

Oversight & Investigation

*Question 1.* The President's budget requests an additional 59 employees at offices within the National Highway Traffic Safety Administration (NHTSA). In 2011, the Department of Transportation Office of Inspector General (OIG) stated that a comprehensive workforce assessment would enable the agency to determine the number of staff and specialized skills needed to complete its mission and ensure manufacturers recall vehicles in a timely manner. At the time of the OIG's report, NHTSA agreed to conduct this assessment by April 2103; however, to date, it has not been completed.

How did the agency determine its specific request for additional employees without completing the ongoing workforce assessment, as the OIG first recommended in 2011?

Answer. NHTSA's workforce assessment is almost complete. The information gathered during the drafting process allowed the agency to identify the Office of Defects Investigation's most immediate needs. These urgent needs are reflected in the request for 57 new positions and the creation of the new Trend Analysis and the Field Investigation and Testing divisions. The full workforce assessment will address these and additional needs.

*Question 2.* When will the recommended workforce assessment be completed?

Answer. The draft assessment is currently undergoing review, and we expect to deliver it to the OIG soon.

*Question 3.* For fiscal year (FY) 2014, you reported to the President two material weaknesses in the Department's financial management, including weaknesses in its information security program and inappropriate access with respect to the Federal Transit Administration's grant management systems. What specific actions have you taken to ensure that the Department addresses these material weaknesses properly and swiftly?

Answer. The specific major finding of the financial auditors was that FTA's grants system (TEAM) does not provide for controlled access rights by the handful of DOT employees and contractors who serve as system administrators. Under certain circumstances system administrators could, in theory, access broader functions in the system. Because TEAM is built on an older technology, the system cannot distinguish between certain functions allowed for certain system administrators. This issue only applies to trusted system administrators with extensive background checks and no level of access to TEAM can result in improper payments because it is not FTA's payment system. In response to the audit finding, FTA has developed a tracking system to monitor and log all system administrator activities in real time. Additionally, because it is at the end of its life-cycle, FTA has been developing a complete replacement of the

TEAM system. The new system, TrAMS, is built on modern technologies using a state of the art IT architecture, and will not have this problem. FTA plans to officially convert to the new system in FY 2016.

*Question 4.* The OIG has identified longstanding cyber security weaknesses and challenges with integrating and coordinating shared security controls. Will you commit to working with the OIG and this Committee to address these outstanding deficiencies?

Answer. DOT is committed to addressing the issue of shared security controls across the Department. The Department will prioritize weaknesses and build upon DOT investment oversight and security responsibilities to identify and leverage opportunities for consolidation and cost-effective delivery of shared services

*Question 5.* With such a large requested increase in the Department's budget, what should give Congress confidence that the Department will exercise the highest level of stewardship over appropriated taxpayer funds?

Answer. The Department of Transportation (DOT) invests more than \$70 billion each year on programs to ensure the safe management and economic viability of U.S. transportation systems. Transportation is a critical engine of the Nation's economy. DOT investments in our transportation network over the country's history have been instrumental in developing our Nation into the world's largest economy and most mobile society. Fixing our existing infrastructure must be a top priority in order to keep America economically competitive. Recent reports on the condition of key facilities—highways, bridges, transit systems, passenger rail, and airport runways—reveal that many fall short of a state of good repair and thus compromise the safety, capacity, and efficiency of the U.S. transportation system. DOT programs will continue to emphasize improving the condition of our infrastructure to ensure that transportation facilities are safe and reliable.

Over time, however, our level of investment as a percentage of the gross domestic product has dropped significantly, as it fails to keep pace with our growing economy and population. Increasingly, we are seeing State and local officials abandon planning on the more ambitious and expensive projects that will move our economy forward. A critical part of DOT's efforts to ensure the safety and continued improvement of transportation programs is effectively securing and channeling investments to finance them. This will require the Department to work with stakeholders to stabilize the Highway Trust Fund and strengthen credit programs that can leverage private investment for transportation projects. The President's \$94.7 billion Fiscal Year (FY) 2016 Budget Request for our transportation programs is critical for our Nation, our economy and job creation. It is also critically important that we work together to enact the priorities reflected in this budget that make much-needed investments in our nation's infrastructure, provide long-term funding certainty to States and local governments, and implement policies that modernize Federal programs to meet our current challenges. With regard to the Department's stewardship over appropriated taxpayer funds:

- The Department of Transportation has a long-standing record of providing excellent stewardship over taxpayer funds.

- The Department's Inspector General's annual review of the internal controls, financial procedures, and financial records has resulted in 3 "clean audit" opinions for the last 14 years.
- The President's FY 2016 budget request for the Department of Transportation was developed through a comprehensive review of its programs, requirements, and missions.
- This request reflects the Administration's views on the Nation's transportation infrastructure needs, the resources needed to address emerging issues that affect the transportation system, and the predictability and reliability of funds to support transportation programs.

*Question 6.* How do you intend to prevent cost overruns and fix management weaknesses in acquisition practices?

Answer. The Department views very seriously any area where cost overruns may occur. We are actively managing processes across the Department (including FAA) to prevent cost overruns and address opportunities to strengthen acquisition practices.

