

S. HRG. 112-700

**NOMINATION OF MICHAEL P. HUERTA  
TO BE ADMINISTRATOR OF THE  
FEDERAL AVIATION ADMINISTRATION**

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**HEARING**

BEFORE THE

**COMMITTEE ON COMMERCE,  
SCIENCE, AND TRANSPORTATION  
UNITED STATES SENATE**

**ONE HUNDRED TWELFTH CONGRESS**

SECOND SESSION

—————  
JUNE 21, 2012  
—————

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SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED TWELFTH CONGRESS

SECOND SESSION

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## CONTENTS

---

	Page
Hearing held on June 21, 2012 .....	1
Statement of Senator Cantwell .....	1
Statement of Senator Boxer .....	2
Prepared statement .....	3
Statement of Senator Hutchison .....	4
Statement of Senator Rockefeller .....	19
Prepared statement .....	4
Statement of Senator Thune .....	21
Statement of Senator Begich .....	23
Statement of Senator Lautenberg .....	25
Statement of Senator Blunt .....	27
Statement of Senator Boozman .....	29
Statement of Senator Klobuchar .....	31

### WITNESSES

Michael P. Huerta, Nominated to be Administrator, Federal Aviation Administration .....	5
Prepared statement .....	7
Biographical information .....	8

### APPENDIX

Letter dated June 19, 2012 from Hans Ephraimson—Abt, Chairman, Air Crash Victims Families Group to Hon. John D. Rockefeller IV .....	35
Response to written questions submitted to Michael P. Huerta by:	
Hon. John F. Kerry .....	35
Hon. Barbara Boxer .....	36
Hon. Mark Pryor .....	38
Hon. Kay Bailey Hutchison .....	39
Hon. Jim DeMint .....	49
Hon. John Thune .....	51
Hon. Pat Toomey .....	58



**NOMINATION OF MICHAEL P. HUERTA  
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**THURSDAY, JUNE 21, 2012**

U.S. SENATE,  
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,  
*Washington, DC.*

The Committee met, pursuant to notice, at 10:05 a.m. in room SR-253, Russell Senate Office Building, Hon. Maria Cantwell presiding.

**OPENING STATEMENT OF HON. MARIA CANTWELL,  
U.S. SENATOR FROM WASHINGTON**

Senator CANTWELL. The Senate Committee on Commerce, Science, and Transportation will come to order, and I'd like to thank our witness for being here, Mr. Huerta, who is the nominee to be the FAA Administrator and our colleague from the Committee Senator Boxer. I'm presiding at the request of the chairman of the full Committee, who is here, and I'm going to go ahead and make an opening statement.

Mr. Huerta, I want to congratulate you again for your nomination by the President to be the next FAA Administrator. I'm glad the President has put your name forward for two reasons: first, you earned the nomination and you've served capably as Deputy Administrator and as Acting Administrator for the past several months and when you came in front of this committee the first time, I recall there were many whispers about whether you had enough background in aviation. Well, you have demonstrated that that is a non-issue and you have brought a great skill set, a great mind set, to this job and we thank you for that.

To me what's most important is that once you were confronted with the challenges of running such a large and complex agency you demonstrated strong leadership and strong judgment in this job. Now, that is not to say that there aren't problems to solve. There are several areas where we need improvement, and I do feel that overall the FAA has been making great progress under your watch.

Second, it is important that the FAA have a confirmed administrator as soon as possible. I know it's a Presidential election year and I know the FAA Administrator term is for 5 years, but not having an Administrator sends the wrong message to the airline industry and to others about how important an Administrator is in this next phase of implementation of NextGen technology.

Also, under the leadership of Chairman Rockefeller and Ranking Member Hutchison, they were instrumental in enacting an FAA authorization bill in February, and there are a number of rulemakings and other actions that are supposed to be completed within the next 6 to 9 months or even a year after this enactment. So I believe that without a confirmed Administrator that will make all of those issues more difficult and punted down the road.

As a result, I expect the implementation of the FAA Modernization and Reform Act—if we don't implement an Administrator—we will have challenges in getting that done on time.

So, Mr. Huerta, if you are confirmed you are going to have a lot of challenges ahead. We had a chance to speak about some of those in my office. We spoke about aviation safety, and safety is the FAA's top priority. It is also one of the top priorities of the Aviation Subcommittee.

We spoke about the challenges of modernization of our air transportation system and I know you have had some firsthand experiences with that. We touched on the Greener Skies Initiative, a pilot program out of Seattle that demonstrates the NextGen capabilities in the near term. And we spoke of the improved sequencing process for FAA certification.

So I understand the FAA has real resource constraints, but the FAA certification process should not be a bottleneck costing aerospace sales or exports or ultimately jobs. The FAA bill requires the agency to look at ways to improve the process and I know that this is under review.

Finally, we spoke about the FAA in its efforts to help those of the active duty military interested in careers in aviation in maintenance repair and overhaul of the airframe system get the certifications they need to help us and to help our industry.

So I look forward to your testimony today, and again thank you for your willingness to serve. And now I'll turn it to—

**STATEMENT OF HON. BARBARA BOXER,  
U.S. SENATOR FROM CALIFORNIA**

Senator BOXER. Madam Chairman, may I ask a point—make a point of personal privilege, a request to my friends? I'm in the middle of literally 24–7 negotiations on the highway bill and it's going well, and I'm due to meet with Chairman Mica. Do you mind if I just gave one and a half minutes of praise for this wonderful man and then charge out the door? Would that be all right?

Senator HUTCHISON. Absolutely.

Senator BOXER. I am so grateful. I am so grateful.

Senator HUTCHISON. Thank you for the job you're doing on the highway bill.

Senator BOXER. Well, it's going to turn to you and Senator Rockefeller momentarily to resolve the last few issues. I'm very hopeful, is all I could say. But thank you.

So I will ask unanimous consent to place my entire statement into the record at this time and I will summarize.

I'm so pleased with the nomination of Mr. Michael Huerta to be Administrator of the FAA, and I want to congratulate Michael and his family. Ann, would you stand, and Matthew, would you stand.

We're so happy you're here, literally behind your wonderful dad and husband.

I am proud that a Californian has been nominated, of course, by President Obama. I won't be repetitive. Mr. Huerta has a long history of service. His nomination to be Deputy was confirmed unanimously by the Senate. So this is a tested gentleman, and the leadership roles he played at the Port of San Francisco, at the Salt Lake City Olympics, as chief of staff for the Secretary of Transportation under the Clinton Administration, will serve him well.

I won't go into the task. We all know it. It's a huge job, and it's a life-and-death job.

So in closing, I want to just note and pay tribute to a number of families, family members of victims of the tragic crash of Flight 3407 near Buffalo in 2010. They're here in the audience today, and they're here to remind us all of what is at stake when it comes to the need for adequate safety regulations. I know Mr. Huerta carries that responsibility very close to his heart, and I believe his breadth of experience and leadership make him an excellent choice to fill the role of Administrator at the FAA.

I want to thank my friends on the Committee, all of you, for this opportunity, and I look forward to a swift confirmation.

[The prepared statement of Senator Boxer follows:]

PREPARED STATEMENT OF HON. BARBARA BOXER, U.S. SENATOR FROM CALIFORNIA

Mr. Chairman, I am pleased to be here today to support the nomination of Mr. Michael Huerta to be Administrator of the Federal Aviation Administration (FAA). I would like to congratulate Michael and his family, his wife Ann and his son Matthew, on his nomination.

I am proud that a California native and a University of California, Riverside graduate has been nominated by President Obama to lead the FAA.

Mr. Huerta has a long history of service in the transportation sector, and his nomination to be Deputy Administrator was confirmed unanimously by the Senate in 2010.

Prior to his work at the FAA, Mr. Huerta served in a number of leadership roles ranging from the Executive Director at the Port of San Francisco, to coordinating transportation for the Salt Lake City Olympics to serving as the Chief of Staff for the Secretary of Transportation (DOT) under the Clinton Administration.

I worked with him on several transportation initiatives that were important to California. These projects brought jobs to California, and greatly increased California's ability to move goods and people in our state. I am confident he will continue to bring that same leadership to key FAA programs.

The FAA is facing many challenges.

The U.S. commercial aviation system operates over 30,000 flights every day and carries over 700 million people per year. The number of passengers is expected to reach one billion by 2021.

And the FAA is tasked with ensuring the safety of our aviation system while working to modernize that system to meet the increasing needs of our Nation.

I know that I will join many of my colleagues on this Committee in urging the FAA to continue to expedite its important work to improve safety.

I understand that there are a number of family members of victims of the tragic crash of Flight 3407 near Buffalo in 2010 who are in the audience today, and who are here to remind all of us of what is at stake when it comes to the need for adequate safety regulations.

One of Mr. Huerta's responsibilities during his time at the FAA has been shepherding the development of the NextGen system, which will modernize our air traffic control system and make our skies safer and more efficient.

I know that he is familiar with this project, and his experience managing large, complex organizations will help to ensure the steady progress we need to modernize our air traffic control system in the coming years.

Mr. Huerta's breadth of experience and leadership make him an excellent choice to fill the role of Administrator at the FAA.

I look forward to working with him in his new capacity and congratulate him again on his nomination.

Thank you, Mr. Chairman.

Senator CANTWELL. Thank you, Senator Boxer. Thank you for being here this morning. We appreciate your activity on the Committee and the FAA bill.

Now we'll turn to the—unless the Chairman wants to make a statement?

The CHAIRMAN. No.

Senator CANTWELL. We'll turn to the Ranking Member if she would like to make an opening statement. Senator Hutchison, would you like to make an opening statement?

**STATEMENT OF HON. KAY BAILEY HUTCHISON,  
U.S. SENATOR FROM TEXAS**

Senator HUTCHISON. Yes. Did you, Mr. Chairman, want to?

The CHAIRMAN. I'll put mine in the record.

[The prepared statement of Senator Rockefeller follows:]

PREPARED STATEMENT OF HON. JOHN D. ROCKEFELLER IV,  
U.S. SENATOR FROM WEST VIRGINIA

I want to congratulate you, Mr. Huerta, on your nomination to be the Administrator of the Federal Aviation Administration (FAA). If confirmed, you will be charged with leading the most complex aviation system in the world and an agency that faces several critical challenges.

Chief among these tasks is making sure the agency takes the steps necessary to maintain the highest levels of safety in the aviation industry. Although the aviation sector is enjoying one of its safest periods in history, we have experienced some troubling incidents over the past few years. The agency has already made substantial progress implementing the Airline Safety and Federal Aviation Administration Extension Act of 2010. Among other accomplishments, the FAA has issued new pilot fatigue rules and moved forward on the use of Safety Management Systems. As the new Administrator, I expect that you make sure the industry continues to embrace a strong culture of safety.

The next Administrator will also have to execute the mandates of the FAA Modernization and Reform Act of 2012. Aside from safety, modernizing the air transportation system remains the most important challenge. The Next Generation Air Transportation System (NextGen) will make our aviation system safer, more efficient, and strengthen the airline sector's ability to help drive economic growth. It is encouraging that the FAA has been able to move forward on some key components of NextGen, including satellite-based navigation (ADS-B) capabilities in the Caribbean, and the development of more precise landing and take-off procedures (RNAV and RNP) at airports across the Nation. Much of this progress has been achieved under your direction, Mr. Huerta, so I have high expectations that you will continue this positive trend.

You already have first-hand knowledge of the challenges confronting the FAA and its operations, and you have received high marks for your performance. I look forward to hearing from you today on how we can strengthen our aviation system.

Senator HUTCHISON. Well, I think that the presiding Chairwoman said most of the important things. I do think that you have had a very good record in your time as Acting and Deputy. You took over quite quickly and I think there was a seamless transition.

Certainly NextGen is the biggest thing on your plate and we all are going to want to know what the setbacks are and how you're going to proceed forward.

I do want to bring up another couple of things. Number one is the U.S. Office of Special Counsel wrote to Congress raising con-

cerns about ongoing safety lapses at the FAA, some of which we certainly have read about in the newspapers with the air traffic controllers. The counsel strongly recommended that more rigorous oversight measures be put in place at the Department and the FAA.

Second, the current Federal budget realities require every agency to have cost-cutting measures, and I will want to hear what you're doing in that regard.

So with that, let me say that I think you have stepped in at a big time at the FAA and you have kept the trains running on time, so I will look forward to hearing your testimony and then asking you a few questions.

Senator CANTWELL. Thank you, Senator Hutchison.

Mr. Huerta, if you could now make your statement. Again, welcome, and again thank you for having your family with you this morning.

**STATEMENT OF MICHAEL P. HUERTA, NOMINATED TO BE  
ADMINISTRATOR, FEDERAL AVIATION ADMINISTRATION**

Mr. HUERTA. Thank you very much, Chairman Rockefeller, Ranking Member Hutchison, Chairman Cantwell, and I'd also like to thank Senator Boxer for that generous introduction. It is an honor to appear before you today as President Clinton's nominee for Administrator of the Federal Aviation Administration. I'm humbled by this nomination and the opportunity that it presents to serve our nation.

I'd like to thank Secretary LaHood for his leadership and support, and I'd also like to recognize my family members who were introduced who are with me today: my wife Ann and my son Matthew, and my sister Rose, who is visiting from California. Of course, I'd also like to thank my late parents, who I know are with me in spirit today.

At the Federal Aviation Administration, we operate the largest and safest aviation system in the world. The safety of the traveling public is our number one priority and it's our mission. We're constantly working to identify and to address potential risks long before there is a problem. We have achieved a greater level of collaboration with our workforce and we are working constantly to enhance our safety culture.

Congress has helped us in our efforts by passing the FAA reauthorization earlier this year, and I want to thank all of you, the members of this committee, for your role in this major accomplishment. The reauthorization gives the dedicated employees of the FAA greater financial guidance and it provides greater stability to all of our programs. All of this is vital to keeping the economic engine of civil aviation at full capacity. It helps expand on the 10 million jobs and \$1.3 trillion that civil aviation already contributes to the American economy each year. Thank you again.

Now I would like to share a little about my background with you today. I have spent my entire career in transportation, with rewarding professional experiences in both the public and the private sectors. I've held senior policy positions at the U.S. Department of Transportation under President Clinton. There I gained valuable

insight into the day to day operations of many Federal agencies, including the FAA.

Later I was a managing director for transportation with the Salt Lake Olympic Committee. This experience taught me that an immovable deadline can be extremely powerful in motivating and in focusing a team toward a common objective.

More recently, in the private sector I led a large transportation technology services company. I managed the operations of a global organization and a diverse and technical workforce to ensure that we met our financial targets. I came to develop a great appreciation for the benefit of mission-focused partnerships between government and business.

Two years ago I returned to the Federal Government, where I've had the opportunity to serve as Deputy Administrator of the FAA and now as Acting Administrator. I'm honored that President Obama has nominated me to lead this great agency. In the last 2 years I've focused on positioning the FAA to deliver NextGen, the Next Generation Air Transportation System.

We recently established a new organization within the agency to focus on implementing major technology programs. This will improve the coordination among all of our NextGen initiatives, helping us to usher them from the drawing board to live operation.

What we do over the next several years is going to determine the course of aviation in this country for decades to come. That is why it's critical that the FAA work closely with Congress, with other government agencies, and all the components of the aviation industry and the communities they serve as we lay this foundation for the future.

NextGen is the total transformation of the way we handle air traffic. We're moving from radar to satellites, from radios to data messages, and from airways that zigzag the country to more direct routes. We need public-private collaboration to create this new way of doing business.

NextGen means enhanced safety, greater access to airports, a smaller impact on the environment, and more predictable schedules for travelers. We're already seeing these benefits in metro areas around the country now.

As we move forward, I've asked my senior leadership team to focus on three main areas this year. First, we need to make the safest aviation system in the world even safer and smarter. Second, we need to realize even more the benefits of NextGen and we need to realize them today. And third, we need to make sure that we empower our 48,000 FAA employees to embrace innovation and to work efficiently.

Mr. Chairman, I'm honored by the trust the President has placed in me as his nominee and, if confirmed, I pledge to continue to enhance the safety of our system for the traveling public and to guide the FAA through the many challenges that lie ahead.

I would like to thank this committee again for its consideration of my nomination and I look forward to continuing our close working relationship. I'm pleased to answer any questions you might have.

[The prepared statement and biographical information of Mr. Huerta follow:]

PREPARED STATEMENT OF MICHAEL P. HUERTA, ACTING ADMINISTRATOR,  
FEDERAL AVIATION ADMINISTRATION

Thank you, Chairman Rockefeller, Ranking Member Hutchison and members of the Committee. It's an honor to appear before you today as President Obama's nominee for Administrator of the Federal Aviation Administration.

I am humbled by this nomination and the opportunity to serve our nation. I'd like to thank Secretary LaHood for his leadership and support, and also recognize my family who is with me today—my wife Ann and my son Matthew.

At the Federal Aviation Administration we operate the largest and safest aviation system in the world. The safety of the traveling public is our number one priority and our mission. We are constantly working to identify and address potential risks long before there is a problem. We have achieved a greater level of collaboration with our workforce and are always enhancing our safety culture.

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I have spent my entire career in transportation with rewarding professional experiences in both the public and private sectors. I held senior policy positions at the U.S. Department of Transportation under President Clinton. There, I gained valuable insight into the day-to-day operations of many Federal agencies, including the FAA.

Later, I was a managing director for transportation with the Salt Lake Olympic Committee. This experience taught me that an immovable deadline can be extremely powerful in motivating and in focusing a team toward a common objective.

More recently, in the private sector, I led a large transportation technology services company. I managed the operations of a global organization and a diverse and technical workforce, to ensure that we met our financial targets. I came to develop a great appreciation for the benefits of mission-focused partnerships between government and business.

Two years ago I returned to the Federal government, where I have had the opportunity to serve as Deputy Administrator of the FAA, and now, as Acting Administrator. I am honored that President Obama has nominated me to lead this great agency.

In the last two years I have focused on positioning the FAA to deliver NextGen—the Next Generation Air Transportation System. We recently established a new organization within the agency to focus on implementing major technology programs. This will improve the coordination among NextGen initiatives, helping us usher them from the drawing board to live operation.

What we do over the next several years is going to determine the course of aviation in this country for decades to come. That is why it is critical that the FAA work closely with Congress, other government agencies, all the components of the aviation industry, and the communities they serve, as we lay the foundation for the future.

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Mr. Chairman, I am honored by the trust the President has placed in me as his nominee. If confirmed, I pledge to continue to enhance the safety of our system for the traveling public and to guide the FAA through the many challenges that lie ahead.

I would like to thank this Committee again for its consideration of my nomination, and I look forward to continuing a close working relationship. I am pleased to answer any questions you may have.

## A. BIOGRAPHICAL INFORMATION

1. Name (include and former names or nicknames used): Michael Peter Huerta, Mike Huerta.
2. Position to which nominated: Administrator, Federal Aviation Administration.
3. Date of nomination: March 27, 2012.
4. Address (List current place of residence and office addresses):  
 Residence: Information not released to the public.  
 Office: 800 Independence Avenue, SW Room 1010, Washington, DC 20591.
5. Date and place of birth: November 18, 1956; Riverside, California.
6. Provide the name, position and place of employment for your spouse (if married) and the names and ages of your children (including stepchildren and children by a previous marriage).  
 Spouse: Ann L. Sowder, Financial Planner, Sagemark Consulting (A Division of Lincoln Financial Advisors), 8219 Leesburg Pike, Suite 200, Vienna, VA 22182; child: Matthew Sowder Huerta, age 15.
7. List all college and graduate degrees. Provide year and school attended.  
 Woodrow Wilson School of Public and International Affairs, Princeton University, MPA, International Relations, 1980.  
 University of California at Riverside, BA, Political Science, 1978.
8. List all post-undergraduate employment, and highlight all management-level jobs and any non-managerial jobs that relate to the position for which you are nominated.  
 December 2011 to present, Acting Administrator, Federal Aviation Administration.  
 July 2010 to December 2011, Deputy Administrator, Federal Aviation Administration.  
 April 2009 to June 2010, President, MPH Consulting, LLC.  
 April 2008 to March 2009, Executive Vice President and Group President, Transportation Solutions, Affiliated Computer Services, Inc.  
 June 2005 to April 2008, Senior Vice President and Managing Director, Transportation Solutions Affiliated Computer Systems, Inc.  
 March 2002 to June 2005, Senior Vice President and Managing Director, Transportation Systems and Services, Affiliated Computer Services, Inc.  
 April 2001 to March 2002, Vice President, Marketing and Business Development  
 Lockheed Martin IMS, sold in August 2001 to Affiliated Computer Services, Inc.  
 September 2001 to March 2002, Managing Director, Transportation Communications, Salt Lake Organizing Committee for the Olympic Winter Games of 2002 (Loaned Executive from Affiliated Computer Services, Inc.)  
 October 1999 to April 2001, Director, Federal Government Relations, Salt Lake Organizing Committee for the Olympic Winter Games of 2002.  
 September 1998 to April 2001, Principal, Cambridge Systematics, Inc.  
 July 1998 to September 1998, Independent Consultant.  
 January 1997 to June 1998, Chief of Staff, Office of the Secretary, U.S. Department of Transportation.  
 May 1993 to January 1997, Associate Deputy Secretary of Transportation, Director, Office of Intermodalism, U.S. Department of Transportation.  
 January 1989 to April 1993, Executive Director, Port of San Francisco.  
 March 1986 to January 1989, Commissioner, New York City Department of Ports, International Trade and Commerce (The agency name was changed twice during my tenure and was also known as New York City Department of Ports and Trade and New York City Department of Ports and Terminals).  
 July 1980 to March 1986, Consultant, Supervising Consultant, Manager, Coopers and Lybrand Management Consulting Services.  
 June 1979 to September 1979, Federal Summer Intern, U.S. Mission to N.A.T.O., U.S. Department of Defense.
9. Attach a copy of your resume. A copy is attached.

10. List any advisory, consultative, honorary, or other part-time service or positions with Federal, State, or local governments, other than those listed above, within the last five years.

Chair, Oversight Committee, National Cooperative Freight Research Program, Transportation Research Board.

11. List all positions held as an officer, director, trustee, partner, proprietor, agent, representative, or consultant of any corporation, company, firm, partnership, or other business, enterprise, educational, or other institution within the last five years.

President, MPH Consulting, LLC, April 2009 to present (company has been inactive since June 2010).

Member, Advisory Board, Kapsch TrafficCom Holding Corporation, June 2009 to March 2010.

Consultant, Securing America's Future Energy, May 2009 to March 2010.

Chairman, Board of Directors, Intelligent Transportation Society of America, June 2009 to January 2010.

Elder, Chevy Chase Presbyterian Church, May 2007 to May 2010.

Deacon, Chevy Chase Presbyterian Church, May 2004 to May 2007.

Chair, Oversight Committee, National Cooperative Freight Research Program, Transportation Research Board, 2007 to January 2010.

Consultant, Mark IV IVHS, June 2009.

Consultant, Chicago 2016, April 2009.

Member, Board of Advisors, College of Engineering, Center for Environmental Research and Technology University of California, Riverside, 1995 to February 2012.

Executive Vice President, Affiliated Computer Services, Inc., April 2008 to March 2009,

12. Please list each membership you have had during the past ten years or currently hold in any civic, social, charitable, educational, political, professional, fraternal, benevolent or religious organization, private club, or other membership organization. Please note whether any such club or organization restricts membership on the basis of sex, race, color, religion, national origin, age, or handicap.

