

**NOMINATION OF JEFFREY A. ROSEN,  
TO BE DEPUTY SECRETARY,  
U.S. DEPARTMENT OF TRANSPORTATION**

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**HEARING**

BEFORE THE

**COMMITTEE ON COMMERCE,  
SCIENCE, AND TRANSPORTATION  
UNITED STATES SENATE**

**ONE HUNDRED FIFTEENTH CONGRESS**

**FIRST SESSION**

**MARCH 29, 2017**

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SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED FIFTEENTH CONGRESS

FIRST SESSION

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**NOMINATION OF JEFFREY A. ROSEN,  
TO BE DEPUTY SECRETARY,  
U.S. DEPARTMENT OF TRANSPORTATION**

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**WEDNESDAY, MARCH 29, 2017**

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

The Committee met, pursuant to notice, at 2:30 p.m. in room SD-G50, Dirksen Senate Office Building, Hon. Roger Wicker, presiding.

Present: Senators Wicker [presiding], Thune, Booker, Nelson, Hassan, Blumenthal, Klobuchar, Young, Fischer, Sullivan, Cortez Masto, Cantwell, Markey, and Duckworth.

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

Senator WICKER. Good afternoon. Today we will consider the nomination of Jeffrey A. Rosen to be Deputy Secretary of Transportation. Without objection, I will place my full statement in the record and simply summarize.

The Department of Transportation contains 10 components agencies, employs approximately 57,000 people, and has an operating budget of more than \$75 billion. As second in charge of the Department, Mr. Rosen will work hand-in-hand with the capable Secretary Elaine Chao to lead our Nation in the day-to-day operation of its various modes of transportation.

Today marks the 50th anniversary of the Department of Transportation, and its mission remains the same today as it was 50 years ago, to serve the United States by ensuring a vast, safe, efficient, accessible, and convenient transportation system that meets our vital national interests and enhances the quality of life of the American people today and into the future.

President Trump announced during his joint address to Congress last month to launch our national rebuilding, I will be asking Congress to approve legislation that produces a \$1 trillion investment in the infrastructure of the United States, financed through both public and private capital, creating millions of new jobs. We'll certainly be interested in talking to our nominee about this goal today.

Mr. Rosen is not a stranger to government service, having served in the Department of Transportation as General Counsel from 2003 to 2006. In this capacity, he oversaw a number of important trans-

portation bills, including SAFETEA and its implementation, as well as the FAA reauthorization bill Vision 100 in the year 2003.

Mr. Rosen then went on to serve as General Counsel under Senator Portman in the Office of Management and Budget from 2006 to 2009.

Mr. Rosen, I would like to thank you for testifying today and for your willingness to continue your record of service to our country.

I will now turn to Ranking Member Booker for any opening remarks he may have.

Senator Booker.

**STATEMENT OF HON. CORY BOOKER,  
U.S. SENATOR FROM NEW JERSEY**

Senator BOOKER. Chairman Wicker, I'm grateful for that, and thank you for holding this hearing.

More importantly, Mr. Rosen, thank you very much. It's a solemn and sacred commitment you make when you step forward to serve your country, and I'm grateful for your willingness to do so.

We are in this committee—I've actually been really grateful, and it's good that I'm sitting next to Senator Wicker because we've found a lot of bipartisan space to work together.

Infrastructure, as a whole, traditionally in our country has been a very bipartisan area. The challenge we have right now is, we in America, are woefully underinvesting in our infrastructure, especially in comparison to our peers in China or in Western Europe. Those folks who we're competing against economically are prioritizing infrastructure in a significant way.

And the American Society of Civil Engineers, who released their report this year, gave the United States infrastructure a D-plus. We are not a D-plus nation, we're an A-plus nation, and we should have an infrastructure that reflects that.

Our investments in infrastructure are at a 22-year low. At a time that we see, again, Europe investing to 5 percent of their GDP in infrastructure; China, 9 percent of their economy in infrastructure; we're just at 3 percent.

I believe that if we fail to make infrastructure investments, we're going to run into catastrophes as well in terms of the infrastructure and the potential for bad things to happen. When we're talking about our economy and getting people to work, helping productivity, helping businesses to thrive, infrastructure is essential.

Just take, for example, the rail tunnel, the busiest rail tunnel in our entire country is that between New Jersey and New York. It's over 100 years old. It's the busiest river crossing in all of North America. Twenty-five percent of our bridges are structurally deficient, but this one crossing in and of itself portends of a tremendous opportunity to expand our economy to increase efficiencies, to help businesses grow, and, in fact, dollars invested in projects like that create multiples of return for our economy.

But as we delay this work, delay making adequate investments in our aging infrastructure, it actually costs more and more and more money. In 2014, the cost of Americans stuck in traffic alone was \$160 billion. On the other hand, a dollar invested, as I said, brings back at least \$2.00 in return in economic growth.

So we have work to do, and I believe, as we see according to the National Safety Council, that the preliminary 2016 data shows that it's not just an economic issue, it's because of the tens of thousands of people that are dying in motor vehicle crashes and other challenges due to things that could be done to make our infrastructure, our transportation modes, a lot more safe.

And so we have a lot of work to do, but I believe we are moving in the wrong direction. I believe, in fact, we've taken some of the greatest inheritances that my generation has, me being an X Generation, my colleague here being a Millennial—

[Laughter.]

Senator BOOKER.—we have inherited from our ancestors this incredible top-of-the-line infrastructure, we've trashed it, and are about to hand over to our children one of the more substandard infrastructures in the developed world. This has to be a Republican and Democratic bipartisan effort. We cannot be about simply regulations or no regulations. We have to have smart government doing what is best for our common goals.

Now, I'm pleased that President Trump has promised a \$1 trillion investment in infrastructure, but so far, we have seen no details. It's critical here that in the leadership of this Department that we begin to flesh out a plan for getting there.

I know the Democrats have released a blueprint that outlines a \$1 trillion investment that I believe we need to make. It's an opening bid into what should be a larger and urgent, not just conversation, but ultimately action plan in getting this done.

There are a number of critical issues that this committee deals with in regards to the Department of Transportation that must be addressed. It is a partnership between the Department of Transportation and this committee, as well as those in the House, that I believe can make for positive change for our country.

So, Mr. Rosen, I look forward to this conversation we're about to have, and I look forward to hearing from you about your plans to drive forward improvements in our infrastructure and assurances for safety. And, again, I conclude that I am grateful for the young man to my right, Senator Wicker, for his leadership during this hearing.

Senator WICKER. Thank you, Senator Booker, for that fine compliment. I don't really know what a Millennial is, but I know I don't fit into that definition. As a matter of fact, I'm old enough to remember discussions about what to do about these young whippersnappers, the Baby Boomers.

[Laughter.]

Senator WICKER. So that's how far back I go. We are now joined by our distinguished colleague, Senator Portman, who has the honor of introducing Mr. Rosen to the panel.

Senator Portman, you are recognized.

**STATEMENT OF HON. ROB PORTMAN,  
U.S. SENATOR FROM OHIO**

Senator PORTMAN. Great. Thank you, Chairman Wicker, Ranking Member Booker, and to my other colleagues, Senators Klobuchar, Hassan, Blumenthal, Young, and Hassan, who are here. Listen, I am just honored to have been asked to introduce Jeffrey Rosen. He

is a class act, and I'm really glad he is willing to step up to serve as Deputy Secretary of Transportation.

President Trump has sent a number of impressive candidates our way: among those have been Elaine Chao, who happens to be related to one of our colleagues, and also Jeffrey Rosen. He's a graduate of Northwestern University and Harvard Law School, magna cum laude. Don't hold that against him. He's also one of the most respected lawyers in town. He has litigated a lot of high-stakes, high-complexity cases in more than 20 different states during his 30 years of experience. He has been in jury trials, bench trials, contracts cases, securities cases, class actions, you name it. And he has got great experience and lots of respect as a lawyer.

In 2003, he was unanimously confirmed by the Senate to serve as Chief Legal Officer to the Department of Transportation. He supervised, he told me today, 425 lawyers over at DOT. And when he was there, he rolled up his sleeves, and he got involved in the details of how the Department works. He gained experience that I think will make him very well qualified to serve as Deputy Secretary.

In 2006, he did leave the Department of Transportation, and he left because I asked him to come over to the Office of Management and Budget to lead. Instead of 425 lawyers, I think we had five. But I wanted the best people around me, I really did, and in the case of Jeff, I was able to get the best because he was awesome. He was General Counsel at OMB. He was also a senior policy advisor. He was, of course, always vigilant about the use of taxpayer dollars.

And more importantly to me, he was always really well prepared and insightful and a straight shooter; he never hesitated to tell me what I needed to know even when I didn't want to hear it. I respected that about him and I've stayed in touch with him since as a result. He went on to become a Governor of the Postal Service. That's a tough lift, it's a heavy lift, and he served his country well there.

If you really want to get a good sense of his judgment, though, you have to look no further than his wife, Kathy, who is an Ohioan and has many other things about her that make her a great person, a great mom. They have three great kids: Anne, Sally, and James. And for all the professional accomplishments he has had, he loves to talk about his kids. He's prouder of them than anything in life, and that's another reason that I think he is the kind of person we would want in public service. He's got his values in the right place.

He has got a passion for this business, and thank goodness he does. Not everybody does. He is willing, once again, to suit up and to help serve us and to serve his country, and he certainly has the experience and skills and the aptitude we would want in a Deputy Secretary of Transportation. Considering all the issues that Senator Booker and Senator Wicker talked about, it's going to be a challenging task, and I know he's up to it. I strongly urge you to confirm him in the Committee and across the floor so that he can get back to public service.

Thank you both.

Senator WICKER. Thank you very much, Senator Portman.



And now, Mr. Rosen, you are invited to come forward and provide an opening statement. Thank you very much for your service.

**STATEMENT OF JEFFREY A. ROSEN, NOMINEE TO BE DEPUTY SECRETARY, U.S. DEPARTMENT OF TRANSPORTATION**

Mr. ROSEN. Mr. Chairman, Senator Booker, and all the members of the Committee, thank you for the opportunity to appear here today. If I'm confirmed, I would very much look forward to working with all of you to advance the important work of the Department of Transportation.

I also want to thank Senator Portman for his very kind introduction. I was honored to serve with him at OMB when he was the Director there, and I sincerely appreciate his taking the time to be here today.

Although Senator Portman already did it, I would like to introduce my wife, Dr. Kathleen Rosen, who is here with me today. And unfortunately, our three adult children, who live in Colorado and New York, are unable to be here to cheer on their old dad.

So let me begin by saying I'm also grateful to President Trump and to Secretary Chao for showing their confidence in my ability to serve in this key position, particularly at a time when transportation and infrastructure are so vital to our country.

During the 35 years of my career to date, I have had a number of experiences which, if I am confirmed, I hope would prove useful to the role that I would play at DOT. As you heard, one is that I previously served as the General Counsel at that Department, and I was very fortunate to work there with Secretary Norman Mineta, who I think some of you know, and worked on a wide range of transportation issues. And, of course, I also served at OMB with Senator Portman.

As you heard, I've also spent 30 years in the private sector at the law firm of Kirkland & Ellis, but I wanted to mention that in addition to my work as a litigator there, I served in a variety of management roles, including several years on the firm's management committee and as co-head of its Washington, D.C., office. I also would like to just note that last year I served as the elected Chair of the American Bar Association's Section of Administrative Law, which has thousands of members nationwide. And for several years, I've been a member of the Administrative Conference of the United States.

Now, as members of this Committee well know, transportation is a very broad subject, and in the time I have available, I would just like to touch briefly on two points. The first is that DOT is a regulatory agency, and the safety of our traveling public must continue to be its primary regulatory objective. At DOT, the General Counsel has long been the Chief Regulatory Policy Officer. And when I served in that role, the Department issued a number of important safety regulations. But things change. We're now a decade later, and we are seeing major technology innovations in transportation, largely driven by the private sector.

Now, for example, I drive a hybrid vehicle, which was an innovative technology when I bought it 8 years ago, but it now seems ancient by comparison to the self-driving cars and trucks being developed today. So determining the role of governments with regard to

new technologies like automated vehicles and drones will be complex, but it's vital if Congress and the Executive Branch are to position the Federal Government as enabling innovation while also protecting the public safety.

A second topic, a second important topic, I wanted to allude to is, as some of you have referenced, the urgent focus on infrastructure, where we know the aging of our highways, our bridges, our airports, and our air traffic control system have become all too plain, but for which the solutions will require both creativity and flexibility.

I'm not yet at DOT, but in thinking about this topic, one of the things I came to appreciate from my prior public service is the importance of DOT officials having good communication and working relationships with the Members of Congress, and I would certainly regard that as an important part of my job if I'm confirmed to serve again at DOT.

I would like to end on something on a personal note if I may. I come before this Committee as someone acutely aware of how fortunate I've been to this point in my life. My parents were not college graduates, but they were smart and caring people who made sure I had the education and the opportunity to become a lawyer. My wife had a similar experience, as her parents were not college graduates, but they are bright and wonderful people who helped her on her chosen path to becoming an emergency room physician.

So having traveled this road heightens how much I appreciate our unique country, and it makes me care deeply about our future, and that's why I want to do this. If I'm confirmed, I see this nomination as an opportunity to make a meaningful contribution to something that impacts the daily lives of every single American. And, indeed, if I am confirmed, I would welcome the chance to work with all of you to help rebuild, refurbish, and revitalize America's transportation system to enable the mobility and the connectivity that Americans need so that our economy can continue to grow and enhance the quality of life for all Americans.

So thank you again for the opportunity to be here today.

[The prepared statement and biographical information of Mr. Rosen follow:]

PREPARED STATEMENT OF JEFFREY A. ROSEN, NOMINEE FOR DEPUTY SECRETARY,  
U.S. DEPARTMENT OF TRANSPORTATION

Chairman Thune, Ranking Member Nelson, and members of the Committee:

Thank you for the opportunity to appear before you today. If I am confirmed, I will look forward to working with all of you to advance the important work of the Department of Transportation.

I also want to thank Senator Portman for his very kind introduction. I was honored to serve with him at OMB when he was the Director there. I sincerely appreciate his taking time to be here today.

I am also pleased to introduce my wife, Dr. Kathleen Rosen, who is here with me today. Unfortunately, our three adult children, who live in Colorado and New York, are not able to be here to cheer on their old dad.

Let me begin by saying that I am grateful to President Trump and Secretary Chao for showing their confidence in my ability to serve in this key position, particularly at a time when transportation and infrastructure are so vital to our country. During the 35 years of my career to date, I have had a number of experiences which, if I am confirmed, may prove useful to the role I would play at DOT. One is that I previously served as General Counsel at DOT, where I was fortunate to work with Secretary Norman Mineta on a wide range of transportation issues, and

I also served as General Counsel and Senior Policy Advisor at OMB, as you heard from Senator Portman. Additionally, I have spent 30 years in the private sector at the law firm of Kirkland & Ellis LLP, during which, in addition to my work as a litigator, I served in a variety of management roles, including several years on the firm's global management committee and as co-head of its Washington, D.C. office. Finally, I will note that last year I served as the elected Chair of the American Bar Association's Section of Administrative Law, which has thousands of members nationwide, and for several years I have been a member of the Administrative Conference of the United States.

Now, as members of this Committee well know, transportation is a very broad subject. Today, I'd like to briefly touch on two points.

First, DOT is a regulatory agency, and the safety of our traveling public must continue to be its primary regulatory objective. At DOT the General Counsel has long been the chief regulatory policy officer, and when I served in that role, the Department issued a number of important safety regulations. Now—a decade later—we are seeing major technology innovations in transportation, driven by the private sector. For example, I drive a hybrid vehicle, which was an innovative technology when I bought it eight years ago, but it now seems ancient by comparison to the self-driving cars and trucks being developed today. Determining the role of governments with regard to new technologies like automated vehicles and drones will be complex but vital if Congress and the Executive Branch are to position the Federal Government as enabling innovation while also protecting the public's safety.

A second important topic I want to mention is the urgent focus on infrastructure, where the aging of our highways, bridges, airports, and air traffic control has become all too plain, but for which the solutions will require both creativity and flexibility. I am not yet at DOT, but in thinking about this topic, one of the things I came to appreciate from my prior public service was the importance of DOT officials having good communication and working relationships with the members of Congress, and I would certainly regard that as an important part of my job if I am confirmed to serve again at DOT.

I would like to end on something of a personal note, if I may: I come before this Committee as someone acutely aware of how fortunate I have been to this point in life. My parents were not college graduates, but they were smart and caring people who made sure I had the education and opportunity to become a lawyer. My wife had a similar experience, as her parents were not college graduates, but they are bright and wonderful people who helped her on her chosen path to becoming an emergency room physician. Having traveled this road heightened how much I appreciate our unique country, and makes me care deeply about its future. If I am confirmed, I see this nomination as an opportunity to make a meaningful contribution to something that impacts the daily lives of *all* Americans.

Indeed, if I am confirmed, I would welcome the chance to work with all of you to help rebuild, refurbish and revitalize America's transportation system, to enable the mobility Americans need, so that our economy can continue to grow, and enhance the quality of life for all Americans. Thank you again for the opportunity to appear here today.

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#### A. BIOGRAPHICAL INFORMATION

1. Name (Include any former names or nicknames used): Jeffrey Adam Rosen.  
 2. Position to which nominated: Deputy Secretary of the U.S. Department of Transportation.

3. Date of Nomination: March 21, 2017.

4. Address (List current place of residence and office addresses):

Home: Information not released to the public.

5. Date and Place of Birth: April 2, 1958; Boston, Massachusetts.

6. Provide the name, position, and place of employment for your spouse (if married) and the names and ages of your children (including stepchildren and children by a previous marriages).

Married for 34 years to Kathleen Nichols Rosen, M.D. (retired)

Children: Anne Rebecca Rosen, age 26 (New York, NY); Sally Amanda Rosen, age 24 (Lafayette, CO); James Kenneth Rosen, age 23 (Boulder, CO).

7. List all college and graduate degrees. Provide year and school attended.

Northwestern University, Evanston, IL; attended 9/76–6/79; B.A. with Highest Distinction (Economics), June 1979

Harvard Law School, Cambridge, MA; attended 9/79–6/82; J.D. Magna Cum Laude, June 1982

8. List all post-undergraduate employment, and highlight all management-level jobs held and any non-managerial jobs that relate to the position for which you are nominated.

(a) Kirkland & Ellis LLP (and Kirkland & Ellis Int'l), Washington, D.C.: Partner May 2009 to March 2017

(b) Executive Office of the President/White House Office of Management and Budget, Washington, D.C.: General Counsel and Senior Policy Advisor, July 2006 to January 2009

(c) U.S. Department of Transportation, Washington, D.C.: General Counsel, December 2003 to June 2006, and Senior Advisor, October 2003 to December 2003. Also served as DOT designee for Amtrak Board 2005–2006.

(d) Kirkland & Ellis LLP, Washington, D.C.: 1982–2003—Began as an associate in 1982, became a partner in 1988, and eventually co-head of D.C. office and a member of the firm's executive management committee in 1999.

(e) Georgetown University Law Center, Washington, D.C.: Adjunct Professor—taught course in Professional Responsibility/Legal Ethics. 1996–2003.

(f) Summer positions after college: Dewey Ballantine LLP, New York, N.Y. (1981), Summer associate; Lord Bissell & Brook, Chicago, IL (1980), Summer associate; Apparel Buying Co., Braintree, MA (1979), Summer warehouse employee.

9. Attach a copy of your resume.

A copy of my most recent professional biography is attached as Attachment A, although it has not been updated to reflect my recent resignation from the law firm of Kirkland & Ellis LLP and other organizations.

10. List any advisory, consultative, honorary, or other part-time service or positions with Federal, State, or local governments, other than those listed above, within the last ten years.

I am currently an appointed Public Member of the Administrative Conference of the United States, and have been since 2013.

11. List all positions held as an officer, director, trustee, partner, proprietor, agent, representative, or consultant of any corporation, company, firm, partnership, or other business, enterprise, educational, or other institution within the last ten years.

Partner, Kirkland & Ellis LLP and Kirkland & Ellis International, 2009–2017  
Chair of the ABA Section of Administrative Law and Regulatory Practice (2015–2016); also served as Vice-Chair (2013–2014), Chair-Elect (2014–2015), and Last Retiring Chair (2016–2017)

Member of the Board of Visitors, Northwestern University's College of Arts & Sciences (2009 to present)

Member of the Board of Directors, Free State Foundation (2011–2016)

Member of the U.S. Chamber of Commerce Government Operations, Oversight & Consumer Affairs Committee (2012–2017)

Member of the Advisory Board of the National Federation of Independent Business Small Business Legal Center (2011–2017)

Trustee of Jeffrey Adam Rosen Revocable Living Trust (1996 to present)

12. Please list each membership you have had during the past ten years or currently hold with any civic, social, charitable, educational, political, professional, fraternal, benevolent or religious organization, private club, or other membership organization. Include dates of membership and any positions you have held with any organization. Please note whether any such club or organization restricts membership on the basis of sex, race, color, religion, national origin, age, or handicap.

To the best of my recollection and available records, in addition to the organizations listed in response to question 11 above, other organizations of which I have been a member during the last ten years are listed below. I am not aware of any organization to which I have belonged having had a discriminatory restricted membership policy.

American Law Institute	1996 to present	Member
U.S. Supreme Court Historical Society	1990 to present	Member
D.C. Circuit Historical Society	2009 to present	Member
Virginia Historical Society	1991 to present	Member
Fairfax County Historical Society	1997 to present	Member
Northern Neck of Virginia Historical Society	2014 to present	Member
Fairfax Genealogical Society	2015 to present	Member
Northwestern University Alumni Club of Washington, D.C.	1983 to present	Member
Phi Beta Kappa	1978 to present	Member
National Association of Scholars	2012 to present	Member
Association for the Advancement of Automotive Medicine	1990 to present	Member
Society of Automotive Engineers	1990–2009	Member
Chesterbrook Woods Citizens Association	1993 to present	Member
McLean Racquet Club	2008 to present	Member
Chesterbrook Swim & Tennis Club	1994–2015	Member
White Point Yacht Club	2014 to present	Member
Ashburn Xtreme Youth Hockey Club	2007–2011	Asst Coach, Club Member

13. Have you ever been a candidate for and/or held a public office (elected, non-elected, or appointed)? If so, indicate whether any campaign has any outstanding debt, the amount, and whether you are personally liable for that debt.

I have not been a candidate for a public office, and I do not have any outstanding campaign debt.

I have held a number of appointed governmental positions, as General Counsel of the U.S. Department of Transportation (2003–2006); General Counsel and Senior Policy Advisor at the White House Office of Management and Budget (2006–2009); as a Public Member of the Administrative Conference of the United States (2013 to present); and as a Member of the Arlington County (VA) Historical Affairs and Landmark Review Board (1991–1993).

14. Itemize all political contributions to any individual, campaign organization, political party, political action committee, or similar entity of \$500 or more for the past ten years. Also list all offices you have held with, and services rendered to, a state or national political party or election committee during the same period.

Please see Attachment B.

15. List all scholarships, fellowships, honorary degrees, honorary society memberships, military medals, and any other special recognition for outstanding service or achievements.

Received various academic honors (*e.g.*, Phi Beta Kappa, Deru Honorary, Departmental Honors in Economics).

Received various professional recognitions (*e.g.*, “Washington, D.C. Super Lawyer” (2012, 2013, 2014, 2015, 2016); Washington, D.C. “Top Lawyers” (2012, 2013, 2014 and 2015); top-rated “AV” Preeminent in Martindale-Hubbell for more than 15 years; Listed in Who’s Who in American Law and Who’s Who in America). Member of American Law Institute.

16. Please list each book, article, column, or publication you have authored, individually or with others. Also list any speeches that you have given on topics relevant to the position for which you have been nominated.

Do not attach copies of these publications unless otherwise instructed.

To the best of my recollection and available records, my publications and public remarks are listed below.

*Publications*

- “Putting Regulators on a Budget,” 27 National Affairs 42 (Spring 2016)
- “The Regulatory Budget Revisited,” 66 Admin.L.Rev. 835 (Fall 2014).
- “Fishing for a Reason to Regulate,” The Hill online (April 10, 2013)
- “President Needs to Get Serious About Spending Cuts,” The Hill (December 20, 2012)
- “2008 Obama Would Like Ryan Budget,” Des Moines Register p.13A (August 30, 2012)
- “The 2012 Budget Surplus That Disappeared,” National Review Online (December 14, 2011)
- “Rein on Federal Regulations Will Only Benefit Economy,” Cincinnati Enquirer (November 9, 2011)
- “Obama’s Spending Ideas Unbalanced,” The Hill Op-Ed p. 20 (September 28, 2011)”
- “Who Checks the Fact Checker?” National Review Online (September 16, 2011)
- “Costly Federal Regulations Escape Congressional Approval,” Atlanta Journal Constitution (September 1, 2010)
- “Major Rules Deserve a Vote,” Baltimore Sun Op-Ed, p. 13 (August 10, 2010)
- “Government Incentives For Businesses,” 19 Business Law Today 51–55 (May/June 2010)
- “A Chance for a second Look: Judicial Review of Rulemaking Petition Denials,” 35 Admin. & Regulatory Law News 7–9 (Fall 2009)
- “Obama vs. the Regulators,” The Washington Post Op-Ed (August 6, 2009)
- “Watch for Hidden Taxes,” Boston Globe Op-Ed (June 12, 2009)
- “Obama Regulations are Taxing Consumers,” Washington Business Journal (June 12, 2009)
- “Court Acceptance of ‘In-Kind’ Settlements in Consumer Class Actions,” 9 Class Actions & Derivative Suits 20 (Summer 1999)

In addition, during 2009–2010, I was a contributor to National Journal’s online experts’ blog series for transportation topics, with eight postings.

*Speeches / Remarks*

- Speaker on “Repairing Regulation” at University of Virginia Journal of Law & Politics program “Reining In the Administrative State” (October 21, 2016)
- Program Co-Chair and Speaker at Joint ABA, SBCA. and GW Regulatory Studies program on “Benefit-Cost Analysis and the Courts” (October 11, 2016)
- Speaker at ABA Section of Administrative Law teleforum on “New Life for the Congressional Review Act?” (May 26, 2016)
- Speaker at Kirby Center for Constitutional Studies and Citizenship Program on “Leashing Leviathan: The Case for a Congressional Regulatory Budget” (May 25, 2016)
- Speaker at Federalist Society’s Annual Executive Branch Review Program’s Plenary Panel on “Congressional Regulatory Reform Proposals” (May 17, 2016)
- Speaker/moderator on “Current Debates on Regulatory Reform” at joint ABA and Hoover Institution program “The Second Hoover Commission’s 60th Anniversary: Lessons for Regulatory Reform” (March 16, 2016)
- Moderator for “The Role of OIRA in the Regulatory Process: A Discussion with OIRA Administrator Howard Shelanski” at ABA’s 12th Annual Administrative Law Institute (March 15, 2016)
- Speaker at U.S. Chamber of Commerce’s Joint Fall Committee Meeting on “Regulation: Who Decides?” (December 9, 2015)
- Speaker/moderator at ABA’s Fall Administrative Law Conference on “The Regulatory Budget Revisited” (October 30, 2015)
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- Speaker at the University of Pennsylvania Program on Regulation workshop on “Agenda-Setting and the Regulatory State” (November 7, 2014)

Speaker at the Washington Legal Foundation Media Briefing Series, U.S. Supreme Court: Reviewing The October 2013 Term (June 25, 2014)

Program Chairman, 10th Annual ABA Administrative Law Institute (April 3–4, 2014)

Speaker at U.S. Chamber of Commerce's Center for Capital Markets Competitiveness on "The Role of Cost-Benefit Analysis in Regulatory Rulemakings" (March 12, 2013).

Speaker/moderator at ABA Administrative Law Section program on "Proposals and Prospects for Regulatory Reform" (October 3, 2012)

Speaker at ABA's 8th annual Administrative Law Institute on "Current Proposals for Regulatory Reform" (May 10, 2012)

Speaker at House Energy and Commerce Committee's Roundtable on "Improving the Economy Through Better Federal Science" (March 22, 2012)

Speaker at ABA's Fall Administrative Law Conference on "Administrative Law: Time to REIN it in, CURB it, or Reform It" (November 17, 2011)

Speaker/moderator at ABA's annual Rulemaking Institute on "Regulatory Reform—Current Legislative Proposals and Obama Administration Initiatives" (May 3, 2011)

Speaker at U.S. Chamber of Commerce program on "Restoring Balance to the Regulatory Process" (March 22, 2011)

Speaker at Homeland Security Law Institute on "Transportation and Supply Chain Security" (March 2, 2011)

Speaker at Conference of Chief Justices Mid-Year Meeting on "When Is Federal Preemption Appropriate?" (January 25, 2011)

Speaker at American Enterprise Institute for Public Policy Research's program on "Who Is Accountable for Federal Regulations?" (December 2, 2010)

Speaker at ABA's Annual Meeting program on "Are Chevron, Vermont Yankee, and State Farm in Need of New Thinking" (August 6, 2010)

Speaker at ABA's annual Rulemaking Institute on "Formal and Hybrid Rulemaking: Time for a Revival" (June 1, 2010)

Speaker at U.S. Department of Transportation's "One DOT Legal Day" on "Former General Counsels' Lessons Learned" (May 11, 2010)

Speaker at NYU Law School Symposium on "Changes to the Regulatory State: President Obama's Approach to Regulation" (March 12, 2010)

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Speaker at Meeting of ABA Task Force on Federal Preemption of State Tort Laws (October 1, 2009)

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Speaker at Heritage Foundation Program "Hurting or Helping Consumers? Destroying Federal Preemption One Industry At a Time" (August 5, 2009)

Speaker at Civil Justice Reform Group's General Counsels Program, on "Preemption of State Tort Law By Federal Agency Regulation of Interstate Commerce" (June 19, 2009)

Speaker at ABA Administrative Law Section's Regulatory Practice Institute, "New Directions in Agency Rulemaking" (June 10, 2009)

Speaker at Kirkland & Ellis Conference "Managing the Enforcement Response to the Financial Crisis," addressing "Pulling the tarp off the TARP: Navigating the Perils of the Bailout" (April 2, 2009)

Speaker at President's Council on Integrity and Efficiency on "Earmarks and Executive Order 13457" (March 12, 2008)

Speaker at Homeland Security Law Institute on "Regulatory Developments for 2008" (January 17, 2008)

Speaker at AEI-Brookings Joint Center for Regulatory Analysis Program on "The Role of Competition Analysis in Regulatory Decisions" (May 15, 2007)

Speaker at Washington International Business Council Meeting on "OMB Priorities Affecting International Trade and Business" (April 26, 2007)

Speaker at Heritage Foundation's Regulatory Working Group on "OMB's Regulatory Review Process" (April 19, 2007)

Speaker at Homeland Security Law Institute on "Regulatory Developments for 2007" (January 17, 2007)

Speaker at U.S. Conference of Mayors Annual Meeting on "Amtrak Reform" (May 11, 2005)

Speaker at National Conference of State Legislators Annual Spring Forum on "Amtrak Update" (April 15, 2005)

Speaker at Federal Highway Administration's Annual Legal Workshop on "Who Owns Transportation Infrastructure" (March 2, 2005)

Speaker at DOT Aviation Enforcement Office's Disability Rights Forum (November 9, 2004)

Speaker at ABA Administrative Law Section's Transportation Subcommittee on "Statutory Mandates of Rulemakings" (September 30, 2004)

Speaker at National Air Carriers Association Board Meeting on "Aviation War Risk Insurance and other current issues" (August 8, 2004)

Speaker at Regional Airlines Association General Counsel Program, on "Current Legal and Regulatory Issues" (June 22, 2004)

Speaker at Price Waterhouse General Counsel Forum on "Taming the Class Action Tiger: Surviving Settlement Challenges" (December 16, 1999)

Speaker at Kirkland & Ellis Litigation Conference on "The Future of Class Action Litigation: Dealing with the Ripple Effects of the Supreme Court Decisions in *Amchem* and *Ortiz*" (September 16, 1999).

Speaker at ALI-ABA Securities Law Seminar on "New Dimensions In Securities Litigation" (March 22, 1990)

17. Please identify each instance in which you have testified orally or in writing before Congress in a governmental or non-governmental capacity and specify the date and subject matter of each testimony.

- "Hearing on Nominations for the Department of Commerce, Corporation for Public Broadcasting, and Department of Transportation," testimony before the Senate Committee on Commerce, Science, and Transportation. November 4, 2003.
- "Implementation of the Small Business Paperwork Relief Act of 2002," testimony before a joint hearing of the House Government Reform Committee's Subcommittee on Energy Policy, Natural Resources and Regulatory Affairs, and of the House Small Business Committee's Subcommittee on Regulatory Reform and Oversight. January 28, 2004.
- "Ratification of the 2001 Cape Town Convention on International Interests in Mobile Equipment," testimony before the Senate Foreign Relations Committee. April 1, 2004.
- "Government Policies Regarding the Ability of an Airline to Deny Transport to an Individual Found Unsafe or Dangerous," testimony before the Senate Appropriations Committee's Subcommittee on Transportation, Treasury, and General Government. June 24, 2004.
- "Amtrak's Budget," testimony before the House Appropriations Committee's Subcommittee on Transportation, Treasury, HUD, Judiciary and District of Columbia. April 27, 2005.
- "Amtrak's Budget," testimony before the Senate Appropriations Committee's Subcommittee on Transportation, Treasury, and General Government. May 12, 2005.
- "The Impact of Regulation on U.S. Manufacturing," testimony before the House Committee on Government Reform's Subcommittee on Regulatory Affairs. June 28, 2005.
- "Amtrak Reform," testimony before the Senate Commerce, Science, and Transportation Committee's Subcommittee on Surface Transportation and Merchant Marine. April 21, 2005.
- "Amtrak Reform Proposals," testimony before the House Transportation and Infrastructure Committee's Subcommittee on Railroads. September 21, 2005.
- "Current Governance Issues at Amtrak," testimony before the House Transportation and Infrastructure Committee's Subcommittee on Railroads. November 15, 2005.



- “The Administrative Procedure Act at 65—Is Reform Needed to Create Jobs, Promote Economic Growth and Reduce Costs?,” testimony before the House Judiciary Committee’s Subcommittee on Courts, Commercial and Administrative Law. February 28, 2011.
- “The Regulatory Accountability Act of 2013,” testimony before the House Judiciary Committee’s Subcommittee on Regulatory Reform, Commercial and Antitrust Law. July 9, 2013.
- “Nomination of the Honorable Jeffrey A. Rosen to be a Governor, U.S. Postal Service”, U.S. Senate Committee on Homeland Security & Governmental Affairs, April 21, 2016.

I also appeared at the following hearings along with DOT Secretary Mineta:

- “CAFE Standards for Passenger Cars,” Senate Commerce, Science, and Transportation Committee. May 9, 2006.
- “Fiscal Year 2006 DOT Budget Request,” House Appropriation Committee’s Subcommittee on Transportation, Treasury, HUD, Judiciary, and District Columbia. March 18, 2005.
- “Fiscal Year 2006 DOT Budget Request,” Senate Appropriations Committee’s Subcommittee on Transportation, Treasury, and General Government. March 15, 2005.

18. Given the current mission, major programs, and major operational objectives of the department/agency to which you have been nominated, what in your background or employment experience do you believe affirmatively qualifies you for appointment to the position for which you have been nominated, and why do you wish to serve in that position?

I am interested in serving because I believe I can make a positive contribution. Several aspects of my background may prove helpful to this position, including my prior service at both the U.S. Department of Transportation and at the Office of Management and Budget. The full span of my career includes experiences useful to the leadership of organizations, such as management, economics and policy, legal requirements, regulation, and budgets, as well as other skills useful to the position. In addition to my previous public service, I have served in leadership roles in a large national law firm and for a nationwide bar association, for example.

19. What do you believe are your responsibilities, if confirmed, to ensure that the department/agency has proper management and accounting controls, and what experience do you have in managing a large organization?

Being a good steward of the public’s resources is an essential responsibility of DOT leaders. My prior experience at OMB of course included a strong focus on fiscal and management oversight, and my prior service at DOT included a strong role in ensuring adherence to legal requirements and fiscal integrity measures there as well. At my law firm, I was for several years a member of the Finance Committee, in addition to other roles in management in the past.

20. What do you believe to be the top three challenges facing the department/agency, and why?

In significant part, the Department’s major responsibilities involve safety and safety regulation, infrastructure programs and funding, and operation of the air traffic control system (and some other operational activities). As the Department enters its fiftieth year, there are policy and fiscal challenges related to all of these.

#### B. POTENTIAL CONFLICTS OF INTEREST

1. Describe all financial arrangements, deferred compensation agreements, and other continuing dealings with business associates, clients, or customers. Please include information related to retirement accounts.

I have no such arrangements except the retirement benefits that are identified on my financial disclosure report. In particular, my law firm has a longstanding defined benefit pension plan, and, because of the length of my service (1982–2003 and 2009–2017), I am entitled to receive a pension.

2. Do you have any commitments or agreements, formal or informal, to maintain employment, affiliation, or practice with any business, association or other organization during your appointment? If so, please explain.

No.

3. Indicate any investments, obligations, liabilities, or other relationships which could involve potential conflicts of interest in the position to which you have been nominated.

In connection with the nomination process, I have consulted with the Office of Government Ethics and the Department of Transportation’s Designated Agency Eth-

ics Official to identify potential conflicts of interest. Any potential conflicts of interest will be resolved in accordance with the terms of an ethics agreement that I have entered into with DOT's Designated Agency Ethics Official and that has been provided to this Committee. I am not aware of any other potential conflicts of interest.

4. Describe any business relationship, dealing, or financial transaction which you have had during the last ten years, whether for yourself, on behalf of a client, or acting as an agent, that could in any way constitute or result in a possible conflict of interest in the position to which you have been nominated.

In connection with the nomination process, I have consulted with the Office of Government Ethics and the Department of Transportation's Designated Agency Ethics Official to identify potential conflicts of interest. Any potential conflicts of interest will be resolved in accordance with the terms of an ethics agreement that I have entered into with DOT's Designated Agency Ethics Official and that has been provided to this Committee. I am not aware of any other potential conflicts of interest.

5. Describe any activity during the past ten years in which you have been engaged for the purpose of directly or indirectly influencing the passage, defeat, or modification of any legislation or affecting the administration and execution of law or public policy.

I have not been paid to lobby on behalf of any organization or individual. I have occasionally testified or provided advice without compensation in my personal capacity.

As a practicing lawyer in private practice—primarily as a litigator—I have advised clients about a wide variety of legal and policy issues.

6. Explain how you will resolve any potential conflict of interest, including any that may be disclosed by your responses to the above items.

In connection with the nomination process, I have consulted with the Office of Government Ethics and the Department of Transportation's Designated Agency Ethics Official to identify potential conflicts of interest. Any potential conflicts of interest will be resolved in accordance with the terms of an ethics agreement that I have entered into with DOT's Designated Agency Ethics Official and that has been provided to this Committee. I am not aware of any other potential conflicts of interest.

#### C. LEGAL MATTERS

1. Have you ever been disciplined or cited for a breach of ethics, professional misconduct, or retaliation by, or been the subject of a complaint to, any court, administrative agency, the Office of Special Counsel, professional association, disciplinary committee, or other professional group? If yes:

- a) Provide the name of agency, association, committee, or group;
- b) Provide the date the citation, disciplinary action, complaint, or personnel action was issued or initiated;
- c) Describe the citation, disciplinary action, complaint, or personnel action;
- d) Provide the results of the citation, disciplinary action, complaint, or personnel action.

