

Senate Committee on Commerce, Science, and Transportation
Questions for the Record - "Implementing the FAST Act"
Hearing held on Wednesday, June 8, 2016

Written Questions from Chairman John Thune to Secretary Anthony Foxx

NHTSA

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

- What is the current status of those recommendations?

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

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

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

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

Answer. This population of Honda and Acura vehicles was recalled between November 2008 and December 2011 for known and identified manufacturing defects in the driver's side air bag inflator. Where vehicles are recalled, NHTSA does not normally undertake

additional testing on the recalled part, and instead applies its resources toward investigating other potential safety defects. However, following notifications under the Agency's Standing General Order of recent rupture incidents involving this population of vehicles, NHTSA directed Takata to conduct additional testing. The Agency was able to get the information and resources it needed to direct this testing because of its 2015 Preservation Order with Takata. When the new test data showed a far higher risk of ruptures among this population of inflators, NHTSA ensured that consumers were made aware of the grave danger the inflators in this particular group of vehicles posed.

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

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

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

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

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

Question 5. Thank you for the discussion at the hearing about providing additional flexibility to the states in the highway safety grant program. I am pleased that, as a result of the FAST Act, NHTSA has just released the Interim Final Rule (IFR) to provide guidance to the states on these grant programs.

- The IFR states that the agency, "if appropriate, will amend provisions of the regulation." What factors would cause the agency to consider amending the rule further?

Answer. As with all rulemakings soliciting public comments, NHTSA plans to carefully review all input received. If public comments identify alternative approaches that would meet the goal of effectively and efficiently awarding and managing the grants, NHTSA will consider these approaches.

- Does the agency intend to issue a final rule, and if so, what is the expected timeframe for a final rule?

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

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

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

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

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

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

Answer. While the Agency is still analyzing the 2015 fatality data, there are a number of areas that NHTSA has identified as potential contributors to the disheartening 7.2 percent increase in roadway deaths. There were increases in fatalities in the following areas: motorcyclist (8.3 percent); pedestrian (9.5 percent); bicyclist (12.2 percent);

passenger car occupants (5.7 percent); pickup truck occupants (4.7 percent); and alcohol-impaired driving fatalities (3.2 percent). Preliminary data reported by the Federal Highway Administration (FHWA) shows that vehicle miles traveled (VMT) in 2015 increased by about 3.5 percent, and thus increased exposure may account for some of the increase.

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

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

Question 7. Section 24105 of the FAST Act required a 2-year state pilot program to evaluate the feasibility and effectiveness of notifying consumers of open motor vehicle recalls at the time of vehicle registration. This pilot program may demonstrate an effective means of achieving higher recall completion rates.

- *What steps has NHTSA taken to ensure this will be a successful pilot?*

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

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

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

Question 8. The FAST Act directs a number of updates to the recall process, including directing that recall notifications may be sent by electronic means in addition to

notification by first class mail. The FAST Act also directs additional public awareness efforts regarding recalls and a report on recall completion rates.

- What steps has NHTSA taken to research and improve consumer notification in an effort to improve recall completion rates?

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

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

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

Question 9. It is important for safety recalls to be remedied as soon as possible.

- What does NHTSA do to ensure that manufacturers are fulfilling their responsibility to make sure replacement parts to remedy recalls are available and at dealerships as soon as possible?

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

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

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

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

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

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

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

- What is the progress of this study?

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

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

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

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

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

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

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

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

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

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

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

The Agency is gathering information and discussing the requirement with stakeholders.

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

- According to NHTSA's most recent schedule, a proposed rule was provided to the Secretary's office in October 2015. The timetable to move this regulation to OMB continues to slip each month. What obstacles are preventing this proposal from progressing through the rulemaking process? What accounts for this unacceptable delay? What is the agency's revised timetable for completing this rulemaking?

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

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

- What is the timeline for completing the Mid-Term Evaluation?

Answer. Given the long time frame covered by standards for Model Year (MY) 2022–2025 light-duty vehicles and NHTSA's statutory obligation to conduct a *de novo* rulemaking, the Agencies committed in the 2012 final rule to conduct a comprehensive mid-term evaluation for the MY2022–2025 standards. The MY2017-2025 final rule noted that in order to align the Agencies' proceedings for MYs 2022–2025 and to maintain a joint national program, EPA and NHTSA will finalize their actions related to MY2022–2025 standards concurrently.

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

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

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

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

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

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

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

Question 14. NHTSA has committed to taking an aggressive approach to accelerating the availability of advanced safety technologies in the marketplace.

- What are the agency procedures for responding to manufacturers' petitions for rulemaking and requests for interpretation of federal motor vehicle safety standards to take into account advanced safety technologies?

Answer. NHTSA's procedures for responding to petitions for rulemaking from all parties (including manufacturers) are detailed at 49 CFR Part 552. The Department is currently developing guidance on how to petition NHTSA for interpretations, exemptions, and rulemakings related to highly automated

vehicles. NHTSA anticipates issuing the guidance as part of the highly automated vehicles report in the near future.

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

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

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

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

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

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

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

- In response to an inquiry from Google, NHTSA has said that some Federal Motor Vehicle Safety Standards will require additional rulemaking in order to allow for

Google's self-driving car features to be permissibly used on our roads. How is NHTSA working with the automakers to reduce regulatory burdens while still ensuring and enhancing safety?

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

Question 15. NHTSA has a new plan for the Driver Alcohol Detection System for Safety (DADSS) Program, to create alcohol-detection technologies that offer the potential to prevent impaired driving.

- *What is the rationale for restructuring the DADSS Program and cooperative agreement? How will this accelerate development, testing, and deployment of the technologies?*

Answer. Over the past 20 years, nearly 250,000 Americans have been killed in drunk driving crashes. Successful implementation of the DADSS technology has tremendous potential to reduce this carnage. The Department appreciates Congress's continued support of the government and industry collaborative research activities that have led from feasibility to the potential for reality. Given that progress, it is time to start a new track of work focused on deployment.

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

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

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

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

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

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

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

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

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

- What are NHTSA’s calculations in this matter, and how does NHTSA believe we are going to avoid the possibility of more accidents and deaths?

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

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

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

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

Motor Carriers and Highway Safety

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

- Can you provide a progress update on the designation of the new routes and the Department’s work with the state?

Answer. FHWA is working proactively with the South Dakota DOT (SD DOT) to implement this provision, which provides an opportunity for the State to update

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

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

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

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

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

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

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

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

Question 20. There are many active and passive driver assist and automated vehicle technologies available in the marketplace today that provide significant safety benefits for cars and trucks on our Nation's highways. The deployment of some of these technologies

currently requires the Federal Motor Carrier Safety Administration (FMCSA) to provide an exemption from outdated regulatory standards and barriers, which inhibit the wider deployment of proven safety technologies. Short-term exemptions, such as those that allow for the windshield display of important safety technology for example, while appropriate, drive up costs for both the agency and industry. Accordingly, section 5301 of the FAST Act directs the Department to provide a permanent exemption for the windshield placement of a variety of proven technologies.

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

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

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

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

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

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

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

Question 22. Funding for the FASTLANE grant program and the freight formula program was authorized by Congress in order to make critical improvements to our nation's freight network. Applications for both the FASTLANE grant program and the unauthorized TIGER grant program are being reviewed at the same time, and some projects have been submitted as both TIGER and FASTLANE applications.