The FAA has a set of structured processes and governance structures to identify issues and risks to reduce or eliminate the likelihood of cost overruns on programs. In 2011, the FAA established the Air Traffic Organization (ATO) Program Management Organization (PMO) to improve the consistency of program execution, institutionalization of acquisition of best practices, review of lessons learned, and to capitalize on efficiencies between programs. The PMO effectively manages the program lifecycle creating a bridge between conceptual use and operational use through the identification and management of risks associated with the design, development, and deployment of systems. The FAA has a tiered structure for managing and reporting program performance. Each program is responsible for reporting cost, schedule and technical performance on a monthly basis that is reviewed within each business unit on a monthly basis. Additionally, the PMO sponsors a bi-weekly forum known as the PMO Program Management Review (PMR) which focuses on a periodic review of the programs and portfolios within the PMO, and on critical programs from other FAA lines of business. The purpose of the PMO PMR is to review the current program status, review and discuss risks and challenges, as well as capitalize on opportunities to help ensure that cost, schedule, and technical issues are mitigated and resolved before they have the effect of a cost overrun on a baselined program. The final level of review is by the Joint Resource Council (JRC), which is the Investment Decision Authority for the FAA. Every 3 months the JRC holds an Acquisition Quarterly Program Review (AQPR) where every baselined investment program in the FAA is reviewed for cost, schedule, and technical performance. Major issues and challenges that have not been resolved or mitigated at other reviews are discussed for action at the AQPR.

The FAA continues to make progress in resolving identified weaknesses in the area of acquisition practices. Since 2005, the FAA has taken steps to put a certification structure in place for those critical acquisition positions in the FAA. Currently all Program Managers (PM's)

must be certified (at the required level for the size and scope of the program) before taking on the responsibility of managing a program. All Contracting Officers (CO's) and Contracting Officers Representatives (COR's) must be certified to perform those activities consistent with current applicable law and the FAA Acquisition Management System (AMS). Both the PM certification and the CO and COR certifications are required to have periodic re-certification and continuing education requirements.

Additionally there are required reviews of acquisitions through the various boards that look at the specifics of each acquisition. The CFO is responsible for ensuring that all acquisitions greater than \$10M are reviewed for completeness and necessity. The Acquisition Strategy Review Board is responsible for ensuring that all contracting activities greater than \$5M are reviewed for potential redundancy with other efforts, and that the approach for the acquisition is in the best interest of the government. In 2007, the FAA established The Acquisition Executive Board (AEB). The AEB is responsible for the identification of improvements to the AMS through suggested Policy, Guidance, and Governance to the JRC and the FAA Federal Acquisition Executive. The FAA continually reassesses our acquisition practices for areas of potential improvement.

The FAA also implemented the National Acquisition Evaluation Program (NAEP) in 2007 to independently monitor the performance and implementation of the AMS and associated processes. Through acquisition metrics, and random and focused evaluations of program and contract data and documentation, NAEP identifies best practices or pinpoints potential weaknesses in requirement and policy implementation. Findings are then used to improve existing programs and contracts where practicable, and reengineer AMS and associated processes where feasible to institutionalize better compliance and efficiency for future requirements. NAEP also serves as the audit liaison to GAO and OIG for acquisition-related audits to ensure findings are properly addressed and integrated into agency processes where needed.

In addition to the program implemented by the FAA, the Department has also created a number of structural and procedural protocols which seek to reduce the likelihood of cost overruns across the Department. Specifically, the Department established an Acquisition Strategy Review Board to provide strengthened management oversight over certain acquisition activities. The Acquisition Strategy Review Board is led by the Department's Senior Procurement Executive, who serves with the Deputy Chief Information Officer and Deputy Chief Financial Officer. The Acquisition Strategy Review Board reviews acquisition plans to ensure the application of sound business strategies and the application of appropriate Federal and Departmental information technology standards and policies, and also seeks to identify and ensure both technical and financial risks are appropriately identified and mitigated early in the acquisition planning process. Working within the DOT Integrated Program Planning & Management process, the ASRB reviews the Department's high risk acquisition plans, including cost reimbursable contracts over \$10 M and all other proposed contracts in excess of \$20M, to include management support service contracts.

Additionally, the Department has made significant process in strengthening its acquisition workforce. To strengthen the consistency and reliability of acquisition workforce data, the Department has fully implemented the Federal Acquisition Certification and Training System (FAITAS). The full deployment of this new capability has provided a reliable and consistent methodology for tracking the Department's acquisition workforce certification programs for

compliance with certification standards and future requirements for continuous learning. The Department has completed a data validation effort to identify training gaps and now tracks progress toward meeting established metrics to ensure all members of the Department's acquisition workforce are properly recorded in FAITAS. Additionally, the Department continues to invest in its acquisition workforce, and has provided targeted training to support improved focus on improving communication with industry and market research strategies during acquisition planning. The Department also continues to work with both internal and external stakeholders to leverage training resources to maximize learning opportunities across the entire acquisition workforce.

Finally, the Department has initiated a systematic approach to conducting procurement management reviews across the Department's operating administrations. These reviews seek to evaluate individual procuring activities to ensure compliance with both Federal and Departmental requirements and the adoption of best practices, as they relate to the entire acquisition life cycle. This structured approach will allow for improved compliance and strengthened management oversight, and more importantly will allow for the emergence of best practices which can be shared across the entire organization. The reviews will also serve to identify opportunities for improved policies, practices, and procedures.

*Question 7.* What specific steps are you taking to identify and root out contract and grant fraud, which represented 46% of the OIG's investigative caseload in FY 2013?

