachusetts bridges are the oldest in the country, yet the Accelerated Bridge Program expires this year, with hundreds of structurally deficient bridges still remaining and future funding sources unclear.

America desperately needs a major increase in infrastructure investment and, if carried out effectively, an investment program could come close to paying for itself by generating an expanding economy. With record low interest rates, low material costs, and high construction unemployment, there is no better time. When states defer maintenance and repair for decades—as was done with the Anderson Bridge—it places a huge burden on future generations.

However, to collectively tackle the Nation's crumbling infrastructure, citizens need to believe that the government is up to the task. In an era when public trust in government remains near all-time lows, every public task is freighted with consequence. The relationship is cyclical—if government can start being more effective, it will win more trust, leading to more effectiveness. If, on the other hand, projects such as the Anderson Bridge repair project become the norm—then we are fated to increasing cynicism and distrust.

The Anderson Bridge is approximately one-sixth the length of the bridge Julius Caesar's men built across the Rhine in 10 days in 55 BC. Caesar's feat is admired not just for its technical mastery but also for its boldness. An allied tribe had offered boats to carry Caesar's troops across the river, to avoid the difficult task of bridge-building. Yet Caesar rejected this offer, on the grounds that it would not be "fitting for the prestige of Rome."

We should hold America's infrastructure to the same standard.

Lawrence H. Summers is the Charles W. Eliot University Professor and President Emeritus of Harvard University. He was also Secretary of the U.S. Treasury. Rachel Lipson is a joint MBA-MPP student at Harvard.

Senator SULLIVAN. These lay out bridges that are being permitted, not new bridges, but just to be repaired. So the Bayonne Bridge, that connects New Jersey to Staten Island, 5 years just to raise the bridge. The Anderson Memorial Bridge in Cambridge, Massachusetts, 5 years, just for the permitting I'm talking about. So I think the FAST Act scratches the surface, but I think there is so much more we can do. There are, as you know, Mr. Secretary, 61,000 structurally deficient bridges in America, and one of the reasons our economy is not moving, clearly, is because we can't build infrastructure because it takes 5 to 10 years to permit a road or permit a bridge, even a bridge that we just want to repair, not even expand.

So there are a lot of different ideas here. One of the things that I think is a good idea is to, if you're just repairing a bridge, to waive the permitting requirements because you're not hitting the ecosystem of the environment. Are there areas that you have in terms of other things that we can do besides what's in the FAST Act to get to what I think is a real, real problem for America? And if you were able to streamline permitting of structurally deficient bridges, you'd probably get 99 percent approval on that from most Americans. What are some of your ideas? And would you be in favor of waiving NEPA requirements for just maintenance on bridges?

Secretary FOXX. Well, I'll tell you that one of the secrets of the last 8 years has actually been an expansion of categorical exclusions, which is one way to move projects more quickly through the process.

Senator SULLIVAN. But it's very narrow.

Secretary FOXX. And so we've actually gone pretty substantially, I think—I may get this wrong, so I'll send you a QFR that will give

you the actual number, but I believe it was something like 93 percent CEs before, and we're closer now to like 96 or 97 percent.

I would also say a couple of other things that are being attempted at the State level that are helpful, and, by the way, it's not altogether always clear whether it is State or Federal permitting requirements that tie these things up.

Senator SULLIVAN. Yes, sir, I couldn't agree with you more.

Secretary FOXX. But also there is technology now that states are using. I'll give you one example. In Massachusetts, they were able to install I think 14 bridges over a weekend because the bridges were prefabricated, and so they were actually able to knock out the old bridge, slide the new bridge in, and have it ready by Monday morning. And so these technologies are ones that I think will also help us speed up the construction time, but I think it is absolutely true that when the government promises a project and it happens relatively quickly, the public gains confidence, and when it takes decades to get projects done, people lose confidence.

Senator SULLIVAN. Thank you. And, Mr. Chairman, I'm going to submit for the record an additional question on Section 5403 of the FAST Act, which is focused on making sure our veterans get expedited into the commercial trucking industry, and I'll have questions on how we're doing on follow up on that.

Thank you, Mr. Secretary.

Secretary FOXX. Yes, sir.

The CHAIRMAN. Thank you, Senator Sullivan.

The prepared statement of Senator Sullivan follows:]

PREPARED STATEMENT OF HON. DAN SULLIVAN, U.S. SENATOR FROM ALASKA

Mr. Secretary, in April, Senator Murkowski, Congressman Young and I sent a letter expressing "strong support" for a grant application submitted by the Municipality of Anchorage and the Port of Anchorage to the "Fostering Advancements in Shipping and Transportation for the Long-Term Achievement of National Efficiencies" (FASTLANE) Grant Program. The Municipality and Port are collectively seeking \$45 million to assist with the first phase of the Anchorage Port Modernization Project.

Since you are testifying before the Senate Commerce Committee regarding the implementation of the FAST Act, I want to use this opportunity to reiterate my support for the Port's FASTLANE Grant.

The CHAIRMAN. Senator Moran.

**STATEMENT OF HON. JERRY MORAN,
U.S. SENATOR FROM KANSAS**

Senator MORAN. Mr. Chairman, thank you.

Mr. Secretary, thank you for being here, but more importantly, thank you for your public service and relationship that you've extended to me and my staff.

Secretary FOXX. Thank you.

Senator MORAN. Let me bring to your attention an amendment that's included in the FAST Act that I offered. It's Section 5523, but what it does is allows for manufacturers of trailers to deliver them to their dealers, and that provision preempts State law, but it's my understanding that apparently many states are still attempting to enforce their own provisions, and so I raise to you this particular issue of education of states, either specifically—I guess specifically to this issue, but more broadly, the Department is doing

what to make certain that our State Departments of Transportation enforcement agencies know where their jurisdiction now lies?

Secretary FOXX. Let me come back to you with a formal response, Senator. It's an important issue, and I want to make sure we answer the mail on this, but I would suspect and will verify that we are actively working to educate the states on this, but let me give you the detail.

Senator MORAN. I would welcome the follow-up. We have a number of trailer manufacturers in Kansas, and, of course, they exist across the country, and this is an important provision in getting their product to their retailers.

Secretary FOXX. Sure.

Senator MORAN. Second, the FAST Act has required a National Academy of Science and a GAO study in regard to the ECP brakes on railcars, an issue that you and most of us are aware of. Has the GAO provided you any status report as to the progress they are making with their study? Part of that study is for National Academy of Science to do testing. And have you seen any results of the testing that you can share with us?

Secretary FOXX. I do not know the status of the GAO study. I know that the NAS is in the process of standing up the Committee that will be part of evaluating the testing. We are also working on a concurrent basis to get the testing ramped up and started, so that work is underway, but that's the current status.

Senator MORAN. When you say you, the Department, is on a path to ramp up the testing, you're talking about assisting the National Academy of Science or separate testing on your—

Secretary FOXX. As I understand the National Academy of Sciences' method, it takes them a while to ramp up their committees. They have a formal process by which they do that. And given the backend timeline that we have to move all this, we've actually started moving forward with some of the development of the testing. My hope is they're able to move quickly enough so that we don't get too far before that happens, but we're worried that we may blow the timeline if we don't start working.

Senator MORAN. And again I'm being repetitive, but I'm just trying to make sure I understand. Is what you're ramping up your own testing or you're assisting the National Academy of Science in their testing?

Secretary FOXX. My understanding is that the NAS will be evaluating the testing that is done by the Department.

Senator MORAN. Done by the Department.

Secretary FOXX. Yes.

Senator MORAN. OK. So the testing is your responsibility. The evaluation of that testing would be done by the National Academy of Science.

Secretary FOXX. Yes.

Senator MORAN. And I assume you would tell me that when that testing and the results are in, that is something you would commit to paying attention to as you develop your plan in regard to—

Secretary FOXX. Yes. And I can also tell you that the results—no results of the testing that is being done will be published or put

out there until the NAS task force has a chance to really drill into it and validate it or invalidate it.

Senator MORAN. OK. Thank you, Mr. Secretary. Finally, this is a manufacturing question, somewhat outside the scope of the FAST Act, but my question relates to harmonizing CAFE standards. My understanding is that the National Highway Traffic Safety Administration and EPA are not in synch on the standards and that you can be in compliance with one and fined or challenged by the other. And the administration had the one national program trying to harmonize the regulations so that a manufacturer—all of us can understand what the standards are. Can you bring me up to date in that regard?

Secretary FOXX. Well, there is work that's underway to do the interim halfway report on the CAFE standards, and I think things are going in a more harmonious direction than perhaps you think they are, but I expect that that work will continue forward and hopefully we'll be able to report out something in the fall.

Senator MORAN. If you have any specifics, I'd be glad to have you share that information with me when you respond to the other items.

Secretary FOXX. Yes, sir.

Senator MORAN. And I'm always looking for harmony, so thank you, Mr. Secretary.

[Laughter.]

Secretary FOXX. Yes, sir. Thank you.

The CHAIRMAN. All right. Thank you, Senator Moran. He is a harmonious guy.

[Laughter.]

The CHAIRMAN. The Senator from Montana, Senator Daines.

**STATEMENT OF HON. STEVE DAINES,
U.S. SENATOR FROM MONTANA**

Senator DAINES. Thank you, Mr. Chairman.

Just a point that Senator Cantwell brought up earlier about that incident in Mosier, Oregon, on the Columbia, the rail incident. Just a reminder, that Bakken crude also could travel the Keystone Pipeline. That's another way of transporting oil. One of the misnomers on the Keystone Pipeline is it's all Canadian crude. 100,000 barrels a day of Bakken crude would enter the Bakken outside of Baker, Montana, as part of building out a more robust infrastructure.

Secretary Foxx, thank you for visiting Montana recently. You were up there in God's country, the northwest part of our state, not too far from Glacier National Park and the Confederated Salish and Kootenai Tribes.

Secretary FOXX. Yes.

Senator DAINES. And that was on the Flathead Reservation. It was a historic meeting. By the way, you are the first Secretary of Transportation to ever step foot on the reservation there.

Secretary FOXX. Wow.

Senator DAINES. So I don't know if you knew you were making history—

Secretary FOXX. I did not.

Senator DAINES.—but you did.

Secretary FOXX. Wow.

Senator DAINES. Tell me what lessons you learned from that visit in tribal transportation.

Secretary FOXX. I think there are several. Number one is that you have a remarkable community, and they have a real idea of how they want to grow their economy, and tourism is obviously a big part of it. And there are also agricultural products that are coming from the area. I found that the people there were very interested in multimodal transportation, very interested in having the ability to walk or bike to work. I think there is a trail that they're trying to get fixed out there.

And then I would say the other piece is that there were also concerns about some of the rail—the commodities moving by rail within the reservation. And so those are some of the observations I came away with.

Senator DAINES. One of their major concerns—and thank you for that—that I hear from the CSKT, as well as Kalispell, in fact, anybody up and down Highway 93, is regarding the safety on U.S. 93. I've experienced it, as a kid who grew up in Montana. And, in fact, I remember the bumper stickers that we would see, and they're still out there, it says, "Pray for me, I drive Highway 93."

[Laughter.]

Senator DAINES. What steps is DOT taking to help the CSKT and others complete projects on U.S. Highway 93?

Secretary FOXX. So when we were there, Highway 93 did come up, and what I offered was our technical teams to come out and try to help. I can't remember where the project is in terms of planning, but there is a gap in the project where they're trying to get it finished. And we also offer technical assistance on the grant writing side as discretionary dollars become available to try to help move the project forward. We certainly want them to be as competitive as they can be within the discretionary programs.

Senator DAINES. I'd appreciate that. You know, tourism is a huge part of our economy in Montana, and that is the major corridor for folks—

Secretary FOXX. It's a beautiful state.

Senator DAINES. Thank you—flying into Missoula perhaps, driving up to Glacier National Park, it's on Highway 93.

I want to pave it over to another issue, on bridges. Senator Sullivan brought it up as well. In Missoula, Montana, three of the five bridges that cross the Clark Fork River are considered structurally deficient. In fact, most notoriously is the Russell Street Bridge. Over 60,000 cars cross these deficient bridges. They were constructed back in the 1950s, back when my dad was going to school at the University of Montana there in Missoula. In your testimony, you mentioned reducing bureaucratic red tape to expedite project delivery. What additional steps are you taking to expedite work on these most at-risk bridges?

Secretary FOXX. Well, I'd say that the biggest impediment we've had has been a lot of uncertainty about funding levels, and so now that the FAST Act has passed, states are starting to ramp up their activities in terms of rehabilitating bridges, repairing bridges, even replacing them. As they do that work, we're trying to find creative ways to help them move projects through very quickly.

I'll give you one example of a case study. We were able to work with the state of Pennsylvania not only to get the projects moved through the permitting process quickly, but they actually pooled a group of about 500 bridges to make use of our innovative financing programs, none of the individual bridges would have qualified or made sense to do by financing, but they got them pooled and were able to move 500 bridges through the system very quickly. So we're looking everywhere we can to help move through the permitting process as quickly as we can.

Senator DAINES. Well, that's good news, getting them through almost in block. If you would take a look at adding the Russell Street Bridge in Missoula to that list, I'd greatly appreciate it.

[Laughter.]

Secretary FOXX. You got it. Absolutely.

Senator DAINES. Thank you. Thank you, Secretary Foxx.

Secretary FOXX. Thank you, Senator. Appreciate you.

The CHAIRMAN. Thank you, Senator Daines.

And, Mr. Secretary, I have to depart here in a moment, but I just want to say again thank you for being here and thanks for all your good work. You've been a great partner on a lot of these issues. And this committee and the Congress has acted on highways, rail freight reform, pipeline safety is hopefully coming back from the House, and I guess the thing I would just encourage you to the degree that you can is encourage our House colleagues on FAA. We need to deal with aviation. I think we're in a much better position if we enact something that is longer term and has more permanent reforms in it than doing another short-term extension. So I'm hopeful that we'll be able to get that done here in the near future and will have addressed most of the major modes of transportation in the country.

So, Senator Wicker.

**STATEMENT OF HON. ROGER F. WICKER,
U.S. SENATOR FROM MISSISSIPPI**

Senator WICKER. Thank you.

And thank you, Mr. Secretary. I want to reiterate what Senator Moran said with regard to harmonization of regulations. As I understand it, auto manufacturers don't know where they are. They can build a fleet that might satisfy requirements of one Federal program, but not another agency, or it might satisfy a Federal requirement, but not a State requirement. So I understand you to say work is underway, you hope to get something to us in the fall. Will that be a legislative recommendation or will it be a change in a rule or regulation?

Secretary FOXX. I think there's an interim report that is due as part of the work on the CAFE standards. It was a 10-year program, and in year 5, there is work underway to do a review of progress to date. I think that our teams, both the EPA teams and the DOT teams, do not believe there is inconsistency. They've actually worked pretty hard to ensure that DOT CAFE standards and EPA's greenhouse gas standards are as harmonized as possible, and we will continue working to keep you advised and the Committee advised on the progress as we go forward.

Senator WICKER. OK. Well, in August 2012, and I realize that was almost 4 years ago, the administration said, and I quote, “Continuing the national program ensures that auto manufacturers can build a single fleet of U.S. vehicles that satisfy requirements of both Federal programs as well as California’s program. There are several discrepancies that allow compliance with one agency but not another.” So perhaps that’s changed since August 2012, or perhaps the administration’s statement was perhaps hyperbole except that the manufacturers tell us that they simply want to know what to comply with. So I hope you’ll commit to having NHTSA work with us on harmonization changes——

Secretary FOXX. Yes.

Senator WICKER.—so the manufacturers can know exactly where they are.

Now, let me ask you, you said something about a proposed Southeast Rail Commission in Charlotte a while back.

Secretary FOXX. Uh-huh.

Senator WICKER. There is already a Southern Rail Commission with Mississippi, Louisiana, and Alabama. Have you given any thought to the advantages of perhaps expanding that Southern Rail Commission to include states that might be in the Southeast Rail Commission as opposed to having a Southeast right up next to a Southern Rail Commission? Have you given that any thought, Mr. Secretary?

Secretary FOXX. Senator, I think the more states in the South that work together on establishing strong intercity passenger rail, the better. I was speaking about the fact that there is an existing compact between North Carolina and Virginia, and the other contiguous states there, South Carolina and Georgia, would be critical to connecting that part of the Southeast.

Senator WICKER. Well, now, you wouldn’t limit that to intercity rail, would you?

Secretary FOXX. Well, that’s what the conference was about that I was speaking from. And I also know that there is a Gulf Coast Working Group that is working to reestablish rail service between Louisiana and Orlando, which is also very important, so——

Senator WICKER. Right. What a nice segue to my next question. [Laughter.]

Senator WICKER. As a matter of fact, that was established in the FAST Act.

Secretary FOXX. It was.

Senator WICKER. How is that going in your opinion? FRA has done an excellent job in leading the group’s work and developing a plan to fund and operate rail service throughout the Gulf. So what can you tell us about the progress in the past 6 months or so?

Secretary FOXX. It has been very good progress. The Gulf Coast Working Group convened on February 6, 2016, for the first time in New Orleans. We sent our FRA Administrator to that meeting as an indication of how important the work is.

Senator WICKER. And that was appreciated.

Secretary FOXX. Absolutely. And they are meeting monthly both in person and call-in meetings as they work to look at the options

for getting that service back up and running. Very important service, though.

Senator WICKER. Wonderful. I do hope that your team can be as enthusiastic about this as I am and as my team is. So thank you very much for keeping us apprised on that.

Let me move to a really tough situation. In May, we lost two children in Mississippi as a result of vehicular heatstroke because of being left in automobiles in rear seating positions. It's just heart-breaking. Today is National Child Vehicular Heatstroke Prevention and Awareness Day. I don't know if people are apprised of that. But having witnessed two of these tragic losses in the last month, I wanted to ask about this. Section 24114 of the FAST Act requires DOT to conduct research into effective ways to minimize the risk of hyperthermia and hypothermia to children or other unattended passengers in rear seating positions. Do you have any information for the Committee about this? Is this study being conducted? And what information can you give to the public and to the Committee at this point on this tragic series of events?

Secretary FOXX. Senator, first of all, it's a tragic loss anytime you lose any lives, but our young people particularly. And if you wouldn't mind, I'd like to submit for the record on that and give you a thorough response to that question on the status.

Senator WICKER. OK. All right. And, you know, I had to comment. How are we doing on the Amtrak Board of Directors? Is that—did you discuss that earlier?

Secretary FOXX. We have not discussed it.

Senator WICKER. What do you think on that? Will the administration be putting forth nominees to ensure that the Amtrak Board of Directors has full representation?

Secretary FOXX. That's my hope. I will need to respond back to you. I'll try to call you in the next couple of days to give you a sense of that. But at the present, I don't know specifically.

Senator WICKER. Let's think national system when we do. Let's think long distance interest when we do, sir.

Secretary FOXX. Yes. Absolutely.

Senator WICKER. Very good. Well, from all accounts, you have done a marvelous job, and I think it is now fallen to me to say the hearing record will remain open for 2 weeks. During this time, Senators are asked to submit any questions for the record. Upon receipt, the witness is requested to submit written answers to the Committee as soon as possible.

So with that said, do you have anything you would like to add, Mr. Secretary?

Secretary FOXX. Senator, if I might, just I'm recalling some of the colloquy we've had about our Takata situation, and it's a very serious situation, and I think we've committed to do a lot of things today to try to work with the Committee to ensure we're doing every single thing we can do to ensure the safety of the public. I want to make it very clear, though, that we have done an awful lot to try to push this issue into the public light and to make sure that Takata is doing every single thing we can push them to do to get this right, and to the point that when I was just talking with Senator Blumenthal, I made a comment that I don't want to get misconstrued about the safety of these cars today. Takata is under

a Consent Order to prove that the airbags are safe, and if they cannot demonstrate that proof, those airbags cannot be used in the future in cars. Based on the evidence we have today, we don't have a basis to prevent those airbags from going into new cars today, but we do know that those airbags will be recalled at some point in the future. It's a very complicated issue, but I wanted to make sure the record was clear on where I stand on that, and hopefully we will continue working together on this.

Senator WICKER. Thank you for that clarification.

Secretary FOXX. Yes, sir.

Senator WICKER. And not having been here for that exchange, I won't follow up, but perhaps we might follow up with questions on the record.

Secretary FOXX. Sure. That's fine.

Senator WICKER. I want to thank you, Secretary Foxx, for appearing today. And if there is no objection from any member of the Committee, this hearing is now adjourned.

Secretary FOXX. Thank you, sir. Thank you.

[Whereupon, at 4:21 p.m., the hearing was adjourned.]

A P P E N D I X

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. JOHN THUNE TO
HON. ANTHONY R. FOXX

NHTSA

Question 1. The FAST Act seeks to ensure that the National Highway Traffic Safety Administration (NHTSA) fully implements the recommendations from the Inspector General's blistering audit conducted at your request in response to the GM ignition switch defect, which has been linked to more than 124 deaths and several hundred injuries. The new law gives you the important role of certifying NHTSA's implementation of those recommendations. What is the current status of those recommendations?

Answer. In NHTSA's June 16, 2015, comments to the Office of Inspector General (O.I.G.) Draft Audit Report (ST-2015-063), NHTSA established an aggressive implementation schedule. NHTSA has taken extensive action to address the O.I.G.'s recommendations, and has met all of its self-imposed completion dates for those recommendations. All 17 of the NHTSA recommendations have been resolved.

Question 1a. Another IG audit released this February found that, while the agency completed all agreed-to actions from a 2011 review on defect identification, the agency did not consistently continue to apply the actions it implemented for several recommendations. Secretary Foxx, will you commit that you will not certify the IG recommendations referenced in the FAST Act until you are confident not only that NHTSA has fully implemented the recommendations, but that it has the capability to continue to consistently apply the recommendations in the future?