- Can you please describe how the Department is reviewing the applications concurrently, and how funding decisions will be made for each individual program?

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

Additionally, the FAST Act directed the Secretary to establish a National Surface Transportation and Innovative Finance Bureau, also known as the Build America Bureau, to administer the FASTLANE grant application process. The newly established Build America Bureau will administer the application process for fiscal year 2017 and future rounds of the FASTLANE discretionary grant program.

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

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

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

evaluation and selection processes are being documented according to each program's evaluation guidelines.

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

Federal Railroad Administration

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

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

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

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

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

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

Answer. Over the life of the Section 130 program, many States have improved crossings with the highest risk and most significant crash history. However, there are still high-profile crashes that highlight the safety risks at many crossings. States are challenged to find innovative methods for prioritizing projects to maximize the safety benefits of the Section 130 Program and further reduce crashes and fatalities at crossings.

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

FHWA and FRA are continuing their collaborative approach to rail grade crossing safety and are jointly working on updating the Rail Crossing Safety Handbook. The handbook provides a single reference document on prevalent and best practices as well as adopted standards relative to highway-rail grade crossings. The handbook provides general information on highway-rail

crossings; characteristics of the crossing environment and users; and the physical and operational improvements that can be made at highway-rail grade crossings to enhance the safety and operation of both highway and rail traffic over grade crossings. The guidelines and alternative improvements presented in this handbook are primarily those that have proven effective and are accepted nationwide.

Question 24. Railroad Rehabilitation & Improvement Financing (RRIF). The FAST Act reformed the RRIF program to increase efficiency, flexibility, and transparency, and institute certain taxpayer protections.

- When does the Department plan to publish its first dashboard, or monthly report on RRIF applications, required by the FAST Act?

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

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

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

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

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

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

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

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

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

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

Answer. As was stressed in the notice of proposed rulemaking (NPRM) issued in March 2016, FRA does not believe that additional data from existing one-person operations would prove useful to the completion of the rulemaking. The NPRM proposes to permit the continued operation of virtually all existing one-person operations in the United States. FRA proposes a process to review all new operations, and the NPRM suggested FRA would likely favorably view those new operations similar to existing safe operations if a railroad did not otherwise have a poor safety history. However, any data related to those existing operations would not be relevant to new operations that are significantly different from any existing operation. The purpose of the proposal is to ensure that a railroad considers and addresses the potential safety implications of using fewer than two

crewmembers on certain operations, especially those hauling certain types and quantities of hazardous materials. The NPRM proposed a requirement that a railroad seeking special approval of an operation with less than two train crewmembers submit “appropriate data or analysis, or both, for FRA to consider in determining whether the train operation proposed will provide at least an appropriate level of safety to a train operation with two crewmembers.” See, proposed 49 CFR Part 218.135(b)(11) at 81 Fed. Reg. 13966. In the NPRM’s section-by-section analysis, FRA explained that an FRA decision “would need to contain the facts and rationale relied upon . . . [because] any final agency decision is an action that is potentially reviewable in Federal court and would need to contain sufficient information to survive legal scrutiny.” 81 Fed. Reg. 13953. FRA conducted a public hearing on the proposal on July 15, 2016, and the comment period closed on August 15, 2016. FRA will consider all public comments when developing a final rule in the matter.

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

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

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

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

Pipeline and Hazardous Materials Safety Administration (PHMSA)

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

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

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

- What is the status of the Department's contract with the National Academies for its services?

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

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

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

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

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

Question 28. Real-Time Emergency Response Information. The FAST Act required the Department, in consultation with other agencies, to issue regulations to require Class I railroads to provide to fusion centers accurate, real-time, and electronic train consist information for certain trains. The FAST Act also codified requirements for each Class I railroad to provide certain train consist information to state emergency response

commissions consistent with the requirements of Emergency Order Docket No. DOT–OST–2014–0067.

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

Answer. The flow of information from railroads to State, local, or tribal governments (and thus the protection of information) is being addressed in two distinct rulemakings. In the first action, a Notice of Proposed Rulemaking (NPRM) titled “Oil Spill Response Plans and Information Sharing for High-Hazard Flammable Trains”, PHMSA addressed provisions contained in Sections 7302(a)(3), (4), and (6) of the FAST Act. In this rulemaking, PHMSA proposes to codify the Emergency Order’s State Emergency Response Commission (SERC) notification provisions for all high-hazard flammable trains (HHFTs).

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

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

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

After issuing the Emergency Order, FRA found that State laws control and may therefore limit the disclosure and dissemination of this information in FRA’s Information Disclosure Notice (79 Fed. Reg. 59891 (Oct. 3, 2014)). The NPRM proposes to require railroads to report, on a weekly basis, aggregated information that includes the volumes of crude oil and other HHFTs that travel

through a jurisdiction. This information does not include customer information, other identifiable business details, or specifics about the timing of HHFT trains.

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

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

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

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

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

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

To further evaluate the effectiveness of the information and how it should be shared within the State and local response communities, PHMSA recently released the NPRM titled "Oil Spill Response Plans and Information Sharing for High-Hazard Flammable Trains" (HM-251B). This NPRM proposes to codify the Emergency Order to meet the requirement set forth in the FAST Act. This NPRM

will provide an additional avenue for PHMSA to capture feedback from the response community along with other interested stakeholders. PHMSA anticipates receiving comments from SERCs, Tribal Emergency Response Commissions (TERCs), and related local emergency planning decision-makers during the NPRM's open comment period.

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

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

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

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

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

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

- What research has the Department conducted to investigate the effects of certain crude oil characteristics on the consequences of specific derailments?

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

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

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

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

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

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

<i>Special Permits:</i>	52
<i>Approvals:</i>	73

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

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

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

Response to Written Questions by the Honorable Deb Fischer to Secretary Anthony Foxx

Question 1. Coordination between FHWA & FRA on rail crossings

- The state of Nebraska has more than 3,000 at-grade rail crossings eligible for public funding. As you know, the FAST Act includes provisions that would compel the Federal Railroad Administration (FRA) to establish and distribute “model” state grade crossing action plans to help mitigate future accidents. State DOT’s will then need to develop an action plan based on the FRA’s model.

- At the same time, the Federal Highway Administration (FHWA) administers the section 130 grade crossing program, which provides grants to states on a formula basis. One of the challenges is that the FRA and FHWA may have conflicting implementations of these critical safety and infrastructure funding programs that could lead to some of the most dangerous rail at-grade crossings not receiving attention for corrective action.

- How is DOT working to ensure that the FRA and FHWA are coordinating to ensure the section 130 program and model grade crossing action plans are consistent and complementary? As a follow up, what will DOT do to ensure states are establish action plans and take corrective actions by utilizing section 130 program resources?

Answer. FHWA manages the Section 130 program, and FRA provides technical and programmatic support to FHWA and the State DOTs regarding the program. FRA Regional Offices have been working with the Safety Specialists in the FHWA Division Offices on the States’ upcoming projects, including information on the States’ project prioritization and selection process.

FRA leads the ONE DOT Intermodal Grade Crossing Safety Team with staff from FRA, FHWA, FTA, FMCSA, NHTSA, and VOLPE. The team meets quarterly, and team members from each modal administration coordinate their current projects and initiatives. They also discuss upcoming projects and work to coordinate a unified message across the DOT.