Member, The City Club of Washington, 1993 to April 2012.

Member, Chevy Chase Presbyterian Church, 2003 to present.

Cubmaster, Cub Scout Pack 52, 2007–2008.

Member, Train Collectors Association, 2005 to present.

13. Have you ever been a candidate for and/or held a public office (elected, non-elected, or appointed)? If so, indicate whether any campaign has any outstanding debt, the amount, and whether you are personally liable for that debt.

January 1997 to June 1998, Chief of Staff, Office of the Secretary, U.S. Department of Transportation.

May 1993 to January 1997, Associate Deputy Secretary of Transportation; Director, Office of Intermodalism, U.S. Department of Transportation.

I have no outstanding campaign debts.

14. Itemize all political contributions to any individual, campaign organization, political party, political action committee, or similar entity of \$500 or more for the past 10 years. Also list all offices you have held with, and services rendered to, a state or national political party or election committee during the same period.

Contributions:

Dennis Herrera for Mayor (San Francisco, CA)	12/2/2010	\$500
Rush Holt for Congress	5/20/2009	\$1,000
Obama for America	9/30/2008	\$2,300
Josh Zeitz for Congress	9/23/2008	\$2,300
Linda Stender for Congress	6/20/2008	\$2,300
Friends of Mark Warner	4/4/2008	\$500
Friends of Jim Oberstar	3/21/2008	\$500
Josh Zeitz for Congress	11/11/2007	\$2,300
Hillary Clinton for President	10/12/2007	\$2,300
Linda Stender for Congress	9/28/2007	\$2,300

Mitt Romney for President	4/2/2007	\$2,300
Linda Stender for Congress	6/29/2006	\$500
Menendez for Senate	4/10/2006	\$500
Menendez for Congress	4/7/2005	\$500
Democratic National Committee	4/5/2006	\$2,500
National Voter Coalition	10/10/2005	\$1,000
Democratic National Committee	10/25/2004	\$2,000
Ameripac: Fund for a Greater America	6/25/2004	\$1,000
Mitt Romney for Governor (MA)	4/22/2004	\$500
Mitt Romney for Governor (MA)	11/2/2003	\$500
Lipinski for Congress Committee	5/13/2003	\$500
Mitt Romney for Governor (MA)	10/24/2002	\$500
Victory 2002	9/21/2002	\$1,000
Steve Westly for Controller (CA)	6/21/2002	\$1,000
Torricelli for U.S. Senate	5/9/2002	\$1,000

I have not held any offices with, nor rendered services to, a state or national political party or election committee during the last ten years.

15. List all scholarships, fellowships, honorary society memberships, military medals, and any other special recognition for outstanding service or achievements: None.

16. Please list each book, article, column, or publication you have authored, individually or with others. Also list any speeches that you have given on topics relevant to the position for which you have been nominated. Do not attach copies of these publications unless otherwise instructed.

Following is a listing of relevant speeches:

*World Aviation Training Symposium, "The Next Level of Training"* (04/17/2012).  
*Houston Metroplex Press Event, "Satellite-Based Routes in Houston Improve On-Time Flights, Enhance Safety and Fuel Efficiency"* (04/04/2012)  
*Sun N' Fun, "Sun N' Fun Meet the Administrator"* (03/30/2012)  
*Oakland Metroplex Press Availability, "More Direct Routes with NextGen"* (03/19/2012)  
*2012 Women in Aviation Conference, "Remarks"* (03/09/2012)  
*37th Annual FAA Aviation Forecast Conference, "Growing with NextGen"* (03/08/2012)  
*Atlanta and Charlotte Metroplex Design & Implementation Kickoff, "Atlanta and Charlotte Metroplex Design & Implementation"* (02/29/2012)  
*American Association of State Highway and Transportation Officials, 2012 AASHTO Washington Briefing, "How States Have Fostered NextGen"* (02/27/2012)  
*Commercial Space Transportation Conference, "Commercial Space Transportation"* (02/16/2012)  
*Archie League Medal of Safety Awards Banquet, "Communicating for Safety"* (02/02/2012)  
*Fort Lauderdale International Airport Runway Expansion Groundbreaking, "Ft. Lauderdale International Airport Runway Expansion"* (01/23/2012)  
*New Horizons Forum, "NextGen: Transforming our National Airspace System into the Next Century of Flight"* (01/10/2012)  
*Press Conference, "Pilot Flight and Duty Time"* (12/21/2011)  
*2011 Federal Highway Administration Civil Rights Symposium, "Assuring Equal Access to Aviation Business Opportunities"* (12/08/2011)  
*Diversion Forum, "Proposed Recommendations"* (12/01/2011)  
*NextGen Advisory Committee, "FAA Report"* (09/29/2011)  
*U.S.-China Aviation Symposium, "Meeting the Challenges of the Future"* (09/28/2011)  
*Global Air Navigation Industry Symposium (GANIS). "Towards a Seamless Global Aviation System"* (09/23/2011)  
*National Hispanic Coalition of Federal Aviation Employees Annual Training Conference. "What I Know for Certain"* (08/02/2011)  
*Air Traffic Control Association, "NextGen—A Worthy Investment in Our Nation's Future"* (05/18/2011)  
*China Civil Aviation Development Forum, "Working Together for NextGen"* (05/11/2011)

*IT/ISS Conference, "Cybersecurity and NextGen"* (03/15/2011)  
*UC Davis, "Aviation Noise & Air Quality"* (02/28/2011)  
*Wichita Town Hall, "Something Extraordinary"* (02/10/2011)  
*Regional Plan Association, "Jump Starting the Discussion"* (01/27/2011)  
*ATCA 55th Annual Conference and Exposition. "Moving Forward with NextGen"*  
 (10/26/2010)  
*Sixth Triennial Fire and Cabin Safety Research Conference. "Tangible Benefits"*  
 (10/20/2010)  
*Recovery Act Press Event, "Groundbreaking of New Air Traffic Control Tower"*  
 (10/18/2010)  
*NextGen Conference, "American Association of Airport Executives "* (10/04/2010)  
*Jeppesen Connect Seminar, "Filled with Reasons to Participate"* (09/30/2010)  
*RTCA Annual Forum, "Building Bridges that Last"* (09/22/2010)  
*National Black Coalition of FAA Employees National Convention, "Respect and  
 Consideration"* (09/15/2010)  
*Bemidji Terminal Expansion, "A Bright Future"* (07/24/2010)  
*National Hispanic Coalition Conference, "United We Stand"* (07/14/2010)  
 16th ITS World Congress; Stockholm, Sweden (09/21/2009).  
 International Bridge, Tunnel and Turnpike Association, Board of Directors; San  
 Francisco, CA (04/16/2009).

17. Please identify each instance in which you have testified orally or in writing before Congress in a governmental or non-governmental capacity and specify the date and subject matter of each testimony.

March 22, 2012—Testimony as Acting Administrator, Federal Aviation Administration, before the Subcommittee on Transportation, Housing and Urban Development, and Related Agencies, Committee on Appropriations, United States House of Representatives, at a hearing on the Administration's FY 2013 budget request.

October 5, 2011—Testimony as Deputy Administrator, Federal Aviation Administration, before the Subcommittee on Aviation, Committee on Transportation and Infrastructure, United States House of Representatives, at a hearing on benefits of the Next Generation Air Transportation System.

January 26, 2010—Testimony as nominee to be Deputy Administrator of the Federal Aviation Administration, Department of Transportation, before the Committee on Commerce, Science, and Transportation, United States Senate, at a hearing to consider nominations.

September 9, 2002—Testimony on behalf of the Coalition for America's Gateways and Trade Corridors before the Subcommittee on Surface Transportation and Merchant Marine, Committee on Commerce, Science, and Transportation, United States Senate, and the Subcommittee on Transportation, Infrastructure and Nuclear Safety, Committee on Environment and Public Works, United States Senate, on Freight Transportation and Intermodal Connections.

March 13, 1997—Testimony as Associate Deputy Secretary of Transportation before the Subcommittee on Transportation and Infrastructure, Committee on Environment and Public Works, U.S. Senate, on reauthorization of the surface transportation program.

February 24, 1997—Testimony as Associate Deputy Secretary of Transportation before the Subcommittee on Government Management, Information and Technology, Committee on Government Reform and Oversight, U.S. House of Representatives, on the Department of Transportation's "Year 2000" activities.

June 19, 1995—Testimony as Associate Deputy Secretary of Transportation before the Subcommittee on Government Management, Information and Technology, Committee on Government Reform and Oversight, U.S. House of Representatives, at a hearing in Chicago, IL on streamlining Federal field office structures.

May 17, 1993—Testimony as nominee to be Associate Deputy Secretary of Transportation before the Committee on Commerce, Science, and Transportation, U.S. Senate, at a hearing to consider nominations.

18. Given the current mission, major programs, and major operational objectives of the department/agency to which you have been nominated, what in your background or employment experience do you believe affirmatively qualifies you for ap-

pointment to the position for which you have been nominated, and why do you wish to serve in that position?

The FAA's mission is to provide the safest, most efficient aerospace system in the world. It does that as a regulator and as an operator. It works in collaboration with key stakeholders, including the private sector. It relies on sophisticated technology. The agency is a large and complex organization and it has an ambitious agenda for transitioning to a next generation air traffic control system, while continuing to operate on a daily basis the largest air traffic system in the world.

In my career, I have worked both in government and the private sector. Since July 2010, I have served as FAA Deputy Administrator and have developed a broad understanding of the agency and its mission. In addition to my role in helping to ensure that the FAA's safety mission is carried out, I have had the primary responsibility for overseeing the FAA's deployment of the Next Generation Air Traffic System (NextGen) and played a major role in the FAA's Foundation for Success initiative, which reorganized the agency to improve its efficiency and effectiveness.

I also held senior policy positions at the U.S. DOT, which gave me valuable insight into how Federal agencies work and, in particular, the important role played by the FAA.

Before joining the FAA, I led a large transportation technology services organization. In that capacity, I had responsibility for the operations of a large, global organization, managing a diverse and technical workforce and, of course, ensuring that the organization met its financial targets. Our customers were for the most part state and local government agencies and we provided critical systems that were central to them successfully executing their missions.

I am excited about the prospect, if confirmed, of leading the FAA at a critical time in its history. The agency is managing a major technological transformation at the same time its workforce is going through a generational change. The decisions that need to be made in the next five years will set the course of the FAA more many years to come.

I believe that my background and experience will assist the FAA in carrying out its mission in the coming years.

19. What do you believe are your responsibilities, if confirmed, to ensure that the department/agency has proper management and accounting controls, and what experience do you have in managing a large organization?

As Administrator, I would serve as the chief executive of the agency with the primary responsibility to ensure adherence to the best management processes. Effective management of a large organization means that the leaders of that organization need to ensure that reporting systems are in place to provide them the visibility they need into what is going on in the organization. At the same time, they need to ensure that appropriate controls are in place.

Before joining the FAA, I served as an officer of a Fortune 500 corporation and have a good understanding of the dynamics of large organizations. It is important to be able to delegate and empower line managers but at the same time, to recognize that ultimate responsibility rests at the top. I have found that managing to specific and quantifiable targets is an effective means of building accountability, but also innovation. In addition, it is important to spend time engaging with the workforce throughout the organization. Talking to line managers and front-line employees informally can provide important insights about what is going on.

As Deputy Administrator at the FAA, I have focused on improving the agency's program management practices and its delivery of services. As a result, the agency has stabilized a troubled deployment of a new technology system, getting it back on track and well on the way to a successful deployment nationwide.

If confirmed, I look forward to working closely with the FAA's employees and stakeholders, and particularly Congress, in meeting the agency's objectives in the coming years.

20. What do you believe to be the top three challenges facing the department/agency, and why?

1. Maintaining and building upon an exceptional record of aviation safety. Commercial aviation is an exceptionally safe mode of transportation but it is important that we continue to find ways to make the system even safer and smarter. The FAA has in recent years begun to focus more on identifying risk factors that could affect safety in the future. The idea is to look for clues that might prevent an accident before it happens. This proactive approach uses science to analyze risks in the system as well as historical accident data. By combining the two, we get a more complete picture of potential problems and ways to address them. As traffic increases and technologies become more advanced, this approach is essential to maintaining the highest levels of safety.

2. Successfully deploying NextGen. The FAA's deployment of NextGen is critical to sustaining the contribution of aviation to the U.S. economy. Today, aviation accounts for \$1.3 trillion in economic activity annually and accounts for over 10 million jobs. That number is expected to grow dramatically in the years ahead. NextGen will integrate new technologies into our air traffic system transforming how we fly. The result will be reduced delays, savings in fuel consumption and lower carbon emissions, and we need to find ways to accelerate these benefits. This transformation combines new technology with more efficient operations and management. It is much more than a new computer system. It requires the FAA to change how it hires and trains people, and how they do their jobs. And all this must be done while the aviation system continues to operate safely 24 hours a day, 7 days a week, 365 days a year.

3. Practicing fiscal responsibility while empowering and engaging employees. Every government agency is being called upon to find ways to carry out its mission as effectively as possible and at the lowest cost to the taxpayers. It is essential that the FAA focus on finding ways to reduce its operating costs and continually improve efficiency. Continued collaboration with and among employees will result in greater efficiency and effectiveness, while also moving the agency toward its goal of becoming a workplace of choice.

#### B. POTENTIAL CONFLICTS OF INTEREST

1. Describe all financial arrangements, deferred compensation agreements, and other continuing dealings with business associates, clients, or customers. Please include information related to retirement accounts.

While employed by Affiliated Computer Systems, Inc., (ACS) I participated in a deferred compensation plan and, at the time I enrolled, I elected to receive deferred compensation in five annual installments following my departure from ACS (March 2009). In 2010, ACS was acquired by Xerox Corporation. I will receive two remaining annual payments from ACS, A Xerox Company, with the final payment expected in April 2013.

During my employment at ACS, I was granted ACS stock options. These were converted to Xerox Corporation stock options upon Xerox's acquisition of ACS in 2010. I still hold Xerox stock options, and intend to continue to hold them as market conditions warrant.

2. Do you have any commitments or agreements, formal or informal, to maintain employment, affiliation, or practice with any business, association, or other organization during your appointment? If so, please explain.

In connection with the nomination process, I have consulted with the Office of Government Ethics and the Department of Transportation's ethics official to identify potential conflicts of interest. Any potential conflicts of interest will be resolved in accordance with the terms of an ethics agreement that I have entered into with the Department's designated agency ethics official and that has been provided to this Committee. I am not aware of any other potential conflicts of interest.

3. Indicate any investments, obligations, liabilities, or other relationships, which could involve potential conflicts of interest in the position to which you have been nominated.

In connection with the nomination process, I have consulted with the Office of Government Ethics and the Department of Transportation's ethics official to identify potential conflicts of interest. Any potential conflicts of interest will be resolved in accordance with the terms of an ethics agreement that I have entered into with the Department's designated agency ethics official and that has been provided to this Committee. I am not aware of any other potential conflicts of interest.

4. Describe any business relationship, dealing, or financial transaction which you have had during the last ten years, whether for yourself, on behalf of a client, or acting as an agent, that could in any way constitute or result in a possible conflict of interest in the position to which you have been nominated.

In connection with the nomination process, I have consulted with the Office of Government Ethics and the Department of Transportation's ethics official to identify potential conflicts of interest. Any potential conflicts of interest will be resolved in accordance with the terms of an ethics agreement that I have entered into with the Department's designated agency ethics official and that has been provided to this Committee. I am not aware of any other potential conflicts of interest.

5. Describe any activity during the past ten years in which you have been engaged for the purpose of directly or indirectly influencing the passage, defeat, or modification of any legislation or affecting the administration and execution of law or public policy: None.

6. Explain how you will resolve any potential conflict of interest, including any that may be disclosed by your responses to the above items.

In connection with the nomination process, I have consulted with the Office of Government Ethics and the Department of Transportation's ethics official to identify potential conflicts of interest. Any potential conflicts of interest will be resolved in accordance with the terms of an ethics agreement that I have entered into with the Department's designated agency ethics official and that has been provided to this Committee. I am not aware of any other potential conflicts of interest.

#### C. LEGAL MATTERS

1. Have you ever been disciplined or cited for breach of ethics by, or been the subject of a complaint to any court, administrative agency, professional association, disciplinary committee, or other professional group? If so, please explain: No.

2. Have you ever been investigated, arrested, charged, or held by any Federal, State, or other law enforcement authority of any Federal, State, county, or municipal entity, other than for a minor traffic offense? If so, please explain: No.

3. Have you or any business of which you are or were and officer ever been involved as a party in an administrative agency proceeding or civil litigation. If so, please explain.

I am aware of three suits that were filed against my previous employers or that named me in an official capacity. None of these involved any allegation related to my own conduct.

In my official capacity as Commissioner of the New York City Department of Ports and Trade, I was named in two suits against the city in the late 1980s involving nonpayment of rent at port facilities. I had no involvement in the litigation of these cases. The NYC Department of Ports and Trade may have been a party to other legal actions, but I had no involvement in any such cases.

In 1994 or 1995, I was deposed in a sexual harassment case that an employee had brought against the City and County of San Francisco. I had been the Executive Director of the Port of San Francisco until April 2003, and I testified that I had met the employee only once and had no knowledge of the complaint. The Port of San Francisco may have been a party to other legal actions, but I had no involvement in any such cases.

During the time when I was an officer of Affiliated Computer Services, Inc., a Fortune 500, publicly traded company with extensive domestic and international operations, the company may have been a party to administrative proceedings and litigation; however, I had no involvement in any such cases.

4. Have you ever been convicted (including plea of guilty or *nolo contendere*) of any criminal violation other than a minor traffic offense? If so, please explain: No.

5. Have you ever been accused, formally or informally, of sexual harassment or discrimination on the basis of sex, race, religion, or any other basis? If so, please explain: No.

6. Please advise the Committee of any additional information, favorable or unfavorable, which you feel should be disclosed in connection with your nomination.

N/A.

#### D. RELATIONSHIP WITH THE COMMITTEE

1. Will you ensure that your department/agency complies with deadlines for information set by Congressional committees? Yes.

2. Will you ensure that your department/agency does whatever it can to protect Congressional witnesses and whistle blowers from reprisal for their testimony and disclosures? Yes.

3. Will you cooperate in providing the Committee with requested witnesses, including technical experts and career employees, with firsthand knowledge of matters of interest to the Committee? Yes.

4. Are you willing to appear and testify before any duly constituted committee of Congress on such occasions as you may be reasonably requested to do so? Yes.

#### RESUME OF MICHAEL P. HUERTA

##### **Professional Experience**

*Acting Administrator*—Federal Aviation Administration, Washington, D.C., December 2011 to present.

*Deputy Administrator*—Federal Aviation Administration, Washington, D.C., July 2010 to December 2011—Acting chief executive of the agency responsible the safety and efficiency of the largest aerospace system in the world. Oversees a \$15.9 billion dollar budget, over 47,000 employees and is focused on ensuring the agency and its

employees are the best prepared and trained professionals to meet the growing demands and requirements of the industry. Responsible for the FAA's multi-billion dollar NextGen air traffic control modernization program as the United States shifts from ground-based radar to state-of-the-art satellite technology.

*President*—MPH Consulting, LLC, Washington, D.C., April 2009 to June 2010—Consultant on transportation policy, technology and financing. Clients include international technology companies and not-for-profit organizations.

*Executive Vice President and Group President, Transportation Solutions*—Affiliated Computer Services, Inc., Washington, D.C., April 2008 to March 2009

*Senior Vice President and Managing Director, Transportation Solutions*—Affiliated Computer Systems, Inc., Washington, D.C., June 2005 to April 2008

*Senior Vice President and Managing Director, Transportation Systems and Services*—Affiliated Computer Services, Inc., Washington, D.C., March 2002 to June 2005—Chief executive of ACS' transportation technology services line of business. ACS is a premier provider of diversified business process outsourcing and information technology services and solutions to government and commercial clients worldwide. The company provides a wide variety of revenue collection, regulatory compliance and technology services to the transportation industry throughout the world. Products and services include:

- System integration and customer service center operations for electronic toll collection systems including E-ZPass in the northeastern United States and FasTrak in California
- Fare collection and parking revenue control and management systems to public transit authorities, airports, and cities
- The nationwide PrePass electronic commercial vehicle pre-clearance program
- A full suite of photo enforcement solutions designed to promote road and highway safety
- System integration and design of PierPASS, a congestion fee collection program used at the Ports of Los Angeles and Long Beach, California.

*Vice President, Marketing and Business Development*—Lockheed Martin IMS, Transportation Systems and Services Washington, D.C., April 2001 to March 2002—Responsible for expanding IMS' leadership position in intelligent transportation marketplaces such as electronic toll collection, commercial vehicle operations, and electronic payment systems.

*Consultant, Director, and Managing Director*—Salt Lake Organizing Committee for the Olympic Winter Games of 2002, Washington, D.C. and Salt Lake City, Utah, July 1998 to April 2002—Served in various positions as an independent consultant and an employee of the organization. Responsible for (a) designing and running, in cooperation with the Utah Department of Transportation, the highly successful Travel Demand Management (TDM) program used during the XIX Olympic Winter Games held in Utah during February 2002, and (b) securing funding for a \$250 million program of temporary and permanent transportation projects to support the transportation requirements of the Games.

*Principal*—Cambridge Systematics, Inc., Washington, D.C., September 1998 to April 2001—Principal of an employee-owned, nationally known, transportation consulting firm. Responsibilities included new business development for freight and intermodal transportation. Services provided included freight transportation planning, transportation planning for special events, project financing, and strategic planning.

*Chief of Staff, Office of the Secretary*—United States Department of Transportation, Washington, D.C., January 1997 to June 1998—Responsibilities included serving as chief strategist and policy advisor to the Secretary of Transportation and day-to-day manager of the Office of the Secretary. Involved oversight of high-profile projects, major initiatives, and federal government financial assistance.

*Associate Deputy Secretary of Transportation and Director, Office of Intermodalism*—United States Department of Transportation, Washington, D.C., May 1993 to January 1997—Responsibilities included coordinating federal policy on intermodal transportation and initiating policies to promote efficient intermodal transportation in the United States. Selected accomplishments:

- \$400 million federal loan as part of financing package for \$1.9 billion Alameda Corridor port access project in Southern California. The federal loan was an in-

novative, direct loan which completed the financing package and enabled this project to move forward.

- Airport access projects in San Francisco and New York which involved blending airport, transit and highway revenues in new ways to provide mass transit links to these airports.

*Executive Director*—Port of San Francisco, January 1989 to April 1993—Chief executive of the port, a self-supporting public agency that develops and administers maritime facilities, commercial development, and fishing facilities on San Francisco's waterfront. Completed a port strategic plan, which led to substantially increased container shipping volume. Initiated planning and construction for modernizing and expanding the port's shipping terminals and fish handling facilities. Completed an award-winning public access pier in downtown San Francisco.

*Commissioner*—New York City Department of Ports, International Trade and Commerce, March 1986 to January 1989—Chief executive of the city department responsible for developing and administering marine, air, rail and truck facilities throughout the city; promoting international trade and investment; operating and regulating the city's public markets.

*Management Consultant*—Coopers & Lybrand, Washington, D.C., July 1980 to March 1986—Consultant serving a variety of public and private sector clients in economic studies, feasibility analysis and international trade services.