No.

2. Have you ever been investigated, arrested, charged, or held by any Federal, State, or other law enforcement authority of any Federal, State, county, or municipal entity, other than for a minor traffic offense? If so, please explain. No.

3. Have you or any business or nonprofit of which you are or were an officer ever been involved as a party in an administrative agency proceeding, criminal proceeding, or civil litigation? If so, please explain.

I have never been involved as a party to any civil litigation, administrative agency proceeding, or criminal proceeding. Kirkland & Ellis LLP has on occasion been a party in some civil litigation, but none of those concerned any activities involving me personally, and I am not personally familiar with the details of any of those.

4. Have you ever been convicted (including pleas of guilty or *nolo contendere*) of any criminal violation other than a minor traffic offense? If so, please explain. No.

5. Have you ever been accused, formally or informally, of sexual harassment or discrimination on the basis of sex, race, religion, or any other basis? If so, please explain. No.

6. Please advise the Committee of any additional information, favorable or unfavorable, which you feel should be disclosed in connection with your nomination. None.

## D. RELATIONSHIP WITH COMMITTEE

1. Will you ensure that your department/agency complies with deadlines for information set by congressional committees?

Yes, to the extent reasonable and feasible.

2. Will you ensure that your department/agency does whatever it can to protect congressional witnesses and whistleblowers from reprisal for their testimony and disclosures? Yes.

3. Will you cooperate in providing the Committee with requested witnesses, including technical experts and career employees, with firsthand knowledge of matters of interest to the Committee?

Yes, to the extent consistent with legal and customary requirements.

4. Are you willing to appear and testify before any duly constituted committee of the Congress on such occasions as you may be reasonably requested to do so? Yes.

## ATTACHMENT A

## RESUMÉ OF JEFFREY A. ROSEN, P.C.

*Partner, Washington, D.C.*

*Practice Areas*

- Litigation
- Energy
- Regulatory
- Class Action, Mass Tort & Toxic Tort Litigation
- Antitrust & Competition

*Admissions*

- 1982, District of Columbia

*Education*

- Harvard Law School, J.D., 1982 *magna cum laude*
- Northwestern University, BA, Economics, 1979 with Highest Distinction

Departmental Honors in Economics

President of Student Government

**Professional Profile**

During his nearly thirty years at Kirkland, Jeff Rosen has handled a wide variety of complex legal problems for major companies and organizations. In 2009, Jeff rejoined the Firm as a senior partner in the Washington, D.C. office, following more than five years of public service. In recent years, Jeff's practice has focused on both regulatory and litigation matters. During his previous 21 years at Kirkland from 1982 to 2003, Jeff's practice principally involved complex business litigation matters involving antitrust, securities, contracts, RICO, business torts, government enforcement actions and product liability, including class actions. He has handled litigation before Federal and state courts in more than 20 states, including jury trials, bench evidentiary hearings, arbitrations and appellate arguments. He also served on Kirkland's Firmwide Management Committee and as Co-Head of the Washington, D.C. office.

From 2003 to 2006, Jeff served as the General Counsel of the U.S. Department of Transportation, after having been unanimously confirmed by the U.S. Senate. As that Department's Chief Legal Officer, he had final authority within the DOT to resolve all legal questions arising within or referred to the Department. As General Counsel, he oversaw the activities of more than 400 lawyers in the Transportation Department and its operating administrations. Jeff also had responsibility for DOT's regulatory program, enforcement and litigation activities, legal issues relating to international activities involving transportation, legislative proposals, and he acted as counsel to Secretary Norman Mineta. At DOT, Jeff testified on behalf of the Administration before various committees of Congress on ten occasions. He served on DOT's Credit Council, which was responsible for four Federal loan programs. In addition, he served as the Government's representative on the Amtrak Board of Directors, which was responsible for overseeing the company's management, personnel, operations, and finances.

From 2006 to 2009, Jeff served as General Counsel and Senior Policy Advisor for the White House Office of Management and Budget, which made him the Administration's lead lawyer for regulatory and fiscal issues, as well as for executive orders. Jeff's legal responsibilities included giving analysis and advice to the OMB Director and the President with regard to Federal laws related to a wide array of government agencies and programs, as well as administrative law, Constitutional law, ethics laws, Federal credit and insurance laws, litigation against the United States, and Federal budget and appropriations laws. He also handled responses to Congressional oversight and investigations.

#### **Representative Matters**

During his years of practice at Kirkland, Jeff has represented leading companies in a range of industries, including transportation, energy, technology and software, communications, chemicals, hotels, shopping malls, and financial services, among others. Some illustrative clients for whom he has handled significant matters during his years as a partner include Raytheon, Yamaha, PG&E Generating, AOL, General Motors, Hyundai, Qwest, Marriott, CF Industries, and the U.S. Chamber of Commerce.

#### **Memberships & Affiliations**

Chair of the ABA Section of Administrative Law and Regulatory Practice (2015–2016); previously Member of the Governing Council (2008–2012), and co-chair of the Section's Committee on Rulemaking (2009–2014)

Member of the Administrative Conference of the United States (2013 to present)

Member of the U.S. Chamber of Commerce Government Operations, Oversight & Consumer Affairs Committee (2012 to present)

Member of the Advisory Board of the National Federation of Independent Business Small Business Legal Center (2011 to present)

Member of National Journal's Panel of Transportation Experts and contributor to the online experts blog (2009–2012)

Counsel to the RNC Platform Committee (2012)

Member of the Board of Visitors, Northwestern University's College of Arts & Sciences (1998–2003, 2009 to present)

Adjunct Professor of Law, Georgetown University Law Center, Washington, D.C. (1996–2003)

#### **Other Distinctions**

Nominated by President Bush to be a Federal District Judge; Received highest rating from American Bar Association's Standing Committee on the Judiciary (2008)

Member of the American Law Institute (1996 to present)

Recognized as a "Washington, D.C. Super lawyer" (2012, 2013, 2014, 2015 and 2016) by *Super Lawyers* magazine for Business Litigation/Administrative Law/Transportation

Recognized in Washington, D.C. *"Top Lawyers"* (2012, 2013, 2014 and 2015) by ALM Media for Business Litigation

Recognized in *Corporate Responsibility Magazine's* "Legal Who's Who" (2014) for Environmental Litigation

Recognized in *The Legal 500 US*. (2012) for Trade Secrets Litigation

Listed in Who's Who in American Law and Who's Who in America; top-rated "AV" Preeminent in Martindale-Hubbell for more than 15 years

#### **Publications**

"Putting Regulators on a Budget," 27 National Affairs 42 (Spring 2016) "The Regulatory Budget Revisited," 66 Admin.L.Rev. 835 (Fall 2014).

"Fishing for a Reason to Regulate," The Hill online (April 10, 2013)

"President Needs to Get Serious About Spending Cuts," The Hill (December 20, 2012)

"2008 Obama Would Like Ryan Budget," Des Moines Register p.13A (August 30, 2012)

"The 2012 Budget Surplus That Disappeared," National Review Online (December 14, 2011)

"Rein on Federal Regulations Will Only Benefit Economy," Cincinnati Enquirer (November 9, 2011)

"Who Checks the Fact Checker?" National Review Online (September 16, 2011)

“Costly Federal Regulations Escape Congressional Approval,” *Atlanta Journal Constitution* (September 1, 2010)

“Major Rules Deserve a Vote,” *Baltimore Sun Op-Ed*, p.13 (August 10, 2010)

“Government Incentives For Businesses,” 19 *Business Law Today* 51–55 (May/June 2010)

“A Chance for a Second Look: Judicial Review of Rulemaking Petition Denials,” 35 *Admin. & Regulatory Law News* 7–9 (Fall 2009)

“Obama vs. the Regulators,” *The Washington Post Op-Ed* (August 6, 2009)

“Watch for Hidden Taxes,” *Boston Globe Op-Ed* (June 12, 2009)

“Obama Regulations are Taxing Consumers,” *Washington Business Journal* (June 12, 2009)

“Court Acceptance of ‘In-Kind’ Settlements in Consumer Class Actions,” 9 *Class Actions & Derivative Suits* 20 (Summer 1999)

### **Seminars**

Some of Jeff’s recent seminar appearances include:

Speaker on “Repairing Regulation” at University of Virginia Journal of Law & Politics program “Reining In the Administrative State” (October 21, 2016)

Program Co-Chair and Speaker at Joint ABA, SBCA, and GW Regulatory Studies program on “Benefit-Cost Analysis and the Courts” (October 11, 2016)

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Speaker/moderator on “Current Debates on Regulatory Reform” at joint ABA and Hoover Institution program “The Second Hoover Commission’s 60th Anniversary: Lessons for Regulatory Reform” (March 16, 2016)

Moderator for “The Role of OIRA in the Regulatory Process: A Discussion with OIRA Administrator Howard Shelanski” at ABA’s 12th Annual Administrative Law Institute (March 15, 2016)

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Program Chairman, 10th Annual ABA Administrative Law Institute (April 3–4, 2014)

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Speaker at U.S. Chamber of Commerce’s Center for Capital Markets Competitiveness on “The Role of Cost-Benefit Analysis in Regulatory Rulemakings” (March 12, 2013)

Speaker/moderator at ABA Administrative Law Section program on “Proposals and Prospects for Regulatory Reform” (October 3, 2012)

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Speaker at Homeland Security Law Institute on “Regulatory Developments for 2008” (January 17, 2008)

Speaker at AEI-Brookings Joint Center for Regulatory Analysis Program on “The Role of Competition Analysis in Regulatory Decisions” (May 15, 2007)

#### **Illustrative Media Quotes and Coverage**

Cheryl Bolen, “Rosen Revitalizing ABA Section With More Debate, Programs,” Bloomberg BNA (July 6, 2016)

Cheryl Bolen, “Resolutions to Disapprove Rules on the Rise,” Bloomberg BNA (May 27, 2016)

Hugh Kaplan, “Justices Halt DOJ’s Broad Application of Criminal Provision of Sarbanes-Oxley Act” Bloomberg BNA (February 25, 2015)

Sara Murray, “Romney Taps Bush Hands to Shape Economic Policies,” The Wall Street Journal (February 24, 2012)

Kathryn Wolfe, “Mitt Romney taps Bushies for transportation advice,” Politico (Oct. 10, 2012)

Cheryl Bolen, “Romney Proposals to Cut Back Regulations,” BNA Daily Report (August 31, 2012)

Mark Dragem and Catherine Dodge, “Obama Wrote Fewer Rules Than Bush, But Cost More,” Bloomberg News (Oct. 26, 2011)

Catherine Dunn, “Cutting Red Tape to Reduce Regulatory Costs of Government Rules,” Corporate Counsel/Law.com (August 24, 2011)

David Ingram, “GOP Starts Race for Top Attorneys,” The National Law Journal, p. 1 (July 25, 2011)

Susan Crabtree, “Airline Lawsuit Threatens Delays for FAA,” The Hill, January 24, 2011

Tony Mauro, "Inadmissible," Legal Times, p. 16 (November 29, 2010)  
 Carrie Levine, "For Chamber, Legal, Lobbying Fights Multiply," The National Law Journal, p. 6 (August 9, 2010)  
 Sue Reisinger, "Reunited We Stand," Corporate Counsel, p.17 (August 2010)  
 David Ingram, "Homecoming," The National Law Journal, p. 13 (June 7, 2010)  
 Ralph Lindeman, "Government Operations," Daily Report for Executives—BNA (May 3, 2010)  
 Melanie Trotzman and Josh Mitchell, "New Transit-Funding Rules Make Streetcars More Desirable," The Wall Street Journal (January 15, 2010)  
 Jim McTague, "Congress Goes Head-Hunting," Barron's (July 20, 2009)  
 Robert Pear, "Bush Directive Increases Sway on Regulation," New York Times, p.1 (January 30, 2007)  
 Cindy Skrzycki, "Bush Order Limits Agencies' 'Guidance,'" Washington Post p. D1 (January 30, 2007)  
 Amir Efrati, "U.S. Policy on Attorney Fees Sparks Debate at State Level," Wall Street Journal p.A12 (May 17, 2007)  
 Cindy Skrzycki, "Agencies' Rules Quietly Enable Tort Reform," Washington Post, p. D1 (September 27, 2005)  
 Daniel Machalaba, "Senator Questions Firing of Amtrak President," Wall Street Journal (November 15, 2005)  
 Alexandra Marks, "Brake Trouble Fuels Larger Debate Over Amtrak," Christian Science Monitor (April 22, 2005)  
 "Big Suits—AOL v Microsoft," in The American Lawyer, p. 42 (April 2002)

#### Courts

In addition to the D.C. Bar (1982) and the U.S. Supreme Court (1986), Jeff is a member of the bars of six Federal appeals courts and three district courts. He has appeared pro hac vice in numerous state and Federal courts throughout the country.

#### Attachment B

Name of Recipient	Amount	Year of Contribution
Rob Portman (Senate)	\$1,000	5/4/2009
Rob Portman (Senate)	\$1,200	11/9/2009
Kelly Ayotte (Senate)	\$500	3/22/2010
Robert Dold (House)	\$500	6/1/2010
National Republican Congressional Committee	\$1,000	7/7/2010
National Republican Senatorial Committee	\$1,000	5/20/2011
Romney for President	\$2,455	6/7/2011
Rob Portman (Senate)	\$1,000	6/30/2011
Ted Cruz (Senate)	\$1,000	9/12/2011
Republican Jewish Coalition	\$500	10/20/2011
Boehner for Speaker	\$1,500	2/16/2012
Rob Portman (Senate)	\$2,000	7/19/2012
Nan Hayworth (House)	\$500	7/16/2012
Romney-Ryan	\$2,500	9/8/2012
Republican National Committee	\$750	10/31/2012

## Attachment B—Continued

Name of Recipient	Amount	Year of Contribution
Rob Portman (Senate)	\$1,000	8/2/2013
Ryan-NRCC	\$1,000	8/30/2013
NRSC/NRCC Victory Committee	\$500	11/21/2013
Liz Chey (Senate)	\$500	12/3/2013
Tom Cotton (Senate)	\$1,000	6/30/2014
Rob Portman (Senate)	\$1,200	8/2/2014
James Lankford	\$1,000	9/23/2014
Barbara Comstock (House)	\$750	10/14/2014
John Boozman (Senate)	\$500	11/11/2014
Right to Rise PAC	\$1,000	2/5/2015
Ed Gillespie (Senate)	\$500	3/26/2015
Ron Johnson (Senate)	\$500	5/19/2015
Boehner for Speaker	\$2,700	8/1/2015
Rubio for President	\$500	1/12/2016
Mike Gallagher (House)	\$1,000	2/6/2016
Mike Gallagher (House)	\$500	3/31/2016
Liz Cheney	\$1,000	3/23/2016
Jason Chaffetz (House)	\$500	3/16/2016
James Lankford (Senate)	\$500	5/14/2016
Elise Stefanik (House)	\$500	9/15/2016

In the summer of 2012, I served as counsel to the Platform Committee for the RNC Convention.

Senator WICKER. Thank you, Mr. Rosen.

We are joined by the Ranking Member of the Full Committee, Senator Nelson, of Florida, and he would like to make an opening statement. So, Senator Nelson, you are recognized.

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

Senator NELSON. Speaking of roads and bridges, Mr. Rosen, we are literally at a crossroads on transportation because our infrastructure is crumbling, it's declining. Some multiples of tens of thousands of bridges in this country are deemed structurally unsound. The railways. You get into a growth state like mine, a thousand people a day net, it's already straining. You can't toll your way out of the situation even if you try. So basically, we've got to commit to do the infrastructure for the next generation.

Last night, the Senate was invited to the White House, and I took the occasion during the reception before the concert—and it



was a wonderful concert, the Army Chorus and the Marine Quartet. It was enjoyed by all. There was a time for some talking, and I took that occasion to talk to the Vice President and said, "I think the time might be right for us to consider a bipartisan infrastructure bill."

And you, of all people, ought to understand that we just can't keep having our commuters spend twice the time that otherwise they would take in order to get to work. So what we've got to do, and the leadership at the top, you and Secretary Chao, are going to have to reach out in a bipartisan way to start bringing people together and start doing some of the heavy lifting that has to be done. Now, we can all agree on infrastructure, but the question is, How are you going to pay for it? It's going to take folks like you that are going to have to offer that leadership. And, it's going to take that commitment.

Yet you look at the President's "skinny budget," and it doesn't tell us that. What it says is in order to build a wall on the Mexican border, we're going to eviscerate the maritime wall, the U.S. Coast Guard, 14 percent cut. That's also going to be an issue that we'll have to take.

What about Amtrak? What about all the people up and down from New Orleans to Jacksonville that want a return of the Amtrak train? They've got it ready to go, but there's not going to be any money for it.

So, Mr. Rosen, whether it's on infrastructure or a whole host of other issues, I hope that we'll have your commitment that you will reach out and work with Members of both parties, not one, in order to accomplish what all of us know have to be done.

Thank you, Mr. Chairman.

Senator WICKER. And thank you, Mr. Ranking Member.

Mr. Rosen, do you have any response to the issue that our Ranking Member just raised?

Mr. ROSEN. Well, with regard to the suggestion that it would be important to have a bipartisan solution and to communicate on both sides of the aisle, I completely agree with that, and I think that I have a track record that would support that that is a concern, and it's something I can do. I did when I was at Transportation previously, worked for the Democratic Member of the Cabinet when Secretary Mineta was the Transportation Secretary.

I've participated in organizations that have people of widely differing views. One reason I mentioned my role in the ABA Section of Administrative Law is that's a group of people that have wide-ranging views. They don't all agree with my views, but I think I was successful at persuading people to try to work together on coming up with ideas and suggestions and programs and the like.

So I'm in complete agreement with Senator Nelson, that one of the roles that I see for this position is to communicate with the Congress and to work with the Congress, and that's on both sides of the aisle.

Senator WICKER. Well, thank you very much. And I'm horrified that the timekeeper started my time running when I was asking if you would respond to Senator Nelson's question.

Mr. ROSEN. It has been reset.

[Laughter.]

Senator WICKER. I want to start off by discussing the Merchant Marine Academy. It's part of the Maritime Administration, which, of course, will come under your jurisdiction. You mentioned your parents not having the opportunity that you had for a collegiate education. For decades, the Merchant Marine Academy has been one of the finest 4-year undergraduate degrees that a young American could have.

Mr. ROSEN. Right.

Senator WICKER. And I'm determined that, as a Member of the Board of Governors at the Academy, that that continue. I was encouraged to hear that Secretary Chao has reinstated the Sea Year Program aboard commercial vessels for midshipmen at the Academy; however, today the Sea Year is operating only at 64 percent of its original capacity while several shipping companies are still awaiting MARAD approval to host midshipmen.

The first thing I want to ask is, do you have any ideas how MARAD can work with the shipping companies to ensure this vitally important training program comes back into full force?

Mr. ROSEN. Well, thank you, Senator. That was an issue that you were kind enough to bring to my attention, and so I asked some questions about that yesterday and was told that the process of beginning to have applicants who could help reinstate that program is underway and that the first group had been approved, which is why there are a number of members of the class who can resume Sea Year, and that there is another group of applicants who are being reviewed, and that there is a process to ensure that they meet the certification requirements so that the students who participate in the program are getting out of the program what they're supposed to and in an acceptable environment. And I think that's underway. I think if I was confirmed, one of the things I would, of course, want to do is continue to monitor that and look for ways we could expedite it to get it back to the situation that I know you would want, and I would look forward to staying in touch with you about that.

Senator WICKER. Were you given any idea about the timeline?

Mr. ROSEN. No, but I'll be happy to follow up on that.

Senator WICKER. OK. Well, it does need to be expedited because this needs to be back at 100 percent.

In addition, the Merchant Marine Academy received a warning in its accreditation review last spring. Now, I find that completely unacceptable and surprising. The Academy has until April 2018 to come into compliance with accreditation standards. A loss of accreditation would have devastating effects on the integrity of what has been a valuable and prestigious institution. It cannot be allowed to happen.

What steps should the Department take to ensure that the Academy stays on track to meet accreditation deadlines?

Mr. ROSEN. Well, as you know, I'm not yet at the Department, so I think that's an issue that if I'm confirmed, I would need to get better educated on. I know the Secretary is attuned to that issue. And I don't think there is any difference of opinion about the importance of getting it done. The steps to get there I need to get better educated about and again would look forward to doing that if I'm confirmed.

Senator WICKER. Well, will you agree to make it a priority?

Mr. ROSEN. Yes.

Senator WICKER. OK. Well, thank you very much.

Senator Booker, you are recognized.

Senator BOOKER. Mr. Chairman, with your permission, I would like to defer my time toward the end and let Senator Klobuchar go in my stead.

Senator WICKER. Without objection, Senator Klobuchar, you are recognized.

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

Senator KLOBUCHAR. Thank you very much, Senator Booker.

And thank you very much, Mr. Chair.

Mr. Rosen, thank you for being here. I really want to ask you what Rob Portman was like as a client, but I'm not going to do that.

[Laughter.]

Senator KLOBUCHAR. You clearly have some deep experience here. We also, of course, are dealing with a really difficult time with the proposed budget that you and I talked about in my office. Coming from Minnesota, whenever I think about the reason we need transportation funding, I think of the I-35W bridge that crashed in the middle of the Mississippi River on this beautiful summer day, killing over 12 people, 55 cars in the water. It was something we will never forget. And after that, we went in and we fixed all our bridges and spent a lot of money on it actually. So it is about the issues that Senator Booker was talking about with what we are leaving as a legacy. It's the effect it has on the economy, but it's also a safety issue.

You and I talked about this in the office, but I'm very concerned about the cuts with EAS, that's Air Service, of course, the capital improvement grants, which are really important in our light rail in Minnesota, TIGER grants, and I would like to see if you will advocate to reverse course. I know you were not consulted on this budget proposal, but at least make developing a comprehensive infrastructure proposal a priority if you're confirmed.

Mr. ROSEN. Well, thank you for those observations. And I think what I can say is sometimes we have to separate ends from means. I think on the ends, there is a lot of consensus that we want to rebuild our infrastructure and that there are important objectives we have to achieve, for example, in the connectivity we want with rural America and the coasts and Alaska and other places. And so with regard to the ends, I like to think there is a lot of agreement. It's part of why transportation lends itself to some opportunity for consensus.

The means and how we get there is often more challenging, and I think the budget presents those challenges, but isn't necessarily an objection to the goal. And so part of what I see as unfolding, if I'm confirmed in the Senate, is a chance to have further conversation and ultimately proposals in the President's infrastructure plan to achieve these goals, whether they are expansions of existing programs or whether they're all new programs to substitute or other ways to look at that.

And I think we have to be flexible, but I think we're looking at the same goals. I think there is opportunity to get people together on that.

Senator KLOBUCHAR. I was really heartened when the President listed infrastructure as the first thing he wanted to work on, on election night, and used the figure trillion dollars. We've put out a proposal on that, and we got the FAST Act done here, but it's just the issue that right now it's looking at cuts. We don't have a proposal actually to add to infrastructure, we have to take away, and I understand you weren't involved in that, I wanted to make the point.

Broadband, I'm going to just submit a question on the record on that. I'm one of the co-chairs of that caucus. I've got the Dig Once policy that we're pushing, and obviously that's a part of infrastructure as well. I know you see it as part of infrastructure, but I want to ask you about Open Skies. Both Democratic and Republican administrations have pursued an expanded Open Skies at a global level, which provides U.S. consumers and airports with more choice access to new international destinations.

Last week I lead a letter with Senators Isakson, Durbin, Inhofe, Baldwin, and Tillis raising concerns about the billions of dollars in subsidies countries like UAE and Qatar provide their state-owned airlines. These subsidies, we believe, completely undermine the Open Skies agreements, hurt American workers. What can we do to ensure American airline workers are not harmed by unfair competition from abroad?

Mr. ROSEN. Well, I can't comment on any individual proceeding, partly because I'm not well-informed about the facts, but also would want the Department to look at things in a fair-minded and neutral way. But as a general principle, I think we've all heard the President emphasize the importance of trade deals generally that are good for Americans and that are enforced so that Americans get the benefits that are promised in the deals that are done. So I think in the big picture what I would say is I think we should enforce the agreements we have.

Senator KLOBUCHAR. Well, that means that we should be doing something about it then, so I appreciate that.

Last, air traffic control. During her confirmation hearing, Secretary Chao said that any changes to the current air traffic control system should be part of a greater national discussion and involve a national consensus.

As we discussed, Senator Moran and I sent out a follow-up letter to the Secretary outlining concerns that we've heard from rural airports and leaders in general in business aviation about this issue of air traffic control privatization.

Will you commit to achieving a consensus among users who would be impacted before moving forward with any changes to the air traffic control system?

Mr. ROSEN. So I think, you know, we're obviously talking about a very complex subject where the ultimate goal is to modernize the technology that we use for air traffic control to restore the kind of leadership we've historically had and want to continue to have. There's a lot of discussion about how to get there, and I think you raised the important point about, what about general aviation, for

example? And I think all of that has to be taken into account in how we get there.

One thing that a couple of folks have mentioned to me, actually after we last spoke, was that some of the proposals, although they moved to user fee kind of systems, would basically exempt general aviation by retaining for general aviation the existing gas tax type arrangement. And so I think there has to be some sensitivity to that issue if we're going to be successful in getting to the ultimate goal. What the exact pieces are to make the puzzle all come together, a lot of work to be done on that, it's very clear.

But, again, I think in my conversations what I take away is there is a large amount of agreement on the desire to get the Next Gen technologies in place and the kind of air traffic control system we all should want.

Senator KLOBUCHAR. OK, well, thank you. And I'll ask questions about the Safe Skies Act, distracted driving, contract towers, recreational trails, things we talked about, on the record, so I appreciate your time.

Thank you.

Mr. ROSEN. Thank you.

Senator WICKER. Thank you, Senator Klobuchar.

Senator Fischer.

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

Senator FISCHER. Thank you, Mr. Chairman.

Hello, Mr. Rosen.

Mr. ROSEN. Good morning, or good afternoon. Sorry.

Senator FISCHER. Good afternoon. Recent news reports have suggested that the administration will seek to address tax reform and infrastructure at the same time. I welcome this approach and have advocated that as part of any major infrastructure initiative. At least some portion of those revenues should be used to expand the successful formula freight program that we established in the FAST Act, and this program provides each state guaranteed funding for a wide array of both urban and rural corridor highway freight projects.

I think the beauty of this freight program is that, for example, Nebraska has the flexibility to invest in rail grade crossings or truck parking facilities along rural roads and highways, while, for example, California could choose to invest in on-dock rail at our Nation's largest port complex. These are all projects that would enhance the flow of freight in our country and also advance our economy.

Do you believe that the freight program can represent an equitable way to strengthen our infrastructure for both our rural and our urban communities?

Mr. ROSEN. Well, I think it's an important topic, and in some ways, I have a simplistic view, that Congress enacted that in the FAST Act, and so it's less important whether I believe that or not, it would be helpful, but it's the law, and I think the Department should implement the law.

Senator FISCHER. Thank you. I know you've worked with my office in the past on many issues, and especially regulatory reform

legislation for various agencies at the Department of Transportation, and that includes the FMCSA. You have a strong background, I believe, in regulatory matters both at DOT and in the Office of Management and Budget.

As it relates to developing any future regulations, how do you foresee the DOT and modal administrations proceeding?

Mr. ROSEN. Well, obviously that's a broad topic. What I would like——

Senator FISCHER. I'll give you a lot of leeway to answer it any way you want.

Mr. ROSEN. Yes. I think that there's a real opportunity to use a regulatory process that takes advantage of the stakeholder participation, and I mean stakeholders of all types, by providing, and I think this was something you wound up being a strong supporter of in the FAST Act, of more advanced notice of what's coming, and, therefore, more opportunity to bring data to the table, more opportunity for creative ideas to come, to say maybe the objective is right, but the means is more costly than necessary.

And so I see a process that allows earlier opportunity to know what's coming, stronger use of the regulatory agenda, both for transparency, so our citizens know what's coming from government, but also as a management tool, so that the Department is implementing things in an orderly way and not inadvertently unfocused, piling on one industry all at once and then another industry all at once rather than taking the opportunity to spread out where there are necessary costs to be incurred for safety and other reasons, and so therefore have a management approach out of the unified regulatory agenda or equivalence.

And then, of course, I'm a big believer, it's of public record, in the strong use of empirical data and science as the basis for regulation and that the benefits justify the costs, and I would like to see that done. But I would also like to see prioritization of things that work best be built upon, and things that haven't worked well or are unnecessary are opportunities to lower the cost so that we achieve good outcomes in an efficient way.

Senator FISCHER. Thank you. You have experience at the DOT. And are there any organizational reforms or changes that you would consider at this point from past experience, not to pin you down on anything, but just in a general view? I mean, we're all looking at ways that we can streamline government, get answers faster, better responses, better transparencies. Is there anything out there that comes to mind that you would look at?

Mr. ROSEN. You know, I've just started thinking about that question because one of my observations from the past is the Department of Transportation, although I think it's an excellent agency of government, is a little bit of people functioning in silos, and there's always a need for more coordination and collaboration across some of our modal administrations.

Particularly, there are a number of agencies that are devoted to surface transportation, and there are different parts of the Department that have aviation responsibility, sometimes not obvious, like the HazMat part of FMCSA has aviation. And so there's a need to get this more coordinated. Some of that's management, and I think

if I'm confirmed, some of it would fall to me as well as the Secretary to try to enable the kind of coordination that's needed.

But I'm just starting to think about the question that you raise, which is, are there organizational ways to enhance that? And I would look forward to talking to you further about that.

Senator FISCHER. Thank you, sir.

Thank you, Mr. Chairman.

Senator WICKER. Thank you, Senator Fischer.

Senator Hassan.

**STATEMENT OF HON. MAGGIE HASSAN,  
U.S. SENATOR FROM NEW HAMPSHIRE**

Senator HASSAN. Thank you, Mr. Chair, and Ranking Member. And good afternoon, Mr. Rosen. It's very nice to have you here.

As you may know, the TIGER grants that have traditionally been issued through the Department of Transportation have had a really major positive impact on the Granite State. In recent years, TIGER funds have been used to support our Memorial Bridge as well as our Sarah Mildred Long Bridge, both of which play a really important role in keeping our state's economy going around our port.

In January, now Secretary Chao testified before this committee for her nomination hearing, and I asked her about these grants, which have been so critical to my home state as well as to many other states across the country. The Secretary acknowledged the importance of the grants, and she even said that the utility of the program is, and this is a quote, "one area of great agreement in Congress."

So the first question to you is, do you agree with Secretary Chao, that TIGER is a really important program?

Mr. ROSEN. Well, there are multiple ways that we fund infrastructure, especially projects. There are projects that come out of the various programs at the Federal Highway Administration. Now in the FAST Act, we have the Nationally Significant Freight and Highway Projects program that are labeled FASTLANE grants.

And so this goes back to something I was saying earlier. The means and the ends, there can be sometimes a disconnect because the ends, as in some of the projects you were identifying, are things that are important, and they are part of trying to help people with their daily lives, to get to work, to get their kids where they need to get them, travel on vacation, and whatever else it is.

And I think it's less consequential as to whether it's TIGER grants or FASTLANE grants or coming out of other programs than it is to think about, what's the best and most efficient way we can get this done? And I think that's part of what the infrastructure proposal that I understand is in the works—I'm not yet at the Department, as you know—

Senator HASSAN. Right.

Mr. ROSEN.—but from what I've read and heard loosely, I think we will focus on that.

And so I think, again, the end of getting support for projects is one that looks to me at least to have widespread support.

Senator HASSAN. Well, I thank you for that. One of the reasons I ask the question, though, is that earlier in the month in the President's draft budget, TIGER grants were completely evis-

cerated, and that's in the absence of anything coming forward from the White House to help us see what an alternative vision might be.

And the other thing is that these are programs that are critical to our economy. I mean, when you're talking about two bridges that cross a critical port in the Northeast, if you don't have those bridges, if you don't have a drawbridge that works, oil doesn't come into our port, right?

So a lot of these programs exist because they're tailored to particular needs, and in the case of TIGER grants, often are initiated from the states after the state has done the homework about what particular need is there.

So I'm grateful that you acknowledge the need. I am very concerned that when we see a budget that eviscerates something that most people in Congress agree has been important for critical projects that keep our economy going, that we don't throw one thing out before we have a good idea of how we're going to address the need. Does that seem reasonable to you?

Mr. ROSEN. Well, I understand your point. I'm not sure if I have a helpful answer, in that I think you have an observation that's useful, which is that there are needs, and I think part of the challenge going forward will be for us collectively to talk about how to meet those.

Senator HASSAN. Well, they're needs, but they're investments, and I think what's really—you know, our economy doesn't move if we don't have a strong transportation infrastructure. We can't lead the world without it.

Let me move on to another area of proposed cuts, or at least as far as we understand them from the draft budget that we've seen that impact states like mine and many other states, and you've probably heard about it from a couple of the other Senators.

The President's proposed budget eliminated the Essential Air Service program, and this program was designed to ensure rural communities receive commercial air service even in areas that would otherwise not be profitable for the airlines because of their geographic location. The Lebanon Airport is one of those EAS airports, and it serves ten to eleven thousand Granite Staters each year. Elimination of this program would have a devastating economic impact on rural communities that these airports serve.

So what is your plan to keep rural communities connected to transportation services if the President's budget proposal eliminating EAS service becomes a reality?

Mr. ROSEN. So this is one of those questions that I have to point out, and I don't mean this defensively, that I'm not currently yet in the administration or a participant in that, but as a nominee for President Trump's administration, I'm of course obligated to support the President's budget, and I do. The administration campaigned on a reordering of priorities, and at least the way I perceive it, the so-called "skinny budget" that was released is sending the message about some reordered priorities.

But having said that, I guess there are maybe three things I want to share that I think are responsive to your question.

The first is that I wholeheartedly share, and I know that Secretary Chao shares as well, the concern that many people have



about access to transportation in rural areas of our country. Transportation is one of the key ways in which we are connected as a nation, and if anything, I think too little attention has been paid to this. If people can't fly to Nome, Alaska, or Meridian, Mississippi, or New York State, it's just that much harder to keep our country knit together. And I think we need that more than ever. It's a national value.

The second observation I wanted to make is rural areas must have access that the whole country should have to the economic benefits that derive from both travel and the movements of cargo, and I think that's good for the rural areas, and I think that's good for the urban areas, as anyone who ever visits a grocery store should know.

So the third thing I want to say, it is my hope that if I'm confirmed, I would want to help the Department to more effectively achieve these objectives, partly by implementing the laws enacted by Congress and in part by looking for ways to make programs work better, work safer, and focus on specifics and how to meet this need for connectivity.

And how to do that? I think that this is where having 55,000 people in the Department is more valuable than one fellow at a table here. And I need, if I'm confirmed, to get people together to discuss some specifics because I think there might be some regulatory changes that could lower the cost, for example, and make rural aviation more viable.

I think there may be other ways to address these needs that haven't been fully considered and fleshed out, and that the best way to do that is, if I'm confirmed, to both draw on the expertise of the Department and talk to the stakeholders.

Senator HASSAN. Well, thank you very much. I thank the Chair for your indulgence. And I'll just encourage you to be an advocate for strong transportation within the administration.

Senator WICKER. Thank you. Senator Blumenthal.

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

Senator BLUMENTHAL. Thanks, Mr. Chairman.

Good afternoon, Mr. Rosen.

Mr. ROSEN. Good afternoon.

Senator BLUMENTHAL. I've been asking for your FBI background check. I understand it hasn't been completed?

Mr. ROSEN. That's not my understanding, but I don't—I don't know—I didn't know you were asking for it.

Senator BLUMENTHAL. Your understanding is that it has been completed.

Mr. ROSEN. That is my understanding, yes, sir.

Senator BLUMENTHAL. OK. If it hasn't been, or at least hasn't been submitted to the Committee, would you agree that the vote should be postponed until we have it?

Mr. ROSEN. My understanding is it has been made available to the Committee.

Senator BLUMENTHAL. OK. Thank you. Let me ask you, you have a long and distinguished career in private practice, you've had a number of very eminent clients, including General Motors and

other automobile manufacturers, the United States Chamber of Commerce, and the association that represents automobile manufacturers, if I'm correct, along with various airlines. In private practice, you represented the United States Chamber of Commerce, perhaps among others, in challenging the tailpipe pollution rules that were written by the EPA. Am I correct?

Mr. ROSEN. I think you're factually mistaken in the specifics of what you just said, but—

Senator BLUMENTHAL. Why don't you correct me?

Mr. ROSEN. I don't think I represented them with regard to the tailpipe rule, but I did represent the U.S. Chamber of Commerce, which was one of I think 80 parties—

Senator BLUMENTHAL. In the fuel economy rules?

Mr. ROSEN. No.

Senator BLUMENTHAL. The finding that greenhouse gases from motor vehicles?

Mr. ROSEN. The rules regarding the greenhouse gases and with respect to the PSD permitting that would have been triggered by the greenhouse gas transportation. I think other counsel actually represented them with regard to the tailpipe rule, but—

Senator BLUMENTHAL. I stand corrected. My question really is, would you recuse yourself with respect to those parties or clients whom you represented in accordance with the rules, but also with respect to any environmental issues that were raised in your representation of them?

Mr. ROSEN. Well, as I think you're probably aware, Senator, in the process of going through the review to be a nominee, the Office of Government Ethics reviews, as this Committee of course can, the financial report that I provided, which includes both financial holdings, but also clients that I had in the reporting period—

Senator BLUMENTHAL. Well, I don't—I don't—I apologize for interrupting you, but my time is limited. I'm not asking what the recusal rules are or what the review process is, I'm asking what you would do voluntarily? Would you recuse yourself from those issues relating to environmental standards concerning air pollution, emissions, because you've been active in the courtroom and also in a number of writings in stating your position?

Mr. ROSEN. So I think there are two things I'll say about that. One is with regard to the ethics agreement that I entered into after the review by the Office of Government Ethics. I will adhere to what's agreed to in that. And with regard to your other question, I hope I'm not misunderstanding you because I think you're talking about things that are at EPA rather than things that are at DOT.

Senator BLUMENTHAL. Well, there are issues that involve both agencies and advice that you may be called upon to give to the President or to other agencies.

Mr. ROSEN. And if it's covered by my ethics agreement, then I will adhere to what's required in the ethics agreement.

Senator BLUMENTHAL. Well, my hope is that you will voluntarily agree to go beyond the ethics agreement, do more than just the letter of the agreement, that you will commit to doing it. I'm going to be submitting some questions in writing—

Mr. ROSEN. Sure.

Senator BLUMENTHAL.—because you’ve written extensively on the need for less regulation, for, in effect, lower standards, and that may have been part of your job, so to speak, when you were in private practice, but it should not be part of your job when you’re in the position of Deputy Secretary of the Department of Transportation if you are confirmed.

Mr. ROSEN. So, Senator, with all respect, I hope we aren’t having a misunderstanding, because I don’t know that I have written about the fuel economy standards. And so I’m not sure if we’re miscommunicating or if I’m missing something there. But I will tell you, if it would give you some insight, for a number of years I taught professional responsibility and legal ethics as an adjunct professor at Georgetown University Law Center, and I would like to think that I will bring to this position and any position the highest levels of integrity and honesty, and I will approach the concern that you’re raising with as fair-minded an approach as I can do.

