

Ranking Member John Thune
Questions for the Record
Nomination of Victor Mendez to be
Deputy Secretary of Transportation
Senate Committee on Commerce, Science, and Transportation
Hearing on June 11, 2014

- 1) Mr. Mendez, the Administration's proposed GROW America bill includes a proposal to give the National Highway Traffic Safety Administration (NHTSA) the authority to regulate navigation apps on smartphones and other electronic devices and products that can be brought into vehicles.

- How would NHTSA enforce such restrictions in practice?

RESPONSE: *It is my understanding that NHTSA does not have any plans to propose regulations to restrict navigation apps on smartphones or other electronic devices and products that can be brought into vehicles.*

- Does NHTSA have the structure to oversee an innovative, dynamic and rapidly changing industry as navigation apps proliferate and grow in sophistication?

RESPONSE: *NHTSA has sufficient structure today to perform its longstanding mission of identifying and analyzing safety risks that potentially could be introduced by new items of automotive equipment, including navigation apps, that may be introduced into the American market. As it always has, NHTSA will respond appropriately if it identifies any unreasonable risks to safety introduced by such automotive equipment.*

- How do you respond to the concern that restrictions and excessive regulation will stunt innovation in a space where innovation has flourished?

RESPONSE: *NHTSA has no plans to propose regulations over navigation apps and our overall efforts will continue to support innovation in the auto industry. Safety will always be our top priority in determining whether or not to establish new regulations and regulations we propose in other areas are designed to maintain and even encourage innovation while making progress on safety.*

- 2) Mr. Mendez, according to news reports, even if NHTSA obtains the authority from Congress, the agency has no immediate plans to issue rules to regulate navigation apps on smartphones and other devices, which begs the question of why such authority is needed in the first place. How do you respond to the concern that this effort to establish authority over navigations apps is just another regulatory power grab by another federal agency?

RESPONSE: *NHTSA is not seeking authority to regulate navigation apps or any other apps on handheld devices. NHTSA's existing authority covers these apps, but, as you indicated in your question, NHTSA doesn't have any plans to issue regulations for apps. The proposed provision in the GROW AMERICA Act addresses a different issue altogether—NHTSA's ability to rely upon industry-consensus process standards, such as ISO standards, when it regulates on-board electronics and software in vehicles.*

- 3) Mr. Mendez, one of the recurring themes we seem to discuss on the Committee for every mode of transportation is fatigue—from hour of service requirements to the impact of sleep apnea. While every mode of transportation is unique, it does seem that some basic issues overlap, including the correlation between tired operators and increased safety risks.

Do you know if the DOT has considered tackling the issue of fatigue in a more global manner, especially with respect to research? If so, how? If not, is that something you would commit to considering?

RESPONSE: *Fatigue safety risks are a life-threatening concern for the Department. Every year, an estimated one million roadway crashes and near-misses are likely fatigue-related, with thousands of people losing their lives and being injured. Fatigue-related tragedies are played out across every hour of the day throughout our nation's transportation system. We have worked to tackle fatigue across the Department. The Federal Aviation Administration (FAA) for example, issued new hours of service rules for pilots and the Federal Motor Carrier Safety Administration (FMCSA) issued new rules for commercial truck drivers. While representing the most significant changes in over 70 years, and incorporating many science-based elements, the aviation rules do not yet cover all pilots, and the truck rules are facing challenges. These are important developments that represent real progress, and need to be embraced and applauded. But so much more needs to be done. Reducing fatigue risks in transportation is everyone's ongoing responsibility: companies, the government, individual operators, and travel consumers. And when you are behind the wheel, every moment requires you to be wide-awake and alert.*

- 4) Mr. Mendez, one concern that we often hear about is how each mode can sometimes be stove-piped within DOT, and how communication between the modes can be difficult.

Is this something that you have experienced as modal administrators? If so, what steps would you take to prevent this in the future should you be confirmed?

RESPONSE: *An appropriate management structure can help avoid stovepiping, although no one model is appropriate in every case. One approach, having a single manager, can assure that one person has overall responsibility for the entire project and can help ensure that the interests and goals of the project are kept in mind at all times. Subproject or functional-unit managers exercise control over the various phases, but the overall manager can see that the phases are coordinated and that the project stays on track and on budget. With the Transportation Investment Generating Economic Recovery*

(TIGER) discretionary grant program, we established TIGER teams. The advantage of teams for avoiding stovepiping is that they can cut across functional boundaries in any organization, helping to manage the phases of the project delivery cycle in a seamless way and encouraging positive handoffs during the transition to different phases. In other words, project management teams can help shepherd a project through the organizational structures that are already in place while assuring that the project-level commitments made at each stage are kept. The TIGER team approach has been so successful we have mirrored the formula for a number of other Department-wide multimodal efforts.

- 5) I am concerned about reports regarding the National Roadside Survey of Alcohol and Drugged Driving that revealed motorists complaints of being forced off the road and asked to provide breath, blood and saliva samples. While combating impaired driving is a priority, and while survey data provide important insights to policymakers regarding the scope of this problem, it is important that the methods employed by NHTSA and its contractors respect the civil liberties of our nation's motorists. Survey participation should be voluntary and not feel coerced as some have claimed.

Can you explain how the survey was conducted and what procedures, if any, NHTSA employs to ensure that its testing activities -- both those conducted by the agency itself and those conducted through third-party contractors --are constitutional and as unobtrusive as possible?

RESPONSE: *In conducting the National Roadside Survey of Alcohol and Drugged Driving, NHTSA took great care to protect the rights of motorists and coordinated closely with State highway safety officials well in advance of setting up a survey site. An experienced non-profit research organization under contract to NHTSA conducted the survey. Trained researchers collected the data from volunteer participants, but only after specifically informing each participant that the survey was voluntary and anonymous, and that the participant was free to discontinue participation at any time. The survey followed a strict protocol that was reviewed and approved by an Institutional Review Board (IRB) for the Protection of Human Subjects. IRB review is designed to ensure that subjects of federally-funded research are treated with dignity, respect, and courtesy, that their participation is voluntary, that there is no coercion, and that volunteers give informed consent to participate.*

Even before entering the survey site, motorists were faced with large signs in the roadway alerting them to the "Paid Voluntary Survey" ahead. The survey protocol makes sure that participants were informed in multiple ways of the voluntary and anonymous nature of the survey. The survey has been conducted by NHTSA on a periodic basis for several decades. It is a vital source of data on the presence and prevalence of alcohol and drug use by drivers on the road, and critical to the Department's efforts to reduce impaired driving.