FHWA and FRA will continue to collaborate on identifying ways to improve how each agency supports rail grade crossing safety, including implementing FAST Act requirements. FAST Act-related activities will include developing and distributing model State-specific highway-rail grade crossing action plans to each State, along with a customized crossing accident/incident data set and contact information for DOT officials; issuing regulations requiring States to develop and update highway-rail grade crossing action plans, or provide updates to their existing action plans; evaluating State highway-rail grade crossing action plans; and reporting to Congress on State progress in implementing their highway-rail grade crossing action plans.

FRA will also issue regulations requiring each State to submit and implement a grade crossing action plan or update an existing grade crossing action plan (for the 10 states that were required by the Rail Safety Improvement Act of 2008 to develop grade crossing action plans). Upon submission, FRA will review each plan for approval.

Question 2. Advanced vehicle technology neutrality

- The Conference Report to the FAST Act included language noting that the FAST Act's programs, "are deployed in a technology neutral manner. The Act promotes technology neutral policies that accelerate vehicle and transportation safety research, development and deployment by promoting innovation and competitive market-based outcomes, while using federal funds efficiently and leveraging private sector investment across the automotive, transportation and technology sectors."
- Stakeholders have indicated that that the DOT is mandating that Smart Cities Competition participants must include Dedicated Short Range Communications (DSRC) in their projects in order to be considered. Can you please explain whether this is true and whether other types of vehicle-to-vehicle safety technologies such as advanced cellular will also be permitted?

Answer. No, neither Notice of Funding Opportunity required applicants to use DSRC. Applicants were permitted to integrate a variety of commercially available communication technologies including cellular, satellite, Wi-Fi and others to deploy connected vehicle and infrastructure services. Applicants were encouraged to use DSRC technology operating in the 5.9GHz band to expand demonstrations of safety-critical V2V and V2I applications based on DSRC communications to ensure the interoperability of these safety applications among multiple automotive manufacturers. But DOT encourages all new advanced technologies to be used in a safe and standardized manner and does not preclude any advanced technologies in the V2I space.

Question 3. Tolling

- While some states have built HOT lanes around cities to help alleviate congestion, the idea of tolling existing Interstates has not made progress. According to the American Trucking Associations, the FHWA pilot program that allows 3 states to toll their Interstates hasn't had a single successful applicant in its 18-year history. Given the history of the pilot program, do you believe it should continue to move forward?

Answer. The Interstate Reconstruction and Rehabilitation Pilot Program (ISRRPP), established in 1998 by TEA-21, is limited to three slots. As you note, none of the states holding these slots – Virginia, North Carolina, and Missouri – have come to FHWA with a tolling project. In response to this lack of progress, the FAST Act sets a one-year "use or lose" deadline for the states currently authorized to pursue ISRRPP projects. Based on these states' replies, the FHWA intends to evaluate new ISRRPP opportunities via an open solicitation to all States, whose expressions of interest will best inform whether to

continue to move forward. You also note that many states have developed HOT lanes to address urban congestion. Most of these facilities—e.g., in California, Washington State, Minnesota, Florida, Virginia, and Texas—are on Interstate highways, demonstrating the efficacy of adding tolls to the system as well as the flexibility of related Federal tolling programs to accomplish a state objective.

Question 3. Drug and alcohol testing for commercial drivers

- Mr. Secretary, the FAST Act requires speedy implementation of a national clearinghouse of drug and alcohol test results in the trucking industry. As you may know, this is something the industry has been advocating for many years. When will DOT issue rule regarding this provision? Further, will the rule make obsolete current requirements that prospective employers contact an applicant's past employers to learn of previous violations?

Answer. The Office of Management and Budget is currently coordinating interagency review of a draft of the final rule. FMCSA expects to publish the final rule later this year. While we cannot discuss the contents of rules under Executive Order 12866 review, the proposed rule would require prospective employers to query the clearinghouse rather than the previous employer about the employee's previous drug and alcohol tests.

Question 4. MARAD Sea Year

- Secretary Foxx, on Wednesday, June 15, 2016, the Maritime Administration (MARAD) announced that it would suspend the U.S. Merchant Marine Academy's (USMMA) Sea Year program. MARAD has stated this decision was not the result of one specific incident but as a result of its discussions and findings when evaluating sexual assault at the USMMA. Would you please explain the specific events, focus group results, survey findings, or other considerations that directly led to the decision to suspend the program?

Answer. My decision to temporarily stand down the sea year program was based on an accumulation of evidence from many sources, including the 2012 and 2014 Defense Manpower Data Center (DMDC) Sexual Assault and Gender Relations (SAGR) surveys of Midshipmen that indicated that, while Midshipmen spend only one quarter of their time at the Academy on Sea Year, between 40 and 50 percent of the incidents of unwanted sexual contact experienced by women and men occurred at sea. Sixty-three percent of women and 11 percent of men experienced sexual harassment in the 2013-14 academic year. In 2015, DMDC conducted focus groups which confirmed the presence of a "pervasive sexist culture" on campus. Faculty, staff and Midshipmen spoke of challenges created by the Sea Year, including evidence that Midshipmen developed inappropriate attitudes towards women while at sea, further contributing to a sexist campus climate. It also noted that Midshipmen are reluctant to report incidents at sea due to fear of retaliation and damage to their future careers in the maritime industry. In addition, further evidence of the prevalence of inappropriate behaviors encountered by male and female Midshipmen while at sea came to light in

meetings with senior MARAD and Academy leadership, the Advisory Board, and the Middle States Commission on Higher Education's evaluation team. Examples of inappropriate behavior included bullying, hazing, sexual harassment, and pressure to consort with prostitutes and to consume alcohol. The evidence that too many Midshipmen face a hostile environment at sea, and their reluctance to report these incidents, led us to the conclusion that the Academy could no longer send Midshipmen to sea until concrete actions were taken to change the status quo. Action to stand down Sea Year needed to be taken before the next class of Midshipmen was scheduled to depart on Sea Year the week of June 13th.

On August 22, I directed that the stand down continue as we look at additional steps we can take to ensure the safety of our students at sea and on campus, and to promote a culture of transparency and respect for everyone. Over the next few months, we will have independent outside experts experienced in assessing institutional and organizational culture examine all such aspects within the USMMA, both on campus and at sea, in an attempt to identify root causes and their impacts to the Academy culture and offer possible short term and long term corrective actions to address the issues. This assessment will delay the resumption of Sea Year on commercial vessels for a number of months. In the interim, we will continue to assign Midshipmen to Federal vessels to get their required sea days and have been utilizing MARAD's Ready Reserve Force (RRF) vessels for this purpose since August 22nd.

Question 5. USMMA Requirements

- In order to graduate USMMA midshipmen must complete their sea service requirements for time aboard an ocean-going vessel.
 - Would you please provide further details as to the expectations of DOT as it relates to the "Call-to-Action" for maritime stakeholders?