#### **Education**

MPA 1980, Woodrow Wilson School of Public and International Affairs, Princeton University BA 1978, University of California, Riverside

Senator CANTWELL. Again, Mr. Huerta, thank you for your willingness to serve and thank you for your testimony this morning.

I'd like to start. You mentioned obviously safety, which is a high priority. As I mentioned earlier in my statement, we had oversight hearings on this issue. There are several rulemakings that are required under the FAA Extension Act of 2010 and some of those rulemakings for new flight and duty time rules have been completed and others haven't.

In the hearings that we had in the aftermath of the Colgan 3407 flight, one of the issues identified was the shortcoming of pilot training and co-pilot training. So what is the status of that rulemaking on pilot training? When can we expect those rules to be released? How much time will be given to airlines to comply? And when can we expect that transformation to be in place?

Mr. HUERTA. We continue to work on a final rule to update our commercial pilot training requirements. This is a very important rule. It's something that I care very deeply about.

I was distressed to learn of the time involved in moving this rule forward and I've made it a very high personal priority to do all we can to expedite the development of this rule. The initial rulemaking was under way before the passage of the Airline Safety and FAA Extension Act of 2010. Subsequent to the passage of that statute we had to issue a supplemental notice of proposed rulemaking. We received a very large number of comments in response to that and we have reviewed those comments. I've instructed my staff to work diligently and quickly in the completion of the rule so that we can get it out there for final implementation.

We expect that we will complete that by October 2013. I know that's a long time and we're doing all that we can to move it as quickly as possible.

Senator CANTWELL. Mr. Huerta, what can we do in the meantime? 2013 is a long time from now as it relates to this. I mean, this seems to be something we needed in 2011.

Mr. HUERTA. The FAA will continue to work closely with industry to find out what we can do in advance of rulemaking. Focusing on training is a very important priority and I want to work closely with industry to do that.

Senator CANTWELL. What about pilot commute times? That was one of the issues in the Colgan Air case, the amount of time in commuting, pilots showing up after long distance travel.

Mr. HUERTA. Every pilot has an important responsibility to report to work fit for duty and safe to fly. This is one of the things that was a high priority to address in the pilot fatigue rule and I think that there is a responsibility that we all have to ensure that pilots can report to work fit for duty.

Senator CANTWELL. What else can we do to address some of these issues, given that, obviously, we want to implement the right rules, but 2013 is a long time.

Mr. HUERTA. As I said, we are doing everything that we can. It's a large and complex rule and I pledge my own personal commitment to push our team as quickly as we can to get this done expeditiously.

Senator CANTWELL. Thank you. I may have questions on that coming up.

But, Mr. Chairman, would you like to? Ranking Member Hutchison?

Senator HUTCHISON. Well, let me start with the Office of Special Counsel and also the relatively large number, according to the Special Counsel, of whistleblowers at the FAA. What oversight measures are you putting in place in response to that report, or what measures are you taking to assure that there is some way to assure that an air traffic controller isn't taking a nap on the job or leaving the tower? Those kinds of things are obviously very troubling.

How are you dealing with that and putting a tighter rein on the information flow?

Mr. HUERTA. Sure. There are two things that you suggest, Ranking Member Hutchison. First and foremost, every FAA employee has a responsibility to ensure the safety of the traveling public. That means that they need to report to work fit for duty all the time every day.

The second thing is that we need to have an environment and a climate where anyone who sees that there is a potential safety risk in the system feels that no crash is in a safe environment to elevate that to higher leadership. In doing that it ensures that we're able to take strong and appropriate action to deal with safety risks that might exist in the system.

A couple of years ago we put in place a whistleblower office within the FAA. We actually set it up with the assistance of a former FAA whistleblower. What we wanted to do was ensure that it was clear where people can go if they have concerns about safety, about compliance with rules, and everything that's associated with that.

I think that that has done a lot to create an appropriate environment and quick responses. As a result of doing this, we've identified areas where—in one instance, we completely changed out the management of a facility so that we could ensure that an appropriate focus was being given to safety.

I think that every employee of the FAA bears a specific responsibility. I think it's a duty. It's my expectation that if there are challenges in the system, if employers see things that represent a risk to safety, then they have to be brought forward so that we can deal with them and deal with them expeditiously.

Senator HUTCHISON. Mr. Huerta, one of the things that you read about and hear about are how difficult it is to discipline and fire if necessary a Federal employee because there are so many requirements and it's a bureaucratic tough situation. All of us have—well, not all of us, but I've certainly been in a Federal agency myself and I know there are a lot of rules and sometimes it's been difficult even if someone was not doing their job and had all the requirements.

I'm asking you if you have had trouble with these safety-essential personnel, like an air traffic controller or a mechanic, have you had trouble with the bureaucratic constraints or union activity that would keep you from taking an action that you felt is necessary to assure that a person not doing the job is not able to stay on the job?

Mr. HUERTA. All of us as managers of the FAA, and in fact in any Federal agency, have a special responsibility to ensure that the requirements and expectations for our workforce are absolutely clear and that we document when we see infractions and when we see that standards are not being complied with, and we do do that. That's something that I think is an important first step in ensuring that these whistleblower complaints are appropriately dealt with.

The FAA takes very seriously its safety-sensitive responsibility and, with appropriate documentation and appropriate leadership, if we've found problems we have been able to deal with them.

Senator HUTCHISON. Thank you.

I do have another quick question, and that is what steps are you taking to live within the lower budgets that we're going to have across the board until we get the deficits down and the debt under control? What measures are you taking that would suggest that you could do things more efficiently and that you're doing the part for your agency?

Mr. HUERTA. Well, first of all I'd like to thank this committee and the appropriators for the support they've shown the FAA. But you've given us a challenge, and that challenge is, as you suggest, Senator Hutchison, the need to do things as effectively and efficiently as possible.

We have within our organizational structure embarked on a major restructuring where we've identified how to minimize administrative costs and find greater efficiencies to operating the agency. We've identified savings in excess of \$100 million. I think that's an important step.

The other thing that we're doing—

Senator HUTCHISON. Give me a couple of examples?

Mr. HUERTA. A lot of that is in technology systems, in general and administrative systems for the agency. Technology benefits are huge in a large complex agency such as ours, where we can deal with ensuring that there are not duplicative systems and that we're also taking advantage of our size and leveraging that as we go through major procurements for these sorts of systems. So that's

one very important area where we've been quite successful. But we can do more.

The other thing relates to the delivery of NextGen. This committee and the Congress in general have made NextGen a very high priority, but that means we have a responsibility to develop and implement it as efficiently as possible and that means creating priorities. We've established in our NextGen implementation plan what our specific goals are that we want to accomplish both in the midterm and the long-term. To sum it up, the major focus is on how do we deliver benefits early? If we deliver benefits early to the users of the system, it means for an airline that they can reduce track miles flown—that's a reduction in fuel. Fuel is a reduction in cost. It's also a reduction in emissions. And it benefits communities because they have a more efficient system with less noise. It's those things that we need to keep our focus on.

Senator HUTCHISON. Thank you very much.

Senator CANTWELL. Chairman Rockefeller, would you like to?

Senator LAUTENBERG. Yes—

Senator CANTWELL. I'm sorry. I think the Chairman's going to ask some questions.

Senator LAUTENBERG. Well, that's OK.

[Laughter.]

Senator CANTWELL. Thank you, Senator Lautenberg.

**STATEMENT OF HON. JOHN D. ROCKEFELLER IV,  
U.S. SENATOR FROM WEST VIRGINIA**

The CHAIRMAN. Thank you, Chairman Cantwell, very much.

Mr. Huerta, I'm sort of aghast here, because we had a very good talk in my office and you talked to me very directly, answered questions very directly, and this morning you seem to be answering them as if scripted by OMB. I have to be frank about that because this is not a favorable impression.

You used the word "expeditiously," "diligence" all the time to answer the questions. Chairman Cantwell asked you a question about aviation safety and the standards, actually required December 2011. We're now finding out that this cannot be done until 2013, and then an additional five years, so that's 2015. Then you just simply said: Well, we're working with the airlines and we'll be expeditious and diligent and do our very best. It's just not an answer at all.

I want to know, what is it that makes it so difficult to get the airlines or the FAA to work together to get this done before 2015, indeed by 2013, if not by 2011, which is what we required in the law? What is your answer?

Mr. HUERTA. Chairman Rockefeller, as I mentioned, this is a very large and complex rulemaking, and no one is more frustrated than I am at the time it has taken—

The CHAIRMAN. Please answer my question.

Mr. HUERTA. What we are doing is working through a large number of comments and ensuring that we can develop a rule that will stand the test of time and that will deliver on the benefits that we want. People are working very hard in getting it done, but we have a lot of comments. It's a complicated rule.

The CHAIRMAN. So it's a complicated bill. There's a lot of comments. There's always a lot of comments. Washington draws lots and lots of comments. It's you and it's the airlines and it's the pilots. I don't understand why this is taking so long or why—don't talk to me about lots of comments and this is a complicated process. Everything is like that around here.

Mr. HUERTA. Mr. Chairman, I am very committed to getting this rule done.

The CHAIRMAN. And I understand that. But what are you doing about it? So far I've heard that there are a lot of comments and it makes it more difficult. Now, so how do you weigh through this and get it? Don't wait until 2015. Lots of Lackawannas could happen by 2015.

Mr. HUERTA. Mr. Chairman, I will do all I can to direct my staff and provide the resources to get this done as quickly as possible.

The CHAIRMAN. Well, let me just make it known for the record, and this is going to seem to be an unfriendly comment. As you know, I support your candidacy, but any Federal person making testimony before any committee of Congress has to have that testimony reviewed and cannot give it until it's approved by the Office of Management and Budget, and that is the same with yours. And that's what you're sounding like.

I just can't live with "I'm going to do everything I can." I want to know what it is that you will do to make sure it will happen. I'm sticking on this thing, 2015.

Mr. HUERTA. Mr. Chairman, once a week I meet with our safety organization and we go over every rule that we have pending. The questions that I ask are: Where is it, who is involved in it, what are the challenges that we have, and do you have resource problems? Are there legal challenges that you're running into? It creates a forum for us to work through what are very complex issues.

I share your frustration. I want this to be done quickly.

The CHAIRMAN. Well, air traffic controller fatigue, 4,000 violations, we read about it in the *Washington Post*, required 9 hours of rest. My question—I think I'm going to get the same answer: what's the agency done to address these violations, to make sure we don't hear more about this?

I understand that you're standing up in an air traffic control tower or in one of the ground-based or underground-based places and things are difficult and people get tired and all the rest of it. Nine hours of sleep helps, but please tell me what you are doing to make sure that this happens? I don't think that's that complicated.

Mr. HUERTA. It's not. What we did last year was we put in place a requirement, as you noted, Mr. Chairman, for nine hours of rest between shifts. To ensure compliance with it, we—

The CHAIRMAN. Does that 9 hours include the time to get home?

Mr. HUERTA. It's a nine-hour rest opportunity, that's correct.

The CHAIRMAN. So that means maybe six and a half hours and then an hour and a half commute.

Mr. HUERTA. It could mean 8 hours if you had 30 minutes each way.

The CHAIRMAN. Right.

Mr. HUERTA. What we have done since then to ensure compliance is we conducted a review of a large number of clocking in of controllers, and we determined that, while the majority of controllers were in compliance with the nine-hour rest period, we did find that there were some controllers who were clocking in a few minutes early.

In most cases they were a matter of a couple of minutes. None exceeded 30 minutes. In light of that, we at the agency, in conjunction with the National Air Traffic Controllers Association, last week issued guidance to everyone in air traffic control reminding them of the nine-hour rule.

We are also now updating our timekeeping system so that they cannot physically clock in until the nine-hour requirement is met, and we will continue to focus on this.

The CHAIRMAN. My time is up. I thank the chair.

Senator CANTWELL. Thank you, and I just want to go over the order of members because people have come in and out of the hearing room. We'll next call on Senator Thune, who's the ranking member on the Subcommittee, followed by Senator Begich, if Senator Boxer reappears, then Senator Lautenberg, then my other colleagues.

So, Senator Thune.

**STATEMENT OF HON. JOHN THUNE,  
U.S. SENATOR FROM SOUTH DAKOTA**

Senator THUNE. Thank you, Madam Chair. I want to thank you and the Ranking Member for holding the confirmation hearing today, and Mr. Huerta for appearing before the Committee as the nominee to be the next Administrator of the FAA.

Aviation is an important part of our U.S. economy. It's obviously very important in my state of South Dakota. It contributes about \$1.2 billion annually to the economy and employs 14,000 people. I think we have to acknowledge that FAA operates the largest and safest air space system in the world. As we know, since the mid-1990s the commercial air carrier accident rate has fallen by nearly 80 percent. Achieving that low of a U.S. air carrier accident rate while transporting almost 800 million passengers per year is no simple feat.

But, having said that, even with the high rate of safety, improvements can be made, and last month's letter from the Office of Special Counsel, which cited 178 FAA disclosures, of which 97 were safety-related, is a startling reminder that safety's got to be a top priority.

The agency faces several other future challenges, including reducing regulatory burdens, streamlining its operations, maintaining professionalism in its work force, and implementing the recently enacted FAA Modernization and Reform Act.

So I appreciate, Mr. Huerta, hearing from you about your ideas on how to address those many challenges. I do want to quickly get your response to something. We have a bill, Senate bill 1956, the European Union Emissions Trading Scheme Prohibition Act that Senator McCaskill and I and others have introduced, which gives the Secretary of Transportation the authority to take the necessary steps to ensure America's aviation operators are not penalized by

any system unilaterally imposed by the EU. We had a hearing about this recently in front of this committee and I'm wondering what your thoughts are about whether this legislation might help you in your negotiations with the European Union.

Mr. HUERTA. Senator Thune, thank you very much. The European Union's efforts to impose unilaterally an emissions trading scheme are something that we are very much in opposition to. We feel that the appropriate forum to work through this is the International Civil Aviation Organization and we've joined with many other countries to express our opposition and to make it clear to the Europeans that we oppose what they're trying to do and are prepared to take action as necessary in order to respond to that.

ICAO is the appropriate forum and all options are on the table. While we're supportive of the goals of reducing aviation's emissions impact on the environment, we think that what the Europeans did is entirely the wrong way to go about it. The Europeans know that and we continue to work on that.

Senator THUNE. Wouldn't having a legislative solution give you additional leverage in confronting the Europeans on this issue and dealing with it?

Mr. HUERTA. I think the Europeans are well aware of the universal opposition that exists in this government to what it is that they're trying to do, and we continue to communicate that to them.

Senator THUNE. At the same time, you've got this thing already in effect, essentially, and lots of American air carriers covered by it and in many cases having to pass those costs on. It seems to me at least that the legislation would at least provide temporary relief from this until such time as you can work through the appropriate forum, if that's ICAO, to get the right resolution in place.

So it just seems to me at least that it gives you one more piece of ammunition, one more tool, if you will, in dealing with the EU if you had Congress on the record and giving our air carriers in this country some relief from what is an unfair violation of international law and sovereignty of the United States.

Mr. HUERTA. Well, Senator, as I mentioned, I think that the fact that there is such widespread opposition in our government is quite significant. We are committed to working with Congress on how best to respond to it.

Senator THUNE. Well, let me ask you one other question quickly. There is a recent IG report that highlighted that the FAA has not yet established total program cost, schedule, or performance baseline for all of the six NextGen transformational programs. When does the agency plan to do this, since without baselining we will not have complete information about when these programs will be completed, what they will deliver, and how much they're going to cost the American taxpayer?

Mr. HUERTA. NextGen is a program that, as I talked about in my opening statement, is critical for the FAA to get right as we deploy the transformational aviation system of the future. My own background, as leader of a large technology company, I think has served me well as I've worked at the FAA.

One of the first things that I did when I arrived at the agency a couple of years ago was to direct the establishment of a program management office, with the sole responsibility for delivering

NextGen programs as their major area of focus. At the same time I strengthened our NextGen organization to ensure that they had the resources and the tools they needed to make tradeoffs, to establish priorities, and to ensure that the agency is meeting its NextGen commitments.

Of the six transformational programs, three have been baselined and we are on track for meeting the commitments in those baselines. But we're trying to find the appropriate balance in how we mitigate risk based on developing the appropriate levels of information so that we know what we're getting into before we establish the baselines. We're very focused on delivering benefits and hitting our targets, and I think we're making good progress.

Senator THUNE. Do you have a schedule for the last three? You mentioned three that you are—

Mr. HUERTA. I'm sorry?

Senator THUNE. The other three of the six that you said that have not—that are not baselined, when do you expect? What do you expect in regard to those?

Mr. HUERTA. We would be happy to meet with your staff and go over each of the programs and where they are.

Senator THUNE. Thank you.

My time has expired. Thanks.

The CHAIRMAN. Senator Begich.

**STATEMENT OF HON. MARK BEGICH,  
U.S. SENATOR FROM ALASKA**

Senator BEGICH. Thank you very much, Mr. Huerta. Let me ask you a couple questions, one on avgas. As you know, the general aviation community from my State and Senator Thune's, others, it's very important, the rural aspect of it. But the EPA has issued an NPRM on avgas. We've heard a lot of comments. I'm sure FAA has also heard a lot of comments.

Our concern is, and as you know, FAA is ultimately responsible for certifying the type of gas that goes into aviation or into airplanes. We are—I want to make it very clear that we are hopeful that there are no moves by EPA or FAA to phaseout avgas until there is truly an appropriate and economical drop-in substitute fuel. Can you comment on that?

Mr. HUERTA. Senator Begich, we share that concern. Avgas is unique. It is the remaining leaded fuel, but it meets the unique requirements that exist in general aviation. The FAA completely understands the importance of having reasonable alternatives before any effort is made to phaseout avgas. I'm very committed to working with EPA so as to ensure that that doesn't happen.

Senator BEGICH. When you say reasonable, economical is part of that equation?

Mr. HUERTA. Certainly.

Senator BEGICH. OK, good, because for us in Alaska it's truly, it's the highway in the sky. It's critical that we have the right ability. When we converted a much higher level of leaded gas to unleaded, which was our vehicles, it took many, many, many years to do that. It wasn't overnight. I'm worried that EPA has a different view of life here, that they can flip the switch and make it all magic. I'm glad that you have made the statement you just said, because I

think you understand the FAA component of this and the aviation component of this. So thank you very much.

Will you keep us, at least our office, informed if there are some milestones occurring that we need to be aware of, because I guarantee you we'll hear very quickly in Alaska and we want to make sure we're on top of this issue.

Mr. HUERTA. Absolutely, we'd be happy to.

Senator BEGICH. Thank you.

The other one is, we have this battle on a fairly regular basis. The administration in the 2013 budget had the \$100 user fee on GA, general aviation users. I honestly think that is—it's creating another system that doesn't need to be created. We have a per-gallon tax assessed. The aviation community is in support of it. It's already an existing system. It works well. It's creating another system where now it's a \$100 user fee for certain GA users. I think it's just going to be burdensome. It's going to create another bureaucracy within FAA, and the reality is we already have a system that general aviation supports and always works with FAA on.

So can you comment on that? I know it's a budget issue and I'm sure OMB has their views on it, but from a practical implication of how you implement it, it seems like it's creating another system that we don't need when we have a user fee tax that people have been accustomed to and have been supportive in the past of adjusting when necessary.

Mr. HUERTA. Senator Begich, the President put forward a proposal with the intent of finding better ways to share the costs of the operation of the aviation system with the users of the system. That was why it was included in his proposal for the fiscal 2013 budget. The appropriators have not seen fit to act on that. We understand that how we look at the long-term financing questions of the FAA is something that we need to do very much in consultation with Congress, and we look forward to continuing that conversation with you.

Senator BEGICH. Great. I know from our end we'd obviously be happy to engage with you on that. I think the general aviation folks, aviation in general, I think always are happy to—if there is a process and they know the value comes back to the users in this case, they're always willing to sit down and work these issues out. So I look forward to that.

Do you—I just want to follow up on what Senator Thune talked about on NextGen, if I can, and that is just very quickly, and that is you talked about the baselines, three more to go. If you were to say—if you could give a percentage of where do you think you're at with full implementation of NextGen in the level that we had asked for in the FAA reauthorization bill, where would you say we are? 10 percent, 20 percent, 30 percent? Do you have a fair—in all the pieces—I know there are multiple pieces, but if you could take a 30,000 view looking down, where do you think we're at?

Mr. HUERTA. I think it's important to look at it in the context of there being both a geographic component to it, as we move it out across the country, and then there are varying levels of capability that it enables. We are making progress in both of these areas.

We made a commitment to the industry to deploy one of the foundational technologies, a technology known as Automatic De-

pendent Surveillance Broadcast (ADS-B). We committed that it would be deployed throughout the country by 2013, and we are on track to deliver the ground infrastructure by 2013. This, as you know, is a technology that we first deployed in Alaska.

Senator BEGICH. That's right.

Mr. HUERTA. And what it gives a pilot is much greater situational awareness. It gives us a very precise view of what's happening in the air space system. So we're well on track to delivery this.

This year we're giving a particular focus on performance-based navigation, which results in more precise routes that reduce for airlines the track miles flown and enables them to reduce costs on fuel. This is a high priority. What we're trying to do is reduce the deployment time for individual procedures from what would ordinarily be five to ten years down to three and sometimes 2 years. We're doing that in metropolitan areas all across the country.

Later this summer, we will take a first step in deploying our DATACOM program. DATACOM is a transformational technology because what it addresses head-on is one of our principal challenges for efficiency as well as for maintaining safety, and that is to ensure that communications between controllers and pilots are accurate, precise, and delivered in a timely fashion. So we're on track for beginning the delivery of that program later on this year.

We're making good progress, but I have to stress it's a long-term delivery program. We have milestones that go all the way out to 2025 for the delivery of NextGen and it's important to us that we hit those milestones and deliver the benefits to the users of the system.

Senator BEGICH. Thank you very much. Thanks for your testimony. I'll look forward to supporting you in the final, but I just want to say thank you very much for coming here. Thanks for spending time with me yesterday on all the other issues we talked about.

Senator CANTWELL. Thank you, Senator Begich.

Senator Lautenberg.

**STATEMENT OF HON. FRANK R. LAUTENBERG,  
U.S. SENATOR FROM NEW JERSEY**

Senator LAUTENBERG. Thank you, Madam Chairman.

Mr. Huerta, my recommendation to you would have been when Senator Boxer finished her introduction that you say: I plead my case, and let it go at that, because you're getting some pressures here for things that I really don't think are justified.

We have been fiddling around with NextGen technology before the turn of the century, and company after company, the best names in technology, aviation technology, were included. I was in the computer business before I came here, and the fact of the matter is that there was failure after failure after failure, with billions of dollars spent.

So while we want you to push along, hurry it up as much as you can, but I think on balance that it has to be recognized that you're not responsible for the delay, but you will be responsible for the management of where we go, and we look forward to that.

I think that we're fortunate that you're here, willing to serve at this job, because you're not going to get lots of pats on the back no matter what you do.

The air traffic control tower at Newark Liberty Airport is critical to the entire aviation system, to the flying public. But the tower is constantly understaffed. I've received many assurances from the FAA over the years that this issue would be remedied, but the problem persists. We're still short a significant number of fully trained controllers.

When might the Newark tower be fully staffed?

Mr. HUERTA. Senator Lautenberg, as you and I spoke about, the staffing range for Newark Liberty Airport is estimated to be somewhere between 32 and 38 controllers. We currently have below that number, in the high 20s, of actual certified controllers in the facility.