Senator BLUMENTHAL. Thank you very much. Thank you. I may be wrong about your writings, so I’m going to go back and check on my own. So thank you for clarifying.

Senator WICKER. And thank you very much, Senator Blumenthal.

For the record, I’m told by staff that the FBI report has been completed as a matter of course and is available according to the standard procedure to be brought by any Senator’s office and shown to the Member. So I hope that answers that question.

Senator BLUMENTHAL. It does, Mr. Chairman. Could I also enter in the record a letter written by various groups on this topic that we’ve been discussing? It’s a letter dated March 29 from groups including the National Resource Defense Council, Friends of the Earth, the Center for Energy Efficiency and Renewable Technology, et cetera.

Senator WICKER. Without objection.

[The information referred to follows:]

March 29, 2017

Dear Senator,

We write on behalf of millions of members and supporters to urge you to oppose the nomination of Jeffrey A. Rosen for Deputy Secretary of the Department of Transportation. Rosen has a long record of opposing critical protections for Americans’ health, safety, and finances, and particularly safeguards within the jurisdiction of the Department of Transportation.

Rosen and his firm have represented companies and industry groups that have strong anti-regulatory agendas before the Department of Transportation, including the Alliance of Automobile Manufacturers,<sup>1</sup> the U.S. Chamber of Commerce,<sup>2</sup> and Airlines for America, a group that has worked to privatize air traffic control.<sup>3</sup> His record shows that his views are closely aligned with theirs, and against the interests of American families.

In 2005 testimony, Rosen explained that he had “overall supervision of the entire regulatory process” as general counsel to the Department of Transportation,<sup>4</sup> and

<sup>1</sup>Myron Levin & Alan C. Miller, *Industries Get Quiet Protection from Lawsuits*, L.A. TIMES, Feb. 19, 2006, <http://articles.latimes.com/2006/feb/19/nation/na-preempt19>.

<sup>2</sup>See *Coalition for Responsible Regulation, Inc. v. E.P.A.*, 684 F.3d 102, 107 (2012).

<sup>3</sup>Alex Daugherty, *Trump’s Pick for Deputy Transportation Secretary Did Legal Work for Airline Lobbyists*, MCCLATCHY, Mar. 14, 2017, <http://www.mcclatchydc.com/news/politics-government/white-house/article138459268.html>.

<sup>4</sup>Hearing on the Impact of Regulation on U.S. Manufacturing: Spotlight on Department of Labor and Department of Transportation Before the Subcomm. on Regulatory Affairs of the H. Comm. On Govt. Reform, 109th Cong. 46–47 (2005) (testimony of Jeffrey A. Rosen) <https://www.gpo.gov/fdsys/pkg/CHRG-109hhrg23627/pdf/CHRG-109hhrg23627.pdf>.

he boasted that he helped terminate or withdraw 180 potential rulemakings in that role.<sup>5</sup> When the agency produced rules during his tenure, they often benefited industry rather than consumers. For example, one rule by the National Highway Traffic Safety Administration (NHTSA) immunized automobile manufacturers from liability for deaths and injuries caused by weak vehicle roofs while doing little to improve safety.<sup>6</sup>

In private practice, Rosen represented the U.S. Chamber of Commerce in challenging tailpipe pollution rules written by the Environmental Protection Agency (EPA), which are closely related to NHTSA's fuel economy rules, and challenging EPA's finding that greenhouse gases from motor vehicles endanger human health and welfare by contributing to climate change.<sup>7</sup> In essence, Rosen and other industry lawyers attempted to put the EPA's analysis of climate science on trial. They were roundly rejected.<sup>8</sup>

Rosen also engaged in science-defying foot-dragging over greenhouse gas pollution while serving as general counsel to the Office of Management and Budget. In one episode, he asked three times for memoranda explaining why carbon dioxide molecules emitted from motor vehicles are different from those emitted from power plants. There is no difference, but Rosen sought to find one in order to limit Federal agencies' responsibility to write rules curbing carbon pollution in the wake of the Supreme Court's ruling that carbon dioxide is a pollutant under the Clean Air Act.<sup>9</sup>

In addition to siding with industry on countless specific matters within the Department of Transportation's jurisdiction, Rosen projects a general hostility to public safeguards. He has repeated outlandish, debunked industry talking points on the purported cost of safeguards, including the self-refuting claim that Federal rules cost Americans \$1.75 trillion each year, or \$15,000 per family.<sup>10</sup> In truth, Federal regulations are extraordinarily beneficial, providing net benefits of billions of dollars annually.<sup>11</sup>

At the Office of Management and Budget, Rosen advocated a George W. Bush executive order that placed a political appointee in each agency to serve as a gatekeeper for new rules and guidance documents.<sup>12</sup> And he has publicly supported two pieces of legislation, the Regulations from the Executive in Need of Scrutiny (REINS) Act and the Regulatory Accountability Act,<sup>13</sup> which would virtually shut down the regulatory process.

Placing Jeffrey A. Rosen in charge of day-to-day operations at the Department of Transportation would be disastrous for American families, who under his regime would face higher risks on the road and in the air, more limits on their access to the courts, and irrevocable harm to their natural environment.

We urge you to oppose his nomination vigorously.

Sincerely,

Alaska Wilderness League  
Americans for Transit

Center for Auto Safety  
Center for Progressive Reform

<sup>5</sup>Id.

<sup>6</sup>Cindy Skrzycki, *Agencies' Rules Quietly Enable Tort Reform*, WASH. POST, Sept. 27, 2005, <http://www.washingtonpost.com/wp-dyn/content/article/2005/09/26/AR2005092602022.html>.

<sup>7</sup>*Coalition for Responsible Regulation, Inc. v. E.P.A.*, 684 F.3d 102, 107 (2012).

<sup>8</sup>Id. at 120–23.

<sup>9</sup>Juliet Eilperin & R. Jeffrey Smith, *EPA Won't Act on Emissions This Year*, WASH. POST, July 11, 2008, <http://www.washingtonpost.com/wp-dyn/content/article/2008/07/10/AR2008071003087pf.html>; Felicity Barringer, *A New (and Unlikely) Tell-All*, N.Y. TIMES, July 22, 2008, <http://www.nytimes.com/2008/07/22/us/22enviro.html>; *An Update on the Science of Global Warming and Its Implications*, Hearing Before the S. Comm. on Envtl. & Pub. Works, 110th Cong. (2008) (testimony of former EPA Associate Deputy Administrator Jason Burnett), <https://www.gpo.gov/fdsys/pkg/CHRG-110shrg88902/html/CHRG-110shrg88902.htm>.

<sup>10</sup>Hearing on H.R. 2122, the Regulatory Accountability Act of 2013 Before the Subcomm. On Regulatory Reform, Commercial & Antitrust Law of the H. Comm. on the Judiciary, 113th Cong. (2013) (testimony of Jeffery A. Rosen), <https://judiciary.house.gov/wp-content/uploads/2016/02/Rosen-Testimony.pdf>.

<sup>11</sup>See, e.g., OFFICE OF INFORMATION AND REGULATORY AFFAIRS, 2015 REPORT TO CONGRESS ON THE BENEFITS AND COSTS OF FEDERAL REGULATIONS AND UNFUNDED MANDATES ON STATE, LOCAL, AND TRIBAL ENTITIES (Mar. 10, 2016), [https://obamawhitehouse.archives.gov/sites/default/files/omb/info/reg/2015\\_cb/2015-cost-benefit-report.pdf](https://obamawhitehouse.archives.gov/sites/default/files/omb/info/reg/2015_cb/2015-cost-benefit-report.pdf).

<sup>12</sup>Robert Pear, *Bush Directive Increases Sway on Regulation*, N.Y. TIMES, Jan. 30, 2007, <http://www.nytimes.com/2007/01/30/washington/30rules.html>.

<sup>13</sup>Jeff Rosen & Susan Dudley, *Let Congress Vote on Major Rules*, BALTIMORE SUN, Aug. 9, 2010, [http://articles.baltimoresun.com/2010-08-09/news/bs-ed-congress-rules-20100809\\_1\\_regulations-rules-federal-agencies;Hearing%20on%20H.R.%202122,the%20Regulatory%20Accountability%20Act%20of%202013%20Before%20the%20Subcomm.%20On%20Regulatory%20Reform,%20Commercial%20&%20Antitrust%20Law%20of%20the%20H.%20Comm.%20on%20the%20Judiciary](http://articles.baltimoresun.com/2010-08-09/news/bs-ed-congress-rules-20100809_1_regulations-rules-federal-agencies;Hearing%20on%20H.R.%202122,the%20Regulatory%20Accountability%20Act%20of%202013%20Before%20the%20Subcomm.%20On%20Regulatory%20Reform,%20Commercial%20&%20Antitrust%20Law%20of%20the%20H.%20Comm.%20on%20the%20Judiciary), 113th Cong. (2013) (testimony of Jeffery A. Rosen), <https://judiciary.house.gov/wp-content/uploads/2016/02/Rosen-Testimony.pdf>.

Citizens for Reliable and Safe Highways (CRASH)	PolicyLink
Coalition for Clean Air	Public Advocates Inc.
Consumer Action	Public Citizen
Consumer Watchdog	Renew Missouri
Consumers for Auto Reliability and Safety	Safe Climate Campaign
Earth Action, Inc.	Sierra Club
Ecology Center	Southern Oregon Climate Action Now
Essential Information	The Center for Energy Efficiency and Renewable Technologies
Food & Water Watch	The Clean Power Campaign
Friends of the Earth	Trauma Foundation
Iowa Environmental Council	Union of Concerned Scientists
League of Conservation Voters	Voces Verdes
Mile High Connects	Cosa Bullock
National Center for Lesbian Rights	Lori Cameron
Natural Resources Defense Council	Lisa Daniel
Nuclear Information and Resource Service	Susan Nedell

Senator BLUMENTHAL. Thank you, Mr. Chairman.  
 Senator WICKER. Thank you, Senator Blumenthal.  
 Senator Sullivan.

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

Senator SULLIVAN. Thank you, Mr. Chairman.

And, Mr. Rosen, good to see you again. Thanks for your time yesterday. I think you have a very strong background for this position.

So the first commitment I want to get from you is, you know, we all represent different states, that's one of the great things about our amazing great country, is that all the states are very different. My state of Alaska has significant challenges with infrastructure. We're an infrastructure-poor state in many ways. Dozens and dozens of communities in my state have no roads whatsoever. Most states can't even imagine that. We're a big state, very big actually, 551 times the size of Rhode Island, but Rhode Island has about 6,000 miles of roads, and we have 10,000, so not very comparable—right?—given the size.

So I would like to get a commitment to you to come to Alaska, if confirmed, to actually see firsthand some of the significant challenges when you represent a state with American citizens in it who occupy a land mass that's one-third the size of the continental United States. Can I get that commitment from you?

Mr. ROSEN. So one of the things that my wife and I enjoy doing for vacations is to go to national parks and see different parts of the country. And you're now asking me to make the painful commitment to visit a place we've always wanted to go.

Senator SULLIVAN. Trust me, this won't be a vacation, but—

Mr. ROSEN. I know, I know, I—

Senator SULLIVAN.—if you can make that commitment, that would be great.

Mr. ROSEN. Yes, I was making light of it, Senator, but the reality is I think the points you make are significant, and it's not—I was being light. But it's not for vacation, it would be to understand the transportation challenges of your state, which I did understand both from our conversation and from other background that I have, that Alaska presents some very unique transportation challenges,

and I would welcome the chance to get a firsthand opportunity to see that in person.

Senator SULLIVAN. Great. Thank you.

Senator WICKER. I'm sure we can all agree, though, that it would be an altogether pleasant experience.

Senator SULLIVAN. Of course.

[Laughter.]

Senator SULLIVAN. I've got to get Senator Booker up there again on a more appropriate mission this time.

Let me ask, related to that, Senator Hassan, I think you've heard about it from a number of Senators, have talked about the Essential Air Service. And I think the title of that, particularly for my state, is very accurate, meaning it is essential, particularly, as I mentioned, in places where dozens of communities have no roads, literally no roads to them.

So you were asked a question by Senator Hassan recently. I'm not going to ask a follow-up question. I'm going to give you what I think would be a very definitive answer to that question for the record. So it is an essential service for many states. There is strong bipartisan support for that program, as I'm sure you saw in this hearing. And if confirmed, we look forward to working with you and the Department of Transportation to do what Secretary Chao committed to in her confirmation hearing, which was, quote, continuing the EAS program and finding ways in which to improve it. So that's not a question, that's a statement, and I think it might help answer the question you got there previously.

Let me turn to another issue. We talked about this yesterday, and I just want to get on the record a commitment from you. As I mentioned, Alaska doesn't have adequate aviation monitoring and weather reporting capabilities due to a lack of infrastructure at a number of our airports. The FAA has not funded a new automated weather observing system location program in Alaska since the 1990s. This lack of data had previously justified the local FAA to allow carriers to use a combination of inputs to satisfy the requirements, which allowed communities to be served.

As we talked about yesterday, the FAA is now changing that standard, enforcing a national standard for weather reporting and weather forecasting, which is having a dramatic impact on aviation operations in my state. Mr. Chairman, I would like to submit for the record some letters from the Alaskan Carriers Association, Everts Air Cargo, that lay this problem out in detail.

Senator WICKER. Without objection.

[The information referred to follows:]

ALASKA AIR CARRIERS ASSOCIATION  
Anchorage, AK, March 23, 2017

MICHAEL HUERTA, FAA Administrator,  
FAA National Headquarters,  
Washington DC.

RE: Alaska's Need for Aviation Weather

Sent via e-mail: Michael.Huerta@faa.gov; Leathard, Scott (Sullivan)  
<Scott\_Leathard@sullivan.senate.gov>;  
Milotte, Paul <paul.milotte@mail.house.gov>;  
Chelsea holt@murkowski.senate.gov; Fleagle, Mike (Sullivan)  
<Mike\_Fleagle@sullivan.senate.gov>;  
Padgett, Chad <Chad.Padgett@mail.house.gov>

Dear Administrator Huerta:

The Alaska Air Carriers Association (AACA) is a membership organization whose mission is to support and advocate for the commercial aviation community. Our members include Part 121, 135, 125, and commercial Part 91 Alaskan air carrier operators and associate members that support them.

The most current economic data representing the Alaskan aviation industry estimates there is about \$3.5B worth of economic activity, generated through 47,000 jobs and comprising 8 percent of Alaska's gross state product. 82 percent of the communities in Alaska are dependent on commercial air carrier transportation for routine transportation.

AACA is writing to you today regarding a serious situation that impacts the people of the State of Alaska, their safety and associated commerce. It regards certified weather availability and public law that allows the Administrator to take into account the unique needs of Alaska.

Aviation weather information is limited in Alaska! It's been estimated (by others) that over 200 new Automated Weather Observation Stations (AWOS) are needed in Alaska to meet the density of aviation weather currently available in the contiguous 48 states where alternate means of access via roads is readily available. In Alaska, 82 percent of the communities are not accessible by roads.

In locations where weather is available and despite consistent attention from FAA Tech Ops and NWS staff, AWOS, and ASOS outages in Alaska are frequent (See attached Examples of weather issues). Outages are often attributed to "telco" or old and unreliable telecommunication line infrastructure, normal wear and tear or issues related to the recent "tech refresh".

FAA regulations currently prohibit Part 121 air carriers from operations without an approved weather report at the destination and alternate airport. In general, to release a flight under part 121, the operator must have a forecast, terminal area forecast (TAF), and a METAR certified weather report. At issue is the recent enforcement application of required certified weather when visual conditions (VFR) prevail.

In Alaska more than any other area in the national air space (NAS), there are vast areas where the only approved source of weather is a EWINS TAF purchased from a private vendor based in Florida. To use EWINS TAF data, a modification to the carrier's Operation Specification must be issued by the FAA. However, this only speaks to the forecast requirement and not the weather report at the destination or alternate airport.

Additionally, there are destination airports where a TAF is not available, but there is an approved local METAR certified weather report. Thus, the Part 121 air carrier cannot release the flight to the airport unless they are authorized to use and willing to purchase the EWINS weather product.

Going a step beyond, there are destination airports where an approved forecast is available or EWINS forecast is available, but lacking a local approved weather report or when a component of the report is missing or NOTAMd as unreliable, the part 121 air carrier cannot land, even when VFR (visual flight rules) conditions exist.

The net result is that a 121 air carrier, complying with the regulations (see attached Guidelines), recently became excluded from landing at many airports in rural Alaska. Part 121 air carriers are mandated to operate at the highest possible level of safety and year over year they prove to be achieving that mark.

Prior to FAA's latest enforcement philosophy change affecting Part 121 air carriers on the need for VFR certified weather, Alaskan air carriers used alternate sources of weather to establish VFR conditions, planned and filed for an alternate landing location and carried additional fuel for the alternate destination. AACA re-

quests you consider exercising your authority to take into account unique conditions in Alaska and exempt Alaskan Part 121 air carriers from the requirement for certified weather at VFR destinations until such time certified and back up weather is available to support the requirement.

AACA also asks FAA to fully support and fund additional certified and backup weather systems in Alaska. AACA has participated in the Weather Work Group where aviation weather needs are being prioritized. AACA would welcome the opportunity to manage grant funds made available through the FAA to expedite site selection and installation of new certified and back up weather systems in Alaska.

Since the 1990s when Alaska served as the test site for FAA's Capstone Project, FAA has not funded any new AWOS locations in Alaska despite approving a business case for 13 new AWOS in 2010. NWS has installed three Modular Automated Weather Systems (MAWS) in Alaska and proposes to install 2-3 new weather stations this summer but MAWS is not certified weather. These additional weather units offer additional weather data that would help to improve NWS forecasting in Alaska but MAWS cannot support Part 121 or 135 IFR or Part 121 VFR flights.

Ultimately, additional AWOS and additional back up certified weather facilities are needed to ensure public forecasts are reliable and air carrier transportation in rural Alaska under Visual and Instrument Flight Rules (VFR and IFR) is available.

AACA appreciates FAA's continued support on this issue. However, without adding new certified and back up weather facilities to the Alaskan aviation system, exempting Part 121 operators from VFR certified weather requirements is necessary.

Alaskan air carriers would welcome any new weather available to support all aviators operating VFR or IFR in Alaska. To facilitate construction of new weather facilities in Alaska, AACA urges FAA to consider offering AACA an annual grant for certified and backup weather site selection and construction. AACA expects an annual grant would expedite new weather development in Alaska. AACA would be unable to offer payment for ongoing maintenance and testing requirements of new weather systems unless the costs were made grant eligible.

Thank you again for your attention to this matter.

Best regards,

Matt Atkinson, Board Chair  
Alaska Air Carriers Association

Jane Dale, Director  
Alaska Air Carriers Association

Cc: Congressman Don Young  
Senator Dan Sullivan  
Senator Lisa Murkowski  
Alaskan FAA Administrator Kerry Long  
Alaska Legislature

## Guidance

The FAA does not allow the use of the EWINS at any airport in the United States for the purpose of the weather report. This becomes most significant under the guidance of:

### Order 8900.1, Volume 3, Chapter 24, Section 4

3-2116 GENERAL. Title 14 of the Code of Federal Regulations (14 CFR) parts 91, 121, and 135 require certificate holders to use weather reports and forecasts from specified sources. Pilots and other persons responsible for operational control must have enough weather information to determine whether a flight can be accomplished in compliance with 14 CFR. Weather information systems must provide all weather information required by 14 CFR.

### 3-2117 REGULATORY REQUIREMENTS REGARDING SOURCES OF WEATHER REPORTS.

- A. *Weather Reports.* For all operations conducted under parts 121 and 135, weather reports either must be prepared by the National Weather Service (NWS) or by sources approved by the NWS or Federal Aviation Administration (FAA). The term "weather report" is as used in 14 CFR and as described in Advisory Circular (AC) 00-45, Aviation Weather Services, section 3.1, Aviation Routine Weather Reports (METAR) and Selected Special Weather Reports (SPECI) (current edition). Forecasters use surface aviation weather observations as the basis for predicting future weather conditions. Any forecast used to control flight movement must be prepared from (based on) weather reports prepared by the NWS or other approved sources.

*Previously, the guidance read as follows.* There has been a change eliminating language which may have been beneficial to Alaska's part 121 air carriers.



- C. *Part 121.* Part 121 requires operators conducting operations within the 48 contiguous States to use weather reports prepared by the U.S. NWS or sources approved by the NWS. Although part 121 does not specify that weather reports prepared or approved by the NWS must be used in Alaska, Hawaii, and U.S. territories, it is FAA policy that weather reports prepared or approved by the NWS must be used by all part 121 operators in areas where NWS services are available. When operating outside the 48 contiguous States where NWS services are not available, part 121 domestic and flag operations must use weather reports prepared by sources approved by the FAA. Additionally, under part 121, § 121.101(c), certificate holders are permitted to use forecasts prepared from weather reports made by any source approved under an Adverse Weather Phenomena Reporting and Forecasting Subsystem established in compliance with part 121, § 121.101(d). Supplemental operations outside the United States require the use of weather reports produced by sources found satisfactory by the FAA in accordance with § 121.119. Any part 121 visual flight rules (VFR) operation must be based on weather reports prepared by the NWS, sources approved by the NWS, or sources approved by the FAA.

#### **Order 8900.1 Volume 3, Chapter 26, Section 4**

##### **3-2120**

C. *EWINS for Certificate Holders Conducting Part 121 Supplemental Operations.* POIs of certificate holders who conduct part 121 supplemental operations may grant approval to use an EWINS to satisfy specific requirements as follows:

1) *Operations Inside the United States—Weather Forecasts.* In accordance with §§ 121.119(a) and 121.119(b), a POI may approve a certificate holder conducting operations inside the United States to use a forecast prepared by an EWINS if that forecast is prepared from weather reports issued by the NWS or a source approved by the Weather Bureau. (The Weather Bureau is the NWS. See Volume 3, Chapter 26, Section 1, paragraph 3-2048.)

2) *Operations Outside the United States and at U.S. Military Airports Where No NWS Reports are Available.*

a) *Weather Reports.* In accordance with § 121.119(a), A POI may approve a certificate holder conducting operations outside the United States or at U.S. Military airports to use a weather report prepared by an EWINS under the following circumstances:

- Where no NWS weather report is available;
- Where no U.S. and NATO Military observing sources are available;
- When no weather report issued by an ICAO Member State-authorized weather source is available;
- When no weather report issued by an ICAO Member State, authorized meteorological station, or automated observation is available; and
- When no weather report issued by a member of the WMO is available.

b) *Weather Forecasts.* In accordance with § 121.119(b), a POI may approve a certificate holder conducting operations outside the United States and at U.S. Military airports to use a weather forecast prepared by an EWINS if that forecast is prepared from weather reports issued by a source approved by the Administrator. See Volume 3, Chapter 26, Section 2, for approved sources of weather reports.

Note: that there is NO provision for weather reports that are not available. Weather reports are unavailable either when the airport is not staffed with qualified personnel to make weather observations, equipped with robots for this purpose, or when the equipment fails (not uncommon).

\* as defined in 14 CFR part 1, the United States includes Alaska, Hawaii and Territories.

#### **Examples of weather issues:**

*Golovin.* An Alaskan air carrier was recently contracted to fly groceries and other supplies to a small village in northwest Alaska, Golovin. Goods and services are typically transported to Golovin by air, especially during winter months when barge service is unavailable. On March 12, the Airport automated observation weather system (AWOS) wasn't reporting altimeter and even though the weather was clear with 10 miles visibility, the Part 121 air carrier was unable to dispatch the VFR flight.

*Emmonak.* AWOS facilities at both Emmonak and Unalakleet were part of the recent FAA technical refresh project and are often inoperable. The Emmonak AWOS was abruptly NOTAMd out of service on Monday, 3/12/2017 with a projected repair

on 3/17/2017. On Monday, weather was clear with 10 miles visibility and the Part 121 operator was unable to depart for this destination.

Parts needed for repairs were ordered by Tech Ops staff however, the parts warehouse is located in Oklahoma City which serves parts needs nationwide. Delays related to parts availability is common. When AACA members inquired about the status of the Emmonak AWOS or the availability of parts, FAA Tech Ops staff offered that 'knowledge related to the repair status is a security issue and that the only source of status information is thru the FSS NOTAM system'.

*Drift River.* The Drift River Terminal Facility, also known as the Drift River Oil Terminal, is a tank farm which holds crude oil before it is loaded onto oil tankers and transported to refineries. It is located in Alaska along Cook Inlet, at the terminus of the Drift River. Recently, a Part 121 Alaskan air carrier was asked to transport materials from the facility to Anchorage. While on a clear day you can see Drift River from Kenai and perhaps from Anchorage, the Part 121 air carrier remains unable to offer transportation services because certified weather is not available at the Drift River Terminal Facility.

EVERTS AIR CARGO  
March 10, 2017

Dear Representative Bishop,

The Federal Aviation Administration has recently reiterated the "national requirement" for weather forecasting and reporting during operations by 14 CFR part 121 air carriers. As I am certain you know, there are not many part 121 air carriers headquartered in the State of Alaska. In fact, only two of these operate large cargo airplanes and provide unique services to the outlying communities and villages in the state. Several weeks ago, representatives of several carriers met in Anchorage with the FAA. The carriers left the meeting with the belief that we had participated in a productive discourse with FAA personnel including John Duncan, FAA's Director of Flight Standards Services.

I am not alone in my belief that Mr. Duncan asserted that there would be a non-enforcement stance from the Administrator until a solution could be found. The issue is complex, or at least as complex as they wish it to be. At the root is the infrastructure in Alaska. There are literally dozens of airports without National Weather Service approved data collection devices from which approved (appropriate in the parlance of certain rules) can be derived. In other cases, the equipment exists but due to equipment failures, equipment age and 'copper wire' communications failures, reports meeting the standard are not available.

As of two weeks ago, I believe that John Duncan has back pedaled on his commitment of "non enforcement" as he did not specifically exclude reported weather and now, claims it applied only to forecasts. We (the air carriers) who know and are impacted by this issue understand that this modified position is rather meaningless as we can replace forecasts with a EWINS product (we pay a fee to a vendor to repackage NWS weather and derive a forecast). The greater problem is the large number of Alaskan airports with no weather reporting (or failed weather reporting systems). On this issue, he is now asserting that he gave no such non enforcement assurances. Recently, it was made quite clear that if we operate where there is no report, we will be considered in *willful* violation. Clearly Mr. Duncan is disputing not only my recollection of his statements during the meeting, but Mr. Fleagle's (Senator Sullivan's office) and Ms. Dale's (Alaska Air Carrier's Association) as well.

We (Robert Everts, EAC CEO; Sammy Wiglesworth, EAC Director of Safety and I) met with the FAA in Fairbanks this past week to seek clarification and work toward finding an amicable solution. They remained, despite focused discussion on their rule and guidance, firm in their position that the requirement for the report had no leeway. We discussed the language of the rule for operations in Visual Meteorological Conditions (VMC) under Visual Flight Rules (VFR) with reference to 14 CFR 121.611.

*§ 121.611 Dispatch or flight release under VFR.*

*No person may dispatch or release an aircraft for VFR operation unless the ceiling and visibility en route, as indicated by available weather reports **or** forecasts, **or** any combination thereof, are and will remain at or above applicable VFR minimums until the aircraft arrives at the airport or airports specified in the dispatch or flight release.*

I have used bold type for emphasis on the word "or" in the regulation.

The FAA also have elected to eschew the intent of the related language in the Order 8900.1 Guidance. This 8,000 page document is used selectively by the FAA. By that I mean, they will direct us to use this guidance for clarification and meaning on one day, but when we reference it for discussion, we are told this is their guidance.

VOLUME 3 General Technical Administration  
 CHAPTER 26 AVIATION WEATHER INFORMATION SYSTEMS for air carriers  
 Section 4 Sources of Weather Information  
 Paragraph 2117 C.

*C. Part 121. Part 121 requires operators conducting operations within the 48 contiguous States to use weather reports prepared by the US. NWS or sources approved by the NWS. Although part 121 does not specify that weather reports prepared or approved by the NWS must be used in Alaska, Hawaii, and US. territories, it is FAA policy that weather reports prepared or approved by the NWS must be used by all part 121 operators in areas where NWS services are available. When operating outside the 48 contiguous States where NWS services are not available, part 121 domestic and flag operations must use weather reports prepared by sources approved by the FAA. Additionally, under part 121, §121.101(c), certificate holders are permitted to use forecasts prepared from weather reports made by any source approved under an Adverse Weather Phenomena Reporting and Forecasting Subsystem established in compliance with part 121, §121.101(d). Supplemental operations outside the United States require the use of weather reports produced by sources found satisfactory by the FAA in accordance with §121.119. Any part 121 visual flight rules (VFR) operation must be based on weather reports prepared by the NWS, sources approved by the NWS, or sources approved by the FAA.*

The applicable statement for operations in Alaska is highlighted.

We have recently sought an exemption from certain requirements for reported weather, but thus far have no response from FAA Headquarters in Washington, D.C. on this matter. Typically, this is a lengthy process. More interestingly, the FAA has indicated familiarity with this request, and cited this application as a basis to infer that we know what the rule requires, therefore any infringement would be seen as willful. It was suggested by the FAA, in our meeting, that we seek an exemption. We reiterated that we have, and after the better part of the month, have not received a response. It is not likely that any productive result will be seen in the near term. In fact, the last operational exemption we were granted took well in excess of a year. It was also suggested that we seek legal interpretation from FAA legal. This is also a lengthy process and we have one request out that has lingered for months.

It is worth mentioning that there are distinctly different standards of safety in aviation. The most basic and least regulated is 14 CFR part 91. This level of “general aviation” is also the most prone to accidents and incidents due to minimal training and airworthiness requirements. Somewhat more regulated is 14 CFR part 135, which allows the operator to hold out to the public offering air transportation. This part restricts the size and seating capacity and while mandated to maintain a higher standard than part 91, the standards, in particular, operational control, flight crew member training and maintenance, are still not those of 14 CFR part 121.

Please understand that, when a part 121 air carrier is restricted from offering/providing service with the highest possible degree of safety (14 CFR part 121), the customer is forced to seek services at a lesser standard. While at first look this would seem to be primarily an economic concern for the part 121 airline, it is inherently discriminatory to the customer, now denied access to the service at the highest possible degree of safety. There is also an element of discrimination against the outlying communities and villages. When the day comes that a village needs a generator in the midst of a flood, or construction materials to build a school or homes for families, or even to carry quantities sufficient to stock the local markets, they must rely on air transport. Operators of small (non 121) aircraft may be challenged by weather conditions or elements of flight which should restrict them from flying the mission. Occasionally they try, and the results are tragic.

The attached is a listing of destinations in Alaska with no weather reporting available as of 2/28/2017. This could become more critical in some areas with the recent avalanche at Atigun Pass closing the Dalton. Communities north of that closure are effectively isolated from delivery of food, some fuels, and any other essential life sustaining supplies reliant on large aircraft.

I believe it would be appropriate for the Senators' offices to work closely with Congressman Young's office and demand the FAA act expeditiously to draft an exemption, applicable only to Alaska's air carriers operating under 14 CFR part 121 enabling operations where reports are not available.

Most of the regulatory language addresses "reports or forecasts or any combination thereof." Several high ranking individuals in the FAA, apparently including Mr. Duncan, do not wish to differentiate between the word "or" and the word "and".

There are only two operators using large cargo aircraft serving the airports with limited capability. Neither has any history of weather related events prior to this new enforcement initiative. Bottom Line, after the February 22 meeting which was attended by operators as well as staff representatives of our U.S. House and Senate, Mr. Duncan has not addressed the industry concern, and the unintended consequences of the actions by the FAA. Communities will suffer, commerce will suffer, safety will suffer and Air Transport in Alaska will suffer. The FAA and NWS have failed to work together to provide forecasts (TAFs) and reports (METARS). The operators obtain EWINS weather products, essentially paying for repackaged NWS data. This only addresses the lack of forecasts. The relief that was implied, and the relief needed relates to the weather reporting at the airport. Earlier last week FAA reaffirmed their stance that if we operate without approved reports, they will take the position that we are intentionally non compliant and in violation.

Thank you for your consideration of this critical issue. Obviously it is complicated and has ramifications that cannot be overstated. We are available to assist with any questions and invite you to contact us at the numbers noted below.

Best regards,

ZACHARY M. ADAMS,  
*Directory of Operations,*  
 Everts Air Cargo.

Enclosure

Cc: Robert Everts  
 Sammy Wiglesworth

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LIST OF ALASKA AIRPORTS WITHOUT WEATHER REPORTING

Akulik	Golden Creek Mine
Alakanuk	Goodnews Bay
Allakaket	Granite Creek
Anvik	Grayling
Arctic Village	Hughes
Atmautluak	Illinois Creek
Beaver	Independence Creek
Beluga	Inigok
Big Mountain	Ivotuk
Birch Creek	Kasigluk
Buckland	Katmai Lodge
Bullen Point	Kavik
Candle	Keyes Point
Chalkyitsik	Kobuk
Chandalar Lake	Kokhanok
Chenega Bay	Kongiganak
Chisana	Kotlik
Chuathbaluk	Koyukuk
Coal Creek	<i>As of 2/28/2017</i>
Colorado Creek	Levelock
Dahl Creek	Little Squaw Lake
Donlin Creek	Medfra
Drift River	Moses Point
Dune Lake	Napaskiak
Eek	Nightmute
Ekwok	Nikolai Creek [Tyonek]
Farewell	Nikolski
Flat	Nixon Fark Mine
Galbraith Lake	Nondalton
Gane Creek	Noorvik
Gold King Creek Mine	Nulato

Nyak	Stebbins
Oliktok	Stevens Village
Osprey Lodge	Tanacross
Point Lonely	Telaquana
Poorman	Trading Bay
Port Clarence	Tuluksuk
Prospect Creek	Tuntutuliak
Ptarmigan Lake	Twin Lakes [East and West]
Quinhagak	Tyonek
Rampart	Ugashik
Red Devil	Umiat
Sheldon Point	Umnak Island
Selby Lake	Venetie
Skwentna	WienLake

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EVERTS AIR CARGO  
Fairbanks, AK, March 28, 2017

Senator DAN SULLIVAN,  
Washington, DC.

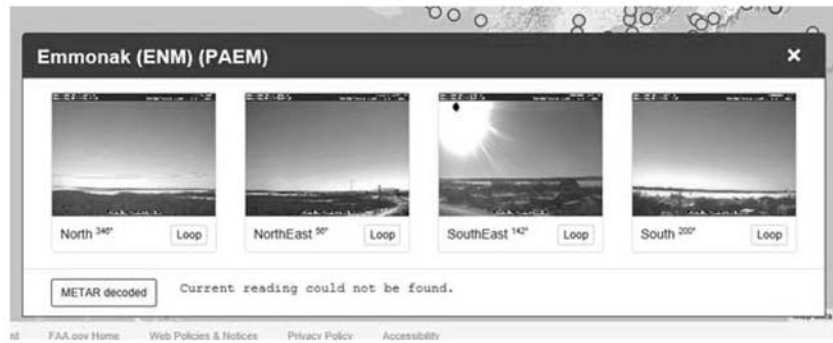
Dear Senator Sullivan,

I understand that you may have recently received correspondence from Jane Dale, the Executive Director of the Alaska Air Carrier's Association, regarding the numerous weather issues affecting 121 Air Carriers in the state of Alaska. I am requesting your immediate attention to a specific issue, which is the new interpretation of "national requirement" for weather reporting at all 121 Air Carrier destination airports (including remote strips used for mining and oilfield development, and other special strips such as ice runways). *121 Air Carriers MUST have certified weather provided by the National Weather Service AT THE DESTINATION.* This is a significant change from how 121 Air Carriers in Alaska have been operating (for over 30 years).

Unfortunately, there are numerous locations (runways) in Alaska where there is no National Weather Service reporting. Under the new interpretation, Everts Air Cargo cannot fly into these destinations. An example is Drift River, located just across the inlet from Anchorage. Two weeks ago, Hilcorp Energy requested that Everts Air Cargo transport an "oil pig" to assist with their operation (as has been done many times before). However, because of the new interpretation and the fact that there is no certified weather provided by the National Weather Service at Drift River, we had to decline the business. The weather was VFR, not a cloud in the sky.

In addition to there being locations without weather reporting, there are numerous occasions where the AWOS (Automated Weather Observation Station) reporting systems fail. That is what we are currently experiencing with the village of Emmonak, one of Alaska's mainline hubs. The weather robot went down in Emmonak on March 24 and is scheduled to be out of service until April 7.

Below is a picture of what the weather is in Emmonak today, but even though it's 10 and clear, because of the new interpretation, we are prohibited from flying there. Currently, we have over 50,000 lbs of mail and freight for Emmonak, but these food items and basic goods will not be flown until the weather robot is repaired by the FAA.



I have included a copy of a letter recently sent to Alaska Senate Representative, “Click” Bishop to request the State’s support. It provides further information regarding the critical weather issues facing 121 Air Carriers in the State, but specifically focuses on the recent initiative by the FAA to enforce certain elements of the regulations. The decisions and actions of the FAA in this area are misguided. Clearly, there are unintended consequences that will continue to negatively impact the flow of U.S. Mail and other essential commodities regularly transported to the villages by 121 Air Carriers. Your support and intervention is respectfully requested.

Please feel free to contact me via e-mail or at the number listed below.

Thanking you in advance for your assistance,

ZACHARY ADAMS,  
*Director of Operations,*  
 Everts Air Cargo.

Cc: Robert Everts

Senator SULLIVAN. And, Mr. Rosen, if confirmed, I would like to get your commitment to work with me and my staff to address this problem, which is a significant one, and we talked about it in my office yesterday. Can I just get that commitment?

Mr. ROSEN. Yes, Senator, I would be happy to work with you and your staff to at least get the right people in the room talking about what the issues are and whether there is a satisfactory solution.

Senator SULLIVAN. Great. And this just goes to the broader issue, which I think many states view, certainly my state, that the one-size-fits-all approach on policy emanating from Washington almost never works in certain states. It certainly doesn’t work in my state, and this is one example.

Let me, if I may, Mr. Chairman, one final question. I know I’m short of time, but there has been a lot of talk on an infrastructure initiative, a package, coming from the administration. I think you’re starting to see a lot of broad bipartisan support for this idea. But as we talked about yesterday, and I’ve talked to Secretary Chao and even the President about this, an infrastructure initiative without corresponding permitting reform at the Federal level in many ways is going to be a lot of money wasted.

Right now, you know the stories. There are examples where Federal permitting takes years and years and years to build a road or to build a bridge. We had the head of the Seattle-Tacoma Airport in front of this committee last year. Fifteen years to get the permits to build a new runway. Fifteen years.

So we’re going to be introducing a bill, the Rebuild America Now Act soon. I’m going to try and get a lot of bipartisan support for this, but it looks at major permitting reform to build infrastructure

projects, not cut corners, but to actually be able to deploy the money. I've already gotten a commitment from Secretary Chao to work with us on that.

Can I get your commitment to work with us on the details of that so if there is an infrastructure package through the Congress, we can make sure that the Federal monies actually get deployed and don't get caught up in years and years of litigation and red tape? Can we get your commitment on that?

Mr. ROSEN. I think you've raised a very important issue. I think this committee has actually had some leadership and shown leadership in trying to find ways to improve the permitting process initially in MAP-21 and the FAST Act, but there is more to be done.