Answer. The Department of Transportation is committed to carrying out a robust suspension and debarment program that protects our acquisition, grant-making, and comparable programs from fraudulent behavior, favoritism, and other threats to effective stewardship of taxpayer funds. The Department administers many grant-making programs, such as the Federal-aid Highway Program, the Federal Transit Program, and the Airport Improvement Program, and maintaining the integrity of these programs, and of our acquisition actions, is one of our most important responsibilities. In calendar year 2013, the Department issued 64 suspensions and 53 debarments. Also, we continue to work with the Office of Inspector General (OIG) to strengthen and improve our suspension and debarment program. In response to a recent OIG report, we updated the Department's Order on suspension and debarment actions to better clarify Departmental and operating administration expectations and succinctly describe roles and responsibilities in the process. The Department will continue to work with the OIG by referring any instances of suspected fraud to the OIG for investigation, promptly taking appropriate action on matters the OIG refers to the Department for suspension and debarment, and implementing all recommendations for improving our suspension and debarment program.

*Question 8.* The President's budget requests \$339 million for the motor carrier safety grants program. What procedures does the Department have in place to scrutinize these grants carefully in order to prevent waste of taxpayer funds?

Answer. In 2013, the FMCSA created a Grants Management Office. In strengthening the Agency's internal controls, the Grants Management Office has: standardized policies and procedures that are consistent with federal law; implemented and integrated automated grant systems; provided greater transparency in the discretionary grant program; ensured that all agency grants include the proper documentation; and developed comprehensive grants management training.

Based on the Agency's strategic goals and policies, the Agency develops annual Notices of Grant Funding Availability for its discretionary grant programs. The Grants Management Office reviews each application to ensure that it includes all the necessary information. The Agency convenes a technical evaluation panel to review every grant application to ensure that it meets the agency's priorities and federal law. The Agency bases its funding recommendations on the technical evaluation panel's review. The Office of Chief Counsel, Grants Management Office and Program office review the funding recommendations. Prior to its award, each grant is reviewed by the Program Office, the Grants Management Office, the Office of Chief Counsel, the Field, and the Budget Office.

*Question 9.* Amtrak has repeatedly shown a lack of accountability with respect to the federal taxpayer funds it receives via the Department of Transportation. What are you doing to ensure greater accountability and avoid waste and mismanagement of these funds?

Answer. The Federal Railroad Administration (FRA) has substantially enhanced its oversight of Amtrak grants in recent years, building a monitoring program that aligns to the rigorous standards applied to FRA's traditional grant portfolio, and provides a stronger assurance that Amtrak is spending its taxpayer funds transparently and delivering public benefits.

As part of this enhanced oversight strategy, FRA is requiring frequent grant-level and project-by-project reporting, increasing the agency's on-site monitoring of Amtrak capital projects, and conducting comprehensive quarterly working group sessions with Amtrak staff. The monitoring and oversight program instituted by FRA promotes better awareness of Amtrak project activities; allows FRA to verify reporting data by more frequently communicating with Amtrak project managers, engineers, and other key personnel; assists FRA in tailoring targeted technical assistance to Amtrak; and ultimately enables FRA and Amtrak to proactively identify and address project development and delivery risks.

In addition to improved grant program and capital project monitoring, FRA is working with Amtrak leadership to collaboratively assess corporate-level activities and study cross-cutting organizational programs to gain understanding, improve communication, and work towards improvements. Specific operational areas of focus include information management and technology, capital planning and Amtrak's budget development process, fleet management, and business line performance. As an example of recent programmatic shifts in FRA's oversight approach, FRA now dedicates specific staff to monitor the performance of each of Amtrak's three primary business lines – the Northeast Corridor (NEC), State-Supported routes, and Long-Distance routes. Additionally, FRA is requiring Amtrak to develop five-year planning documents for both its general capital and Americans with Disabilities Act programs, which is intended to spur Amtrak to consider a longer horizon and more methodical approach to planning for its investments.

Finally, many of the provisions the Senate Committee on Commerce, Science, and Transportation authored in the Passenger Rail Investment and Improvement Act of 2008 (PRIIA) are helping to drive Amtrak performance improvements, transparency, and accountability. Sections 209 and 212 of PRIIA are leading to standardized and transparent methodologies for allocating costs among Amtrak and its state and commuter partners on the state-supported and NEC business lines. Under Section 210, Amtrak is working to implement performance

improvements for its Long-Distance routes. Additionally, Section 203 led Amtrak to develop and implement an improved financial accounting and reporting system.

*Question 10.* Since 2009, Congress has appropriated over \$10 billion for the Federal Railroad Administration's (FRA) high speed intercity passenger rail (HSIPR) grant program. The OIG has previously reported that the "FRA's lack of an effective grants administration framework may be putting Federal funds at risk." The President's FY 2016 budget requests \$2.3 billion to establish a Rail Service Improvement System, building off HSIPR funding. What controls are in place to ensure taxpayer funds are not at risk?

Answer. The Federal Railroad Administration (FRA) has successfully managed \$10 billion in funding and approximately 150 projects through the HSIPR Program. Forty percent of these projects are complete or substantially complete with significant public benefits already realized.

Since 2009, FRA's HSIPR program has undergone five external oversight reviews. The five external oversight reviews on HSIPR program management/oversight processes is composed of three OIG reviews and two GAO reviews. None of these reviews has identified any project-related concerns or major oversight issues as FRA has implemented this program. Most recently, the OIG issued a report on April 1, 2015 stating that "FRA improved its guidance on high-speed rail grant agreements, but policies and procedures for amending and monitoring grants remain incomplete." The OIG report contained five recommendations, four of which the OIG considered resolved and closed by the report's publication date and the fifth was resolved pending completion of planned actions. The four closed recommendations sought amendments or clarifications to existing FRA policies and procedures.

FRA has established a dynamic and robust oversight program to reduce implementation risk to the HSIPR Program. FRA's program management model comprises three major components, including: grant compliance reviews, project implementation oversight, and technical assistance delivery.