Answer. As required under the FAST Act, I am currently reviewing the actions that NHTSA has taken to address the recommendations from the 2015 O.I.G. Audit Report (ST-2015-063) and will make the certification when I am satisfied that NHTSA has implemented all of those recommendations. My office will continue to work with both NHTSA and the O.I.G. to ensure the continued implementation and execution of NHTSA's improved policies and procedures.

Question 2. In a recent press release, NHTSA warned that certain model year 2001-2003 Honda and Acura vehicles with defective Takata airbag inflators show a substantially higher risk of rupture and need to be repaired immediately. Given that these vehicles were initially recalled between 2008 and 2011 for related defects, what accounted for the delay in NHTSA reaching this conclusion?

Answer. This population of Honda and Acura vehicles was recalled between November 2008 and December 2011 for known and identified manufacturing defects in the driver's side air bag inflator. Where vehicles are recalled, NHTSA does not normally undertake additional testing on the recalled part, and instead applies its resources toward investigating other potential safety defects. However, following notifications under the Agency's Standing General Order of recent rupture incidents involving this population of vehicles, NHTSA directed Takata to conduct additional testing. The Agency was able to get the information and resources it needed to direct this testing because of its 2015 Preservation Order with Takata. When the new test data showed a far higher risk of ruptures among this population of inflators, NHTSA ensured that consumers were made aware of the grave danger the inflators in this particular group of vehicles posed.

Question 3. I am concerned that the leadership of the Office of Defects Investigation is in transition. Secretary Foxx, what are you doing to ensure effective leadership and especially accountability for the day-to-day activities of that office?

Answer. NHTSA is moving swiftly to fill the vacancy for Office of Defects Investigation (ODI) Director, with candidate interviews commencing soon. A NHTSA senior staff member who reports directly to the Associate Administrator for Enforcement is overseeing the day-to-day operations of ODI and is closely monitoring the new transparent, risk-based and objective pre-investigative processes implemented this Spring.

Question 4. The FAST Act tied an increase in civil penalties for Safety Act violations to the issuance of a final rule on civil penalty factors. NHTSA finalized that rule, but now is proposing to unilaterally assess civil penalties for vehicle safety violations under 49 USC 30165 instead of compromising penalties and relying on the Department of Justice to assess penalties when an action is not compromised, citing a minor wording change contained in the Moving Ahead for Progress in the 21st Century Act (MAP-21). The MAP-21 direction, however, did not provide NHTSA with express authority to issue such a rule. Moreover, while I was not Chairman when MAP-21 was negotiated, members of my staff who worked under then-Ranking Member Hutchison inform me that the negotiations did not include any discussion of providing NHTSA with unilateral authority to impose such penalties. Relevant sections of the code also cast doubt on the rationale for NHTSA's current effort. For example, 49 USC 30165(d) discusses "a civil action brought under this section" in connection with the civil penalty authority, indicating a Federal civil action in court. In addition, 49 USC 30163(c) provides that "... a civil action under this section or section 30165(a) of this title may be brought in the judicial district in which the violation occurred ..." thus reiterating the reference to a civil action. Congress has provided authority for the administrative imposition of civil penalties at other agencies, but in those cases it has generally done so expressly by stating that the agency should "impose" or "assess" the penalty. NHTSA has successfully used the consent order process, as exemplified by the recent \$200 million consent order with Takata, the \$105 million consent order with FCA, and the \$70 million consent order with Honda. And, of note, these negotiations all occurred prior to the tripling of the civil penalties as directed under the FAST Act. The FAST Act also included provisions to strengthen NHTSA's defect identification and investigation processes, which should facilitate such consent orders, when appropriate. Please help the Committee better understand why, in light of this legislative history and context, NHTSA now believes it has the legal authority for its proposal to assess penalties unilaterally.

Answer. The plain language of the amendments to 49 U.S.C. § 30165(c) in the Moving Ahead for Progress in the 21st Century Act (MAP-21) confirmed NHTSA's authority to assess civil penalties as well as to compromise them. Prior to the enactment of MAP-21, the statute provided, "In determining the amount of a civil penalty or compromise, the appropriateness of the penalty or compromise to the size of the business of the person charged and the gravity of the violation shall be considered." 49 U.S.C. § 30165(c) (2011). The statute did not specify who would assess the civil penalties. However, the statute specifically stated that "The Secretary of Transportation may compromise the amount of a civil penalty imposed under this section." 49 U.S.C. § 30165(b)(1). MAP-21 revised this language to read: "In determining the amount of a civil penalty or compromise under this section, the Secretary of Transportation shall consider the nature, circumstances, extent, and gravity of the violation." 49 U.S.C. § 30165(c) (2016). This amendment made it clear that the Secretary of Transportation has the authority and a mandate to assess civil penalties as well as to compromise them pursuant to the provisions of MAP-21.

The legislative history also supports the Agency's interpretation. When S. 1449, the Motor Vehicle and Highway Safety Improvement Act of 2011 (Mariah's Act), was introduced, the bill contained language listing the factors that the Secretary of Transportation shall consider in determining the amount of civil penalty or compromise. According to a Senate report, the provisions of S. 1449 were enacted into law, with modifications, as title I of division C of MAP-21. The Senate Commerce Report made clear that NHTSA was authorized to impose "fines." It stated, "Before issuing a fine, the Secretary would be required to consider several relevant factors in setting the level of the fine, including the nature of the violation; the severity of the risk of injury; the actions taken by the person charged to identify, investigate, or mitigate the violation; the nature of the defect or noncompliance; and the size of the company." The word "fine" is synonymous with the term "civil penalty." Therefore, the plain language of the statute and the legislative history support NHTSA's authority, acting under delegation from the Secretary, to impose civil penalties directly.

Question 5. Thank you for the discussion at the hearing about providing additional flexibility to the states in the highway safety grant program. I am pleased that, as a result of the FAST Act, NHTSA has just released the Interim Final Rule (IFR) to provide guidance to the states on these grant programs. The IFR states that the agency, "if appropriate, will amend provisions of the regulation." What factors would cause the agency to consider amending the rule further?

Answer. As with all rulemakings soliciting public comments, NHTSA plans to carefully review all input received. If public comments identify alternative ap-

proaches that would meet the goal of effectively and efficiently awarding and managing the grants, NHTSA will consider these approaches.

Question 5a. Does the agency intend to issue a final rule, and if so, what is the expected time-frame for a final rule?

Answer. Yes, the Agency expects to issue a final rule well before Fiscal Year 2018 applications are due.

Question 5b. The newly issued IFR changed some requirements for state submissions. In particular, the IFR now appears to require full “descriptions” of certain data elements, whereas “brief” or “general” descriptions were previously required (see, e.g., 23 CFR 1200.11(a) and 1200.35(a) and (b) compared to the new IFR). Some areas also ask for increased project-level detail, such as 23 CFR 1300.11(d). I believe that strong oversight of the use of Federal funds is needed, but many of the FAST Act’s changes to highway safety grants were intended to provide additional flexibility to the states. What was the rationale behind these changes in the IFR? Are they consistent with the flexibility for states endorsed in the FAST Act?

Answer. The FAST Act provided states with greater flexibility in eligible use of grant funds under the National Priority Safety Programs (Section 405). NHTSA’s IFR supports this flexibility by allowing states to integrate Section 405 planned activities into the Highway Safety Plan instead of the separate project lists that were previously required. In addition, the IFR implemented the added FAST Act flexibility for states to qualify for law-based grants.

Separately, the IFR made amendments to some requirements to support the implementation of an improved and enhanced electronic grants management system that will enable states to apply for highway safety grants and receive and manage grant funds more efficiently and with fewer burdens. The IFR allows states applying for Section 405 grants to cross reference project information already appearing in the Highway Safety Plan, eliminating the submission of duplicative information. Because we expect project information to be captured in the grants management system when states submit their Highway Safety Plans, the burden of invoicing for expenses will also be reduced.

The modest amendments to the Highway Safety Plan and annual report requiring descriptions rather than summaries of a State’s progress will better position the states to adjust upcoming plans. This will assist states in reversing the disturbing increases in fatalities across the country.

Question 6. Preliminary data recently released by NHTSA show a 7.7 percent increase in motor vehicle traffic deaths in 2015. What has accounted for such an increase? What steps have you taken to improve NHTSA’s partnership with the states to improve highway safety?

Answer. While the Agency is still analyzing the 2015 fatality data, there are a number of areas that NHTSA has identified as potential contributors to the disheartening 7.2 percent increase in roadway deaths. There were increases in fatalities in the following areas: motorcyclist (8.3 percent); pedestrian (9.5 percent); bicyclist (12.2 percent); passenger car occupants (5.7 percent); pickup truck occupants (4.7 percent); and alcohol-impaired driving fatalities (3.2 percent). Preliminary data reported by the Federal Highway Administration (FHWA) shows that vehicle miles traveled (VMT) in 2015 increased by about 3.5 percent, and thus increased exposure may account for some of the increase.

In response to early estimates, NHTSA convened a series of behavioral safety summits across the country in February and March 2016. The purpose of these summits was to identify evidence-based methods to change behavior outside of traffic safety and explore the potential for applying those in new settings. As a direct result of these summits, NHTSA is fostering engagement between states and new partners who had not previously been engaged in traffic safety.

NHTSA has focused on expanding partnerships with the states and with new national and local partners to implement new safety initiatives and programs. NHTSA plans to introduce new innovative performance metrics and program resources for states later in 2016.

Question 7. Section 24105 of the FAST Act required a 2-year state pilot program to evaluate the feasibility and effectiveness of notifying consumers of open motor vehicle recalls at the time of vehicle registration. This pilot program may demonstrate an effective means of achieving higher recall completion rates. What steps has NHTSA taken to ensure this will be a successful pilot?

Answer. In preparation for issuance of the grant solicitation, NHTSA engaged with stakeholders to become better informed about State and commercial sector logistics as well as technical capabilities regarding open recall notification at the time of vehicle registration. This outreach has provided NHTSA with a better understanding of the registration process and of State capabilities so that it can ensure

that the program is flexible enough to accommodate the various State systems for registering vehicles.

Question 7a. Beyond the Request for Information issued on April 15, has NHTSA worked with states to ensure there is interest and readiness for the functionality of the program?

Answer. NHTSA discussed the pilot notification program with the American Association of Motor Vehicle Administrators, the organization that represents the State officials who administer and enforce motor vehicle laws, to gauge interest in and encourage participation in the pilot notification program. Because many states have preexisting relationships with the motor vehicle industry and with commercial entities providing notification services, we have also encouraged State-industry partnerships to increase participation in the notification program.

Question 8. The FAST Act directs a number of updates to the recall process, including directing that recall notifications may be sent by electronic means in addition to notification by first class mail. The FAST Act also directs additional public awareness efforts regarding recalls and a report on recall completion rates. What steps has NHTSA taken to research and improve consumer notification in an effort to improve recall completion rates?

Answer. NHTSA issued an Advance Notice of Proposed Rulemaking (ANPRM) soliciting comments and supporting information on what NHTSA might require as to electronic recall notification. See 81 Fed. Reg. 4007 (January 25, 2016). The Agency asked questions to facilitate comments from stakeholders on what means of notification, based on their experience, have been most effective in providing information to customers and motivating customers to have safety recall remedies performed. NHTSA expects to issue a Notice of Proposed Rulemaking in the near future.

Question 8a. How has NHTSA worked with the auto manufacturers to research new and better ways to reach consumers and influence recall repair?

Answer. As part of their consent orders, General Motors (GM) and Fiat Chrysler Automobiles (FCA) researched what factors best motivate consumers to take action and seek out their recall remedies. GM provided highlights of its results at NHTSA's "Retooling Recalls" symposium in April 2015 where industry leaders gathered at the U.S. DOT and brainstormed new ideas to improve recall completion rates. FCA shared results of its consumer focus groups and surveys with NHTSA and other auto manufacturers. The Alliance for Automobile Manufacturers and Global Automakers conducted a joint research project to learn how consumers view recalls and the recall notifications they receive. Over 1,500 people were surveyed and the results were shared with NHTSA and summary results were published in the comment filed in the ANPRM docket noted above.

Question 9. It is important for safety recalls to be remedied as soon as possible. What does NHTSA do to ensure that manufacturers are fulfilling their responsibility to make sure replacement parts to remedy recalls are available and at dealerships as soon as possible?

Answer. NHTSA regularly monitors safety recalls and the amount of time manufacturers take to provide recall remedies to their owners. NHTSA requires manufacturers to mail consumers an interim notice when the remedy is not yet available. The law requires manufacturers to remedy vehicles within a reasonable time. However, there is no fixed time-frame for what is reasonable because factors such as the number of vehicles, age of vehicles, and the nature of the defect may impact how quickly a manufacturer can develop a remedy and obtain a sufficient supply of parts to fix vehicles.

Question 9a. In some instances, consumers who bring their vehicles in for repair in response to a recall are told parts are not available. Such consumers may need to wait several weeks or more for parts to become available. While certain recalls may unavoidably result in longer times to obtain replacement parts, does NHTSA track the length of time between the notification of a defect or noncompliance and the date upon which parts are readily available and at dealerships?

Answer. Yes, the Agency tracks the length of time between notification and the date the remedy becomes available.

Question 9b. If so, what is the average length of time, and have you identified any differences in the average length of time among manufacturers?

Answer. For passenger vehicle recalls issued in 2015, manufacturers made the recall remedy available, on average, 62 days from the date they notified the Agency of the recall. The length of time varies with each manufacturer. Manufacturers taking less than 62 days to launch their remedy program recalled about 11 million vehicles, combined, in 2015. Manufacturers taking 62 days or more recalled about 38 million vehicles, combined.

Generally, manufacturers who recall more vehicles take longer to launch their remedy programs. In addition, variables such as the number of recalls, size of those recalls, complexity of the remedy development, and availability of parts play a factor.

Question 10. The FAST Act requires a study, in coordination with manufacturers and dealers, on the feasibility of searching multiple vehicle identification numbers at a time, often called VIN “batching.” What is the progress of this study?

Answer. NHTSA has not yet developed a time table for completing this study. The Agency continues to gather information and discuss the requirement with stakeholders. NHTSA is assessing options that exist in the commercial arena and that do not involve the Agency’s data systems or resources for collecting and managing this data. The Agency’s VIN lookup tool is intended to assist the individual consumer, and attempting to accommodate demands in that system may compromise its effectiveness for consumers. The information that the Agency has gathered to date suggests that tools exist in the private sector that may support private sector VIN batching.

Question 10a. Has NHTSA reviewed any of the VIN batching systems being developed by industry? If so, will NHTSA play a role in the development or deployment of those systems?

Answer. NHTSA has reviewed some of the VIN batching systems developed by industry. The Agency has not yet determined what role, if any, the Agency will play in the deployment of those systems.

Question 11. The FAST Act includes provisions to: create new tire performance standards for fuel efficiency and wet traction; require tire sellers to register tires at point of sale; and require NHTSA to create a tire recall search tool to be located on the agency’s website. The Committee strongly supports these provisions and looks forward to their prompt implementation.

The tire performance standards have a statutory deadline of 24 months for a final rule, while the tire registration and tire recall search tool provisions do not have statutory deadlines. Nevertheless, the tire recall search tool does not require a rule-making procedure.

In the next 6 months, what progress does the Department anticipate toward implementing the tire performance standards for fuel efficiency and wet traction?

Answer. The FAST Act requires NHTSA to promulgate regulations for tire rolling resistance and wet traction minimum performance standards by December 4, 2017. NHTSA has already begun the research necessary to guide the development of requirements pertaining to wet traction performance. NHTSA is reviewing tire fuel efficiency data collected previously, and is coordinating with stakeholders to see if additional data is available. NHTSA anticipates the completion of testing by the beginning of 2017 and intends to use this data for the proposed regulation.

Question 11a. In the next 6 months, what progress does the Department anticipate toward implementing the requirement for tire sellers to register tires at point of sale?

Answer. The FAST Act requires NHTSA to initiate a rulemaking for mandatory tire registration by independent sellers. There is no statutory deadline for completing this rulemaking, and the Agency has not yet developed a time table for completing this rulemaking. NHTSA is gathering information and meeting with stakeholders to discuss this requirement. The electronic identification study required by section 24334 of the FAST Act will aid in creating a more beneficial tire registration and recordkeeping requirement for tire sellers at the point of sale. NHTSA anticipates beginning that study later this year.

Question 11b. When does the Department anticipate launching the web-based tire recall search tool? What can you share about its development progress?

Answer. The FAST Act requires NHTSA to establish a publicly available and searchable electronic tire recall database. The statute does not require this provision to be implemented through a rulemaking and there is no statutory deadline. NHTSA has not yet developed a timetable for completing this provision. The Agency is gathering information and discussing the requirement with stakeholders.

Question 12. NHTSA has not completed a rulemaking required under the 2007 Energy Independence and Security Act (EISA) that mandated consumer information about tire fuel efficiency, wet traction and tread wear. The White House announced in December 2014 that NHTSA would finalize that rule by 2017. Completion of this rulemaking will help facilitate progress on the FAST Act’s provisions regarding tire fuel efficiency and wet traction.

According to NHTSA’s most recent schedule, a proposed rule was provided to the Secretary’s office in October 2015. The timetable to move this regulation to OMB

continues to slip each month. What obstacles are preventing this proposal from progressing through the rulemaking process? What accounts for this unacceptable delay? What is the agency's revised timetable for completing this rulemaking?

Answer. NHTSA published a final rule in 2010 establishing test methods that would be used for the new consumer information program. However, the 2010 final rule did not specify the content or requirements of the consumer information and education portions because NHTSA needed to conduct additional consumer testing and resolve important issues raised by the public comments on the proposal. The Agency is drafting a Supplemental Notice of Proposed Rulemaking and expects to issue a final rule in 2017.

Question 13. The Mid-Term Evaluation of MY 2022–2025 Greenhouse Gas and Corporate Average Fuel Economy Program standards that was jointly published in 2012 is an important assessment. What is the timeline for completing the Mid-Term Evaluation?

Answer. Given the long time frame covered by standards for Model Year (MY) 2022–2025 light-duty vehicles and NHTSA's statutory obligation to conduct a de novo rulemaking, the Agencies committed in the 2012 final rule to conduct a comprehensive mid-term evaluation for the MY 2022–2025 standards. The MY 2017–2025 final rule noted that in order to align the Agencies' proceedings for MYs 2022–2025 and to maintain a joint national program, EPA and NHTSA will finalize their actions related to MY 2022–2025 standards concurrently.

The first step in the process was the issuance of the Draft Technical Assessment Report (TAR) for public comment. The Draft TAR was jointly issued by the NHTSA, EPA, and the California Air Resources Board (CARB) on July 18, 2016. It is open 60 days for public comment. Subsequently, EPA will have to determine, by April 2018, whether the standards should stay the same, or increase or decrease in stringency. DOT will establish CAFE standards for MYs 2022–2025 which will include a proposal and final rule. EPA and NHTSA have committed to coordinate so the final actions occur at the same time. The Agencies are still considering the timing of the next steps.

Question 13a. What role does NHTSA play in this process? How are DOT and EPA working to ensure the Evaluation is conducted in a collaborative and transparent process?

Answer. NHTSA has sponsored several studies and analysis, including those by National Academies of Science and Argonne National Laboratory, and will continue to sponsor additional work moving forward. NHTSA also uses the CAFE Compliance and Effects Model developed by DOT's Volpe National Transportation Systems Center to:

- analyze how manufacturers could comply with CAFE standards by adding technology to anticipated future vehicle fleets;
- estimate impacts of that additional technology on fuel consumption, greenhouse gas emissions, and economic costs and benefits;
- evaluate the sensitivity of these estimated outcomes to key analytical inputs (e.g., fuel prices); and
- perform probabilistic uncertainty analysis.

Both Agencies are conducting coordinated research, analyses, and extensive stakeholder outreach to inform NHTSA's rulemaking and EPA's midterm evaluation. NHTSA and EPA are consulting with CARB with the goal of maintaining a national program. The three Agencies coauthored the Draft TAR. In addition to extensive stakeholder outreach and making information available in the public docket, the Draft TAR, NHTSA's NPRM, and EPA's Proposed Determination provide opportunity for public content. The Agencies also have websites that provide information on the midterm evaluation and make the Agencies' research and analyses available to the public.

Question 13b. Has the Administration considered taking steps to harmonize the regulation of light duty vehicle fuel economy by NHTSA, EPA, and the State of California? If not, why not?

Answer. Yes. While NHTSA, EPA, and CARB programs differ in some ways because of their separate statutory authorities, the Agencies have sought to harmonize standards so that manufacturers may build a single fleet of vehicles that meets all requirements.

Question 14. NHTSA has committed to taking an aggressive approach to accelerating the availability of advanced safety technologies in the marketplace. What are the agency procedures for responding to manufacturers' petitions for rulemaking

and requests for interpretation of Federal motor vehicle safety standards to take into account advanced safety technologies?

Answer. NHTSA's procedures for responding to petitions for rulemaking from all parties (including manufacturers) are detailed at 49 CFR Part 552. The Department is currently developing guidance on how to petition NHTSA for interpretations, exemptions, and rulemakings related to highly automated vehicles. NHTSA anticipates issuing the guidance as part of the highly automated vehicles report in the near future.

Question 14a. While I take no position on the following petitions, what is the current status of the petitions for rulemaking to permit Adaptive Driving Beam headlamps and to allow the use of camera-based rear and side vision systems instead of side and rearview mirrors?