Senator SULLIVAN. Much more to be done.

Mr. ROSEN. And so I think you raise a very important issue and one that is personally interesting to me as something that could improve our infrastructure needs in that some of the information I've seen suggested that the single largest time component of infrastructure projects is actually the permitting phase. And—

Senator SULLIVAN. Not the design phase, not the building phase, the permitting phase.

Mr. ROSEN. So if we can improve that, we make a lot of progress. And so I would welcome the chance to work with you on that if I'm confirmed.

Senator SULLIVAN. Thank you.

Thank you, Mr. Chairman. And we'll have additional records that we're going to submit for the record.

Thank you, Mr. Rosen.

Senator WICKER. Thank you, Senator Sullivan. And I would only observe that Senator Ted Stevens would have been very pleased with that exchange with regard to the permitting process.

Senator Cortez Masto.

**STATEMENT OF HON. CATHERINE CORTEZ MASTO,  
U.S. SENATOR FROM NEVADA**

Senator CORTEZ MASTO. Thank you, Mr. Chair.

Welcome, Mr. Rosen. It's good to see you again. Thank you so much for taking the time to visit with me. And I will be in and out. I'm juggling two meetings at a time, so I apologize for the tardiness.

Mr. ROSEN. No problem.

Senator CORTEZ MASTO. But let me start with the conversation that we had in my office. As you know, Nevada has a number of emerging and exciting innovative sectors happening right now. Two of them include unmanned aerial systems and the next generation of vehicle technologies. To better understand how you will approach the regulatory and future funding decisions, could you share with me and all of us your perspective on innovation and transportation?

Mr. ROSEN. Sure. Thank you for that question, Senator. I think we're in one of the most interesting phases in a long, long time. There was this wonderful burst of transportation innovation 100 years ago with the Wright brothers and the automobile and so forth, and then, while there have been incremental improvements, we're suddenly seeing the application of digital technologies to the

transportation sector, as you alluded to, with the unmanned aerial vehicles and automated vehicles, and both cars and trucks.

And so we have to start thinking very creatively about how we accomplish some of the fantastic opportunities that exist for serving all Americans, but some obvious ones with regard to automated vehicles, for example, are people with disabilities or elderly or children who need to get places. And yet we know that there are a number of challenges involved with that, of which the first and foremost is safety, because you're not going to have consumer acceptance of these technologies without safety, but all these things that people have to think hard about, the privacy concerns, cybersecurity concerns.

And I think the challenge for governments generally is to both—how to foster the innovation of the private sector, how to enable that, while ensuring that the public is protected on these other concerns, especially first and foremost safety, which I see as job one for the Department of Transportation.

Senator CORTEZ MASTO. I appreciate that. And I don't disagree that when we're looking at moving in the path of innovation, we always want to have guardrails and protections in place for consumer safety.

But that brings me to my next question, which my colleague, Senator Blumenthal, I think was also talking to you a little bit about, is that cost-benefit analysis that goes into the regulations that you will be looking at when it comes to the safety of consumers and the riding public. And I'm curious how you weigh that. When you're making that cost-benefit analysis, in your perspective, how is that undertaken, and how much weight does that carry when we are looking at this type of analysis?

Mr. ROSEN. So I'll offer two thoughts about that. One is it's really important in the regulatory process to have the best available data and to be using the best information you have. And one of the great things about the Department of Transportation actually is that among government agencies, it has access to some really excellent data.

Some members of this Committee are undoubtedly familiar with NHTSA and auto safety. It has these tremendous databases of all the unfortunate tragic fatalities we have in auto accidents. It has databases from police reports. We have wonderful data on aviation in the Bureau of Transportation Statistics. And part of what we have to do is use the data to ensure we have accurate outcomes.

But I will say, as much as I am a supporter of cost-benefit analysis, I don't think it's an algorithm. I don't think you just plug it in, and if it's positive, you're done, and if it's negative, you're not.

I do think that as much as we strive for the use of good data, there is a need for some judgment and discretion. There are things that can't always be perfectly quantified. And so there is a need for judgment, and part of that is judgment of where things fit in the larger scheme of priorities because unfortunately it's a real fact of life in all realms that we don't have infinite resources, so the resources we have, we have to use wisely.

Senator CORTEZ MASTO. Thank you. I appreciate those comments. And then, finally, we had talked about this. As you well know, I-11, we are looking to have an Interstate 11 through Ari-



zona into Nevada, and it's an important project for the state of Nevada to open doors and improve our economy on commerce.

And I've heard the current administration talk about investing in our infrastructure needs. But the comment that I heard from the President was that we need to fix it first. And as you well know, investing in Interstate 11 is not fixing it first, it is investing in new projects that we need in infrastructure across the country.

So I'm just curious, your thoughts on fix it first. Is that how you feel about that? Is that the mandate that you're hearing? Or is it more of a broader infrastructure plan that includes new projects?

Mr. ROSEN. So I'm not yet a member of the administration, so I haven't been privy to conversations that would flesh out that. My own sense of that is, while the President is defining his priorities, I did not interpret that, unless I hear otherwise, as being a preclusion of taking into account the realities that there are parts of the country where growth is the driving consideration in infrastructure, and there are other parts of the country where refurbishment is the priority.

In the big picture, there certainly is a lot of repair that's needed, but I don't construe that as a citizen who is listening to the conversation, let's say, as saying that we're going to ignore the needs of places that are growing.

Senator CORTEZ MASTO. Thank you. And I see my time is up. I appreciate the comments today. And as I said in the office when we spoke, you're welcome to Nevada. We look forward to having you come out there as well. Thank you.

Mr. ROSEN. Thank you, Senator.

The CHAIRMAN [presiding]. Thank you, Senator Cortez Masto. Senator Cantwell.

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

Senator CANTWELL. Thank you, Mr. Chairman. And congratulations to the nominee.

Mr. Rosen, I wanted to ask you about oil train volatility. In the last administration, we worked very hard to try to address both through the Department of Transportation and FMCSA the necessary safety in making sure our communities don't have a Lac-Mégantic type situation. One of the issues is making sure that we understand the volatility of the product being shipped on our rail lines, and the Department of Energy and Highway Safety Administration is investigating the properties of crude oil that affect combustion, including volatility. We expect this study to be completed later this year. So we want to know how you will work with that information and protect our communities on a transportation issue?

Mr. ROSEN. Well, I think you raise an important question, that we all want to have safety in the transport of materials that are potentially hazardous. I am aware there were some regulations issued in recent years on tank car safety and the like, and I know that there are studies out there.

As I've mentioned, I'm not yet at the Department, so I'm not yet as current as I need to be, and I think the issue you raise suggests to me that that's another item that if I'm confirmed, would be something I would want to get with the Federal Rail Administra-

tion and have myself brought current on the issues so that I could participate in helping to assess, what are the next steps that are needed?

I assume that that's an ongoing issue that they're working in light of the report and the analysis, and I would need to, as I've said to some of the other Senators, take advantage of the fact that there are a large number of experts at the Department that are more knowledgeable on the specifics of that than I am and try to get in a position to help things move forward.

Senator CANTWELL. Well, I appreciate that. I hope you will. Our frustration has been both the DOT and FMCSA thought they didn't have the ability to regulate this product, so one of the reasons why we're doing the analysis is to show this level of volatility and its combustion does need to be regulated, but I would believe the DOT could do a more aggressive job today even without the study. But that aside, you should look it up and get more up to speed on that. I'm going to look forward to hearing more from you on that.

My colleague from Nebraska mentioned freight, and the investment that freight delivers to our economy. What are your views in continuing to make investments in this area of transportation and evaluating projects under the Nationally Significant Freight and Highway grant program?

Mr. ROSEN. So I really have, I guess, two sets of thoughts. Some are that we should implement the statute, that there are criteria and there are things in the statute, and we should follow them, but at a more general policy level, I think we're very fortunate in this country that some of our freight infrastructure is really privately held, and we see investment, and we have to try to facilitate it, and I'm thinking particularly of rail and pipelines as examples of that.

But then, of course, trucking is a huge part of freight movement, as is aviation, and so on, and I think that's part of the bigger picture we're talking about, of, what does an overall infrastructure proposal look like? And while I think I look forward to getting into that conversation if I'm confirmed, I don't yet know where that stands, and I would look forward to receiving input and trying to be a good contributor to the process, including taking that concern into account.

Senator CANTWELL. Well, I hope you would work to ensure that new infrastructure packages kept with that robust investment in freight infrastructure. It's really where a lot of congestion is. And I think the study and analysis was that you could have freight travel all the way from the West Coast to Chicago, but it would take the same or more amount of time to just travel through Chicago. So clearly freight can't wait when it comes to the competitiveness of, say, our Canadian ports, so—

Mr. ROSEN. Right. Right. We know there are bottlenecks that occur. We've had the experience of that at ports on occasion. And I think you raise an important issue to be taken into account.

Senator CANTWELL. Thank you.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Cantwell.

Senator Markey.

**STATEMENT OF HON. EDWARD MARKEY,  
U.S. SENATOR FROM MASSACHUSETTS**

Senator MARKEY. Thank you, Mr. Chairman.

Mr. Rosen, you have a long history both in government and on the private sector of defending private industry against regulations designed to protect consumers. In fact, when you first worked for the Department of Transportation, you touted the fact that you were involved in ending or withdrawing 180 potential DOT rulemakings.

And you've also demonstrated hostility to environmental regulations design to protect our air, our water, opposing greenhouse gas emissions regulations in your role at OMB, and representing the U.S. Chamber of Commerce in attempting to undermine climate change science in order to fend off potential regulations.

I know that Senator Blumenthal asked you to voluntarily recuse yourself from matters involving former clients and issues you worked on. I understand you would not agree to that. Is that true?

Mr. ROSEN. I think what I told Senator Blumenthal was that I would adhere to the ethics agreement that I had entered into that identifies where I have former clients, and that I would be recused, and that I would intend to bring, as I try to do in everything I do, the highest standards of integrity and professional responsibility, and I stand by that.

Senator MARKEY. OK. I guess my recommendation to you, sir, would be that you should recuse yourself in all cases where your independence is in question, which it is on matters where you've had prior clients and matters that you have previously worked on.

Let me now turn to climate science if I may. According to media reports, during the Monday evening briefing on the President's dirty energy executive order, the White House briefer said he was not familiar with the economic consequences of climate change impacts like rising sea levels and extreme storms.

Those impacts pose numerous risks to America's infrastructure in Massachusetts and throughout the country. For instance, roads, rail lines, and ports can be shut due to flooding. Extreme heat can degrade asphalt and weaken metal rail lines and bridges.

Mr. Rosen, are you familiar with the risk climate change poses to transportation infrastructure?

Mr. ROSEN. Well, Senator, I think what I would say is, much like many of the transportation issues that we've talked about at this hearing, I think that I'm in favor of protecting the environment, and I think that that's a common sentiment that many people have. I have shared in the opening statement, as an example, that I do drive a hybrid vehicle and have for many years.

So when you get into the specifics of the lists you were giving, I was trying to think the connections to transportation because my mind is a little bit fixed on that today, and I think you and I had some conversation about fuel economy as being the key area in which DOT has some responsibilities on that. And I think I mentioned to you that when I was General Counsel, DOT issued three cafe fuel economy rules back at that time.

Senator MARKEY. Well, let me just go back. Let me go back to *Massachusetts v. EPA*. That was the decision at the Supreme Court in 2007 where the Supreme Court ruled that the EPA had to make

a determination as to whether or not there was an endangerment to Massachusetts, to our coastline, to our infrastructure, that was posed by CO<sub>2</sub> going up into the atmosphere. So that decision came down 5 to 4 saying that they had to make that determination.

So if that's the law, which it is, and EPA then made that endangerment finding, then the question becomes, should the Department of Transportation build climate change into decisions made at the Department of Transportation in terms of the impact on infrastructure? We can begin with Massachusetts, but it was a ruling for the whole country.

Mr. ROSEN. Well, I'm familiar with the case you're referencing, and my recollection is the Supreme Court expressly talked about the fact that there would need, in light of the decision, to be coordination between NHTSA and the fuel economy rules and EPA and the greenhouse gas rules. And the Court contemplated that there would be coordination. And my understanding is that that has been part of the process in the years subsequent to that.

Senator MARKEY. Well, back in 2008 in March while you were still at OMB, the Department of Transportation released a report entitled, "Impacts of Climate Variability and Change on Transportation Systems and Infrastructure Gulf Coast Study." The report found that the expected impacts of climate change on transportation in just this one region of the country are striking.

The significant position of the Gulf Coast region's road, rail, and port network is at risk of permanent flooding if sea levels rise by 4 feet, and that includes more than 2,400 miles of major roads and 9 percent of rail lines.

So nine years after that, my hope is that the Department of Transportation leadership, no matter what their party affiliation, would recognize the importance of taking the consequences of climate change into account when making decisions about transportation policies and infrastructure. And I'm referring back to a Bush era study of what the impacts could be.

Mr. ROSEN. I'm not familiar with the actual study you're referencing, but I would, if I'm confirmed, look forward to looking into that and be happy to have further conversation with you.

Senator MARKEY. From my perspective, this is—you know, Hurricane Sandy is a good example of where if it was just off by a couple of degrees and hit Boston, hit Cape Cod, we would still be digging out. The costs were massive. The infrastructure damage was massive. And, again, that was at the heart of Massachusetts v. EPA, what would be the impact on our state? And we lose hundreds of miles of beach, you know, on an ongoing basis, and that's pretty much the challenge that we're going to have going forward.

The Department of Transportation understands that, especially when it comes to the issue of the fuel economy standards. You know, the less CO<sub>2</sub> that goes up into the atmosphere is the less danger there is going to be to any of this infrastructure. My fear is that the auto industry, notwithstanding having 700,000 new jobs since we bailed them out in 2010, and having a much higher fuel economy standard, it's just going to try to walk away from that commitment.

But it's not just a commitment to the jobs that were created, it's also going to be the commitment that they were making to making

sure we protect all of this infrastructure in our country, and I'm just really afraid that that's going to be a consequence unless the Department of Transportation is able to make that determination that the auto industry can meet these standards. It's just a National Academy of Sciences study that makes it quite clear that they can do so. So I just throw that out. I think it's critical. I think it's central to the long-term responsibility the Department of Transportation is going to have to our country.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Markey.

Senator Booker.

Senator BOOKER. I'm grateful, Senator Markey.

And, again, thank you very much for being here. It means a lot that you would be willing to serve your country. It's so wonderful to see Dr. Rosen here. This goes to what I always say, behind—in front of every accomplished man is a more accomplished woman looking over her shoulder saying, "Keep up, please."

You said during your opening remarks, which was music to my ears, that you think good communications between the Committee and the Department of Transportation is—I don't remember the exact superlative you used, but something you thought was important.

Mr. ROSEN. Absolutely.

Senator BOOKER. Well, I say that is music to my ears is because since the administration came into the office, a number of committee members have sent letters to the Department of Transportation on a variety of issues, some of them not seemingly controversial, but have yet to receive a response. And this is very problematic to me. This Committee I think functions well when we have a direct line of communications.

Would you commit to me right now on the record that you will be communicative and responsive to this committee and our letters?

Mr. ROSEN. Yes.

Senator BOOKER. Thank you. Positive Train Control, something that I think is really urgent, as someone who rides Amtrak myself, but also understands how critical it is up and down the Northeast Corridor. You have probably witnessed through the news some of the crashes we've had, some of them that might have been affected by Positive Train Control. It is important that the DOT continue to push this?

Mr. ROSEN. I think it's an important issue, that, like you, I have ridden Amtrak many, many times to New York and other places actually. And I have a daughter who lives in New York, so that's a train I like to take from time to time, even for pleasure.

But the short answer is Positive Train Control, you know, has been in the works for at least a decade. I think when I was at the Department as General Counsel, I went to a demonstration of the technology. My recollection is it was in Illinois. And, you know, I hate to think about how many years that's been. So I think it's an important issue. I would be very interested, if I'm confirmed, in working on the observation monitoring of where that stands, and would be interested in your input. If you think there are issues or concerns, I would look forward to working with you on that.

Senator BOOKER. Mr. Rosen, I bring it up for two reasons. One, because of the urgency I feel on this, and also because—and I'll submit this for the record if the Chairman is OK—is something you wrote about sort of the cost of regulations and that they shouldn't be articulated by agencies, they should be articulated by Congress. In this case—and you mentioned Positive Train Control as an example of that and the cost of the regulation, but the reality is, is that Congress requires the Department of Transportation, we have spoken on this issue, to move forward with Positive Train Control. [The information referred to follows:]

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**HEADLINE: MAJOR RULES DESERVE A VOTE:**  
REGULATIONS COSTING MILLIONS OF DOLLARS ARE CREATED WITHOUT CONGRESSIONAL APPROVAL

BYLINE: Jeff Rosen and Susan Dudley

**BODY:**

Every year, more than 60 federal agencies issue thousands of new regulations covering every sector of the American economy. The Small Business Administration estimates the cumulative costs of these regulations at more than \$1 trillion annually, or more than \$10,000 per household per year. These regulations are legally binding, yet they emerge from unelected officials in regulatory agencies; **Congress** never has to **vote** to approve them.

Over the last few decades, on average, between 30 and 40 of the new final regulations issued each year have been considered "**major**," with impacts of more than \$100 million. In the past year-and-a-half, federal agencies have issued 94 **major** final **rules** (59 in 2009, and another 35 already this year). The costs of many of these are measured in the billions and even tens of billions of dollars.

For example, last year the Department of Energy issued costly regulations restricting certain light bulbs, as well as standards for clothes washers, while the Department of Interior issued **rules** on alternate energy uses of the Outer Continental Shelf. The Department of Transportation issued a \$10 billion **rule** requiring railroads to use "positive train controls," and another \$1 billion **rule** requiring stronger car roofs (despite the DOT's analysis indicating the benefits would not justify the increase in consumer prices). This year, the DOE added another **rule** setting standards for pool heaters and water heaters, while the DOT and the Environmental Protection Agency issued a \$60 billion regulation increasing auto fuel economy, and the Federal Aviation Administration issued a \$7 billion **rule** to change aircraft equipage requirements. And the EPA issued **rules** to begin to regulate most of the economy to try to limit global warming.

Regardless of whether these **rules** are good or bad, there is no question they involve very significant costs for our economy, possibly slowing the recovery and hindering job creation.

Moreover, the Obama administration's current "Regulatory Agenda" identifies almost 4,000 regulations under development, 191 of which involve more than \$100 million each. The costs of these mandates sometimes dwarf the budgets of the regulatory agencies that produce them, yet these "off-budget" **rules** are not subject to the same scrutiny as on-budget spending. **Congress had to vote** to approve the nearly \$13 billion used to fund the Department of Labor in 2009, for example, but did not **vote** with regard to any of the 10 **major** final **rules** the department issued in the last year and a half. Throughout our government, regulatory agencies cannot hire staff or spend money without approval from **Congress**, but they routinely issue regulations that impose huge costs on the economy without congressional approval.

MAJOR RULES DESERVE A VOTE; REGULATIONS COSTING MILLIONS OF DOLLARS ARE CREATED  
WITHOUT CONGRESSIONAL APPROVAL The Baltimore Sun August 10, 2010 Tuesday

Our government was built on the dual principles of separation of powers - with "all legislative powers ... vested in a **Congress** of the United States" - and checks and balances. Over the last century, **Congress** has delegated more and more legislative authority to the Executive Branch, but it need not give up accountability for these administrative laws.

A procedural change where **Congress would have to vote** to approve high-impact regulations could restore a system of checks and balances to federal regulation. Sixty-eight members of **Congress** have proposed legislation that would accomplish this, requiring congressional approval under expedited procedures before **major** regulations can go into effect.

Critics of the bill, known as the "REINS Act," are concerned that **Congress** would not have enough time to **vote** on every **major rule**, and that the requirement would produce gridlock. However, over the last 18 months, **Congress** has found time to enact 210 new laws, including 58 **votes** to name Post Offices and other federal buildings. Surely a **Congress** that has time for such **votes** could make the time to **vote** on 59 important federal regulations that have the force and effect of law.

Not only would this give **Congress** more accountability and control over implementation of the legislative powers it delegates, but it would encourage fuller transparency and informed debate on significant regulations that have the power of law.

Susan Dudley, former administrator of the Office of Information and Regulatory Affairs at the White House Office of Management and Budget under George W. Bush, is director of the Regulatory Affairs Center at The George Washington University. Her e-mail is [sdudley@gwu.edu](mailto:sdudley@gwu.edu) Jeff **Rosen**, former general counsel and senior policy advisor at the OMB, is a partner at Kirkland & Ellis LLP. His e-mail is [jeff.rosen@kirkland.com](mailto:jeff.rosen@kirkland.com).

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**GRAPHIC:** Photo(s)  
Brendan Hoffman/BALTIMORE SUN

**LOAD-DATE:** August 10, 2010

Mr. ROSEN. Right.

Senator BOOKER. This is to me a life-or-death issue that I'm hoping that your commitment—and I ask it given the letter you wrote—is this is not an agency-driven initiative, this is something Congress has told the Department of Transportation to do, and something that this Congress, in a bipartisan fashion, has allocated resources to get done. I'm hoping that I can get your commitment that the Department of Transportation will do what Congress has indicated it should do.

Mr. ROSEN. I have said many times I have a somewhat simple view that if Congress has written a law, then administrative agencies should implement the law.

Senator BOOKER. All right. Can I just talk to you really quickly about the Gateway Program? This is something that is, as I said in my introductory remarks, profoundly important. The tunnels going between the Hudson River and through the Portal Bridge, we've got 107-year-old tunnels across the busiest river crossing in all of North America. It's not just important to New Jersey commuters, it's important to the region. The infrastructure is severely damaged.

And this is the challenge, is we have about three quarters of a million people that go across those tunnels or that river crossing every day. It moves a workforce that contributes \$50 billion to the gross domestic product.

But this is the critical issue, is that if we don't replace those tunnels before the end of their lifespan—which some folks are thinking about 15 years because of the damage that Superstorm Sandy was, and I've gone through those tunnels and reviewed them—if we don't do it proactively and end up doing it reactively, in other words, we have to shut down a tunnel to repair it, it will cause a traffic "Armageddon" in the region and hurt the American economy to the tune of about \$100 million a day in lost productivity.

Do you understand the urgency of a project like this?

Mr. ROSEN. With regard to the need and the problem center, yes. I think that we're talking about a crucial part of our overall mobility in this country. And so the need to do something I think is clear. I'm very interested, and I'm glad you raised it, I've only recently started to learn more about the proposals itself for how the project would be done, and I'm very interested to learn more about what the ideas are. I know it's multimodal. I'm not as well-versed as I need to be to understand what the proposed fix is. But on the question of, is there a need? You're talking about, as you said, 100-year-old tunnels.

Senator BOOKER. So I would love to have the opportunity to sit with you, Mr. Rosen, and talk to you about this project—

Mr. ROSEN. Agreed.

Senator BOOKER. That's all I need. And now I am treading in very—basically treading upon the Chairman over here's good graces to ask one more line of questioning. He is perhaps the fittest Senator in all of Washington, and so he intimidates me in multiple factors, not just his seniority, but also the fact that he might be able to take—a former tight end like myself. So if that's OK with you, can I go to one—

The CHAIRMAN. Absolutely.



Senator BOOKER. Thank you, sir.

The CHAIRMAN. With that introduction.

Senator BOOKER. Yes. So truck safety is a serious concern of mine because of what's happening right now on our highways, which we're seeing actually, especially with the technology we have at our behest, especially with the ways we have to control it. Unfortunately, we're seeing about a 57 percent increase in people injured by crashes since 2009. This problem is growing worse and worse and worse. And I've met with a lot of these families. I met with one person just yesterday who have seen sort of the devastating impact of what a truck crash on our highways can mean. We're talking to the tune of thousands of people.

In 2015 alone, 4,067 people were killed in crashes involving large trucks. Again, I'm not pointing blame to the truckers, to the cars, it's just happening on our highways. It's a problem that's getting worse. Do you have in your mind a plan to try to address this serious issue of mass carnage in the United States of America happening on our highways involving trucks?

Mr. ROSEN. Well, I appreciate your concern, and I think it's a valid one. I've wondered myself. In addition to trucks, we've just seen an upturn in the last 2 years of auto fatalities generally, of motor vehicle fatalities, and I've wondered after, you know, we had about a decade of continuous decline. And I think it's a great concern why that has turned in the other direction, that we're having an increase, and trucks are a part of it. I know you are right.

So I think, if I'm confirmed, one of the things I would like to do is take advantage of the tremendous data resources that DOT has and begin some exploration as to, what are the reasons? Because if we're going to solve the problem, we have to understand what's causing the increases, and I think that needs some very timely exploration because, you're right, we don't want that trend line to continue.

Senator BOOKER. So four yes-or-no questions, and I'm done. And, again, perhaps when we meet and talk about Gateway, you and I can have a conversation a little bit more on this.

Mr. ROSEN. Sure.

Senator BOOKER. Just yes-or-no questions. Do you support efforts to target enforcement at the high-risk companies; in other words, those companies that are showing demonstrably that they're involved in significantly more crashes, and some of the great companies we've had testify before us? Do you support efforts to target enforcement on those higher risk companies with existing congressionally mandated rules?

Mr. ROSEN. So what I would say about that, Senator, is I think enforcement can be an important tool in trying to address these issues. What's the right tool, I need to get better educated, and, as I've said in response to some other questions, take advantage of the Department's expertise because right now I'm not there. And so I wouldn't want to pretend that I have all the answers without having the benefit of the expertise of people at the Department.

Senator BOOKER. I appreciate that.

Mr. ROSEN. But I think as a philosophical matter, let's say, what I know from experience is that enforcement can be an important piece of the puzzle.

Senator BOOKER. I appreciate that. And, again, your value of congressionally mandated rules and the importance of the intention of Congress in your deference in your testimony and words to me earlier, I hope that that would spill over to the rules.

Do you support the entry-level driver training rule for new drivers that exists right now?

Mr. ROSEN. I have to say something of the same thing, in that I'm aware that there was a rule finalized late at the last administration, but it's a pretty lengthy rule. And although it's on my to-do list, I have not read it. So I think it would be premature for me to offer a bottom-line view, but I think it's another one of these issues that's important, and if I'm confirmed, I would intend to get in a position to know what I think of it.

Senator BOOKER. So I think you've taken away my ability to ask these last two questions, but things you might want to familiarize yourself with. But I'll say them both at once and then run quickly just in case Senator Thune is not indulging me.

Do you support the electronic logging devices rule, which switches from paper logs to electronic logs, something I know you have managed, I've managed, seeing you've managed multiple organizations? Having access to data, objective data, that's not kept on paper logs, you've got to believe that that's important.

Mr. ROSEN. I do have to give sort of the same answer with the one additional thing, in that trying to get better educated on that issue, I did see that one of the courts, I think the Seventh Circuit, recently affirmed a challenge to that rule. So I'm interested in the topic, but I am not well briefed enough yet to give you a bottom-line set of observations.

Senator BOOKER. And the last is, do you support moving forward with congressionally mandated rules in general, or is the position you're presenting to me that you want to read the rules and evaluate them to see if they should be enforced or not?

Mr. ROSEN. No, I wouldn't put it that way. I think that if Congress has said to do something, it should be done. I think the part I was reserving judgment on, let's say, is, is it the most effective and efficient way to do what Congress said to do? If you can achieve your objective in a better, more effective, quicker, less costly way than what's done, then you should try to do that. And I'm saying I don't have my arms around, what do I think about have they implemented what Congress said to do in the best way? But on the question you asked, which is, "If Congress says to do something, should you do it?" the answer is yes.

Senator BOOKER. Sir, just in closing, you are a wise man. I say that simply because of who you married. I suspect you will be confirmed. And the best thing I've heard right now is should you be confirmed, you and I will sit down and have two reasonable men having a conversation about how to best move this country forward.

Mr. ROSEN. I would very much look forward to that, Senator.

Senator BOOKER. Thank you very much.

And I want to say for the record how grateful I am to Senator Thune.

[Laughter.]

The CHAIRMAN. Thank you, Senator Booker. You are eminently reasonable.

[Laughter.]

The CHAIRMAN. So thank you.

Next up is Senator Duckworth.

**STATEMENT OF HON. TAMMY DUCKWORTH,  
U.S. SENATOR FROM ILLINOIS**

Senator DUCKWORTH. Thank you, Mr. Chairman.

Mr. Rosen, as you know, Illinois is one of the most important states in the Nation when it comes to transportation infrastructure. We have one of the world's busiest airports, we are at the center of the Nation's freight rail network, and we also are home to one of the country's most important transit systems. That's why I was very alarmed by the President's budget blueprint for 2018, where he seeks to cut the Department of Transportation's budget by about 13 percent.

My Illinois stakeholders are deeply concerned with the administration's proposal, and they are very concerned with the plans to eliminate critical DOT programs. What they want to know, and as their Senator, I need to know, whether, if confirmed, you will make a strong commitment to stopping these harmful cuts that threaten job creation and urgently needed infrastructure projects?

Mr. ROSEN. So, Senator, I'm going to maybe elaborate on something I've said earlier, which is I think in these issues, it's sometimes important to separate the ends and the means. I think you've expressed, and I've heard other Senators express, concern about there are important issues you care about, freight mobility, or some of the other issues that are addressed in the President's budget. And I think that I would like to say that I would look forward to trying to work on ways of addressing the policy outcomes we want, which is separate than the means of whether the particular budget programs that are addressed need to be changed, reformed, improved upon, and so on.

And so as a nominee of President Trump, I support the President's budget, but that's not to say that there aren't other ways to address some of the concerns you and other Senators may have. And, of course, all budgets, all appropriations I should say, come before the Congress, and the Congress has to approve them.

So I think it's inherently a collaborative process, and I would hope we could work together, notwithstanding that you differ with the President's budget, and I'm a nominee of President Trump.

Senator DUCKWORTH. So my understanding is you support the 13 percent cuts in the President's budget to DOT, but you think that there are other ways to improve the transportation infrastructure system in this country outside of the budget, what's listed in the budget? Is that—

Mr. ROSEN. Well, I should take a half step back because I've said this before, and I may have said it earlier, I'm not currently at DOT, so I wasn't a participant in the budget process, but, of course, as the President's nominee, I am going to support the President's budget. I think that's what you would expect. And I'm saying I don't think that means, however, that you should think that's closing the door on being able to discuss how we achieve policy out-

comes that we may all want in a consensus way, or least in a majority way at least.

Senator DUCKWORTH. Well, I find your support for this budget with the significant cuts deeply concerning. And as members have discussed all afternoon, we are very concerned that creating new jobs, supporting small businesses, and generating economic growth, if you support those things, cutting the DOT budget is absolutely the last thing we should do.

I am also concerned about the administration's proposal to eliminate the successful TIGER grant program that has proven incredibly popular with state and local governments across this country and in Illinois. Every year, the demand for TIGER grant funding greatly exceeds the amount of funding available.

In 2016 alone, DOT received 585 applications from all 50 states requesting \$9.3 billion in total funding for the program. This was almost 20 times more than the actual amount of TIGER funding available that year, which was \$500 million. TIGER is a great deal for the American taxpayers. It's cost effective and competitive. Projects are selected based on performance, and TIGER promotes matching funds.

Mr. Rosen, yes or no, if confirmed, will you support the administration's proposal to eliminate the TIGER grant program in 2018?

Mr. ROSEN. Well, Senator, as I've tried to say throughout this hearing, I think, if I'm confirmed, I would look forward to participating in the process of helping develop the President's overall infrastructure proposal, and I see infrastructure as an area both where there is wide agreement on our national needs and an area that has an opportunity for bipartisan joining together to get something done. So——

Senator DUCKWORTH. Well, I don't want to go to that point.

Mr. ROSEN. No, no, I—OK.

Senator DUCKWORTH. Just answer yes or no, do you support the proposal to cut, to basically eliminate the TIGER grant program? You said you supported the 17 percent—the budget with the 17 percent cut. So do you support the elimination of the TIGER program because that's what the White House has put forward?

Mr. ROSEN. Well, perhaps I'm not communicating well because what I'm trying to say to you is that I think in the infrastructure proposal there can be multiple ways of addressing the concerns you have, the policy outcomes you have——

Senator DUCKWORTH. I'm not asking about the policy outcomes. I'm asking specifically about the President's proposal to eliminate the TIGER grant program.

Mr. ROSEN. OK. So let me address the TIGER grants. Those are discretionary grants that DOT makes, but it's not——

Senator DUCKWORTH. Do you support his proposal to eliminate them, yes or no?

Mr. ROSEN. No, no, but——

Senator DUCKWORTH. It's simple. You're his nominee. You just said that you're willing—that you support his 17 percent cut to DOT in his budget. Do you support his proposal to eliminate TIGER, yes or no? It's simple.

Mr. ROSEN. Senator, what I——

Senator DUCKWORTH. If you're going to put that money back somewhere else, that's a different discussion, but do you support his proposal to eliminate TIGER grants?

Mr. ROSEN. What I'm trying to tell you, Senator, is that I think that the discretionary grants to achieve the kinds of projects that I think we're all interested in, there are multiple ways to get at that. I mentioned earlier there is the FASTLANE grants program that was authorized in the FAST Act a year and a half ago. There are ongoing—

Senator DUCKWORTH. His proposal cuts those as well.

Mr. ROSEN. I'm sorry?

Senator DUCKWORTH. His proposal cuts those as well.

Mr. ROSEN. I would need to check that. I don't remember that.

Senator DUCKWORTH. OK. Well, I would recommend that you take a look. But I'm deeply concerned that you have said that you will—that you support the President's 17 percent cut to DOT, and now you won't answer the question of whether or not you support his proposal to eliminate the TIGER grant program. I'm overtime.

Thank you, Mr. Chairman. I yield back.

The CHAIRMAN. Thank you, Senator Duckworth.

My understanding is the FASTLANE is not part of that. Yes.

Mr. Rosen, I want to thank you for being here.

And I want to thank Senator Wicker for serving as Chair.

I apologize for getting here late, but I was actually with Secretary Chao, and the Department had their 50th anniversary celebration today, so it was a great opportunity to reflect on the DOT's accomplishment of the past 50 years, and some of which you've had a role in and been a part of, and to look toward the new challenges ahead, but the event also served as a warm welcome back to the Department for Secretary Chao.

As was highlighted at the event, Mr. Rosen, if confirmed, you're going to have the opportunity to help lead the Department at a critical time as we continue to facilitate and promote the safe and efficient movement of goods and people throughout the country and around the world.

Decisions you make are going to help affect our Nation's economy and the individual lives of Americans on an almost daily basis, be it in the agricultural producers from my home state of South Dakota, who need to move their products to the marketplace, or the commuters, who count on a safe and reliable passenger rail to get them to and from work each day, or families who are taking yearly vacations who rely on affordable and safe flight options. Those are all things that are under the Department's very vast jurisdiction.

And in addition to tackling some of these more traditional responsibilities at the Department, you're also going to be faced with helping to usher in new ways to move goods and people, like UAVs and autonomous vehicles, in a manner that is not only safe, but also fosters innovation and economic development.

So needless to say, the Deputy Secretary of Transportation is going to be very busy. Mr. Rosen, are you ready for the challenge?

Mr. ROSEN. Yes, Senator. I would like to think I am. I appreciate your comments, and I appreciate your multitasking to be over at the Department and here on the same day.

I felt when I was asked if I would take on this challenge that it was almost the opportunity of a lifetime in that it brings together so much of what my experience and background had been in. The Department is a regulatory agency, it's an infrastructure agency, it runs the air traffic control, I've worked there before, and I've worked at OMB before, and I see it as a chance to just bring together a lot of things, and I said in my opening remarks, for me a chance to try to contribute back for something that I just think is hugely important for every single American.

The CHAIRMAN. All right. Last month, I announced that Senator Peters and I had been working together to promote innovation, ensure safety, and identify ways to foster regulatory flexibility for the testing and development of self-driving vehicles. As the Department reviews the self-driving vehicle guidance issued last year, what challenges do you anticipate with this technology? And if confirmed, how would you address them?

Mr. ROSEN. So I think this technology presents just tremendous opportunities, and if it's successful, would be a hugely exciting development, at least in some circumstances that ultimately the markets will decide which it's most successful in.

But as you point out, there are several challenges to be dealt with, and the biggest among them is safety because if people have given up control of the wheel, consumer acceptance is going to depend on people being satisfied that the vehicles they're in are safe. And I think that there are other factors, of course, that are important as well. Some of them are product concerns and others are actually governance concerns.

But as you know, there was a NHTSA guidance published late last year, and it's only a guidance, so it's not actually a binding regulation, and it's certainly not a law. And I think that one of the things we need to do is bring together some of the expertise and make sure we're creating a regulatory framework that facilitates innovation for the private sector to sort out winners and losers as to which technologies prevail and are the most successful, but in a way that ensures the public is protected on both safety and other measures.

And so when I learned that you and Senator Peters were working on that, I applaud that you're getting it underway, and I would look forward to conferring with you about that.

The CHAIRMAN. During the previous administration, we've seen the Department take some short cuts and use outdated, incomplete, or inaccurate data to push forward seemingly predetermined regulations. And I know the depth of your regulatory background, you've responded to some questions already about that, but could you elaborate on how you plan to help manage the regulatory development process at the Department to ensure it uses the best available data in robust analysis to help inform the regulatory decisions that come out of the Department?

Mr. ROSEN. Yes. Thank you for that question. I've got to think hard on how I keep that under 5 hours or so.

The CHAIRMAN. Yes.

[Laughter.]

Mr. ROSEN. I think in a nutshell, you know, President Trump has issued a couple of executive orders to set a framework that will

cause prioritization of what's important in regulation. And then it's up to the agencies, including the one that, if I am confirmed, I would go to, to in the process focus on where the needs are, I mentioned this earlier, use the regulatory agenda as a tool, not just for transparency of the public, which I see is hugely important, but as a management tool so that costs, if there need to be costs, they are prioritized, they consider whether there are old rules that should be taken out, and they are spread out so that a particular industry doesn't get a large cost burden in a short amount of time.

And to do that, you need both management, but you then, as I think you alluded to, Senator, you need really good data. And the data comes from two places. The Department has its own actually wonderful datasets that are available, and they have to be used and accessed and used properly. But the other is stakeholders bring tremendous amounts of knowledge from their industries or sometimes as critics of the industries, but from a variety of sources. And part of what has to happen in the process there is a process that allows enough time and engagement opportunity for people.

And when Senator Fischer was here, I was mentioning she was a proponent of some provisions in legislation that provided earlier opportunities, particularly I think it was in the truck safety area, to participate in the rulemaking process so that the best data is available, and I think that's how you get to good outcomes and robust analysis and rules that are more likely to command consensus.

The CHAIRMAN. I want to associate myself with some, I think, questions and comments that have already been made by some of my colleagues prior to my arrival here dealing with connectivity for rural communities. And, of course, in a state like South Dakota, it's vital for our economic well-being.

The President's budget did propose eliminating the Essential Air Service program, just like it did when you were at DOT and OMB the last time. And I agree that EAS could benefit from reform, but it does make a huge difference in some of our communities, including our state capitol of Pierre.

And so I want to put on your radar screen the interest, high level of interest, and concern that many of us on this committee and across the entire United States Senate have with that proposal in particular, but others as well, which you've heard discussed at some length I think during the course of this hearing. But those are programs, and this Committee, in terms of its representation, represents a lot of rural communities, small areas that are connected and that do depend heavily upon the EAS program. So I just want to make sure that I echo what's already been said by some of my colleagues who preceded me.