- Grant compliance: FRA grant agreements clearly outline each award recipient's grant administration responsibilities, in compliance with federal grant oversight regulations and FRA policies. FRA requires grantees to submit detailed and accurate quarterly financial and project progress reports. FRA closely reviews reports for accuracy and has developed a compliance assessment tool to evaluate grantee adherence to administrative requirements on a monthly basis. Further, grant compliance is a component of FRA's monitoring program discussed below.
- Project implementation: Before awarding funds, FRA requires each grant recipient to submit a detailed, thorough, and feasible statement of work (SOW), including a clear scope, schedule, budget, and deliverables that grantees must submit throughout the grant period of performance. FRA uses these grantee-generated deliverables and other resources to assess grantees' adherence to the SOW and general project quality.

FRA also manages an intensive grant and project monitoring program that includes a combination of detailed reviews of grantee and project

documentation, as well as grantee and project site visits. Utilizing these tools to evaluate grantee performance and identify project delivery issues, the FRA grant oversight team may require grantees to submit and implement corrective action plans, if necessary.

- Technical assistance: FRA's monitoring and oversight team is in constant communication with grantees and is often able to assist grantees in identifying project risk or addressing realized challenges in technical areas such as engineering or environmental compliance. FRA has provided an appropriate level of support to grantees throughout the HSIPR Program to safeguard federal investments and maximize public benefits.

The GROW AMERICA Act and FY16 Budget request build on the framework established under the HSIPR program and provide dedicated funding to conduct necessary oversight, training and technical assistance, and project evaluations and assessments for all financial assistance provided under the new National High-Performance Rail System.

*Question 11.* Since 2003, when legislation initiated the Next Generation Air Transportation System (NextGen), the OIG has reported on "longstanding management challenges and barriers that have limited FAA's progress in delivering NextGen capabilities, such as the Agency's inability to set realistic plans, budgets, and expectations, and clearly identify benefits for stakeholders."

What steps are you taking in order to get the NextGen implementation back on track, on time, and on budget?

Answer. The FAA is implementing an executable plan for NextGen with the leadership of the FAA's Deputy Administrator, who is also the Chief NextGen Officer, and the Assistant Administrator of NextGen, who, within the FAA, is responsible for the day-to-day implementation and execution of NextGen activities. Since NextGen implementation relies on the coordination of multiple stakeholders, both of these individuals are constantly engaged in discussions with relevant parties in clearly identifying benefits for stakeholders. The FAA, in collaboration with the aviation industry through the NextGen Advisory Committee, has developed the NextGen Priorities Joint Implementation Plan. This Joint Implementation Plan, which was delivered to Congress on October 17, 2014, summarizes the high-level commitments the FAA will accomplish over the next three years, the industry commitments necessary for those activities to be successful, and a timeline of milestones and locations to deliver the benefits for our stakeholders. The FAA is also working with the stakeholders to resolve barriers and address potential challenges to meet the mandate for equipping thousands of aircraft with ADS-B Out avionics. Under the Equip 2020 initiatives, we have established workgroups to coordinate and monitor equipage for part 121, 135 and General Aviation aircraft, and educated the community on ADS-B Out and addressed issues with installation and approval.



*Question 12.* Is the Department open to looking at new models of governance structure to improve the delivery of NextGen benefits?

Answer. There has been an on-going conversation regarding alternative models for FAA governance among some aviation community stakeholders and in Congress. The Secretary and the Administrator have expressed openness to taking part in these conversations. However, any alternative model should provide not only for the improved delivery of NextGen benefits but also ensure that any governance changes solve the challenges FAA faces. Any movement away from the present model needs to ensure continued direct accountability to users of the National Airspace System (NAS) and be mindful of the linkage and integration of safety, NextGen, airport infrastructure, and other functions. Proposed solutions will need to make certain that we make improvements in all aspects of FAA's mission and that any change does not set us back in the progress that we have made.

### Federal Records Act

The Federal Records Act (FRA) requires federal employees to preserve all records, including e-mails, documenting official government business. The National Archives and Records Administration (NARA) further clarified this requirement in 1995 by adopting regulations specifically requiring the preservation of official e-mails created on non-official accounts. The cornerstone of transparency, this clear and unambiguous requirement ensures that complete and accurate documentation of the business of federal departments and agencies is available for congressional inquiries, Freedom of Information Act (FOIA) requests, litigation, and historical research. Given reports about deficiencies in FRA compliance at several departments and agencies, please answer the following questions:

*Question 13.* Do you use an official government e-mail account for official business?

Answer. Yes.

*Question 14.* Do you or any other senior Department officials use an alternate, alias, or other official account (apart from your primary official account) for official business?

Answer. Yes.

*Question 15.* If so, is the Department's Chief FOIA Officer aware of this practice?

Answer. Select officials within the Department use email accounts that do not follow the standard email naming convention of FIRST.LAST@DOT.GOV, however all such accounts are maintained on authorized DOT email systems. For example, I have two official accounts Anthony.Foxx@dot.gov and a separate email account, also maintained on the DOT email servers. In addition, program offices may also use a program specific email address; the FOIA Office uses FOIA@dot.gov; the use of such addresses supports operational effectiveness and efficiency. The Department searches all such accounts, including a second DOT account for a select official or a program office DOT account whenever they may include records responsive to a FOIA request.

*Question 16.* Have you ever used a non-official e-mail account for official business? If yes, please explain your purpose and justification for this practice.

Answer. No.

*Question 17.* Are you aware of any other Department or Administration officials who use or have used non-official e-mail accounts for official business?

