

U.S. Senate Committee on Commerce, Science, and Transportation

Nominations Hearing of Mr. John Putnam

December 16, 2021

Questions for the Record – Minority

Ranking Member Roger Wicker

Question 1: *Advanced transportation technologies are reshaping all modes of transportation. How will you help enable the safe and efficient deployment of these technologies?*

Response: DOT remains committed to safely advancing innovative transportation technologies that can increase safety, mobility, efficiency, accessibility, environmental performance and other objectives. If confirmed, I will ensure that safety and regulatory efficiency remains a top priority in my office and influential in the guidance provided and actions taken. DOT has a broad array of tools to meet safety goals, including research, rulemaking, investigations, grant programs, and enforcement, and we will use the right tools at the right time. For example, we will continue to support FAA’s process of integrating Unmanned Aerial Vehicles into the National Airspace System through implementation of the recommendations we expect to receive from the Aviation Rulemaking Committee on Beyond Visual Line of Sight and other rulemakings. We will continue to coordinate with FAA on similar efforts for commercial space and urban air mobility technologies.

On vehicle matters and the deployment of advanced technologies, DOT continues to engage industry through various means in an effort to facilitate both the innovation of new technologies and the development of those technologies in a safe and responsible manner. Manufacturers are also required to timely report crash information for vehicles equipped with Advanced Driver Assistance Systems (ADAS) or Automated Driving Systems (ADS). Data we collect from industry will inform the Department of potential vehicle safety issues that can be addressed through recalls or investigations. In addition, DOT is also proactively researching how safety could be measured and assessed objectively and applied practically to develop future technologies, recognizing that an effective and trusted safety strategy will be necessary for robust commercialization of technologies. All of these actions lead to the safe and efficient deployment of vehicle technologies. If confirmed, I commit to continuing efforts to help enable safe integration of innovative technologies across the modes of transportation.

Question 2: *Mr. Putnam, as you may be aware, the DOT has proposed a new rule which would address the topic of airline ticket refunds. Do you believe the current requirements for airline refunds are insufficient?*

Response: The Department’s existing refund requirement provides that airlines have an obligation to provide prompt refunds when refunds are due, but the reference to refunding airfare due to cancellations and significant changes are not codified in rule text. Also, the terms “cancellation” and “significant schedule change” are not defined in regulation, which has resulted in inconsistency among carriers on when passengers are entitled to refunds. In addition, the Department’s existing regulations do not address refund eligibility under special circumstances, such as government-imposed travel restrictions. The Department has received an unprecedented level of complaints regarding the failure to refund cancelled flights over the last 21 months. For these reasons, in the Fall 2021 Unified Agenda, the Department announced a notice of proposed rulemaking, which is scheduled to be issued in March 2022, that would propose to address these deficiencies. We look forward to collecting comments from all stakeholders on these issues and the proposed rule.

Senator Dan Sullivan

Question 1: *The FAA Alaska Aviation Safety Initiative (FAASI) is an FAA effort to respond to the February 2020 NTSB Report and the Alaska Aviation Safety Summit. A February 2020 NTSB report pointed to a recent 10-year period where the total accident rate in Alaska was 2.35 times higher than the rest of the United States. During the same period, the fatal accident rate in Alaska was 1.34 times higher. There is inherent bias in federal investment, given the lack of federal investment in infrastructure and technology to support rural isolated communities that are dependent on aviation as compared to the rest of the nation, and how this has translated to safety. FAASI identifies safety improvements and investments for the Alaska Region, and aims to make progress on the effort for FAA and DOT to take a holistic view of DOT programs to ensure the inherent bias no longer inhibits infrastructure investments in our remote Alaska Native communities.*

When policies impacting aviation investment and safety in Alaska come before you at DOT, will you consider the unique operating environment and unique needs of Alaska and support the efforts of the FAA Alaska Aviation Safety Initiative?

Response: I recognize Alaska’s distinctive physical and aviation environment and am aware of the fact that Alaskans rely heavily on aviation transportation. If confirmed, I am committed to aviation safety in Alaska and beyond, and will consider Alaska’s unique attributes where appropriate. I will work with the FAA to ensure important safety initiatives, such as the FAASI, advance expeditiously.

Senator Mike Lee

Question 1: *During consideration of the Bipartisan Infrastructure Package, I offered an amendment that required a spectrum audit of the Department of Transportation’s spectrum,*

which was successfully signed into law. If confirmed, will you commit to ensuring all statutory deadlines for the audit are met?