We have an effort under way this year to transfer a number of additional controllers into the facility and plans for 2013. Also, in recognition of the unique complex air space that we have in northern New Jersey and greater New York, we placed a tower simulator in the Newark Liberty facility to provide the ability to do more on-the-ground training for controllers in the facility simulating the unique air space requirements of that area.

That went into place earlier this year in March and I think that we're seeing some benefit associated with it. But we have to continue to focus on that.

The New York area is critical for us and Newark Liberty is part of that. Most of the delays in the air traffic system have as their starting point the New York area. So focusing on ensuring that we have the appropriate technology and the appropriately trained staff in place, is something that we have to continue to focus on.

Senator LAUTENBERG. You were asked a question some minutes ago about what kind of performance we might expect if there is less funding. Can things get better with less funding?

Mr. HUERTA. Clearly, funding is essential in our ability to deliver the Next Generation Air Transportation System. This committee and the Congress have been very supportive of those efforts. But we in the agency bear the responsibility to do it as efficiently as possible and to ensure that we are prioritizing those things that deliver the benefits for the users of the system.

That's a conversation that we will continue to have. We're all in government. We all understand the fiscal challenges that we as a country face and the FAA needs to be part of that conversation.

Senator LAUTENBERG. The FAA authorization which was signed into law earlier this year exempts certain NextGen projects from environmental review. I think perhaps Senator Thune was raising that question. The exemption has raised concerns in my region that there will be potentially more noise as a result of NextGen implementation. How is FAA going to provide communities with an opportunity for public input? That's critical, and that's a complaint that we hear about regularly and really in some instances very angrily, as you can imagine.

So what can we do there?

Mr. HUERTA. The specific provision that you're referring to deals with environmental reviews related to the development of naviga-

tion procedures. We are working to figure out how best to implement a process that ensures that we're doing whatever environmental process we need to do as efficiently as possible.

Having said that, the real intent behind the provision is why do these things take so long to develop? There is benefit, great environmental benefit, in getting navigation procedures out as quickly as possible. The benefit is that you reduce fuel burn, you reduce track miles, and you reduce noise. So getting them into the system as quickly as possible is generally a good thing.

What the legislation suggested is find ways to cut down that time. So we're looking at the full scope of what needs to be done—everything from the development of the procedures to how they are designed, the environmental process, how it is deployed, operationalized, and then how we evaluate whether it's doing what it was originally intended to do.

That's the process that we're trying to cut from 5 to 10 years down to 2 or 3. So clearly the direction we receive from Congress in the environmental area is an important factor that we're focused on, but we're looking at the full scope of what is needed to be done here so that we can cut the overall time down.

Senator LAUTENBERG. Madam Chairman, I close with this, Mr. Huerta, if I might. That is, I'd like your commitment that you're going to devote the time and energy to solving the Newark air traffic control problem that we wrestle with constantly.

Mr. HUERTA. Absolutely.

Senator LAUTENBERG. Thank you.

Thank you very much, Madam Chairman.

Senator CANTWELL. Senator Blunt.

**STATEMENT OF HON. ROY BLUNT,  
U.S. SENATOR FROM MISSOURI**

Senator BLUNT. Thank you, Chairman.

Thanks for the good job you're doing. As you and I talked about, as I said when we visited the other day, probably hard to find a group of 535 people that fly more or think they're more experts in air traffic, air travel, than Members of Congress. So it makes your job harder than a lot of the other regulatory jobs. But I've been impressed by the way you've been doing it and hope that moving permanently into the position allows you to finalize some things even in a better way.

I have two or three things I want to ask about. On the pilot flight rule, at one point it looked to me like the FAA was moving toward having the same flight rules for passenger pilots as cargo pilots, which I didn't think was necessary. Eventually you decided that wasn't necessary, either. Is that the position the FAA will continue to have, that there's a different—the cargo pilots are under the rules that they've been working under and you're moving the passenger pilots to other rules; is that the status?

Mr. HUERTA. When we finalized our pilot flight duty and rest rule at the end of last year, we did exempt the cargo industry from the provisions of the rule as it was finally enacted. However, at that time Secretary LaHood and I encouraged the cargo industry to voluntarily opt into the program and to do the same things that

are required for passenger operations in the rule in order to manage fatigue within the system.

We've met with the cargo industry and we continue to urge them to abide by the provisions of the rule.

Senator BLUNT. But you're not requiring them—you're requiring them to abide by the provisions of the previous rules, right?

Mr. HUERTA. That's correct.

Senator BLUNT. On the cost of that, I noticed there was a wide discrepancy—I think the FAA thought that cargo companies complying with the rule would cost about \$30 million and they thought \$600 million. Have you looked more carefully at that cost-benefit, how they could have that big a number, how the numbers could be that widely divergent?

Mr. HUERTA. We're evaluating the cost-benefit provisions of the cargo portion of the analysis that we did, and we've brought a third party in to advise us in doing that. We expect to complete that review in the coming couple of weeks.

Senator BLUNT. Would you send me a copy of that review when it's available?

Mr. HUERTA. Certainly.

Senator BLUNT. I'd like to—this cost-benefit—I think there are going to be more and more pressures on cost-benefit generally as regulation is becoming a bigger and bigger concern at all levels. Maybe you can figure out how to help set the standard even for how to make that work.

On the FAA training and conference center, there's language in the Senate appropriations bill that directs the FAA to continue to pursue new leased space for that center. You were a long way down that path last year and didn't get there at the end. What's your ongoing plan for how to look at the future of how you're going to conduct those training facilities, moving people in and out of one training facility to get their training?

Mr. HUERTA. Senator, as we talked about when we met, when the FAA was evaluating our training needs, we had developed an approach which included two components. One was to enter into a lease for a facility; and then the second, for the development of the training itself.

In light of the fiscal challenges that we were facing as we were doing our work on that project, one of the things that we had some concern about was entering into a long-term lease, such as a ten-year lease, given the fiscal challenges that we knew that we were going to face in the future. At the same time, however, we were hearing that there were alternative models to conduct training where we would contract for services from entities that would provide both the training and the facility. So it was in that spirit that we suspended work on looking at a training facility.

All of our options are on the table as we look at this review going forward of what is the best way to conduct training for the FAA's needs. We're a very technical organization, so training is critical to our mission. As I mentioned, the proposals that we had received on the training facility were very good proposals and none of the bidders did anything that represented a problem. It really is a question of is it prudent to enter into a long-term lease when we might have an alternative to contract for services.

Senator BLUNT. Well, I don't know about all of the bidders. I do know that in Kansas City, which bid for this, they had invested lots of money in that bid, which is also something that the FAA needs to think about. When you go out for bid and you have competitive bidders making substantial investments to try to make that work, and then just decide, well, maybe that's not what we needed, you probably ought to pull that trigger when you're a little more sure of where you're headed, though economic circumstances clearly are different than they may have been a handful of years ago when that discussion could have started.

Will you make a decision on whether to go for bids that include training or whether to go for bids that only include facilities at some point, do you think?

Mr. HUERTA. At some point we have to decide whether we want to contract for training as a service, where the trainer would provide everything, the facility, the materials, the actual instruction, or whether we would want to use the model we've used in the past, which is to first have a facility and then bring trainers into it, with the FAA having the responsibility for development of the materials. That's exactly the analysis that we're in the middle of.

Senator BLUNT. And are the trainers right now FAA full-time employees?

Mr. HUERTA. They're contractors.

Senator BLUNT. They're contracted employees now and would be. In a sense, it just depends on who contracts with them, you or the successful bidder for the training?

Mr. HUERTA. They're always contract employees, and it can be any of a number of models.

Senator BLUNT. One last question on—

The CHAIRMAN [presiding]. Senator Blunt, I hate to be rude, but—

Senator BLUNT. We have votes, Chairman.

The CHAIRMAN. Is that OK? All right. Thank you for your courtesy.

Senator Boozman.

**STATEMENT OF HON. JOHN BOOZMAN,  
U.S. SENATOR FROM ARKANSAS**

Senator BOOZMAN. Thank you, Mr. Chairman.

We appreciate your being here, and we do appreciate your service. I know you've worked really hard in the past. Let me ask you about FAA's certification. Certainly this is so important. We've got to be effective. It's got to be sufficient. We produce a lot of aviation products. We're a global marketplace, and it's really important that this is done in a timely fashion.

Unfortunately, sometimes that's not the case; it's not done very timely. Can you comment a little bit on perhaps some ideas that you have how we can do a better job of that in the future, and any proposals that you've got in solving that problem?

Mr. HUERTA. Senator, I think there are two parts to it. The first is to ensure that we are establishing the right priorities and that we're carrying out our certification responsibilities as efficiently as we possibly can. In recent years we've put in place mechanisms

that enable us to establish those priorities and to do things in parallel so that we're not taking a lot of time to certify these things.

Now, as you well know, the certification process is important because that's how we ensure safety of aviation equipment, aircraft, and everything that goes into the operation of our aviation system.

The second thing, though, is working cooperatively with industry through designations for some of the technical aspects of certification. This is where we can rely on the industry to perform some of the technical work, leaving for the FAA the analysis and ultimately the determinations as to airworthiness. That has given us greater bandwidth, more ability to move more things through the process.

We have been successful in working down our backlog. We're not where we need to be. So to me what that means is we have to give renewed emphasis to what we can do through designations, for some of the technical aspects, and continue to find ways to make the process more efficient.

Some of it is just doing things in parallel, as opposed to waiting for one aspect of the analysis to be done before moving on to the next one. But I've met with many, many interests in the general aviation industry, and in the aircraft manufacturing industry. We've learned a lot, and I think it's something that requires a very high level of my focus to ensure that we stay the course there.

Senator BOOZMAN. Good. I appreciate that. You know, we talked a lot about jobs and the economy, which we can't talk too much about it. Again, these are the things that play into that.

In relation to that, I understand that we're moving more toward a risk-based safety oversight. Would certification be one of those things that either is going to be done in that way more or something to be considered in that regard?

Mr. HUERTA. The risk-based approach is how we evaluate where there might be operational issues in the system. In the past, we tended to use more of a forensic approach, you know, which was that as a problem emerged or an accident happened, you reviewed what caused it, and then the focus was on how do you prevent that from happening in the future.

Through data-driven approaches, what we're trying to develop is more information about where there might be the potential for risk. What does the data tell us in terms of patterns that might be developing where, if not addressed, there might be a problem that would emerge down the road. This is definitely where we are focused: how can we use risk management techniques to identify areas of risk, in order to address them before there is a problem.

That's what I referred to in my opening statement when I talked about how do you take the safest system in the world and make it safer. Well, you do it by making it smarter. That means we have to rely on data. We have to use that data in ways where we can develop a better understanding of where there might be risk and take actions to mitigate it.

Senator BOOZMAN. Again, it does seem like—and I think we're really saying the same thing—that with the certification process, that some things people need to devote more time to than other things. But again, hopefully, working together we can make that a little bit more effective.

Thank you, Mr. Chairman, very much.  
 The CHAIRMAN. Thank you, Senator Boozman.  
 Senator Klobuchar.

**STATEMENT OF HON. AMY KLOBUCHAR,  
 U.S. SENATOR FROM MINNESOTA**

Senator KLOBUCHAR. Thank you very much, Mr. Chairman. And thank you so much, Acting Administrator Huerta, for being here today and answering our questions in a straightforward manner.

The airport improvement program is essential to many communities, both rural and urban. Additionally, smaller airports, which are central to rural commerce—we have a lot of them in my state—often struggle to get the funds needed for infrastructure updates for airports and runways. The local match requirement for small airport projects recently doubled from 5 to 10 percent. I'm concerned about the effect that this new requirement would force—that it could force small airports, which in the scheme of things aren't as small as some, like the one we have in Duluth, and elsewhere, to delay completion of critical infrastructure projects that were under way before the higher local match went into effect.

I don't think it's fair to change the rules midstream, and I hope you'll work to find a way to help these airports complete their projects, because it's obviously very important. You can't just change the rules midstream and then expect everything to keep going as planned.

So I'm going to be in Duluth tomorrow—we've had some major flooding up there—and was just wondering what I can tell them about this.

Mr. HUERTA. Well, Senator Klobuchar, the small airports play a very important role in our national system of airports. As you know, I had the pleasure of joining you in Bemidji a couple of years ago, which is a very important airport in Minnesota that I think serves an important need in the community.

This question of the local match is something that was included in the FAA authorization, and we certainly recognize the burden that it represents for some of our smaller airport sponsors, particularly those that are midstream in projects. We think that, generally, the challenges that they have are pretty project-specific and very site-specific. Therefore, we have been aggressively and actively reaching out to airport sponsors: is this presenting a problem? How can we work with you to manage through these match issues to ensure that, at the end of the day, we get a successful project consistent with the provisions of the AIP program?

So what you can tell your constituents in Duluth is that if they have not been in contact with their local airport's district office—

Senator KLOBUCHAR. Oh, they have.

Mr. HUERTA.—then we need to make sure that we sit down and work through an actual project plan to see how we can manage through this.

Senator KLOBUCHAR. OK, that would be very helpful.

Then also I hope you can commit to making sure that cold weather airports, such as the ones you just discussed, Bemidji, Duluth, get the flexibility they need to complete infrastructure improvements with the short construction season issue. This is, again,

they're waiting for awarded funds to be released so they can try to get this construction done through the summer season.

Mr. HUERTA. Two aspects to that. The FAA Authorization Act creates a framework under which we would prioritize cold weather airports for grantmaking purposes, and we're working on the implementation of that. But on an informal basis right now, what we're doing is making those determinations of where do we have an airport with a short construction season that has a specific need to get something done quickly. We're making those a priority as we move through the system in recognition of the unique circumstances they face.

Senator KLOBUCHAR. OK, good, because you came to Bemidji in the summer. Otherwise I'm going to make you come to Duluth when it's 20 below zero and do construction. So we have to try to fix it. I really appreciate that.

Mr. HUERTA. Absolutely.

Senator KLOBUCHAR. Then last, I wanted to just ask about the pilot fatigue issue. I understand that in the final order of the new regulations that it only applied to commercial pilots. Cargo pilots were not included. Can you expand on why the FAA chose to do this?

Then I also have a concern about commuting practices. I know Senator Cantwell touched on this, and that some pilots commute across the country to their hubs and we have the issue where the FAA isn't following through with this request from the Inspector General about this particular commuting issue.

Mr. HUERTA. Well, first of all, as it relates to the pilot fatigue rule, as we talked about, the rule as it's currently drafted does exclude the cargo industry, but I've been very vocal in suggesting that the cargo industry should abide by the provisions of the rule. We've encouraged them to do that. Secretary LaHood has encouraged them to do that, and it's something that we've stressed should represent a good business practice for them in assuring a safe system.

We will continue to meet with the cargo industry to apply aspects of the rule, to make sure that they have an understanding of what compliance looks like. Again, I encourage them to abide by the provisions of the rule. We couldn't make it work from a cost-benefit standpoint and so we're asking for their voluntary compliance.

As it relates to the provisions of commuting, clearly pilots have a responsibility to report to work fit for duty. This is one of the things that we wanted to address in the fatigue rule, and I think we've come a long way in doing that. There is a level of personal responsibility that exists in the pilot community and I think the pilots have heard that and they understand that they bear a responsibility. We have to be vigilant to ensure that they have the opportunities for rest that they need so that they can report to work fit for duty.

Senator KLOBUCHAR. Very good. Thank you very much and I look forward to working with you on this. We'll put a few more questions on the record. Thanks.

Mr. HUERTA. Thank you.

The CHAIRMAN. Thank you, Senator Klobuchar.

Voting has started. Senator Cantwell has probably already voted and is racing back here because she has a couple more questions she'd like to ask. But in the mean time, Senator Blunt, who I so rudely interrupted, wants to finish his questioning.

Senator BLUNT. Well, thank you, Chairman. I was failing to watch the clock and you weren't rude at all, and I was taking time that should have gone to others and did.

What I was going to ask you about was on—we talked about the Columbia, Missouri, airport the other day. On these airports like that, that have moved off Essential Air Service, are there things that the FAA can do to encourage their ability to stay off Essential Air Service? Have you got some ideas there of ways that those kinds of airports that need to be planning for more travelers and more service could get some assistance in doing that?

Mr. HUERTA. Senator Blunt, as we talked about, Columbia is to be congratulated for being able to develop a level of air service that gets them off of the Essential Air Service program but as you quite correctly pointed out, how do we ensure they stay there?

There's an infrastructure component to that. After we met, I sat down with our airports staff to find out what we knew about Columbia and have encouraged them to meet with the leadership at Columbia airport. One thing that we will certainly need to do is recognize the fact that the airport's master plans are quite old. We probably need to update them. The FAA is certainly willing to be supportive of that and to work with the airport sponsor on what their long-term needs are to maintain an efficient airport.

Senator BLUNT. Well, that would be helpful. I think as these airports move to where they're not getting the Essential Air Service support, things that we can do to help them stay there are really beneficial and make money. As long as we have an Essential Air Service program, when we can help people stay off of it, it's hard to imagine that that's not a better investment than the VSA support that we normally would give those same airports. So thank you for looking at that.

Thank you, Chairman.

The CHAIRMAN. Thank you, Senator Blunt.

What I need to do now is, because we've got—Senator Klobuchar, who's finishing her third book over there, we—

Senator KLOBUCHAR. I'm tweeting about you. No, I'm not really. You wish.

The CHAIRMAN. I wish.

[Laughter.]

The CHAIRMAN. Senator Cantwell is on her way back. So what I'd like to do, with your forbearance, is simply to recess this for a couple of minutes. She'll be back finishing her questions, and then we will adjourn. But Senator Klobuchar and I need to go vote.

Thank you very much.

Mr. HUERTA. Thank you, sir.

[Recess at 11:15 a.m.]

[At the direction of the Chair and Ranking Member, the hearing was adjourned without further testimony at 2:43 p.m. by John Williams, General Counsel for the Commerce Committee.]



## A P P E N D I X

AIR CRASH VICTIMS FAMILIES GROUP  
*Ridgewood, NJ, June 19, 2012*

Hon. JOHN D. ROCKEFELLER IV,  
Chairman,  
Senate Committee on Commerce, Science, and Transport,  
Washington, DC.

SUBJECT: NOMINATION THE HONORABLE MICHAEL P. HUERTA, FEDERAL AVIATION  
AGENCY (FAA)

Mr. Chairman:

We support the President's nomination of the Honorable Michael P. Huerta for a full term as the Administrator of the Federal Aviation Agency (FAA).

Since 2011, Mr. Huerta serves already at the Federal Aviation Agency (FAA), first as a Deputy Administrator to which appointment you gave your Advice and Consent and the full Senate confirmed him. Presently he is the FAA's Acting Administrator.

Considering the heavy workload of your Committee, we appreciate that some time was found to give the nominee the opportunity of a confirmation Hearing which—we do hope should be followed by timely, appropriate action of the full Senate, implementing your Advice and Consent to his nomination.

The nominee has a proven, distinguished and wide ranging record as an able administrator not only presently at the FAA—but also at the Department of Transportation (DOT)—in the wider field of transportation, at large events and by education in the international field.

We respectfully request that this letter be made part of Mr. Huerta's confirmation file, be distributed to the distinguished members of your committee and to the general public, if appropriate.

Respectfully,

HANS EPHRAIMSON-ABT,  
*ACVFG—Chairman.*

With: James Brokaw—Victoria Cummock—Miles Gerety—Jim Hurd—Richard Kessler—Kendra St. Charles

By e-mail and surface mail.

cc:—The Hon. Senator Kay Bailey Hutchinson, Ranking Member

The Hon. Maria Cantwell, Chairman, Aviation Subcommittee

The Hon. Senator John Thune, Ranking Member

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RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. JOHN F. KERRY TO  
MICHAEL P. HUERTA

*Question 1.* In October, 2011, the U.S. Court of Appeals for the District of Columbia said the Federal Aviation Administration (FAA) misread its own rules when assessing Cape Wind renewable energy project off Nantucket Sound in Massachusetts. Specifically, the court determined that the FAA did not adequately determine whether Cape Wind's 130 turbines—each 440-foot tall—would pose a danger to pilots relying on sight rather than the plane's instruments. The court vacated the government's "no hazard" finding and sent the case back to the FAA, agreeing with plaintiffs that "the FAA did misread its regulations." I understand that you were not at the FAA when this proposal was approved.

It is my understanding that the Federal Aviation Administration is reconsidering its approval for the Cape Wind renewable energy project in Nantucket Sound. If confirmed to be the Administrator of the FAA, will you assure the Commerce Committee that the FAA will provide an appropriate and fair review to both sides of

the safety issues related to the Cape Wind application will be done before any final decision on this project is made?

Answer. If confirmed as Administrator, I will continue to ensure that FAA's objective to promote air safety and the efficient use of the navigable airspace will be maintained. In evaluating potential obstructions to air navigation, the standards and processes FAA uses to make obstruction determinations and their effect on the safe and efficient use of the airspace are prescribed by statute and FAA regulations and orders.

As the Senator noted, on May 17, 2010, FAA issued written determinations that each of 130 wind turbines proposed to be built by Cape Wind in Nantucket Sound would not be a hazard to air navigation if properly marked and lighted. FAA issued these determinations only after it conducted an in-depth, year-long aeronautical study on the proposed project's effect on the operation of air navigation facilities and the safe and efficient utilization of the navigable airspace, as required by statute. As a result of the court case referenced by Senator Kerry, FAA will be issuing new determinations for the Cape Wind project in accordance with our statutes and regulations while factoring in the Court's decision issued last October. The FAA determinations will reflect the rigorous, science-based analysis FAA has undertaken to evaluate the Cape Wind proposal. Our approach will provide an appropriate and fair review of the Cape Wind application.

*Question 2.* As you may know, the Westfield Barnes Regional Airport in Westfield, Massachusetts is utilized by commercial and private aircraft as well as the Air National Guard. Runway 2/20, the primary runway, is in dire need of reconstruction. The runway is over 27 years old and has sustained continued deterioration despite investment from the FAA for patches. This runway is a critical asset in Western Massachusetts for commercial and private aircraft tenants and visitors but also by the 104th Fighter Wing and the missions they support at the Air National Guard level as well as Homeland Security in the F-15C Eagles. For the well being of all planes that land and take off from Westfield Barnes Regional Airport it is imperative that Runway 2/20 be looked at for a rebuild prior to the scheduled date of 2015. Would you be willing to review the runway's status and see if the repaving can be sped up?

Answer. The FAA is willing to review the runway's status and see if the repaving can be sped up per the Senator's request. However, as the Senator notes, the runway is used by both civilian and military aircraft. AIP funds may only be used for the portion of the runway rehabilitation that is justified by civilian operations, and the military would fund the additional length of the runway that is needed for military operations. (The civilian aircraft using the runway do not need as much runway length as the military aircraft do.)

The FAA has confirmed that the recent runway repairs that have been funded by the American Recovery and Reinvestment Act (2009), the Air National Guard (2011) and the Massachusetts Department of Transportation (2011) have brought the runway up to a level of safety that will allow it to perform until the scheduled 2015 rehabilitation can be completed.