Answer. No.

*Question 18.* What steps have you taken to ensure the preservation of all federal records, including e-mails, at the Department in accordance with the FRA?

Answer. In 2012, the Departmental Records Management Office (DRMO) initiated a Department wide records management inventory, requiring all Operating Administrations (OAs) to identify their federal records and associated records schedules. The OAs have completed their inventories and the DRMO is working with OA records offices and NARA to schedule permanent and temporary unscheduled records. The Department uses a mix of technologies to assist in the management of permanent records. Depending on the business needs and electronic information system(s) supporting a given program, records are managed in place, stored in an Electronic Records Management System (ERMS), or printed and filed.

DOT permanent electronic records are generally housed in their individual electronic management systems and are maintained according to their disposition schedule until transferred to NARA. The DRMO is also in the process of creating a unified guided approach for all OAs to meet the OMB Directive goal requiring all federal agencies to manage all permanent electronic records in an electronic format by December 31, 2019. Under the DRMO's leadership, a DOT-wide strategic approach for managing implementation of the Directive has been established. This approach allows each OA to make electronic records management plans based on business needs, resource availability, and best practices. Each OA is required to develop its strategic and tactical approaches in accordance with the DRMO's established minimum specifications and provide the plans to the DRMO for on-going oversight and compliance. The DRMO will identify and work to resolve common issues through evaluation and research of best practices and lessons learned through participating in inter-agency collaboration groups including the Federal Records Officers Network (FRON), the Bi-monthly Records and Information Discussion Group (BRIDG), Capstone working group meetings, and Senior Agency Official meetings.

*Question 19.* Has the Department adopted the Capstone approach to managing e-mail, outlined in the September 14, 2014 memorandum to the heads of federal departments and agencies from the Office of Management and Budget and NARA?

Answer. The Department has adopted in principle the Capstone approach and is working to address the technical and operational requirements necessary to support its implementation. The DRMO, with the support of the Associate CIO for IT Shared Services, OA records management staff, the OGC, and other stakeholders is working to finalize the policy framework for the DOT's implementation of the NARA-approved Capstone approach for persona-based email retention that meets the Department's business needs and records management requirements. The DOT continues to evaluate cloud-based email solutions and fully anticipates that all DOT email systems will meet the Directive goal of managing both permanent and temporary email records in an accessible electronic format by December 31, 2016.

*Question 20.* Have any Department employees using non-official e-mail accounts to conduct official business forwarded the e-mails to their official accounts within 20 days as required by law?

Answer. The Department is not aware of any employee using non-official e-mail accounts to conduct official business. The Department's Records Management 101 (RM 101) training currently includes language reminding employees to not use a personal e-mail account for work. In FY2015, the RM101 training will be updated to reflect the new changes in the Federal Records Act requiring any individual who must, for unforeseen circumstances, use a non-DOT email for official purposes to copy their official email so that the record may be appropriately preserved.

*Question 21.* What policies and procedures does the Department have in place to ensure that all employees comply with their FRA obligations?

Answer. The Departmental CIO has issued CIO Policy (CIOP) DOT Order 1351.28 Records Management which establishes the policy, and roles and responsibilities for records management review within the Department. The policy is currently under formal review and an updated version will be issued by the end of the fiscal year. The designated Records Officer for each OA has either been certified or granted a certification exception based on records management experience by NARA. These OA Records Officers are supported by a community of Records Liaisons who work directly with records custodians to ensure that all FRA obligations are addressed.

*Question 22.* When was the most recent FRA training session offered to Department employees, including Senate-confirmed individuals?

Answer. Effective November 11, 2013, the SAO RM required that all DOT employees complete the OCIO developed RM 101 course. The training aims to educate all staff about records and their records management responsibilities. All Federal staff were required to complete the training within 90 days of the requirement being established and every two years afterwards. Staff that had previously completed RM 101 were not required to retake the training until two years after they last completed RM 101. To date, 97% of non-FAA DOT employees and 94% of FAA employees have completed the RM101 course. As noted above, the DRMO plans to evaluate and update RM 101 as appropriate during FY15 as well as develop additional role based training for specialized communities such as political appointees, records custodians, and project managers.

*Question 23.* Is any senior Department employee aware of any unlawful or accidental removal, alteration, or destruction of electronic federal records in the Department's custody or control, including e-mails? If so, has the Department reported these incidents to NARA? Please provide details of any such incidents, including the dates, number and type of records, and custodians involved, as well as any reports, including dates, made to NARA.

Answer. No.

*Question 24.* Are you or any Department official aware of any Department employee's use of a private or independent e-mail server to conduct official business?

Answer. No.

*Question 25.* If yes, who approved its use?

Answer. N/A

*Question 26.* What was the rationale or justification for its use?

Answer. N/A

*Question 27.* Has the Department received any inquiries from employees about the permissibility of using a private or independent e-mail server to conduct official business? If yes, who made the inquiry and what was the response?

Answer. No.

### Vehicle Safety

*Question 28.* Vehicle safety has been a long-standing priority of mine and, as you know, alcohol impaired driving kills many thousands of individuals on the road each year. While some success has been seen with implementing the use of breath alcohol ignition interlock devices (BAIID), there is some evidence that many of those individuals required to install a BAIID in their vehicle do not install them.

Do you believe the compliance rates for installing BAIIDs have been well established?

Answer. Alcohol ignition interlock use has grown substantially over the past nine years resulting in a significant increase from about 100,000 in 2006 to over 300,000 in 2014. However, it is difficult to establish compliance rates, which vary widely among States. NHTSA is working with States to improve tracking and recording of compliance with installation orders by offenders. We believe that once State ignition interlock programs mature the compliance rate for installing BAIIDs can be established.