I want to just say that we want to, as quickly as we can, get your nomination on our hearing—or on our markup next week, and so I'm hoping that we can get responses, questions for the record responded to as quickly as possible. Members of the Committee, if they can, and I'll say this to the members of their staffs who are here, that if we will keep the hearing record open until March 31, which will be this Friday, and encourage Senators to get their questions in, and then if you could get the responses back as quickly as possible, we'll try and proceed in a way that enables us to

process your nomination at our markup next week, and hopefully get you across the floor and into that position as quickly as possible.

So thank you for being here. Thanks for your willingness to serve. And we look forward to working with you on a whole range of issues that are critical to not only public safety, but also to the economy of this country and making sure that we have a vibrant, robust economy that, of course, depends upon solid infrastructure and good decisionmaking and policymaking by people in your Department.

So thank you. And with that, this hearing is adjourned.

Mr. ROSEN. Thank you very much, Senator. I look forward to working with you if I am confirmed.

The CHAIRMAN. Thank you.

[Whereupon, at 4:22 p.m., the hearing was adjourned.]



## A P P E N D I X

RESPONSE TO WRITTEN QUESTION SUBMITTED BY HON. DAN SULLIVAN TO  
JEFFREY A. ROSEN

*Question.* The public transportation needs of Alaska, like everywhere else, far exceed resources. Federal Transit Administration urbanized area formula funds for Anchorage for this year and last year are held up, creating strains that increase by the day. The Alaska Railroad has asked FTA for an administrative solution that will allow these funds to flow again. Under this solution, the funds would flow to Anchorage's two FTA recipients, the Alaska Railroad and the Municipality of Anchorage, the way they always have, and this would change only if the Alaska Railroad and the Municipality of Anchorage agree to a change.

It is my understanding that FTA made a prior determination that it lacked the authority to direct the allocation of the funds, absent agreement of the two parties. I have written to the Secretary requesting that DOT review the authority to allocate funds between the parties. Otherwise, this may become a matter of who blinks first and Congress certainly did not intend that brinksmanship would drive how these funds are split. A fair default method may be exactly what is needed for the parties to ultimately have a true meeting of the minds over a better long-term approach.

If confirmed, will you please review the authority of FTA to determine an allocation between the parties and consider the suggested solution presented by the Railroad as a way to get FTA formula funds flowing again for public transportation in Alaska?

*Answer.* Yes. I have been told that the suballocation of FTA urbanized area formula funds between recipients that are within the same urbanized area, such as Anchorage and the Alaska Railroad, is a local decision based on a determination of local need. If I am confirmed, I will review the Department's past activities related to this issue and whether the Department has authority that may help resolve the apparent impasse.

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RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. BILL NELSON TO  
JEFFREY A. ROSEN

*Infrastructure Funding.* President Trump has talked about investing \$1 trillion in our infrastructure. The President's recent budget proposal, however, would slash infrastructure funding. These cuts will hurt many projects in Florida.

*Question 1.* If confirmed, what would your recommendation be to the President on how to invest in infrastructure?

*Answer.* In addition to my responses in the pre-hearing questions and my remarks and responses at the nomination hearing last week, I would add that I agree that the current state of transportation infrastructure needs to be addressed to keep our Nation's economy strong. If I am confirmed, I would expect to play a role in the development of the Administration's new infrastructure proposal that would direct substantial amounts of money from several sources to leverage public and private investment in infrastructure.

*Question 2.* Do you support funding for Amtrak and transit grants?

*Answer.* Intercity passenger rail has an important role to play in our national transportation system, as do transit systems. As I have previously stated in responses to the Committee, however, it would be premature of me to respond to specific funding questions as a nominee who is not fully current on recent developments at Amtrak and in the transit sector. I do understand that both passenger rail and transit systems are important issues, and I believe they deserve attention as the Department shapes its transportation policies.

While the Administration's budget recommends cutting funds for several programs, involving Amtrak long-distance routes and programs within the Federal Transit Administration, the President will also be proposing what I understand to

be a comprehensive infrastructure initiative. If confirmed, I would hope to be involved in the development of the new initiative.

*Question 3.* At the hearing, in response to questions about the President's budget cuts, you indicated that the upcoming infrastructure proposal would address larger infrastructure funding issues. If confirmed, will you provide details on how the infrastructure proposal will address these programs?

Answer. If I am confirmed, I would expect that I would participate in the development and implementation of the President's infrastructure proposal. If confirmed, it would be my intention to work collaboratively with Congress on this important initiative.

*Safety.* I appreciate your comments at the hearing about working in a bipartisan manner. However, I am concerned that the Department has slowed and in some cases rescinded important safety rules without first having a discussion with the Committee of jurisdiction on these issues. For example, the effective date of the Entry Level Driver Training rule was recently delayed until March, despite this safety rule being a product of an extended negotiation between the Department, industry, safety, labor, and others. Additionally, the Department recently rescinded the Safety Fitness Determination rule that would help the Department focus enforcement on carriers with a higher crash risk.

*Question 4.* If confirmed, do you commit to brief the Committee in a bipartisan manner in advance of delaying, rescinding, or repealing any safety rule?

Answer. If I am confirmed, I would strive to work with the Committee, as well as all stakeholders and the public, on safety issues, including discussions about proposed regulatory actions.

*Wildlife Crossings.* In 2016, a record 32 panthers were killed by cars in Florida. We are working very hard to bring this endangered species back from the brink of extinction, but that could be wasted effort if we are not able to protect panthers from being hit by vehicles. That's why wildlife crossings are such an important conservation tool for panthers, black bears, and other animals.

*Question 5.* Do you support funding or resources for wildlife crossings, especially along roads like Alligator Alley (I-75) that would otherwise create habitat fragmentation?

Answer. It is my understanding that State DOTs can use Federal funds to implement measures (primarily driven by safety concerns) to reduce wildlife collisions. However, this is an issue I would want to learn more about before responding more fully to your question about Federal funding for wildlife crossings that create habitat fragmentation, and if I am confirmed, I will plan to do so.

*Air Traffic Control.* In its recent budget proposal, the administration expressed support for shifting Air Traffic Control services away from the Federal Aviation Administration. I have long expressed my concerns with such proposals.

During last year's debate on this issue, the Department of Defense also expressed concerns about how a private air traffic control entity would ensure that national security remained a top priority.

*Question 6.* Despite the administration's proposal, do you share my concerns about privatizing Air Traffic Control services?

Answer. As Secretary Chao indicated in her responses to Committee members following her nomination hearing, there will be a thorough Administration review of these issues, including any impact on the Department of Defense. If confirmed, I would hope to assist the Secretary in the extensive evaluation of the details any reform proposal would entail. I share your view that national security will be a critical consideration.

*Aviation Consumer Protection.* We have to protect the flying public, particularly when it comes to requiring clear disclosure of ancillary fees on activities like checking a bag or picking a seat. It is also important that the Department complete its rules on refunds for delayed baggage and family seating, which are required by the Federal Aviation Administration extension.

*Question 7.* Do you believe airlines should do a better job of disclosing fees? Do you believe current airline ancillary fees are fair to consumers?

*Question 8.* If confirmed, will you ensure that DOT remains committed to vigorously protecting consumers through enforcement and regulatory action?

*Question 9.* In January 2017, the Department of Transportation issued a Supplemental Notice of Proposed Rulemaking (SNPRM) that would require airlines and ticket agents to disclose fees for a first checked bag, a second checked bag, and a carry-on item when providing airfare information. On March 2, 2017, the Department indefinitely suspended the comment period in this proceeding. Do you believe

that consumers and other stakeholders should have an opportunity to comment on this proposal?

Answer. If confirmed, I will work to ensure that DOT remains committed to vigorously protecting consumers through enforcement and regulatory action. I believe we had a strong record on this when I was previously at DOT as General Counsel. My understanding with regard to the suspension of the comment period on the Department's SNPRM on "Transparency of Airline Ancillary Fees" was that it was to allow the new Administration the opportunity to review and consider this action. I am not yet aware of what next steps are planned by DOT, but will look into that if I am confirmed. If I am confirmed, I would look forward to working with this Committee to ensure a healthy and competitive airline industry where consumers have access to timely and accurate information on which to base their purchasing decisions.

*Takata.* The National Highway Traffic Safety Administration (NHTSA) has faced the challenging task of coordinating the Takata airbag recalls.

*Question 10.* How will you prioritize the driving public's safety in your handling of the Takata airbag recalls?

Answer. As I have said before, the public's safety is and ought to be DOT's top priority. After my nomination hearing, I have been told that NHTSA has set up a prioritization schedule for Takata, under a consent order, to declare the inflators defective with respect to age of the inflator and geographic location of the affected vehicles. Likewise, that affected auto manufacturers must comply with an inflator replacement schedule under a coordinated remedy plan that removes and replaces the oldest and most dangerous inflators first and then completes the entire recall in an accelerated fashion by 2019. If confirmed, I would expect NHTSA to continue to address this issue with a priority focus on safety.

*Question 11.* Do you think NHTSA needs more resources to effectively carry out its statutory safety mission?

Answer. If confirmed, I intend to receive detailed briefings from NHTSA regarding all aspects of its safety mission, and what resources it has or needs. I can assure the Committee that safety is a top priority.

*Conflict of Interests.* Mr. Rosen, you have had a long and distinguished career. With that career comes certain conflicts that may require recusal from some actions you may be asked to handle if confirmed as Deputy Secretary, such as your past work challenging both the chemistry and the law regarding greenhouse gas emissions from vehicles. This is an issue that the Department will work on.

*Question 12.* Do you plan to recuse yourself from any direct involvement in the NHTSA mid-term review process? If not, why?

Answer. Because I was not yet at DOT, I am not current on the status of the NHTSA mid-term review process. Moreover, in my previous professional work as a lawyer, no client had retained me to participate in NHTSA's mid-term review process. If I am confirmed, I will comply with my agency Ethics Agreement, which was submitted to the Committee, along with other disclosure documents, and which addresses when I will and will not be recused.

*Federal Preemption.* In 2005, you were quoted in *The Washington Post* as supporting efforts to add preemption clauses to Department of Transportation regulations that could stop states from enforcing their own safety standards, as well as potentially overrule state tort laws and remedies.

*Question 13.* What is your current position on the use of preemption clauses in safety regulations promulgated by the Department?

Answer. Ultimately the courts make the determination of whether Federal law preempts a particular State law. The goal is to have the laws enacted by Congress properly interpreted and effectively implemented. There are times national uniformity is important or necessary, and other times when states play a vital role. There may be instances in which statements by the agency about the preemptive effect of a Federal regulation may aid the courts in making such determinations. However, in my view, it is often most helpful to make a case-by-case determination about this issue, or sometimes a category-by-category determination.

*Climate Change.* Mr. Rosen, climate change is already having an impact on a number of coastal states, including Florida. In Miami Beach, for example, we are seeing increased flooding due to sea level rise.

The vast majorities of scientists agree that man-made greenhouse gas emissions from a variety of sources are causing climate change and that emissions from motor vehicles represent nearly one fifth of all U.S. emissions.

*Question 14.* What are your thoughts on this issue?

Answer. As I said at my nomination hearing, I believe that we should try to be protective of our environment. Please refer to my remarks and responses at the

nomination hearing of March 29, 2017. I would add that I think that this area should be informed by empirical data and sound science.

*Question 15.* What role do you believe the Department of Transportation should play in mitigating the threats posed by climate change?

Answer. With regard to motor vehicles, Congress enacted the Energy Security Act of 2007 and the Energy Policy Conservation Act of 1975 that established fuel economy rules. It is my view that DOT should implement those laws (unless Congress changes them).

*Responding to Senators' Requests.* As referenced during your confirmation hearing, there are a number of outstanding requests to the Department of Transportation from members of the Commerce Committee, including the following:

- 1/30/2017 Letter from Senator Nelson to Secretary Chao
- 2/15/2017 Letter from Senator Schatz to DOT's General Counsel
- 2/6/2017 Letter from Senators Baldwin *et al.*, to Secretary Chao
- 2/14/2017 Letter from Senator Baldwin to Secretary Chao
- 2/27/2017 Letter from Senator Markey to Secretary Chao
- 3/30/2017 Letter from Senator Nelson to Secretary Chao

*Question 16.* Will you commit to promptly responding to all letters from members of this Committee?

Answer. One of the things I came to appreciate from my prior public service was the importance of DOT officials having good communication and working relationships with the members of Congress, and I would certainly regard that as an important part of my job if I am confirmed to serve again at DOT.

*GM Product Liability.* In response to Question 8 of my prehearing questions, you noted that you represented General Motors "In numerous cases, but not in recent years." One of these cases was *Bishop v. General Motors Corporation* (E.D. Ok. 1994). In that case, it appears that you argued for a protective order that would have enjoined the taking of a videotaped deposition of a former GM employee, Ronald Ewell, based on his employment agreement in a case involving the failure of seatbelts and door latches used in GM vehicles.

*Question 17.* Do you believe that these types of employment agreements should remain valid and enforceable in cases where government regulators, such as NHTSA, are investigating defects and in civil lawsuits alleging defects?

Answer. My recollection is that Mr. Elwell, a disgruntled former employee of GM who had previously expressed support for GM's product design, was permitted to testify in some cases, and his inconsistent testimony was impeached. It is also my recollection that NHTSA had previously had an opportunity to interview Mr. Elwell. I do not recall all the specifics of the Bishop litigation, which was more than twenty years ago. In terms of whose testimony should be permitted and under what circumstances in legal proceedings, my view then and now has been that judges should make those decisions in accordance with the applicable law.

*Question 18.* In addition to that case, please list any other product liability cases in which you have served as counsel to General Motors (please include caption, venue, date, and summary of case and disposition).

Answer. Please see my response to question 8 of Senator Nelson's Pre-Hearing Questions. Because it has been more than a decade—before 2004—since I last appeared in court as counsel for General Motors, I do not remember all such cases. One example would be: *Khan v. General Motors Corp.*, No. 30509 97 (Sup. Ct. N.Y. 1990), where the defendant GM won a defense jury verdict against allegations of design defects in seats and seat belts of all Oldsmobile Cutlass Cieras.

*Congressional Review of High-Impact Regulations.* In a September 2, 2010, opinion article in the *Atlanta Journal-Constitution* titled, "Costly Federal Regulations Escape Congressional Review," you stated that a "procedural change where Congress would have to vote to approve high-impact regulations could restore a system of checks and balances to Federal regulation."

*Question 19.* Is it your current position that the Department of Transportation should not issue any "high-impact" safety regulations without express Congressional approval?

Answer. No. My point in the article was that Congress should have a role in major Federal regulation that impacts the economy, not that Federal agencies should not regulate where needed.

*Prepared Remarks.* On your Commerce Committee Questionnaire, you were asked to list speeches that you have given on topics relevant to the position for which you have been nominated.

*Question 20.* Please provide a copy of prepared remarks or a transcript, video, or audio of delivered remarks for the following events:

- a. Heritage Foundation's Regulatory Working Group on "OMB's Regulatory Review Process" (April 19, 2007)
- b. Heritage Foundation Program on "Helping or Hurting Consumers? Destroying Federal Preemption One Industry at a Time" (Aug. 5, 2009)
- c. U.S. Chamber of Commerce program on "Restoring Balance to the Regulatory Process" (March 22, 2011)
- d. George Mason University program "Regulatory Boot Camp for Policy Advisors" on "Reform—The Path Forward" (April 1, 2015)
- e. U.S. Chamber of Commerce's Joint Fall Meeting on "Regulation: Who Decides?" (Dec. 9, 2015)

Answer. Some of these were informal remarks for which I have not located a transcript or video, such as items a and e. The Heritage Foundation program from August 5, 2009 was available online at <http://origin.heritage.org/multimedia/video/2009/08/hurting-or-helping-consumers—destroying-federal-preemption>; the George Mason program from April 1, 2015 was available online at <https://www.mercatus.org/video/regulatory-bootcamp-panel-iii-reform-path-forward-1>; and my slides from the March 22, 2011 U.S. Chamber program will be provided.

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RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. AMY KLOBUCHAR TO  
JEFFREY A. ROSEN

*Question 1.* Aviation safety must remain a priority for the Department. The first item on the National Transportation Safety Board's list of "most wanted" safety improvements this year is reducing fatigue related crashes. In the coming weeks I plan to reintroduce the Safe Skies Act, which I worked on with Senator Boxer for many years. This commonsense bill would take the rest requirements put into place for passenger pilots after the tragic crash of Colgan Flight 3407 and apply them to cargo pilots who—despite using the same runways and airspace as passenger pilots—currently have looser rest requirements. Do you believe that Department of Transportation regulations can be an effective means of reducing fatigue-related crashes?

Answer. Safety is and will remain a top priority for the Federal Aviation Administration (FAA) and the Department. DOT has several regulations in place that address the hours worked by pilots, truck drivers, and locomotive engineers, for example. If I am confirmed, I will look to receive updates from DOT's operating administrations about the effectiveness of those rules.

*Question 2.* For the last five-decades, traffic fatalities on our roads had been declining. However, data recently released by the National Highway Traffic Safety Administration (NHTSA) show that from 2014 to 2015 there was a seven percent increase in traffic fatalities. We know that distractions behind the wheel played a part in this rise. I included a provision in the FAST Act to help more states qualify for Federal grants to fight distracted driving. Do you agree that the Department of Transportation has an important role in educating drivers about the dangers of distracted driving?

Answer. Yes. My understanding is that driver distraction remains a serious safety problem. I have seen some of the campaign materials being used by NHTSA to educate drivers about the dangers of using electronic devices while driving. If confirmed, I would support dissemination of such materials and look for other opportunities to raise awareness of the risks of distracted driving.

*Question 3.* One of FAA's most successful government-industry partnership programs is the Contract Tower Program, which provides proven, cost-effective and critical air traffic control safety benefits to 253 smaller airports across the country, including two in Minnesota. This program, is a good deal for taxpayers, helps rural communities and supports military readiness and national security operations. Will you work with me to support small airports through initiatives like the Contract Tower Program?

Answer. I think that trying to ensure access to small airports in rural communities and elsewhere is an important topic, and, if confirmed, I would look forward to working with you in this regard.

*Question 4.* As I travel around my state, I hear concerns from communities that say they do not have the capacity to prepare for and respond to an event like a derailment and hazardous material spill. I pushed to include provisions in the FAST Act to help local governments plan for and respond to rail incidents. Are you committed to working with state and local governments to help them prepare for derailments?

Answer. Yes. My understanding is that the Department works closely with state and local governments on any major accident or train derailment. The Pipeline and Hazardous Materials Safety Administration (PHMSA) provides relevant training to local responders and grants to state governments. If confirmed, I would look forward to working with DOT's modal administrations and others with regard to these programs.

*Question 5.* Blocked rail crossings not only inconvenience drivers, they delay emergency vehicles and threaten public safety. I have heard firsthand from local leaders and emergency responders across Minnesota about the inconvenience and dangerous delays blocked rail crossing can cause. A provision I fought to include in the FAST Act helps improve safety at rail-highway crossings by ensuring that states have access to tools and best practices to mitigate the safety risks posed by blocked rail crossings. Will you ensure the Department of Transportation continues to assist states as they develop and update highway-rail grade crossing action plans?

Answer. Yes, if confirmed I will ensure that DOT continues to assist states as they develop and update their highway-rail grade crossing action plans. I am told that DOT has already provided states with guidance and models to assist them in this endeavor, and if confirmed I would look forward to receiving further updates about this topic.

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RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. RICHARD BLUMENTHAL TO  
JEFFREY A. ROSEN

*Question 1.* The President has discussed a one-trillion dollar infrastructure program to rebuild the country's roads and transportation network. Details, however, are faint, with little more offered so far but proposals for corporate tax breaks and giveaways that somehow foster private-sector investment. Even these proposals, however, would only focus on revenue-generating projects—not necessarily ones that really need attention. Tax breaks are an insufficient way to rebuild roads, highways, and rail.

- Do you agree that tax breaks are an insufficient way to rebuild our transportation network?
- Can you provide more details on the President's plan?
- When will it release more details?
- Where will passenger rail fit among the administration's priorities?

Answer. I believe that all modes of transportation will need to be considered in the Administration's infrastructure program. I have not yet been a participant in the Administration's discussions about prospective infrastructure legislation. My understanding is that the details of the Administration's infrastructure plan are still being developed and that more details will emerge in the coming months. If I am confirmed, I hope to participate in the development of the President's proposal, and would look forward to working with the Committee on the transportation elements of it.

*Question 2.* The Department of Transportation is involved in the life of nearly every American, as we all depend on safe roads, rails, pipelines and air—and the safe movement of goods. Do you agree the Department of Transportation must be strong and proactive in putting forward rules and regulations to protect us all?

Answer. I agree that the Department of Transportation plays an essential role in ensuring the safety of our Nation's transportation system. Indeed, as Secretary Chao has emphasized, safety is the number one priority for the Department. If confirmed, I will work with Secretary Chao to ensure that the Department uses sound, data-driven approaches to developing and implementing regulations that protect our people and support, rather than stifle, continuing technological innovations that enhance transportation safety.

*Question 3.* Perhaps the biggest aviation issue that Congress will address this year is whether to spin off our air-traffic control services and transfer their control from the FAA to a private entity that would have outsized influence from airlines. I have many concerns about privatizing our country's air traffic control system, es-

pecially the negative impact it could have on consumers. During your testimony, you mentioned that you have yet to form a conclusion on this.

- What is your time-frame for developing a position on this issue?
- To what extent will you value consumer protection in your analysis?

Answer. As Secretary Chao indicated in her responses to Committee members following her nomination hearing, there will be a thorough Administration review of issues regarding air traffic control modernization, including the impact on consumers. If confirmed, I would hope to assist the Secretary in the extensive evaluation the details of this proposal would entail, and I would ensure that the concerns you raise are thoughtfully considered.

*Question 4.* We've seen many disasters on our rail network in recent years. A significant number of these disasters have happened on Metro-North Railroad, affecting my constituents.

- What lessons have you learned from these disasters?
- What's the first thing you'll do to improve rail safety?
- Do you believe this is an example where the Federal Government should require action?

Answer. First and foremost, safety is the highest priority. But before coming to any conclusion about individual accidents, if I am confirmed I would first request to be informed of the post-accident findings of the NTSB or state accident investigations. Depending on the results, I would consult with safety experts within DOT to determine if Federal action was warranted and could be effective.

*Question 5.* There's one function that's uniquely housed within the Secretary's office—the Office of Aviation Enforcement and Proceedings, including its Aviation Consumer Protection Division, which focuses on consumer issues. 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 \$2.7 million in fines against an industry with nearly \$169 billion in annual revenue. And that's just for unfair consumer practices. The situation is worse for persons with disabilities trying to assert their rights to be accommodated when flying. 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 does 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.

- Would you agree the current framework is a giveaway to the airlines with a long-running, unintended effect that protects airlines from regulation and vigorous oversight?
- Wouldn't allowing a private right of action—in addition to continuing to allow DOT enforcement efforts—make real, structural changes to how airlines operate and interact with the public?

Answer. I worked with this Office when I was General Counsel at DOT, and I believe it had a strong and effective track record at that time. I have been told that more recently, in 2016, this Office issued 29 consent orders assessing almost \$6.4 million in civil penalties against airlines and ticket agents for violations of Federal laws protecting the economic and civil rights of air travelers. Five of these orders, assessing approximately \$2.8 million in penalties, were for violations of the rule protecting the rights of passengers with a disability. I recognize that this overall topic is an important issue and would be pleased to work with the Committee on any proposal that might better protect air travel consumers, particularly passengers with disabilities.

*Question 6.* Nearly 4,000 people are killed in truck accidents each year, and 97 percent of those are drivers or passengers in a passenger car. What will be your approach toward ending the scourge of deaths from trucks on our highways?

Answer. Every fatality on our Nation's roadways is a tragedy, and I share your concern with recent increases in crashes of large trucks. As Secretary Chao has emphasized, safety is the number one priority for the Department of Transportation. If confirmed, I would expect to coordinate with the Federal Motor Carrier Safety Ad-

ministration (FMCSA) and review our data resources to identify safety concerns, leverage technology, advance programs that address non-compliant motor carriers and drivers, and work towards reducing unsafe driving behaviors in all driving populations. This would involve working closely with States and other stakeholders to develop strategies to reduce crashes.

*Question 7.* Surveys of truck drivers show many are fatigued and many often fall asleep at the wheel—endangering us all. They need rest. How will you address fatigue?

Answer. As Secretary Chao has emphasized, safety is the number one priority for the Department of Transportation. If confirmed, I would work with the Federal Motor Carrier Safety Administration (FMCSA) and the truck and bus industries to develop effective strategies to address fatigue. As I understand it, FMCSA has regulations that address this issue. But in addition to those, there may be strategies that would involve a combination of using technology where it makes sense and promoting best practices, such as working with the industry to implement non-regulatory fatigue management programs.

*Question 8.* Will you fight to ensure that trucks are not allowed to get longer and heavier?

Answer. My understanding is that Congressional action would be required to change the Federal truck size and weight limits. Federal weight limits currently apply only to the Interstate System, and size limits apply to the National Network. There are States, however, that legally permit higher vehicle weights off their Interstates. Given the impact of higher weights on roadway infrastructure, this is an issue that appears to have attracted the interest of several Members of the Committee, and if confirmed, I will plan to receive additional information about it. If confirmed, I will work to ensure that DOT faithfully executes the law and works collaboratively with States with the goal of having trucks operate legally and safely on the Nation's highway system.

*Question 9.* Ten years ago, national safety advocates first urged DOT to mandate the installation of speed-limiting devices on large truck to prevent them from traveling at dangerous speeds on U.S. roads and highways. Trucking industry representatives joined this call, recognizing the dramatic savings in lives and dollars that would come from such a mandate. In August, after years of analysis, DOT put forward a proposed rule that would carry out this vision, mandating speed limiters on any vehicle heavier than 26,000 pounds, including commercial trucks, intercity passenger buses, and school buses. The faster large vehicles travel, the deadlier they can become. Large vehicles already take longer to stop than smaller passenger vehicles. And just a small increase in speed leads to an exponentially large increase in kinetic energy, which can cause far greater damage and destruction in a crash—especially to those traveling nearby in much smaller, lighter passenger vehicles. Crashes involving large vehicles kill around 4,000 people each year and injure more than 100,000. Speeding has been identified as a possible factor in as many as 23 percent of these crashes. A vehicle with a functioning speed limiter is only half as likely to be involved in a crash as a vehicle without an operating device. DOT put forward a proposed rule in August will save hundreds of lives and prevent thousands of injuries. A strong, sensible rule will save millions of dollars and will respond to strong public sentiment that wants speeding trucks to simply slow down. It will ensure that no trucking company creates an uneven playing field, tolerating speeding while competitors comply with the law. It will ensure that large vehicles are going no faster than their tires and other parts were designed to handle. Do I have your commitment to completing this rule?

Answer. If confirmed, I will work with the FMCSA and others within DOT to assess the status of the proposed rule and review the best available data, including public comments and information, to inform the appropriate next steps.

*Question 10.* Last month, Congress passed the Water Infrastructure Improvements for the Nation (WIIN) Act, a \$10 billion bill that makes major investments in the country's water infrastructure. The bill largely focused on the Army Corps of Engineers—outside the purview of DOT. But DOT has tremendous oversight of our country's maritime economy, freight, and ports and the WIIN Act shows that bipartisan action and investment is possible. What is your plan to improve the economic viability of our country's ports, especially the three ports that we have in Connecticut?

Answer. If confirmed, I would expect to work with Secretary Chao to ensure that our country's ports, inland, Great Lakes, and coastal, and their unique concerns and capabilities, are considered in discussions of infrastructure development, such as the National Multimodal Freight Network. I also expect that, with Secretary's Chao's direction, the Department would work with the Connecticut Port Authority to en-



sure that the State's ports work together on issues like marketing and economic development, and potential access to capital.

*Question 11.* In 2012, Congress passed the Motorcoach Enhanced Safety Act of 2012 as part of MAP-21, a major surface transportation reauthorization bill. The law requires a number of efforts to improve motorcoach safety. These efforts were mandated in the aftermath of several horrific incidents. One provision requires improvements in the roof strength and crush resistance of large, intercity buses—aka motorcoaches. Another requires improvements to prevent passengers from being ejected through windows. These mandates were all due by October 2014, but they still remain unmet. Will you ensure that the basic motorcoach safety regulations required by MAP-21 that are still outstanding are issued promptly without any further delay?

Answer. If confirmed, I will work with others in the Department to implement the requirements of MAP-21. If there are difficulties with doing so, I would expect DOT to communicate with Congress about that, if I am confirmed.

*Question 12.* The use of smart phones has proliferated in recent years and led to an alarming increase in incidents of distracted driving. What steps will you take to prevent distracted driving and the dangers it can cause on our roads?

Answer. I am aware that NHTSA is pursuing educational, law enforcement and technology-based strategies to address the problem of distracted driving. If I am confirmed, I will work with NHTSA to ensure that the agency is exploring all options to reduce this problem.

*Question 13.* Thousands of pedestrians are killed every year and tens of thousands of pedestrians are injured.

- What steps will you take to end pedestrian deaths and injuries?
- Will you support safety standards for the hood and bumper areas of motor vehicles in order to reduce the severity of injuries suffered by pedestrians and bicyclists that frequently result in death and lifelong disabilities?

Answer. If confirmed, I will work with the DOT modal administrations, stakeholders, and the public to explore options to advance the safety of pedestrians and vulnerable road users.

*Question 14.* The North American Free Trade Agreement (NAFTA) opened opportunities for trucking companies domiciled in Mexico to operate within the United States. The Department of Transportation undertook a pilot program allowing certain Mexico-domiciled carriers to operate in the U.S. and concluded such carriers could operate safely in this country. The DOT Inspector General, however, found that the pilot program was flawed and produced unreliable results. How will you address the concerns raised by the Inspector General?

Answer. If confirmed, I would work with FMCSA to ensure continued monitoring of the safety of these carriers and ensure that appropriate action is taken should safety concerns arise. If I am confirmed, I will plan to review the IG Report and consult further as warranted.

*Question 15.* Will you oppose allowing Mexico-domiciled trucks to operate in the U.S.?

Answer. The North American Free Trade Agreement (NAFTA) requires that the U.S. allow the operation of Mexico-domiciled trucks into the U.S. under some conditions, unless those provisions are changed during future discussions about NAFTA. If confirmed, I would expect to work with the Federal Motor Carrier Safety Administration to ensure compliance with all applicable laws, and to avoid any transportation by carriers not in compliance with U.S. safety requirements.

*Question 16.* Many states—including Connecticut—provide workers with mandatory meal and rest breaks. These laws have existed for nearly a century in some states and are critical for all kinds of workers, protecting them from workplace fatigue and related accidents, injury and death. These laws also apply to commercial truck drivers, with some exemptions. Federal courts have ruled these laws are not pre-empted by Federal law. Some seek to pre-empt these meal and rest break laws so as to maximize the workday of truck drivers. If this happens, there would be fewer opportunities and incentives for truck drivers to rest. Are you concerned about these efforts?

Answer. I have been told that the preemptive effect of Federal law in this area has been the subject of litigation in recent years. From DOT's perspective, it has been important for commercial drivers to be able to take appropriate breaks during the course of their work in the interest of safety. I am sensitive to the concerns that have been raised about the preemption of State law in this area and look forward

to engaging with the States, members of industry, and other stakeholders to examine their viewpoints on this issue and work toward a solution.

*Question 17.* Will you defend these important safety laws?

Answer. Although it is not the role of the Department of Transportation to defend these State laws, if I am confirmed, I am amenable to an open-minded review of the arguments for and against them.

*Question 18.* About 10,000 people die each year because of alcohol-impaired driving. This annual figure has remained steady for two decades. As we consider ways to eliminate preventable deaths, we must examine changes to the laws around alcohol impaired driving. Do you support efforts to highlight the message that driving under the influence of alcohol at any level is impairing?

Answer. Yes.

*Question 19.* Do you agree that all NHTSA recalls are safety recalls, address an unreasonable risk to safety, and should be promptly repaired?

Answer. My understanding is that NHTSA has recall authority over safety-related defects and non-compliances with Federal safety standards. The Motor Vehicle Safety Act of 1966, as amended, provides specifics as to what is or is not required. It is important that any safety issues are addressed.

*Question 20.* 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. If confirmed, will you upgrade the safety standard for seatback performance to better protect back seat passengers?

Answer. If I am confirmed, I will work with NHTSA, stakeholders, and the public to review current safety standards and assess their effectiveness or suggested changes.

*Question 21.* Nearly 1 in 5 vehicles on our Nation's roads have unrepaired safety defects. In 2015, nearly 900 million vehicle recalls involving 51 million vehicles were issued, eclipsing the previous record set in 2014. Accordingly, millions of vehicles on our Nation's roads and highways have critical safety defects that have not been repaired. If confirmed, what specific actions will you direct NHTSA to take to increase the recall completion rate and reduce the number of cars with open safety recalls from our Nation's roads?

Answer. Safety should be the top priority. If confirmed, I would confer with NHTSA about ways to engage the automobile industry and the public to find new ways to increase recall completion rates.

*Question 22.* While new car dealers are required to repair safety recalls before selling vehicles with open recalls, there is no requirement that used car dealers fix any outstanding safety defects before selling a used car. Do you agree that used car dealers should not be allowed to sell used vehicles with unrepaired safety defects?

Answer. If I am confirmed, I would expect to work with NHTSA to help ensure the Department is doing those things within its authority to ensure that recalls are addressed as required.

*Question 23.* The Department of Justice recently charged six VW executives in its emissions-cheating scandal, and announced that the company has pled guilty to three criminal felony counts and agreed to pay a total of \$4.3 billion in criminal and civil penalties. In contrast, GM was not charged and was only ordered to pay a mere \$900 million in penalties for an ignition switch defect that has been tied to at least 124 deaths. Neither GM nor any of its executives faced any criminal charges despite accusations of misleading safety regulators and delaying potentially lifesaving decisions. Families who lost loved ones as a result of the GM ignition switch defect deserve an explicit acknowledgment of criminal wrongdoing, individual criminal accountability, as well as a larger monetary penalty. Do you agree that automakers and their executives that conceal a dangerous product for over a decade and that kills 124 people should face criminal penalties?

Answer. GM was represented in that litigation by Kirkland & Ellis LLP, my former employer. Paragraph 4 of my agency ethics agreement has restrictions with regard to certain matters in which I know my former employer represents a party. As a more general matter, the Department of Justice ultimately makes the determination of whether to pursue criminal penalties and when to settle a criminal case.

*Question 24.* I am concerned about the unnecessary use of hazardous flame retardant chemicals, which have been linked to serious health effects and environmental harms. Children are especially vulnerable to the toxic effects of these chemicals since their brains and bodies are still developing. Most children's car seats con-

tain these dangerous chemicals in order to comply with for flammability standards for vehicles and children's car seats set by NHTSA. NHTSA recently initiated a two-year research program on flammability standards, including those for children's car seats. If confirmed, will you support this research and work to update the Federal Motor Vehicle Safety Standards to eliminate the unnecessary exposure to toxic flame retardant chemicals from children's car seats?

Answer. I am supportive of DOT's two-year research efforts on this topic. If confirmed, I would look to work with NHTSA, stakeholders, and the public to review the safety standards and ensure any appropriate amendments are supported by the latest data and research.

*Question 25.* In September 2016, NHTSA issued the Federal Automated Vehicle Policy, updating its previously issued 2013 guidance on autonomous vehicles (AV). These guidelines are not mandatory. In May of 2016, a Tesla Model S equipped with Tesla Autopilot crashed, raising questions as to the performance of the vehicle's technology and whether it caused or contributed to the crash.

It's been reported that several auto manufacturers including Tesla, Ford, BMW, and Volvo are promising to have fully autonomous cars on the roads within five years. The next Deputy Secretary of Transportation will play a critical role as we enter a new period of advanced automated technologies in transportation.

Do you have any concerns that voluntary guidelines may be insufficient to protect the American public from unreasonable risk of crashes involving AVs during the testing and deployment of this technology?

Answer. Please see my remarks and responses at the nomination hearing on March 29, 2017. I think this is an important subject, and if confirmed, I will look forward to receiving briefings on this complex subject, in order to help assess and determine where Federal policy should go on this.

*Question 26.* Should DOT require manufacturers of AVs to perform a minimum level of due diligence testing and analysis to ensure that AVs work safely and properly before they are tested on public roads or sold to consumers?

Answer. See response above.

*Question 27.* If confirmed, will you commit to instituting an effective regulatory framework for automated vehicle technology, including automatic emergency braking systems currently being sold without any performance guarantee for consumers that provides a level playing field for developers and manufacturers and insures public safety?

Answer. See response above.

*Question 28.* It has been reported that Takata, the airbag supplier responsible for the unprecedented recall affecting 42 million vehicles in the United States, is actively soliciting new investors and contemplating bankruptcy or similarly major restructuring in order to keep factories running and manufacturing replacement airbag. Do you agree that any restructuring of Takata should occur on terms that accelerate the availability of replacement parts, end the dangerous use of ammonium nitrate as an airbag propellant, and help the overall recall effort?

Answer. Please see response to Nelson question 10 above.

*Question 29.* The Jones Act prohibits any foreign-built or foreign-flagged vessel from engaging in trade between two U.S. ports. Only U.S. ships can go from U.S. port to other U.S. ports. This law, which has been around for decades, is a critical measure that protects the U.S. domestic maritime industry. What can you say about the importance of the Jones Act and the need to have a strong U.S.-flagged fleet?

Answer. The Jones Act is designed to provide our country with a strong U.S. Flag fleet that engages in trade between our U.S. Ports and is available to meet national security requirements. Like the Secretary, I support a strong U.S.-flagged fleet. If confirmed, I will look for ways to help increase opportunities to increase the number of American merchant mariners and ships to serve our country's economic needs and to meet our defense sealift requirements.

*Question 30.* Will you commit to supporting an American maritime industry that provides American economic, military, and homeland security?

Answer. If confirmed, I will look for ways to help strengthen the maritime industry, including ports and intermodal connectors, shipbuilding, and the number American merchant mariners and ships needed to serve our country's economic, national and homeland security needs.

*Question 31.* 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, we 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 currently not advised that the middle seat may be the safest. In the meantime, ensuring consumers have this critical information could be a good and commonsense first step. Do you believe consumers should have the most accurate and up-to-date information regarding the safest seat and position for children?

Answer. Providing information to consumers can be an important aid to safety. If I am confirmed, I would expect to work with NHTSA, stakeholders, and the public to continue efforts to better inform consumers regarding safety for children.

*Question 32.* Major airlines have taken actions to prohibit third-party travel websites from accessing published fare, schedule, and seat availability data. We believe consumers should be able to make apples-to-apples comparisons among fares and flights and select the best price and itinerary for themselves.

Promoting access to transparent pricing information is not only good for consumers, it is also good for competition in the airline industry.

- Do you think it is important for airline consumers to have access to information they need to make informed purchasing decisions?
- If confirmed, will you use take action to ensure that airline consumers have access to comprehensive, transparent flight information?