Answer. MARAD and USMMA hosted more than 90 representatives of the maritime industry at a Call-to-Action meeting on June 24, 2016, to address concerns about the shipboard working and living environment that led to the stand down of USMMA's Sea Year training program. Held in Washington, D.C. at the U.S. Department of Transportation, the meeting was convened to review actions taken by the U.S. Armed Forces as well as an opportunity for the maritime industry to present a proposal to improve the quality of life onboard vessels and provide a working and training environment that is both safe and respectful for the Midshipmen. The discussions focused on industry culture, sexual assault, and sexual harassment awareness and prevention efforts, industry-wide best practices and reporting protocols, and implementable actions included how to proactively address the issues, training programs involving the companies and mariner unions, assignment of onboard mentors, debriefing of all Midshipmen upon completion of their Sea Year training, vessel visits by company operations representatives, and a 24/7 hotline or ability for

Midshipmen to make reports while at sea. The Maritime Administrator began discussions on this issue with several ship companies and operators as early as January 2016 and the Call-to-Action was scheduled before the decision to stand down. The industry proposal presented at the Call-to-Action meeting provided the foundation for developing requirements that commercial operators will need to meet to be eligible to have Midshipmen work and train on their vessels. We are engaged with industry and continue to discuss our requirements and their implementation. The industry's willing cooperation and support for the USMMA Sea Year program has been helpful.

- What specific metrics or criteria does DOT have in place for evaluating when to restart the program?

Answer. With my approval, MARAD restarted the Sea Year program on ships, specifically aboard Military Sealift Command and MARAD Ready Reserve Force vessels, owned by the Federal government. The operators of these vessels have robust programs in place that are aimed at preventing and reporting incidents. In addition, Midshipmen have conducted at sea instruction on the USMMA's training ships, the Kings Pointer and the Liberator, and sailed aboard the SUNY Maritime College's training ship, Empire State, and California Maritime Academy's training ship, Golden Bear in July and August.

As noted in the previous question, the results of the comprehensive study of the culture and climate of the campus will be used to inform any necessary changes to the Sea Year program. The results of the study will also be used to assist in developing criteria for commercial companies to meet in order to become "Sea Year Eligible."

- Based on your initial planning, what are your target dates for MARAD and stakeholders to meet the metrics or criteria in order to resume the program?

Answer. As stated previously, MARAD resumed the Sea Year program on Federal ships. In addition, Midshipmen have conducted at sea instruction on the USMMA's training ships, the Kings Pointer and the Liberator, and sailed on SUNY Maritime College's training ship, Empire State, and California Maritime Academy's training ship, Golden Bear in July and August. Commercial companies will be evaluated on a case-by-case basis. MARAD is working closely with commercial companies, and four companies have submitted information and are being evaluated. There are no target dates. An individual company's restart date will depend on how long it takes for the company to make changes to its training, policies or reporting that assures Midshipmen complete Sea Year in a safe and respectful environment. The commercial Sea Year program is a core part

of the USMMA experience; we are committed to resuming commercial Sea Year assignments once companies meet the requirements.

- Do you expect all midshipmen will have the opportunity to graduate on time? What contingency plans do you have in place to ensure all midshipmen have the opportunity to graduate on-time?

Answer. We do expect all Midshipmen to be able to graduate on time. When the current sailing period ends at the end of October 2016, the Academy will have 19 months to make up lost sea days for the Class of 2018. For the Class of 2019, the Academy will have 31 months, including their entire second sailing period. Although, we cannot guarantee that a combination of circumstances might delay graduation for one or more Midshipmen, we are and will be doing everything to ensure that no Midshipman's graduation is delayed solely due to the stand down.

At present, all engineering track Midshipmen in the Class of 2018 will have sufficient days to take the U.S. Coast Guard Merchant Mariner Credential examination and upon passing would be eligible to graduate pending completion of their Bachelor's Degree requirements. For the deck track Midshipmen in the Class of 2018, we anticipate that 20-30 Midshipmen will be 10 or more days short of the required number of days. The exact number of Midshipmen in this category will be determined at the end of the current sailing period which ends at the end of October. The Academy routinely has Midshipmen who are short the number of required sailing days and has experience making those days up during the last year of academic study.

Midshipmen have been able to log sea days on the Kings Pointer and the Liberator, the Academy's two training vessels. Midshipmen were also embarked on the State University of New York Maritime College and California Maritime Academy training ships during their scheduled summer cruises. Sea days aboard these vessels are credited by the U.S. Coast Guard at 1.5 days for each day onboard because instructors are on board and in charge of delivering the training. A two week internship is a required component of the Sea Year, and many Midshipmen have completed their internships during the stand down. Further, beginning July 8, Midshipmen began returning to Military Sealift Command (MSC) vessels. On 22 August, USMMA began assigning Midshipmen to MARAD-owned Ready Reserve Force (RRF) vessels. As of September 6, all of the 216 Midshipmen affected by the stand down were either at sea, in an internship, or scheduled to join a MSC ship in the coming weeks. The Academy will continue to take all steps possible, including maximizing use of the Academy's training vessels, to help Midshipmen in the Classes of 2018 and 2019 affected by the stand down to accumulate the required sea days to graduate on schedule.

Question 5. USMMA Requirements (cont'd)

- As you may know, S. 2829, the Maritime Administration Enhancement Act of 2017, includes a “Sea Year” working group to bring stakeholders together to address challenges related to sexual assault and harassment of midshipmen during their year at sea. Congress has worked closely with MARAD and USMMA on the development of this bill.

- How long has the MARAD been considering suspending the program?

Answer. I made my formal decision on June 10, 2016. The Maritime Administrator began discussion with industry leaders in January 2016 and personally met with ship owners regarding the challenges with Sea Year in April 2016. This led to the planning for the Call-to-Action meeting that was held on June 24, 2016. In addition, the USMMA Superintendent began engaging in conversations with select senior Academy staff in mid-May over his concerns about the accumulation of evidence that the environment at sea was detrimental to the well-being and safety of Midshipmen. He first addressed the question of a stand down with the Maritime Administrator in late May. Conversations continued with the Advisory Board and senior Academy and MARAD leadership in June.

- As a follow up, why did the agency not coordinate in advance with Congress or the USMMA Board of Visitors on reaching this critical decision?

Answer. As noted above, my decision to stand down Sea Year was made on Friday, June 10. Congress was notified of the stand down on June 15 concurrently with industry and other stakeholders shortly before the formal announcement at USMMA.

The timing of the decision was based on the fact that by June 18, the first group of Midshipmen from the Class of 2018 was scheduled to depart on their Sea Year. It was decided that action had to be taken immediately to stand down Sea Year before any Midshipmen left campus to join their assigned vessels.

Response to Written Questions by the Honorable Roger Wicker to Secretary Anthony Foxx

Question 1. Congress used the Fast Act to make significant changes to the TIFIA program to streamline the application process and make TIFIA more accessible for small towns to pursue local transportation projects such as trail systems for pedestrians and bicyclists.

- What is USDOT doing to revise TIFIA procedures to make it easier for local governments to apply for TIFIA loans?

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

Question 2. As I mentioned during the hearing, this year two children already have died because of vehicular heatstroke in Mississippi, and the national total is fifteen children just in the last six months. The seasonal public awareness campaigns are simply not adequate to completely stop these fatalities. I am aware that there is in-vehicle technology available that could eliminate this tragic problem, such as radio-based technology or on-board diagnostics (OBD II Standard) that can sense when small occupants are in a vehicle.

