

Ranking Member John Thune
Questions for the Record
Nomination of Peter Rogoff to be
Under Secretary of Transportation for Policy
Senate Committee on Commerce, Science, and Transportation
Hearing on June 11, 2014

- 1) Mr. Rogoff, 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: *The GROW AMERICA Act has many important provisions intended to enhance safety across our national transportation network. However, it does not include a provision to restrict electronic devices and products that can be brought into vehicles. As I understand it, the Act seeks to address a different issue, namely NHTSA's authority to rely upon industry consensus process standards in regulating vehicle electronics.*

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

RESPONSE: *While these technologies are expanding widely and quickly, NHTSA must continue its longstanding efforts to identify and analyze the safety risks associated with these and other new types of automotive equipment that could be brought to the market. Where unreasonable risks are identified, NHTSA will engage the manufacturers and consumers as it always has to ensure safety.*

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

RESPONSE: *NHTSA and the rest of DOT have no interest in engaging in excessive regulation or stunting innovation. This area of innovation has been met with strong consumer approval and has provided consumers with many new opportunities. NHTSA will always be focused on maintaining safety, first and foremost, and any regulations in this area will seek to capture the appropriate balance to provide consumers with the products they desire while maintain safety on our highways.*

- 2) Mr. Rogoff, 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 and the rest of DOT have no interest in seeking unnecessary authority. As I understand it, NHTSA's existing authority covers these devices. And, in fact, there are no agency plans to issue regulations for apps. The proposed provision in the GROW AMERICA Act seeks to address a different issue—NHTSA's ability to rely upon industry-consensus process standards when it regulates on-board electronics and software in vehicles. I'm sure NHTSA would welcome the opportunity to brief the Committee in greater detail on this issue if that would be helpful.*

- 3) Mr. Rogoff, 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: *You are quite correct that the fatigue issue cut across all parts of the DOT. And the Department should be using the best science available on fatigue when issuing any regulations or safety advisories across the Department. The Department must continue to stay up to date in this area because the stakes are so high. 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. These tragedies impact families all across the nation every day. As such, the DOT has worked to tackle fatigue across the Department. New rules have been issued both by the Federal Aviation Administration (FAA) and the Federal Motor Carrier Safety Administration (FMCSA). These are important areas of progress. DOT will continue to monitor the impact of these rules both on the impacted industries and on safety to ensure that we are capturing the right balance. And we will continue to bring the best science to bear upon these efforts.*

- 4) Mr. Rogoff, 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: *Yes. I certainly experienced the issue of stovepiping within the Department when I served as a modal administrator. I believe one of the critical roles of the Under Secretary position is to eliminate or minimize that tendency wherever and whenever it appears. Regular communication between modes at all levels of the organization can and has helped address this issue. It can also help avoid duplication and help achieve efficiencies to benefit the taxpayer. Your questions regarding fatigue above cites an important example where individual modes should be able to benefit from the work done in other modes when confronting the safety challenge within their own mode. If confirmed to the Under Secretary position, I will work diligently to push each of*

the modes to share their experience and expertise in the many cross-cutting areas that impact the Department so that the Department can speak with one voice and avoid unnecessary expense.

- 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: *Whenever the DOT engages the public for information gathering purposes, it is essential that the public be treated with dignity and that privacy rights are fully respected and protected. My understanding it that NHTSA worked closely with State highway safety officials when developing the methodology the National Roadside Survey of Alcohol and Drugged Driving in order to ensure that the survey be conducted in such a way. The survey was conducted by an experienced non-profit research organization under contract to NHTSA. 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.