Response: I understand that Sec. 27003 of the Bipartisan Infrastructure Law requires the Department, jointly with the National Telecommunications and Information Agency (NTIA) of the Department of Commerce, to conduct an audit of the electromagnetic spectrum that is assigned or otherwise allocated to the Department. If confirmed, I commit to working to ensure that the Department meets all statutory requirements and deadlines, and we have already initiated discussions with NTIA to begin this work.

Question 2: *In your view, what constitutes a “significant delay” for consumers regarding their air travel? Does the federal government have a role in resolving such “significant delays?” If so, what is the appropriate role?*

Response: As you know, airlines have an obligation to provide a refund to a ticketed passenger when the airline cancels or significantly changes the passenger’s flight, and the passenger chooses not to accept an alternative offered by the carrier. However, neither the term “significant change” nor “cancellation” is defined in regulation or statute. The Department’s review of the refund policies and practices of U.S. and foreign airlines revealed that airlines define “significant change” and “cancellation” differently when fulfilling their obligation to provide refunds. The Department plans to issue a notice of proposed rulemaking on airline ticket refunds in March 2022. This rulemaking would, among other things, define cancellation and significant changes including addressing whether new itineraries involving delays of a certain length or additional stops constitute a significant change requiring a refund. We look forward to collecting comments from all stakeholders on these issues and the proposed rule.

Question 3: *Would you support regulating baggage rates and other airline fees? What you support making these fees “nondiscriminatory” or “equitable?”*

Response: I believe it is important to protect consumers from hidden fees and to ensure transparency, and support regulating the disclosure of baggage fees and other airline fees. The Department already has rules relating to fee transparency, but those rules allow airlines to display fees for ancillary services, except for baggage, in a range. In the Fall 2021 Unified Agenda, the Department announced its intention to issue a notice of proposed rulemaking that would amend its aviation consumer protection regulations to ensure that consumers have ancillary fee information, including baggage fees, change fees and cancellation fees at the time of ticket purchase. This rulemaking would also examine whether fees for certain ancillary services should be disclosed at the first point in a search process where a fare is listed. If confirmed, I am committed to working with this Committee to ensure a competitive airline industry where consumers are protected from hidden fees and treated fairly and equally without regard to race, color, national origin, religion, sex, ancestry or disability. The proposed rulemaking would not seek to

regulate the level of baggage or other airline fees. We look forward to collecting comments from all stakeholders on these issues and the proposed rule.

Question 4: *Conducting cost-benefit analyses for proposed regulations has been a practice undertaken by agencies under both Democrat and Republican Administrations. Please explain your views on the use of cost-benefit analysis when considering proposed regulations. Should all DOT regulations be considered with a cost-benefit analysis? If regulatory costs outweigh the benefits, should that be a determining factor that prevents DOT from moving forward with a proposed regulation?*

Response: Consistent with Executive Order 12866 and OMB Circular A-4, agencies should assess costs and benefits of available regulatory alternatives. Costs and benefits include both quantifiable measures and qualitative measures that are difficult to quantify but nevertheless essential to consider. Under Executive Orders 12866 and 13563, to the extent permitted by law, DOT and other agencies must propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs, recognizing that some benefits and costs are difficult to quantify. If confirmed, I will continue to work within this framework, as improved under the President's January 20 Memorandum on Modernizing Regulatory Review. That memo proposes that a regulatory review process should reflect new developments in scientific and economic understanding and should consider regulatory benefits that are not easy to quantify.

Question 5: *If confirmed, would you advocate or support a federal requirement that Americans must be vaccinated for COVID-19 as a prerequisite for interstate travel, transportation, or movement?*

Response: DOT has not proposed and is not proposing any requirement that vaccination be a prerequisite for interstate travel, transportation or movement. The Centers for Disease Control provides subject matter expertise and assessment of the best scientific information on any measures for public health, and has also not made any such recommendation.

Question 6: *Do you support the raising of the federal gas tax or other tax increases in order to fund the Highway Trust Fund shortfall?*

Response: The President has made clear that he does not support measures that would increase taxes for Americans making \$400,000 or less. If confirmed, I will work with the Secretary, our interagency partners, the Committee and with the other key Committees to address the long-standing funding challenges for the Highway Trust Fund.