Answer. The issue of airline restrictions on the distribution or display of airline flight information on third-party travel websites is an important and complex issue with far-reaching implications for consumers, airlines, ticket agents, and the various participants in the distribution chain. I am aware of arguments that transparency is not only good for consumers but also good for competition in the airline industry, and I am aware of arguments that airlines should be able to choose how and where they sell their products so long as they don't engage in an unfair or deceptive practice. This is an area about which, if confirmed, I would want the Department to consult with experts within and outside of the DOT to ensure the appropriate balance of conflicting interests in whatever decisions are made.

*Question 33.* NHTSA plays a critical role in overseeing recalls and making sure they proceed expeditiously, and is responsible for overseeing the largest and most complex safety recall in U.S. history—the Takata airbag recall. The Takata airbag defect has resulted in 11 deaths and over 180 injuries in the United States, to date, and the largest civil penalty in NHTSA's history. Test data released by NHTSA reveal that certain vehicles with these defective Takata airbags show rupture rates as high as 50 percent in a crash. If confirmed, what will you do to accelerate the replacement of these dangerous defective devices?

Answer. Please see response to Nelson question 10 above.

*Question 34.* In 2005, while you were serving as General Counsel for the Department of Transportation, NHTSA proposed a rule aimed at strengthening the agency's safety standard on roof crush resistance, to better protect passengers in roll-overs. Tucked in that proposal, as you know, was language stating that the proposal "would preempt all conflicting State common law requirements, including rules of tort law." As DOT's General Counsel, you defended this language.

Prior to becoming General Counsel, you were a senior partner at Kirkland & Ellis, where you defended GM in numerous product liability lawsuits and also represented the Alliance of Automobile Manufacturers.

Are you able to affirm unequivocally that you were not at all influenced by your prior roles representing GM and the Alliance of Automobile Manufacturers, in your defense of this state preemption provision?

Answer. The factual premises of this question are mistaken. Among other things, my recollection is that the determination to include the preemption language in that rule was made by NHTSA, and not by me.

*Question 35.* More generally, while previously at DOT, my client was the United States, and I implemented the law faithfully and brought my entire energy and attention to serving what I regarded as the best interests of the American people. What was the purpose of including this language in a proposed update to the Federal Motor Vehicle Safety Standards?

Answer. Please see response to previous question.

*Question 36.* Do you believe there are areas of transportation-related law in which states currently have too much authority and in which Federal law should preempt such state authority? If so, please list these areas of law.

Answer. Federal preemption of state law is a complicated question, premised on the Supremacy Clause of the U.S. Constitution, and it often depends on the language used in Congressional enactments. Whole books have been written on this topic. Some of my views on this topic are included in an op-ed I published in the

*Washington Post* in 2009, which was identified in my response to question 16 of the Commerce Committee questionnaire that I submitted on March 21, 2017.

*Question 37.* The pre-emption language in the 2005 proposed rule on roof crush resistance greatly impinged on State court authority and State's rights. Do you believe that this was an appropriate position for a Federal agency to adopt and an appropriate legal action for Federal regulators rather than Federal courts to decide?

Answer. The premises of the question appear to be mistaken. In all events, the question of Federal preemption continues to be one for courts to decide, as the Supreme Court has sometimes indicated that it finds agency views helpful, but it remains for the courts to determine what the law is and how it applies.

*Question 38.* Do you intend to pursue this line of pre-emption analysis in future rules issued by NHTSA and other DOT modal administrations if you are confirmed as Deputy DOT Secretary?

Answer. Please see response to Nelson question 13 above.

*Question 39.* The final rule for roof crush resistance, issued under the Obama administration, stated: "Implied Preemption. We have reconsidered the tentative position presented in the NPRM. We do not foresee any potential State tort requirements that might conflict with today's final rule. Without any conflict, there could not be any implied preemption." Do you agree with this reasoning presented in the roof crush resistance final rule? Please answer Yes or No.

Answer. The language quoted in this question is conclusory, and does not set out a factual analysis of the circumstances at issue, so a yes or no response would be misleading and inappropriate. I am confident that such a response is not intended by the question.

*Question 40.* In January, the President issued a government-wide hiring freeze. This hiring freeze allows agencies to exempt from the hiring freeze any positions that an agency deems necessary to meet national security or public safety responsibilities. NHTSA's explicit, core statutory mission is to "reduce traffic accidents and deaths and injuries resulting from traffic accidents." As such, the agency clearly qualifies under the public safety exemption articulated in the memorandum. In fact, Congress explicitly authorized increased funds for NHTSA's public safety mission in the FAST Act. Do you agree? Please answer Yes or No.

Answer. As I was not at DOT at that time and have not been involved in applying the Presidential Memorandum Regarding the Hiring Civilian Freeze, I am not able to speak directly to whether any particular DOT positions meet the exemptions for national security or public safety responsibilities. If confirmed, I will work with other DOT officials to apply the Presidential Memorandum and supplemental OMB and OPM Guidance to ensure that NHTSA and all of DOT is able to accomplish its vital safety mission.

*Question 41.* Do you agree that it is critical that roles in this office should be filled? Please answer Yes or No.

Answer. See response above.

*Question 42.* Mr. Rosen, you have written extensively on your distaste for regulations. One article you wrote argued for a "regulatory budget" for Federal agencies and you have previously testified in support of anti-regulatory legislation. NHTSA regulations, including the Federal Motor Vehicle Safety Standards, provide enormous lifesaving public benefits.

Please list all NHTSA regulations that you would rescind.

Answer. The premises of this question are mistaken. As I wrote in an article published last year, most will agree that "there is a need for some regulation and that there can also be excessive regulation . . ." The concept of a regulatory budget is one with bipartisan origins, and its earliest Senate sponsor was Senator Lloyd Bentsen, who became a Democratic nominee for Vice-President (and later served in President Clinton's Cabinet). With regard to recent legislation, I have testified in support of the bipartisan Regulatory Accountability Act of 2013; in the Senate, that was a bipartisan bill (S. 1029) sponsored by Republican Senators Portman, Collins, Ayotte, Johanns, and Cornyn, and Democratic Senators Nelson, Pryor, Manchin, and King. As General Counsel, I facilitated key regulations, and I have favored improvements to the process that will most effectively produce beneficial outcomes.

*Question 43.* In a letter dated March 16, 2017, from you to Judith S. Kaleta at the U.S. Department of Transportation, you write the following: "I understand that the interests of the following persons are imputed to me" and you mention "any spouse or minor child of mine." Are the interests of your adult children imputed to you?

Answer. The letter referenced is my agency ethics agreement, developed in consultation with the Office of Government Ethics, which has been provided to the Committee. Its terms speak for themselves.

*Question 44.* Are the interests of Donald Trump's adult children imputed to him?

Answer. That was not a topic of my consultations with the Office of Government Ethics, and is not within the purview of the Department of Transportation.

*Question 45.* The U.S. Department of Transportation disburses tens of billions of dollars every year for transportation-related construction and maintenance projects. Is it appropriate for President Trump, his immediate family, or business interests controlled by him or his immediate family to be the recipients of Federal funds?

Answer. This question seems to assume a hypothetical question for which no actual facts or evidence have been presented, so there is no basis for a response.

*Question 46.* What steps will you take to ensure that President Trump, his immediate family, and business interests controlled by him or his immediate family do not receive direct financial benefit from decisions you would make at the Department of Transportation?

Answer. See response above.

*Question 47.* In a letter dated March 16, 2017, from you to Judith S. Kaleta at the U.S. Department of Transportation, you write the following: "I will not participate personally and substantially in any particular matter that to my knowledge has a direct and predictable effect on the financial interest of the entity until I have divested it" unless given a waiver or you qualify for an exemption. Did you agree to divest certain assets in order to be considered and confirmed for the position for which you were nominated?

Answer. The letter referenced is my agency ethics agreement, developed in consultation with the Office of Government Ethics, which has been provided to the Committee. Its terms speak for themselves.

*Question 48.* Has President Trump made such a commitment in relation to the office he holds?

Answer. This is not a question properly directed to the Department of Transportation. Indeed, it is my understanding that the laws applicable to agency officials are in many instances different than those applicable to the President, who along with the Vice-President, are the only members of the Executive Branch elected by the American people.

*Question 49.* On March 17, 2017, President Trump released a document entitled "Budget Blueprint to Make America Great Again." Are you familiar with this document?

Answer. I was not a public employee on March 17, 2017, but I have become aware that the Office of Management and Budget has published that document.

*Question 50.* Have you read it?

Answer. With regard to each of these questions, please refer to my oral remarks and testimony at the Committee's hearing on March 29, 2017, which addressed these topics.

*Question 51.* In the document, President Trump writes the following: "One of the most important ways the Federal Government sets priorities is through the Budget of the United States." Do you agree with this statement?

Answer. With regard to each of these questions, please refer to my oral remarks and testimony at the Committee's hearing on March 29, 2017, which addressed these topics.

*Question 52.* The budget document further states: "The Budget request reflects a streamlined DOT that is focused on performing vital Federal safety oversight functions and investing in nationally and regionally significant transportation infrastructure projects." Do you agree with this statement?

Answer. With regard to each of these questions, please refer to my oral remarks and testimony at the Committee's hearing on March 29, 2017, which addressed these topics.

*Question 53.* The budget document proposes the elimination of funding for the TIGER discretionary grant program, eliminating \$499 million in resources to rebuild our Nation's infrastructure. If confirmed, is this a priority you will support?

Answer. With regard to each of these questions, please refer to my oral remarks and testimony at the Committee's hearing on March 29, 2017, which addressed these topics.

*Question 54.* If you oppose this priority, have you conveyed your concerns to the administration? If so, how?

Answer. With regard to each of these questions, please refer to my oral remarks and testimony at the Committee's hearing on March 29, 2017, which addressed these topics.

*Question 55.* Do you support construction of a wall along the southern U.S. border with Mexico, as described by President Trump throughout the campaign and in subsequent documents, including proposed budget documents?

Answer. This question appears to relate to matters that would fall within the responsibility of the Office of Management and Budget or the Department of Homeland Security, and not the Department of Transportation.

*Question 56.* How much will this wall cost?

Answer. This question appears to relate to matters that would fall within the responsibility of the Office of Management and Budget or the Department of Homeland Security, and not the Department of Transportation.

*Question 57.* Which is more important, the construction of a border wall or rebuilding our country's infrastructure?

Answer. This question appears to relate to matters that would fall within the responsibility of the Office of Management and Budget or the Department of Homeland Security. With regard to the President's priorities, I know of no reason why the President cannot have multiple priorities.

*Question 58.* President Trump spoke often on the campaign trail regarding the need to upgrade America's transportation infrastructure, but we have heard little from the President since he entered office regarding his transportation priorities.

- Have you had conversations with President Trump regarding his transportation priorities?
- Have you had conversations with any officials from the Trump administration regarding President Trump's transportation priorities?
- Have you been asked directly by President Trump or any member of the Trump administration about your level of support for any policy matters? If so, what matters?
- Have you been asked directly by President Trump or any member of the Trump administration about your level of opposition for any policy matters? If so, what matters?

Answer. During the process that preceded my nomination, I had discussions with Administration officials about transportation and my transportation experience and credentials, as I have now done with several members of the Commerce Committee. When not yet in the Administration, I was not a participant in OMB's release of the so-called "skinny budget", though I would hope to participate in future budget deliberations as they concern DOT.

*Question 59.* Do you consider yourself knowledgeable of the Federal budget? Have you written articles on this subject in widely distributed publications, like *The Washington Post*, *The Baltimore Sun* and *The Hill*? In 2011, did you author an article in the newspaper *The Hill* entitled "Obama's spending ideas unbalanced"? In that article, did you voice support for the reduction in Federal spending by \$6 trillion over a decade? A reduction in Federal spending at that amount is equal to \$600 billion per year over a decade. What programs do you believe should receive a reduction in spending or elimination to achieve such cuts?

Answer. In the articles that you referenced, I set out my views on several budget topics. The articles set out the analyses that I did at the time, and I have not conducted additional analysis to augment them at this time.

*Question 60.* In 2016, did you author an article in the publication *National Affairs* entitled "Putting Regulators on a Budget"?

- In that article, did you write the following: "There is now an extraordinary number of regulations on the books. Today the Code of Federal Regulations is 175,268 pages in 236 volumes, up from approximately 141,000 pages in 206 volumes back in 2001. (In 1975, it was 71,224 pages in 133 volumes, so it has roughly doubled in the last 40 years.) According to estimates prepared at the Mercatus Center at George Mason University, just to read today's 236 volumes of the Code of Federal Regulations would take an individual person nearly three full years, if that is the only thing he did full-time."?
- If there is an "extraordinary number of regulations on the books," what would an "ordinary number" of regulations be? What regulations do you propose eliminating to achieve such number?
- Is page length an appropriate method of judging the value of administrative policy?

- Do many of the pages you mention concern mundane matters?
- In the article referenced above, did you write the following: “By now, it is almost cliché to mention how much new red tape is being issued each year. Each new round of major Federal legislation, such as the Affordable Care Act of 2010, the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, and the Food Safety Modernization Act of 2011, provide agency regulators with new authority to issue more new regulations, and the current administration has discerned novel ways to issue once-unthinkable new rules under old laws like the Clean Air Act of 1970.”?
- Please list the “once-unthinkable new rules” that were issued under the last administration.
- In the article referenced above, did you write the following: “With regard to the setting of budget allocations and caps, it is important that the budget caps apply to costs—not to benefits—just as with the fiscal budget. When Congress appropriates fiscal expenditures, the budget puts a cap only on the cost. One of the main considerations in budgeting is that resources are finite and not unlimited, regardless of how many good and legitimate potential uses might exist for the money. Choices have to be made among them.”?
- Does this quote concern the concept that regulations should be prohibited if they impose a cost above a certain threshold—or “cap”?
- What should the value of the “cap” be, in your opinion?
- In 2005, did you state the following in Congressional testimony: “As General Counsel, I have overall supervision of the entire regulatory process, including reviewing and making recommendations to the Secretary on all significant rules. In addition, we have weekly regulatory review meetings with the Deputy Secretary and the Secretary’s Chief of Staff. Each week, we meet with a different operating administration usually including the agency Administrator. At those meetings, we discuss every rulemaking action on the operating administration’s agenda. The discussions generally cover the need for the rulemaking, our priorities, and our progress in meeting schedules for each project; these meetings often involve discussions among the senior DOT officials present on important substantive issues. These regulatory review meetings played an important role in the Department’s decisions during the last five years to terminate or withdraw almost 180 potential rulemakings that were deemed unnecessary or unproductive, and a similarly important role in ensuring that useful and necessary rules were issued in a timely way.”?
- Please list the “180 potential rulemakings that were deemed unnecessary or unproductive.”
- Please list the “useful and necessary rules” that moved forward.

Answer. In 2016, I authored an article in the publication *National Affairs* entitled “Putting Regulators on a Budget”. It is available online at <http://www.nationalaffairs.com/publications/detail/putting-regulators-on-a-budget>, so its contents are readily available for reading. With regard to a regulatory cost “cap”, it would function much like fiscal budget caps do. It would not preclude any individual regulation or regulations, but would require prioritization such that new costs fall within the “cap” or that offsets are located to reduce costs elsewhere. The reasons for doing that are set out in that article, and an earlier law review article that I published entitled “The Regulatory Budget Revisited”, 66 Admin.L.Rev. 835 (Fall 2014).

With regard to DOT in 2005, I do not have the list of potential rulemakings that the Department deemed unproductive, though it may be contained in my testimony from that time period. However, with regard to rules that were deemed useful and necessary and were moved forward, those can be located in the *Federal Register* between December 2003 and June 2006. They include numerous significant safety rules, as well as significant rules addressing other matters as well. As I said at the nomination hearing on March 29, 2017, DOT issued numerous significant safety rules when I was the General Counsel there.

*Question 61.* Is it appropriate for a senior administration official to work on policy matters that directly impact the official’s former clients? Does it present an appearance of impropriety for a senior administration official to work on policy matters that directly impact the official’s former clients? Do you agree to voluntarily recuse yourself from any matters involving former clients, beyond those that may be required by law, in order to avoid the appearance of impropriety?

Please list all individuals, entities and concerns for whom you have provided legal services since returning to private practice in 2009.



Answer. Federal rules determine what is and what is not appropriate in this context. Please refer to my Commerce Committee questionnaire responses, my responses to the 57 Pre-Hearing Questions for the Record, and my remarks and responses at the nomination hearing on March 29, 2017, which address this topic—including my responses to Senator Blumenthal at the hearing.

With regard to my clients from private practice, the information required by the Office of Government Ethics is publicly available on my OGE 278 Financial Disclosure Form, and supplemental information was provided in my responses to the 57 Pre-Hearing Questions for the Record. Beyond that, where I have handled litigation it is a matter of public record, and other matters would involve client confidentiality.

The Office of Government Ethics has completed its review of my nomination, along with DOT's Designated Agency Ethics Official. As I have said repeatedly, I will adhere to the terms set forth in my agency ethics agreement, which has been provided to the Committee, and which represents a very high standard of integrity for public officials.

*Question 62.* In materials you provided to the Committee, a biography of you says that “[s]ome illustrative clients for whom” you “handled significant matters” include General Motors, Hyundai and the U.S. Chamber of Commerce.

- Is this statement correct?
- Please list and describe the matters you handled for each of these clients.
- Beyond the “illustrative clients” mentioned above, what other clients have you “handled matters” for since your return to private practice in 2009?

Answer. Please see my responses to questions 7–13 of the Pre-Hearing Questions for the Record from Senator Nelson and my response to question 1 of the Pre-Hearing Questions for the Record from Senator Schatz.

*Question 63.* In a letter dated March 16, 2017, from you to Judith S. Kaleta at the U.S. Department of Transportation, you write the following: “I will not participate personally and substantially in any particular matter involving specific parties in which I know a former client of mine is a party or represents a party, for a period of one year after I last provided service to that client” unless provided appropriate waiver.

- Please list each party covered under this prohibition.
- Please list the date you last provided legal services to each client.

Answer. This question refers to my agency ethics agreement, which has been provided to the Committee. However, because the quoted provision refers to future events that have not yet occurred, and instead states a principle to be applied if such events occur, at this point in time I have no idea whether such circumstances would ever occur.

*Question 64.* In a letter dated March 16, 2017, from you to Judith S. Kaleta at the U.S. Department of Transportation, you write the following: “I will not participate personally and substantially in any particular matter involving specific parties in which I know Kirkland & Ellis is a party or represents a party for a period of one year from the date of my resignation” unless provided appropriate waiver.

- Please list each party covered under this prohibition.
- Please provide the date this prohibition ends.

Answer. Please see previous response above.

*Question 65.* In a letter dated March 16, 2017, from you to Judith S. Kaleta at the U.S. Department of Transportation, you write the following: “I understand that as an appointee I will be required to sign the Ethics Pledge (Exec. Order no. 13770) and that I will be bound by the requirements and restrictions therein in addition to the commitments I have made in this ethics agreement.”

- Please describe the obligation this executive order places on any work you conduct as a department official.
- Please list each party covered under the prohibitions in the executive order pertinent to your service.
- Please list each regulation and contract covered under this prohibition, as mentioned in the executive order.

Answer. President Trump's Executive Order 13770 regarding “Ethics Commitments by Executive Branch Employees” is available at 82 Fed.Reg. 9333 (Jan.28, 2017). Its provisions describe what will be required.

*Question 66.* Do you believe in climate change? Please answer yes or no. Do you believe that human activity is driving that change? Please answer yes or no.

Answer. Please see response to Nelson question 14 above.

*Question 67.* In your testimony before the Senate Commerce Committee, you indicated that you would provide great deference to the president's positions as a member of his administration. President Trump has called climate change a "hoax" and has taken steps to rollback climate change initiatives and slash funding for critical research.

- Do reject the notion that climate change is a "hoax"?
- Do you support the president's proposal to eliminate funding for climate change initiatives?
- Do you support the president's decision to weaken greenhouse gas emissions and fuel efficiency standards for cars and trucks?
- In a 2013 piece for *The Hill*, did you write that "at a minimum" senators should ask "the EPA nominee to commit the agency to using sound science"?
- If confirmed, will you commit to using sound science on climate change to guide the Department's efforts?

Answer. Please see response to Nelson question 14 above. As I have noted in numerous contexts, I am in favor of using empirical data and sound science.

*Question 68.* A *New York Times* piece in 2008 provides an account an incident in which you, as General Counsel of the Office of Management and Budget, "asked three times for separate memorandums describing why carbon dioxide molecules emitted from vehicles (already likely to be subject to regulation) could not be distinguished from CO<sub>2</sub> molecules emitted from power-plant smokestacks (whose regulation was opposed by powerful segment of the industry and administration.)"

- Is this account correct?
- Do you believe there is a difference between carbon dioxide molecules emitted from vehicles and carbon dioxide molecules emitted from smoke stacks?

Answer. Ordinarily, when I was General Counsel at OMB, much of the work I did and the advice I gave was privileged, and I generally refrain from discussing it in detail. Nor would I see it as inappropriate for a lawyer to ask questions to obtain information needed to advise policymakers about legal questions. However, with regard to the account in the media report you reference, I will say the following:

Any such account was inaccurate, and no journalist asked me about it at the time. It was a very considerable time after its publication that I even learned of such a report in the media. (I am unaware of it appearing in the NY Times.) However, this mistaken account was apparently included in the letter that Senator Blumenthal entered in the record on March 29, 2017.

Carbon dioxide is a naturally occurring chemical compound made up of a carbon atom covalently double bonded to two oxygen atoms. I did not ask about such molecules being different nor did I ask for three memoranda as to whether that is so.

*Question 69.* In 2010, did you author an article in the *Atlanta Journal-Constitution* and *The Baltimore Sun* entitled, "Costly Federal regulations escape Congressional approval"?

- In this article, did you attribute a cost of \$10 billion to rail safety technology known as positive train control?
- What is the source of the \$10 billion figure?
- Does positive train control provide benefits?
- Is it true that the National Transportation Safety Board has said this technology could have saved over 300 lives?
- Did you handle any matters related to positive train control during your previous work in the Federal Government? If so, please describe.
- Do you believe there should be regulations from FRA implementing the Congressional mandate governing PTC?
- What is the current PTC deadline?
- What railroads does it apply to?
- Will you enforce the PTC deadline?
- Will railroads be penalized for failure to meet the deadline?

- What will those penalties be?

Answer. My recollection is that DOT issued a rule on Positive Train Control when I was General Counsel in 2005. My view on PTC is that the law should be implemented, unless or until it is changed.

*Question 70.* In both Republican and Democratic administrations we've seen the problem of "regulatory capture." This happens when an industry "captures" its regulator, exercising undue influence on the regulator's efforts. It occurs when an agency becomes so familiar and chummy with the industry that it regulates that it begins to advocate for the industry's best interests and its bottom line—not the public's interest. This phenomenon has been demonstrated in various agencies at the U.S. Department of Transportation.

- Have you represented auto manufacturers, railroads and airlines?
- Would your service present a problem of regulatory capture?
- How can we be assured you're driven not by your past clients' interests, but by the safety of the traveling public?

Answer. No, my service would not represent regulatory capture. As Supreme Court Justice Rehnquist once wrote in another context about judges, "Proof that a Justice's mind at the time he joined the Court was a complete tabula rasa in the area of constitutional adjudication would be evidence of lack of qualification, not lack of bias." *Laird v. Tatum* 409 U.S. 824 (1972) Having knowledge about the transportation sector is a qualification, regardless of whether a lawyer has in the past represented transportation companies or their critics. I have a record of integrity and professionalism. Moreover, in terms of regulatory expertise, I was elected the Chair of the American Bar Association Section of Administrative Law, which is a group with a strong interest in Federal agencies, and composed of lawyers from a wide variety of perspectives including agency lawyers as well as scholars, private practitioners, and judges, among others.

*Question 71.* In 2009, did you write in the *Boston Globe* the following: "Take, for example, the administration's recent actions to impose Davis-Bacon wage requirements on a wide range of stimulus projects, which will ensure higher-than-market wage rates for a few, and increase costs for all taxpayers."?

- Do you support the law known commonly as Davis-Bacon?
- Should Davis-Bacon apply to new Federal infrastructure projects?

Answer. If confirmed, I expect to support the President's position with respect to the Davis-Bacon law.

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RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. BRIAN SCHATZ TO  
JEFFREY A. ROSEN

*Question 1.* Your response to section B.6. of your Commerce Committee Questionnaire does not provide any clarity into your activity during the past 10 years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat, or modification of any legislation or regulation affecting the administration and execution of law or public policy. This includes providing legal, policy, or political services. Please provide a thorough answer. Please provide a thorough response.

Answer. I am unclear in what sense my response to section B.6. does not provide clarity. I am not a lobbyist. My career as a lawyer has primarily been as a litigator, and also as a counselor.

My questionnaire responses also identify occasions when, as a private citizen on my own behalf, I accepted Congressional requests to testify before committees of Congress about legislation in 2011 and 2013.

I assume the request is not meant to address when I served previously at DOT and OMB, during which time I of course worked in an Administration that administered the law and public policy. Likewise, as indicated in my questionnaire responses, in my personal capacity I have served as a Public Member of the Administrative Conference of the United States, where I have participated in plenary sessions devoted to ACUS recommendations on the improvements in public administration. And in my private capacity I have served as an officer of the American Bar Association Section of Administrative Law, which is an organization that sometimes suggests improvements to the law.

In the same way, my questionnaire responses also indicate that I have provided advice or assistance to Congress on occasion in my personal capacity, not for clients, but I have no inventory of such occasions.

*Question 2.* During Senator Fischer's questioning, she indicated that you have been in contact with her office on numerous regulatory issues across DOT agencies, including FMCSA while working at Kirkland & Ellis, LLP. What were you advising her on? Who was the client that you were representing?

Answer. I was not representing any client. And I did not do so on behalf of Kirkland & Ellis LLP. I was contacted by Senator Fischer's staff as a well-known and recognized authority on regulatory topics, to provide insights from my experiences in government.

*Question 3.* What is your relationship with the U.S. Chamber of Commerce? Will you recuse yourself from U.S. DOT matters involving the U.S. Chamber of Commerce?

Answer. I currently have no business relationship with the U.S. Chamber of Commerce. My agency ethics agreement, which has been provided to the Committee, addresses the circumstances in which I will recuse myself.

*Question 4.* In 2009, the U.S. Chamber of Commerce called for a trial on the science of climate change. What was your role in this trial? What arguments was the Chamber attempting to make, and do you believe they still stand today?

Answer. I cannot speak for the U.S. Chamber on this topic. Nor am I aware of such a trial taking place.

*Question 5.* What is your relationship with the National Federation of Independent Business? Will you recuse yourself from U.S. DOT matters involving the National Federation of Independent Business?

Answer. I currently have no business relationship with the National Federation of Independent Business. My agency ethics agreement, which has been provided to the Committee, addresses the circumstances in which I will recuse myself.

*Question 6.* In private practice, your clients have included Airlines for America, General Motors, and Hyundai. Will you recuse yourself from U.S. DOT matters involving Airlines for America, GM, Hyundai, and other previous clients?

Answer. Please see my agency ethics agreement, which has been provided to the Committee, and which addresses the circumstances in which I will recuse myself. I have a consistent record of integrity and professionalism, and will continue to conduct myself accordingly. Please also see response to Blumenthal question 61 above. As indicated previously, to the best of my recollection and available records, I have not appeared as counsel for General Motors or Hyundai since before 2004, and have not appeared for counsel for Airlines for America since 2013.

*Question 7.* Have you engaged in conversations with private companies about vehicle standards?

Answer. I am unclear about what is being asked, but will assume that "vehicle standards" is meant to reference CAFE vehicle fuel economy standards. When I was at DOT during 2003–2006, my recollection is that DOT issued at least two CAFE regulations during that timeframe. My recollection is that we received information from companies (and others) about the CAFE fuel economy standards. I do not recall having such discussions in recent years.

*Question 8.* Have you engaged in conversations with foreign companies about vehicle standards?

Answer. Please see response above.

*Question 9.* How quickly should an automaker address safety or emissions defects and what should the penalties be?

Answer. In my view, automakers (and others) should comply with the law.

*Question 10.* Do you believe the U.S. auto industry is competitive on an international scale?

Answer. I have seen media accounts from this year reporting on automakers announcing plans to invest in the United States in the coming years.

*Question 11.* How would you describe the health of the U.S. automotive industry?

Answer. I understand that the industry has reported that U.S. auto sales totaled nearly 17.5 million new vehicles in 2016. However, I am not currently familiar with what the returns on investment have been for U.S. manufacturers.

*Question 12.* Do you feel the government should regulate vehicle emissions?

Answer. Yes.

*Question 13.* Transportation uses over 70 percent of the oil we consume in the U.S. Therefore the key to reducing oil consumption is to reduce the amount of oil

needed to drive our vehicles. What are your thoughts on the vehicle fuel efficiency standards that are currently in place?

Answer. I am aware that Congress enacted the Energy Security Act in 2007 and the Energy Policy Conservation Act of 1975. It is my view that unless Congress changes the law, it should be followed.

*Question 14.* How important is it that consumers save money at the gas pump?

Answer. In a free market, that is for the consumer to decide. But consumers often prefer to save money.

*Question 15.* Is it the responsibility of government to support consumers' health or cost savings over the life of owning or leasing a vehicle?

Answer. In developing public policy, government officials should consider all relevant factors applicable to a particular issue or problem.

*Question 16.* In your view, does the Clean Air Act allow for regulation of greenhouse gases?

Answer. The U.S. Supreme Court decided this question in *Massachusetts v. EPA*, 549 U.S. 497 (2007), and in *UARG v. EPA*, 573 U.S. (2014).

*Question 17.* Does the U.S. DOT have the authority to regulate greenhouse gases?

Answer. The U.S. DOT's statutory authority for regulating fuel consumption in vehicles is set forth in the Energy Conservation Policy Act of 1975 and the Energy Security Act of 2007, so DOT's authority is defined in those statutes. However, there is a direct correlation between fuel consumption and vehicle greenhouse gas emissions, and my understanding is that manufacturers reduce emissions by reducing fuel consumption. The U.S. Supreme Court has said: "EPA has been charged with protecting the public's 'health' and 'welfare,'" 42 U.S.C. § 7521(a)(1), a statutory obligation wholly independent of DOT's mandate to promote energy efficiency. See Energy Policy and Conservation Act, § 2(5), 89 Stat. 874, 42 U.S.C. § 6201(5). The two obligations may overlap, but there is no reason to think the two agencies cannot both administer their obligations and yet avoid inconsistency." *Massachusetts v. EPA*, 549 U.S. 497 (2007).

*Question 18.* Does FHWA have the authority to regulate greenhouse gases under Title 23 of the U.S. Code?

Answer. Historically, the Federal Aid Highway Program has been a grant program, not a regulatory program. Under MAP-21, Congress directed FHWA to establish a performance management program to add that to the Federal Aid Highway Program, and provide a means to the most efficient investment of Federal transportation funds. I am not currently aware of the full extent of FHWA's authority in this regard, and if I am confirmed, will need to consult with FHWA and DOT's General Counsel as to such authority.

*Question 19.* In your view, can the automotive industry self-regulate in dealing with issues of consumer safety? Pollution?

Answer. There are times when industry participants can take steps on their own to improve safety and/or reduce pollution. In other cases, government action may be warranted.

*Question 20.* Do you support California's right to set emission standards that exceed the Federal Government's standards?

Answer. That question is addressed in Federal statutes, and I am in favor of adhering to the law.

*Question 21.* Do you think it is in the best interest of the automakers or the U.S. economy to have higher standards in California and a dozen other states, while having lower standards in the rest of the country?

Answer. There would be obvious challenges and drawbacks to having varied standards in different states, with Federal rules some places and State rules others. But I would want to have more information before rendering any opinion on this topic.

*Question 22.* Do you support EPA Administrator Pruitt's withdrawal of the Final Determination of the Mid-Term Evaluation of Greenhouse Gas Emissions Standards for Model Year 2022–2025 Light Duty Vehicles?

Answer. I have not read EPA's announcement. If I am confirmed, and this were to fall within my responsibilities, I would plan to obtain additional briefing from NHTSA or others.

*Question 23.* What would it take for you to agree to leave the existing fuel efficiency standards in place for model years 2022 to 2025?

Answer. As a nominee, it would not be appropriate for me to prejudge the Mid-Year Review. My general view is that the agencies should adhere to the law (unless it is changed by Congress) and apply it to the factual circumstances.

*Question 24.* In an op-ed published on March 20, EPA Administrator Pruitt argued that fuel economy standards are pushing jobs out of the country. Do you agree?

Answer. I have not read that op-ed, so have no comment on it.

*Question 25.* What types of investments, if any, do you feel the U.S. DOT should be making to set and enforce vehicle emission standards?

Answer. My understanding from my past service at DOT was that DOT, at both NHTSA and the Volpe Center, has had a sizable and experienced staff who have worked on CAFE fuel economy standards going as far back to the 1970s. I am not currently familiar with how DOT and EPA have coordinated in recent years, and if confirmed, would look to gain a better understanding of that.

*Question 26.* More than 40,000 people died in car crashes last year. Many of these deaths are preventable. What are your plans to reverse the upward trend of roadway fatalities in the next two years?

Answer. The upward trend in fatalities is troubling. I would like to see additional analysis of the available data from FARS and other statistical databases. If confirmed, I will plan to receive a briefing on this fundamental issue. Until I am fully briefed on the matter and have access to the considerable expertise at NHTSA and other DOT components, it would be premature to plan specific actions.

*Question 27.* How do you believe vehicle standards should protect consumers?

Answer. In the Motor Vehicle Safety Act of 1966, as amended, Congress has set forth statutory criteria for the protection of vehicle occupants from unreasonable risk.

*Question 28.* The U.S. DOT has delayed the implementation of a safety performance measure rule that would improve the state of good repair for our roads and bridges (Pavement and Bridge Condition Performance Measures Final Rule). Do you feel it is in the best interest of the American public's safety and well-being for the Federal Government to restrict information on how many roads and bridges are in poor or even unsafe conditions? As a former general counsel for the U.S. DOT, what do you believe is holding up the implementation of this important performance measure rule?

Answer. I do not know the answer to this question, but if confirmed would look to FHWA for information about it. I was recently told that the rules are being reviewed, and that FHWA is continuing to work with its partners to ensure that any bridges found to be unsafe are immediately closed to traffic or repaired, and that information on pavement and bridge conditions is not being restricted.

*Question 29.* What regulations at the U.S. DOT do you support removing or amending?

Answer. I have not made any determinations one way or another as this question. As you know, the Department has a large number of regulations across all modes of transportation, in multiple volumes of the Code of Federal Regulations. If confirmed, before removing or amending any of them, I would anticipate that DOT and its operating administration would work with interested stakeholders and the public, as well as relying on the expertise of the professional staff at the Department, to ensure that the consequences are understood and that it is prudent and appropriate to do so.

*Question 30.* Do you believe any categories of regulations should be exempt from regulatory budgeting practices, such as President Trump's one-in-two-out executive order on rules?

Answer. Yes. FAA airworthiness directives and airspace actions would be one such category.

*Question 31.* In your view, is the American public better off with more or less government regulations? What kinds of regulations do you think are important to put in place in the context of the DOT?

Answer. For DOT, safety is and ought to be the top priority. Some regulation is necessary and beneficial. It is also possible to have poor regulations or excessive levels of costs. These should be assessed in a factual, data-driven way with the use of sound science. With regard to DOT, it will be important to assess what regulatory framework should apply to new technologies, such as automated vehicles and UAVs.

*Question 32.* Do you believe that President Trump's one-in-two-out executive order is legal? How would the U.S. DOT, an agency tasked with protecting safety, choose which regulations to eliminate?

Answer. With regard to Executive Order 13771, "Reducing Regulation and Controlling Regulatory Costs", I am not aware of any legal reason that it cannot be implemented appropriately. It is a managerial tool for prioritizing new regulations, and it creates an incentive to identify existing regulations that no longer serve well. For DOT, safety will remain the top priority. In terms of regulations that are out-

dated, there are multiple tools to identify those, and if confirmed, I would look forward to trying to make that process successful at enhancing safety while doing so in the most cost-effective way.

*Question 33.* As OMB General Counsel, you advocated for all agency regulations to go through political appointees. Do you still hold this view?

Answer. This question is based on a mistaken premise. Executive Order 12866 as issued by President Clinton in 1993 had already provided for Regulatory Policy Officers in each agency, and those were non-career appointees. When President Bush issued Executive Order 13422 in 2007, the provision on Regulatory Policy Officers made more transparent what had already been in place since 1993. At that time, OMB published on its website a roster of who the Regulatory Policy Officers were, by name and department. I was disappointed that this transparency was not continued in the Obama Administration, even though the regulatory process continued to have non-career appointees responsible for the approval of regulations.

*Question 34.* Should agencies be required to promulgate rules based on the idea of least costly rulemaking or should they focus on maximizing public health, safety, and environmental benefits?

Answer. Agencies should promulgate rules based on the requirements set in the laws that delegate the authority to establish the regulations, using the criteria establish in the law, that takes account of both cost-effectiveness and obtaining maximum public health, safety, and environmental benefits.

*Question 35.* How will you ensure that the U.S. DOT adequately considers the benefits of new regulations establishing science-based public health and safety protections, and not solely the costs?

Answer. See response above.

*Question 36.* Will you respect and uphold scientific integrity policies at the U.S. DOT?

Answer. I support scientific integrity as a general principle, and I believe in intellectual honesty. I am told that DOT has posted several current policies on its website: DOT Scientific Integrity Policy, the DOT Public Access Plan for the Results of Federally Funded Scientific Research, and the DOT Implementation Plan for OMB Statistical Policy Directive No. 1 (the "Trust Directive"). If I am confirmed, I will plan to review those in greater detail.

*Question 37.* What will you do to increase transparency at the U.S. DOT?

Answer. I am told that there are significant initiatives underway to make the DOT's programs and data much more accessible to the public than in the past. If confirmed, I would expect to learn more about these initiatives, to enable increased public access.

*Question 38.* Should the Highway Trust Fund be eligible to reimburse construction or maintenance projects that do not pay directly into the fund (e.g., transit, biking or walking)?

Answer. The Highway Trust Fund plays a critical role in funding a large portion of the Department's surface transportation programs. States often makes the point that they prefer flexibility. If confirmed, I would hope to work with Secretary Chao to examine all aspects of the Department's budget, including the Highway Trust Fund programs, to ensure that funding is appropriately allocated and supports our Nation's most pressing transportation and transportation safety needs. Please also see response to question 16 of Senator Booker's Pre-Hearing Questions for the Record.

*Question 39.* TIGER and the FTA Capital Investment Grant (CIG) programs are two of the most cost effective programs at the DOT. Do you agree that these programs are effective? If so, should we be expanding them?

Answer. If confirmed, I look forward to working on an infrastructure initiative that incorporates the best aspects of our current transportation programs, incorporates new and bold ideas, and ensures the most effective investment in our Nation's transportation systems. As a nominee, it is premature for me to say what the President's infrastructure proposal will include or not include. Please also see responses to Blumenthal question 53 and Booker question 8, and response to question 2 of Senator Klobuchar's Pre-Hearing Questions for the Record.

*Question 40.* Do you support the proposed cuts to TIGER and public transit included in the FY 2018 budget blueprint?

Answer. Please see my remarks and responses at the nomination hearing on March 29, 2017, and the response to the previous questions above.

*Question 41.* In your opinion, taking into account your prior role as a general counsel for U.S. DOT, if a transit project currently receiving funding through the CIG program were to amend its FFGA with FTA, would this remove the project

from receiving funds under the FY 2018 budget blueprint's transit funding ban? In this instance, we are assuming that FTA would approve the FFGA amendment.