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RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. BARBARA BOXER TO  
MICHAEL P. HUERTA

*Question 1.* I understand that you will be revising the OMB cost estimates for the pilot fatigue management rulemaking that was recently issued. Senator Snowe and I have introduced legislation, the Safe Skies Act of 2012, to close the current loophole in the new fatigue management plans for pilots that would exempt cargo airline pilots to ensure that they are included in the same requirements as commercial airline pilots. Will you share the outcome of this revised study with us? Will you take into account the concerns expressed by pilots regarding the exception for cargo carriers?

Answer. The FAA has asked the Volpe Center to evaluate the final regulatory evaluation to identify and correct errors in the calculation of potential costs and benefits to all-cargo operations. These errors were discovered by the FAA during the course of litigation associated with the agency's decision not to include these operations in the new part 117. This new regulation imposes new flight, duty and rest requirements on part 121 passenger operations. This fall, the FAA intends to issue a draft supplemental regulatory evaluation that will correct any errors and also better explain our underlying assumptions and methodologies in calculating the anticipated costs and benefits detailed in the final regulatory evaluation. Once the supplemental regulatory evaluation is complete, it will be published in the *Federal Register* for notice and comment. All interested parties are invited to comment on that

document. After the FAA has had a chance to evaluate comments received, the agency will issue a notice indicating whether the supplemental regulatory evaluation and the agency's review of comments justify any change to the final rule.

*Question 2.* Following the tragic crash of Flight 3407, the NTSB investigation revealed some significant issues in how the pilots were trained, especially in regards to handling a stall. In light of that, Congress unanimously passed legislation aimed at improving safety, including the training of commercial pilots. The FAA is already behind on the rulemaking to address pilot training. Is the FAA still planning to delay this rulemaking until October 2013? If so, how is the FAA planning to expedite efforts to address concerns the Flight 3407 families have raised regarding the lengthy implementation time frame?

*Answer.* The *Qualification, Service, and Use of Crewmembers and Aircraft Dispatchers* Supplemental Notice of Proposed Rulemaking (SNPRM) is a comprehensive training rule that includes revised airline pilot training requirements. The SNPRM public comment period closed in September 2011 and the FAA is currently developing the final rule. The agency currently projects a publication date of October 2013 for the final rule, but I am committed to working to accelerate that if possible. The final rule will permit the certificate holder to use its approved programs while it transitions to the new requirements. In the SNPRM we proposed up to 5 years for that transition. New air carriers must train under the new requirements from the first day of operations. However, we will consider the transition period as we draft a final rule.

To accommodate training on stall and stall recovery, we also had to make changes to the fidelity of the simulators used for that training. The Rulemaking Action Plan for that rule was approved and the team is developing the Notice of Proposed Rulemaking.

We reinstated the Stick Pusher and Adverse Weather Aviation Rulemaking Committee to address aircraft stall training and to develop mitigating upset recovery training strategies. This group will provide the FAA with additional recommendations in Fall 2012. The FAA is participating in initiatives of the Royal Aeronautical Society (RAeS) and International Committee for Aviation Training in Extended Envelopes (ICATEE) to address loss of control. ICAO has also extended invitations to other national aviation authorities (NAAs) to observe these proceedings and facilitate harmonization in the development of future training standards. These harmonized efforts will ensure U.S. pilots will continue to receive the highest quality and relevant training available.

These are complicated rulemaking endeavors that require a substantial investment of time and resources, including executive review within the Administration. Nevertheless, I am committed to doing everything we can to finalize rulemakings as quickly as possible.

*Question 3.* The Flight 3407 accident also raised serious issues regarding pilot qualifications among regional airlines and the major commercial airlines. Where is your agency at in the process of completing the pilot qualifications rulemaking process? What progress have regional airlines made in implementing stronger pilot hiring standards? Are they making the same investment in safety as the major airlines?

*Answer.* P.L. 111-216 required all part 121 flight crew members to hold an ATP certificate by August 2, 2013. Although the NPRM incorporates the ATP certificate requirement, the Act's requirement is self-enacting and will take effect on August 2, 2013 independent of any FAA rulemaking action. The FAA is working to have a final rule out prior to August 2, 2013. The FAA issued Information to Operators (InFO) 10024 on December 15, 2010 to notify air carriers of the ATP requirement.

The *Pilot Certification and Qualification Requirements for Air Carrier Operations* Notice of Proposed Rulemaking (NPRM), which provides training requirements for achieving an airline transport pilot certificate and includes the requirement that all airline pilots have an airline transport pilot certificate, closed for public comment on April 30, 2012. We are currently reviewing and considering the more than 550 comments received to the proposal as we develop the final rule. The NPRM is consistent with a mandate in the Airline Safety and Federal Aviation Administration Extension Act of 2010 (P.L. 111-216). The NPRM would require first officers to hold an Airline Transport Pilot (ATP) certificate, which requires 1,500 hours of pilot flight time. Currently, first officers are required to have only a commercial pilot certificate, which requires 250 hours of flight time. The proposal also would require first officers to have an aircraft type rating. The proposal included modified flight time requirements based on military or academic experience.

We are working towards publication of a final rule that will address the comments in advance of the August 2013 self-enacting statutory requirement that all pilots in Part 121 operations have an airline transport pilot certificate.

All regional airlines and major airlines are covered by 14 CFR Part 121 and must meet the same safety standards.

*Question 4.* In the 2010 Airline Safety and Federal Aviation Administration Extension Act of 2010, Congress sought to address the issue of keeping better track of pilot records by creating a federal electronic record database for all pilots. In response to my question for the record for the Commercial Airline Safety Oversight hearing in March, the FAA said that the proof of concept for the database would be completed in the 4th quarter of 2012 and you will then evaluate and determine a rulemaking timeline. Can you comment as to when the rulemaking timeline would come out after the evaluation is completed? By what date could we expect to have the rulemaking finalized?

Answer. Depending on what we learn in the proof of concept phase, we expect to develop the plan for rulemaking by November of 2012. This scenario would yield a Pilot Record NPRM in March of 2014 and a final rule in November of 2015.

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RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. MARK PRYOR TO  
MICHAEL P. HUERTA

*Question 1.* Do you believe you have the necessary statutory authority to implement Section 221 (Public-Private Partnerships) in the FAA Modernization and Reform Act of 2012 (P.L. 112-95)? If not, please explain and provide the agency's plans for implementation.

Answer. Based on the Federal Credit Reform Act of 1990, the FAA believes that additional statutory authority is required to create an incentive program. The FCRA requires either budget authority, a loan limitation or other provision in an appropriations act before the FAA can make or guarantee loans. Since Section 221 of the "FAA Modernization and Reform Act" requires the Secretary to finance any program established under this section through the collection of collateral, fees and premiums, a loan limitation is most applicable.

The FAA is currently evaluating various options to see how this provision might allow us to provide incentives for equipage that would accelerate the benefits of NextGen. We are also evaluating other government incentive programs and assessing feedback from stakeholders to develop and then implement an effective incentive program. The agency held one public meeting and another is scheduled for August 7 to share the evolution of our thinking based on what the agency heard from stakeholders and to communicate next steps. Additionally, the agency released a market survey to determine interest in this incentive program by both private parties and users of the National Airspace System. Based on review of other incentive programs and stakeholder feedback, the agency is designing an equipage incentive program for possible implementation.

In order to complete the stand-up of the equipage incentive program, the FAA must evaluate stakeholder feedback; finalize the design of the incentive program; determine that such a program will meet the goals of accelerating equipage and delivery of NextGen benefits; receive additional statutory authority; and complete the administrative processes in support of the Federal Credit Reform Act of 1990.

*Question 2.* How is the FAA working to ensure Automatic Dependent Surveillance-Broadcast equipage is accelerated and what milestone based timelines are you working toward?

Answer. Through a monitoring capability, the ADS-B program office has detected more than 775 properly equipped aircraft (mostly General Aviation) on the East Coast, West Coast, and in Alaska that are taking advantage of traffic and weather information services. In addition, there are approximately 150 aircraft equipped with ADS-B Out rule compliant avionics.

To expedite equipage, the agency has signed agreements with several airlines, including JetBlue, United, UPS, and US Airways. These agreements are set up to demonstrate the benefits of advanced ADS-B applications and procedures during revenue service and allow the FAA to share costs and risks with the participants. The operational evaluations will give the agency detailed cost and benefit data, and encourage airlines to equip early to capitalize on ADS-B benefits. Under these agreements, the following equipage will occur:

- 35 JetBlue A320 aircraft
- 12 United 747 aircraft (DO-260 complete, upgrades to be rule compliant in 2013)

- 20 US Airways A330 aircraft
- 143 UPS aircraft (747, 767, A300, and MD-11)

To ensure FAA ADS-B projects meet established goals and timelines for the acceleration of equipage, the Flight Standards (AFS) and Aircraft Certification (AIR) offices in Washington, D.C. coordinate directly with the supporting certification (ACO) and certificate management offices (CMO) to provide guidance and assist in the management of priorities and workload. AFS and AIR coordinate with avionics manufacturers, ACOs, and CMOs to expedite the certification, installation, and operational approvals of new ADS-B avionics to aid in increased equipage. Additional technical standards are being developed that target the needs of the general aviation community within the US. These new standards will allow manufacturers to produce and market ADS-B equipment at a lower price, making ADS-B equipage more affordable for this large group of NAS users.

The agency has also agreed to fund upgrades to the avionics for approximately 54 helicopters in the Gulf of Mexico. These operators voluntarily equipped with an earlier version of ADS-B avionics before the ADS-B rule requirements were published. In addition, the FAA will award a contract this fall to upgrade approximately 400 air taxi aircraft that were equipped under the legacy Capstone program in Alaska.

The ADS-B Out Final Rule was published in May 2010, with compliance effective after January 1, 2020. In conjunction with publication of the rule, associated technical standards and installation guidance were published to enable the manufacture and installation of ADS-B Out avionics to begin 10 years before the mandate. The ADS-B program office considers 2012 to be early for self-equipage under the rule, as manufacturers are just now starting to submit avionics through the FAA's certification process. The FAA anticipates equipage to increase in 2013 and beyond, as more certified, rule-complaint avionics become available.

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RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. KAY BAILEY HUTCHISON TO  
MICHAEL P. HUERTA

*Question 1.* Fundamental NextGen programs have suffered delays and cost increases, raising concerns over the Federal Aviation Administration's (FAA) ability to deliver NextGen benefits in a timely fashion. How will you get this critical initiative moving forward again?

Answer. NextGen has a high priority in the Administration, the Department of Transportation and the FAA. Its complexity and interdependencies make it different from anything the FAA has ever done. In 2010, an external organization was tasked by the FAA Administrator to diagnose the current state of NextGen via interviews and surveys with employees across the Agency. Agency leadership recognized the need for a transformation that would result in one FAA moving towards successful integration of the extremely complex NextGen vision of National Airspace System (NAS) modernization.

The assessment resulted in two key recommendations to better position the agency to successfully implement NextGen:

- Create increased internal and external visibility of the NextGen organization by establishing a direct line of reporting to the Deputy Administrator, as well as a restructure of positions and groups to better align with organizational goals and the NextGen mission. The agency implemented this change as part of our reprogramming request last year.
- Develop a process in which an idea is developed and implemented in the National Airspace System (NAS) through cross-agency collaboration, increased transparency, defined roles and responsibilities, and establishment of clear decision authorities

NextGen requires an expanded and more collaborative acquisition process for the NAS than we have traditionally used. From May to September of 2011, the Functional Design Consideration Team (FDCT) worked extensively to address the above recommendations. The FDCT included members from the NextGen organization and representation from across the agency. Specifically, the group developed the Ideas to In-Service framework (i2i) to move a concept from an idea to in-service management. Highlights of i2i include:

- A deliberate reduction in "hand-offs" in favor of collaboration. NextGen, program management offices, operations and other FAA offices engage throughout the capability lifecycle from beginning to end.

- A single FAA-wide process for changes to the NAS that works with all contributors to the NAS.
- A collaborative approach that requires shared accountability, responsibility and risk. This is achieved through direct and obligatory engagement.
- Capture Teams, which consist of representatives across the agency who are responsible for activities such as requirements management, configuration management, and assumption/constraint management. Capture Teams minimize rework and retain the same stakeholders to manage a portfolio of products from the managing requirements stage all the way through to in-service management.

The framework was approved on September 26 by the FAA's NextGen Management Board (NMB). The FAA is currently in the process of integrating i2i into the agency's training and workflows.

The FAA also created the Program Management Organization or PMO. This new central program office within the Air Traffic Organization assembles in one organization the majority of programs that specialize in program management. This allows our operational groups to focus on the key daily mission of safely separating air traffic and maintaining our airspace system. It allows our program organization to focus on managing for better outcomes by developing improvements to our airspace and making sure these solutions are on time, cost effective and within scope.

The PMO will improve consistency of program execution through robust information sharing with stakeholders, institutionalization of acquisition best practices and community review of lessons learned. The PMO will standardize the required steps, from definition and design through development and deployment, creating a bridge between concepts and operational use of technologies. Having a portfolio of programs under one umbrella provides the potential for streamlining, better cost control and economies of scale to better manage uncertainty.

The PMO will also ensure greater visibility, tighter alignment and closer integration of complex, interdependent NextGen initiatives and innovative technology. The PMO will play a critical role in the success of NextGen by acting as the bridge between strategic requirements and tactical program implementation to improve the safety and efficiency of our National Airspace System.

The PMO's success will depend on developing and maintaining relationships with other FAA organizations. Most critical among these are our relationships with NextGen, which will help set the overall direction of some of our highest priority program work, and with Mission Support's requirements and concept validation office, which will help ensure operational adaptability and validity.

An added benefit for our coworkers is the PMO will recognize and elevate the profession of program management within the agency. The PMO will clarify and enhance program management and related acquisition career paths, and help us attract and retain highly skilled and motivated individuals on program management teams.

The PMO will play a critical role in each of the tenets of our new flight plan, Destination 2025: moving to the next level of safety, creating a workplace of choice, delivering aviation access through innovation, sustaining our future, and advancing global collaboration.

*Question 2.* The Special Counsel's May 8, 2012 letter cites whistleblower disclosures regarding recurring safety lapses and inaction to solve these problems even after the establishment of the FAA whistleblower office. At the hearing, you cited the establishment of this office as a tool to help to resolve safety issues before they affect the travelling public. But the persistence of these issues years after the establishment of the office raises concern. What are your plans to more effectively improve the safety culture at the FAA?

*Answer.* The U.S. Office of Special Counsel's (OSC) May 8, 2012 letter to the President, to Congress, and to the Secretary of Transportation closed seven whistleblower cases filed by eight FAA employees. Four of the seven cases were repeat disclosures dating back to 2008 and filed again by the same whistleblowers. Only one of the 7 cases (Seeley) is an entirely new case referred by OSC after the establishment of FAA's new Office of Audit and Evaluation (AAE, "whistleblower office"). Two of the seven cases involve a single whistleblower who has filed a total of seven OSC disclosures since 2008 for primarily related issues at Detroit (DTW) tower.

AAE's mission was formally established by the agency in December 6, 2010 and enacted into law on February 14, 2012 when the President signed the FAA Modernization and Reform Act. Thus, our new procedures for dealing with whistleblower disclosures were not in place when most of these cases were initially referred to the FAA.

In the Seeley case, which was investigated and overseen by the AAE organization, the OSC complimented the FAA and found our actions comprehensive, timely, and reasonable. In all of the seven cases, the FAA initiated immediate actions on any safety issues which were substantiated (many were not), long before OSC's May 8 closures, and in no case was the safety of the travelling public significantly impacted. In all of the four repeat disclosures, the FAA was already working with the whistleblowers on corrective actions prior to their decision to file the repeat disclosures with the OSC.

The OSC delayed their closure of these cases, in some cases, for more than a year after they had received the investigative reports from the DOT Office of Inspector General (OIG) or FAA AAE. In none of the cases did either OIG or AAE find that there was "a substantial danger to public safety." However, all of them were vigorously addressed because of our desire to correct any safety deficiency that is identified, even if that issue involved small levels of risk.

In the other six cases covered in the May 8 letter, the OSC did not allege FAA "inaction." Rather, they alleged that the agency's responses were "unreasonable because of delays or the lack of appropriate or timely corrective action", and the FAA strongly disagrees with the OSC's conclusions. In all of those cases, the FAA implemented comprehensive corrective actions and continues to audit the effectiveness of those actions.

While the FAA applauds the OSC's good intentions and diligence in its oversight efforts, the Pay increases under the recent contract extension are not based on individual or agency performance. The contract provides two raises to employees. The January raise is equal to the Presidential Increase so employees would not receive a raise if there are continued freezes in the general schedule. The second raise is paid in June and is fixed at 1.6 percent. The June raise will "not be granted in any year in which a prohibition on step increases under the General Schedule (GS) is enacted by statute." The FAA must proceed very carefully when making changes in air traffic procedures or to the Federal Aviation Regulations (FARs), and any proposed change must be carefully evaluated so as to ensure that the proposed action will effectively address a known safety issue and will not introduce new and unintended consequences, which could introduce new risk factors more serious than the issue under consideration for appropriate corrective action. That careful evaluation process requires painstaking evaluation and data collection and usually takes a considerable amount of time. Sometimes, new procedures are introduced on a trial basis, but are later withdrawn because the data either do not support their effectiveness, or better changes and refinements are identified during the data collection and safety risk evaluation process.

The aviation community, in general, has a long history of safety reporting, and aviation professionals have always been more inclined to report safety issues than employees in other venues. In large part, this culture of safety reporting has contributed to the remarkable safety improvements and to the astonishingly strong commercial aviation safety record, which has no peer in any other environment.

The FAA believes that a strong measure of a healthy safety culture is an environment with a consistently large number of safety disclosures, and we believe that the OSC arrived at an erroneous conclusion by implying that more safety disclosures somehow infers the presence of more safety problems or negatively implicates an organization's safety culture.

We believe the opposite to be true. That is, the absence of safety disclosures is more characteristic of an unhealthy safety culture where employees are reluctant to report their concerns.

To bolster our safety culture, we are continually encouraging the reporting of all safety concerns by both FAA employees and any other member of the aviation community by providing a non-punitive reporting environment, where a safety disclosure can be filed without fear of retaliation or other negative consequences. AAE was established as an entirely independent office reporting to the Administrator for that very reason. Programs like the Aviation Safety Action Program (ASAP), the Air Traffic Safety Action Program (ATSAP), Voluntary Self-Disclosure Program (VDRP), the Whistleblower Protection Program (WPP), and other reporting programs are all aimed at *increasing* our number of safety disclosures to provide us with more safety data trends, and thus continually bolster the strength of our safety culture.

*Question 3.* What actions did you take to address each of the safety issues raised in the Special Counsel's May 8, 2012 letter to the President and Congress?

Answer. The corrective actions implemented by the FAA in all of the seven cases closed by the OSC on May 8, 2012 are summarized below:

### **Foster**

This is repeat disclosure originally referred to the FAA in 2008. The OSC concluded that the FAA's actions were "unreasonable," but only because of what they perceived to be an unreasonable delay in implementing a comprehensive corrective action plan. The OSC does not suggest that the corrective action plan now in place is "unreasonable" or in any way ineffective.

The main thrust of this issue is not the actual safety or airworthiness of the emergency medical system (EMS) helicopters retrofitted with night vision imaging systems (NVIS), per se. The disclosure pertained exclusively to regulatory compliance with NVIS installation specifications and thus, only to operations while using the NVIS systems, which is a small fraction of EMS operations. The corrective action plan did take a considerable amount of time to implement because almost every one of the hundreds of EMS helicopters fitted with NVIS is unique, and each installation had to be customized for an individual aircraft. Thus, aircraft, so equipped, had to be visually inspected by the FAA, and new airworthiness guidance for the installation in each individual aircraft had to be developed. That did take considerable time and consumed an extraordinary number of FAA aviation safety inspector resources.

There were no reported safety incidents involving malfunctioning NVIS systems, but if there had been a pilot could simply have taken the night vision goggles off. In the FAA's inspection of NVIS-equipped helicopters, 51 identified "potential safety concerns" were given to a team of senior airworthiness experts for analyses, but only one was judged to be an actual safety concern.

Nonetheless, all of the identified discrepancies were addressed. While there was no violation of "law, rule, or regulation," the FAA does agree that FAA guidance was inadequate to address to complexity of installing and maintaining the regulatory compliance of NVIS systems, and new guidance was put into place. In short, no significant danger to public safety existed in this case, but the issue was aggressively addressed.

### **Seeley**

The OSC concluded that FAA actions were "reasonable." The FAA removed the entire management team at the New York Air Route Traffic Control Center (ZNY-ARTCC), and all of the allegations substantiated during our investigation were the result of lax and inadequate management. Actions were taken to terminate the facility manager, and other subordinate managers were served with disciplinary proposals and removed from the management ranks.

The new management team implemented a comprehensive set of management reforms and facility management procedures changes. The AAE continues to monitor compliance with these new procedures, and level of compliance with FAA policies at ZNY-ARTCC is now high.

### **Iacopelli**

This investigation was referred prior to the formal stand-up of AAE and was performed by the DOT-OIG with FAA support. The OSC again concluded that the FAA's actions were "unreasonable," but only because of what OSC felt were delays in its resolution. Despite this finding of "unreasonable," the OSC goes on to acknowledge in the May 8 letter that the resolution was satisfactory.

This safety disclosure pertained to a visual flight rules (VFR) departure procedure ("Dalton Procedure") at Teterboro, NJ (TEB) airport, which was designed to minimize the risk of uncontrolled VFR traffic conflicts with arrivals at nearby Newark Liberty International Airport (EWR). The complainant reported that pilots were sometimes flying the procedure incorrectly, which increased the risk of a traffic conflict with a EWR arrival.

The OIG concluded that the Dalton Procedure *may* pose a hazard, but neither the FAA nor the OIG had sufficient evidence to conclude that a safety issue existed. Thus, the FAA immediately agreed to begin auditing Dalton compliance, while in the meantime instructing controllers not to offer the use of that procedure unless pilots specifically requested it. OIG agreed with this approach and the logical rationale that only pilots familiar with Dalton would request it, decreasing the probability they would fly it incorrectly.

FAA and OIG both agreed that cancelling the Dalton Procedure would have posed a greater danger to public safety because pilots could still have requested a VFR departure, in which case there would have been no guidance from FAA other than "see and avoid" all traffic. Dalton was an attempt to impose stricter guidelines on VFR operations.

After collecting sufficient data, the FAA agreed that the Dalton Procedure could, and should, be revised. The whistleblower worked with the FAA and agreed that

the revision would correct the problem, and steps were taken to implement and evaluate it on a trial basis. The new Dalton Procedure has proven effective, and after final validation, it will be published as a permanent procedure soon.

This case also illustrates that the process of implementing airspace procedures changes always requires considerable time, because it would be irresponsible to implement changes in the absence of compelling evidence of a severe risk to public safety without a systematic data collection and safety risk analysis. To do so would run the risk of introducing unintended consequences, with greater risk to public safety than the original procedure.

#### **Lund/Mirau**

This is a repeat disclosure of a case that was originally referred in 2008 by one of the same whistleblowers (Lund). The 2008 case involved Northwest Airlines (NWA), whose fleet has now been incorporated into Delta Airlines (DAL), and the newer case also involved the same former NWA aircraft. The OSC concluded that the investigative findings and corrective actions were “reasonable,” but questioned FAA’s surveillance program because additional discrepancies were noted, related to the 2008 case, and suggested that FAA took too long to implement effective corrective actions.