Answer. NHTSA is actively considering both petitions. NHTSA has conducted considerable new research on how to develop a test procedure for adaptive driving beam headlamps, as no industry standards existed at the time of the petition and the petition itself did not contain or refer to test procedures. NHTSA intends to respond to that petition by the end of this year, 2016. The petitions for camera-based rear and side vision systems lacked the technical detail necessary for NHTSA's review. The Agency has asked the petitioners a number of clarifying questions and is currently awaiting their responses.

Question 14b. What is NHTSA's time-frame for publishing guidelines on the safe deployment and operation of autonomous vehicles? Does NHTSA anticipate publishing draft guidance for public comment? If not, why not?

Answer. NHTSA expects to issue the highly automated vehicles report in the near future.

Question 14c. Do you think the deployment of fully autonomous vehicles will change the current requirement for a car to have a "driver"? How should we resolve this issue and ensure safe operation of vehicles on our roads? What role should the Federal Government play to ensure access of these technologies to a nationwide market?

Answer. NHTSA does not have a requirement that a "car must have a (human) driver"—that is a matter of State law. That said, NHTSA anticipates issuing a model State policy on highly automated vehicles. NHTSA has been coordinating with individual states as well as representative bodies such as the American Association of Motor Vehicle Administrators (AAMVA) as part of the Agency's recent actions to develop a model State policy and operational guidance for highly automated vehicles. A primary goal of these actions is to achieve a consistent national policy.

We note that, in drafting the original Vehicle Safety Act in 1966, Congress sought to ensure that the standards issued under the Act would be uniform and national so that the public as well as industry would be guided by a single set of criteria instead of a multiplicity of diverse standards. We will also evaluate whether legislation is needed to achieve consistent national policy regarding highly automated vehicles.

Question 14d. In response to an inquiry from Google, NHTSA has said that some Federal Motor Vehicle Safety Standards will require additional rulemaking in order to allow for Google's self-driving car features to be permissibly used on our roads. How is NHTSA working with the automakers to reduce regulatory burdens while still ensuring and enhancing safety?

Answer. NHTSA has sought to ensure and enhance safety via its regulations while minimizing burden on industry. It is true that manufacturers seeking to introduce vehicles with non-conventional designs, such as ones without steering controls, brake pedals, or internal displays of system functions or malfunctions, would not be able to certify the compliance of those vehicles to certain existing Federal Motor Vehicle Safety Standards (FMVSSs). NHTSA encouraged Google and other regulated parties with similar interests to petition the Agency for exemption from those provisions using the existing procedures under 49 CFR Part 555, or to petition for rulemaking to amend the relevant FMVSSs. NHTSA will be issuing guidance in the near future to better explain the information that the Agency expects to see in such petitions in order to facilitate the Agency's response.

Question 15. NHTSA has a new plan for the Driver Alcohol Detection System for Safety (DADSS) Program, to create alcohol-detection technologies that offer the potential to prevent impaired driving. What is the rationale for restructuring the DADSS Program and cooperative agreement? How will this accelerate development, testing, and deployment of the technologies?

Answer. Over the past 20 years, nearly 250,000 Americans have been killed in drunk driving crashes. Successful implementation of the DADSS technology has tremendous potential to reduce this carnage. The Department appreciates Congress's

continued support of the government and industry collaborative research activities that have led from feasibility to the potential for reality. Given that progress, it is time to start a new track of work focused on deployment.

To begin the shift toward deployment, NHTSA is implementing the terms in its existing cooperative agreement that expand the opportunity for public input into the program and allowing for additional transparency.

In 2015, the program achieved significant milestones. For example, the DADSS demonstration vehicle incorporating new alcohol detection technology was displayed publicly for the first time in a press event at the DOT Headquarters on June 4, 2015. Public and media response to this unveiling, which featured members of Congress and several hundred members of Mothers Against Drunk Driving, was very positive. Late in 2015, partially in response to calls to accelerate deployment, NHTSA instructed the DADSS program manager to develop activities focused on deployment. These activities include additional test vehicles, consumer acceptance testing, human factors, and many others that would ready the technology for deployment at the end of the current cooperative agreement in 2022.

Question 15a. How will the new DADSS cooperative agreement and Board be structured? Will the role of the existing Automotive Coalition for Traffic Safety members change under the agreement? What do you expect the role of states to be going forward?

Answer. NHTSA is working with our current cooperative agreement partner, the Automotive Coalition for Traffic Safety (ACTS), on a modification to the existing cooperative agreement. The modification is necessary to implement an existing provision in the agreement that creates a Stakeholders Team to allow for more representation. The modification would expand membership of the Stakeholders Team to include representation from states and public interest organizations, while keeping in place the existing NHTSA and ACTS roles.

Question 15b. When does NHTSA expect that the breath-based system and the touch-based system will be ready for commercial deployment? What method, if any, is the DADSS Program using to objectively quantify that the technologies are ready for deployment?

Answer. Under the current program of work, assuming no additional funding to accelerate activities, the technology is expected to be ready for vehicle integration (commercially feasible) by 2022. The DADSS program uses Technology Readiness Level (TRL) and Manufacturing Readiness Level (MRL) to objectively quantify readiness for deployment. The TRL and MRL measures, originally developed by NASA and the Department of Defense and adapted for automotive use, are used to assess maturity of new technologies. Technology is ready for deployment at TRL=8 MRL=7. Currently the breath-based system is at a TRL=4 and MRL=4 and the touch-based system is at a TRL=3 and MRL=3.

Question 16. On August 18, 2015, NHTSA issued an Advance Notice of Proposed Rulemaking on vehicle-to-vehicle (V2V) communications technology. What is the status of that rulemaking? What feedback from stakeholders have you received thus far?

Answer. The Department developed and submitted a notice of proposed rulemaking (NPRM), a Regulatory Impact Assessment, and a Privacy Impact Assessment to the Office of Management and Budget (OMB).

Question 17. The committee is concerned that the proposed Greenhouse Gas Phase 2 regulations may have an unintended effect on safety. The addition of extra weight on a truck trailer will inevitably displace cargo in some instances to maintain compliance with gross vehicle weight limitations. Thus, in order to continue to transport even the current level of freight, more trucks and trailers will very likely be needed. At the current truck-related accident rate, however, more trucks on the road may translate into an increase in accidents, including more fatal accidents, and ironically an overall increase in greenhouse gases. Pursuing a policy that is likely to lead to more accidents and road fatalities is at odds with NHTSA's mandate to reduce deaths, injuries and economic losses resulting from motor vehicle crashes. What are NHTSA's calculations in this matter, and how does NHTSA believe we are going to avoid the possibility of more accidents and deaths?

Answer. The finalized Greenhouse Gas Emissions and Fuel Efficiency Standards for Medium-and Heavy-Duty Engines and Vehicles—Phase 2 regulations predict that vehicles affected by the regulations will employ some amount of mass reduction to achieve fuel savings, especially in the high volume Heavy-Duty Pickup and Van segments. See <http://www.nhtsa.gov/fuel-economy> for copy of Final Rule. As discussed in the Final Rule preamble.

“Both the NPRM and the current analysis consider the potential effects on crash safety of the technologies manufacturers may apply to their vehicles to meet each of the regulatory alternatives. NHTSA research has shown that vehicle mass reduction affects overall societal fatalities associated with crashes and, most relevant to this rule, mass reduction in heavier light-and medium-duty vehicles has an overall beneficial effect on societal fatalities. Reducing the mass of a heavier vehicle involved in a crash with another vehicle(s) makes it less likely there will be fatalities among the occupants of the other vehicles.”

Overall, the potential positive safety implications of weight reduction efforts could partially or fully offset safety concerns from added weight of aerodynamic devices. In fact, for this reason, we believe that the Phase 2 trailer program could produce a net safety benefit in the long run due to the potentially greater amount of cargo that could be carried on each truck as a result of trailer weight reduction.

In addition, the agency anticipates our continued efforts to improve the crash worthiness of the vehicle fleet will work in parallel with these standards, providing increased occupant safety in conjunction with improve fuel efficiency. The analysis supporting the final rule takes into account the total societal benefits of the program and projects a net benefit overall.

Motor Carriers and Highway Safety

Question 18. The FAST Act includes language that allows the State of South Dakota to revisit and update the routes on which longer combination vehicles can travel within the state. The state plans to shift the routes from rural roads to interstates constructed specifically to handle these heavier trucks in a safer manner, with better infrastructure, including divided highways. I have been working for years with the State of South Dakota to ensure that these trucks are on the roads most aligned with our freight networks, providing direct routes on appropriate roads. Can you provide a progress update on the designation of the new routes and the Department's work with the state?

Answer. FHWA is working proactively with the South Dakota DOT (SD DOT) to implement this provision, which provides an opportunity for the state to update and revise Interstate and National Network routes that are subject to the longer combination vehicle (LCV) freeze. Staff from FHWA Headquarters, the FHWA South Dakota Division and the SD DOT met on May 20, 2016, to ensure mutual understanding of the FAST Act provision and to discuss the process for implementation. The SD DOT is reviewing the State's LCV routes and developing a proposal for updating and revising routes. The SD DOT anticipates completing its review later this summer, at which time it will submit its proposal to FHWA. The SD DOT is aware of the statutory requirements that any such updates and revisions must shift routes to divided highways or not increase centerline miles by more than 5 percent and must be expected to increase safety performance.

Question 19. You mentioned in your remarks that you do not expect the Compliance, Safety, Accountability (CSA) program scores will be reformed and made public for two years. In this timeframe, the Safety Fitness Determination (SFD) Rulemaking process will proceed.

I understand you do not expect the SFD rulemaking to be complete prior to the reform of the CSA program. Can you provide a timeline of how these two linked programs will be implemented?

Answer. The National Academies of Sciences (NAS) kicked off its review of the CSA program and Safety Measurement System (SMS) on June 29, 2016. Based on FMCSA's contract with NAS, we expect its final report, with any recommendations for changes, in June 2017. The scope of the NAS study, as prescribed in the FAST Act, did not include the SFD Notice of Proposed Rulemaking.

The SFD Notice of Proposed Rulemaking was published on January 21, 2016, and the comment period closed on June 23, 2016. The Agency received approximately 170 comments. FMCSA is currently reviewing the comments to identify any appropriate revisions to the Agency's proposal. This is a significant rulemaking requiring review by the Office of Management and Budget. FMCSA does not expect this final rule to be published before December 2017.

As a result, if there are recommendations from the NAS Correlation Study that impact the SFD rulemaking, the timing of these two initiatives will allow any needed changes to be incorporated into the SFD final rule.

Question 19a. Do you expect the Department to revise the SFD rule to take into account the recommendations of the National Academies of Science report on CSA?

Answer. If the National Academies provides recommendations relevant to the SFD final rule, FMCSA will consider them when developing the final rule.

Question 20. There are many active and passive driver assist and automated vehicle technologies available in the marketplace today that provide significant safety benefits for cars and trucks on our Nation's highways. The deployment of some of these technologies currently requires the Federal Motor Carrier Safety Administration (FMCSA) to provide an exemption from outdated regulatory standards and barriers, which inhibit the wider deployment of proven safety technologies. Short-term exemptions, such as those that allow for the windshield display of important safety technology for example, while appropriate, drive up costs for both the agency and industry. Accordingly, section 5301 of the FAST Act directs the Department to provide a permanent exemption for the windshield placement of a variety of proven technologies.

This provision required the Department to move forward within 180 days of enactment, a date that has already passed.

Where is the Department in implementing this directive and why is there a delay on moving forward on such an important, commonsense initiative?

Answer. No current exemptions related to this issue are due to expire until late 2017. A final rule implementing section 5301 of the FAST Act is expected to be transmitted to the Office of the Federal Register for publication soon.

Question 21. Section 5203 of the Fast Act directs FMCSA to review guidance documents to eliminate conflicts and ensure enforcement consistency. The legislation further requires FMCSA to incorporate guidance into regulations within five years of issuance, where practicable.

Please provide an update on the status of the guidance review, including the number of guidance documents eliminated or significantly revised.

Answer. FMCSA is acting on the section 5203 requirement to "clean up" its regulatory guidance. The Agency has inventoried a total of 633 regulatory guidance documents while simultaneously, the Motor Carrier Safety Advisory Committee (MCSAC) has been tasked to review the guidance and make recommendations. The MCSAC met on June 14–15, 2016, to review FMCSA guidance and will continue its work through the summer. Thus far, of the 633 documents, 215 documents have been reviewed to determine whether the guidance is obsolete, needs refinement, or is accurate as written. The Agency and MCSAC have completed review of guidance related to hours-of-service (49 CFR Part 395) and commercial drivers' license (49 CFR Part 383) regulations. FMCSA has drafted *Federal Register* notices to update that guidance. Approximately 60 documents have been identified as obsolete and will be removed. FMCSA expects to continue to integrate its own analysis with the MCSAC recommendations. The Agency will issue a series of *Federal Register* notices to rescind, update, or reissue the guidance, as appropriate. These notices will provide both transparency and an opportunity for public comment on the issues.

FMCSA expects to complete the initial review of all guidance documents before the statutory deadline of December 4, 2016.

Question 22. Funding for the FASTLANE grant program and the freight formula program was authorized by Congress in order to make critical improvements to our Nation's freight network. Applications for both the FASTLANE grant program and the unauthorized TIGER grant program are being reviewed at the same time, and some projects have been submitted as both TIGER and FASTLANE applications. Can you please describe how the Department is reviewing the applications concurrently, and how funding decisions will be made for each individual program?

Answer. Applications for TIGER and FASTLANE funding are being evaluated independently according to the selection criteria unique to each program. Funding decisions for the FASTLANE program are being made in accordance with the Notice of Funding Opportunity published on March 2, 2016. Funding decisions for the TIGER program are being made in accordance with the Notice of Funding Opportunity published on February 26, 2016. Because many of the same staff were involved in both the review of TIGER and FASTLANE applications, staff members were able to coordinate between the two application processes and brief senior officials on the applications that were submitted for both discretionary programs so that Secretarial investment decisions were fully informed. In accordance with the FAST Act, the Department provided Congress with a 60 day notification of the proposed FASTLANE projects, award amounts and justification on July 5, 2016, and publicly announced awards on September 7, 2016. Congressional notification of the 2016 TIGER awards was provided on July 26, 2016, and publicly announced on July 29, 2016.

Additionally, the FAST Act directed the Secretary to establish a National Surface Transportation and Innovative Finance Bureau, also known as the Build America Bureau, to administer the FASTLANE grant application process. The newly estab-

lished Build America Bureau will administer the application process for Fiscal Year 2017 and future rounds of the FASTLANE discretionary grant program.

Question 22a. Please describe how projects are being rated and ranked for each program, how the decision making process will be documented, and how the Department plans to provide feedback to project sponsors who do not receive an award.

Answer. Applications for TIGER funding are being evaluated in accordance with the selection criteria and review process described in the Notice of Funding Opportunity (NOFO) published on February 26, 2016. The TIGER NOFO can be found at: <https://www.transportation.gov/tiger/tiger-nofo>.

Applications for FASTLANE funding are being evaluated in accordance with the selection criteria and review process described in the NOFO published on March 2, 2016. The FASTLANE NOFO can be found at: <https://www.transportation.gov/buildamerica/fastlanegrants/fastlane-nofo>. The evaluation and selection processes are being documented according to each program's evaluation guidelines.

As has been the practice in the past, the Department is available to assist past and prospective applicants to the TIGER and FASTLANE program to provide technical assistance with regard to understanding the criteria, evaluation, selection, and implementation process for future application submissions. For both programs, the Department provides debriefs, upon request, to all applicants not selected for award to include a summary of the evaluation and constructive technical assistance for subsequent rounds of competition.

Federal Railroad Administration

Question 23. Grade Crossing Safety. The FAST Act contains several provisions to increase highway-rail grade crossing safety, including a requirement for the Federal Railroad Administration (FRA) to distribute model action plans and risk data to states. The FAST Act also increased funding for the Section 130 program to reduce risk at grade crossings.

To what extent does the Department engage stakeholders, including railroads and state departments of transportation, to ensure Section 130 funds are used most effectively?

Answer. FHWA, in coordination with FRA, provides continuing outreach and guidance to ensure Section 130 funds are used effectively. This outreach includes presentations and dialogue with stakeholders such as railroads and State departments of transportation at conferences, workshops, and symposia. For example, in April 2016, the FRA Administrator wrote to the leadership of State departments of transportation identifying the congressional increase in Section 130 funding for FY16 and guidance to more effectively apply Federal dollars to grade crossings.

FHWA and FRA staff also present overviews of the Section 130 program at Grade Crossing Safety Conferences, TRB Committees, and meetings with industry groups throughout the country. These presentations provide stakeholders with an overview as well as updates on the history of Federal grade-crossing legislation; funding amounts for Section 130 nationally and by state; project eligibility; the project selection and prioritization process; roles of FHWA and FRA staff in headquarters and in Division Offices nationwide; reporting requirements; upcoming products; and legislative updates that affect the program. Recently, FHWA and FRA conducted a joint presentation to the American Association of State Highway and Transportation Officials (AASHTO) and the Association of American Railroads (AAR), which focused on FAST Act implementation of the Section 130 program, discussed emerging rail safety issues, and promoted safety countermeasures.

FHWA also gathers information on States' progress in implementing the Section 130 program through annual reports. These reports describe the projects states implement to improve safety at railway-highway grade crossings, the effectiveness of such improvements, an assessment of the costs of the various treatments employed, and subsequent crash experience at improved locations. FHWA communicates the effectiveness of the program to Congress in a biennial report as required under Section 130(g). The report to Congress provides a national summary on the progress states are making in implementing projects to improve safety at railway-highway crossings and makes recommendations for future implementation of the Section 130 program. This report provides Congress, FHWA, and FRA with valuable insight into the effectiveness of the program. The Department will continue to work with stakeholders and partners to improve the safety of our Nation's railway-highway grade crossings through the Section 130 Program.

Question 23a. Is the Department aware of any inconsistencies across states in their interpretation of Section 130 program eligibilities, and, if so, what steps has the Department taken to address those inconsistencies?

Answer. Over the life of the Section 130 program, many states have improved crossings with the highest risk and most significant crash history. However, there

are still high-profile crashes that highlight the safety risks at many crossings. States are challenged to find innovative methods for prioritizing projects to maximize the safety benefits of the Section 130 Program and further reduce crashes and fatalities at crossings.

While FHWA provides eligibility guidance to ensure statutory and regulatory compliance, there is no one-size-fits-all risk formula that states use for project identification. To promote best practices among states, FHWA and FRA developed the “Highway-Rail Action Plan and Project Prioritization Noteworthy Practices Guide.” This guide shows states and their partners how to develop their own State-specific grade crossing action plans, and how to identify best practices in how states tailor risk formulas to State needs, incorporate benefit-cost evaluations in project selection, supplement Federal Section 130 funding with State dollars, invest planning dollars (2 percent allowance) in inventory improvements, and apply innovative improvements to project execution. FRA also has two key, web-based application and decision support tools, WBAPS and GradeDec, which provide users with an analytical tool that can assist in determining where highway-rail grade crossing risk mitigation resources can best be directed, including the identification and evaluation of strategies such as highway-rail grade crossing upgrades, separations and closures.

FHWA and FRA are continuing their collaborative approach to rail grade crossing safety and are jointly working on updating the Rail Crossing Safety Handbook. The handbook provides a single reference document on prevalent and best practices as well as adopted standards relative to highway-rail grade crossings. The handbook provides general information on highway-rail crossings; characteristics of the crossing environment and users; and the physical and operational improvements that can be made at highway-rail grade crossings to enhance the safety and operation of both highway and rail traffic over grade crossings. The guidelines and alternative improvements presented in this handbook are primarily those that have proven effective and are accepted nationwide.

Question 24. Railroad Rehabilitation & Improvement Financing (RRIF). The FAST Act reformed the RRIF program to increase efficiency, flexibility, and transparency, and institute certain taxpayer protections. When does the Department plan to publish its first dashboard, or monthly report on RRIF applications, required by the FAST Act?

Answer. With the establishment of the Build America Bureau, which is the Department’s name for the National Surface Transportation and Innovative Finance Bureau, we are working to harmonize the processes for RRIF, TIFIA, and PABs. This includes harmonization of the public dashboard approach for all credit programs within the Build America Bureau, including the existing procedures for TIFIA and the approach for RRIF, as outlined in the FAST Act. We are working towards implementing a harmonized dashboard approach for the credit programs in Fall 2016.

Question 24a. Considering the directive in the Joint Explanatory Statement of FAST Act, the goal of minimizing the length of time the Government retains possession of credit risk premiums, and the shared objective to facilitate increased infrastructure investment, what steps is the Department taking to repay certain credit risk premiums of repaid loans?

Answer. We appreciate the direction from the Joint Explanatory Statement. As everyone is aware, this issue is complicated with a long history. The Department is actively engaged in reviewing the process regarding the repayment provision.

Question 25. Positive Train Control (PTC). The FAST Act allocates \$199 million in dedicated funding for recipients of funds under chapter 53 of title 49, including states and commuter railroads. If a state receives a PTC grant from this pool of funds, does the Department view it as allowable for the state to use this grant to financially assist a short line railroad with PTC installation?

Answer. The Department believes that a state would not be allowed to use a PTC grant authorized by section 3028 of the FAST Act to financially assist any short line railroad that solely supports freight rail transportation. The \$199 million in dedicated funding for recipients of funds under chapter 53 of title 49, United States Code (U.S.C.), including state and commuter railroads, is available for installation of PTC systems that are required under 49 U.S.C. §20157 and that support passenger rail transportation.

Question 26. Train Crew Staffing. In addition to the rules required by the FAST Act, FRA allocates staff resources to issue discretionary rules, including the recent proposed rule entitled “Train Crew Staffing.” In this proposed rule, FRA stated it “does not currently collect sufficient data related to the size of a train crew nor do accident reports and investigations generally address the size of a crew in order for

FRA or any entity to definitively compare one-person operations to multiple person operations.”