- Would you please provide a status report on where NHTSA is with the study required in the FAST Act (Sec. 24114) and include your plans to initiate a rulemaking to start the process of getting lifesaving technology into new cars?
- Answer. *NHTSA completed the research and issued the study on July 31, 2015 (<http://www.nhtsa.gov/About+NHTSA/Press+Releases/2015/nhtsa-kids-in-hot-cars-07312015>) under a preexisting provision under MAP-21. To date, technology has not been proven effective enough to support a rulemaking. The Agency does not expect to initiate rulemaking at this time. However, NHTSA's study provided a foundation of test procedures that innovators and companies could use to test and evaluate products. As products come to the market, NHTSA will continue to monitor technology development, test new technology as they are developed, and determine whether the test procedures need updating to account for new products.*

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

Response to Written Questions by the Honorable Dan Sullivan to Secretary Anthony Foxx

Question 1. Mr. Secretary, Section 1426 of the FAST Act reestablishes a Motorcyclist Advisory Council to coordinate with the U.S. DOT on infrastructure issues that could affect motorcyclists. As you implement the FAST Act, do you plan to include participants from the full spectrum of available experts and stakeholders of different organizations?

It is critical that the reestablished Council ensure that motorcyclists with professional expertise in national motorcyclist safety are represented from a variety of different organizations, as SAFETEA-LU required representation by various national and state motorcyclist associations, as well as representatives of the construction and safety industries that have experience on motorcycles.

Answer. We are currently working through the Federal Advisory Committee Act (FACA) requirements to establish the Motorcyclist Advisory Council (MAC). I agree that diversity of expertise is very important for the success of this type of committee, and the Department certainly will aim to convene the MAC with a variety of professional backgrounds that will help provide meaningful insight into the safety topics identified in the FAST Act, including barrier design; road design, construction, and maintenance practices; and the architecture and implementation of intelligent transportation system technologies.

Question 2. Mr. Secretary, the FAST Act created two new freight programs and authorized almost \$11 billion, primarily for highway projects, to improve freight movement. What is your vision for these programs, and how will you and your team ensure these programs will truly focus on addressing the most critical barriers to efficient truck freight mobility on our highway system?

Answer. The Department's vision is to use these two new freight programs, one that is discretionary (FASTLANE) and one that is formula-based (the National Highway Freight Program), to help fund critical freight and highway projects across the country that will address the most pressing freight mobility barriers. It is clear from the recent round of FASTLANE that there are a large number of critical freight and highway projects, more than the Department has funding for. The Department has thoroughly evaluated each application received to ensure that the projects selected for funding meet the statutory requirements set by Congress and address critical barriers to efficient freight movement. In accordance with the FAST Act, the Department provided Congress with a 60 day notification of the proposed FASTLANE projects, award amounts and justification on July 5, 2016, and publicly announced awards on September 7, 2016. In addition, the Department has worked quickly to provide guidance to State DOTs to help them access the formula funding available under the National Highway Freight Program. The Federal Highway Administration (FHWA) has been working closely with the State DOTs to ensure that they meet all the requirements for obligating those formula funds such as the creation of individual State Freight Plans. As part of the process, FHWA is assisting States with designating critical rural and critical urban freight corridors, which plays a major role in the identification of key projects that will address the most critical barriers

to efficient freight mobility. Additionally, FHWA and State DOTs are using performance measures specific to freight to assess the performance of our freight system as freight investments are made through these programs. Freight performance measures are vital to ensuring the success of freight program implementation.

Question 3. Mr. Secretary, many motor carriers have complained that the Federal Motor Carrier Safety Administration (FMCSA) still uses non-fault crashes in the Agency's Compliance, Safety, Accountability (CSA) program scores to evaluate carriers. So if your truck is stopped at a stoplight, or parked legally on the side of the road, and is hit from behind by a drunk driver, the crash still goes on the motor carrier's record and is used against the company in its Safety Measurement System scores. Those same scores are used by shippers and brokers, insurance companies, and the courts to evaluate a carrier's safety record, but this type of crash gives false information about a carrier's safety performance. When is the agency going to fix this problem, and how will you address this issue?

Answer. FMCSA is aware of the industry concerns about this issue and, over the past 3 years, has conducted significant research to determine how crash preventability decisions could be made accurately in a timely and cost-efficient manner. While studies by FMCSA and others have confirmed that crash involvement, regardless of role in the crash, is an effective indicator of future crash risk, the Agency continues to explore this issue.

In 2015, the Agency released the results of a study that indicated that police accident reports alone are not sufficient to make crash preventability determinations, and FMCSA asked for public input. After analyzing that input, FMCSA issued a Federal Register notice on July 7, 2016, that proposed a demonstration project to conduct preventability determinations on certain crash scenarios and to determine the impacts of removing these crashes from the data, including the impacts to identifying motor carriers with a high future crash risk. The Agency is currently receiving comments on the demonstration project proposal and is preparing to implement it in Spring 2017. The demonstration project is scheduled to operate for 2 years. The FMCSA will document the results of the crash reviews, including the costs and impact of conducting this sample set of crash reviews. This exercise will inform what is needed to potentially expand the program, if removing these types of non-preventable crashes proves to be a better predictor of future crashes.

Question 4. Mr. Secretary, the FAST Act contains direction to increase access to the commercial trucking industry for our nation's veterans by allowing physicians from the VA to perform medical examinations and provide medical certificates to veterans seeking to operate commercial motor vehicles. Has there been any recent developments in the implementation of this language that veterans and the trucking industry may find encouraging?

Answer. FMCSA held a series of internal deliberations to discuss regulatory and policy options, and associated information technology issues for addressing the FAST Act

requirement. FMCSA is currently drafting a Notice of Proposed Rulemaking to implement this provision.

- *Follow up 1.* Specifically, have representatives from Federal Motor Carrier Safety Administration (FMCSA) met with their counterparts from VA to develop an implementation strategy? If so, can you provide details involving their discussions?

Answer. FMCSA has been in contact with representatives from the VA to discuss the strategy. We believe the strategy agreed upon to implement the FAST Act requirement will ensure the integrity of the National Registry Program to the greatest extent practical. The strategy includes:

- *Development of a training module to present information to VA physicians on FMCSA's physical qualifications rules, to be delivered online through the VA's internal training program. The training would include a test at the end to ensure that the physician completed the material and understood what was presented, which would be analogous to the process used by other examiners on the National Registry;*
 - *Entering into a formal agreement (MOU/MOA) with the VA to make the training available through the VA's training system for its employees so that any VA physician that would like to issue medical examiner's certificates to physician-approved veteran operators of commercial vehicles would be required to take the free training and provide the training certificate/test results to FMCSA to be added to the National Registry; and*
 - *Establishing protocols for the VA and its participating physicians to submit the medical examiner's certificate information to FMCSA to ensure the veterans obtain the full benefits of the VA examination.*
- *Follow up 2.* What is the progress (of the team established by FMCSA) to begin the rulemaking process? Does DOT or FMCSA have a sense of urgency to complete the process?

Answer. FMCSA has begun drafting rulemaking documents and is committed to completing the regulatory process as quickly as practical.

- *Follow up 3.* Is there any more clarity about the timing of the rulemaking process?

Answer. FMCSA has begun drafting rulemaking documents to establish the VA physician program with a target compliance date expected in late 2017. The delayed compliance date provides time to implement the VA training module and test, and complete the IT upgrades to accept the medical examiner's certificate information from the VA physicians.

Response to Written Questions by the Honorable Roy Blunt to Secretary Anthony Foxx

Question 1. Secretary Foxx, during your time at the agency, NHTSA has taken steps toward implementing many of the requirements that Congress prescribed in MAP-21. One is a MAP-21 requirement requiring Original Equipment Manufacturers (OEM) to index all technical service bulletins (TSBs) for the benefit of consumers.