The OSC contention that actions took “too long” does not take into account the sequence of events leading up to the whistleblowers’ allegations. The process began with the fact that Mr. Lund had not completed the assigned task for the review of the B-757 maintenance program at DAL. Subsequently, he was assigned to complete this task with the assistance of another safety inspector. He failed to complete the task and contacted the OSC. Following this action, the DAL FAA certificate management office (CMO) conducted an independent review with three DAL CMO inspectors of the B-757 program. This inspection led to two enforcement action filings and an action plan audit script to correct the administrative deficiencies discovered. This audit script was applied to all nine fleet types operated by DAL, both by the company and a 100 percent review by each fleet assigned FAA maintenance inspection manager. The airline agreed to conduct a safety analysis review for the correct application & implementation of all of the airworthiness directives (AD) associated with the maintenance program. This review was completed by December 31, 2011 and all minor administrative issues were resolved, with only one AD requiring corrective action. Such reviews are part of FAA’s continuing surveillance process and procedures implemented after the 2008 disclosure, and well prior to the more recent OSC disclosure.

On June 2-9, 2011, a FAA Headquarters-appointed Flight Standards (AFS) investigation team conducted a review of the whistleblower allegations and did not substantiate the alleged non-compliance of DAL with AD 2008-10-11. The investigation did not substantiate the allegation that the Operations Specifications (OPSS) were approved with known deficiencies. The FAA investigation determined that the administrative discrepancies revealed were not significant enough for a safety of flight concern. However, enforcement action is still being contemplated against DAL for non-compliance in certain areas.

The FAA’s final conclusion after an administrative review of maintenance documentation, interviews with ASI’s and Delta personnel was that there was no immediate safety of flight issues or unsafe conditions associated with the allegations, even though both FAA and the OIG identified some compliance discrepancies. The complexity of this timeline, the technical implications of the non-compliance findings, and the complexity of the various reviews underway well prior to OSC’s referral again all underscore the challenges OSC faces in making appropriate determinations of “reasonableness” and “timeliness.”

#### **Diaz**

This is another repeat disclosure originally referred in 2008. This case pertains to deviations of foreign-controlled air traffic (foreign facility deviations, FFDs) into U.S. airspace around Puerto Rico (PR). An FFD is not a “near miss” or a “close call.” It is simply an unauthorized and uncoordinated deviation into U.S. airspace because no prior communication has taken place prior to the entry into U.S. airspace. The allegations were partially substantiated, and OSC criticized the FAA for taking too long to resolve the problems identified in 2008.

However, OSC’s May 8 conclusion does not correlate with the trend data on FFDs in PR airspace. In 2009, there were 52 recorded FFDs. In 2010, there were 76, but in all of 2011 there were only 18, and the 2012 year-to-date numbers remain consistent with 2011 levels, as a result of better coordination between San Juan controllers and foreign facilities, primarily the Dominican Republic.

The FAA agrees with the OIG's finding that FFDs into PR airspace do not pose a substantial and specific danger to aviation safety. These FFDs occur when a non-US controlled aircraft from foreign airspace deviates into (enters) adjacent airspace controlled by the San Juan ATC facility, at other than expected/intended location or at altitude/route/speed other than expected/intended without timely coordination/clearance or authorization.

The OSC stated that FAA has not completed all promised corrective actions. The most important of these is the development of a radar sharing agreement between the U.S., the Dominican Republic, and San Maarten, as well as the installation of a "shout line" between San Juan and the Dominican Republic that will enable instant, direct communication between facilities, and it is true that these actions have not been completed.

However, the U.S. cannot unilaterally force another sovereign nation to install equipment into its ATC facilities. The FAA has been and remains ready to install the necessary equipment in our facilities. Diplomatic efforts to persuade the appropriate foreign nations to speed up these installations continue.

#### **Sugent/Gault**

In this case, the OSC concluded that FAA's actions were "unreasonable" and "unresolved." The DOT-OIG partially substantiated the complainants' allegations that two competing directives pertaining to aircraft separation and missed approach procedures could be interpreted as being in conflict and not possible to simultaneously adhere to. In particular, the investigation found that some controllers at DTW, including management, misunderstood the directives and a lack of training was cited.

The FAA reviewed the published arrival and missed approach procedures at DTW, and Notices to Airmen were published on April 3, 2012, announcing new missed approach procedures, which seek to clarify any remaining confusion. The FAA reviewed the application of national air traffic policies in place at the time, and the agency does not agree that the procedures in question conflict with any other policies necessary for safe operations at DTW. In short, nothing inconsistent or unique was found at DTW, and that operating environment is common to other large airports with parallel runways and simultaneous operations. Thus, the national guidance is consistent.

In order to further reduce any remaining controller confusion, DTW updated their training materials related to simultaneous operations to ensure controller training was properly focused and understandable, and the facility retrained all local controllers responsible for simultaneous operations on the proper application of FAAO 7110.65 paragraphs 5-8-3, 5-8-4, and 5-8-5. The training of local controllers was completed Mar. 11-20, 2012. The FAA will continue to audit the effectiveness of the new guidance and procedures.

#### **Sugent**

The DOT-OIG and FAA-AAE investigation of this disclosure did not substantiate the allegations and concluded that the complainant's allegations did not constitute any safety problems. Nonetheless, the OSC concluded that the report and FAA's actions are "not reasonable," but they did not provide any technical justification to support this conclusion.

The complainant alleged that wind measuring equipment at DTW was "faulty." The two types of sensors installed at DTW sometimes displayed different, usually small discrepancies, in wind readings, but the vast majority of their measurements were relatively consistent. Testing revealed no system flaws, and that the slight variations at DTW are entirely normal and characteristic of the current state-of-the-art in wind measurement. FAA's experts disagree with the complainant's, and the OSC's conclusions regarding problems with the wind sensors. We do not agree that the wind sensors performance at DTW is any different than sensors installed in locations all over the system and that the sensors function as intended. There is inherent imprecision in wind sensor technology.

DTW opted for the newer wind sensor technology, and "ASOS" was selected as the primary wind sensor. ASOS is owned and maintained by NWS (NOAA, Department of Commerce), while the Wind Measuring Equipment (WME) is owned and maintained by the FAA. ASOS uses electronic transducers capable of converting pressure into an analog electrical signal. Pressure applied to the transducer produces a mechanical deflection that generates an electrical resistance change proportional to the pressure. Unfortunately, ASOS is susceptible to pressure changes when birds arrive, hover, and leave the ASOS measuring tower.

Currently, DTW controllers see both wind sensor readouts, ASOS and WME. Prior to March 2012, wind sensor readouts from the ASOS were archived but the WME readouts were not. With a new software patch installed in the WME at DTW, wind

readouts are now archived for a short period that allows local technicians to download wind sensor readouts if an anomaly between the two sensors is spotted. DTW is in the process of re-designating the WME as the primary wind sensor for their facility, and they soon will be trained to download archived data that can be analyzed following wind sensor readout discrepancies between the two systems at DTW.

In the same case, but on an entirely unrelated matter, the OSC also criticizes FAA for its “very slow progress” on implementing new standard instrument departures (SIDs) at DTW. With redesign of the airspace around Chicago, the high altitude airspace between DTW and Ohio was largely delegated to Cleveland ARTCC (ZOB). Although delayed, the recent cooperation between DTW and ZOB has created options to link existing Standard Instrument Departures (SID) to Cleveland, Cincinnati, and Columbus.

Procedures changes such as the publication of SIDs take time because of the careful evaluation, including flight checks, that must take place in order to avoid introducing new safety problems into the system. New DTW SIDs will be issued in the near future.

*Question 4.* Have all of the issues raised in the letter, including repeated air traffic controller misconduct, been resolved?

Answer. The FAA believes that all of the issues raised in the May 8, 2012 letter have been effectively addressed, including the allegations of controller misconduct. However, as discussed extensively in our response to question 3, it is imperative that the FAA continually audit all previously implemented corrective actions for effectiveness and compliance. As previously discussed, we operate in a complex and dynamic environment, and we must remain ever vigilant for new issues which may well arise in order to ensure continued procedural and regulatory compliance and the highest levels of safety.

*Question 5.* Given the current Federal budget pressures, what is your plan to keep personnel costs under control? What is your plan to balance agency priorities, including NextGen, against rising personnel costs within the agency budget as provided in the recently enacted FAA Modernization and Reform Act of 2012?

Answer. Over the past five years, FAA has managed to maintain its annual growth in Personnel, Compensation & Benefits (PC&B) costs in the Operations account to 3.3 percent per year—the same rate of growth experienced by the Operations account as a whole. As such, PC&B costs accounted for 69.6 percent of total Operations spending in FY 2011, essentially the same percentage as FY 2006.

There are two factors that make controlling personnel costs more challenging for the FAA as compared to other Federal agencies. First, the need to hire and retain a highly skilled and technical workforce creates and upward pressure on personnel costs. Second, unlike most other Federal agencies, FAA is required by statute to negotiate pay with its employee bargaining units.

Nonetheless, the FAA has achieved some recent successes to control labor costs despite these challenges. Our collaboration with the National Air Traffic Controllers Association (NATCA) resulted in an extension of the 2009 collective bargaining agreement for FAA’s air traffic controllers (referred to as the Red Book Contract). This extension of the Red Book contains pay raises equal to the raises received by other Federal employees under the General Schedule. The contract extension also contains a clause that does not allow any additional employees to go over their pay band maximums. The extension will slow the growth of PC&B costs for one of our largest and mostly highly compensated workforce segments. In addition, FAA has made improvements in recent years to manage overtime costs at our air traffic facilities. Overtime hours as a share of controller hours worked has fallen slightly, from 2.4 percent in 2008 to 2.1 percent year-to-date in 2012.

For non-safety related positions, we have established strict staffing targets to help the Agency maintain staffing levels consistent with efficient operations. Total Full Time Equivalent (FTE) levels in the Operations account have subsequently plateaued at about 42,500. While FTEs in the Operations account averaged 2.3 percent annual growth from FY 2007 to FY 2009, that growth has reduced to an average of 0.4 percent over the past two years.

Many Air Traffic Organization (ATO) processes have been standardized under a “shared services environment” concept with regional resources consolidated under service centers. Since implementation began in 2006, we have realized a net savings and cost avoidance of approximately \$330 million. And effective management of worker compensation claims has resulted in cost avoidance of over \$117 million since FY 2005.

We continue to search for new ways to control costs in the future. The FAA Modernization and Reform Act of 2012 requires the National Academy of Sciences to re-

view the air traffic controller and technical operations staffing standards to ensure the Agency continues to improve its methods for determining staffing for its air traffic operations. We look forward to reviewing the NAS findings when they become available and will work diligently to address their recommendations.

The FAA is committed to realizing cost efficiencies and avoidance wherever possible. We have taken a hard look at our organizational structure, and we are making changes to create a more streamlined and efficient agency.

*Question 6.* Growing demand for unmanned aircraft here in the United States is pushing the FAA to develop standards for their safe integration into the national airspace system, which could support as many as 23,000 jobs in the U.S. over the next 15 years, according to some estimates. If confirmed, how would you plan to safely integrate unmanned aircraft into the national airspace system?

*Answer.* The FAA is developing new policies, procedures and approval processes to address the increasing desire by public and civilian operators to fly UAS in the NAS. Developing and implementing these new UAS standards and guidance is a long-term effort. As part of this effort, the FAA chartered a UAS Aviation Rule-making Committee in 2011 to develop inputs and recommendations on appropriate operational procedures, regulatory standards and policies before allowing routine UAS access to the Nation's airspace. In addition, the FAA has asked RTCA—a group that facilitates expert advice to the agency on technical issues—to work with industry to assist in the development of UAS standards. RTCA's technical group will address questions about how UAS will handle communication, command and control and how they will “sense and avoid” other aircraft.

The FAA continues to work closely with its international aviation counterparts to harmonize standards, policies, procedures and regulatory requirements.

*Question 7.* We have seen an increase in the number of reported mishaps by controllers called “operational errors.” This increase has taken place while overall traffic levels are in decline, which should mean fewer errors, not more. What is the root cause of the sharp increase in operational errors, and what is FAA doing to address this serious safety problem?

*Answer.* Over the past several years, the FAA has methodically transitioned to a non-punitive error reporting system at its air traffic facilities and began implementing electronic monitoring of controller and pilot performance. These changes in safety reporting have produced a wealth of information to help the FAA identify potential risk and take swift action to address it.

As anticipated, these changes resulted in higher numbers of incident reports involving loss of required separation between aircraft than in previous year. Notwithstanding this increase in reporting, the number of incidents is very small; in fact, more than 99.9 percent of operations occur completely according to procedure.

These increases in reporting are consistent with the implementation of similar systems in the airline industry, *e.g.*, FOQA and ASAP programs, that have been extremely successful in the identification and reduction of potential risk and are absolutely necessary to an effective safety management system.

However, we have no intention of treating our extraordinary safety performance as good enough.

- First, we are moving from an events-based, reactive approach to safety analysis to a risk-based proactive approach through which we analyze vastly greater volumes of data in order to preview, predict and prevent risk situations that we might not have fully understood, or even known about, in the past.
- Second, we are generating this greater volume of data by moving to a safety culture where people are encouraged to provide essential safety-related information

As a result of these new systems we have implemented an SMS-based approach to separation loss mitigation. This new measure incorporates a risk analysis process that will increase our ability to mitigate risks associated with losses of separation.

Electronic monitoring of radar data coupled with voluntary reporting from controllers has enabled the FAA to develop a standardized risk analysis process and addressed dozens of identified safety concerns.

Information contained in our voluntary reporting system has resulted in well over 100 formal and informal corrections to; procedures, equipment, training, phraseology, etc. Examples:

- Chicago O'Hare (ORD): Construction Confusion
- Denver Centennial Airport (APA) New Wind Equipment
- Dalton Departure procedure at Teterboro and effect on EWR arrivals
- Airline Flights Incorrect Routing at San Francisco (SFO)

Additionally, consistent with industry best practices, the FAA is currently addressing five top areas to mitigate risks. The FAA determined the “Top Five” by analyzing collected safety data, considering the severity of an incident and the likelihood it will occur. The corrective action plans for each risk will reassess policy, procedures and training to prioritize resources. The “Top Five” includes:

1. Turns to Final—Arrival sequencing to final (angle and speed control.) Aircraft vectors at a speed and/or angle that result in an overshoot of final approach.
2. Parallel Runway Operations—Arrival sequencing at the same altitude and on parallel runways. (Aircraft overshoots turn to final at the same altitude as arrival traffic to a parallel runway.)
3. Go-Arounds—Unexpected go-around operations. (Arrival aircraft executes an unexpected go-around resulting in conflict with departing traffic as well as false ASDE-X alarms triggering a late go-around)
4. Clearance Compliance Altitude—Aircraft at other than expected altitude, for example, incorrect hearback/readback.
5. Coordination—Lack of appropriate or incomplete coordination among operational employees. (Aircraft handoff to controller at an altitude or route other than expected)

#### **Examples of Specific Improvements**

##### *Chicago O’Hare (ORD): Construction Confusion*

*Issue:* Airport construction shortened the available runway length but use of the term “full length” caused confusion between pilot and controller. Pilots interpreted “full length” to mean the actual runway length rather than the useable runway length.

*Resolution:* There was a national briefing created about “lessons learned” at ORD at towers who will be undergoing construction and/or are already undergoing construction. The Airport Construction Advisory Council followed up by amending the Controllers Handbook to eliminate use of the term “full length” from clearances whenever construction reduces the length of a runway, and also changed ATIS requirements to ensure that pilots are warned about shortened runways. Effective September 22, 2011, the ACAC also added requirements to the 7210.3 for air traffic managers to train controllers ahead of time and develop local directives for construction projects that affect their facilities. In addition, the ACAC has developed a compilation of best practices and a runway and taxiway construction checklist both of which can be found on their web page.

##### *Denver Centennial Airport (APA) New Wind Equipment*

*Issue:* Faulty wind instruments at APA created a safety issue due the proximity of the mountains and the thunderstorms in the vicinity of Centennial airport.

*Resolution:* A Stand Alone Weather System (SAWS) was installed in June 2010.

##### *Dalton Departure procedure at Teterboro and effect on EWR arrivals*

*Issue:* The Dalton Departure Procedure allowed pilots to depart Teterboro’s Runway 19 under visual flight rules (VFR) in Class D airspace, at the same time as IFR aircraft are arriving at Newark Airport directly above them in Class B airspace. Because flights operating under the Dalton Departure procedure remain outside of Class B airspace, the pilots are responsible for maintaining safe separation from aircraft descending into Newark.

*Resolution:* N90 proposed an interim procedure to plan for a gap in the EWR Rwy 22L final traffic to provide an extra level of mitigation to minimize the probability of a TEB Rwy 19 departure on the Dalton conflicting with an EWR Rwy 22 arrival during a potential altitude excursion. Procedures were to plan for a gap in the EWR Rwy 22L final traffic to minimize the probability of a TEB Rwy 19 departure on the Dalton conflicting with a EWR Rwy 22 arrival during an unforeseen altitude excursion. This required several levels of coordination and possible Traffic Management initiatives. This requires several levels of coordination and possible Traffic Management initiatives. Additionally, the following were other changes to the Dalton Departure Procedure that have been implemented:

- added a no radio/lost communications procedure,
- added a “wake turbulence” advisory,
- TEB ATCT Implemented an altitude reminder to departing aircraft,
- reduced location of the westerly turn after takeoff from 4 miles to 2 miles south of TEB.

*Albuquerque Airport vehicle confusion*

*Issue:* At Albuquerque (ABQ), several airport vehicles were using similar-sounding and confusing call signs. This presented a safety issue for the Tower, since vehicle operators often took each other's instructions, or had to ask that the instructions be repeated. To change long-standing call signs and practices was a challenge for the city.

*Resolution:* After numerous ATSAP reports, and at the urging of the ERC, the City of Albuquerque (the operator of the airport), the facility and NATCA, the parties reached agreement on new, less similar call signs, which were implemented in July 2011.

*Airline Flight Computer Discrepancies at Denver (DEN)*

*Issue:* An airline flying into Denver International Airport (DEN) was having issues with the routings stored within the Flight Management System (FMS). The FMS would divert to a Standard Terminal Arrival Route (STAR) different than what was filed in the flight plan. This could cause dangerous deviations from the expected flight, placing the aircraft into conflict with other traffic. The issue was thought to be resolved with a software upgrade to the FMS. However, an ATSAP submitter identified that the issue was reoccurring.

*Resolution:* In February 2011, the ERC shared the report with the airline's Aviation Safety Action Program (ASAP). The ASAP's ERC immediately discovered that when a pilot enters new information into the FMS resulting from a runway change, the FMS applies the preferential routing of the wrong STAR regardless of the clearance. In February 2011, the airline's Director of Safety immediately notified the pilots and the FMS was fixed within weeks. The airline's ASAP ERC commented that this would have taken them far longer to identify if it were not for the ATSAP report.

*Instrument Landing System at Savannah (SAV)*

*Issue:* The Instrument Landing System (ILS) at Savannah/Hilton Head International Airport (SAV) became unusable when aircraft were approximately a mile from the runway threshold.

*Resolution:* In January 2011, the ERC issued a Corrective Action Request (CAR) to address the safety problem. Technical Operations personnel evaluated the issue and were able to correct it by moving the localizer shelter and making improvements to the radar antenna. In March 2011, the ILS was returned to service without restrictions.

*Interference with radar at Greenville-Spartanburg (GSP)*

*Issue:* Since July 2009, the Greer Airport Surveillance Radar (ASR) at Greenville-Spartanburg International Airport (GSP) has had reduced coverage due to the inadequate height of the radar antennae and surrounding tree growth. The multiple actions to mitigate the issue have resulted in little resolution.

*Resolution:* In November 2010, the ERC issued a Corrective Action Request (CAR). After some reluctance, the airport authority removed the trees affecting the ASR in December 2011. For a long-term solution, the funding and construction to raise the antennae is to be completed in calendar year 2013.

*Confusion with Student Pilots at Fargo, ND (FAR)*

*Issue:* In 2011, the ERC began receiving reports about an issue at FAR ATCT where student pilots from the University of North Dakota would come over to practice. The pilots had predetermined routes that they would fly on departure. When they would depart FAR, the controller would say "proceed on course". To the pilot, that was interpreted to mean proceed on their predetermined route which actually caused the pilot to turn back towards the airport and begin their route from there. For the controller, it means proceed direct from the present position on course, but not back towards the airport which would cause conflict with other departures.

*Resolution:* With encouragement from the ERC, FAR ATCT met with representatives from UND and worked out an agreement that the controllers would use vectors to help the pilots join their desired route.

*Airline Flights Incorrect Routing at San Francisco (SFO)*

*Issue:* On occasion, one airline's flights departing San Francisco International Airport (SFO) would track towards a fix that was not evident on their flight plan.

*Resolution:* Through the Confidential Information Share Program (CISP), the report was shared with the airline's Aviation Safety Action Program (ASAP). It was discovered that the navigational data update for the Flight Management System (FMS) was missed mistakenly and it was subsequently discovered that the update did not occur at several other airports as well.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. JIM DEMINT TO  
MICHAEL P. HUERTA

*Question 1a.* In March of this year, you agreed to a four-year extension of the FAA's contract with the National Air Traffic Controllers Association, until July 1, 2016. Under the contract: What is the average compensation for the 100 highest-paid air traffic controllers, including overtime pay and all additional compensation allowed under the collective bargaining agreement?

Answer. The maximum salary for air traffic controllers is the statutory cap for Federal employees of \$179,700. In addition, controllers are eligible for premium pay, such as overtime, night, holiday pay, etc. In FY11, the 100 highest-paid controllers earned average cash compensation of \$245,300. This does not include benefits such as pension, health, OASDI, etc.

*Question 1b.* How are air traffic controller raises linked to performance?

Answer. Pay increases under the recent contract extension are not based on individual or agency performance. The contract provides two raises to employees. The January raise is equal to the Presidential Increase so employees would not receive a raise if there are continued freezes in the general schedule. The second raise is paid in June and is fixed at 1.6 percent. The June raise will "not be granted in any year in which a prohibition on step increases under the General Schedule (GS) is enacted by statute."

*Question 1c.* How has the recently signed contract with air traffic controllers affected the pay gap between air traffic controllers and all other FAA employees? Specifically, what is the current pay gap between air traffic controllers covered under the March 2012 agreement with all other FAA employees, in percentage terms?

Answer. The recent contract extension calls for air traffic controllers to receive pay increases that are the same as those granted to other Federal employees for FY13–FY16. The average Certified Professional Controller (CPC) earned 26 percent more than the average non-controller FAA employee. The average earnings of all controllers (including both CPCs and developmentals) was 14 percent higher than the average non-controller FAA employee.

In FY11, the average air traffic controller (CPCs only) earned \$119,900 in salary and an additional \$17,900 in premiums for an average cash compensation of \$137,800. The average air traffic controller (including both CPCs and developmentals) earned \$109,300 and an additional \$15,600 in premiums for an average cash compensation of \$124,900.

Employee Group	Salary	Premiums	Cash Compensation	% above All Other FAA
CPC	\$119,900	\$17,900	\$137,800	26%
CPC + Developmental	\$109,300	\$15,600	\$124,900	14%
All Other FAA	\$105,100	\$4,400	\$109,500	n/a

*Question 2.* What percentage of the agency's budget goes to personnel costs? Given the current budget situation, what is your plan to keep personnel costs of the agency under control?