Answer. If confirmed, I would ensure that any existing FFGA's are managed consistent with current law and regulations. The President's Budget Blueprint does propose not to execute new FFGA's during FY 2018, and I would expect that FTA would examine the specific circumstances regarding any proposed amendment for existing FFGAs.

*Question 42.* If the FY2018 budget blueprint were enacted, how do you recommend that transit agencies cover the long-standing Federal investment in capital projects?

Answer. Because I was not yet at DOT nor a participant in the OMB budget process, I am not yet in a position to address this question. If confirmed, I would hope to participate in the budget process going forward. If confirmed, I would also hope to be involved in the development of the President's new infrastructure proposal.

*Question 43.* What are your views on reforming the air traffic control system?

Answer. There seems to be wide agreement on the need to modernize the FAA's air traffic control technologies, often referenced as NextGen. There is not always agreement on how to accomplish that goal. As Secretary Chao indicated in her responses to Committee members following her nomination hearing, there will be a thorough Administration review of Federal Aviation Administration (FAA) reform proposals. If confirmed, I would hope to assist the Secretary in the extensive evaluation the details of any reform proposal.

*Question 44.* Did you support Chairman Shuster's air traffic control proposal from the 114th Congress?

Answer. I did not have occasion to take a position one way or another, and did not do so.

*Question 45.* If the air traffic control system is spun off to a private organization, what stakeholders should be represented on the board?

Answer. Your question addresses one of the significant issues involved in this concept. As Secretary Chao indicated in her responses to Committee members following her nomination hearing, there will be a thorough Administration review of these issues, including the composition of the board and mechanisms to ensure all stakeholders are represented.

*Question 46.* In your view, how do you think the privatized air traffic control system should be paid for?

Answer. This question also addresses one of the significant issues involved in this concept. As Secretary Chao indicated in her responses to Committee members following her nomination hearing, there will be a thorough Administration review of these issues, including funding for the new organization.

*Question 47.* Should the Federal Government require recipients of U.S. DOT funding to coordinate local land use and transportation planning and decision-making?

Answer. In general, authority to plan land use and zoning rests firmly with local governments, and they are responsible for determining how to efficiently coordinate transportation investments to serve developed and rural areas. Federal law requires States and Metropolitan Planning Organizations receiving Federal dollars to consider in their planning the consistency between planned transportation improvements and State and local planned growth and economic development. If confirmed, I will work to identify ways in which DOT can most effectively coordinate with local and State governments in the provision of infrastructure. Please also see response to question 18 of Senator Booker's Pre-Hearing Questions for the Record.

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RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. EDWARD MARKEY TO  
JEFFREY A. ROSEN

*Fuel Economy Standards.* The fuel economy emissions standards that President Obama put in place, after reaching agreement with the auto industry, and building upon the 2007 law that I helped author is the single biggest step the United States has taken to reduce our carbon pollution. But at a time when we still import more than three million barrels a day from OPEC, these fuel economy emissions standards are also critical to our national security. They will save consumers billions of dollars at the pump. But now the Trump Administration has decided to make a U-turn on these important standards by reopening the mid-term review at the Environmental Protection Agency.

*Question 1.* You mentioned in our meeting that you want to rely on the best available data. Well, the EPA, the Department of Transportation and the California Air Resources Board worked together to compile roughly 1,000 pages of technical anal-



ysis as part of the Technical Assessment Report for the midterm review. Would you characterize that technical assessment report as the best available data?

Answer. I stand by my interest in government using the best available data. In considering any decision, if I am confirmed, I would want DOT to have the best and most recently available data reasonably available. To date, I have not read the July 2016 Technical Assessment Report, but I assume it would be a useful source of data.

*Question 2.* That technical report showed that the 2022–2025 standards are both technically feasible and cost-effective. The scientific work that was done for this technical report was done by the agencies, based on data from the National Academies of Science, the auto industry, and technical NGOs. The technical work is the best available science. Do you plan to uphold this analysis if you are confirmed?

Answer. If I am confirmed, I would expect that NHTSA would carefully review and consider the data included in the Technical Assessment Report.

*Question 3.* Do you agree with the conclusion that was reached by the national academies, the DOT and the EPA in the 2012 rulemaking that tear down studies are the gold standard for evaluating the cost of different technologies?

Answer. I am in favor of using the best available information and methodologies to inform all rulemaking processes when feasible and practical. Because I have not to date read the Technical Assessment Report, I am not yet in a position to comment on its specific conclusions.

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RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. CORY BOOKER TO  
JEFFREY A. ROSEN

*Question 1.* Do you believe that climate change is real and is not a hoax?

Answer. Please see response to Nelson question 14 above.

*Question 2.* Do you believe that man-made impacts such as more cars on the road contribute to climate change?

Answer. Please see response to Nelson question 14 above.

*Question 3.* Do you think successful Federal policies such as CAFE standards have a role in addressing the impacts of climate change?

Answer. With regard to CAFE fuel economy standards, those have been required by Energy Security Act of 2007, and by the Energy Policy Conservation Act of 1975, and unless Congress changes the law, DOT is responsible for implementing it.

*Question 4.* Media reports indicate that while you were serving as General Counsel at Office of Management and Budget, you asked the Environmental Protection Agency for memos detailing why carbon dioxide emitted from motor vehicles could not be distinguished from carbon dioxide emitted from power plants. Can you explain the circumstances behind this and why you requested these memos?

Answer. Please see response to Blumenthal question 68 above.

*Question 5.* Mr. Rosen, in your opinion, what are the benefits of transit and passenger rail projects?

Answer. Transit and passenger rail are sometimes important transportation options for many citizens that rely on these services for their daily commuting needs, especially in many of our urban centers where highway and road capacity is inadequate to meet the demands of transportation and for citizens that do not have other transportation options.

*Question 6.* Do you believe there are benefits from the TIGER grant program?

Answer. Please see responses to Blumenthal question 53 and Schatz questions 39 and 40, and response to question 2 of Senator Klobuchar's Pre-Hearing Questions for the Record. There are benefits to having some discretionary grant programs, of which DOT currently has several. If confirmed, I would hope to participate in the planning of the President's infrastructure proposal.

*Question 7.* If confirmed as Deputy Secretary, what role will you have in the President's infrastructure plan and the development of future budgets?

Answer. If confirmed, I would hope to and expect to participate in the process that will be shaping the DOT aspects of the infrastructure plan, but that role is not yet defined at this time.

*Question 8.* Will you commit to advocating for funding for TIGER, New Starts, and Amtrak?

Answer. Please refer to my oral remarks and testimony at the Committee's hearing on March 29, 2017, which addressed these topics, and my response to question 6 and 14 of Senator Booker's Pre-Hearing Questions for the Record, and to Nelson question 13 above.

*Question 9.* Mr. Rosen, I know you served on the board of Amtrak. What would the impacts be to our Nation's intercity passenger rail system if President Trump's proposed cuts to long-distance train services were realized? Will you support Amtrak's long-distance train services?

Answer. Please see responses 22–26 to Senator Booker's Pre-Hearing Questions for the Record, and the response to Nelson question 15 above.

*Question 10.* Mr. Rosen, FMCSA has promulgated a Final Rule on Entry-Level Driver Training (ELDT) standards for commercial motor vehicles published in the *Federal Register* on December 8, 2016, due to begin implementation on February 6 of this year and has a compliance date of February 7, 2020. The regulation was subject to a 60-day delay by FMCSA subsequent to the President's January 20 Memorandum that issued the regulatory freeze. While I understand it is not unusual for an incoming administration to require time to review the pending regulations, the Presidential Memo from January 20 explicitly stated that any regulation required by statute or that is necessary for public safety is exempted. Do you believe the Entry-Level Driver Training Final Rule, which is both necessary for public safety and required by law under MAP-21, should be exempted from the President's Memo?

Answer. As I was not at DOT at that time, I am not in a position to address the specifics of this, but if I am confirmed, I will plan to receive an update on its status, the requirements of MAP-21 regarding this rule, and FMCSA's plans.

*Question 11.* The Obama Administration went to great lengths to promote the use of technology in the transportation sector. From working to remove regulatory barriers for UAS, to creating a Federal automated vehicle policy, to implementing the Smart City Challenge, technology and innovation were at the forefront of solving our most pressing transportation and safety challenges. How do you plan to harness new technologies at the DOT once you are confirmed?

Answer. Please see my response to question 11 of Senator Booker's Pre-Hearing Questions for the Record.

*Question 12.* As you may know, the emergence of self-driving cars holds great promise for many people who have traditionally been disenfranchised. These autonomous vehicles can help provide greater independence to older Americans and persons with disabilities, providing them greater access to employment opportunities and health care. Under your leadership, will DOT further explore the benefits of autonomous cars for persons with disabilities?

Answer. In my view, autonomous vehicles have a tremendous potential to provide benefits to a wide variety of Americans, including the elderly and persons with disabilities. If the technologies are successful, I would look forward, if confirmed, to working with Secretary Chao and Congress to pursue these benefits and ways to safely incorporate the technology into widespread use.

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RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. TOM UDALL TO  
JEFFREY A. ROSEN

*Question 1.* More than 10,000 Americans are killed each year in alcohol-impaired driving crashes. Drunk driving accounts for roughly a third of all traffic fatalities. These deaths are preventable. That is why I support high visibility law enforcement, ignition interlocks for all offenders, and a promising R&D program to end drunk driving. The Driver Alcohol Detection System for Safety (DADSS) is a public private partnership that brings together automakers and the National Highway Traffic Safety Administration (NHTSA) to develop lifesaving drunk-driving prevention technology. As transportation secretary, will you continue to support the DADSS initiative and other efforts to save lives from drunk driving?

Answer. If confirmed, I would receive a full briefing from NHTSA regarding the timing, technology, and funding of the Driver Alcohol Detection System of Safety (DADSS). Any fatality or injury due to drunk driving is tragic, and NHTSA must continue to work with the States to educate drivers and enforce current laws.

*Question 2.* Given that the Highway Trust Fund has solvency issues, what measures will this Administration take to ensure that adequate funding is maintained in order for the Federal Government to meet the continued need for infrastructure improvements?

Answer. Maintaining the solvency of the Highway Trust Fund is a critical issue. If confirmed, I would expect to take a strong role in examining future options for transportation investment as we develop our Departmental budgets and the Administration's infrastructure initiative. If confirmed, I look forward to working with Congress on this issue.

*Question 3.* I am concerned your Administration's reported plans for funding transportation infrastructure through tax credits for companies and privatizing roads could result in American taxpayers paying twice. Should states that turn existing public roads into private toll roads be allowed to continue to receive Federal support for those roads, at the expense of taxpayers in other states?

Answer. As Secretary Chao indicated in her response to the Committee, tolling is but one tool in the toolbox for addressing certain financing needs of various infrastructure projects. If I am confirmed, I would intend to be briefed on all of the options available for financing of infrastructure projects. What works for one State or one project may not work for another, and so it would be inappropriate to speculate or engage in broad generalizations.

*Question 4.* Under your Administration, will private companies be allowed to charge tolls for a road that has already been paid for with Federal money?

Answer. Congress has set explicit restrictions on the allowance of tolling the existing federal-aid highway system. Should Congress decide to pursue an expansion of tolling on existing roads already paid for with Federal money, I would, if confirmed, look forward to participating in those discussions.

*Question 5.* How will your Administration work to improve infrastructure projects that private investors may be reluctant to invest in, such as municipal water-systems or improvements to existing bridges and roads where it may not be possible to charge tolls to recover costs?

Answer. As I understand it, there are potential tools and strategies that can encourage greater private sector investment in a wide range of different infrastructure assets. Federal credit and finance options can help make certain types of infrastructure investment more attractive to the private sector. Leveraging other sources of State and local funding, including the use of availability payments, may also be a potential option for critical transportation assets that do not generate direct revenue streams on their own. If confirmed, I will work to identify the challenges to investment in infrastructure and will seek effective options for advancing investment opportunities.

*Question 6.* How will you approach the transportation needs for those Americans living in rural areas?

Answer. Rural America is home to many of the Nation's most critical infrastructure assets including 444,000 bridges, 2.98 million miles of roadways, 30,500 miles of interstate highways. Local and regional highway connections are vital to support the movement of energy and agricultural products that rural economies depend upon. However, rural local bridges continue to have the highest percentage of structural deficiencies, 17.2 percent. Interstate bridges in rural areas had the highest share of functionally obsolete bridges at 11.6 percent. If confirmed, I will work with Secretary Chao to develop an approach that will meet the needs of rural Americans both for personal transportation and to bolster the rural economy.

*Question 7.* How should new Internet and communications technologies be incorporated into our Nation's transportation infrastructure to improve safety and performance?

Answer. Innovation holds much promise to improve the safety and operational efficiency of our transportation infrastructure. Many of these advances in intelligent transportation systems are the result of efforts by the private sector and research communities. DOT has a long history of partnering with these entities to explore how we can maximize their effectiveness in the transportation sector. If confirmed, I will work with Secretary Chao to promote an environment that encourages technological innovations in transportation and the ability to communicate operational conditions of our transportation network in real time to save lives and make more efficient use of our transportation infrastructure.

*Question 8.* What role do you envision railroads playing in America's transportation infrastructure under your Administration?

Answer. Railroads play a critical role in our Nation's transportation system and economy. If confirmed, I look forward to working with Congress and the railroads to build on current investment in rail infrastructure and identify options to most efficiently deliver projects.

*Question 9.* Recent Federal and private investments at the Santa Teresa, NM Port of Entry and surrounding areas have helped expand and improve the efficiency of trade along the New Mexico-Chihuahua international border. New Mexico has also led all U.S. states in goods export percentage growth to Mexico. Will your Administration support transportation policies to promote efficient trade along the border?

Answer. This is an important issue, and if I am confirmed, I would look forward to working with you and the Committee to address it.

*Question 10.* President-elect Trump's infrastructure plan available at <https://www.donaldjtrump.com/policies/an-americas-infrastructure-first-plan> calls for "reforms that streamline permitting and approvals." What specific reforms will you pursue to the permitting and approval process for transportation infrastructure such as bridges, roads, pipelines, etc.?

Answer. My understanding is that the Department established its Infrastructure Permitting Improvement Center (IPIC) as a central resource for accelerating project delivery. IPIC oversees implementation of permitting reforms including those from MAP-21 and the FAST Act. These include synchronizing environmental reviews and minimizing duplication, establishing programs to measure progress in accelerating project delivery, and integrating geospatial and other data tools with fiscal management systems to provide improved data and greater transparency. IPIC coordinates with the Department's Operating Administrations as well as with the Council on Environmental Quality, the Federal Permitting Improvement Steering Council (established through the FAST Act), and other Federal agencies through the Transportation Rapid Response Team, in completing implementation of many of these reform measures. The Department and Operating Administration websites include more information on the results of these actions. This is an ongoing effort, and if confirmed, I will look forward to continuing to find ways to improve the efficiency of permitting and approval processes in order to accelerate project delivery while concurrently achieving good outcomes for communities and the environment.

*Question 11.* What is your Administration's plan for improving the aging and insufficient roads on tribal lands and how will DOT work with these communities to see that their infrastructure needs are addressed?

Answer. As I understand it, the Administration is coordinating a process to evaluate all of the various financing tools and opportunities for a new infrastructure plan, including those projects on tribal lands. As a nominee, I am not yet aware of where that stands, but if I am confirmed I would hope to become a participant in the process.

*Question 12.* President-elect Trump's infrastructure plan calls for approving "private sector energy infrastructure projects—including pipelines and coal export facilities—to better connect American coal and shale energy production with markets and consumers." In recent years, a proposed coal export facility at Cherry Point, WA and pipeline near the Standing Rock Indian Reservation faced opposition from local Indian tribes. Will you assure me that the Department of Transportation will consult with tribes on a government to government basis and uphold the U.S. Government's treaty obligations?

Answer. As I understand it, section 106 of the National Historic Preservation Act of 1966 (NHPA) generally requires that a Federal agency should consult with any Indian tribe that attaches religious and cultural significance to historic properties that may be affected by the agency's undertakings. It is my understanding that DOT regularly consults with American Indian tribes and incorporates their feedback in both the Section 106 and NEPA documents.

*Question 13.* The DOT's Transportation and Climate Change Clearinghouse (available at <https://climate.dot.gov/about/index.html>) states that "within the United States, transportation is the largest source of greenhouse gas (GHG) emissions after electricity generation. With scientific recognition that GHG emissions are contributing to a long-term warming trend of the earth, there is an increasing realization that transportation, as a significant contributor of GHGs, plays an important role in climate change policy and program decisions." How will DOT under your leadership work to address GHG emissions and climate change issues?

Answer. Please see responses to Nelson question 15, Schatz question 25, and Booker question 3.

*Question 14.* Each major Federal agency has been graded at least three times on their implementation of the Federal Information Technology and Acquisition Reform Act of 2014 (FITARA, PL 113–291). The House Oversight and Government Reform Committee with assistance from the Government Accountability Office (GAO) issues a "scorecard" for FITARA implementation. What grades has DOT received? How do you plan to improve this grade?

Answer. I am told that DOT strongly supports the goals of FITARA and has played a leading role among Government agencies in its implementation. From what I was told, however, DOT has received two D grades and an F+ on the FITARA scorecard. I am advised that the DOT CIO Council is actively working to improve these grades. If I am confirmed, it would be my intention to follow up on these activities to ensure that DOT was making the necessary improvements.

*Question 15.* Describe the role of your department Chief Information Officer (CIO) in the development and oversight of the IT budget for your department. How is the

CIO involved in the decision to make an IT investment, determine its scope, oversee its contract, and oversee continued operation and maintenance?

Answer. I am told that the CIO's oversight of the IT budget has evolved and strengthened with the implementation of FITARA. In May 2016, the CIO signed the "DOT IT Spend under FITARA" memorandum with the Assistant Secretary for Budget and Programs/Chief Financial Officer (CFO) and the Assistant Secretary for Administration. If I am confirmed, I would be pleased to arrange an update of this topic for you.

*Question 16.* Describe the existing authorities, organizational structure, and reporting relationship of the Chief Information Officer. Note and explain any variance from that prescribed in the Federal Information Technology and Acquisition Reform Act of 2014 (FITARA, PL 113–291) for the above.

Answer. Please see response above.

*Question 17.* What formal or informal mechanisms exist in your department to ensure coordination and alignment within the CXO community (*i.e.*, the Chief Information Officer, the Chief Acquisition Officer, the Chief Finance Officer, the Chief Human Capital Officer, and so on)?

Answer. Please see response above.

*Question 18.* According to the Office of Personnel Management, 46 percent of the more than 80,000 Federal IT workers are 50 years of age or older, and more than 10 percent are 60 or older. Just four percent of the Federal IT workforce is under 30 years of age. Does your department have such demographic imbalances? How is it addressing them?

Answer. I am told that the average age of the DOT IT workforce is 50.80 years. DOT's OCIO is working to develop OCIO IT professionals through the Staff Training, Education, and Professional Development (STEP) program. If I am confirmed, I would be pleased to arrange an update on this topic for you.

*Question 19.* How much of the department's budget goes to Demonstration, Modernization, and Enhancement of IT systems as opposed to supporting existing and ongoing programs and infrastructure? How has this changed in the last five years?

Answer. I have been told that over the past five years, DOT's Development, Modernization, and Enhancement (DME) has made-up about 51 percent of the IT portfolio spending, or approximately \$1.5B per year. This represents modernization efforts across the Department, and FAA projects make-up the largest percentage.

*Question 20.* What are the 10 highest priority IT investment projects that are under development in your department? Of these, which ones are being developed using an "agile" or incremental approach, such as delivering working functionality in smaller increments and completing initial deployment to end-users in short, six-month time frames?

Answer. I am told that FAA investments accounted for 87 percent of the DOT IT portfolio, and the requirements for developing and maintaining 24/7 operational mission essential and safety critical systems are very stringent and not necessarily candidates for agile development. I am also aware that GAO also concurred on this assessment as part of GAO 14–361 (3112890). As noted in the GAO Report, there are high priority DOT investments that do not lend themselves to agile development. Examples of safety critical investments, which require reliability, availability and maintainability standards at or above 99.9999 percent, include:

- FAAXX255: Alaskan Satellite Telecommunication Infrastructure (ASTI)
- FAAXX732: Common Support Services Weather (CSS-Wx)
- FAAXX807: NextGen Weather (Wx) Processor (NWP)
- FAAXX505: ERAM Enhancements & Tech Refresh
- FAAXX711: Data Communications NextGen Support (DataComm)
- FAAXX612: System Approach for Safety Oversight (SASO)
- FAAXX808: NextGen R&D Portfolio
- FMCSA100: Unified Registration System (URS)
- FAAXX102: Terminal Flight Data Manager (TFDM)
- FAAXX778: Next Generation Air/Ground Communications (NEXCOM) Segment

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While these systems may not follow strict "agile development" guidelines, they do follow waterfall national deployment schedules that are built around minimizing deployment risks.

*Question 21.* To ensure that steady state investments continue to meet agency needs, OMB has a longstanding policy for agencies to annually review, evaluate, and

report on their legacy IT infrastructure through Operational Assessments. What Operational Assessments have you conducted and what were the results?

Answer. Please see response to Udall question 15 above.

*Question 22.* What are the 10 oldest IT systems or infrastructures in your department? How old are they? Would it be cost-effective to replace them with newer IT investments?

Answer. Below is a summary that I was provided by the DOT CIO's office as a courtesy to assist me in responding to this request. Until I am confirmed and able to obtain more thorough briefing, I am unable to judge the cost effectiveness of replacing these items.

- i. As part of the Common Operating Environment (COE), the DOT CIO's office currently provides a telecommunication system for DOT employees. The existing system was purchased in FY 2007 when DOT relocated into the Navy Yard headquarters building. The legacy system does not provide modern features and is not scalable based on the changing telecommunications needs of the DOT workforce. A COE Communications Workgroup, consisting of representatives from across the Department, has been formed to examine current requirements and conduct market research as part of a recommended approach to modernize the legacy telephone system.
- ii. The NHTSA Artemis system was initiated in 2002 and consists of complaints from vehicle owners, early warning reporting data submitted by manufacturers, and recall and investigation information. Modernization of this system is necessary to adjust a high volume analysis of data. It is slated to end in 2024.
- iii. In the FAA National Airspace System (NAS), the Airport Surveillance Radar-9 (ASR) in Huntsville, AL is on track for approval by the FAA's Final Investment Decision of funding in Q4 CY2017.
- iv. In the FAA National Airspace System (NAS), the Flight Data Input Output Center (FDIOC) in Miami FL will undergo a planned tech refresh as part of a contract awarded in 2016.
- v. In the FAA National Airspace System (NAS), the Low Level Wind Shear Alert System (LLWAS) in Dallas—Fort Worth TX is scheduled to be modernized in the third quarter of calendar year 2020.
- vi. In FAA Mission support, Cisco ethernet switches have been identified as End of Life (EOL). These EOL switches do not house critical systems or personal identifiable information. The FAA has a network infrastructure of approximately 3,000 switches. The FAA follows a replacement cycle for switches of 5 percent per year. A break/fix approach is applied to switches that fail before the replacement schedule.
- vii. In FAA Mission support, Dell PowerEdge file and print servers are EOL and out of warranty. Data will be migrated and systems will be decommissioned by July 2018. These EOL servers do not house critical systems or personal identifiable information.
- viii. In FAA Mission support, Dell servers supporting the CRU—ART System are EOL and out of warranty. CRU—ART servers were upgraded to Microsoft Windows 2008 operating system but were not decommissioned. CRU—ART is a critical system and does not house personally identifiable information. CRU—ART is being replaced with Air Traffic Operations Management System (ATOMS). Servers will be either replaced as they break or migrated to the FAA Cloud.
- ix. In FAA Mission support, the AVS Flights Standards, Registry Management System (RMS) for Aircraft and Airman Infrastructure are EOL and out of warranty. RMS is a critical system. A project is underway to implement a technical refresh strategy. The application infrastructure and mainframe migration are a part of that strategy.
- x. In FAA Mission support, the National Offload Program (NOP) is a system of hardware and applications that work together to retrieve, store, and distribute NAS data from all ARTCCs, STARS, and ARTS 2eAir Traffic Control Radar facilities. It is not a critical system and does not contain personal identifiable information. The effort to upgrade the network infrastructure and operating systems is currently at 55 percent completion and expected to be complete by September 2017.

*Question 23.* How does your department's IT governance process allow for your department to terminate or "off ramp" IT investments that are critically over budg-

et, over schedule, or failing to meet performance goals? Similarly, how does your department's IT governance process allow for your department to replace or "on-ramp" new solutions after terminating a failing IT investment?

Answer. If I am confirmed, I would be please to arrange an update on this topic for you.

*Question 24.* What IT projects has your department decommissioned in the last year? What are your department's plans to decommission IT projects this year?

Answer. Please see response above.

*Question 25.* The Federal Information Technology and Acquisition Reform Act of 2014 (FITARA, PL 113-291) directs CIOs to conduct annual reviews of their department/agency's IT portfolio. Please describe your department's efforts to identify and reduce wasteful, low-value or duplicative information technology (IT) investments as part of these portfolio reviews.

Answer. Please see response to Udall question 15 above.

*Question 26.* In 2011, the Office of Management and Budget (OMB) issued a "Cloud First" policy that required agency Chief Information Officers to implement a cloud-based service whenever there was a secure, reliable, and cost-effective option. How many of the department's IT investments are cloud-based services (Infrastructure as a Service, Platform as a Service, Software as a Service, etc.)? What percentage of the department's overall IT investments are cloud-based services? Does DOT have a Cloud strategy to encourage the use of Cloud computing solutions? If not, by when do you plan to have such a strategy in place?

Answer. Please see response to Udall question 15 above.

*Question 27.* Congress passed the MEGABYTE Act (PL 114-210) to encourage agencies to achieve significant savings in managing IT assets including software licenses. What policies or processes are in place at DOT to improve management of software licenses? What savings do you expect DOT to report by the end of FY 2017?

Answer. I am told that DOT's OCIO is currently in the inventory stage of a software category management initiative. If I am confirmed, I would be pleased to arrange an update for you.

*Question 28.* Provide short summaries of three recent IT program successes—projects that were delivered on time, within budget, and delivered the promised functionality and benefits to the end user. How does your department/agency define "success" in IT program management? What "best practices" have emerged and been adopted from these recent IT program successes? What have proven to be the most significant barriers encountered to more common or frequent IT program successes?

Answer. These are important questions to ascertain the status of DOT's IT capability. And I share the view that modern IT capability increasingly affects how well an agency can perform its mission. I look forward to learning more about this if I am confirmed. I would also offer to arrange an update for you and your staff.

*Question 29.* Are you the beneficiary or trustee of any discretionary trust that has not been fully disclosed to the Committee or the Office of Government Ethics? If so, please provide detailed information about the trust(s).

Answer. Not to my knowledge.

*Question 30.* During a campaign speech in Ashburn, Virginia last August, President-elect Trump reportedly said that he would "at least double" Hillary Clinton's proposed \$275 billion infrastructure plan. Yet he did not provide many details where the money to do this will come from. A campaign website describes "leverag[ing] new revenues and work with financing authorities, public private partnerships, and other prudent funding opportunities." Can you shed more light on what the Trump infrastructure plan really is and how it will be funded?

Answer. As I understand it, the Administration is currently evaluating all the various tools and opportunities for a new infrastructure plan. If confirmed, I would work within the Administration to ensure that a variety of strategies and options for all infrastructure investments are considered. Since I am not yet a part of these discussions, it would be premature for me to speculate on the details and effects of such a plan.

*Question 31.* Some of my Congressional colleagues have reportedly expressed concerns about how to pay for a Trump infrastructure plan. There are news reports that estimate that a tax reform package could lead companies to repatriate up to \$200 billion of overseas cash holdings. Such tax measures could be part of a broader agreement to help fund infrastructure upgrades with Federal investments. What level of direct Federal investment will be necessary to support a Trump infrastructure plan?

Answer. Please see responses to question 20 of Senator Booker's Pre-Hearing Questions for the Record, and the response to Nelson question 1 above.

*Question 32.* Would direct Federal investment to upgrade our Nation's infrastructure create jobs and promote economic growth?

Answer. The Federal Government has invested hundreds of billions of dollars to preserve and improve our Nation's transportation infrastructure over the last several decades. However, the problems we face today in rebuilding and revitalizing our decaying transportation network are simply too great to rely on any one source alone. Addressing this challenge will require investment and commitment from all levels of government and the private sector to ensure that our transportation networks continue to play their vital role in supporting a thriving economy.

*Question 33.* Your written statement notes that you want to work this committee on transportation needs in rural America. I am concerned that it may be easier to "unleash private investment" for transportation improvements in cities along the Interstate 95 corridor from New York to Washington than in smaller towns along I-40 from Gallup to Tucumcari. How will your Administration work to improve infrastructure projects that private investors may be reluctant to finance, especially where it may not be possible to recover costs through tolls and other user fees?

Answer. As I understand it, there are a number of potential financing and funding options for encouraging greater private sector investment in infrastructure assets in a variety of geographic contexts, including rural infrastructure. Although I have not been employed at DOT during the last two months, I anticipate that the Administration will work to identify the unique challenges to attracting private investment in certain types of vital infrastructure and to develop innovative strategies to create incentives for investment.

*Question 34.* Vehicle fuel efficiency has been a success story thanks to advances in technology that improve car mileage. Fuel efficiency save drivers money at the pump. Do you agree with the assessment of the Department of Transportation and the Environmental Protection Agency that there are more technologies to increase fuel efficiency available, and that they cost less than earlier projections believed would be the case? Will you work to further improve vehicle fleet fuel economy rather than rolling back standards?

Answer. Please see responses to Nelson question 15, Schatz question 25, and Booker question 3.

*Question 35.* Senator Feinstein and I have worked for several years on the truck safety issue of so called "twin 33s." Currently, thirty-eight states including New Mexico do not allow these longer trucks to operate within their jurisdictions. One study estimates that twin 33s would put more wear and tear on our Nation's roads, adding \$1.2 billion to \$1.8 billion in maintenance costs per year. DOT has previously advised that there is currently not enough data to draw conclusions on the safety implications of double 33-foot trailers. DOT recommended that no changes to truck size be considered at this time. Given the cost and potential safety hazards, would you as Secretary require DOT to complete a comprehensive safety study before longer trucks are permitted on highways?

Answer. Please see response to Blumenthal question 8.

*Question 36.* Pipelines are a key component of our Nation's transportation infrastructure. Many Americans are probably not aware that they live, work, or pursue recreational activities near pipelines. Ensuring their safety is an issue I take very seriously. In 2000, a quiet summer morning was shattered when a gas pipeline ruptured and burst into flames near Carlsbad, New Mexico. The fireball could be seen twenty miles away. Tragically, twelve people who were camping along the Pecos River died. This was the worst pipeline accident in the continental United States. I wish I could say that it was the last. Yet tragedy struck again since then. I am concerned that PHMSA still has not done enough to prevent further pipeline catastrophes. What are your priorities for PHMSA's work related to pipeline safety?

Answer. If confirmed, I would expect to work with the Pipeline and Hazardous Materials Safety Administration (PHMSA) to ensure that the Department is taking appropriate steps to promote the safe transportation of natural gas, petroleum, and other hazardous materials by pipeline.

*Question 37.* Not far from the United State Senate, trains carry hazardous materials through the heart of Washington, D.C. In fact, all across the country, trucks and trains pass through communities carrying hazardous cargoes such as ammonia, chlorine, and highly flammable fuels. PHMSA has an important responsibility in ensuring the safe and secure shipment of these dangerous materials. What efforts should PHMSA undertake to improve safety and emergency preparedness? How can



PHSMA better help local governments and communities with pipeline and hazardous materials safety and emergency preparedness?

Answer. Please see response to Klobuchar question 4.

*Question 38.* As in so many areas, U.S. military research helped develop and accelerate autonomous vehicle technology. Defense Advanced Research Projects Agency (DARPA), for example, successfully used challenge prizes for autonomous vehicles to reach beyond traditional partners and attract problem solvers from the wider research community. Prizes can also be a cost-effective way to spur innovation since one pays only for successful solutions rather than traditional research and development costs. Legislation I sponsored last year, the Science Prize Competitions Act (PL 114–329) encourages Federal agencies to use prize competitions as incentives for innovation. The Challenge.gov website notes that DOT has 13 active challenge prizes. Under your leadership, will DOT continue to use challenge prizes as one tool to help drive innovation?

Answer. Challenge prizes have sometimes been effective in spurring innovation and addressing other technology problems, and in encouraging original uses of government data. If confirmed, I will work with Secretary Chao to consider all challenge prizes proposed by the Department to ensure that they are truly innovative challenges that will help address transportation needs.

*Question 39.* Last year marked the National Park Service centennial. Will you commit to assisting the National Park Service in addressing the transportation infrastructure needs of America's national parks?

Answer. If I am confirmed, I would anticipate that DOT would continue to assist its Federal land management agency partners, including the National Park Service, in the design and construction of appropriate highway and bridge projects.

*Question 40.* As a member of the Senate Appropriations Committee, I supported a transportation funding bill that included \$241 million for New Starts. Unfortunately, New Start projects cannot currently move forward due to the continuing resolution. Will you work in the Administration to support an appropriations bill for the remainder of Fiscal Year 2017 that allows New Starts projects to move forward?

Answer. Please see responses to Nelson question 2, Schatz question 39, and Booker questions 5 and 8, as well as response to question 5 from Senator Nelson's Pre-Hearing Questions for the Record.

*Question 41.* NHTSA is set to require that all light vehicles use dedicated short-range communications (DSRC) by 2023 but to date has not fully addressed critical vehicle security vulnerabilities in those vehicles. This could potentially result in NHTSA requiring drivers to use connected cars that have unreasonable cybersecurity risks. How will you ensure that NHTSA efforts to promote connected vehicle innovations will also adequately address cybersecurity risks?

Answer. If confirmed, I would work to ensure that NHTSA is considering these and other risks as it looks to work with all stakeholders and the public to further improve the cybersecurity posture of vehicles.

*Question 42.* My understanding is that NHTSA has not required automotive OEMs to develop and comply with a set of industry vehicle and DSRC security standards prior to selling those vehicles to the public. Do you believe this poses any potential cybersecurity or safety risk for consumers?

Answer. See response above.

*Question 43.* NHTSA's 5-Star Safety Ratings help consumers make informed decisions about safety when purchasing a vehicle. Should any compliance with industry vehicle and DSRC security standards be made transparent to consumers using "star ratings" or other ways to help consumers better understand the risks involved in their purchase?

Answer. Consumer understanding and awareness is certainly one aspect of vehicle cybersecurity. Working with stakeholders and having a robust vehicle design are others. If confirmed, I will plan to confer with NHTSA about considering these and others as it looks to work with all stakeholders and the public to further improve the cybersecurity posture of vehicles.

*Question 44.* A WalletHub study recently ranked my home state No. 4 on a list of states that would be hardest-hit by a trade war with Mexico. In 2016, New Mexico exported over \$1.5 billion in goods across our southern border. Significant transportation investments in Santa Teresa, for example, have helped facilitate trade and increase economic opportunity in southern New Mexico. But President Trump seems to be leading us to a trade war with Mexico. He has proposed a 35 percent tariff on goods coming from Mexico. Mexico's economy minister has reportedly indicated that a border tax on Mexican goods would lead to immediate retaliation by his coun-

try. Would a trade war with Mexico be good for the American transportation industry?

Answer. Please see response to Udall question 9 above. If confirmed, I would look forward to working with the transportation community and the public to take all concerns and feedback into account as we move forward on key policy and planning initiatives.

*Question 45.* The New Mexico Rail Runner Express is a state-owned commuter rail service operating from Belen to Albuquerque to Santa Fe. Rail Runner Commuter Service currently operates sixteen (16) on weekdays. My understanding is that Rail Runner has operated for over a decade with no PTC-preventable accidents. The state and the regional transit district that operates the Rail Runner face difficulty funding implementation and operations of PTC and will likely not meet the federally mandated PTC implementation deadline of December 31, 2018. Will you work with Rail Runner and the State of New Mexico to address the important safety requirements approved by Congress without risking a loss of service for the New Mexicans that depend on the Rail Runner?

Answer. If confirmed, I would look forward to conferring with FRA to continue its efforts to provide necessary technical assistance and guidance to the New Mexico Rail Runner Express operation to ensure that it implements PTC in accordance with the existing Congressional mandates and existing regulations.

*Question 46.* President Trump's budget proposal calls for transferring air traffic control from the FAA and to a non-governmental organization. My understanding is that the permissibility of Federal delegations of authority to private entities is relatively unsettled. However, delegations of regulatory and enforcement powers to private entities generally raise constitutional concerns. Can you share more specifics about President Trump's plan to shift the ATC function to a private entity and whether his approach will raise any issues involving an impermissible delegation of authority?

Answer. As Secretary Chao indicated in her responses to Committee members following her nomination hearing, there will be a thorough Administration review of these issues, including constitutional issues. If confirmed, I would hope to assist the Secretary in the extensive evaluation the details of this proposal would entail, and I would ensure that the concerns you raise are thoughtfully considered.

*Question 47.* In hearing testimony on the Regulatory Accountability Act of 2013 (available at <http://judiciary.house.gov/files/hearings/113th/07092013/Rosen%2007092013.pdf>), you discussed regulation issues and ways to make the rulemaking process more efficient and consistent, including through greater use of cost-benefit analysis tools. When it comes to DOT safety-related regulations, how should cost-benefit analyses be used appropriately and how should DOT weigh the potential number of lives saved against the potential compliance costs for companies?

Answer. Agencies should promulgate rules based on the requirements set in the laws that delegate the authority to establish the regulations, using the criteria establish in the law, that takes account of both cost-effectiveness and obtaining maximum public health, safety, and environmental benefits.

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RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. CATHERINE CORTEZ MASTO  
TO JEFFREY A. ROSEN

*Smart Cities.* During 2015–2016, previous USDOT Secretary Anthony Foxx, led an interesting Smart Cities challenge that incorporated innovative transportation solutions for a single \$40 million grant award.

*Question 1.* Can you speak about your thoughts of that creative challenge and whether you envision projects that were applied for under that opportunity receiving Federal support under this administration?

Answer. As I understand it, the Smart Cities Challenge provided an award to a single city, Columbus, Ohio, and also leveraged significant private sector capital to help cities implement their visions for innovation. It is my understanding that many of the cities that did not win an award have continued to pursue the visions they developed as a result of the Challenge. Secretary Chao has been clear that innovation will be a top priority and, if confirmed, I would look forward to working on new initiatives to spur innovation, both in the private sector and in State and local government. As to Federal support for other projects that submitted applications to the Smart Cities challenge, it is premature for me to address that, but if confirmed, I may plan to receive additional information about that award program.

*DBE Program.* A priority I raised in our individual meeting was about having a strong Disadvantaged Business Enterprise (DBE) program.

*Question 2.* Can I get your opinion on the effectiveness of that program at USDOT?

Answer. As indicated by Secretary Chao in her responses to the Committee following her nomination hearing, current law provides the DBE programmatic requirements. If confirmed, I would join her in pursuing equal application of the law and fulfilling the Department's legal obligations.

*Question 3.* And I get your commitment that during your time at the department that you'll work diligently to ensure the properly managed and administered program for contractors like those I have in Nevada?

Answer. If confirmed, I would work with DOT staff to try to ensure that the DBE program is being properly and lawfully administered.