In investigating the derailment of Amtrak #188, the National Transportation Safety Board (NTSB) stated that “relying on a single person to make correct decisions can result in a single point failure. This single-point failure will be substantially addressed by full PTC implementation since that system will provide an independent automated means of compliance with speed and signal restrictions in case of human error. In areas where PTC is not implemented, other ways of addressing this single point failure may be necessary. It is unclear if a two-person crew would satisfactorily address this issue because there is insufficient data to demonstrate that accidents are avoided by having a second qualified person in the cab.” As such, the NTSB recommended that FRA first collect data on additional crew size and accident circumstances and then use that data to evaluate the safety adequacy of current crew size regulations.

What steps, if any, is the Department taking to increase the sufficiency of its data related to crew size in order to compare one-person operations to multiple person operations? To what extent does the Department plan to gather and analyze data from international and domestic one-person operations?

Answer. FRA is contemplating an update to the existing accident reporting forms to capture various pieces of information related to train operations that have become more important over the last several years. This may include crew staffing levels, PTC information, flammable liquid information, and various other changes to the reporting forms. However, this effort is likely to take some years to yield actionable data. FRA has not yet determined if it will gather and analyze additional data regarding international one-person operations.

Question 26a. Consistent with the NTSB recommendation, does the Department plan not to publish a final rule on train crew staffing until, at a minimum, FRA revises its applicable data collections, obtains sufficient data on train crew size risk, and uses that data in an updated analysis that justifies such a rule?

Answer. As stressed in the notice of proposed rulemaking (NPRM) issued in March 2016, FRA does not believe that additional data from existing one-person operations would prove useful to the completion of the rulemaking. The NPRM proposes to permit the continued operation of virtually all existing one-person operations in the United States. FRA proposes a process to review all new operations, and the NPRM suggested FRA would likely favorably view those new operations similar to existing safe operations if a railroad did not otherwise have a poor safety history. However, any data related to those existing operations would not be relevant to new operations that are significantly different from any existing operation. The purpose of the proposal is to ensure that a railroad considers and addresses the potential safety implications of using fewer than two crewmembers on certain operations, especially those hauling certain types and quantities of hazardous materials. The NPRM proposed a requirement that a railroad seeking special approval of an operation with less than two train crewmembers submit “appropriate data or analysis, or both, for FRA to consider in determining whether the train operation proposed will provide at least an appropriate level of safety to a train operation with two crewmembers.” See, proposed 49 CFR Part 218.135(b)(11) at 81 Fed. Reg. 13966. In the NPRM’s section-by-section analysis, FRA explained that an FRA decision “would need to contain the facts and rationale relied upon . . . [because] any final agency decision is an action that is potentially reviewable in Federal court and would need to contain sufficient information to survive legal scrutiny.” 81 Fed. Reg. 13953. FRA conducted a public hearing on the proposal on July 15, 2016, and the comment period closed on August 15, 2016. FRA will consider all public comments when developing a final rule in the matter.

Question 26b. Does the Department agree with the NTSB’s assessment that PTC will substantially address the risk posed by single-point failures caused by a single person failing to make correct decisions?

Answer. The Department agrees that PTC will provide a number of safety benefits and address a number of potential single-point failures that exist in many train operations. However, the full implementation of PTC systems is several years away, and even when fully deployed as required by Federal statute, PTC systems will be utilized only on less than half of the Nation’s rail system. In addition, PTC will not address all of the potential safety hazards that may arise when using fewer than two crewmembers on a train, nor will PTC provide the safety benefits associated with a second crew member, including: handling en route equipment failures and setting out defective equipment, separating or backing up trains to alleviate blocked crossings, and providing assistance to other crew members and the public in emergencies.

Question 26c. Given the Department's support for the development of autonomous vehicle technology to reduce or eliminate road accidents caused by human error, what is FRA doing to similarly encourage the advancement and deployment of technologies to enable autonomous operation of trains?

Answer. Through its research and development program activities, FRA continually seeks to identify and explore technological innovations and solutions to enhance the safety, reliability, and efficiency of train operations. For example, FRA has supported the development and use of remote control operations in and around train yards.

Pipeline and Hazardous Materials Safety Administration (PHMSA)

Question 27. Electronically-Controlled Pneumatic (ECP) Brakes. With respect to ECP brakes, the FAST Act required an independent evaluation by the Government Accountability Office (GAO) and a real-world testing framework through the National Academies. I understand the Department has been working with the National Academies to establish an independent panel to oversee the testing.

To what extent will the National Academies' independent panel oversee and have the opportunity to shape the real-world testing framework, including both topline and detailed testing plans, before any testing is conducted?

Answer. It is anticipated that the independent panel of the Transportation Research Board (TRB) of the National Academy of Sciences (NAS) will hold its first meeting in October of 2016. While the TRB panel is being selected, DOT will develop high-level specifications for testing and analysis to address the FAST Act requirements. Detailed test plans will be developed by DOT's contractors and made available to the independent TRB panel. The independent TRB panel will then have the opportunity to review DOT's testing and analysis framework as well as the detailed test plans and will make recommendations on any changes or additional tests the panel believes are necessary.

Question 27a. What is the status of the Department's contract with the National Academies for its services?

Answer. FRA entered into a contract with TRB on May 27, 2016. TRB is currently in the process of forming the independent technical panel, which requires checks to ensure independence and avoid any conflicts of interest. Once the independent TRB panel is selected, the panel member names will be posted for public comment. The first meeting of the independent panel is anticipated to take place in October of 2016.

Question 27b. In addition to funding the real-world testing, what role do you expect the Department to have with respect to the design and execution of the testing?

Answer. While the TRB panel is being selected, DOT will develop high-level specifications for testing and analysis to address the FAST Act requirements. Detailed test plans will be developed by DOT's contractors and made available to the independent TRB panel.

Question 27c. Does the Department plan to consider or use the independent testing and evaluation results prior to taking any further action concerning ECP brakes?

Answer. As required by the FAST Act, the updated Regulatory Impact Analysis (RIA) will incorporate the results of the independent evaluation conducted by the Government Accountability Office (GAO), the testing overseen by the independent TRB panel, and public comments. DOT will then use the updated RIA to inform the Secretary's decision on whether the ECP brake requirement is justified. In the event that independent, third parties present additional results, DOT also will take them into consideration before taking further action.

Question 28. Real-Time Emergency Response Information. The FAST Act required the Department, in consultation with other agencies, to issue regulations to require Class I railroads to provide to fusion centers accurate, real-time, and electronic train consist information for certain trains. The FAST Act also codified requirements for each Class I railroad to provide certain train consist information to state emergency response commissions consistent with the requirements of Emergency Order Docket No. DOT-OST-2014-0067.

Understanding the rulemaking for real-time information is under development, what security and confidentiality protections does the Department plan to establish to prevent the release of information, including proprietary or security-sensitive information, to unauthorized persons?

Answer. The flow of information from railroads to State, local, or tribal governments (and thus the protection of information) is being addressed in two distinct rulemakings. In the first action, a Notice of Proposed Rulemaking (NPRM) titled "Oil Spill Response Plans and Information Sharing for High-Hazard Flammable

Trains”, PHMSA addressed provisions contained in Sections 7302(a)(3), (4), and (6) of the FAST Act. In this rulemaking, PHMSA proposes to codify the Emergency Order’s State Emergency Response Commission (SERC) notification provisions for all high-hazard flammable trains (HHFTs).

In the second action, PHMSA is developing an NPRM to address provisions contained in section 7302 of the FAST Act that require Class I railroads to provide fusion centers with accurate, real-time, and electronic train consist information for trains transporting hazardous materials. Specifically, the NPRM will address sections 7302(a)(1), (2), (5), (6), and (7) of the FAST Act. This NPRM is currently under development, and PHMSA is evaluating all reasonable options to implement these FAST Act provisions.

The Oil Spill Response Plans and Information Sharing for High-Hazard Flammable Trains NPRM proposes requiring that “[i]f the disclosure includes information that railroads believe is security sensitive or proprietary and exempt from public disclosure, the railroads should indicate that in the notification.” This requirement that business confidential information be marked appropriately will help prevent against inadvertent public disclosure. Specifically, states will know which information is considered by the railroads to be inappropriate for public release. Thus, states can incorporate this information into their processes for determining which information to release to the public.

Both after the initial issuance of the Emergency Order and as part of the Oil Spill Response Plans and Information Sharing for High-Hazard Flammable Trains NPRM development, DOT analyzed the Emergency Order and determined that the information shared by railroads does not qualify for withholding under Federal standards on business confidential or sensitive security information (SSI).

After issuing the Emergency Order, FRA found that State laws control and may therefore limit the disclosure and dissemination of this information in FRA’s Information Disclosure Notice (79 *Fed. Reg.* 59891 (Oct. 3, 2014)). The NPRM proposes to require railroads to report, on a weekly basis, aggregated information that includes the volumes of crude oil and other HHFTs that travel through a jurisdiction. This information does not include customer information, other identifiable business details, or specifics about the timing of HHFT trains.

The NPRM solicits comments on this topic, as well as on the means by which PHMSA can fulfill the FAST Act’s direction to establish security and confidentiality protections where this information is not subject to Federal standards. The NPRM is available at <https://federalregister.gov/a/2016-16938>.

Question 28a. To what extent has the Department established any security or confidentiality protections for the information provided under the requirements in Emergency Order Docket No. DOT-OST-2014-0067?

Answer. In an October 2014 Information Disclosure Notice, the Department analyzed the Emergency Order, and determined that the information shared by railroads does not qualify for withholding under Federal standards for business confidential information or Sensitive Security Information. See 79 *Fed. Reg.* 59891 (October 3, 2014), available at: <https://federalregister.gov/a/2014-23511>. The Department noted that, for each State, public disclosure laws control the disclosure and dissemination of this information. The Department has not established additional disclosure limitations on the Emergency Order information.

As discussed in the response to the previous question, the Department addressed security and confidentiality protections in the Oil Spill Response Plans and Information Sharing for High Hazard Flammable Trains NPRM.

Question 28b. To what extent has the Department evaluated whether the information that has been provided to state emergency response commissions under the Emergency Order has resulted in increased preparedness or enhanced local decision-making?

Answer. In January 2015, PHMSA participated in conference calls with representatives of the 48 states in the lower continental United States and the District of Columbia that addressed emergency response to crude-by-rail incidents. Hosted by the Environmental Protection Agency and attended by other Federal partners, these discussions clarified how states prepare and respond to incidents involving crude-by-rail and identified their unique needs. Twenty-two of 49 states reported that rail carriers provided information pursuant to the Order that was helpful in understanding the threat to their state. Thirty of 49 states provide oil train routing information to local communities, but variations exist in the amount of information provided, with some states sharing all routing information and others heavily redacting carrier-submitted data.

To further evaluate the effectiveness of the information and how it should be shared within the State and local response communities, PHMSA recently released

the NPRM titled “Oil Spill Response Plans and Information Sharing for High-Hazard Flammable Trains” (HM–251B). This NPRM proposes to codify the Emergency Order to meet the requirement set forth in the FAST Act. This NPRM will provide an additional avenue for PHMSA to capture feedback from the response community along with other interested stakeholders. PHMSA anticipates receiving comments from SERCs, Tribal Emergency Response Commissions (TERCs), and related local emergency planning decision-makers during the NPRM’s open comment period.

Further, PHMSA continues to engage with SERCs, TERCs, and others in order to improve hazardous materials emergency preparedness and response. Overall, states participating in the conference calls requested additional in-state training options for first-responders. To address this input, DOT developed the Transportation Rail Incident Preparedness and Response (TRIPR) information modules to offer a flexible approach to train first responders and emergency personnel on best practices for pre-incident planning and response to rail incidents involving flammable liquids such as petroleum crude oil and ethanol. Since October 6, 2015, more than 3,200 users have used the TRIPR website (<http://dothazmat.vividlms.com/tools.asp>). More are receiving direct training through focused activities by PHMSA and other Federal agencies.

Question 29. Crude Oil Characteristics. The FAST Act requires a report following the completion of the comprehensive Crude Oil Characteristics Research, Sampling, Analysis, and Experiment Plan study at Sandia National Laboratories. The FAST Act requires the report to contain any recommendations for regulatory or legislative changes to improve the safe transport of crude oil.

To what extent does the Department, or any of its interagency partners, plan any regulations or other administrative actions concerning crude oil characteristics, including a potential vapor pressure limitation or other similar type of standard, prior to the results of the study and submission of the report?

Answer. In order to address the increase in the domestic production of crude oil, since September 2012, DOT has taken over 30 actions to prevent and mitigate the damage from crude-by-rail accidents. These actions come in the form of rulemakings, Emergency Orders, research, training and grant programs. More information about these actions is available online at: <http://www.phmsa.dot.gov/hazmat/safe-transportation-of-energy-products>.

One of these actions was a joint study with the Department of Energy (DOE), which will help develop an understanding of scientific questions associated with the production, treatment, and transportation of crude oil, including Bakken crude oil. The Department will use the results of this study to inform our decisions on future public policies. Upon completion of the study, as mandated by the FAST Act, PHMSA will submit a report to Congress that will include the results of the Crude Oil Characteristics Research Sampling, Analysis, and Experiment Plan. The Department is actively monitoring the progress of the study to avoid delays.

The Department has consistently shown a willingness to take action and will consider all options as we learn more and move forward.

Question 29a. What research has the Department conducted to investigate the effects of certain crude oil characteristics on the consequences of specific derailments?

Answer. PHMSA has not investigated the effects of certain crude oil characteristics on the consequences of specific derailments. However, PHMSA investigators collect crude oil samples from derailments to gain a better understanding of crude oil characteristics, and determine compliance with hazardous materials regulations. PHMSA is in the process of sharing our data with DOE for the joint DOT–DOE study. This study is a multi-phase effort to develop a more comprehensive understanding of the properties of crude oil and to address its risks in transportation. The results of this study will help inform future actions by the Department to improve the safe transportation of crude oil and will comply with the requirements of the FAST Act.

Question 29b. Within the analysis for the high-hazard flammable train final rule, to what extent did the Department incorporate any differences in the characteristics of crude oil and ethanol—including differences in vapor pressure, flashpoint, and boiling points—into its assessment of the relative risks of each commodity? How did the potential safety benefits of the rule differ by commodity, given these differences?

Answer. Since crude and ethanol are the main commodities shipped as HHFTs, these commodities were the focus of the regulatory impact analysis (RIA) for the “Enhanced Tank Car Standards and Operational Controls for High-Hazard Flammable Trains” final rulemaking. The RIA focuses on economic factors (benefit-cost analysis findings) and did not directly consider chemical and technical characteristics, such as vapor pressure, flashpoint, and boiling points.

PHMSA evaluated crude and ethanol benefits separately in the RIA for certain provisions. When considering the combined economic impacts of the final rule, PHMSA analyzed fleet size/composition, train lengths, travel distances, volumes transported, production projections, and other market characteristics that vary between crude oil and ethanol rail transport. In addition, the benefits for the provisions in the HHFT final rule were derived using a cost per gallon figure that was developed based on reported damages associated with crude oil and ethanol rail incidents. This cost per gallon estimate represents the average consequences per gallon for crude oil and ethanol rail incidents in the U.S. safety record and is presented as a single figure for calculation of the benefits. That is, the RIA considered the typical damages for ethanol and crude oil rail incidents separately, but used a weighted average to derive an overall cost per gallon estimate to calculate the expected benefits of the final rule. Therefore, while the RIA did not explicitly differentiate characteristics of crude oil and ethanol, it did consider appropriate economic factors that vary between these commodities.

Question 30. Special Permits and Approvals. The FAST Act reformed the special permits and approvals process to improve accountability, increase transparency, and add predictability for the regulated public. Among other things, the FAST Act amended the processing deadline from 180 to 120 days, yet the latest publically available data appear to show PHMSA has over 100 approvals and permits that exceed the deadline. Would you provide a list of each application that exceeds the deadline and provide more information on the circumstances or actions causing the backlog?

Answer. As of June 27, 2016, the number of Approvals and Permits greater than 120 days is as follows:

Special Permits:	52
Approvals:	73

PHMSA has been working diligently to reduce the number of applications for approvals and special permits whose processing times exceed 120 days. In the past, the reporting requirements only pertained to special permits and not to approvals. In addition, the timeline which required reporting was 180 days and not 120 days. During any year it is estimated that PHMSA processes approximately 2,500 applications for special permits and 25,000 applications for the various types of approvals. When the number of applications that exceed the 120 day timeline is compared to the overall volume of applications received, it can be seen that the number of applications that exceed the timeline are only a fraction of the applications received. It is unusual for an application to reach that mark.

If an application exceeds the 120 day timeline it is generally due to one of the following extenuating circumstances:

- The application is precedent setting and requires an increased level of technical review;
- The application is technically complex (such as a new composite cylinder design) and requires technical review of many documents such as design drawings, technical specifications, and test reports;
- The application requires an extended fitness review by PHMSA or a modal administration and may require an onsite inspection of the applicant;
- During review of the application if it is determined that additional information is needed, the time to gather and submit the additional information can lead to an extended review time; and
- During some periods of time, other priorities such as ensuring the safe transportation of crude oil by rail reduce the number of available engineers, chemists, and scientists who are responsible for the technical evaluation of approvals and permits.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. ROGER F. WICKER TO
HON. ANTHONY R. FOXX

Question 1. Congress used the Fast Act to make significant changes to the TIFIA program to streamline the application process and make TIFIA more accessible for small towns to pursue local transportation projects such as trail systems for pedestrians and bicyclists. What is USDOT doing to revise TIFIA procedures to make it easier for local governments to apply for TIFIA loans?

Answer. The FAST Act contained a number of new provisions to help rural and small projects access TIFIA credit assistance, including allowing the Department to cover its fees for small projects, allowing the Department to lend to rural projects

at a dramatically reduced interest rate, allowing the Department to lend directly to State Infrastructure Banks (SIBs) to capitalize rural project funds, and allowing smaller projects to access the TIFIA program by lowering the overall minimum project cost to \$10 million. Immediately upon passage of the FAST Act, the Department rolled out TIFIA's new lending authority in a Notice of Funding Availability (NOFA). This NOFA announced new eligibility criteria and programmatic changes that facilitate lending to small and rural projects. The Department has also worked to implement new provisions authorized by Congress, like the streamlined application process and the new loan program to capitalize SIBs, developing a framework for each of these new processes and products. To ensure that new project sponsors are aware of TIFIA's new lending authority, the Department has held a series of outreach sessions and webinars focusing on non-traditional sponsors that cover the streamlined process, new provisions for small and rural projects, and TIFIA's ability to capitalize SIBs. To make TIFIA more accessible to rural and small projects, the Department has developed a streamlined application process and a process for lending to State Infrastructure Banks as well as fully implemented new changes to TIFIA, like reducing the minimum eligible project cost. The Build America Bureau is the Department's name for the National Surface Transportation and Innovative Finance Bureau. Through the new Build America Bureau outreach and credit teams, the Department will continue to disseminate information about the TIFIA program and its new lending authority to ensure that all eligible projects interested in TIFIA can access the program.

Question 2. As I mentioned during the hearing, this year two children already have died because of vehicular heatstroke in Mississippi, and the national total is fifteen children just in the last six months. The seasonal public awareness campaigns are simply not adequate to completely stop these fatalities. I am aware that there is in-vehicle technology available that could eliminate this tragic problem, such as radio-based technology or on-board diagnostics (OBD II Standard) that can sense when small occupants are in a vehicle. Would you please provide a status report on where NHTSA is with the study required in the FAST Act (Sec. 24114) and include your plans to initiate a rulemaking to start the process of getting lifesaving technology into new cars?

Answer. NHTSA completed the research and issued the study on July 31, 2015 (<http://www.nhtsa.gov/About+NHTSA/Press+Releases/2015/nhtsa-kids-in-hot-cars-07312015>) under a preexisting provision under MAP-21. To date, technology has not been proven effective enough to support a rulemaking. The Agency does not expect to initiate rulemaking at this time. However, NHTSA's study provided a foundation of test procedures that innovators and companies could use to test and evaluate products. As products come to the market, NHTSA will continue to monitor technology development, test new technology as they are developed, and determine whether the test procedures need updating to account for new products.

The Agency is mindful that a technology-based solution only addresses about half the unattended children problem. Hence NHTSA has conducted public outreach with other partners over the last several years, including the "Where's Baby?" campaign, to alert and improve the public's understanding of the issue.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. ROY BLUNT TO
HON. ANTHONY R. FOXX

Question 1. Secretary Foxx, during your time at the agency, NHTSA has taken steps toward implementing many of the requirements that Congress prescribed in MAP-21. One is a MAP-21 requirement requiring Original Equipment Manufacturers (OEM) to index all technical service bulletins (TSBs) for the benefit of consumers. Can you explain the authority the agency relied upon when it published the complete TSBs on the agency's website when many of these are copyrighted documents available by the OEMs through various channels?

Answer. Section 31303 of MAP-21 affirmatively requires NHTSA to "make available on a publicly accessible Internet website" copies of all communications to manufacturers' dealers, rental companies, owners, and purchasers about a defect or non-compliance that manufacturers submit to the Agency. (49 U.S.C. § 30166(f))

Question 1a. Are there alternatives the agency could instead use to strike a balance between copyright concerns while fully realizing the access goal that motivated the provision in MAP-21?

Answer. Pursuant to the fair use limitation on copyright, NHTSA has historically posted on its website copies of service bulletins for recall repairs and service bulletins related to its defect investigations. NHTSA also has made a paper copy of other service bulletins available to the public pursuant to the library provision of

copyright law. Prior to MAP-21, the Agency determined that copyright law prevented it from publicly posting copies of certain communications. However, the explicit and direct language of MAP-21 has made clear that the Agency must now post copies of TSBs and other manufacturer communications to its website.