*Question 29.* In your view, are the compliance rates for installing BAIIDs acceptable and indicative of success?

Answer. There is strong evidence that, while installed, interlocks reduce recidivism among both first-time and repeat offenders 50 to 90 percent. Offender compliance with orders to install a BAIID is critical to the success of State programs. Compliance rates for installing BAIIDs are increasing in some States, and we expect other States to increase compliance rates as their programs mature. Through increased support for State ignition interlock programs at the State and Federal level, it is expected that compliance rates for installing BAIIDs will continue to increase.

*Question 30.* Relatedly, have the performance measures and benchmarks for BAIID been met?

Answer. There are no performance measures and benchmarks for BAIIDs.

*Question 31.* The 24/7 Sobriety Program is a drug and alcohol monitoring program that was created in my home state of South Dakota and has since been adopted in some form by North Dakota, Montana, Idaho, Washington, Alaska, Wyoming, Florida, Nebraska, and Iowa. NHTSA-funded studies based on the South Dakota 24/7 program data have indicated that participants who have been on the 24/7 Sobriety Program have substantially reduced recidivism rates for one, two, three, and four years from arrest. Congress has made clear that 24/7 is a program worthy of federal support, and my state of South Dakota is pleased with the results of our 24/7 program.

What changes could be made to federal statutes to further encourage the use of this promising approach to addressing drunk driving and alcohol abuse?

Answer. NHTSA is aware of evaluations of intensive supervision programs, such as the 24/7 Sobriety Program, that show such programs to be effective in reducing DWI recidivism. In the GROW AMERICA Act, the Administration proposes to increase State flexibility with regard to eligibility for an alcohol-ignition interlock law grant by allowing the substitution of 24/7 intensive supervision programs for ignition interlock use under certain circumstances. Under the proposal, a State would be eligible for an ignition interlock grant even if its all-offender interlock law contained an exemption for employer-owned vehicles, provided that the State required such offenders to participate in a 24/7 intensive supervision program. Similarly, a State would also be eligible for an ignition interlock grant even if its all-offender interlock law contained an exemption for rural residents, provided that such offenders live more than one hundred miles from an interlock service provider and they participate in a 24/7 intensive supervision program. These changes would provide States with additional tools to help combat drunk driving.

*Question 32.* Drugged driving is a growing problem in our country. How is NHTSA working to understand this problem and should federal grants and penalties for drugged driving be treated similarly to those for driving under the influence of alcohol?

Answer. NHTSA has conducted two important roadside surveys to provide information on the presence of drugs in the driving population. These surveys, which are anonymous and voluntary, are the only source of statistically reliable information on the extent of drugged driving in the United States. The 2007 National Roadside Survey (NRS) indicated that 16.3% of weekend nighttime drivers had drugs in their systems. The 2013-14 NRS indicated this figure has increased to 20%. These surveys provide important data about the presence of drugs in the driving population, but do not measure impairment levels. These roadside surveys are the only source of this critical safety information. Unfortunately, NHTSA is currently prohibited from conducting future roadside surveys under the “Consolidated and Further Continuing Appropriations Act, 2015.”

NHTSA considers driving under the influence of drugs (DUID) as part of the larger impaired driving threat facing this country. State data on fatalities indicate that one third of total fatalities (10,076 in 2013) were the result of alcohol impairment. Less is known concerning the level of involvement of drugs in impaired driving, and more research is required to understand the issues and preventive strategies. That is why the President’s fiscal year 2016 budget requests an additional \$10 million to study the magnitude of drug impaired driving.

States may currently use Section 402 and most of Section 405(d) Impaired Driving grants for both alcohol and drug impaired driving countermeasures. The Administration’s GROW

AMERICA Act would continue to allow States this flexibility.

### Surface Transportation & Merchant Marine Infrastructure, Safety, and Security

*Question 33.* The freight map developed by the Department of Transportation (DOT) has limited connectivity in rural states like South Dakota. With just one mile of the “DOT freight network,” but hundreds of miles of multimodal freight routes, I am concerned that DOT’s map fails to account for the realities of how goods move in rural areas. Can you provide additional information about DOT’s freight planning, and how rural freight corridors should be addressed?

Answer. The Moving Ahead for Progress in the 21st Century Act (MAP-21) directed the Secretary to establish a National Freight Network (NFN) to assist States in strategically directing resources toward improved system performance for efficient movement of freight on highways. By statute, the NFN is comprised of three network components: the primary freight network (PFN), the portions of the Interstate System not designated as part of the PFN, and Critical Rural Freight Corridors.

The freight map you describe is the initial draft designation of the highway PFN portion of the NFN. Under MAP-21, this draft highway PFN would eventually be supplemented by the Critical Rural Freight Corridors designated by States, and cover important rural freight routes. A final initial designation of the highway PFN will be released this year. However, consistent with public comments, the Department recognizes that MAP-21’s mileage-constrained, highway-only PFN is an incomplete representation of the system that is required to move freight in the United States. The Department is supportive of a more comprehensive approach to freight under the NFN.

The Department, as part of the GROW AMERICA surface transportation authorization proposal, has proposed the establishment of a multimodal national freight network. This network would not have a mileage cap and could include connectors, corridors, and facilities in all freight transportation modes as most critical to the current and future movement of freight within the national freight system. The input of local and State transportation planners will be necessary to fill in data gaps and improve the accurate representation of goods movement in the nation.