Question 7: *The Department of Transportation is responsible for regulating aviation in the United States. One debate taking place at the FAA is the issue of drone regulation. Low-altitude drones are a major focus for the states, who through their inherent police powers, govern matters such as property rights, land use, trespass, privacy, and local safety issues. When Secretary Buttigieg came before this Committee, he agreed with me that there should be a clear role for authorities outside of the federal government, such as state and local authorities, to regulate drones in some of these matters.*

- 1. Do you agree with Secretary Buttigieg that state and local governments have a clear role to play in the regulation of low-altitude drone operations?*
- 2. Are there limits to the FAA's authority to regulate airspace in relation to a State's police powers?*
- 3. In the context of drone operations, the FAA has taken the position that they control the airspace from the ground up. Do you think the federal government has the ability to regulate the airspace a couple of feet above your lawn? What about mere inches above the blades of grass? In other words, should air inches above your backyard or front lawn be considered federal airspace?*

Response: The FAA regulates the safety and efficiency of all civil aircraft operations throughout all altitudes of U.S. airspace, including through takeoff and landing. The Department recognizes that state, local, and tribal governments have legitimate interests to protect the property and privacy interests of their citizens. We also understand that substantial local restrictions affecting the safety or efficiency of operations could present unmanned aircraft system operators with a complex regulatory patchwork. Regulatory uncertainty could undermine the Department's continued efforts to carry out the congressional mandate to fully integrate UAS into the NAS. If confirmed, I look forward to the Department's continued work with all stakeholders on a regulatory framework that will realize the congressional vision for full integration of UAS, while balancing the legitimate interests of local and state governments in protecting property and privacy interests. Based on my past work with airport authorities and general-purpose local governments on UAS issues, I understand the legitimate concerns of local governments and their residents, and commit to working with all stakeholders to address this issue.

Question 8: *To my knowledge, the last federal guidance on use of counter-drone mitigation equipment was issued jointly by the DOJ, DOT, FCC, and DHS in August 2020. The guidance notes that Congress has only authorized DOD, DOE, DOJ, and DHS to engage in C-UAS activities and that any other entity, including airports, must "understand that federal laws may prevent, limit, or penalize the sale, possession, or use of UAS detection and mitigation capabilities." This guidance certainly seems to tie airports hands in being able to respond to legitimate threats. Absent any change in the law, does an airport have any recourse to address these safety and security concerns? Would you agree that it would make sense to allow airport operators, state and local law enforcement, and airport law enforcement to be equipped with some form of counter-drone authority to counter threats to airport property?*

Response: Congress has recognized the potential risks faced by airports and directed the Federal Aviation Administration to work with the Secretary of Defense, the Secretary of Homeland Security, and the heads of other relevant Federal agencies to ensure that technologies or systems that are deployed by Federal departments and agencies to detect and mitigate potential risks posed by errant or hostile unmanned aircraft system operations do not adversely impact or interfere with safe airport operations, navigation, air traffic services, or the safe and efficient operation of the national airspace system (NAS). This work is ongoing.

Additionally, FAA-certificated airport operators are working with their local TSA representatives, and local law enforcement agencies on implementation of local UAS response plans. I recognize the importance of airport operators having appropriate tools to address unlawful interference with airspace, including based on my past work representing airport operators. Airport operators must add their UAS response plan to the FAA-approved Airport Emergency Plan providing instructions for responding to unlawful interference with airport operations created by an errant UAS operation. If confirmed, I look forward to working with Congress, other agencies, and the industry to ensure that airports have the tools needed to respond appropriately to potential risks while ensuring that no unacceptable adverse effects are introduced to the NAS.

Senator Rick Scott

Question 1: *What role do you believe the Department of Transportation plays in solving the current supply chain crisis? As current Deputy General Counsel, what has the Department done so far to help prevent these sorts of supply chain problems?*

Response: The Department of Transportation plays a key role in mitigating the supply chain disruption caused by the COVID-19 pandemic and the unprecedented increase in freight demand and movement. Secretary Buttigieg, as a co-chair of the Administration's Supply Chain Disruption Task Force, has worked cooperatively with co-chairs Raimondo and Vilsack to tackle these challenges with using a comprehensive all-of-government approach. Actions have focused on partnering with the governments at all levels as well as industry and labor to enhance goods movement at key bottlenecks across transportation modes. For example, DOT and the Administration have worked with private-sector labor and management to enhance operations at the Ports of Los Angeles and Long Beach, enabling 24 hour-a-day, seven-day-a-week operations at the ports responsible for 40 percent of our country's imports. DOT has also worked with private-sector partners to secure additional commitments from port operators and terminal operators to encourage port utilization during off-peak times and relieve congestion.