Question 2. Secretary Foxx, as you know, we worked to include language in the FAST Act, to create a working group that would investigate how to speed up permitting of over length trucks carrying utility infrastructure equipment following an emergency such as a tornado, hurricane or other disaster. That working group was to have been established, and a report is supposed to be presented to Congress by the end of the year. The report is to include details on how we can go beyond the antiquated process of having each state government issue permits for these trucks carrying critical materials which will speed up the process of restoring, for example, electric and communication services. To date, that working group has not been set up, despite outreach attempts by Congress and industry stakeholders. Can you provide me with an update on timing?

Answer. Section 5502 of the FAST Act requires the Department to establish this working group not later than December 4, 2017. Given the importance of this provision, FHWA moved quickly to create the Emergency Route Working Group (ERWG), and I am pleased to inform you that I approved the charter to establish the group as a Federal advisory committee on July 25, 2016. Because the nature of the advice and recommendations has the potential to impact programs and policies of the Federal Government, a Federal advisory committee was warranted. Additionally, establishing the group through the Federal Advisory Committee Act will ensure Congress and the public remain informed of the purpose, membership, and activities of this outside group.

In the coming weeks, I expect FHWA will announce the working group and solicit nominations for members. I can assure you that we will work to ensure the advisory committee includes representation from the groups named in the FAST Act, including State highway transportation departments and agencies; relevant modal agencies within DOT; emergency response or recovery experts; relevant safety groups; and entities affected by special permit restrictions during emergency response and recovery efforts (*e.g.*, gas and electric utility organizations).

Question 3. In 2011 the administration finalized what is now sometimes referred to as “One National Program” to regulate light duty vehicle fuel economy for the 2017–2025 model years. It consists of three separate sets of regulations, including EPA’s program under the Clean Air Act and NHTSA’s program under CAFE. The harmonization intended was to provide greater consistency and certainty for auto makers as they develop their products for sale in the various parts of the country. But the two Federal programs are different, and those differences are likely to result in automakers being subject to fines under the NHTSA program even though they comply with the more stringent EPA program. There is provision for manufacturers to earn and use credits for exceeding the requirements in some years to help with compliance in other years. Do both the EPA and NHTSA use the credit program?

Answer. Yes. The NHTSA credit program is dictated by the Energy Policy and Conservation Act of 1975 (EPCA) and the Energy Independence and Security Act of 2007 (EISA). EPA established its credit program by regulation.

Question 3a. How long do the EPA credits last for?

Answer. EPA set its useable life of credits by regulation. (See 40 CFR 1865–12(k)(6)) The usable life of credits under the EPA program varies based on the year in which the credit was earned. Specifically, the usable life of EPA credits was 5 years for model year 2009, phased down from 11 years to 6 years over the course of model years 2010 through 2015, and is 5 years for model years 2016 and beyond.

Question 3b. How long do the NHTSA credits last for?

Answer. The usable life of credits under the NHTSA program is five consecutive model years, as dictated by EPCA and EISA.

Question 3c. Would it make sense to allow credits earned under the NHTSA program to have comparable usable lives to more closely harmonize this aspect of the two programs?

Answer. NHTSA’s and EPA’s usable life of credits are presently in alignment. Beginning with model year 2016 vehicles and continuing into the future, both agencies allow for 5 years of usable credit life. Any changes to the usable life of present or future credits earned under NHTSA’s program would create a misalignment with EPA’s program. Any retroactive changes to the usable life of previously earned credits under NHTSA’s program would give some manufacturers a windfall, whereas manufacturers who did not earn credits as part of their long-term compliance plan would suffer a competitive loss.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. MARCO RUBIO TO
HON. ANTHONY R. FOXX

Question 1. The FAST Act requires that the Federal Rail Administration (FRA) to convene the Gulf Coast Rail Service Working Group to evaluate the restoration of an intercity passenger rail service in the Gulf Region, between New Orleans and Orlando, Florida.

Based on previous and similar Working Group efforts on passenger or freight rail service, does the FRA have any initial estimates of state and local cost-share to restore this passenger line, including estimates on the state and local cost-share in capital investments?

Answer. Amtrak has conducted two recent studies on restoring passenger rail service along the Gulf Coast that have provided the FRA with some initial estimates on what the service will cost. Amtrak's study titled "Report for the Southern Rail Commission on Potential Gulf Coast Service Restoration Options," which was published in December 2015, provided projections on the annual operating costs. According to this report, two daily corridor trains operated between New Orleans, LA and Mobile, AL would require \$6.97 million in state/local funds to cover the operating costs (the Passenger Rail Investment and Improvement Act [PRIIA] requires State/local funds to cover operating losses on Amtrak routes that are less than 750 miles). If daily Amtrak long-distance service was extended east of New Orleans to Orlando, FL, Amtrak's annual operating costs would increase by \$5.8 million (since long-distance trains are not required to be subsidized by state/local sources). Both a corridor train between New Orleans and Mobile and extending a long-distance train from New Orleans to Orlando would require \$3.78 million in state/local funds and an additional \$5.71 million in Amtrak operating funds. This report did not include any capital cost estimates for restoring passenger rail service along the Gulf Coast.

Amtrak's 2009 study titled "PRIIA Section 226 Gulf Coast Service Plan Report" did provide an estimate of \$10.7 million (in 2009 dollars) for the work that is needed to bring the stations between New Orleans and Orlando back to service and into compliance with Americans with Disabilities Act requirements. An updated estimate of the station costs, as well as an estimate of the additional infrastructure improvements that are needed, will be included in the report required by the FAST Act. The State/local match for the capital costs will depend on the requirements of any grants that are awarded to the region for restoring passenger rail service.

Question 2. All Aboard Florida, now known as Brightline, the privately-owned, proposed high-speed passenger rail project in Florida, was slated to begin operating at the beginning of 2016. The \$3.5 billion project was set to leverage both Federal and private funds. However, due to lacking private investment, most recently, DOT has offered the private train builders another extension, for another year, to issue over a billion dollars of private activity bonds to partially finance the project. Would you please explain the Department's justifications for these extensions?

Answer. Section 11143 of Title XI of SAFETEA-LU, passed in 2006, amended section 142 of the Internal Revenue Code to add certain surface transportation projects to the types of privately developed and operated projects for which private activity bonds (PABs) may be issued. The statute set the nationwide limit on allocated authority at \$15 billion. As of July 7, 2016, approximately \$6.5 billion in PABS have been issued by 17 projects, and \$4.7 billion is currently allocated to five additional projects, including \$1.75 billion to the All Aboard Florida project. Approximately \$3.8 billion is unallocated and available immediately for allocation to future projects.

In a December 3, 2015 letter to the Department, All Aboard Florida indicated that they had decided to delay the issuance of their bonds due to market conditions, and they were therefore requesting an extension of one year. The Department reviewed their extension request consistent with prior practice, and extended their allocation until January 1, 2017.

Question 3. In your testimony you refer to the FASTLANE grants authorized in the FAST Act. Consistent with the legislation, these grants should only be awarded to "nationally significant freight and highway projects," including highway, freight, bridge, and port projects. Can you speak to how DOT determines, on the basis of criteria, which projects, and "key challenges" addressed by the project, will be given priority for grant funding?

Answer. As described in the Notice of Funding Opportunity published on March 2, 2016, in evaluating FY 2016 FASTLANE applications, DOT considered the extent to which the project addressed the statutory selection criteria and met program requirements. The selection criteria included: Economic, Mobility, Safety,

and Community and Environmental Outcomes, Partnership and Innovation, and Cost Share.

Question 3a. The law indicates that each fiscal year, 10 percent of the FASTLANE grants (at least \$5 million) are used for “small projects.” Can you speak to what constitutes a “small project,” and how DOT will determine this project selection?

Answer. According to 23 U.S.C. § 117(e), small projects are projects which do not satisfy the minimum cost threshold described under 23 U.S.C. § 117(d)(1)(b). This threshold, as applied to total project cost, is the lesser of \$100 million; 30 percent of a State’s FY 2015 Federal-aid apportionment if the project is located in one state; or 50 percent of the larger participating State’s FY 2015 apportionment for projects located in more than one State. Additional information on this threshold can be found in the Notice of Funding Opportunity published on March 2, 2016. The Department reviews all small project applications received in accordance with the statutory requirements of the FAST Act and the selection criteria listed in the Notice of Funding Opportunity.

Question 4. Last week, the Department of Transportation approved six U.S. domestic airlines to begin scheduled flights to nine Cuban airports. On February 16, 2016, the Department of Transportation signed a non-legally-binding arrangement to re-establish scheduled air service between the two countries. Why did the Administration choose a non-legally binding arrangement?

Answer. During the December 2015, talks, the U.S. and Cuban delegations affirmed their desire to begin, at the appropriate moment, the process of negotiating a new binding bilateral air transport agreement. In the interim, the nonbinding arrangement provides an appropriate legal framework under which scheduled services between our countries can resume and charter services can continue.

Question 4a. What was the criteria for choosing the Cuban airports to which U.S. flights would be authorized?

Answer. Cuba lists ten airports as eligible to receive international service. The governments determined to make each of the international airports in Cuba and in the United States available to international service by duly authorized carriers.

Question 5. Among those Cuban airports chosen are Varadero (Matanzas), Cayo Coco, and Cayo Largo. These three airports are feeders to the Cuban military’s isolated beach resorts. How do those flights fit into the U.S. legal criteria for people-to-people travel?

Answer. It is the Department’s understanding that travelers will need to comply with the applicable requirements and regulations of other U.S. agencies and with all applicable laws of the United States, regardless of their point of entry to Cuba. The Department of Treasury Office of Foreign Asset Control could provide more detailed information regarding requirements and regulations regarding authorized travel to Cuba.

Question 5a. Do these flights seek to circumvent legal restrictions on tourism-related transactions towards Cuba?

Answer. Any award of economic authority by the Department of Transportation to an airline will not relieve U.S. carriers or travelers from complying with the applicable requirements and regulations of other U.S. agencies, and with all applicable laws of the United States. It is the Department’s understanding that the Department of the Treasury’s Office of Foreign Asset Control has issued general licenses within the 12 categories of authorized travel for many travel-related transactions to, from, or within Cuba that previously required a specific license, but that travel for “tourist activities” remains prohibited by statute.

Question 6. A recent hearing in the House Homeland Security Committee revealed that Transportation Security Administration (TSA) officials have privately raised serious security concerns with lawmakers regarding the suitability of some of these Cuban airports. Why did the Administration choose a non-legally binding arrangement?

Have all nine Cuban airports been independently evaluated by U.S. personnel to ensure they meet security and infrastructure criteria?

Answer. The Department of Homeland Security has authority over issues of airport security.

Question 6a. Will TSA officials be stationed at all nine Cuban airports with direct flights to the United States?

Answer. The Department of Homeland Security has authority over issues related to the deployment of Transportation Security Administration (TSA) personnel.

Question 6b. Will the U.S. airlines awarded these flights have independent personnel—not hired through the Cuban government—stationed at these nine airports?

Or is the Administration fully outsourcing our security requirements to the Cuban government?

Answer. The Department of Homeland Security has authority over issues of airport security.

Question 7. What level of confidence does the U.S. Government have in the integrity and security of the Cuban government's policies regarding issuance of visas to third country nationals? Will U.S. authorities have independent security verification?

Answer. The Department of Homeland Security has authority over immigration and entry issues.

Question 8. Among the nine selected Cuban airports, can you confirm whether any of these airports are confiscated properties from the Cuban government?

Answer. The Department has no information on whether these airports are properties confiscated by the Cuban government.

Question 9. The 5.9 GHz band is important to the automotive industry's hopes for ITS crash-avoidance systems and to address the pressing need for additional spectrum for consumer wireless services. Congress instructed the FCC and DOT to work out a sharing approach, and I've worked to push the process forward. We must find an approach that opens the band to Wi-Fi while ensuring no harmful interference to crash-avoidance systems. I'm pleased to hear that the FCC will soon conduct tests to make this a reality, with DOT's participation. But FCC Commissioner O'Rielly has suggested that some companies may try to use ITS licenses not just for crash avoidance, but also for non-safety applications like metering, e-commerce, or even entertainment systems—far afield from the safety-of-life systems contemplated in DOT's pending rulemaking. I'm all for protecting crash avoidance. Do you believe that companies engaged in non-safety activities deserve the special status we give safety? Please answer yes or no.

Answer. DOT recognizes the critical national interest in making more broadband spectrum available. Our overarching goal is to assure safe, reliable, and on demand access to the 5.850–5.925 GHz spectrum for licensed vehicle to vehicle communication technology. We are working collaboratively with FCC and NTIA on testing to ensure that the capabilities of the safety critical crash avoidance applications and technologies are maintained.

Question 9a. Are you considering mandating that all automakers use a government-mandated technology and frequency band? If so, why?

Answer. NHTSA is considering this issue in the Vehicle to Vehicle Communication NPRM that is currently under deliberations. We cannot comment on the issue until the rule has been released for public comment.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. DEB FISCHER TO
HON. ANTHONY R. FOXX

Question 1. Coordination between FHWA & FRA on rail crossings

The state of Nebraska has more than 3,000 at-grade rail crossings eligible for public funding. As you know, the FAST Act includes provisions that would compel the Federal Railroad Administration (FRA) to establish and distribute "model" state grade crossing action plans to help mitigate future accidents. State DOT's will then need to develop an action plan based on the FRA's model.

At the same time, the Federal Highway Administration (FHWA) administers the section 130 grade crossing program, which provides grants to states on a formula basis. One of the challenges is that the FRA and FHWA may have conflicting implementations of these critical safety and infrastructure funding programs that could lead to some of the most dangerous rail at-grade crossings not receiving attention for corrective action.

How is DOT working to ensure that the FRA and FHWA are coordinating to ensure the section 130 program and model grade crossing action plans are consistent and complementary? As a follow up, what will DOT do to ensure states establish action plans and take corrective actions by utilizing section 130 program resources?

Answer. FHWA manages the Section 130 program, and FRA provides technical and programmatic support to FHWA and the State DOTs regarding the program. FRA Regional Offices have been working with the Safety Specialists in the FHWA Division Offices on the States' upcoming projects, including information on the States' project prioritization and selection process.

FRA leads the ONE DOT Intermodal Grade Crossing Safety Team with staff from FRA, FHWA, FTA, FMCSA, NHTSA, and VOLPE. The team meets quarterly, and team members from each modal administration coordinate their current projects

and initiatives. They also discuss upcoming projects and work to coordinate a unified message across the DOT.

FHWA and FRA will continue to collaborate on identifying ways to improve how each agency supports rail grade crossing safety, including implementing FAST Act requirements. FAST Act-related activities will include developing and distributing model State-specific highway-rail grade crossing action plans to each state, along with a customized crossing accident/incident data set and contact information for DOT officials; issuing regulations requiring states to develop and update highway-rail grade crossing action plans, or provide updates to their existing action plans; evaluating State highway-rail grade crossing action plans; and reporting to Congress on State progress in implementing their highway-rail grade crossing action plans.

FRA will also issue regulations requiring each State to submit and implement a grade crossing action plan or update an existing grade crossing action plan (for the 10 states that were required by the Rail Safety Improvement Act of 2008 to develop grade crossing action plans). Upon submission, FRA will review each plan for approval.

Question 2. Advanced vehicle technology neutrality

The Conference Report to the FAST Act included language noting that the FAST Act's programs, "are deployed in a technology neutral manner. The Act promotes technology neutral policies that accelerate vehicle and transportation safety research, development and deployment by promoting innovation and competitive market-based outcomes, while using Federal funds efficiently and leveraging private sector investment across the automotive, transportation and technology sectors."

Stakeholders have indicated that that the DOT is mandating that Smart Cities Competition participants must include Dedicated Short Range Communications (DSRC) in their projects in order to be considered. Can you please explain whether this is true and whether other types of vehicle-to-vehicle safety technologies such as advanced cellular will also be permitted?

Answer. No, neither Notice of Funding Opportunity required applicants to use DSRC. Applicants were permitted to integrate a variety of commercially available communication technologies including cellular, satellite, Wi-Fi and others to deploy connected vehicle and infrastructure services. Applicants were encouraged to use DSRC technology operating in the 5.9GHz band to expand demonstrations of safety-critical V2V and V2I applications based on DSRC communications to ensure the interoperability of these safety applications among multiple automotive manufacturers. But DOT encourages all new advanced technologies to be used in a safe and standardized manner and does not preclude any advanced technologies in the V2I space.

Question 3. Tolling

While some states have built HOT lanes around cities to help alleviate congestion, the idea of tolling existing Interstates has not made progress. According to the American Trucking Associations, the FHWA pilot program that allows 3 states to toll their Interstates hasn't had a single successful applicant in its 18-year history. Given the history of the pilot program, do you believe it should continue to move forward?

Answer. The Interstate Reconstruction and Rehabilitation Pilot Program (ISRRPP), established in 1998 by TEA-21, is limited to three slots. As you note, none of the states holding these slots—Virginia, North Carolina, and Missouri—have come to FHWA with a tolling project. In response to this lack of progress, the FAST Act sets a one-year "use or lose" deadline for the states currently authorized to pursue ISRRPP projects. Based on these states' replies, the FHWA intends to evaluate new ISRRPP opportunities via an open solicitation to all states, whose expressions of interest will best inform whether to continue to move forward. You also note that many states have developed HOT lanes to address urban congestion. Most of these facilities—*e.g.*, in California, Washington State, Minnesota, Florida, Virginia, and Texas—are on Interstate highways, demonstrating the efficacy of adding tolls to the system as well as the flexibility of related Federal tolling programs to accomplish a state objective.

Question 4. Drug and alcohol testing for commercial drivers

Mr. Secretary, the FAST Act requires speedy implementation of a national clearinghouse of drug and alcohol test results in the trucking industry. As you may know, this is something the industry has been advocating for many years. When will DOT issue rule regarding this provision? Further, will the rule make obsolete current requirements that prospective employers contact an applicant's past employers to learn of previous violations?

Answer. The Office of Management and Budget is currently coordinating inter-agency review of a draft of the final rule. FMCSA expects to publish the final rule later this year. While we cannot discuss the contents of rules under Executive Order 12866 review, the proposed rule would require prospective employers to query the clearinghouse rather than the previous employer about the employee's previous drug and alcohol tests.

Question 5. MARAD Sea Year

Secretary Foxx, on Wednesday, June 15, 2016, the Maritime Administration (MARAD) announced that it would suspend the U.S. Merchant Marine Academy's (USMMA) Sea Year program. MARAD has stated this decision was not the result of one specific incident but as a result of its discussions and findings when evaluating sexual assault at the USMMA. Would you please explain the specific events, focus group results, survey findings, or other considerations that directly led to the decision to suspend the program?

Answer. My decision to temporarily stand down the sea year program was based on an accumulation of evidence from many sources, including the 2012 and 2014 Defense Manpower Data Center (DMDC) Sexual Assault and Gender Relations (SAGR) surveys of Midshipmen that indicated that, while Midshipmen spend only one quarter of their time at the Academy on Sea Year, between 40 and 50 percent of the incidents of unwanted sexual contact experienced by women and men occurred at sea. Sixty-three percent of women and 11 percent of men experienced sexual harassment in the 2013-14 academic year. In 2015, DMDC conducted focus groups which confirmed the presence of a "pervasive sexist culture" on campus. Faculty, staff and Midshipmen spoke of challenges created by the Sea Year, including evidence that Midshipmen developed inappropriate attitudes towards women while at sea, further contributing to a sexist campus climate. It also noted that Midshipmen are reluctant to report incidents at sea due to fear of retaliation and damage to their future careers in the maritime industry. In addition, further evidence of the prevalence of inappropriate behaviors encountered by male and female Midshipmen while at sea came to light in meetings with senior MARAD and Academy leadership, the Advisory Board, and the Middle States Commission on Higher Education's evaluation team. Examples of inappropriate behavior included bullying, hazing, sexual harassment, and pressure to consort with prostitutes and to consume alcohol. The evidence that too many Midshipmen face a hostile environment at sea, and their reluctance to report these incidents, led us to the conclusion that the Academy could no longer send Midshipmen to sea until concrete actions were taken to change the status quo. Action to stand down Sea Year needed to be taken before the next class of Midshipmen was scheduled to depart on Sea Year the week of June 13.

On August 22, I directed that the stand down continue as we look at additional steps we can take to ensure the safety of our students at sea and on campus, and to promote a culture of transparency and respect for everyone. Over the next few months, we will have independent outside experts experienced in assessing institutional and organizational culture examine all such aspects within the USMMA, both on campus and at sea, in an attempt to identify root causes and their impacts to the Academy culture and offer possible short-term and long-term corrective actions to address the issues. This assessment will delay the resumption of Sea Year on commercial vessels for a number of months. In the interim, we will continue to assign Midshipmen to Federal vessels to get their required sea days and have been utilizing MARAD's Ready Reserve Force (RRF) vessels for this purpose since August 22nd.

Question 6. USMMA Requirements

In order to graduate USMMA midshipmen must complete their sea service requirements for time aboard an ocean-going vessel.

Would you please provide further details as to the expectations of DOT as it relates to the "Call-to-Action" for maritime stakeholders?