Additionally, to support national and regional planning, the Department will be releasing the National Freight Strategic Plan, and continues to encourage States to develop freight plans. The Department believes that freight planning is best accomplished at the local and State level, including at a multistate regional level, in freight advisory committees, with the active participation of the suppliers, shippers, and receivers, as well as all stakeholders impacted by freight movement. Rural and urban goods movement is best understood by those parties and can inform State freight plans to prioritize investment and help advance local, State, and national freight goals.

*Question 34.* On February 11<sup>th</sup>, Senator Inhofe, the Chairman of the Committee on Environment and Public Works, and I wrote a letter requesting an update on the timeline for the Comprehensive Truck Size and Weight Study that was mandated for delivery in November of 2014. We have not yet received a response to our letter, and the report has not yet been issued. Congress passed MAP-21, which required this study, more than 32 months ago. I look forward

to your response to our letter, and the release of the report. Please provide an updated timeline for the completion and release of the report for the record.

Answer. The Department is analyzing carefully the results and making sure that the information contained in the study is factual and clearly communicated. The Department recognizes the importance of this study, and we are working diligently to complete our review. As soon as our review is completed, we will prepare the draft technical reports for release to the independent peer review panel and the public.

The Department is also making revisions to the study's desk scans, as recommended by the initial report from the Transportation Research Board Peer Review Panel. Once we release the technical reports, we will launch the second phase of the Peer Review. At that time, we will also schedule the final Public Input Session. When these steps are completed, we will deliver to you the final Report to Congress.

*Question 35.* In late 2013 or early 2014, the DOT undertook testing of braking distance of 5 and 6 axle trucks at various weights. I understand that the testing has been finished for some time. Please provide the Committee with the results of this testing, and indicate whether the results will be included in the Comprehensive Truck Size and Weight Study.

Answer. The testing on the 5-axle tractor-semitrailer combination was performed in 2012. A final report for that testing has been completed, "Heavy and Overweight Vehicle Brake Testing: Combination Five-Axle Tractor-Flatbed Final Report" <http://www-cta.ornl.gov/cta/CMVRTC/past-research/HOVBT.html>. A copy of the Final Report can also be accessed via the link.

The testing on the 6-axle tractor-semitrailer combination was performed in 2013 and 2014. The final report for that testing is currently undergoing final review, but has not been published yet. My hope is that we are able to get it done soon, but I don't have a more specific timeline.

The Federal Highway Administration is the lead for the MAP-21 Comprehensive Truck Size and Weight Study. The brake testing results will be provided in that study. The following link provides the Project Milestones and schedule: [http://ops.fhwa.dot.gov/freight/sw/map21tswstudy/milestones\\_schedule.htm](http://ops.fhwa.dot.gov/freight/sw/map21tswstudy/milestones_schedule.htm).

*Question 36.* I understand the Maritime Administration (MARAD) commissioned a report last fall to study the use of liquefied natural gas (LNG) as a fuel in the maritime sector, specifically looking at existing LNG bunkering infrastructure, safety, regulations, and training. The report also included recommendations to accelerate the adoption of LNG fuel. Can you please provide a status update on the agency's progress on implementing these recommendations?

Answer. The study referenced was performed by DNV GL, a classification society that has many years of experience with design and application of LNG vessels. The study was not designed to provide MARAD with implementing recommendations but was developed to address several issues related to the use of LNG as a propulsion fuel. The report makes a number of recommendations geared towards industry that wants to use LNG as a fuel and regulatory agencies considering the development of standards. For example, the report details bunkering methods and port facility locations, provides best management practices, and identifies

regulatory gaps. Since the report was completed in September 2014, additional guidance has been issued by the U.S. Coast Guard regarding safety and training for bunkering operations.

MARAD continues to work with both industry and the regulatory agencies to address continued challenges regarding LNG infrastructure and financing. In late 2014, MARAD initiated follow-up research aimed at identifying locations along the Great Lakes and Inland Waterway System where LNG infrastructure could serve multi-modal and multi-use operations in an effort to determine volume requirements and infrastructure barriers.

*Question 37.* In October 2014, MARAD awarded a ship recycling sales contract to one of its pre-qualified companies that bid \$420,000 less than another pre-qualified company. The winning company, however, is reportedly shut down currently, with at least four MARAD ships in various stages of dismantlement in its yard.

What is the current status of these vessels?

Answer. The company in question currently has two former MARAD vessels under dismantlement. Unfortunately, this long-standing recycler declared bankruptcy on March 7, 2015 and, for the present, has stopped work. We are working with the Department of Justice and the U.S. Navy to ensure the Federal Government's interests are protected during the bankruptcy court proceedings and will continue monitoring the situation to assess whether there will be any impact to the completion schedule for these two vessels.

*Question 38.* Was MARAD aware that the company that was awarded the contract was in financial distress at the time?

Answer. No. The buyer provided payment in full of more than \$3.5 million for both vessels and provided a performance bond before the title to the vessels was transferred to them. This company is one of the largest domestic recycling facilities dismantling Federal government vessels and has successfully recycled 69 obsolete MARAD vessels, the most in the program's history. The company has also successfully recycled numerous vessels for the U.S. Navy.

*Question 39.* Please explain how MARAD determines best value to the federal government.