*Hiring Freeze.* The President has signed White House executive orders to implement a hiring freeze for the majority of Federal agencies—including many who handle vital aspects of our daily life, such as cyber or IT security and public safety, like at USDOT. As well as many areas where the Nation's economy could be stymied, all of which are places where the Federal Government's lack of staffing could be detrimental.

*Question 4.* Do you have an understanding on how many vacancies you have at USDOT that will be going unfilled?

*Question 5.* And how many are related to public safety, at FTA, FRA, FMCSA, PHMSA, NHTSA, for example?

*Question 6.* I'm aware there is a waiver process for important safety positions. Do you know how many waivers that USDOT Secretary Chao has applied for so far to meet the need of staffing your vital department?

Answer. I am told that Secretary Chao has exercised her authority as the head of an agency to approve certain exceptions to the hiring freeze because the positions approved were necessary to ensure the safety of the traveling public. . If I am confirmed, I would be pleased to request that additional information be provided to you and the Committee.

*Question 7.* These are serious concerns that come from what I can only imagine even an accomplished public servant like you, who have handled countless Federal Government personal decisions, would consider ill-advised or cumbersome to you effectively doing the job for which you've been appointed. Would you agree?

Answer. While my years in public service at DOT and elsewhere have shown me of the quality of various personnel and programs, more can always be done to bring effectiveness to government. President Trump has recently established an Office of American Innovation in the White House to focus on this on behalf of the American public.

*Regulatory EO.* Another issue, that you as a former OMB staffer might have insight on, is the regulatory "2 for 1" Executive Order.

*Question 8.* Can you please explain how you understand that action will be enforced in your capacity at USDOT?

Answer. Executive Order 13771, "Reducing Regulation and Controlling Regulatory Costs", is a managerial tool for prioritizing new regulations, and it creates an incentive to identify existing regulations that no longer serve well. For DOT, safety will remain the top priority. In terms of regulations that are outdated, there are multiple tools to identify those, and if confirmed, I would look forward to trying to make that process successful at enhancing safety while doing so in the most cost-effective way.

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RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. MAGGIE HASSAN TO  
JEFFREY A. ROSEN

*Question 1. Transportation Investment Generating Economic Recovery Grants:* In January of this year, Secretary Chao testified before our Committee and discussed the TIGER Grant program. She noted that these grants were "one area of great agreement" in Congress and also noted that the funding levels for this program were a "modest sum." Yet the President's proposed budget eviscerates this program. Do you agree with the proposed elimination of TIGER grants? If confirmed, how do you plan to ensure critical projects like the Memorial Bridge and the Sarah Mildred Long Bridge in New Hampshire receive the funding and support they need?

Answer. Please see responses to Blumenthal question 53 and Booker question 8, and response to question 2 of Senator Klobuchar's Pre-Hearing Questions for the Record.

*Question 2. Essential Air Service:* The President's budget proposal also eliminates the EAS program, which rural communities depend on for commercial air service. Lebanon Airport in New Hampshire relies on the EAS program as do rural communities across the country in states like Texas, Nevada, Nebraska, Alaska, and so many others. If the President's proposed budget becomes a reality, what is your plan to keep rural communities connected to broader transportation services?

Answer. Please see response to Udall question 6, as well as my remarks and responses at the nomination hearing on March 29, 2017. If confirmed, I will work with the Committee and Congress to explore ways to keep small or rural communities connected to the national transportation system.

*Question 3. Safety:* The number one job of government is protecting public safety. If confirmed, how will you prioritize safety across all transportation modes?

Answer. As Secretary Chao has emphasized, safety is the number one priority for the Department of Transportation. If confirmed, I would expect to participate with her and the rest of the Departmental leadership in ensuring that this priority is fulfilled across all transportation modes.

*Question 4. Commuter Rail:* I have long supported efforts to bring commuter rail up from Boston to New Hampshire, which would improve access to jobs and economic opportunities for our entire region, and would have the net benefit of reducing congestion on our roads. A project of this magnitude will require Federal support to enhance our state and local efforts. Are you committed to ensuring support for a vibrant commuter rail system in this country?

Answer. Commuter rail services play an important role in our Nation's transportation system. As a nominee, I am not familiar with the specifics of proposals to establish commuter rail service between Boston and New Hampshire. If I am confirmed, I would be interested to learn more about this initiative.

*Question 5. Automation.* The trucking industry plays a critical role in my state and around the country. The previous Administration announced a working group on automation consisting of various public and private sector stakeholders as well as innovators, labor, and academia. Do you agree that there is value in a multi-stakeholder process to prepare for future technologies? Do you support the continuation of this working group under the current Administration?

Answer. While it would be premature for me as a nominee to address the continuation of this particular working group, there is sometimes value in the Department engaging in multi-stakeholder processes to prepare for the safe and economic application of technologies. Automation presents important challenges, as I noted at my nomination hearing on March 29, 2017. If I am confirmed, I would look forward to engaging with a wide range of stakeholders and the public to address the important issues associated with this topic.

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RESPONSE TO PRE-HEARING QUESTIONS SUBMITTED BY HON. BILL NELSON TO  
JEFFREY A. ROSEN

*Question 1.* What lessons did you learn in your previous experience at the Department of Transportation and the Office of Management and Budget that you would bring to your job as the Deputy Secretary of Transportation?

Answer. One of the things I came to appreciate from my prior public service was the importance of DOT officials having good communication and working relationships with the members of Congress, and I would certainly regard that as an important part of my job if I am confirmed to serve again at DOT.

*Question 2.* Many transportation projects require Federal funding to get them over the finish line. While financing can be a helpful tool, what is your philosophy on Federal funding to support transportation projects? Do you believe there is a need for increased funding for infrastructure?

Answer. From what I have seen, the Administration has indicated that diverse sources of funding to include state and local funds, Federal support, Federal credit and finance, as well as private capital can be better leveraged to address our national infrastructure needs. Although I am not yet at DOT, I anticipate that the Administration's future infrastructure proposal will contain new and innovative approaches that will also be an important part of the overall strategy to meet our national infrastructure needs.

*Question 3.* Ports, freight, and rail have traditionally received a much smaller share of Federal transportation funding as compared to highways, even though this infrastructure system must work together to drive the economy and move goods. The President's budget proposal would further cut these priorities by eliminating

funding for the TIGER grant program. Do you believe that current Federal funding is sufficient to support the needs of our freight system?

Answer. There is no doubt that efficient freight movement is critical to our national economy. I am not yet at DOT, but if I am confirmed, I expect to be a participant in the budget process and decision making and would look forward to obtaining the data to better assess what is needed.

*Question 4.* Many small and rural towns rely on dependable Amtrak service to support tourism and travel. Passenger rail service not only supports infrastructure jobs in the region, but it also can help support jobs at small businesses along Amtrak routes. Do you support Federal funding for Amtrak? Do you support increased funding to help communities establish and restore rail lines and stations? Do you support long distance rail service?

Answer. I believe that intercity passenger rail is important and necessary. In the past, I have held the view that Amtrak was in need of reform. I am not current on the present status, but I have heard that it has made some progress. I am in favor of some Federal funding for intercity rail, and I think the needs of the communities are an important issue that needs attention.

*Question 5.* Many transit systems are in need of increased Federal funding to help with necessary expansion. Do you support increased funding for transit systems, which are critical to moving the workforce and supporting development?

Answer. My understanding is that, under the President's direction, the White House is leading the effort to put together a package to rebuild, refurbish and revitalize our country's critical infrastructure.

*Question 6.* What are your views on the administration's intention in its latest budget proposal to shift air traffic control services from the Federal Aviation Administration (FAA) to an independent, non-governmental organization? Do you share my concern that the transition to such a system could be disruptive, potentially costly, and would invoke significant questions of national security, given the complex relationship between the FAA and the Department of Defense?

Answer. There seems to be wide agreement on the need to modernize the FAA's air traffic control technologies, often referenced as NextGen. There is not always agreement on how to accomplish that goal. Your question addresses some of the significant issues involved in the Administration's proposal to shift Federal Aviation Administration (FAA) air traffic control functions out of the FAA to an independent entity. As Secretary Chao indicated in her responses to Committee members following her nomination hearing, there will be a thorough Administration review of these issues, including costs, safety, the effect on rural areas, and any impact on the Department of Defense. If confirmed, I would hope to assist the Secretary in the extensive evaluation the details of this proposal would entail, and I would ensure that the concerns you raise are thoughtfully considered. Of course, Congress would have to enact this significant reform.

*Question 7.* Please list all court cases and regulatory actions in which you served as counsel for the Chamber of Commerce of the United States of America from 2009 until the present. To the extent applicable, please include, at a minimum, the case caption, venue, date of filing, and a summary of the matters involved.

Answer. To the best of my recollection and available records:

- a) *Yates v. United States*, No.13-7451 (U.S. Supreme Court, decided 2/25/2015) (holding that Sarbanes-Oxley § 1519 does not apply to commercial fishing vessel's disposition of fish).
- b) *UARG v EPA*, Nos. Nos. 12-1272 (U.S. Supreme Court, decided 6/23/2014) (rejecting erroneous EPA legal interpretations of statute in promulgating regulations concerning PSD permits); and earlier proceedings below regarding set of EPA rules.

*Question 8.* Please list all court cases and regulatory actions in which you served as counsel for General Motors from 2009 until the present. To the extent applicable, please include, at a minimum, the case caption, venue, date of filing, and a summary of the matters involved.

Answer. To the best of my recollection and available records, I did not appear as counsel for General Motors in any cases during that period of time. During my years at Kirkland & Ellis LLP from 1982-2003, I had represented General Motors in numerous cases, but not in recent years.

*Question 9.* Please list all court cases and regulatory actions in which you served as counsel for Hyundai from 2009 until the present. To the extent applicable, please include, at a minimum, the case caption, venue, date of filing, and a summary of the matters involved.

Answer. To the best of my recollection and available records, I did not appear as counsel for Hyundai during that period of time. During my years at Kirkland & Ellis LLP from 1982–2003, I had represented Hyundai Motor America, but not in recent years.

*Question 10.* Please detail the nature and extent of all work you have performed for the Cargo Airline Association.

Answer. To the best of my recollection and available records, I represented the Cargo Airline Association with regard to FAA's Flight Crew Member Duty and Rest Requirements, 77 Fed. Reg. 330–01 (Jan. 4, 2012), in which the Cargo Airline Association ultimately intervened on the side of FAA in litigation filed against the final rule by the Independent Pilots Union in the U.S. Court of Appeals for the District of Columbia. On March 24, 2016, the D.C. Circuit rejected the petition and affirmed the rule in a per curiam opinion. *IPA v FAA*, No. 11–1483 (March 24, 2016).

*Question 11.* Please detail the nature and extent of all work you have performed for BNSF Railway.

Answer. To the best of my recollection and available records, I have represented BNSF in two significant but confidential commercial arbitration matters involving disputes with a customer. In addition, I have provided advice regarding compliance with Federal law on some occasions.

*Question 12.* Please detail the nature and extent of all work you have performed for Kapsch Trafficom North America.

Answer. To the best of my recollection and available records, I have assisted KTNA in intellectual property litigation pending in Federal court in Delaware, at the International Trade Commission, and in certain proceedings before the Patent and Trademark Office. In addition, I have provided KTNA with advice regarding a procurement-related litigation that was pending in Florida.

*Question 13.* Please detail the nature and extent of all work you have performed for the U.S. Chamber Institute for Legal Reform.

Answer. To the best of my recollection and available records, I have advised ILR from time to time about various Federal statutes and legal requirements, and of legal developments in the courts.

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RESPONSE TO PRE-HEARING QUESTIONS SUBMITTED BY HON. AMY KLOBUCHAR TO  
JEFFREY A. ROSEN

*Question 1.* One area where I believe there is room for bipartisan cooperation with the Administration is investing in our Nation's infrastructure. In Minnesota, we saw the cost of neglecting our infrastructure on August 1, 2007, when the I–35W Bridge collapsed into the Mississippi River, killing 13 people and injuring many more. Senate leaders have released an infrastructure plan that would invest \$1 trillion to modernize the Nation's infrastructure and increase our economic competitiveness.

Can you elaborate on how you think the administration can work with Congress to advance necessary infrastructure investments?

Answer. As I understand it, the Administration is currently evaluating all the various tools and opportunities for a new infrastructure plan. If confirmed, I will work within the Administration to ensure that a variety of strategies and options for all infrastructure investments are considered. Since I am not yet a part of these discussions, it would be premature for me to speculate on the details and effects of such a plan.

*Question 2.* The TIGER Discretionary Grant Program supports innovative projects, including multi-modal and multi-jurisdictional projects, which are difficult to fund through traditional Federal programs. In Minnesota, a \$17.7 million 2016 TIGER Grant is helping to fund construction of a highway freight interchange in Scott County that will improve the flow of freight through the area and increase safety throughout the region. The President's proposed budget eliminates the TIGER Discretionary Grant Program. Without TIGER Grant funding, many communities will not be able to make necessary improvements to local infrastructure.

Why has this program been eliminated?

Answer. As I am not yet at DOT, I am not able to speak directly to such decisions. I am aware that the TIGER Program, first enacted as part of the Recovery Act in 2008, has not been formally authorized as part of a long-term surface transportation bill. Many projects funded by TIGER are eligible under DOT's other mandatory highway and transit formula programs. It is my understanding that the Nationally Significant Highway and Freight Projects discretionary grant program provides DOT the ability to award competitive grants to projects of national or regional significance. Additionally, I anticipate that the Administration's Infrastructure pro-

posal will provide an important capability for the Department to address our Nation's transportation Infrastructure needs as well.

*Question 3.* As co-chair of the Senate Broadband Caucus, I led a letter to President Trump in January signed by 48 Senators urging that broadband be included in any infrastructure package. Expanding access to broadband is the infrastructure challenge of our generation and fast, affordable Internet is essential for consumers and businesses of all sizes. Unfortunately, many areas of the country, particularly rural and low-income communities, still do not have access to quality broadband.

Do you believe that broadband infrastructure should be included in infrastructure investment efforts?

Answer. Speaking only for myself at this point, the answer is yes.

*Question 4.* I have introduced legislation which would increase coordination when federally-funded highways are being constructed so that broadband infrastructure is installed at the same time . . . in other words, to only "dig once."

Do you believe it is important for the Department of Transportation to be preparing our Nation's infrastructure for the demands of the 21st century economy through policies like dig-once?

Answer. Your question highlights the parallels between conventional highway construction and the physical components of the broadband digital network that underlies the internet. With regard to the inclusion of broadband construction in the Administration's infrastructure initiative, Secretary Chao indicated in her nominee responses to the Committee that the Department will be reviewing and considering all of the options available for the infrastructure plan. As soon as that proposal has taken shape, she intends to share it with Congress.

Additionally, I note that President Trump has just established the White House Office of American Innovation. That Office will enlist the expertise that the private sector has to offer and will be looking at transformative projects.

*Question 5.* In the last Congress, I introduced the Stop Trafficking on Planes Act to require training for flight attendants to recognize and report suspected human trafficking. A provision based on my bill became law as part of the FAA Extension, Safety, and Security Act of 2016. But human trafficking doesn't just happen on airplanes. Truck drivers, like flight attendants, are also on the front lines of the battle since one of the best times to identify human trafficking is during travel. Many truckers want to be helpful in the fight and groups like Truckers Against Trafficking are training truckers to identify and report human trafficking. I am working on legislation to help ensure they have the resources they need to be effective partners in combating human trafficking.

Will you work with me to find ways the Department of Transportation can support private sector initiatives to fight human trafficking across all modes of transportation?

Answer. Yes, I will work with you to find ways the Department can support private sector initiatives to fight human trafficking across all modes of transportation. I am told that, since 2012, the Department has worked closely with stakeholders on various human trafficking initiatives under the Department's initiative, Transportation Leaders Against Human Trafficking. The Department has also worked with the Department of Homeland Security to ensure that 70,000 airline personnel have been trained in how to recognize and report cases of Human Trafficking. The Department has facilitated similar training to Amtrak personnel, and has mandated Human Trafficking training for the Department's 55,000 employees. If I am confirmed, I will look forward to working with you to see how we can do more with the transportation industry.

*Question 6.* Along with Senator Risch, I have been a leading advocate for the Recreational Trails Program, which is extremely important to my state. It's an issue that brings together cross-country skiers, bicyclists and the motorized vehicle community. It funds off-highway vehicle, snowmobile and non-motorized trail uses and derives its funding from gas taxes paid by off-highway vehicle users when they fill up their machines.

Are you committed to listening to all trail users for ideas on how this program can be improved?

Answer. From my prior years at the Department of Transportation, I am confident that the program offices across the Department are receptive to public input and new ideas for program improvements, including the Recreational Trails Program. If confirmed, I would expect the various program offices to operate in a manner that is receptive to recommendations for improvement from the public.

RESPONSE TO PRE-HEARING QUESTIONS SUBMITTED BY HON. RICHARD BLUMENTHAL  
TO JEFFREY A. ROSEN

*Question 1.* Do you receive a financial benefit over any offshore company or entity? If yes, please describe.

Answer. Not to my knowledge. The Public Financial Disclosure Report (OGE 278e) that I submitted and that was transmitted to the Committee lists the securities that I hold with values that exceed \$1000 or that produced more than \$200 of income. To the extent that any security that I hold may have been issued by a foreign entity, the financial benefit that I receive from that security does not differ from the benefit to a member of the general public who holds that same security.

*Question 2.* Do you exercise control over any offshore company or entity? If yes, please describe

Answer. No.

*Question 3.* Do you have signature authority over any offshore accounts? If yes, please describe.

Answer. No.

*Question 4.* Have you taken or given a loan to a foreign official or a family member or individual business entity controlled by that foreign office? If yes, please describe.

Answer. No.

*Question 5.* Are you subject to challenges or audits by any revenue agency anywhere in the world? If yes, please describe.

Answer. Not to my knowledge.

*Question 6.* Do you have any investments in vehicles intended to reduce tax liability? If yes, please describe.

Answer. I am not aware of holding any investments intended for that purpose in the sense of tax-shelters, but like many Americans I have retirement accounts (such as IRAs, 401k, TSP) that have tax advantages.

*Question 7.* Please list sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, licensing fees, honoraria, and other items exceeding \$500 or more (if you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here).

Answer. Please refer to my responses to Part E (confidential) of my Commerce Committee Questionnaire responses, and to my OGE 278 Financial Disclosure Report.

*Question 8.* Please list the sources, amounts and dates of all anticipated receipts from deferred income arrangements, stocks, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients or customers. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.

Answer. Please refer to my responses to Part E (confidential) of my Questionnaire responses, and to my OGE 278 Financial Disclosure Report.

*Question 9.* Potential Conflicts of Interest: a. Please identify the family members or other persons, parties, affiliations, pending and categories of litigation, financial arrangements or other factors that are likely to present potential conflicts-of-interest when you first assume the position to which you have been nominated. Please explain how you would address any such conflict if it were to arise. b. Please explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern.

Answer. Please see Part B of my Questionnaire responses. As noted there, in connection with the nomination process, I have consulted with the Office of Government Ethics and the Department of Transportation's Designated Agency Ethics Official to identify potential conflicts of interest. Any potential conflicts of interest will be resolved in accordance with the terms of an ethics agreement that I have entered into with DOT's Designated Agency Ethics Official and that has been provided to this Committee. I am not aware of any other potential conflicts of interest.



RESPONSE TO PRE-HEARING QUESTIONS SUBMITTED BY HON. BRIAN SCHATZ TO  
JEFFREY A. ROSEN

*Question 1.* Please describe all business relationships which you have had during the last 10 years where your past or former client may reasonably have issues before the Department of Transportation and this committee during your tenure in the position that you have been nominated to hold. For each client, please detail your work and specific issues where you consulted or provided legal advice.

Answer. Please see response nos. 10–12 to questions from Senator Bill Nelson above. In addition, to the best of my available records and recollection, the following two former clients might reasonably be anticipated to have issues before DOT or the Committee at some time:

I represented the Airlines for America in a lawsuit against the FAA, titled *Airlines for America v. FAA*, No. 13–1140 (D.C. Cir. April 19, 2013), which challenged the manner in which the FAA had implemented the budget sequester as inconsistent with the statutory language. Shortly thereafter, Congress itself clarified that FAA had the authority to transfer funds and mitigate the problems about which A4A had sought relief, in the Reducing Flight Delays Act of 2013, Public Law 113–9 (May 1, 2013).

I represented Raytheon Technical Services Company in the defense of a lawsuit brought by the Washington Consulting Group, *WCG v Raytheon*, 2010 CA 000296 B (D.C. Superior Court, filed in 2010, and summary judgment granted in favor of defendant on March 7, 2013). The case involved allegations that Raytheon had won an FAA contract to train air traffic controllers by theft of plaintiff's trade secrets; the court entered judgement against those claims and in favor of Raytheon.

*Question 2.* Describe any activity during the past 10 years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat, or modification of any legislation or affecting the administration and execution of law or public policy. This includes providing legal, policy, or political services.

Answer. Please refer to my response to sections B.6. of my Commerce Committee Questionnaire responses.

RESPONSE TO PRE-HEARING QUESTIONS SUBMITTED BY HON. CORY BOOKER TO  
JEFFREY A. ROSEN

**Gateway Program/Northeast Corridor Investment**

*Question 1.* As you may know, a recent economic analysis of the Gateway Program demonstrated that every dollar invested in the Program returns \$4 in economic benefits to the region. As the Northeast Corridor contributes some 10 percent of the Nation's Gross Domestic Product, how important do you believe this project is to the national economy?

Answer. As a nominee, I am not yet familiar with the economics of the Gateway Program, and I would like the opportunity to learn much more about the project before commenting on its importance to the national economy.

*Question 2.* The current Hudson River tunnels were built in 1910 and suffered extreme damage during Superstorm Sandy. The 450 NJ Transit and Amtrak trains that use the tunnels each day are at risk of a complete disruption if new tunnels are not built. I have worked closely with Senators Menendez, Schumer, and Gillibrand along with Secretary Foxx, Governor Christie, and the Port Authority to advance the Gateway Program. Can you commit to partner with New Jersey and New York to prioritize investment and expedite the completion of the Gateway Program?

Answer. It is my general understanding that the President's Infrastructure Task Force will be evaluating projects of this nature and importance to balance the complementary roles that localities and the Federal Government should play in financing these large projects.

*Question 3.* What's your plan to streamline environmental reviews, planning and construction of the full Gateway Program including a new Hudson River Tunnel, an expanded Penn Station and other associated infrastructure?

Answer. I understand that the current plan for efficiently delivering the Gateway program would be a multipronged approach that streamlines multiple environmental review processes, coordinates planning activities among the Department's modes, and explores logical phasing of and funding for construction activities. If confirmed, I will receive a briefing on this project, but until I am fully briefed on this matter, it would be premature to comment on its specific aspects.

*Question 4.* I believe we must take a holistic approach to improving our Nation's transportation network. Modes work together to provide a network of mobility and

sometimes investments in a single mode can enhance the whole network by reducing demand or generating efficiency in other modes as a secondary impact. When the Federal Government invests in our intercity and commuter railroads on the Northeast Corridor, we are also investing in our highway and aviation systems by removing cars from roads and bridges and freeing up slots at congested airports. Do you agree that it is essential to consider this when looking at the overall transportation network in the U.S.?

Answer. Yes. Taking a holistic view of the entire transportation system and recognizing the interdependence between different modes of transportation is essential to ensuring that our transportation system functions efficiently. While we have made great progress towards a more fully integrated transportation system, there is still more work to be done to ensure that different modes of transportation view each other as complementary pieces of the Nation's transportation network.

*Question 5.* The Amfleet 1, single-level passenger cars dating from the mid-1970s is the backbone of Amtrak's Northeast Corridor Regional and eastern State-Supported passenger car fleet. It is approaching the point where it will require complete rebuilding or replacement. Purchasing new equipment will be more cost-effective and will improve Amtrak's product, enhance customer experience, lower maintenance cost, increase safety and accessibility and support domestic manufacturing. Investment in this type of product will create a number of good jobs in this industry. Would this type of job creating investment be a priority for your department?

Answer. Even though I have not had briefings on Amtrak, it is clear that there is a lot to consider regarding Amtrak. We need to look at the whole concept of Amtrak—what service it is now providing, what service we want it to provide in the future, what the costs are, and what new technology or equipment may be needed. It would be premature to speak to the replacement of Amtrak's Amfleet before going through this process. If I am confirmed, I would expect to play a role in the process of evaluating this and other matters involving passenger rail service.

#### **Budget Cuts**

*Question 6.* President Trump has promised to invest one trillion dollars in our Nation's infrastructure. However, in President Trump's budget blueprint, the administration proposed a 13 percent cut to the Department of Transportation including zeroing out the Federal Transit Administration's New Starts program. As you know, New Starts is critical to funding the Gateway Program, which includes construction on the portal bridge scheduled to begin next year. Do you oppose the proposed cuts to the New Starts program in order to make sure Federal funds are available to begin construction on the Gateway Program? Should you be confirmed, will you support increasing funding to New Starts?

Answer. I am generally aware of the significance of the Gateway Program to the people of New Jersey and surrounding jurisdictions, as well as Northeast Corridor travelers. Also, I assume that the Administration recognizes that strong transportation infrastructure directly contributes to a secure nation and economic growth. In support of these goals, I am told that the President has created an Infrastructure working group led by the National Economic Council that is reviewing all infrastructure needs to ensure that funding is allocated efficiently and effectively to maximize returns on infrastructure investments. While the outlined FY 2018 Budget Request does not include new Full Funding Grant Agreements, I do not know what the President's infrastructure proposal will be. I believe the Infrastructure Task Force will be evaluating projects of this nature to balance the complementary roles that localities and the Federal Government should play in financing the projects.

#### **Truck Safety**

*Question 7.* Every year, over 4,000 people are killed and nearly 100,000 are injured in large truck crashes. In 2015, 4,067 people were killed in crashes involving large trucks. This is an increase of more than 4 percent from the previous year and a 20 percent increase from 2009. Further, this is the highest fatality number since 2008. Early release data for 2015 shows that 116,000 people were injured in crashes involving large trucks, which is an increase of 57 percent since 2009.

I am concerned that in recent years we have seen rollbacks in common sense truck safety protections, and I want to make sure that we can work together to reduce fatalities on our roads.

Can you please describe your plan to address the rising rate of fatalities from large truck crashes?

Answer. Every fatality on our Nation's roadways is a tragedy, and I share your concern with recent increases in crashes of large trucks. As Secretary Chao has emphasized, safety is the number one priority for the Department of Transportation.

If confirmed, I would expect to participate with the Federal Motor Carrier Safety Administration (FMCSA) to leverage technology and advance programs that address non-compliant motor carriers and drivers, and to reduce distracted driving and other unsafe driving behaviors in all driving populations. This would involve working closely with States and other stakeholders to identify safety issues and develop strategies to reduce crashes.

*Question 8.* During your confirmation hearing, you noted that workers cannot protect themselves and they need the protection of Federal regulations. If confirmed, will you prioritize issuing regulations that protect truck drivers, specifically the rule requiring most commercial motor vehicles to install speed limiters?

Answer. If confirmed, I would expect to work with Secretary Chao to ensure safety remains the top priority of the Department. Reducing truck and bus crashes and the associated fatalities and injuries is covered by the focus on safety. One element of this focus would be to work with the new leadership of the National Highway Traffic Safety Administration and the Federal Motor Carrier Safety Administration to determine what actions should be taken regarding speed limiters.

*Question 9.* Will you reject any weakening of rules that protect truck drivers such as the Hours-of-Service and Electronic Logging Device regulations?

Answer. If confirmed, I would fully support Secretary Chao's commitment to improve truck and bus safety and to ensure the Department has data-driven approaches to safety regulations and enforcement. I am told that the statutorily-mandated Electronic Logging Device rule published in 2015, was recently upheld by the 7th Circuit U.S. Court of Appeals.

*Question 10.* Will you commit to ensuring that the Department will not advance policies that can be used to justify requiring truck drivers to operate larger and heavier trucks?

Answer. I recognize there is a lack of consensus on truck size and weight. The Moving Ahead for Progress in the 21st Century Act (MAP-21) required the Department to study the impacts of trucks operating at or within Federal truck size and weight limits and trucks legally operating in excess of Federal limits. The report that U.S. DOT provided to Congress last summer suggested that there are significant data gaps and insufficiencies in the models that limit the ability to extrapolate the results across the national system. The study recommended further research was necessary in order to fully understand the impacts of any change in existing Federal truck size and weight limits. If confirmed, I would ensure that DOT's relevant modal administrations will continue to pursue opportunities to further develop this body of research.

### **Technology and Innovation**

*Question 11.* The previous administration went to great lengths to promote the use of technology in the transportation sector. From working to remove regulatory barriers for unmanned aerial systems (UAS), to the creation of a Federal automated vehicle policy, to implementing the Smart City Challenge, technology and innovation were at the forefront of solving our most pressing transportation and safety challenges.

How do you plan to harness new technologies at the Department of Transportation (DOT)?

Answer. I echo Secretary Chao's view in her response to the Committee following her hearing that the private sector is the best source for ready-to-deploy technologies and innovations. A number of nascent technologies, such as autonomous vehicles, and advanced automation in all sectors, bear promise for advancing transportation safety across all modes. If confirmed, I would hope to work with Secretary Chao on a flexible regulatory environment that encourages development and deployment of these innovations, addressing safety challenges in close coordination with our partners in industry; state, local and Tribal governments; and universities to apply appropriate technology solutions to meet urgent local and regional needs.

### **Autonomous Cars/Persons with Disabilities**

*Question 12.* As you may know, the emergence of self-driving cars holds great promise for many people who have traditionally been disenfranchised. These autonomous vehicles can help provide greater independence to older Americans and persons with disabilities, providing them greater access to employment opportunities and health care.

Do you plan to explore the benefits of autonomous cars for persons with disabilities?

Answer. In my view, autonomous vehicles have a tremendous potential to provide benefits to a wide variety of Americans, including the elderly and persons with disabilities. If the technologies are successful, I would look forward, if confirmed, to

working with Secretary Chao and Congress to pursue these benefits and ways to safely incorporate the technology into widespread use.

### **Rail Safety**

*Question 13.* I am also deeply concerned about urgent passenger rail safety issues. Last September, a New Jersey Transit commuter train crashed into the station terminal in Hoboken, New Jersey killing one person and injuring over 100. In 2015, an Amtrak derailment along the Northeast Corridor outside Philadelphia killed eight people and injured over 200. And again last week, a train derailed on the Long Island Railroad, injuring over 100 people. While the National Transportation Safety Board (NTSB) has yet to make a determination on whether the absence of the safety system known as “Positive Train Control” was a contributing factor in Hoboken or Long Island, we know it was in the Amtrak incident. Positive Train Control is a critical system that stands to prevent similar disasters in the future, but installation of the system is moving slowly across the Nation’s railroads.

Will you make Positive Train Control implementation a top priority for DOT?

Answer. If confirmed, I look forward to working with Secretary Chao and the Federal Railroad Administration to oversee the rail industry’s progress implementing PTC systems.

### **Key Transportation Programs**

*Question 14.* USDOT’s successful TIGER program has granted millions of dollars for innovative port, roadway, transit and other multimodal projects throughout the US. Additionally, the Federal Transit Administration’s New Starts, Small Starts, and Core Capacity programs have helped to fund light rail, commuter rail, heavy rail, streetcar, and bus rapid transit bus rapid transit projects. Given the vast demand for these grants across the country, how do you plan to ensure adequate funding levels for critical discretionary and competitive grant programs that create jobs, spur economic development, and help to rebuild our Nation’s infrastructure?

The port of New York-New Jersey, the largest on the east coast, expects increases in demand in the coming years while also continuing to grapple with truck congestion and air quality issues. How do you plan to ensure adequate investment in major seaports that are key economic drivers for the entire nation?

Answer. While the Administration’s budget recommends eliminating or cutting funds for several programs, such as TIGER and several programs within the Federal Transit Administration, the President will also be proposing what I understand to be a comprehensive infrastructure initiative. If confirmed, I would hope to be involved in the development of the new initiative.

*Question 15.* The port of New York-New Jersey, the largest on the east coast, expects increases in demand in the coming years while also continuing to grapple with truck congestion and air quality issues. How do you plan to ensure adequate investment in major seaports that are key economic drivers for the entire nation?

Answer. The Port of New York and New Jersey is a good example of the role ports have as a critical part of our overall transportation system, and as the commercial hearts of a region. And I agree that demand for goods moving through ports will increase as the growth of our economy and populations rise.

I believe it is important to view investments in ports along with improvements to the condition and capacity of its water, road and rail connectors. The private sector and local communities are already partnering with Federal and state governments to expand the capacity of port and multi-modal infrastructure.

### **Bicycle and Pedestrian Issues**

*Question 16.* Communities across the country are embracing bicycling and pedestrian infrastructure as an integral part of their transportation network for a number of reasons, including attracting businesses, workers and younger Americans who are choosing to live without a car. How will you support programs that will help expand this type of important infrastructure to meet the growing demand?

Answer. I understand that non-motorized travel has been in DOT’s authorizing legislation since the 1991 ISTEA authorization expanded local governments’ ability to use Federal funds for pedestrian and bicycle infrastructure. Most recently, I am told that the Transportation Alternatives program was authorized at \$835 million in 2016, and many State and local governments also chose to use some of their other Federal funds, such as Surface Transportation Block Grant funds, to support pedestrian and bicycle infrastructure. It is my understanding that FHWA offers technical assistance to ensure that infrastructure that is installed is safe and effective, and all of the surface transportation agencies within DOT work together to improve the safety of those traveling by foot and bicycle.

*Question 17.* Increasing bicycle and pedestrian safety is critically important. In 2014, just over 700 cyclists were killed in a crash with a vehicle. On average, nearly 4,500 pedestrians are killed and 68,000 are injured each year since the recent low point in pedestrian deaths in 2009. In 2015, pedestrian deaths increased 10 percent to 5,376 deaths up from 4,884 in 2014. What is your plan to improve the safety of bicyclists and pedestrians?

Answer. Safety is the Department's number one priority. Secretary Chao has expressed her commitment to working with our State and local partners to prevent all roadway deaths through better roadway design, safer vehicles, and through educational and enforcement programs.

#### **Local Control**

*Question 18.* As a former Mayor I support providing additional resources and decision-making authority to local officials including increasing sub-allocation of Federal resources to the Metropolitan Planning Organizations (MPOs). What is your plan to ensure that local officials have a substantial role in transportation decisions, and do you support additional sub-allocation of Federal resources to MPOs?

Answer. The nation's 409 Metropolitan Planning Organizations (MPO's) play an important role in metropolitan transportation planning in the United States. They develop fiscally responsible transportation plans that reflect the transportation vision and priorities for their regions, and they are taking on a new role in setting performance targets, as required by MAP-21. I expect that DOT will continue to work with MPOs on improving our transportation infrastructure. If confirmed, I will obtain full briefings on the issues surrounding sub-allocating Federal resources to MPOs and will seek to ensure that local officials have a substantial role in local transportation issues.

#### **Diversity in Transportation Sector**

*Question 19.* Nearly one in ten jobs in the United States are in the transportation and/or infrastructure sector. However, women, workers of color, and workers with disabilities are significantly under-represented in the sector compared to their overall participation in the workforce. I am a strong supporter of the Disadvantaged Business Enterprise (DBE) Program, which is designed to provide small businesses owned by socially and economically disadvantaged individuals an equal playing field to compete for federally funded transportation contracts. Can you commit to supporting the DBE Program, and describe other steps you plan to take to connect disadvantaged workers to employment in the transportation field?

Answer. As indicated by Secretary Chao in her responses to the Committee following her nomination hearing, current law provides for specific Disadvantaged Business Enterprise (DBE) programmatic requirements. If confirmed, I would join her in pursuing equal application of the law and fulfilling the Department's legal obligations.

#### **Funding**

*Question 20.* In your testimony, you agreed that an infrastructure bill this Congress would include some direct Federal investment in transportation, not solely private financing. Do you think an infrastructure bill should provide supplemental dollars to existing authorized programs that are underfunded thus far but offer big impacts in terms of economic benefit, job creation and mobility benefits, like intercity passenger rail grant programs? Or do you have ideas for new DOT programs that would distribute Federal grant dollars via new authorized programs?

Answer. While I am not yet involved in developing the President's infrastructure proposal, if confirmed, I look forward to working with you and other members of Congress to be sure we are good stewards of all resources for the public good.

*Question 21.* Since Amtrak was first created more than 45 years ago, there has been discussion of including it in a transportation trust fund. However, this simply never came to fruition. Instead, Amtrak relies on discretionary funding one Fiscal Year at a time, which is unfortunate. This creates uncertainty and wreaks havoc on Amtrak's ability to plan capital improvement projects. By comparison, highway and transit programs' dedicated funding via multi-year contract authority allows for better capital planning and creates efficiencies and cost savings. It would also be beneficial for intercity passenger rail to receive predictable and dedicated funding like almost all the other transportation modes. Would you support including at least a portion of Federal funding for intercity passenger rail in the trust fund?

*Question 22.* While including intercity passenger rail in the trust fund is by far the preferred method of Federal funding, have you given thought to other options for multi-year predictable and dedicated funding of intercity passenger rail? For example, providing Amtrak with advance appropriations for several years instead of

only funding it one year at a time. Would you support Congress providing advance appropriations or creating another trust fund-like mechanism dedicated to passenger rail?

Answer to questions 21 and 22. As a nominee, it would be premature for me to weigh in on alternative funding possibilities for Amtrak. This is just one of the many significant issues facing Amtrak that we should look at.

*Question 23.* Germany recently approved a transportation infrastructure plan to spend \$126 billion on rail projects through 2030. In the United States, which has four times Germany's population, Federal funding for vital infrastructure investments in the Northeast Corridor and elsewhere on the national passenger rail network amounts to just a few hundred million dollars a year. With each new fiscal year, there is no assurance that there will be any additional predictable and dedicated Federal spending to leverage private and state investment. How do we attract private investment in passenger rail infrastructure projects, like Gateway, when the Federal Government does not support a mechanism for substantial and reliable Federal investment in passenger rail?

Answer. If confirmed, I look forward to working with you, the Committee, and Congress, to look at best practices and all options to incent private investment in passenger rail infrastructure. On the general question of attracting private investment in passenger rail infrastructure projects, my understanding is that the Build America Bureau (Bureau) was established to work with the modal administrations, eligible entities, and other public and private interests to develop and promote best practices for innovative financing and public-private partnerships, such as those that may be established for passenger rail infrastructure projects. To fulfill this goal, the Bureau helps streamline transportation finance and funding processes and provides project sponsors with transparent and efficient access to DOT's credit and grant programs.

#### **National Passenger Rail System**

*Question 24.* Can you discuss your vision for intercity passenger rail in the U.S.?

*Question 25.* Do you agree that the Federal Government has an important role to play to help ensure passenger rail remains a viable option to connect rural communities to the rest of our transportation network?

*Question 26.* What role do you envision the DOT has to make good on this commitment to the various rural communities who rely on intercity passenger rail?

Answer to questions 24, 25, and 26. Intercity passenger rail has an important role to play in our national transportation system. As I have previously stated, however, it would be premature of me to respond to these questions as a nominee who is not fully current on recent developments at Amtrak. I do understand that passenger rail involves important issues, and I believe they deserve attention as the Department shapes its transportation policies.



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