Answer. Nearly 70 percent of FAA's Operations budget is Personnel, Compensation & Benefits (PC&B) related. FAA will staff safety and support related positions to maintain the safety of the National Airspace System (NAS).

FAA issues various workforce plans, such as the Controller Workforce Plan and Aviation Safety Workforce Plan that explain the staffing needed to meet the operational and safety requirements. For non-safety related positions, we have established strict staffing targets to help the Agency maintain staffing levels consistent with efficient operations. Total Full Time Equivalent (FTE) levels in the Operations account have subsequently plateaued at about 42,500. While FTEs in the Operations account averaged 2.3 percent annual growth from FY 2007 to FY 2009, that growth has reduced to an average of 0.4 percent over the past two years.

Over the past five years, FAA has managed to maintain its annual growth in Personnel, Compensation & Benefits (PC&B) costs in the Operations account to 3.3 percent per year—the same rate of growth experienced by the Operations account as a whole. As such, PC&B costs accounted for 69.6 percent of total Operations spending in FY 2011, essentially the same percentage as FY 2006.

There are two factors that make controlling personnel costs more challenging for the FAA as compared to other Federal agencies. First, the need to hire and retain a highly skilled and technical workforce creates and upward pressure on personnel costs. Second, unlike most other Federal agencies, FAA is required by statute to negotiate pay with its employee bargaining units.

Nonetheless, the FAA has achieved some recent successes to control labor costs despite these challenges. Our collaboration with the National Air Traffic Controllers Association (NATCA) resulted in an extension of the 2009 collective bargaining agreement for FAA's air traffic controllers (referred to as the Red Book Contract). This extension of the Red Book contains pay raises equal to the raises received by other Federal employees under the General Schedule. The contract extension also contains a clause that does not allow any additional employees to go over their pay band maximums. The extension will slow the growth of PC&B costs for one of our largest and mostly highly compensated workforce segments. In addition, FAA has made improvements in recent years to manage overtime costs at our air traffic facilities. Overtime hours as a share of controller hours worked has fallen slightly, from 2.4 percent in 2008 to 2.1 percent year-to-date in 2012.

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We continue to search for new ways to control costs in the future. The FAA Modernization and Reform Act of 2012 requires the National Academy of Sciences to review the air traffic controller and technical operations staffing standards to ensure the Agency continues to improve its methods for determining staffing for its air traffic operations. We look forward to reviewing the NAS findings when they become available and will work diligently to address their recommendations.

The FAA is committed to realizing cost efficiencies and avoidance wherever possible. We have taken a hard look at our organizational structure, and we are making changes to create a more streamlined and efficient agency.

*Question 3.* Please explain how the scheduling practice for air traffic controllers, known as "2-2-1", works. Does this schedule present a safety issue for the traveling public? What are you doing to address any safety concerns raised by this scheduling practice?

*Answer.* All services and industries that operate 24/7/365 encounter employee scheduling and human factors issues. These continuous operations environments are often associated with health, safety and emergency services.

As with other safety service providers, air traffic control, faces issues with employee fatigue. To examine this issue, the FAA created a Fatigue Risk Management office in 2009. The establishment of this office within the FAA was coincident with an increased focus in the human fatigue area within the international aviation community, both commercial aviation operators and air navigation service providers. FAA research and analysis into the effects of fatigue in the operational ATC workforce has now been underway for several years.

Our own, as well as other fatigue research, has indicated that the critical period for human fatigue during 24/7 operations is any period when an employee is required to remain on duty, awake and alert, after midnight. This is the time of greatest circadian pressure for humans to fall asleep. The research indicates that employee fatigue issues are present regardless of the type of schedule utilized to deliver an employee to that post midnight work period.

The 2-2-1 schedule is one of several basic types of watch schedules utilized for air traffic controllers. The schedule is comprised of two (2) evening shifts, two (2) day shifts followed by one (1) middle (Mid) of the night shift. A typical 2-2-1 rotation would comprise the following shift start times for an employee; 3 PM, 2 PM, 7 AM, 6 AM and 10 PM.

The 2-2-1 schedule has both positive and negative fatigue aspects. The most negative aspect of the 2-2-1 schedule is the duration of the off-duty period between the second evening shift and the first day shift. Prior to the FAA examination of fatigue in the operational workforce the minimum interval for this off-duty period was 8 hours. Our research indicated that increasing this interval to 9 hours would result in a 14 percent reduction in fatigue impact and assist employees in combating the circadian pressure to fall asleep during the middle of the night shift later in the work week. The minimum off-duty time between these types of shifts was increased to 9 hours approximately one year ago.

The most positive aspect of the 2–2–1 schedule is the extended recovery period between the end of last shift in a week and the beginning of the next work period. For a Monday through Friday work schedule this recovery period extends from 6 AM Friday morning until the beginning of the next work shift at 3 PM on the following Monday afternoon. This allows employees a significant period to overcome any accumulated sleep deficit from the prior week.

The FAA has introduced changes into fatigue education, training and scheduling as a result of our ongoing research. In addition, aviation medicine is introducing methodologies for the identification of sleep apnea in both the ATC and pilot communities. We are confident that our efforts are increasing operational employees' ability to manage the effects of fatigue during their on-duty work week. We will continue our research and introduce further fatigue mitigations as they are identified.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. JOHN THUNE TO  
MICHAEL P. HUERTA

*Question 1.* A recent IG report highlighted that the FAA has not yet established total program cost, schedule, or performance baselines for all of the six NextGen transformational programs. When does the agency plan to do this, since without baselining we will not have complete information about when these programs will be completed, what they will deliver, and how much they will cost the American taxpayer? Can you please give a specific exact date or date range.

Answer. The Inspector General's Office report suggests that it is both possible and desirable to establish cost, schedule and performance baselines for the entire life cycle of a program in its earliest stages of research and concept development. This is contrary to well established best practices as reflected by the Office of Management and Budget Circular A–11 Appendix J Principals of Budgeting for Capital Assets. As directed by the Circular, agencies should implement programs in phased, successive segments and make use of prototyping and pilot programs in order to gain better information before moving into production. The FAA Acquisition Management System (AMS) Lifecycle adheres to this best practice and policy guidance. The AMS requires five key decision points across six phases of work designed to mature concepts and define requirements for major acquisition investments. At each decision point, the work that is to be done during the phase is approved, the agency's enterprise architecture reflects the schedule by which the work is anticipated to be completed, and a limited amount of funding is provided to accomplish this work. As part of each decision point, the FAA considers the estimated cost and benefit of the entire program not just the immediate segment—but the FAA also recognizes that in the earliest stages these estimates are not, and cannot be precise.

- The beginning phases are Service Analysis and Concept and Requirements Definition (CRD). During these phases both technical and operational analyses are conducted to determine the operational needs, shortfalls, rough order cost estimates, and technical alternatives to achieve the desired improvements to the national airspace system, and to ensure operational needs are recorded in the FAA's Enterprise Architecture..
- Before progressing beyond CRD, into the next phase, the FAA's Joint Resources Council (JRC) determines if the program has completed sufficient analysis and engineering assessments to define technical requirements for a solution to the need.
- The middle phases are Initial Investment Analysis and Final Investment Analysis. Initial Investment Analysis includes analyzing of performance, cost, benefit, and risk of different alternative solutions to the need, developing the business case for the alternatives, updating program requirements, and ensuring a mature safety assessment. Using this information, the JRC selects one alternative solution for further analysis and planning. During Final Investment Analysis, detailed cost and schedule estimates, and other analyses are conducted specific to the chosen alternative. This information is presented to the JRC for decision. If the program receives approval—the "Final Investment Decision" or FID in AMS terminology—the program then receives a financial, schedule, and performance baseline and the Agency proceeds with the necessary contract awards.
- The last phases are Solution Implementation and In-Service Management. During solution implementation, contractors typically develop systems, equipment, or services and FAA oversees the effort. When the system and other deployment planning activities are completed, the JRC makes an in-service decision authorizing deployment of the system into the national airspace system.

As of June of 2012 Automatic Dependent Surveillance-Broadcast (ADS-B), Collaborative Air Traffic Management-Technologies (CATM-T), System Wide Information Management (SWIM) and DATA Communications are baselined. The Joint Resources Council made a Final Investment Decision and established the baseline for the first segment of the National Airspace System Voice Switch on July 18. The NextGen Network Enabled Weather (NNEW) received its Investment Analysis Readiness Decision in December 2010 and is scheduled for a Final Investment Decision in September 2013.

These investment decisions are not the last that these programs will see. The transformational programs are not “end-state” programs. Rather, they are inter-related building blocks upon which the FAA will continue to grow, in order to meet the changing demands of all aviation users, as well as allow for evolving technology. For example, ADS-B is being purchased as a service, instead of purchasing and installing an FAA infrastructure, precisely because technology is quickly evolving, which would limit our ability to meet service improvements required by our customers. As such, and consistent with OMB guidance, the transformational programs are built in segments. These are included in the Enterprise Architecture (EA), which establishes a most likely path for implementation and the evolution of the National Airspace System (NAS). Since the EA extends beyond a decade, we develop the levels of planning according to the maturity of the investment. For near-term investments, the detail provided in the EA is of higher fidelity reflecting the baseline decision made at the final investment. Beyond the ten-year horizon, the plan provides an affordable estimate for the outyears, along with projected milestones, schedules and costs, based upon engineering judgment for the long-term investments.

*Question 2.* The En Route Automation Management (ERAM) system is a backbone for other NextGen platforms like System Wide Information Management (SWIM). The IG Report highlighted that ERAM is expected to be delayed by four years. What is causing the delay in ERAM and how does it affect progress on NextGen in general? Do you have an estimate on cost increases because of the delay?

*Answer.* The Federal Aviation Administration (FAA) has made substantial progress on the ERAM program since the Office of Inspector General (OIG) began the subject audit. The FAA has already implemented several of the OIG’s recommendations.

Early in the deployment of the system, the operational runs at the key sites (Salt Lake City and Seattle) identified problems that were not seen during the multiple testing phases conducted at the FAA’s William J. Hughes Technical Center. Therefore, the FAA decided to suspend the waterfall in order to address the critical issues identified at the key sites and prepare for sustained operations.

The original ERAM program (2003) was rebaselined in June 2011 to include a \$330M cost variance and a three-year, eight-month schedule variance. The program is currently operating within that new baseline. The last site Operational Readiness Date (ORD) milestone shifted from December 2010 to August 2014. Although the agency will continue to adjust deployment dates for individual sites within the approved baseline, there is a high degree of confidence in the program’s final completion date. To date, the ERAM delays have had a minimal impact to the deployment of NextGen capabilities.

Beginning in early 2011, the ERAM Program Office has undertaken a series of management initiatives to also help get the program back on track. This includes addressing contractual, strategic, structural, process, personnel, and incentive aspects of the program’s overall approach.

The OIG’s assessment appears to have been based upon the state of the program in October 2010 before the system achieved major deployment milestones. Since that time, those milestone accomplishments include:

- Achieving Initial Operating Capability (IOC) at seven more sites, bringing the current total to nine sites.
- Achieving ORD at two of those nine sites, and achieving continuous operations at another three (meaning they are operating on ERAM with no planned fall-back to the legacy HOST system), while the remainder continue to work through the progression of longer and longer operational runs toward continuous operations.
- Declaring IOC on the first ERAM software release enabled with Automatic Dependent Surveillance Broadcast (ADS-B), allowing for operational use of both ERAM and a key NextGen program in Houston.
- Decommissioning of the legacy HOST system at Seattle and Salt Lake Centers.

The growing level of ERAM-enabled operations has led to multiple instances where nearly one half of the Nation’s air traffic was being served by ERAM-based

air traffic control procedures. Since December of 2011, the system has accumulated over 2,600 hours of operations across a range of varying airspace needs and traffic volumes, excluding Salt Lake and Seattle. The program is well positioned to continue to activate sites within the current budget and schedule as planned into FY13.

*Question 3.* One of the major hurdles to successfully transition to NextGen is to have air carriers equip their aircraft with appropriate technology. However, we know they are hesitant to invest in new technology until there is sufficient guarantee that they will stand to benefit from new air traffic control technologies. How are you going to address their concerns and what progress has the agency made in regards to the provisions in the FAA Modernization and Reform Act on incentivizing air carriers to equip?

*Answer.* The user community has requested more clarity and detail in the FAA's plans for implementing NextGen capabilities at specific locations in order to assist in user investment decisions. The FAA has provided more specificity in the NextGen Implementation Plan and will continue to provide updates as information becomes available. Additionally, the FAA has collaborated with the NextGen Advisory Committee (NAC) to work through many of the challenges associated with NextGen implementation, including equipage and incentives.

To address concerns with regard to incentivizing NextGen equipage, the agency is evaluating incentive initiatives—both financial and operational. Financial and operational incentives are related activities and we are treating them as such. Work for both incentive tracks is underway.

Section 221, Public-Private Partnerships, in the Act granted authority for the Secretary of Transportation to establish an equipage incentive program to equip U.S. registered aircraft in the interest of achieving NextGen capabilities. The goal for an equipage program is to encourage deployment of NextGen capable aircraft in the NAS sooner than would have occurred otherwise. The FAA is currently evaluating various options to see how this provision might allow us to provide incentives for equipage that would accelerate the benefits of NextGen. Specifically, FAA would aim to increase the speed of adoption of base levels of NextGen equipage, which will accelerate delivery of NextGen benefits by reducing the time of mixed equipage operations.

The agency held a public meeting on May 30, to seek initial input from interested stakeholders about program design and implementation of an equipage incentives program for both commercial aircraft and general aviation to equip their aircraft with NextGen capabilities. The agency also released a market survey to solicit interest from both operational stakeholders and those interested in being private partners. A second public meeting is planned for August 7 to share the evolution of our thinking based on what the agency heard from stakeholders, to seek additional information, and to communicate the agency's next steps.

The FAA understands that financial incentives by themselves will most likely be insufficient to encourage operators to equip and that operational benefits must come with any financial incentive. Over the last several years, the FAA has worked with various stakeholders to demonstrate in an operational environment the benefits of various NextGen capabilities.

For example, one NextGen initiative, Greener Skies Over Seattle, has the goal to prove that satellite-based navigation approaches can be flown using the same separation standards as procedures using ground-based instrument landing systems have today. Initial feedback on the Greener Skies initiative has been positive, producing fuel savings. The FAA will add 27 new procedures, expanding the use of Optimized Profile Descents (where the airplane essentially glides in idle to the runway threshold), Area Navigation (RNAV) arrivals (which are GPS-guided arrivals) and Required Navigation Performance (RNP) approaches (which take RNAV to an additional level of precision). These procedures will be available to any properly equipped aircraft next spring.

Additionally, the FAA is working with several air carriers to obtain Automatic Dependent Surveillance-Broadcast (ADS-B) data to validate the business case for early adoption of new equipment. These efforts are governed by memorandums of agreement in which the government and the air carriers contribute to the project.

Realizing NextGen benefits requires more than installed avionics or technologies. Procedures, training, and policies for both operators and controllers are necessary to implement the capability that produces operational benefits.

Both the NAC and the NextGen Mid-Term Implementation Task Force requested the FAA to identify candidate NextGen capabilities for operational incentives. The FAA held a public meeting on March 13 to solicit stakeholder feedback on candidate operational scenarios. The agency has included this stakeholder feedback in its implementation planning activities.

Among the candidates under consideration for implementation are scenarios providing priority service to aircraft capable of performing complex precision approaches at specified airports in the National Airspace System (NAS) during limited time periods. The candidate scenarios also provide operational solutions such as: 1) separating air traffic in areas where multiple airport operations conflict, 2) providing improved approaches in poor weather at airports with closely spaced parallel runways, 3) increasing access to specific Atlantic routes, and 4) enabling more fuel-efficient operations in specific Pacific oceanic routes.

The FAA continues to encourage user equipage through various means—demonstrations and incentives—and to develop both operational and financial incentives.

*Question 4.* Could you provide a status on what FAA is doing to improve airspace procedures for aircraft flying into and out of major and non-major metropolitan airports (implementing procedures such as Area Navigation and Required Navigation Performance)? Where does the FAA stand in improving airspace efficiencies as part of delivering NextGen to the American public?

Answer. Area Navigation (RNAV) and Required Navigational Performance (RNP) are the key components of Performance-Based Navigation (PBN) in the National Airspace System (NAS). The FAA, by adopting PBN, has improved airspace and procedures design which has led to improvements in system capacity and efficiency. It has done this by leveraging existing and emerging cockpit capabilities and by working in close collaboration with key stakeholders. Since 2002, the FAA and industry have formally collaborated to plan and implement PBN routes and procedures across the NAS.

There are currently 351 PBN approaches published and in use at the 35 Core airports. For the 35 non-Core airports identified by the FAA to serve as a basis of comparison, there are currently 21 published approaches. However, the FAA is aggressively pursuing an active PBN development and publication process that will substantially increase the number of published approaches. The implementation plan for deploying PBN approaches at Core airports calls for an additional 73 new procedures by the end of 2012 with 162 completed by the end of 2013. Another 110 will be added by the end of 2014. These objectives are well ahead of the targets directed in recent Congressional legislation. Further, the total number of new procedures published for the selected non-Core airports will reach 48 by the end of this calendar year, with a total of 75 scheduled before the end of 2014. Again, this is well ahead of the targets established in the FAA's Authorization.

Additionally, the FAA in cooperation with the RTCA Task Force 5, has embarked on the Optimization of Airspace and Procedures in the Metroplex (OAPM). This process is a systematic, expedited approach to optimizing both procedures development and airspace redesign in 21 key metropolitan areas. To date, the FAA has initiated study team efforts at eight (8) of the 21 metropolitan locations. Further design and implementation efforts are underway at six (6) of those locations. FAA is on track to address all 21 locations through OAPM or traditional PBN study efforts by the end of FY 2016.

*Question 5.* The FAA Modernization and Reform Act provides the FAA Administrator with the authority to improve environmental reviews via the use of categorical exclusions for performance-based navigation procedures. Are you providing such exclusions while improving procedures in and around major airports? If so, how has this speed up the deployment of performance-based navigation?

Answer. The FAA has several categorical exclusions that are currently being used for performance-based navigation (PBN) procedures. The FAA Modernization and Reform Act of 2012 established two additional legislative categorical exclusions for procedures that meet specified conditions. It has been necessary for the FAA to undertake technical and legal analyses as a prerequisite for developing implementing guidance that must comport with these conditions. These analyses are currently nearing completion. At the same time, we are adding the two categorical exclusions, using the text directly from the Act, to the list of categorical exclusions in the update to FAA Order 1050.1E, which provides the FAA's guidance for implementing the National Environmental Policy Act (NEPA). At this time, it is premature to report on the practical effect of the new categorical exclusion authority.

*Question 6.* The FAA has already issued a rule requiring all air carriers operating in U.S. controlled airspace to equip with ADS-B Out by 2020. As required in the FAA Modernization and Reform Act, will the FAA be conducting rulemaking anytime soon to require air carriers to equip with ADS-B In by 2020? What is the status of the agency's interaction with the ADS-B In Aviation Rulemaking Committee?

Answer. Section 211 (b) in the FAA Modernization and Reform Act directs the FAA to initiate a rulemaking within the year (by February 2013) with guidelines

and regulations for ADS-B In technology and requires ADS-B In to be mandated by 2020 for congested airspace, congested airports, or in any other airspace deemed appropriate. On May 30, 2012, the charter for the existing ADS-B In Aviation Rule-making Committee (ARC) was extended to assist the agency in meeting the requirements of this language.

The FAA tasked the ADS-B In ARC to provide recommendations on how to target an ADS-B equipage mandate that could offer sufficient benefits to cover costs. The ARC has been asked to identify: (a) in what airspace, and/or (b) at what airports, and/or (c) by what other criteria one could apply to limit an ADS-B-In mandate (examples including, but not limited to, by operator class or aircraft class). It should be noted that the ARC may indicate resistance to a compliance date of 2020, given that currently available ADS-B-In equipment standards and guidance is limited for a number of applications.

After receiving the recommendations from the ARC this fall, the FAA will be able to decide among options for moving forward and initiate rulemaking formally by the February 14, 2013 deadline. Options for the requirements could be, for example, tying the ADS-B In mandate to the airports capacity-constrained by slot regulations (*i.e.*, New York airports). The ARC may develop other options as part of their tasking.

*Question 7.* I know the FAA has agreements with some airlines like JetBlue and UPS to help deploy initial ADS-B avionics for trials that will help incentivize fleet-wide acquisition of this equipage. Are any further agreements to fund ADS-B equipage planned with U.S. commercial or general aviation carriers?

Answer. To expedite early equipage, the agency has signed agreements with several airlines, including JetBlue, United, UPS, and U.S. Airways. These agreements are set up to demonstrate the benefits of advanced ADS-B applications and procedures during revenue service and allow the FAA to share costs and risks with the participants. The operational evaluations will give the agency detailed cost and benefit data, and encourage airlines to equip early to capitalize on ADS-B benefits. Under these agreements, the following equipage will occur:

- 35 JetBlue A320 aircraft
- 12 United 747 aircraft (DO-260 complete, upgrades to be rule compliant in 2013)
- 20 USAirways A-330 aircraft
- 143 UPS aircraft (747, 767, A300, and MD-11)

The agency has also agreed to fund upgrades to the avionics for approximately 54 helicopters in the Gulf of Mexico. These operators voluntarily equipped with an earlier version of ADS-B avionics before the ADS-B rule requirements were published. In addition, the FAA will award a contract this fall to upgrade approximately 400 air taxi aircraft that were equipped under the legacy Capstone program in Alaska.

In summary, the ADS-B program has entered into several additional agreements beyond those with JetBlue and UPS that will help fund early ADS-B equipage. The ADS-B program office may consider additional agreement opportunities if proven to be an economically sound decision; however, given the current funding limitations, these agreements are expected to be limited. The FAA anticipates voluntary equipage will increase in 2013 and beyond, as more certified, rule-complaint avionics become available.

*Question 8.* In order for NextGen to be successful, FAA leadership will need to initiate a culture change that will ensure that workforce at all levels (analyst, manager, executive) are empowered to breakdown intra-agency and inter-agency barriers and promote cross-organizational learning and collaboration. What steps have you taken so far to achieve this culture change, what have been your biggest challenges, and what more needs to be done?

Answer. NextGen has a high priority in the Administration, the Department of Transportation and the FAA. Its complexity and interdependencies make it different from anything the FAA has ever done. In 2010, an external organization was tasked by the FAA Administrator to diagnose the current state of NextGen via interviews and surveys with employees across the Agency. The assessment resulted in two key recommendations to better position the agency to successfully implement NextGen:

- Create increased internal and external visibility of the NextGen organization by establishing a direct line of reporting to the Deputy Administrator, as well as a restructure of positions and groups to better align with organizational goals and the NextGen mission. The agency implemented this change as part of our reprogramming request last year.

- Develop a process in which an idea is developed and implemented in the National Airspace System (NAS) through cross-agency collaboration, increased transparency, defined roles and responsibilities, and establishment of clear decision authorities.