Answer. Current law, set forth in Section 3502 of P.L. 106-398, requires MARAD to award vessel dismantlement and recycling contracts based on a "best value" determination consistent with the Federal Acquisition Regulation (FAR). Best value as described in Section 3502 (b) includes consideration of the least cost to the Government, the timeliness of performance, worker safety and the environment. The best value process used by MARAD is in compliance with the FAR. In 2009, the Government Accountability Office (GAO) reviewed and upheld MARAD's best value process and confirmed, in a 2014 review, that MARAD's best value process is consistent with the FAR. The February 2014 GAO report on the Ship Disposal Program may be found at: <http://www.gao.gov/assets/670/660899.pdf>

When determining best value, MARAD considers price and non-price factors of performance



schedule, facility capacity and past performance in addition to price when awarding contracts. For example, the benefit of removing and recycling a vessel in a timely manner may outweigh the benefit of a higher sales offer, if the facility making the higher offer cannot dispose of the vessel as quickly. An expedited disposal lessens the risk of possible harm to the environment and the corresponding costs of cleanup. To ensure transparency in the process, MARAD revised its ship recycling solicitation in 2013 to better explain the “best value” process and has held industry outreach sessions to explain the solicitation, including the process of review. In addition, MARAD posts all awarded contracts, which includes the awarded price and schedule of performance, on its website. All offerors can compare their offers to the awarded offer. MARAD also offers individual debriefings to any offeror who requests it to discuss their offer and the best value decision.

In order to ensure a level playing field, and transparent and open competition, the best value process requires that every offer comply with the published terms of the solicitation.

With respect to the sales contract in question for the ex-YELLOWSTONE, MARAD could not consider the \$420,000 higher sales offer. The higher offer was eliminated from consideration because it was a contingent offer and, therefore, not eligible for award. The solicitation required the awardee to remove the vessel from the MARAD fleet within 30 days and the higher offer was contingent on an additional 90-day delay in removing the vessel. If MARAD had awarded a contract based upon a contingent offer that did not comply with the requirements of the solicitation, the integrity of the vessel sales process would have been compromised. The 30-day removal provision is a long-standing term of MARAD’s solicitations. The ability to begin performance in a timely manner is consistent with the published best value award guidelines and consistent with statutory language directing expeditious dismantling of vessels.

*Question 40.* When does MARAD anticipate completing the national maritime strategy required by the Howard Coble Coast Guard and Maritime Transportation Act of 2014? Will it include ship recycling?

Answer. Following an extensive, deliberate and transparent public engagement effort to gain input, we plan to have the national maritime strategy open for public comment this summer. We look forward to Congress' input and recommendations as we then begin work on an implementation plan for the strategy.

The strategy will focus on actions needed to ensure our Nation's critical maritime industries remain relevant and viable in meeting our economic and national security requirements long into the future.

*Question 41.* As you know, DOT has issued a proposed rule calling for a new tank car design and operational requirements for any train carrying 20 or more cars of ethanol, crude oil, or other flammable materials. DOT has estimated that the rule would cost as much as \$5.2 billion, with nearly all of the costs incurred by industry in the first five years.

DOT must take a thoughtful approach to improving the safety of crude oil transportation by rail. DOT should promulgate the necessary and appropriate standards to increase the puncture resistance and thermal protection of legacy DOT-111 tank cars in crude oil service, but it must

avoid regulatory overreach that introduces unintended consequences, network delays, and new safety risks. In that light, please reply to the following:

**Retrofit Deadline:** In the proposed tank car rule, DOT did not examine retrofit shop capacity; it only looked at new tank car manufacturing capacity and did not account for existing new car orders for flammable liquids and other commodities. The result was a deadline for retrofits and replacements that appears unattainable. For the final rule, what steps is DOT taking to examine tank car retrofit shop capacity and to set a more attainable deadline that avoids disrupting our rail network and creating congestion?

**Answer.** The Department received over 3,200 comments representing over 182,000 signatories in response to the August 1, 2014 proposed rule, “Enhanced Tank Car Standards and Operational Controls for High-Hazard Flammable Trains.” We have carefully considered these comments in the development of our final rulemaking action. On February 5, 2015, PHMSA submitted the draft final rule to the Office of Management and Budget for interagency review under EO 12866 and EO 13563, which is the final stage of review before publication.

I can’t comment on the specifics of the final rule, but the Department received substantial feedback on the retrofit timeline in response to the proposed rule, and I assure you we have taken that feedback seriously in the development of the final rule.

*Question 42.* ECP brakes: Former PHMSA Administrator Quarterman said that Electronically-controlled pneumatic, or ECP, brakes “in the long run...will more than pay for themselves,” but most ECP brake pilot programs have been shut down due to insufficient safety and business benefits. The DOT proposed rule relies on an outdated study (from 2006) to assess ECP brakes, and since that time industry has increasingly used other technologies like dynamic braking and distributed power, capturing additional safety and business benefits. To what extent does the insufficient benefit seen in ECP brake pilot programs, and the increased use of other braking technologies, affect the assessment about whether ECP brakes pay for themselves?

**Answer.** The Department received a great deal of feedback on ECP brakes following the proposed rule, including the claims made here regarding increased use of dynamic braking. We are considering all information in development of the final rule.

*Question 43.* Scope: DOT treated a carload of ethanol as having the same risk as a carload of crude oil, despite the fact that other DOT regulations classify ethanol as having a lower flammability and volatility risk than most types of crude oil that travel by rail. Ethanol and crude oil carloads also differ in route distance and clean-up costs. In your view, to what extent does a typical carload of ethanol have the same risk as a typical carload of crude oil?

**Answer.** Ethanol is a flammable liquid, and we have seen many destructive derailments involving ethanol fires, such as at Dubuque, Iowa, on February 4, 2015. Again, while I cannot speak to the particular provisions of the final rule, I assure you the Department takes very seriously the risks involved with rail transport of ethanol. Exploring and monetizing these risks is a component of the deliberative regulatory process.