In November, DOT and the Administration released the Port Action Plan. Near-term actions have included enabling enhanced flexibility in port grants and DOT financial support for development of a pop-up container yard at the Port of Savannah to relieve East Coast port congestion. DOT has also announced the release of more than \$250

million to modernize ports and marine highways, as well as open competition for more than \$475 million of port infrastructure grants in early 2022. Longer-term actions include DOT facilitating the development of comprehensive freight movement plans for states to alleviate freight bottlenecks, incorporation of global freight planning best practices into state plans, and development of comprehensive data standards for goods movement to prevent future bottlenecks.

The pandemic also served to exacerbate the existing shortage of short and long-haul truckers, leaving many inland warehouses clogged with goods that need transport to their final destinations as well as ports with containers to be transported to inland warehouses. On December 16th the Biden-Harris Administration Trucking Action Plan to Strengthen America's Trucking Workforce was released. This plan calls on all levels of government, industry, and labor to come together and build the next generation trucking workforce. Specific immediate actions DOT is taking include providing \$30 million in funding to states to reduce the barriers to obtaining a commercial driver's license, developing a 90-day joint DOT-DOL challenge to expand the use of Registered Apprenticeships, an enhanced focus on veteran recruitment, and the launch of the DOT-DOL Driving Good jobs initiative to improve the quality of trucking jobs. The Federal Motor Carrier Safety Administration has also extended and expanded some waivers for trucks hauling critical freight related to the COVID-19 pandemic.

As Deputy General Counsel it has been my honor to work with my colleagues across DOT and the Administration to address these critical national issues, seeking creative solutions that comply the law, and if confirmed as General Counsel I look forward to continuing this work.

Question 2: *As Deputy General Counsel, how have you worked with the trucking industry to address their trucker shortages?*

Response: As Deputy General Counsel, my primary contributions have been to verify the legal authorities available to the Department to support the ambitious "Biden-Harris Administration Trucking Action Plan to Strengthen America's Trucking Workforce" and to work collaboratively with the Federal Motor Carrier Safety Administration and Department of Labor to address the challenge of trucker shortages. I have also worked with FMCSA on hours of service and other waivers related to the COVID-19 pandemic, including the recent waivers that expanded scope and include better data collection. A primary objective is to implement rapidly the task force dedicated to expanding the pool of drivers by promoting the recruitment, inclusion, and advancement of women in trucking established in the Bipartisan Infrastructure Law. This task force will be the first of many strategies to help build the pipeline and diversify the trucking workforce. The task force will also investigate predatory truck leasing arrangements that dissuade drivers from entering or staying in the industry.

Question 3: *The Department of Transportation gives out billions of dollars in discretionary infrastructure grants, such as the RAISE Grants. How will you ensure these are awarded fairly, transparently, and consistently?*

Response: The Department recognizes the importance of maintaining the public's confidence that all Federal infrastructure investments, including discretionary grants, are made fairly, transparently and consistently. With much experience implementing discretionary grant programs for large infrastructure investments, the Department has robust policies and practices designed to result in fair, transparent, and consistent discretionary grant decisions on timelines dictated in law. If confirmed as General Counsel, I will ensure that the Office of the General Counsel will work closely with the offices implementing discretionary grant programs to build on that experience and continually improve the Department's performance. In particular, I will ensure that legal advisors throughout the Department are involved from early in program design through project closeouts, and that fairness, transparency and consistency remain central considerations throughout the legal offices' support of the programs.

Question 4: *How do you plan on addressing and improving the "return on investment" for our taxpayers with President Biden's aggressive infrastructure proposals?*

Response: If confirmed, I will work with Secretary Buttigieg to ensure that the DOT implements a balanced investment program that meets the needs of all communities. I will also ensure that our discretionary programs meet the selection and reporting requirements set forth by Congress in legislation. It is my understanding that most, if not all, of the discretionary programs require DOT to consider the cost effectiveness of the projects as part of the selection process. If confirmed, I will ensure that the Department commits to a transparent process, considers these cost-effectiveness criteria, and continues to prioritize the strongest projects when awarding our available discretionary funding.

Question 5: *How would you address the fact that the Highway Trust Fund (HTF) is going insolvent, and do you believe we need to increase the federal gas tax?*

Response: Since 2008, the ongoing and growing imbalance between Highway Trust Fund spending and receipts has remained a significant issue. If confirmed, I will work with Department colleagues, Federal partners, the Committee and with the other key Committees to address our long-standing funding challenges. The President has made clear that he does not support measures that would increase taxes for Americans making \$400,000 or less.