Answer. MARAD and USMMA hosted more than 90 representatives of the maritime industry at a Call-to-Action meeting on June 24, 2016, to address concerns about the shipboard working and living environment that led to the stand down of USMMA's Sea Year training program. Held in Washington, D.C. at the U.S. Department of Transportation, the meeting was convened to review actions taken by the U.S. Armed Forces as well as an opportunity for the maritime industry to present a proposal to improve the quality of life onboard vessels and provide a working and training environment that is both safe and respectful for the Midshipmen. The discussions focused on industry culture, sexual assault, and sexual harassment awareness and prevention efforts, industry-wide best practices and reporting protocols, and implementable actions included how to proactively address the issues, training programs involving the companies and mariner unions, assignment of onboard men-

tors, debriefing of all Midshipmen upon completion of their Sea Year training, vessel visits by company operations representatives, and a 24/7 hotline or ability for Midshipmen to make reports while at sea. The Maritime Administrator began discussions on this issue with several ship companies and operators as early as January 2016 and the Call-to-Action was scheduled before the decision to stand down. The industry proposal presented at the Call-to-Action meeting provided the foundation for developing requirements that commercial operators will need to meet to be eligible to have Midshipmen work and train on their vessels. We are engaged with industry and continue to discuss our requirements and their implementation. The industry's willing cooperation and support for the USMMA Sea Year program has been helpful.

Question 6a. What specific metrics or criteria does DOT have in place for evaluating when to restart the program?

Answer. With my approval, MARAD restarted the Sea Year program on ships, specifically aboard Military Sealift Command and MARAD Ready Reserve Force vessels, owned by the Federal Government. The operators of these vessels have robust programs in place that are aimed at preventing and reporting incidents. In addition, Midshipmen have conducted at sea instruction on the USMMA's training ships, the *Kings Pointer* and the *Liberator*, and sailed aboard the SUNY Maritime College's training ship, *Empire State*, and California Maritime Academy's training ship, *Golden Bear* in July and August.

As noted in the previous question, the results of the comprehensive study of the culture and climate of the campus will be used to inform any necessary changes to the Sea Year program. The results of the study will also be used to assist in developing criteria for commercial companies to meet in order to become "Sea Year Eligible."

Question 6b. Based on your initial planning, what are your target dates for MARAD and stakeholders to meet the metrics or criteria in order to resume the program?

Answer. As stated previously, MARAD resumed the Sea Year program on Federal ships. In addition, Midshipmen have conducted at sea instruction on the USMMA's training ships, the *Kings Pointer* and the *Liberator*, and sailed on SUNY Maritime College's training ship, *Empire State*, and California Maritime Academy's training ship, *Golden Bear* in July and August. Commercial companies will be evaluated on a case-by-case basis. MARAD is working closely with commercial companies, and four companies have submitted information and are being evaluated. There are no target dates. An individual company's restart date will depend on how long it takes for the company to make changes to its training, policies or reporting that assures Midshipmen complete Sea Year in a safe and respectful environment. The commercial Sea Year program is a core part of the USMMA experience; we are committed to resuming commercial Sea Year assignments once companies meet the requirements.

Question 6c. Do you expect all midshipmen will have the opportunity to graduate on time? What contingency plans do you have in place to ensure all midshipmen have the opportunity to graduate on-time?

Answer. We do expect all Midshipmen to be able to graduate on time. When the current sailing period ends at the end of October 2016, the Academy will have 19 months to make up lost sea days for the Class of 2018. For the Class of 2019, the Academy will have 31 months, including their entire second sailing period. Although, we cannot guarantee that a combination of circumstances might delay graduation for one or more Midshipmen, we are and will be doing everything to ensure that no Midshipman's graduation is delayed solely due to the stand down.

At present, all engineering track Midshipmen in the Class of 2018 will have sufficient days to take the U.S. Coast Guard Merchant Mariner Credential examination and upon passing would be eligible to graduate pending completion of their Bachelor's Degree requirements. For the deck track Midshipmen in the Class of 2018, we anticipate that 20–30 Midshipmen will be 10 or more days short of the required number of days. The exact number of Midshipmen in this category will be determined at the end of the current sailing period which ends at the end of October. The Academy routinely has Midshipmen who are short the number of required sailing days and has experience making those days up during the last year of academic study.

Midshipmen have been able to log sea days on the *Kings Pointer* and the *Liberator*, the Academy's two training vessels. Midshipmen were also embarked on the State University of New York Maritime College and California Maritime Academy training ships during their scheduled summer cruises. Sea days aboard these vessels are credited by the U.S. Coast Guard at 1.5 days for each day onboard because

instructors are on board and in charge of delivering the training. A two week internship is a required component of the Sea Year, and many Midshipmen have completed their internships during the stand down. Further, beginning July 8, Midshipmen began returning to Military Sealift Command (MSC) vessels. On 22 August, USMMA began assigning Midshipmen to MARAD-owned Ready Reserve Force (RRF) vessels. As of September 6, all of the 216 Midshipmen affected by the stand down were either at sea, in an internship, or scheduled to join a MSC ship in the coming weeks. The Academy will continue to take all steps possible, including maximizing use of the Academy's training vessels, to help Midshipmen in the Classes of 2018 and 2019 affected by the stand down to accumulate the required sea days to graduate on schedule.

Question 6d. As you may know, S. 2829, the Maritime Administration Enhancement Act of 2017, includes a "Sea Year" working group to bring stakeholders together to address challenges related to sexual assault and harassment of midshipmen during their year at sea. Congress has worked closely with MARAD and USMMA on the development of this bill. How long has the MARAD been considering suspending the program?

Answer. I made my formal decision on June 10, 2016. The Maritime Administrator began discussion with industry leaders in January 2016 and personally met with ship owners regarding the challenges with Sea Year in April 2016. This led to the planning for the Call-to-Action meeting that was held on June 24, 2016. In addition, the USMMA Superintendent began engaging in conversations with select senior Academy staff in mid-May over his concerns about the accumulation of evidence that the environment at sea was detrimental to the well-being and safety of Midshipmen. He first addressed the question of a stand down with the Maritime Administrator in late May. Conversations continued with the Advisory Board and senior Academy and MARAD leadership in June.

Question 6e. As a follow up, why did the agency not coordinate in advance with Congress or the USMMA Board of Visitors on reaching this critical decision?

Answer. As noted above, my decision to stand down Sea Year was made on Friday, June 10. Congress was notified of the stand down on June 15 concurrently with industry and other stakeholders shortly before the formal announcement at USMMA.

The timing of the decision was based on the fact that by June 18, the first group of Midshipmen from the Class of 2018 was scheduled to depart on their Sea Year. It was decided that action had to be taken immediately to stand down Sea Year before any Midshipmen left campus to join their assigned vessels.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. JERRY MORAN TO
HON. ANTHONY R. FOXX

Question 1. Secretary Foxx, my first question to you during the hearing was regarding state compliance with the FAST Act. Included in Section 5523 of the FAST Act is an amendment I offered mirroring the text of S. 1692, to allow for the delivery of tandem trailers by manufacturers.

However, I have heard reports from the National Association of Trailer Manufacturers, headquartered in Topeka, Kansas, that some states are continuing to take enforcement action against operators utilizing Sec. 5523, notwithstanding the fact that the FAST Act permits and preempts state law on such operations.

My question to you was, more broadly: How is U.S. DOT ensuring that states comply with the new law as soon as possible? Your response indicated you would follow up with more specific details, and I would greatly appreciate hearing what actions the agency is taking to ensure state compliance.

Answer. On February 24, 2016, FHWA issued guidance on the truck size and weight provisions of the FAST Act. With regard to section 5523 ("Commercial Delivery of Light and Medium Duty Trailers"), the guidance emphasizes the preemptive nature of the provision by reiterating that "a state may not prescribe or enforce a regulation of commerce that has the effect of imposing an overall length limitation of less than 82 feet on a towaway trailer transporter combination. [49 U.S.C. 31111(b)(1)(H)]."

Following the issuance of the above guidance, in April 2016, FHWA asked its Division Offices, located each state, to provide assurance that each State's truck size and weight enforcement and regulatory agency received FHWA's guidance. FHWA also asked the Division Offices to ensure that the states were aware that the FAST Act became effective on October 1, 2015, unless otherwise provided in the FAST Act, and that State laws may require updating to ensure that they align with the FAST

Act-amended Federal maximum vehicle size and weight limits applicable to the Interstate System and National Network.

The Department believes that most states fully recognize that section 5523 is preemptive; however, States' ability to revise their laws to align with the FAST Act is impacted by each State's legislative session dates. We acknowledge, however, that a State's inability to revise its laws to align with Federal requirements directly impacts roadside enforcement activities, which are typically based on State laws.

I assure you that FHWA and its Divisions Offices are proactively working with the states to achieve full alignment between State and Federal laws in this area. For example, this summer, each Division Office will discuss the implementation of FAST Act provisions with the states during an annual evaluation of the truck size and weight program. Additionally, this will be a special emphasis area in January 2017 when FHWA reviews the states' annual certifications, checking whether states are enforcing all State laws with respect to maximum vehicle size and weight permitted on the Interstate System and National Network.

Question 2. Secretary Foxx, the FAST Act did not address the 2011 Hours of Service rule that made two major changes to the restart provision for truck drivers. Congress has made clear through FY 2015 and FY 2016 appropriations that it has serious concerns about implementing these rules without a comprehensive field study to evaluate whether or not these changes will provide any meaningful safety benefits.

Mr. Secretary, while you have indicated support for this rulemaking in the past, do you agree it is important to study the safety impacts of the rule before it is implemented and has a significant impact on the livelihood of not just truck drivers and highway travelers, but interstate commerce in general?

Answer. The Department is committed to improving commercial motor vehicle (CMV) safety. Eliminating the restart restrictions imposed by the 2011 rule would allow drivers to drive after accumulating more than 70 hours of on-duty time within an 8-day period. The Department remains concerned about the safety risks associated with cumulative fatigue when drivers are allowed (and may sometimes be required) to work such intensive schedules, week after week. Section 133 of the Consolidated and Further Continuing Appropriations Act, 2015, required a study comparing the safety impacts of the restart provision before and after the 2011 restrictions became operational. That study has been completed and is under Departmental review.

Question 3. Secretary Foxx, a recent American Automobile Association survey found that nearly 70 percent of motorists are concerned about the condition of our Nation's roads, citing traffic congestion and unsafe roads and bridges their top concerns. The wear and tear on vehicles, lost productivity in traffic and costs imposed on society because of accidents confronts us on a daily basis.

The FAST Act provides funding for these kinds of improvements and contains a number of requirements to study or review traffic congestion. Can you provide a report on how these initiatives are progressing and what actions hold out the most promise for improving this situation?

Answer. FHWA has on-going research, studies, and implementation efforts underway on various congestion reduction strategies and technologies. This includes connected vehicle technology deployment, advanced traffic signal control systems, work zone management, traffic incident management, road weather management, managed lanes, and advanced transportation and demand management strategies. A full list and status of these efforts can be found at ops.fhwa.dot.gov.

FHWA also is pursuing solicitation and award of the Advanced Transportation and Congestion Mitigation Technology Deployment (FAST Act Section 6004) grants. Many of the eligible strategies and technologies contained in this grant program have direct congestion reduction objectives. We are aiming to award the 2016 grants by the end of the fiscal year.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. DAN SULLIVAN TO
HON. ANTHONY R. FOXX

Question 1. Mr. Secretary, Section 1426 of the FAST Act reestablishes a Motorcyclist Advisory Council to coordinate with the U.S. DOT on infrastructure issues that could affect motorcyclists. As you implement the FAST Act, do you plan to include participants from the full spectrum of available experts and stakeholders of different organizations?

It is critical that the reestablished Council ensure that motorcyclists with professional expertise in national motorcyclist safety are represented from a variety of different organizations, as SAFETEA-LU required representation by various national

and state motorcyclist associations, as well as representatives of the construction and safety industries that have experience on motorcycles.

Answer. We are currently working through the Federal Advisory Committee Act (FACA) requirements to establish the Motorcyclist Advisory Council (MAC). I agree that diversity of expertise is very important for the success of this type of committee, and the Department certainly will aim to convene the MAC with a variety of professional backgrounds that will help provide meaningful insight into the safety topics identified in the FAST Act, including barrier design; road design, construction, and maintenance practices; and the architecture and implementation of intelligent transportation system technologies.

Question 2. Mr. Secretary, the FAST Act created two new freight programs and authorized almost \$11 billion, primarily for highway projects, to improve freight movement. What is your vision for these programs, and how will you and your team ensure these programs will truly focus on addressing the most critical barriers to efficient truck freight mobility on our highway system?

Answer. The Department's vision is to use these two new freight programs, one that is discretionary (FASTLANE) and one that is formula-based (the National Highway Freight Program), to help fund critical freight and highway projects across the country that will address the most pressing freight mobility barriers. It is clear from the recent round of FASTLANE that there are a large number of critical freight and highway projects, more than the Department has funding for. The Department has thoroughly evaluated each application received to ensure that the projects selected for funding meet the statutory requirements set by Congress and address critical barriers to efficient freight movement. In accordance with the FAST Act, the Department provided Congress with a 60 day notification of the proposed FASTLANE projects, award amounts and justification on July 5, 2016, and publicly announced awards on September 7, 2016. In addition, the Department has worked quickly to provide guidance to State DOTs to help them access the formula funding available under the National Highway Freight Program. The Federal Highway Administration (FHWA) has been working closely with the State DOTs to ensure that they meet all the requirements for obligating those formula funds such as the creation of individual State Freight Plans. As part of the process, FHWA is assisting states with designating critical rural and critical urban freight corridors, which plays a major role in the identification of key projects that will address the most critical barriers to efficient freight mobility. Additionally, FHWA and State DOTs are using performance measures specific to freight to assess the performance of our freight system as freight investments are made through these programs. Freight performance measures are vital to ensuring the success of freight program implementation.

Question 3. Mr. Secretary, many motor carriers have complained that the Federal Motor Carrier Safety Administration (FMCSA) still uses non-fault crashes in the Agency's Compliance, Safety, Accountability (CSA) program scores to evaluate carriers. So if your truck is stopped at a stoplight, or parked legally on the side of the road, and is hit from behind by a drunk driver, the crash still goes on the motor carrier's record and is used against the company in its Safety Measurement System scores. Those same scores are used by shippers and brokers, insurance companies, and the courts to evaluate a carrier's safety record, but this type of crash gives false information about a carrier's safety performance. When is the agency going to fix this problem, and how will you address this issue?

Answer. FMCSA is aware of the industry concerns about this issue and, over the past 3 years, has conducted significant research to determine how crash preventability decisions could be made accurately in a timely and cost-efficient manner. While studies by FMCSA and others have confirmed that crash involvement, regardless of role in the crash, is an effective indicator of future crash risk, the Agency continues to explore this issue.

In 2015, the Agency released the results of a study that indicated that police accident reports alone are not sufficient to make crash preventability determinations, and FMCSA asked for public input. After analyzing that input, FMCSA issued a *Federal Register* notice on July 7, 2016, that proposed a demonstration project to conduct preventability determinations on certain crash scenarios and to determine the impacts of removing these crashes from the data, including the impacts to identifying motor carriers with a high future crash risk. The Agency is currently receiving comments on the demonstration project proposal and is preparing to implement it in Spring 2017. The demonstration project is scheduled to operate for 2 years. The FMCSA will document the results of the crash reviews, including the costs and impact of conducting this sample set of crash reviews. This exercise will inform what

is needed to potentially expand the program, if removing these types of non-preventable crashes proves to be a better predictor of future crashes.

Question 4. Mr. Secretary, the FAST Act contains direction to increase access to the commercial trucking industry for our Nation's veterans by allowing physicians from the VA to perform medical examinations and provide medical certificates to veterans seeking to operate commercial motor vehicles. Has there been any recent developments in the implementation of this language that veterans and the trucking industry may find encouraging?

Answer. FMCSA held a series of internal deliberations to discuss regulatory and policy options, and associated information technology issues for addressing the FAST Act requirement. FMCSA is currently drafting a Notice of Proposed Rulemaking to implement this provision.

Follow-up 1. Specifically, have representatives from Federal Motor Carrier Safety Administration (FMCSA) met with their counterparts from VA to develop an implementation strategy? If so, can you provide details involving their discussions?

Answer. FMCSA has been in contact with representatives from the VA to discuss the strategy. We believe the strategy agreed upon to implement the FAST Act requirement will ensure the integrity of the National Registry Program to the greatest extent practical. The strategy includes:

- Development of a training module to present information to VA physicians on FMCSA's physical qualifications rules, to be delivered online through the VA's internal training program. The training would include a test at the end to ensure that the physician completed the material and understood what was presented, which would be analogous to the process used by other examiners on the National Registry;
- Entering into a formal agreement (MOU/MOA) with the VA to make the training available through the VA's training system for its employees so that any VA physician that would like to issue medical examiner's certificates to physician-approved veteran operators of commercial vehicles would be required to take the free training and provide the training certificate/test results to FMCSA to be added to the National Registry; and
- Establishing protocols for the VA and its participating physicians to submit the medical examiner's certificate information to FMCSA to ensure the veterans obtain the full benefits of the VA examination.

Follow-up 2. What is the progress (of the team established by FMCSA) to begin the rulemaking process? Does DOT or FMCSA have a sense of urgency to complete the process?

Answer. FMCSA has begun drafting rulemaking documents and is committed to completing the regulatory process as quickly as practical.

Follow-up 3. Is there any more clarity about the timing of the rulemaking process?

Answer. FMCSA has begun drafting rulemaking documents to establish the VA physician program with a target compliance date expected in late 2017. The delayed compliance date provides time to implement the VA training module and test, and complete the IT upgrades to accept the medical examiner's certificate information from the VA physicians.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. STEVE DAINES TO
HON. ANTHONY R. FOXX

Question 1. Secretary Foxx, I regularly hear concerns about new rulemakings placing burdensome requirements on rural states with small state transportation agencies covering large spaces. What efforts are you taking to ensure new rulemakings promote construction of projects and are not creating laborious compliance requirements for staff?

Answer. The issue you raise is an important one, and I assure you that the Department considers impacts to rural and small states when issuing new rulemakings. In establishing the national performance management measures required under section 150 of title 23, United States Code, for example, FHWA has been cognizant of and has considered the impacts on all transportation agencies, large and small. In some performance areas, the statute requires the performance requirements to apply to all states across the country regardless of their size and capability. For example, safety and infrastructure condition impact both urban and rural areas. In these cases, we have proposed performance management practices that are widely used today to minimize the burden on agencies to comply with new

requirements. In other areas, such as congestion, where we were provided more flexibility within the statutory language, we limited the applicability of the requirements to large metropolitan areas across the country. The potential burdens on State and local agencies are considered and quantified in a regulatory impact analysis posted for public review and comment for each of our proposals.

FHWA is committed to supporting transportation agencies as they work to meet these new performance management requirements. We are deploying a new capacity building program to provide assistance in the form of training, on-site workshops, technical guidance, and informational sessions to agencies across the country to support their efforts in implementing and meeting these new requirements. Through this program, we believe that all agencies, including rural agencies, will be better equipped to move their transportation programs forward with minimal burden.

Question 2. I was pleased to hear you mention the 24/7 Sobriety Program in your testimony. This program has proven to reduce recidivism of intoxicated driving. I have heard concerns from state transportation agencies that the Federal implementation may be too narrow. How is USDOT taking into account existing programs and ensuring the final rule does not prohibit states from accessing these life-saving dollars?

Answer. NHTSA encourages states to develop creative approaches to improve safety. Our general approach is to allow states the maximum flexibility consistent with statutory language. Under Section 405, states must meet two requirements to receive funding under the new 24/7 Sobriety Program grant. The first statutory requirement mandates that a state enact and enforce a law that requires all individuals convicted of driving under the influence of alcohol or of driving while intoxicated to receive a restriction on driving privileges. 23 U.S.C. § 405(d)(6)(B)(i). In implementing the requirement, NHTSA established a short time-frame (at least 30 days) during which the restriction must apply and added flexibility by allowing any type of State-imposed sanction. The second statutory requirement mandates that a state provide a 24/7 Sobriety Program. *Id.* § (ii). NHTSA will use the statutory definition of a 24–7 sobriety program, without change, as a basis to determine compliance. *Id.* § (7)(A). In addition, the Agency made clear that for those states that do not meet the requirements for the separate 24/7 Sobriety Program grant, the flexibility exists to use funds provided for general impaired driving countermeasures grants to fund 24–7 sobriety grant programs.

Question 3. Across the nation, 54 percent of automobile fatalities occur on rural roads, despite the fact that only 19 percent of Americans live in rural areas. Beyond the FAST Act, what efforts are you undertaking to improve rural road safety?

Answer. Local road agencies often do not have the resources needed to adequately address safety problems on the roads they own and operate. FHWA's Local and Rural Safety Program provides national leadership in identifying, developing, and delivering safety programs and products to agencies, elected officials, governments and other stakeholders to improve safety on local and rural roads. FHWA provides many resources to support local road agencies in understanding and addressing their safety issues, including videos and brochures, toolkits, checklists, and manuals. These resources and others are available on FHWA's website at http://safety.fhwa.dot.gov/local_rural/.

FHWA also offers a peer-to-peer support program specific for local and rural roads and funds the National Center for Rural Road Safety (<http://ruralsafetycenter.org/>). FHWA's Office of Safety has taken an integrative approach to addressing rural road safety by establishing a Cross Office Working Group (COWG) to coordinate rural road safety throughout all technical areas. This group works to reduce fatalities and serious injuries on local and rural roads by providing practitioners and decisionmakers with important information, tools, and resources that will improve the safety performance of these roadways. This group not only provides greater integration of rural safety within the Office of Safety, but it also has promoted strong coordination throughout FHWA to leverage resources to improve safety on these roads.

Question 4. Passenger rail is an important component of connectivity for Montana. Amtrak's Empire Builder connects 12 Montana communities and there is an opportunity to connect a 13th community—Culbertson. A previously completed Amtrak feasibility study has indicated reinstating this stop would have a net positive financial impact. What can USDOT do with my office and the City of Culbertson to help them prepare for competing for future Consolidated Rail Infrastructure and Safety (CRISI) or Transportation Investment Generating Economic Recovery (TIGER) grant funds?