- Can you explain the authority the agency relied upon when it published the complete TSBs on the agency's website when many of these are copyrighted documents available by the OEMs through various channels?

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

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

Answer. Pursuant to the fair use limitation on copyright, NHTSA has historically posted on its website copies of service bulletins for recall repairs and service bulletins related to its defect investigations. NHTSA also has made a paper copy of other service bulletins available to the public pursuant to the library provision of copyright law. Prior to MAP-21, the Agency determined that copyright law prevented it from publicly posting copies of certain communications. However, the explicit and direct language of MAP-21 has made clear that the Agency must now post copies of TSBs and other manufacturer communications to its website.

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

Answer. Section 5502 of the FAST Act requires the Department to establish this working group not later than December 4, 2017. Given the importance of this provision, FHWA moved quickly to create the Emergency Route Working Group (ERWG), and I am pleased to inform you that I approved the charter to establish the group as a Federal advisory committee on July 25, 2016. Because the nature of the advice and recommendations has

the potential to impact programs and policies of the Federal government, a Federal advisory committee was warranted. Additionally, establishing the group through the Federal Advisory Committee Act will ensure Congress and the public remain informed of the purpose, membership, and activities of this outside group.

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

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

- Do both the EPA and NHTSA use the credit program?

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

- How long do the EPA credits last for?

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

- How long do the NHTSA credits last for?

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

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

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

Response to Written Questions by the Honorable Jerry Moran to Secretary Anthony Foxx

Question 1. Secretary Foxx, my first question to you during the hearing was regarding state compliance with the FAST Act. Included in Section 5523 of the FAST Act is an amendment I offered mirroring the text of S. 1692, to allow for the delivery of tandem trailers by manufacturers.

However, I have heard reports from the National Association of Trailer Manufacturers, headquartered in Topeka, Kansas, that some states are continuing to take enforcement action against operators utilizing Sec. 5523, notwithstanding the fact that the FAST Act permits and preempts state law on such operations.

My question to you was, more broadly: How is U.S. DOT ensuring that states comply with the new law as soon as possible? Your response indicated you would follow up with more specific details, and I would greatly appreciate hearing what actions the agency is taking to ensure state compliance.

Answer. *On February 24, 2016, FHWA issued guidance on the truck size and weight provisions of the FAST Act. With regard to section 5523 (“Commercial Delivery of Light and Medium Duty Trailers”), the guidance emphasizes the preemptive nature of the provision by reiterating that “a State may not prescribe or enforce a regulation of commerce that has the effect of imposing an overall length limitation of less than 82 feet on a towaway trailer transporter combination. [49 U.S.C. 31111(b)(1)(H)].”*

Following the issuance of the above guidance, in April 2016, FHWA asked its Division Offices, located each State, to provide assurance that each State’s truck size and weight enforcement and regulatory agency received FHWA’s guidance. FHWA also asked the Division Offices to ensure that the States were aware that the FAST Act became effective on October 1, 2015, unless otherwise provided in the FAST Act, and that State laws may require updating to ensure that they align with the FAST Act-amended Federal maximum vehicle size and weight limits applicable to the Interstate System and National Network.

The Department believes that most States fully recognize that section 5523 is preemptive; however, States’ ability to revise their laws to align with the FAST Act is impacted by each State’s legislative session dates. We acknowledge, however, that a State’s inability to revise its laws to align with Federal requirements directly impacts roadside enforcement activities, which are typically based on State laws.

I assure you that FHWA and its Divisions Offices are proactively working with the States to achieve full alignment between State and Federal laws in this area. For example, this summer, each Division Office will discuss the implementation of FAST Act provisions with the States during an annual evaluation of the truck size and weight program. Additionally, this will be a special emphasis area in January 2017 when FHWA reviews the States’ annual certifications, checking whether States are enforcing all State laws with respect to maximum vehicle size and weight permitted on the Interstate System and National Network.

Question 2. Secretary Foxx, the FAST Act did not address the 2011 Hours of Service rule that made two major changes to the restart provision for truck drivers. Congress has made clear through FY2015 and FY2016 appropriations that it has serious concerns about implementing these rules without a comprehensive field study to evaluate whether or not these changes will provide any meaningful safety benefits.

Mr. Secretary, while you have indicated support for this rulemaking in the past, do you agree it is important to study the safety impacts of the rule before it is implemented and has a significant impact on the livelihood of not just truck drivers and highway travelers, but interstate commerce in general?

Answer. *The Department is committed to improving commercial motor vehicle (CMV) safety. Eliminating the restart restrictions imposed by the 2011 rule would allow drivers to drive after accumulating more than 70 hours of on-duty time within an 8-day period. The Department remains concerned about the safety risks associated with cumulative fatigue when drivers are allowed (and may sometimes be required) to work such intensive schedules, week after week. Section 133 of the Consolidated and Further Continuing Appropriations Act, 2015, required a study comparing the safety impacts of the restart provision before and after the 2011 restrictions became operational. That study has been completed and is under Departmental review.*

Question 3. Secretary Foxx, a recent American Automobile Association survey found that nearly 70 percent of motorists are concerned about the condition of our nation's roads, citing traffic congestion and unsafe roads and bridges their top concerns. The wear and tear on vehicles, lost productivity in traffic and costs imposed on society because of accidents confronts us on a daily basis.

The FAST Act provides funding for these kinds of improvements and contains a number of requirements to study or review traffic congestion. Can you provide a report on how these initiatives are progressing and what actions hold out the most promise for improving this situation?

Answer. *FHWA has on-going research, studies, and implementation efforts underway on various congestion reduction strategies and technologies. This includes connected vehicle technology deployment, advanced traffic signal control systems, work zone management, traffic incident management, road weather management, managed lanes, and advanced transportation and demand management strategies. A full list and status of these efforts can be found at ops.fhwa.dot.gov.*

FHWA also is pursuing solicitation and award of the Advanced Transportation and Congestion Mitigation Technology Deployment (FAST Act Section 6004) grants. Many of the eligible strategies and technologies contained in this grant program have direct congestion reduction objectives. We are aiming to award the 2016 grants by the end of the fiscal year.

Response to Written Questions by the Honorable Steve Daines to Secretary Anthony Foxx

Question 1. Secretary Foxx, I regularly hear concerns about new rulemakings placing burdensome requirements on rural states with small state transportation agencies covering large spaces. What efforts are you taking to ensure new rulemakings promote construction of projects and are not creating laborious compliance requirements for staff?

Answer. *The issue you raise is an important one, and I assure you that the Department considers impacts to rural and small states when issuing new rulemakings. In establishing the national performance management measures required under section 150 of title 23, United States Code, for example, FHWA has been cognizant of and has considered the impacts on all transportation agencies, large and small. In some performance areas, the statute requires the performance requirements to apply to all States across the country regardless of their size and capability. For example, safety and infrastructure condition impact both urban and rural areas. In these cases, we have proposed performance management practices that are widely used today to minimize the burden on agencies to comply with new requirements. In other areas, such as congestion, where we were provided more flexibility within the statutory language, we limited the applicability of the requirements to large metropolitan areas across the country. The potential burdens on State and local agencies are considered and quantified in a regulatory impact analysis posted for public review and comment for each of our proposals.*

FHWA is committed to supporting transportation agencies as they work to meet these new performance management requirements. We are deploying a new capacity building program to provide assistance in the form of training, on-site workshops, technical guidance, and informational sessions to agencies across the country to support their efforts in implementing and meeting these new requirements. Through this program, we believe that all agencies, including rural agencies, will be better equipped to move their transportation programs forward with minimal burden.