NextGen requires an expanded and more collaborative acquisition process for the NAS than we have traditionally used. From May to September of 2011, the Functional Design Consideration Team (FDCT) worked extensively to address the above recommendations. The FDCT included members from the NextGen organization and representation from across the agency. Specifically, the group developed the Ideas to In-Service framework (i2i) to move a concept from an idea to in-service management. Highlights of i2i include:

- A deliberate reduction in “hand-offs” in favor of collaboration. NextGen program management offices, operations and other FAA offices engage throughout the capability lifecycle from beginning to end.
- A single FAA-wide process for changes to the NAS that works with all contributors to the NAS.
- A collaborative approach that requires shared accountability, responsibility and risk. This is achieved through direct and obligatory engagement.
- Capture Teams, which consist of representatives across the agency who are responsible for activities such as requirements management, configuration management, and assumption/constraint management. Capture Teams minimize rework and retain the same stakeholders to manage a portfolio of products from the managing requirements stage all the way through to in-service management.

The framework was approved on September 26th by the FAA’s NextGen Management Board (NMB). The FAA is currently in the process of integrating i2i into the agency’s training and workflows.

The FAA also created the Program Management Organization or PMO. This new central program office within the Air Traffic Organization assembles in one organization the majority of programs that specialize in program management. This allows our operational groups to focus on the key daily mission of safely separating air traffic and maintaining our airspace system. It allows our program organization to focus on managing for better outcomes by developing improvements to our airspace and making sure these solutions are on time, cost effective and within scope.

The PMO will also ensure greater visibility, tighter alignment and closer integration of complex, interdependent NextGen initiatives and innovative technology. The PMO will play a critical role in the success of NextGen by acting as the bridge between strategic requirements and tactical program implementation to improve the safety and efficiency of our NAS.

The PMO’s success will depend on developing and maintaining relationships with other FAA organizations. Most critical among these are our relationships with NextGen, which will help set the overall direction of some of our highest priority program work, and with Mission Support’s requirements and concept validation office, which will help ensure operational adaptability and validity.

The PMO will play a critical role in each of the tenets of our new flight plan, Destination 2025: moving to the next level of safety, creating a workplace of choice, delivering aviation access through innovation, sustaining our future, and advancing global collaboration.

The FAA also continues our collaborative work with other agencies. The JPDO provides a National, big-picture perspective that encompasses a broader Federal view for air transportation than just FAA. The JPDO ensures efficient coordination and collaboration among NextGen partner agencies. It addresses key interagency priorities identified by the Cabinet-level Senior Policy Committee (SPC) for NextGen.

*Question 9.* The FAA’s 2012 Air Traffic Controller Workforce Plan details the fact that the FAA staffed 20 of 23 en route air traffic control centers and 237 of the FAA’s 293 terminal facilities above the maximum staffing range. Considering the FAA sets these ranges themselves, it appears you have hired way too many controllers. Understanding that FAA is expecting a wave of retirements and there is a need to train incoming controllers, I still think there is a problem, especially considering that ten of the en route centers and 67 of the terminal facilities have at least as many certified professional controllers hired as the high staffing ranges prescribed for total controller staffing. In a time of economic and fiscal challenges, the entire Federal government is cutting back on its spending and Federal agencies are

tightening their belts. Can you explain this overstaffing, especially given the high cost of air traffic controller salaries?

Answer. In many facilities, the current Actual on Board (AOB) number is higher than the range maximum. This is because the workforce includes larger numbers of developmental controllers in training to offset expected future attrition. The FAA hires 2–3 years in advance of expected attrition so that trainees are fully prepared to take over responsibilities when senior controllers retire.

As noted above, some facilities have certified professional controllers (CPCs) above the range maximums. There are multiple reasons this can occur:

1. Changes in Traffic—Traffic levels are projected to increase over next the few years after a period of flat to slightly negative traffic growth. Increased traffic operations within ATC facilities require more efficient staff usage and increased staffing at some facilities. Given the prolonged training cycles and compounding of traffic growth during that period, the FAA must hire now to meet future demand.
2. Changes in Attrition—Retirement decisions are made by individual Air Traffic Controllers and therefore difficult to project at an individual level. FAA has been very accurate at predicting system-wide retirements in recent years, but experiences greater variability at the individual facility level.

Retirement behavior has been impacted in recent years by externalities such as current economic conditions and the labor contract (NATCA) situation. Any improvement in macro economic conditions may cause an increase in Controller retirements. The recent NATCA contract extension will likely not drive significant changes in Controller retirement behavior.

Because it takes 2–3 years to train new controllers, and because FAA does not typically force controllers to move to other locations, unexpected changes in traffic and attrition occasionally lead to overstaffing at some facilities.

Staffing Ranges are updated every year as part of the Controller Workforce Plan development process. In general, the system-wide staffing ranges have been dropping over the past 5 years. Mostly driven by reduced traffic, the system-wide total range is now several hundred lower than it was five years ago. With these reduced ranges, lower attrition than expected can result in relatively higher levels of CPCs on board relative to these reduced ranges at some facilities. Similarly, higher than normal training success rate or reduced training times can lead to additional CPCs onboard certain facilities.

*Question 10.* In February, the FAA announced proposed rules to raise the qualifications for first officers from 250 hours to 1,500 hours. Included in these rules are two exceptions that provide flight hour credit for military pilots and baccalaureate aviation degrees. If this rule becomes permanent, how much more difficult will it be for carriers, especially regional carriers, to find first officers that qualify?

Answer. The changes to first officer qualifications will affect pilot supply for the airlines, but the magnitude of the impact is uncertain. The FAA developed the proposed rules in response to the Congressional requirements of P.L. 111–216, which required that all pilots in part 121 operations have an Airline Transport Pilot (ATP) certificate. Consistent with the statute, the FAA proposed to allow academic and military credit in place of flight hours in issuing a restricted ATP certificate. While pilot supply is not the reason the FAA believes a restricted ATP is appropriate, it addresses some of the pilot supply concerns.

*Question 11.* It is my understanding that the FAA is considering the development of a new policy where the FAA, in its airspace hazard determinations, would require consideration of airline One Engine Inoperative (OEI) procedures upon take-off at airports. It appears to me this change would have an enormous impact on private property rights, building heights, urban development, and jobs. Can you please provide the Committee with an update on this issue and let us know if the FAA intends to provide a notice-and-comment period for interested stakeholders or a comprehensive cost-benefit analyses?

Answer. The FAA has not made any policy changes pertaining to one engine inoperative procedures. However, there have been discussions within the FAA about whether one engine inoperative procedures should be included in aeronautical studies considered under Title 14 Code of Federal Regulations, Part 77. If the agency decides to pursue a policy change of this nature, we will provide notice and comment in the *Federal Register*.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. PAT TOOMEY TO  
MICHAEL P. HUERTA

*Question 1.* In the past, the FAA has stated that the Federal Aviation Administration Authorization Act of 1994 and the Federal Aviation Administration Reauthorization Act of 1996 supports its position that mineral rights on airport lands are subject to the Airport Revenue Use Restriction. What precise language of the 1994 Act, the 1996 Act or the congressional record supports the FAA's position that Congress mandated that mineral rights on airport property are subject to the Airport Revenue Use Restriction?

Answer. Over time, FAA has been directed by Congress on several occasions to ensure that airports are as financially self-sustaining as possible. Listed below is the specific Congressional language on airport financial self-sustainability as well as specific language on mineral revenue from airports. In addition, provided below is an explanation as to how FAA has implemented those congressional requirements. Language particularly pertinent is bolded below.

House Conference Report No. 103-677, August 5, 1994

60. Section 112. Revenue Diversion. Secretary was required to establish within 90 days from the date of enactment, *policies and procedures to enforce grant assurances requiring airports to develop fee structures to make their operations self sustaining, and prohibiting diversion of revenues.*

61. Section 110. Policy Statement on Airport Fees. Adds policy statements that airport rates and fees must be reasonable and used only for purposes not prohibited by the Act, *that airports should be as self sustaining as possible*, and that airports should not seek to create surpluses which exceed the amounts needed for the airport system, including reasonable reserves and allowances for contingencies.

P.L. 103-305 (August 23, 1994)

Section 110. Airport Fees Policy. 49 U.S.C. Section 47107(a)(13) *that airports should be as self-sustaining as possible under the circumstances existing at each particular airport and in establishing new fees, rates, and charges, and generating revenues from all sources*, airport owners and operators should not seek to create revenue surpluses that exceed the amounts to be used for airport system purposes and for other purposes for which airport revenues may be spent under section 47107(b)(1) of this title, including reasonable reserves and other funds to facilitate financing and cover contingencies."

Section 112 Additional Enforcement Against Illegal Diversion of Airport Revenue. 49 U.S.C. 47107(l) Policies and Procedures To Ensure Enforcement Against Illegal Diversion of Airport Revenue. (1) In general.—Not later than 90 days after the date of enactment of this subsection (August 23, 1994), the Secretary of Transportation shall *establish policies and procedures that will assure the prompt and effective enforcement of subsections (a)(13) and (b) of this section and grant assurances made under such subsections.* Such policies and procedures shall recognize the exemption provision in subsection (b)(2) of this section and shall respond to the information contained in the reports of the Inspector General of the Department of Transportation on airport revenue diversion and such other relevant information as the Secretary may by law consider. (2) *Revenue diversion.—Policies and procedures to be established pursuant to paragraph (1) of this subsection shall prohibit, at a minimum, the diversion of airport revenues (except as authorized under subsection (b) of this section) through—(A) direct payments or indirect payments, other than payments reflecting the value of services and facilities provided to the airport; (B) use of airport revenues for general economic development, marketing, and promotional activities unrelated to airports or airport systems; (C) payments in lieu of taxes or other assessments that exceed the value of services provided; or (D) payments to compensate nonsponsoring governmental bodies for lost tax revenues exceeding stated tax rates.* (3) *Efforts to be self-sustaining.—With respect to subsection (a)(13) of this section, policies and procedures to be established pursuant to paragraph (1) of this subsection shall take into account, at a minimum, whether owners and operators of airports, when entering into new or revised agreements or otherwise establishing rates, charges, and fees, have undertaken reasonable efforts to make their particular airports as self-sustaining as possible under the circumstances existing at such airports.* (4) *Administrative safeguards.—Policies and procedures to be established pursuant to paragraph (1) shall mandate internal controls, auditing requirements, and increased levels of Department of Transportation personnel sufficient to respond fully and promptly to complaints received regarding possible violations of subsections (a)(13) and (b) of this section and grant assurances made under such subsections and to alert the Secretary to such possible violations.*

H.R. Rep. 104–714(I) (July 26, 1996)

Revenue Diversion . . . Current law 49 U.S.C. 47107(b) requires any airport receiving an AIP grant to promise, *as a condition to that grant, that all revenues generated by the airport will be spent on the capital and operating costs of that airport.* This prohibition against revenue is designed to prevent airports from using their monopoly power to gouge airlines and other airport users in order to build huge surpluses that could be diverted to other local programs that have nothing to do with aviation. Given that most airport users do no vote in the area of the airport but are merely visiting or making connections, it was feared that local officials would be tempted to raise airport fees rather than local taxes of those fees could be used for nonairport projects. *The revenue diversion prohibition ensures that money raised at the airport will be spent on the airport.* In light of the important safety, capacity, and noise mitigation needs at most airports, it is vital that the money is spent in this way. *The revenue diversion prohibition was also imposed in recognition of the fact that money is fungible. Congress did not want an airport to receive an AIP grant for a specific project and then divert a like amount of money off the airport for a nonairport purpose. The revenue diversion prohibition ensures that all airport and AIP money is used for airport purposes.*

P.L. 104–264 (October 9, 1996) Section 802. Findings; Purpose

(a) In general, Congress finds that (1) section 47107 of title 49, United States Code, *prohibits the diversion of certain revenue generated by a public airport as a condition of receiving a project grant;* (2) a grant recipient that uses airport revenue for purposes that are not airport related in a manner inconsistent with chapter 471 of title 49, United States Code, illegally diverts airport revenues; (3) any diversion of airport revenues in violation of the conditions referred to in paragraph (1) undermines the interest of the United States in promoting a strong national air transportation that is responsive to the needs of airport users; (4) *the Secretary and the Administrator have not enforced airport revenue diversion rules adequately and must have additional regulatory tools to increase enforcement efforts;* and (5) sponsors who have been found to have illegally diverted airport revenues . . .

(b) Purpose. The purpose of this title is to ensure that airport users are not burdened with hidden taxation for unrelated municipal services and activities by (1) eliminating the ability of any State or political subdivision thereof that is a recipient of a project grant to *divert airport revenues for purposes that are not related to an airport, in violation of section 47107 of title 49, United States Code;* (2) imposing financial reporting requirements that are designed to identify instances of illegal diversions referred to in paragraph (1); (3) establishing a statute of limitations for airport revenue diversion actions; (4) *clarifying limitations on revenue diversion that are permitted under chapter 471 of title 49, United States Code;* and (5) establishing clear penalties and enforcement mechanisms for identifying and prosecuting airport revenue diversion.

*Policy and Procedures Concerning the Use of Airport Revenue (Revenue Use Policy), 64 Fed. Reg. 7,696, 7,702 (Feb. 16, 1999)*

Just as proceeds from the sale or lease of airport property constitute airport revenue, proceeds from the sale or lease of a partial interest in the property—*i.e.*, water or mineral rights—should also be considered airport revenue . . . In addition, the revenues generated by these activities will still flow to the sponsor for its use for a legitimate local governmental activity, the operation and development of its airport.

House Conference Report No. 112–381, February 1, 2012

Section 813. Use of Mineral Revenue at Certain Airports. In General. Notwithstanding any other provision of law, the Administrator of the Federal Aviation Administration may declare certain revenue derived from or generated by mineral extraction, production, lease, or other means at a general aviation airport to be revenue greater than the amount needed to carry out the 5 year projected maintenance needs of the airport in order to comply with the applicable design and safety standards of the Administration.

FAA implementation of Congressional requirements on airport financial self-sustainability:

In 1999, the FAA published its *Policy and Procedures Concerning the Use of Airport Revenue* (64 Fed. Reg. 7696) (*Revenue Use Policy*). Among other things, this policy defined mineral rights revenue as revenue derived from the sale of sponsor owned mineral, natural, agricultural products or water taken from the airport. Prior to 1999, the FAA did not have a formal Policy pertaining to revenue use, including revenues from mineral royalties. The *Revenue Use Policy* was de-

veloped in response to Congressional mandates. First, under the 1994 FAA Authorization Act, Congress instructed the DOT Secretary to establish policies and procedures to assure enforcement of the airport's self-sustaining and revenue use grant assurances (codified at 49 U.S.C. §47107(a)(13) and 49 U.S.C. §47107(b) respectively). Specifically, under 49 U.S.C. §47107(b), Congress imposed a revenue-use requirement on recipients of FAA airport development grants. This statute defines airport revenue as "revenues generated by a public airport." [49 U.S.C. §47107(b)(1)]

FAA interprets the FAA Modernization and Reform Act of 2012, Section 813 as clearly recognizing that revenue derived from the extraction of minerals on a federally obligated airport is airport revenue. Congress provided a process for using mineral revenue at general aviation airports for local transportation infrastructure projects. Congress did not provide a similar process for commercial service airports.

*Question 2.* For purposes of its Airport Revenue Use Restriction, the FAA has stated that a Water Treatment Facility would not be subject to the Airport Revenue Use Restriction but that mineral rights would be. What is the distinction between revenues generated from a Water Treatment Facility and those generated by naturally occurring mineral rights?

*Answer.* Under current FAA policy on Revenue Use, a municipal water treatment facility located on airport property and without direct benefit to the airport would be required to pay the airport a ground lease set at Fair Market Value for use of the airport land. Mineral rights owned by the airport are thus airport property and therefore any revenue gained by their extraction would be airport revenue.

In developing the Revenue Use Policy, the FAA was cognizant that the Airport and Airway Improvement Act of 1982 (AAIA) did not define the term airport revenue. Section 511(a)(1)(12) of the AAIA requires the sponsor of a public airport to use revenues generated by the airport for the capital or operating costs of the airport, the local airport system, or other local facilities which are directly and substantially related to the actual air transportation of passengers and property. The legislative history of section 511(a)(12) suggests that Congress did not intend airport revenues to apply to revenues generated by facilities, which are located on the airport, but are unrelated to air operations or services which support or facilitate air transportation. The House Report 2.H.R. Rep. No. 760, 97th. Cong., 2d Sess., 712 (1982) lists a water reservoir or convention center located on the airport as examples of such facilities. The FAA followed the guidance of the legislative history in defining airport revenue, but as stated in the Revenue Use Policy no longer considered the analogy between mineral extraction and operation of a convention center or water treatment plan to be appropriate. The FAA determined that mineral and water rights represent a part of the airport property and its value, and thus should be considered airport revenue.

Accordingly, on February 26, 1996, the FAA issued its initial Proposed Policy on the Use of Airport Revenue. (61 Fed. Reg. 7134, February 26, 1996) After reviewing all comments received in response to this notice, the FAA issued a Supplemental Notice on December 11, 1996, and requested further public comment. (61 Fed. Reg. 66735, December 18, 1996) Many comments on the original notice of proposed policy were addressed in the supplemental notice. The Proposed Policy did include royalties from mineral extraction on airport property earned by a sponsor as airport revenue. As noted in the disposition of comments in the Final Policy, one airport sponsor objected to this scope citing the Erie letter from 1985. Drawing on the context of Congressional direction in the 1994 Act to address generating revenues from all sources<sup>1</sup> in its Policy, the FAA determined the value of airport property, if sold or leased, was a source of airport revenue. [See, Section 110 of Federal Aviation Administration Authorization Act of 1994] The FAA based the scope of this interpretation on the previously held opinion issued in the Erie letter that the sale of the property with the minerals would require consideration of that value and appropriate compensation to the sponsor. The Erie letter stated the sale of the property should recognize the value of the minerals and "all proceeds from the sale of the mineral rights should be used for airport-related purposes."

With the publication of the final *Revenue Use Policy* in 1999, FAA applied 49 U.S.C. §47107 to certain<sup>1</sup> revenue generated by a public airport property, including property owned by the airport, to be used for airport purposes. This application is based on Congressional intent as cited previously and the Agency's interpretation is supported by case law. Interpretation of grant assurances by the FAA (issued

<sup>1</sup>The exclusion of certain revenue is limited by statute to grandfather provisions permitting certain uses of airport revenue for non-airport purposes that predate the AAIA. None of which reference mineral rights.

after notice and comment) are entitled to substantial deference. [See *Auer v. Robbins*, 519 U.S. 452, 461 (1997)] The Agency's publication of the initial and supplemental notices enabled the FAA to meet this standard to implement the policy interpretation.

Note:

In making its determination on the value of airport property, the FAA considered the basics of real estate law. Specifically, the FAA recognized there are some instances where airport sponsors do not own the minerals located under the surface of the airport. For example, at an airport in Texas, prior to becoming a federally funded airport, the airport land was deeded to a sponsor with a provision specifically reserving all interests in underground minerals from the transfer. Thus, the airport sponsor does not have an interest in those assets, nor in any proceeds derived from the mineral rights. In this case, the proceeds are not airport revenue. Because property interests can be separated, reserved, or transferred by a deed, the FAA reasonably concluded in its interpretation airport revenue includes the value of the airport property. Thus, in the absence of any specific reservation of the mineral rights or other interests in an airport property conveyance, such interests belong to the airport sponsor. Reaching any other conclusion would be tantamount to saying that a person does not own the minerals under his or her home because they belong to the prior homeowner. Unless specifically exempted in the deed of conveyance, property interests are whole, and any corresponding revenue generated is airport revenue.

The House Conference Report for Public Law 97-24, (H.R. Conf. Rep. 97-760, H.R. Conf. Rep. No. 760, 97TH Cong., 2ND Sess. 1982, p. 712), explains the intent of the airport revenue provision.

. . . airport users should not be burdened with "hidden taxation" for unrelated municipal services . . . This provision is not intended to apply to revenue generated by facilities which are located on airport property but are unrelated to air operations or services which support or facilitate air transportation. It would accordingly not apply to revenue generated by such facilities as a water reservoir or a convention center which happen to be located on airport property, but which serve neither the airport nor any air transportation purpose. It would apply to such facilities as terminal concessions and parking lot serving the terminal or other air transportation purposes.

The legislative history for the Airport and Airway Safety and Capacity Expansion Act of 1987, Public Law 100-223 (December 30, 1987), reaffirms the earlier statement that §511(a)(12) is not intended to apply to revenue generated by facilities located on airport property but unrelated to air operations or services that support or facilitate air transportation. (H.R. Conf. Rep. No. 100-484, 100th Cong., 2d Sess. 63 (1987), reprinted in 1987 U.S.C.C.A.N. 2638; see also, H.R. Rep. No. 100-123 (II), 100th Cong., 2d Sess. 14, reprinted in 1987 U.S.C.C.A.N. 2601, 2613.)

7716 b. Revenue from sponsor activities on the airport. Airport revenue generally includes all revenue received by the sponsor for activities conducted by the sponsor itself as airport owner and operator, including revenue received: i. From any activity conducted by the sponsor on airport property acquired with Federal assistance; ii. From any aeronautical activity conducted by the sponsor which is directly connected to a sponsor's ownership of an airport subject to 49 U.S.C. §§ 47107(b) or 47133; or iii. *From any nonaeronautical activity conducted by the sponsor on airport property not acquired with Federal assistance, but only to the extent of the fair rental value of the airport property. The fair rental value will be based on the fair market value.*

*Question 3.* Does the FAA believe it has the right to restrict the use of proceeds from mineral rights beneath airport lands when the land is owned by an independent third party and is leased to the airport for use as an airport? If so, under what specific statutory authority?

Answer. In the case in which an airport is built on land in which the sub-surface mineral rights continue to be retained by a third party, the proceeds are not considered airport revenue. However, Allegheny County Airport and Pittsburgh International Airport are different. It does not matter whether the County or the Authority owns the mineral rights because the County, as original owner of the airports took Federal airport grants and accepted FAA revenue use polices which mandate mineral revenues extracted from airport property remain airport revenue as long as the site remains an airport, even if the sponsor of that airport changes.

Allegheny County claims that it owns the mineral rights underneath the airport property according to Pennsylvania law, while Allegheny County Airport Authority is only leasing the land for airport purposes. In 1999, Allegheny County, the original airport sponsor, created an airport authority to operate the Airport. The County has the power to dissolve the Airport Authority and operate the Airport as it did prior

to 1999 when the County took grants subject to the grant assurance requirements, including the revenue use requirements. As a condition to the transfer, the County was not released from the revenue use requirements. When the FAA approved the transfer from Allegheny County in the fall of 1999, after the adoption of the Revenue Use Policy in February 1999, both the County and the Airport Authority were advised that each must adhere to Federal law and regulations concerning the use of airport revenue. The County was informed that it is subject to revenue use restriction as long as the property is used as an airport. Consequently, any proceeds received from the oil deposits located on airport property are airport revenue and must be used for airport purposes.

*Question 4.* The FAA committed to promulgating a standards-based rulemaking for portable oxygen concentrators when SFAR 106 was published in 2005 so that individual manufacturers would not have to seek a specific rulemaking approval for every device. Nevertheless, 7 years later the FAA has not initiated that rulemaking and the current device approval process persists. With that in mind, will the FAA make individual device rulemakings a priority so as to not disrupt new and improved technologies from coming to market?

*Answer.* I understand your desire to ensure new products are able to come to market in an expeditious manner. Shortly we expect to issue a rule approving additional O2 concentrators for use on aircraft. This rule will address all requests for approval currently at the FAA. We will continue to make individual requests a priority until a final rule is published.