Answer. With regard to the TIGER program, in addition to the guidance available on our website, www.dot.gov/tiger, the Department can provide direct technical as-

sistance to potential applicants who request it. Please have the City of Culbertson contact *TIGERGrants@dot.gov*.

Similarly, FRA will provide guidance to prospective applicants of the newly authorized CRISI program upon receiving initial appropriations for the program. In the meantime, FRA is available to provide technical assistance to the City of Culbertson regarding the development of proposed projects. The City may contact Valerie Kniss, Regional Manager for the Pacific Northwest, at 202-493-0616 or at *valarie.kniss@dot.gov*.

FRA staff has also been in communication with Senator Daines' staff to provide the appropriate Amtrak contacts to facilitate the addition of a station stop in the City of Culbertson. As directed by Senate Report 114-75 of the FY16 Transportation and Housing and Urban Development, and Related Agencies Appropriations Bill, FRA and Amtrak are working together to reevaluate a previous Amtrak study on the feasibility of establishing a station stop in the City along Amtrak's Empire Builder route.

Question 5. Secretary Foxx, I was also pleased to hear you mention the University Transportation Center (UTC) program in your testimony. I am proud of the UTC at my alma mater, Montana State University (MSU), and their focus on rural transportation. In working with the UTC at MSU, three questions have been raised.

In rural areas, tourism is a leading economic driver, and many of the major attractions are on public lands, such as National Parks and state recreation areas. Efficient transportation systems are critical to move visitors to, from, and around public lands. Advanced technologies such as autonomous vehicles and Intelligent Transportation Systems (ITS) present opportunities to enhance both safety and experiences for visitors, such as avoiding wildlife on roadways and freeing passengers to enjoy their surroundings. Is the USDOT considering rural applications for the technology grant programs in the FAST Act, as well as the traditional urban congestion applications?

Answer. Yes, the Department will consider rural applications for technology grant programs under the FAST Act to the maximum extent possible. For example, under the Advanced Transportation and Congestion Management Technologies Deployment Initiative, DOT is required to ensure, to the extent practicable, that grant recipients are geographically diverse (including urban and rural areas) and represent diverse technology solutions. DOT will consider this over the life of the program and anticipates announcing awards in September.

FHWA and the Intelligent Transportation Systems Joint Program Office (ITS JPO) also are investigating the Shared Mobility and Innovated Technology implementations for rural, suburban, and urban areas to better understanding how technologies may impact transportation needs and opportunities.

Further, FHWA and the ITS JPO are investing up to \$42 Million over a three year period on 3 pilot sites to accelerate the deployment of ITS technology in more regions throughout the Nation. One of the 3 awardees is the ICF/Wyoming Connected Vehicle (CV) Pilot. The primary objective for the ICF/Wyoming CV Pilot deployment is to use connected vehicle technology to reduce the number of weather related incidents (including secondary incidents) in Interstate 80 (I-80) corridor in order to improve safety and reduce incident-related delays. I-80 is a freight-intensive corridor with a daily volume of 11,000 to 16,000 vehicles, many of which are heavy-duty trucks (30 percent to 55 percent). Using Vehicle to Vehicle (V2V) and Vehicle to Infrastructure (V2I) technology, and existing technologies deployed and operated by Wyoming DOT (WYDOT) and freight carriers, information such as road weather advisories, roadside alerts, and truck parking information will be transmitted and shared with a combination of vehicles. The set of vehicles includes WYDOT snow plows, maintenance fleet vehicles, emergency vehicles, and private trucks/commercial vehicles. Researchers believe that CV technologies will address up to 80 percent of crashes where impairment was not a factor.

FHWA and ITS JPO have and continue to support activities associated with the Annual National Rural ITS (NRITS) Conference.

Question 5a. In his testimony, you provided an update on the establishment of the National Surface Transportation and Innovative Finance Bureau, which will help states and other agencies access Federal expertise and resources. Given the specialized needs of rural areas and small towns, has there been any consideration of including a rural specialist or liaison at the new Bureau?

Answer. One of the missions of the National Surface Transportation and Innovative Finance Bureau, which we're calling the "Build America Bureau," is to provide customer-focused support to project sponsors of all types who may be seeking to use DOT credit programs. The Bureau will draw upon the full resources of the Depart-

ment to best utilize the expertise of our staff, including expertise in dealing with rural projects and project sponsors.

Question 5b. At a recent event for the Smart Cities Challenge, you said that “a lot of times, technology gets deployed to those who are best able to afford it first.” Rural areas are certainly challenged to invest in and deploy new technologies. Would USDOT consider developing a similar challenge grant program for rural areas or small towns?

Answer. While resource constraints have dictated the size and regularity of initiatives like the Smart City Challenge being launched, there are a number of programs and initiatives benefiting rural communities that consider innovation as a criterion. Specifically the TIGER discretionary grant program requires a minimum of 25 percent of awards be made to rural projects. As a result, TIGER has awarded over \$1 billion to rural applicants over eight rounds. TIGER has been a source of funding for projects like the Regional Truck Parking Information and Management System project sponsored by eight Midwest cities to aid truckers in rural areas through technology. Similar to the Department’s practice in TIGER of using innovation as a secondary selection criteria, the Department also gave additional consideration to applicants for proposing the use of innovative technologies in the new FASTLANE discretionary grant program. Additionally, the Department’s Connected Vehicle pilot program recently awarded three recipients, including Wyoming DOT for deploying connected vehicle technology to improve and monitor performance on Interstate 80, which is a freight-intensive corridor with a daily volume of 11,000 to 16,000 vehicles. Also, two new innovative programs—FTA’s Mobility on Demand Sandbox and FHWA’s Advanced Transportation Congestion Management Technology Deployment—are built to encourage technology in a way similar to the Smart City Challenge but are less focused on urban areas. We hope to announce the winners of those grants in the coming months. When we have flexibility in programs to further assist rural regions, the Department has worked to establish important initiatives, such as FTA’s Rides-to-Wellness initiative—a transit initiative designed to increase access to care, improve health outcomes, and reduce health care costs in rural places. Supporting innovation in rural areas continues to be a priority, and we’re happy to work with Congress to find resources that can be more targeted towards rural challenges.

Question 6. Secretary Foxx, I regularly hear concerns about new rulemakings placing burdensome requirements on rural states with small state transportation agencies covering large spaces. What efforts are you taking to ensure new rulemakings promote construction of projects and are not creating laborious compliance requirements for staff?

Answer. Please see the response to *Question 1*.

Question 6a. Secretary Foxx, in working with motorcoach operators in Montana two concerns have been raised.

My understanding is there is outstanding communications with motorcoach industry associations, specifically regarding Federal Motor Carrier Safety Administration’s (FMCSA) Final Rule on Lease Interchange for Passenger Carriers. What is the status of USDOT’s response to their October 2015 petition for reconsideration?

Answer. On May 27, 2015, FMCSA published a final rule concerning the lease and interchange of passenger-carrying commercial motor vehicles (CMVs). Its primary purpose is to identify the motor carrier operating a passenger-carrying CMV that is responsible for compliance with the Federal Motor Carrier Safety Regulations. The Agency received numerous petitions for reconsideration and concluded that some have merit. FMCSA, therefore, extended the compliance date of the final rule from January 1, 2017, to January 1, 2018, to allow the Agency time to complete its analysis and amend the rule where necessary.

On August 31, 2016, the Agency published a “Notice of Intent” to initiate rulemaking. The notice identified the issues to be addressed. In addition, the Agency will host a roundtable with stakeholders on October 31, to discuss the scope of the forthcoming rulemaking and ensure that it will adequately address petitioners’ major concerns.

Question 6b. You mentioned in your testimony that the National Academies study of the Compliance, Safety, Accountability (CSA) program is underway now. This study will affect the Safety Fitness Determination (SFD) Notice of Proposed Rulemaking (NPRM) issued in January. The FAST Act requires more than the study, such as the corrective action plan and a certification by the Inspector General. What is the status of the study? How will the final results be incorporated into the SFD rulemaking process?

Answer. The National Academies of Sciences (NAS) kicked off its review of the CSA program and Safety Measurement System (SMS) on June 29, 2016. Based on

FMCSA's contract with NAS, we expect its final report, with any recommendations for changes, in June 2017. The scope of the NAS study, as prescribed in the FAST Act, did not include an assessment of the SFD Notice of Proposed Rulemaking.

The SFD Notice of Proposed Rulemaking was published on January 21, 2016, and the response comment period closed on May 23, 2016. The Agency received approximately 170 comments. FMCSA is currently reviewing the comments to identify any appropriate revisions to the Agency's proposal. This is a significant rulemaking requiring review by the Office of Management and Budget. FMCSA does not expect this final rule to be published before December 2017.

If the National Academies provides recommendations relevant to the SFD final rule, FMCSA will consider them as appropriate when developing the final rule.

RESPONSE TO WRITTEN QUESTION SUBMITTED BY HON. BILL NELSON TO
HON. ANTHONY R. FOXX

Question. One of the lessons we learned in the aftermath of GM's ignition-switch crisis was just how woefully inadequate NHTSA's Office of Defects Investigation (ODI) had been. It was clear that there needed to be sweeping reforms, fresh leadership, drastic employee training, and more resources and authority. In the FAST Act, we were able to provide NHTSA's vehicle safety mission with GROW AMERICA authorization levels as soon as you certify that ODI has successfully completed all 17 recommendations made by the Inspector General in June 2015. It's my understanding that nearly a dozen recommendations are nearly completed. Secretary Foxx, can you comment on how you and Administrator Rosekind have ensured that ODI—and NHTSA in general—not only make the IG's recommendations but also see to it that ODI never returns to what had been an awful state?

Answer. NHTSA's own internal review and the review performed by the O.I.G. last year form the agency's roadmap for building a more effective and comprehensive defects program. In the agency's June 16, 2015 comments to the O.I.G. Draft Audit Report (ST-2015-063), NHTSA established an aggressive implementation schedule. NHTSA has taken extensive action to address the O.I.G.'s recommendations, and NHTSA has met all of its self-imposed completion dates for those recommendations. NHTSA has also implemented additional processes and technology to complement and enhance the improvements identified by the O.I.G. and by the agency's internal review, including the installation of new leadership, improved processes and procedures, a robust training plan, and enhanced quality control measures to ensure the continued accountability of ODI.

My office will continue to work with both NHTSA and the O.I.G. to ensure the continued implementation and execution of NHTSA's improved policies and procedures.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. RICHARD BLUMENTHAL TO
HON. ANTHONY R. FOXX

Question 1. Secretary Foxx, do you agree all NHTSA recalls are safety recalls, address an unreasonable risk to safety, and should be promptly repaired?

Answer. Manufacturers must recall vehicles with a safety defect or vehicles that do not comply with a Federal Motor Vehicle Safety Standard (FMVSS). In either case, the defect or non-compliance presents an unreasonable risk to safety that must be addressed promptly.

Question 2. One pressing safety issue for children involved in crashes is that even when properly secured in a child restraint, failure of a front seatback in a crash may put back seat passengers—especially infants and children—at serious risk of injury or even death. According to a child rear impact study commissioned by the Center for Auto Safety, approximately 50 children placed behind occupied seats die annually in rear impact incidents.

Secretary Foxx, what are the Department's plans to upgrade the safety standard for seatback performance? What steps has DOT taken to look into this?

Answer. NHTSA is working to strengthen its standards for integrated rear impact protection (whiplash mitigation and mitigation of harmful interaction between front and rear seat occupants). The agency is currently:

- Developing a more sophisticated, anatomically correct test dummy to determine how seat backs can be strengthened to increase protection to front seat occupants without creating more injuries to rear occupants (*i.e.*, from being too rigid);

- Developing revised neck injury criteria for manufacturers to provide better whiplash protection in low speed impacts, as well as to use with the new rear impact test dummy to comprehensively assess potential safety improvements in high speed rear impacts;
- Researching an upgrade to frontal crash protection requirements to improve the lower rear-facing part of the seat back, which has been a source of injury to belted and unbelted rear seat occupants. The findings will inform NHTSA's next steps toward enhancing seat back performance.

NHTSA also continues to work towards mitigating the occurrence of rear impact crashes. The agency's encouragement of Automatic Emergency Braking (AEB) in the New Car Assessment Program will move us closer to that goal. We estimate that this technology will save 100 fatalities and 4,000 serious injuries annually.

Question 3. The Department's current occupant crash protection standards require vehicles to include warning labels informing consumers stating: "The BACK SEAT is the SAFEST place for children." However, I understand that the seat back failure risk can be mitigated by placing children behind unoccupied front seats, such as the empty middle seat, for which there is no front seat, or behind the lighter front seat occupant. Consumers are not advised that the middle seat may be the safest. It strikes me that in the meantime, ensuring consumers have this critical information could be a good and commonsense first step.

Secretary Foxx, what are the Department's plans to ensure consumers have the most accurate and up-to-date information regarding the safest seat and position for children?

Answer. Data consistently show that the rear seat is the safest place for children under 13 years of age. NHTSA data show that rear seats are 25–75 percent more effective in reducing fatalities (compared to front seats) for children less than 13 years of age.

NHTSA does not specifically advise consumers to use the rear middle seats over the outboard rear seats. Real world data suggests that if a child is properly restrained in rear seating positions (middle or outboard), the probability of injury in crashes is very low regardless of outboard or middle seat. NHTSA recommends that consumers read the car seat's instruction manual and the portion of the vehicle's owner manual on car seat installation. Because car seats and vehicles are different, it is important to follow all instructions carefully.

NHTSA continues to monitor data regarding the safest seating positions for children. The agency uses this data to develop and disseminate the best child passenger safety information to consumers by a variety of methods, including via our website, printed and video information, through partner organizations and through the network of more than 25,000 certified Child Passenger Safety (CPS) technicians around the country.

Question 4. Secretary Foxx, as you know, several of the major airlines have taken actions to prohibit third-party travel websites from accessing published fare, schedule, and seat availability data. Senator Markey and I have previously written to you on this matter, urging you take action against such unfair methods of competition. You have the statutory authority to remedy this problem. When, exactly, can we expect the Department to act?

Answer. I share your view that this is a very important matter—one with far-reaching implications for consumers, airlines, ticket agents, and the various participants in the distribution chain. This is why the Department posed questions related to airline restrictions on the display of flight, schedule, fare, and seat availability information in the May 23, 2014, notice of proposed rulemaking titled "Transparency of Airline Ancillary Fees and Other Consumer Protection Issues." (See 79 Fed. Reg. 29974.) Separately, as you know, we have met with representatives of online travel agencies, metasearch sites, and airlines to better understand their roles and relationships and how restrictions on airline flight information may affect consumers' ability to make efficient and accurate comparisons between fares and other flight information. We continue to examine this matter to determine whether any current practices are unfair or deceptive or constitute an unfair method of competition.

Question 5. In May 2015, DOT released a rule requiring railroads to implement redundant signal protection by 2018. In other words, railroads must take better precautions to ensure trains don't go over tracks occupied by workers.

That rule came about because of a provision in the FAST Act I fought hard to achieve—and I appreciate the cooperation of Chairman Thune and Ranking Member Nelson in helping advance that effort. The provision in the FAST Act, in turn, was spurred by a horrific tragedy in West Haven in which a track worker was killed.

And one outside Boston in which two were killed. The NTSB for many years called on DOT to take action. I am glad it finally has.

There are other outstanding safety recommendations from NTSB—and that I fought to get into the FAST Act. For instance, one provision—section 11409—requires DOT to re-evaluate regulations governing inspection practices for commuter railroads. After a horrific crash three years ago in Bridgeport that injured many, the NTSB urged DOT to ensure railroads weren't skating by and inspecting railroad tracks two at a time—which makes it easy to miss rail defects that can lead to catastrophes.

Secretary Foxx, what actions is DOT taking to improve commuter inspection practices so crashes like the Bridgeport one don't happen again?

Answer. In accordance with section 11409 of the FAST Act, FRA is currently in the process of re-evaluating several of its requirements contained in the Track Safety Standards regulation at 49 CFR Part 213. As part of these efforts, FRA's Railroad Safety Advisory Committee (RSAC) has accepted the task of reviewing and updating, as necessary, the track inspection requirements. These activities will include an evaluation of track inspection practices on high-density commuter operations, such as along the Northeast Corridor. The RSAC Track Working Groups are also considering other potential changes to the existing regulations related to continuous testing and rail head wear. Over the next several months, FRA will also be reviewing the speed limit action plans of all commuter and intercity passenger operations consistent with the requirements of section 11406 of the FAST Act.

Question 6. In May 2015, a fire in a garden center in New York City broke out right below a viaduct of elevated track that carries trains serving Metro-North's Harlem, Hudson and New Haven Lines. Many reports stated the fire was sparked when workers at the garden center spilled fuel on a hot generator as they were refilling it. Reports also indicated this happened in an area of the store loaded with highly-flammable materials, like fertilizer and firewood. According to city officials, these materials were stored without necessary permits.

The conflagration was so severe that it damaged already-aging beams and structures supporting elevated track that carries hundreds of thousands of commuters per day. Repairing that damage took days, and during that time many of my constituents endured dreadful commutes. And, still, I understand some service will remain slowed indefinitely as longer-term repairs are carried out.

Metro-North has hundreds of miles of track—much of it elevated—throughout Connecticut and the New York City region.

Immediately, I urged Federal officials to take a look at this incident. This could be a sign of a major issue. While many local jurisdictions play an important role promoting fire safety and ensuring proper fire oversight in the areas that Metro-North serves, I believe Federal officials could play an important role here, too. A more aggressive, formal, Federal effort could help to ensure these kinds of practices are kept at bay.

Secretary Foxx, what can DOT do to prevent further incidents like this?

Answer. FRA's regional inspection forces as well as FRA's Bridge and Structures Division monitored the incident in New York and engaged in several conversations with Metro-North Commuter Railroad (MNCR) and Metropolitan Transportation Authority (MTA) representatives. Bridge and structure safety oversight is a key element to the efforts of the Rail and Infrastructure Integrity Division. Through its field enforcement staff, it participates in bridge accident investigations, performs bridge assessments and bridge management program reviews, and provides direction and technical advice in bridge inspection, maintenance, and management. Both MTA and MNCR conducted site inspections of all tenant spaces posing potential hazards to the right-of-way (ROW) and implemented mitigations. MNCR has an ongoing ROW task force to identify safety and security risks along its ROW and address issues and ensure compliance with applicable State and local codes. MNCR has also contacted Connecticut DOT (CDOT) to initiate fire inspections of CDOT and MNCR facilities. MNCR also conducted meetings with the New York Fire Department to discuss various response and communication issues. FRA is not aware of any similar incidents occurring under elevated structures at other locations across the country, but the Agency will continue to perform its bridge and structure safety oversight functions, including providing guidance on Railroad Bridge Worker Safety pursuant to the Bridge & Structures Section's mission.

Question 7. There are many "modal" agencies within DOT focused on the major transportation functions—aviation at FAA, rail at FRA, and so forth. But there's one function that's actually housed within the Secretary's office—the Office of Aviation Enforcement and Proceedings, which focuses on consumer issue.

Under current law, consumers and states lack a private right of action regarding unfair, deceptive, and anti-competitive practices against airlines. Consumers' only recourse is to file a complaint with DOT, hope DOT pursues the matter through administrative remedies and civil fines. These remedies—like cease and desist orders—can be weak, and fines (which are negotiated) can be weak as well. For example, in 2015 DOT levied just \$2.7 million in fines against an industry with nearly \$169 billion in annual revenue.

The situation is perhaps worse for persons with disabilities trying to assert their rights to be accommodated when flying. Again, only DOT can assert their claims and receive damages. In 2014, passengers filed 772 disability-related complaints with DOT about airlines. But the U.S. Department of Transportation appears to do little with these individual complaints, taking real action only when there are “a number of complaints” against one airline, as DOT wrote one disabled passenger. Even then, enforcement is rare. For example, in 2015, there were no enforcement orders against any airlines. In 2014, there was just one.

Secretary Foxx, wouldn't allowing a private right of action—in addition to continuing to allow DOT enforcement efforts—make real, positive, structural changes to how airlines operate and interact with the public?

Answer. The Department would be pleased to work with you on any proposal that might better protect air travel consumers, particularly passengers with disabilities.

The Department maintains a robust air travel consumer protection program, which includes vigorously and fairly enforcing existing rules. Staff members in the Department's Office of Aviation Enforcement and Proceedings and its Aviation Consumer Protection Division (ACPD) routinely monitor air travel complaint records to determine the extent to which airlines are in compliance with Federal statutes and regulations, and to track trends or spot areas of concern which may warrant further action. So far this calendar year, the Department has issued 14 consent orders assessing almost \$4,000,000 in civil penalties against carriers and ticket agents for violations of Federal laws protecting the economic and civil rights of air travelers. Four of these orders assessing more than \$2,500,000 in penalties have been for violations of the rule protecting the rights of passengers with a disability. In addition, staff members often provide direct assistance to consumers. A recent *Washington Post* article recognized the significant assistance that ACPD provides air travelers who are dissatisfied by helping them one-on-one. It noted that airlines respond quickly to consumer problems when DOT contacts them because “If they don't they could soon find themselves paying an even bigger fine.”

In connection with consumer claims, the Airline Deregulation Act of 1978 (ADA), by which Congress deregulated the airline industry, does not provide for a private right of action for general consumer claims against airlines. In addition, under the ADA, states are prohibited from enforcing any law “relating to rates, routes, or services” of any airline. The preemption provision of the ADA limits the ability of individuals to bring a private right of action; however, there is precedent permitting certain claims under State or Federal law. For example, the Supreme Court has held that that breach of contract claims may be brought against airlines for violations of their own contracts entered into voluntarily. There is also precedent indicating that tort claims under state law may be brought against airlines.