Question 2. I was pleased to hear you mention the 24/7 sobriety program in your testimony. This program has proven to reduce recidivism of intoxicated driving. I have heard concerns from state transportation agencies that the Federal implementation may be too narrow. How is USDOT taking into account existing programs and ensuring the final rule does not prohibit states from accessing these life-saving dollars?

Answer. *NHTSA encourages States to develop creative approaches to improve safety. Our general approach is to allow States the maximum flexibility consistent with statutory language. Under Section 405, States must meet two requirements to receive funding under the new 24-7 Sobriety Program grant. The first statutory requirement mandates that a State enact and enforce a law that requires all individuals convicted of driving under the influence of alcohol or of driving while intoxicated to receive a restriction on driving privileges. 23 U.S.C. § 405(d)(6)(B)(i). In implementing the requirement, NHTSA established a short timeframe (at least 30 days) during which the restriction must*

apply and added flexibility by allowing any type of State-imposed sanction. The second statutory requirement mandates that a State provide a 24-7 sobriety program. Id. § (ii). NHTSA will use the statutory definition of a 24-7 sobriety program, without change, as a basis to determine compliance. Id. § (7)(A). In addition, the Agency made clear that for those States that do not meet the requirements for the separate 24-7 Sobriety Program grant, the flexibility exists to use funds provided for general impaired driving countermeasures grants to fund 24-7 sobriety grant programs.

Question 3. Across the nation, 54% of automobile fatalities occur on rural roads, despite the fact that only 19% of Americans live in rural areas. Beyond the FAST Act, what efforts are you undertaking to improve rural road safety?

Answer. Local road agencies often do not have the resources needed to adequately address safety problems on the roads they own and operate. FHWA's Local and Rural Safety Program provides national leadership in identifying, developing, and delivering safety programs and products to agencies, elected officials, governments and other stakeholders to improve safety on local and rural roads. FHWA provides many resources to support local road agencies in understanding and addressing their safety issues, including videos and brochures, toolkits, checklists, and manuals. These resources and others are available on FHWA's website at http://safety.fhwa.dot.gov/local_rural/.

FHWA also offers a peer-to-peer support program specific for local and rural roads and funds the National Center for Rural Road Safety (<http://ruralsafetycenter.org/>). FHWA's Office of Safety has taken an integrative approach to addressing rural road safety by establishing a Cross Office Working Group (COWG) to coordinate rural road safety throughout all technical areas. This group works to reduce fatalities and serious injuries on local and rural roads by providing practitioners and decision-makers with important information, tools, and resources that will improve the safety performance of these roadways. This group not only provides greater integration of rural safety within the Office of Safety, but it also has promoted strong coordination throughout FHWA to leverage resources to improve safety on these roads.

Question 4. Passenger rail is an important component of connectivity for Montana. Amtrak's Empire Builder connects 12 Montana communities and there is an opportunity to connect a 13th community – Culbertson. A previously completed Amtrak feasibility study has indicated reinstating this stop would have a net positive financial impact. What can USDOT do with my office and the City of Culbertson to help them prepare for competing for future Consolidated Rail Infrastructure and Safety (CRISI) or Transportation Investment Generating Economic Recovery (TIGER) grant funds?

Answer. With regard to the TIGER program, in addition to the guidance available on our website, www.dot.gov/tiger, the Department can provide direct technical assistance to potential applicants who request it. Please have the City of Culbertson contact TIGERGrants@dot.gov.

Similarly, FRA will provide guidance to prospective applicants of the newly authorized CRISI program upon receiving initial appropriations for the program. In the meantime,

FRA is available to provide technical assistance to the City of Culbertson regarding the development of proposed projects. The City may contact Valarie Kniss, Regional Manager for the Pacific Northwest, at 202-493-0616 or at valarie.kniss@dot.gov.

FRA staff has also been in communication with Senator Daines' staff to provide the appropriate Amtrak contacts to facilitate the addition of a station stop in the City of Culbertson. As directed by Senate Report 114-75 of the FY16 Transportation and Housing and Urban Development, and Related Agencies Appropriations Bill, FRA and Amtrak are working together to reevaluate a previous Amtrak study on the feasibility of establishing a station stop in the City along Amtrak's Empire Builder route.

Question 5. Secretary Foxx, I was also pleased to hear you mention the University Transportation Center (UTC) program in your testimony. I am proud of the UTC at my alma mater, Montana State University (MSU), and their focus on rural transportation. In working with the UTC at MSU, three questions have been raised.

- *In rural areas, tourism is a leading economic driver, and many of the major attractions are on public lands, such as National Parks and state recreation areas. Efficient transportation systems are critical to move visitors to, from, and around public lands. Advanced technologies such as autonomous vehicles and Intelligent Transportation Systems (ITS) present opportunities to enhance both safety and experiences for visitors, such as avoiding wildlife on roadways and freeing passengers to enjoy their surroundings. Is the USDOT considering rural applications for the technology grant programs in the FAST act, as well as the traditional urban congestion applications?*

Answer. Yes, the Department will consider rural applications for technology grant programs under the FAST Act to the maximum extent possible. For example, under the Advanced Transportation and Congestion Management Technologies Deployment Initiative, DOT is required to ensure, to the extent practicable, that grant recipients are geographically diverse (including urban and rural areas) and represent diverse technology solutions. DOT will consider this over the life of the program and anticipates announcing awards in September.

FHWA and the Intelligent Transportation Systems Joint Program Office (ITS JPO) also are investigating the Shared Mobility and Innovated Technology implementations for rural, suburban, and urban areas to better understanding how technologies may impact transportation needs and opportunities.

Further, FHWA and the ITS JPO are investing up to \$42 Million over a three year period on 3 pilot sites to accelerate the deployment of ITS technology in more regions throughout the nation. One of the 3 awardees is the ICF/Wyoming Connected Vehicle (CV) Pilot. The primary objective for the ICF/Wyoming CV Pilot deployment is to use connected vehicle technology to reduce the number of weather related incidents (including secondary incidents) in Interstate 80 (I-80) corridor in order to improve safety and reduce incident-related delays. I-80 is a freight-intensive corridor with a daily volume of 11,000 to 16,000 vehicles, many of which are heavy-duty trucks (30% to 55%). Using Vehicle to Vehicle (V2V)

and Vehicle to Infrastructure (V2I) technology, and existing technologies deployed and operated by Wyoming DOT (WYDOT) and freight carriers, information such as road weather advisories, roadside alerts, and truck parking information will be transmitted and shared with a combination of vehicles. The set of vehicles includes WYDOT snow plows, maintenance fleet vehicles, emergency vehicles, and private trucks/commercial vehicles. Researchers believe that CV technologies will address up to 80% of crashes where impairment was not a factor.

FHWA and ITS JPO have and continue to support activities associated with the Annual National Rural ITS (NRITS) Conference.

- In his testimony, you provided an update on the establishment of the National Surface Transportation and Innovative Finance Bureau, which will help states and other agencies access federal expertise and resources. Given the specialized needs of rural areas and small towns, has there been any consideration of including a rural specialist or liaison at the new Bureau?