Regarding the rights of air travelers with disabilities, the Air Carrier Access Act (ACAA)—codified at 49 U.S.C. § 41705—was construed by the courts to contain an implied private right of action until 2002. In 2002, the 11th Circuit held that no private right of action exists under the ACAA and that the ACAA can only be enforced administratively by the Department. A similar decision was also issued by the 10th Circuit. Prior to those court decisions, individuals were able to sue for damages separate from any administrative action by the Department.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. BRIAN SCHATZ TO
HON. ANTHONY R. FOXX

Question 1. Secretary Foxx, on April 22, 2016, the U.S. Department of Transportation issued a Notice of Proposed Rulemaking (NPRM) on, “National Performance Management Measures; Assessing Performance of the National Highway System, Freight Movement on the Interstate System, and Congestion Mitigation and Air Quality Improvement Program.” I have received input from several advocacy groups concerned that the NPRM could lead the Department to define “successful performance” as those measures which allow for cars and trucks to move consistently at high speeds. Certainly getting people from point A to point B quickly is good but congestion relief is also achieved when someone takes transit, walks or skips a trip altogether.

Mr. Secretary, given your successful and positive work with the Mayor's Challenge for Safer People, Safer Streets, and LadderSTEP, how will the final rule complement your vision and demonstrated success at promoting complete streets and multimodal connectivity and avoid policy that would incentivize highway widening?

Answer. USDOT carefully considered a wide range of input from stakeholders in the development of the measures proposed in this notice of proposed rulemaking (NPRM). In the proposal, USDOT discusses the stakeholder input received which includes comments urging the Department to consider a measure that would directly reflect the mobility of travelers using all surface modes of transportation—a “multi-modal” performance measure. Although USDOT supports the desire to move to a multi-modal measure, we do not believe sufficient data is available at this time to support and require an effective measure in this area and have asked for additional public input on this topic.

The NPRM expresses USDOT's desire for a multi-modal measure and seeks specific comments on feasible approaches that can be taken to move toward the development of such a measure. The Department has received nearly 5,000 comments on this proposal to date, including commenters sharing your view. I can assure you that we take these and all comments received very seriously and will fully consider all comments in the rulemaking process. As you noted, we also have a number of efforts underway to promote and advance smarter transportation systems that connect people to places; this work will help us move toward new performance measures in the future that more directly address a complete transportation system.

Question 2. Secretary Foxx, the FAST Act expanded TIFIA to make Transit Oriented Development (TOD) projects eligible for financing. In determining whether or not to consider providing credit assistance to a project sponsor seeking TIFIA financing for a TOD project, is it statutorily required that the project sponsor must obtain an investment grade rating? If not, does the Secretary have the authority to consider other factors such as collateral to determine the creditworthiness of a project?

Answer. Yes, it is statutorily required that the sponsor of a TOD project must obtain an investment grade rating on the project's senior debt. All TIFIA projects, including TOD projects, must obtain an investment grade rating on the debt senior to TIFIA. If the TIFIA loan is the project's senior debt, the TIFIA loan must also receive an investment grade rating. In addition to the requirement that the project's senior debt receive an investment grade rating, the TIFIA statute requires that a project satisfy other applicable creditworthiness standards, including demonstration of adequate coverage levels. An evaluation of a project's coverage levels enables the Department to consider the sufficiency of the revenues pledged to repay the TIFIA loan.

Question 3. Secretary Foxx, are there any new authorities within the Office of the Secretary or changes to existing statute that you believe would make the TIFIA program more accessible to project sponsors of small TOD projects? Small being defined as projects costing \$10 million.

Answer. The FAST Act incorporated several changes to the TIFIA program that we anticipate will make the program more accessible to sponsors of small projects. USDOT is focused on implementing these FAST Act provisions and would prefer to evaluate their impact prior to proposing any additional changes to the statute.

- As one example of the FAST Act's changes that benefit sponsors of small projects, the minimum project cost threshold for TIFIA assistance is generally \$50 million (or, prior to the FAST Act, \$25 million for a qualifying rural infrastructure project). The FAST Act lowered the minimum cost threshold for rural infrastructure projects to \$10 million, and set the minimum cost threshold for TOD projects and local infrastructure projects at \$10 million. Each of these changes should make the program more accessible to project sponsors of small TOD projects.
- As another example, the FAST Act expanded the definition of eligible TIFIA projects to include the capitalization of a rural projects fund (of up to \$100 million) within a State Infrastructure Bank (SIB). TIFIA credit assistance to capitalize such a fund could then be used to make loans to small, rural infrastructure projects, potentially including TOD projects.
- Finally, the FAST Act requires DOT to reserve at least \$2 million of each year's TIFIA funding to use in lieu of fee payment by sponsors of smaller projects, specifically those costing less than \$75 million. Small TOD projects would be eligible to receive assistance from this pool of reserved funding.

Question 4. Secretary Foxx, as you know, since 2013 the Federal Railroad Administration has been working on an update to its train crashworthiness safety stand-

ards, known as Passenger Equipment Alternative Compliance. This update aims to modernize passenger train car regulations to improve safety, lower fossil fuel consumption, increase potential train speed and reduce procurement and maintenance costs. Mr. Secretary, what is the status of this rule, and do you foresee a comprehensive, reform-oriented regulation being published and ultimately finalized in the near future?

Answer. A notice of proposed rulemaking (NPRM) addressing design requirements related to passenger equipment (including equipment capable of operating up to 220 mph) is currently undergoing final Executive Branch review. Because performance standards for passenger equipment contained in the proposal were approved by the Railroad Safety Advisory Committee (RSAC), the stakeholders within the industry are expected to be supportive of the proposed rule. We expect to publish the NPRM in the near future.

RESPONSE TO WRITTEN QUESTION SUBMITTED BY HON. EDWARD MARKEY TO
HON. ANTHONY R. FOXX

Question. As automobile safety technologies continue to evolve, it is paramount that we take common sense steps to ensure that these safety features function properly.

Regrettably, the National Highway Traffic Safety Administration's (NHTSA) current rules allow tire pressure monitoring systems, which electronically gauge if a vehicle's tires have the appropriate air pressure, to be recalibrated to dangerous pressure levels without alerting the driver. As a result, drivers could unintentionally and unwittingly increase the risk of a tire failure or blow out.

To address this safety hazard, Senator Gardner and I included a provision (Section 24115) in the Fixing America's Surface Transportation (FAST) Act, the five year surface transportation reauthorization bill that passed late last year, that requires NHTSA to update its rules to ensure that tire pressure monitors cannot be recalibrated to unsafe levels.

Secretary Foxx, our provision requires the Department of Transportation (DOT) to publish proposed rule by December 4, 2016. Could you provide me with an update on the status of the rulemaking? What specific steps must the DOT take to promulgate the proposed rules and what is the agencies' timeline for completing each step?

Answer. The Federal Motor Vehicle Safety Standard No. 138, "Tire pressure monitoring system" (TPMS), established performance-based testing requirements for TPMS and does not require specific technology. The agency is reviewing the FAST Act provision to understand how it would impact the current TPMS standard. NHTSA is also conducting a Tire Pressure Monitoring Systems-Outage Rates and Repair Costs study that may inform the rulemaking. The agency is working to meet the regulatory timing outlined in the Act.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. CORY BOOKER TO
HON. ANTHONY R. FOXX

Question 1. The Gateway Hudson Tunnel project to build new rail tunnels under the Hudson River is critical to New Jersey and to the Northeast region. The existing tunnels are over 100 years old and require substantial maintenance. Even a minor delay in the tunnels can cause major congestion throughout the New Jersey-New York region. If these tunnels were closed for an extended period of time, the ripple effects would be devastating to the economy of the Northeast Corridor. Can I have your commitment that you will work with us to utilize any opportunity—be it Federal grants such as TIGER and New Starts or Federal loan programs—to advance the Gateway Hudson Tunnel project?

Answer. The Department is supporting the Hudson Tunnel Project and the Gateway Program to improve rail service between New Jersey and New York City.

A Federal investment of \$235 million—a transfer that the Federal Railroad Administration (FRA) received from the Federal Transit Administration (FTA) through Hurricane Sandy Relief funds to support Amtrak's Hudson Yards Right of Way Preservation Project—is an important investment supporting this critical development.

The FRA has since initiated the environmental impact statement process for the Hudson Tunnel Project on May 2, 2016. The Department is also assisting New Jersey Transit, Amtrak, and the Port Authority of New York and New Jersey (PA) in establishing an entity that can manage the implementation of the Gateway Program. The Department is taking into account the critical nature of the old tunnels

under the Hudson River in considering any funding requests for the Gateway Program.

In addition, on July 14, the Gateway Program projects took another significant step toward receiving major DOT funding when the Department moved the Hudson Tunnel Project and Portal North Bridge—both critical elements of the Gateway Program—into the Project Development process for New Starts, a type of Capital Investment Grant through the FTA.

Question 2. There are concerns that Federal permitting requirements could delay the project. What steps can you take to speed the project's approval, while also allowing for proper environmental reviews?

Answer. For the Hudson Tunnel Project, the Federal Railroad Administration (FRA) has worked with New Jersey Transit and Amtrak to commit to an aggressive 24-month schedule for completing the entire National Environmental Policy Act (NEPA) review, including the preliminary engineering required to support the NEPA review. In order to meet this schedule, the project team will utilize, as appropriate, work conducted for previously completed studies (*e.g.*, the extensive engineering and environmental documentation prepared for the Access to the Region's Core project and Amtrak's Gateway Program Feasibility Study). Additionally, the FRA is: (1) working with the project partners to integrate permitting requirements into the NEPA analysis and process as much as is practicable based on the early stage of design; (2) maintaining transparency by publishing the Project schedule on the Permitting Dashboard for Federal Infrastructure Projects; and (3) establishing and leading a task force comprising Federal agencies with a role in the environmental compliance and/or permitting processes—in order that issues can be identified and addressed/resolved in a timely and efficient manner.

Question 3. The cost of a fatal multi-vehicle commercial motor vehicle accident can exceed \$20 million to compensate families, care for the injured, and repair damage to our Nation's highway infrastructure. Yet the requirement for commercial motor vehicle carriers to carry at least \$750,000 in minimum insurance has not been increased in 30 years, even to account for inflation. In result, taxpayers have borne much of the cost of major truck accidents. In your professional judgment, how important is it that we address these insufficient levels of insurance?

Answer. FMCSA shares your interest in determining whether current minimum insurance level requirements mandated by the Agency are sufficient to ensure adequate coverage for losses resulting from commercial motor vehicle crashes. On November 28, 2014, the Agency published an advance notice of proposed rulemaking (ANPRM) seeking public comment and requesting related data from the insurance industry and key stakeholders to make an informed decision whether to move forward with a notice of proposed rulemaking related to minimum levels of financial responsibility. However, the Agency did not receive a sufficient quantity of data to adequately inform a rulemaking to increase insurance levels. Generally, insurance claim and settlement data is proprietary and not available to the public or the Agency.

The Agency continues to work with stakeholders, including insurance providers, to gather any available data to complete the motor carrier financial responsibility study mandated in section 5517 of the FAST Act. The Agency is also seeking additional data to inform any future minimum financial responsibility rulemaking, and will undertake the analysis required by section 5509 of the FAST Act prior to issuing a final rule.

Question 4. For the last few years, the commercial motor vehicle industry has attempted to roll back Federal rules meant to prevent fatigue among commercial drivers. This year, they are also seeking to preempt state laws on hours of service such as California's meal and rest break requirements. In the meantime, we continue to see reports in which fatigue led to a tragic collision.

The Department of Transportation has been warning about the dangers of fatigue for many years. How concerned are you that efforts to undermine the Department's hours of service requirements could result in more fatigued drivers behind the wheel?

Answer. FMCSA commits its resources to improve commercial motor vehicle (CMV) safety. The Agency remains concerned about the safety risks associated with cumulative fatigue when drivers are required or allowed to work intensive schedules, week after week. While most drivers do not work such grueling schedules, the Agency believes there should be safeguards in place to prevent truck operators from driving after accumulating excessive on-duty hours during a work week. FMCSA continues to collaborate with the industry and government officials from the U.S. and Canada to develop the North American Fatigue Management Program (NAFMP). The NAFMP reinforces the Agency's safety mission by providing training

and fatigue management procedures that companies can implement and is available online at www.nafmp.com.

The Department does not recommend that the Federal Government preempt the State of California's meal and rest break requirements, which are primarily matters of State labor law.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. GARY PETERS TO
HON. ANTHONY R. FOXX

Question 1. I'm very enthusiastic about advancing connected and automated vehicle (CAV) technology safely across the country, and will continue to work with DOT to develop a common understanding of the performance characteristics necessary for fully autonomous vehicles and the testing and analysis needed to assess them.

Sec. Foxx, you announced at the Detroit Auto Show that DOT was committed to working with industry and other stakeholders to develop guidance on the safe deployment and operation of autonomous vehicles. You also stated that NHTSA will work with state partners to develop a model state policy on automated vehicles that offers a path to consistent national policy. As you know, 34 states have considered or are considering bills related to automated driving. We must work closely with state and local authorities to assist in the development of consistent regulations to fully realize the national advantages of these technologies.

Please provide an update on the development of NHTSA's pending autonomous vehicle guidelines and model policy for state regulation, including the anticipated date of release for both. Will NHTSA recommend specific next steps regarding autonomous vehicles, and if so, what themes would such next steps address?

Answer. NHTSA anticipates issuing the highly automated vehicles report, which includes guidance and the model State policy in the near future. The agency plans to address next steps and will likely include activities aimed at improving and expanding the guidance as well as providing oversight.

Question 2. How do existing or potential state laws related to self-driving technologies inform your Department's development of national guidance? Do you believe legislation is necessary to achieve consistent national policy, and if so, what new authorities and/or resources would be helpful to that end?

Answer. NHTSA considers a wide variety of information sources when forming national guidance, including existing State laws and pending legislation. NHTSA has been coordinating with individual states as well as representative bodies such as the American Association of Motor Vehicle Administrators (AAMVA) as part of the agency's recent actions to develop a model State policy and operational guidance for automated safety technologies. A primary goal of these actions is to move our system toward achieving a uniform national policy.

As part of the highly automated vehicles report, NHTSA will also address the issue of what new tools and authorities the agency may need to operate in a fast-changing technology environment. We note that, in drafting the original Vehicle Safety Act in 1966, Congress sought to ensure that the standards issued under the Act would be uniform and national so that the public as well as industry would be guided by a single set of criteria instead of a multiplicity of diverse standards. We will evaluate whether legislation is needed to achieve consistent national policy regarding automated safety technologies.

Question 3. An April 2016 GAO report on vehicle cybersecurity recommended that DOT should "define its role in responding to a real-world attack." How are you incorporating cybersecurity principles into your autonomous vehicle guidance?

Answer. The highly automated vehicles report will include Performance Guidance with sections dedicated to cybersecurity and privacy. These sections will provide guidance to system developers to adopt a risk-based systems engineering approach. As part of this approach, the agency recommends that system developers assess, identify and mitigate cybersecurity vulnerabilities, risks and threats that could present unreasonable safety risks to the public or compromise privacy-sensitive data. NHTSA recommends that system developers not only design layers of protection appropriate to the assessed risks, but also consider the full life-cycle management of vehicle cybersecurity and plan for rapid remediation capabilities. The agency recommends adoption of existing proven standards, such as the NIST framework, and industry's recommended best practice, Cybersecurity Guidebook for Cyber-Physical Vehicle Systems (J3061). Further, NHTSA suggests that system developers fully document their cybersecurity process as well as all actions, changes, design choices, analyses, associated testing and data. The agency also encourages data and intelligence sharing with respect to individual experiences with the broader community.

Question 4. How will DOT define and address safety recalls made necessary due to cyber vulnerabilities of critical systems?

Answer. Traditional motor vehicle safety defects are generally evaluated based on severity and frequency of the defect conditions, but cyber vulnerabilities should be approached differently. For cyber vulnerabilities, the safety risks should be evaluated by assessing, among other factors, the probability of an attack and the severity, should the attack occur. The probability of an attack is based, in part, on the difficulty of exploiting the vulnerability. The severity for cyber vulnerabilities is based, in part, on whether safety-related vehicle functions are impacted and whether, among other things, this can occur while the vehicle is in motion. Following the evaluation of the safety risks, NHTSA may consider a cyber vulnerability to be a safety-related defect compelling a recall.

Question 5. The FAST Act contains a requirement that GAO submit a report to Congress within 2 years that: “(1) assesses the status of autonomous transportation technology policy developed by public entities in the United States; (2) assesses the organizational readiness of the Department to address autonomous vehicle technology challenges, including consumer privacy protections; and (3) recommends implementation paths for autonomous transportation technology, applications, and policies that are based on the assessment described in paragraph (2).”

Please provide an update on your Department’s engagement with GAO in the development of this report, including the anticipated date of its release.

Answer. GAO has not initiated its engagement with the Department. It is our understanding that GAO plans to start this engagement in late summer or fall. NHTSA will fully cooperate with GAO once it starts this engagement.

Question 6. The NHTSA CAFE and EPA fuel economy programs play important roles in driving forward innovative vehicle technologies, which helps to build advanced cars and trucks, create manufacturing jobs, save energy, improve air quality, and address a changing climate. It is my understanding that the two programs are set up so that one auto manufacturers can build a single fleet of U.S. vehicles that satisfy requirements of both Federal programs as well as California’s program. I’d like to gain a better grasp of some of the differences in the availability and usability of credits under each program.

Is it possible that an automaker could be fully in compliance with one of the two Federal programs and yet find itself out of compliance with the other program—and thus possibly subject to fines?

Answer. Yes. However, the agencies have sought to craft harmonized standards such that manufacturers may build a single fleet of vehicles to meet both agencies’ requirements. Manufacturers should plan their compliance strategies to meet both the NHTSA standards and the EPA standards, but they can still build a single fleet of vehicles to accomplish that goal.

Question 7. By statute, I understand that NHTSA credits can only be used for up to 5 years, but EPA credits, in some instances, can be used for up to 11 years. Will you please explain the differences in the life of credits between the two programs, and would allowing credits earned under the NHTSA program to have comparable usable lives serve to more closely harmonize this aspect of the two programs?

Answer. NHTSA’s usable life of credits, five consecutive model years, is dictated by statute. EPA set its usable life of credits by regulation, and established a program under which usable life varies based on the year in which the credit was earned. Specifically, the usable life of EPA credits phased down from eleven years to five years over the course of model years 2010 through 2016.

As a result, NHTSA and EPA’s usable life of credits is presently in alignment. Beginning with Model Year 2016 vehicles and continuing into the future, both agencies allow for five years of usable credit life. Any changes to the usable life of present or future credits earned under NHTSA’s program would create a misalignment with EPA’s program. Further, any retroactive changes to the usable life of previously earned credits under NHTSA’s program would give some manufacturers a windfall, whereas manufacturers who did not earn credits as part of their long-term compliance plan would suffer a comparable competitive loss.

Question 8. Also by statute, the ability of manufacturers to transfer credits from one fleet to another is limited to no more than 2 mpg, whereas the transferability of credits in the EPA program is unlimited. Would expanding the credit transfer cap in the CAFE program to a higher level more closely align this aspect of the two Federal programs?

Answer. The differences between the EPA and NHTSA programs are a result of different statutory authorities for the regulation of fuel economy and greenhouse gases. However, the programs were structured to account for these differences. NHTSA and EPA have worked closely to ensure that their respective programs, tak-

ing all relevant statutory considerations into account, will work in a coordinated fashion, and will provide regulatory compatibility that allows auto manufacturers to build a single national light-duty fleet that would comply with both the GHG and the CAFE standards.

As part of the Energy Independence and Security Act of 2007 (EISA) amendments to EPCA, NHTSA was required to establish a CAFE credit transferring program to allow a manufacturer to transfer credits between its car and light truck fleets to achieve compliance with the standards. However, EISA imposed a cap on the amount by which a manufacturer could raise its CAFE standards through transferred credits. The caps ensure that fuel economy improvements are attained in both the passenger car and light truck fleets. Manufacturers transferring or trading credits to another compliance category are also subject to an adjustment factor to ensure total fuel savings are preserved.

Under section 202(a) of the Clean Air Act (CAA), there is no statutory limitation on car/light truck credit transfers, and EPA's GHG program allows unlimited credit transfers across a manufacturer's car/light truck fleet to meet the GHG standard. EPA also requires manufacturers to use an adjustment factor in transferring credits across cars/trucks, in a similar way as the CAFE program, to preserve total GHG emissions reductions.

Question 9. Does the Administration have the authority to address these specific concerns under the current CAFE statute?

Answer. NHTSA is currently in the process of conducting a Mid-term Evaluation of the Model Year 2022–2025 CAFE standards. Following the Mid-term Evaluation, NHTSA will conduct a rulemaking on the Model Year 2022–2025 CAFE standards. This opportunity will allow the agency to review stringency levels and existing flexibilities, pursuant to existing statutory authority. NHTSA is available to provide technical assistance on any amendments to the CAFE program statutes that Congress wishes to consider.

Question 10. If these credits were expanded, would you expect an overall reduction in fuel economy improvements compared to current trends?

Answer. If the 2 mpg credit transfer cap were enlarged or eliminated, NHTSA expects there would be an overall reduction in fuel economy improvements compared to current trends. Enlarging or eliminating the transfer cap would allow manufacturers to offset more potential credit deficiencies for light trucks, thereby slowing the improvement of fuel economy for light truck fleets.

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