Answer. One of the missions of the National Surface Transportation and Innovative Finance Bureau, which we're calling the "Build America Bureau," is to provide customer-focused support to project sponsors of all types who may be seeking to use DOT credit programs. The Bureau will draw upon the full resources of the Department to best utilize the expertise of our staff, including expertise in dealing with rural projects and project sponsors.

- At a recent event for the Smart Cities Challenge, you said that "a lot of times, technology gets deployed to those who are best able to afford it first." Rural areas are certainly challenged to invest in and deploy new technologies. Would USDOT consider developing a similar challenge grant program for rural areas or small towns?

Answer. While resource constraints have dictated the size and regularity of initiatives like the Smart City Challenge being launched, there are a number of programs and initiatives benefiting rural communities that consider innovation as a criterion. Specifically the TIGER discretionary grant program requires a minimum of 25% of awards be made to rural projects.

As a result, TIGER has awarded over \$1 billion to rural applicants over eight rounds. TIGER has been a source of funding for projects like the Regional Truck Parking Information and Management System project sponsored by eight Midwest cities to aid truckers in rural areas through technology. Similar to the Department's practice in TIGER of using innovation as a secondary selection criteria, the Department also gave additional consideration to applicants for proposing the use of innovative technologies in the new FASTLANE discretionary grant program.

Additionally, the Department's Connected Vehicle pilot program recently awarded three recipients, including Wyoming DOT for deploying connected

vehicle technology to improve and monitor performance on Interstate 80, which is a freight-intensive corridor with a daily volume of 11,000 to 16,000 vehicles.

Also, two new innovative programs – FTA's Mobility on Demand Sandbox and FHWA's Advanced Transportation Congestion Management Technology Deployment – are built to encourage technology in a way similar to the Smart City Challenge but are less focused on urban areas. We hope to announce the winners of those grants in the coming months.

When we have flexibility in programs to further assist rural regions, the Department has worked to establish important initiatives, such as FTA's Rides-to-Wellness initiative — a transit initiative designed to increase access to care, improve health outcomes, and reduce health care costs in rural places. Supporting innovation in rural areas continues to be a priority, and we're happy to work with Congress to find resources that can be more targeted towards rural challenges.

Question 6. Secretary Foxx, I regularly hear concerns about new rulemakings placing burdensome requirements on rural states with small state transportation agencies covering large spaces. What efforts are you taking to ensure new rulemakings promote construction of projects and are not creating laborious compliance requirements for staff?

Answer. Please see the response to Question 1.

Question 6. Secretary Foxx, in working with motorcoach operators in Montana two concerns have been raised.

- My understanding is there is outstanding communications with motorcoach industry associations, specifically regarding Federal Motor Carrier Safety Administration's (FMCSA) Final Rule on Lease Interchange for Passenger Carriers. What is the status of USDOT's response to their October 2015 petition for reconsideration?

Answer. On May 27, 2015, FMCSA published a final rule concerning the lease and interchange of passenger-carrying commercial motor vehicles (CMVs). Its primary purpose is to identify the motor carrier operating a passenger-carrying CMV that is responsible for compliance with the Federal Motor Carrier Safety Regulations. The Agency received numerous petitions for reconsideration and concluded that some have merit. FMCSA, therefore, extended the compliance date of the final rule from January 1, 2017, to January 1, 2018, to allow the Agency time to complete its analysis and amend the rule where necessary.

On August 31, 2016, the Agency published a "Notice of Intent" to initiate rulemaking. The notice identified the issues to be addressed. In addition, the Agency will host a roundtable with stakeholders on October 31st, to discuss the scope of the forthcoming rulemaking and ensure that it will adequately address petitioners' major concerns.

- You mentioned in your testimony that the National Academies study of the Compliance, Safety, Accountability (CSA) program is underway now. This study will affect the Safety Fitness Determination (SFD) Notice of Proposed Rulemaking (NPRM) issued in January. The FAST Act requires more than the study, such as the corrective action plan and a certification by the Inspector General. What is the status of the study? How will the final results be incorporated into the SFD rulemaking process?

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

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

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

Response to Written Questions by the Honorable Marco Rubio to Secretary Anthony Foxx

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

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

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

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

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

- Would you please explain the Department’s justifications for these extensions?

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

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

Question 3. In your testimony you refer to the FASTLANE grants authorized in the FAST Act. Consistent with the legislation, these grants should only be awarded to “nationally significant freight and highway projects,” including highway, freight, bridge, and port projects.

- Can you speak to how DOT determines, on the basis of criteria, which projects, and “key challenges” addressed by the project, will be given priority for grant funding?

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

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

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

applications received in accordance with the statutory requirements of the FAST Act and the selection criteria listed in the Notice of Funding Opportunity.

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

- Why did the Administration choose a non-legally binding arrangement?

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

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

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

Question 5. Among those Cuban airports chosen are Varadero (Matanzas), Cayo Coco, and Cayo Largo. These three airports are feeders to the Cuban military's isolated beach resorts.

- How do those flights fit into the U.S. legal criteria for people-to-people travel?

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

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

Answer. Any award of economic authority by the Department of Transportation to an airline will not relieve U.S. carriers or travelers from complying with the applicable requirements and regulations of other U.S. agencies, and with all applicable laws of the United States. It is the Department's understanding that the Department of the Treasury's Office of Foreign Asset Control has issued general licenses within the 12 categories of authorized travel for many travel-

related transactions to, from, or within Cuba that previously required a specific license, but that travel for “tourist activities” remains prohibited by statute.

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

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

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

- Will TSA officials be stationed at all nine Cuban airports with direct flights to the United States?

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

- Will the U.S. airlines awarded these flights have independent personnel -- not hired through the Cuban government -- stationed at these nine airports? Or is the Administration fully outsourcing our security requirements to the Cuban government?

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

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

- Will U.S. authorities have independent security verification?

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

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

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

Question 9. The 5.9 GHz band is important to the automotive industry's hopes for ITS crash-avoidance systems and to address the pressing need for additional spectrum for consumer wireless services. Congress instructed the FCC and DOT to work out a sharing approach, and I've worked to push the process forward. We must find an approach that

opens the band to Wi-Fi while ensuring no harmful interference to crash-avoidance systems. I'm pleased to hear that the FCC will soon conduct tests to make this a reality, with DOT's participation. But FCC Commissioner O'Rielly has suggested that some companies may try to use ITS licenses not just for crash avoidance, but also for non-safety applications like metering, e-commerce, or even entertainment systems - far afield from the safety-of-life systems contemplated in DOT's pending rulemaking. I'm all for protecting crash avoidance.

- Do you believe that companies engaged in non-safety activities deserve the special status we give safety? Please answer yes or no.

Answer. DOT recognizes the critical national interest in making more broadband spectrum available. Our overarching goal is to assure safe, reliable, and on demand access to the 5.850-5.925 GHz spectrum for licensed vehicle to vehicle communication technology. We are working collaboratively with FCC and NTIA on testing to ensure that the capabilities of the safety critical crash avoidance applications and technologies are maintained.

- Are you considering mandating that all automakers use a government-mandated technology and frequency band? If so, why?

Answer. NHTSA is considering this issue in the Vehicle to Vehicle Communication NPRM that is currently under deliberations. We cannot comment on the issue until the rule has been released for public comment.