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# IIMPLEMENTING MAP–21: PROGRESS REPORT FROM U.S. DEPARTMENT OF TRANSPORTATION MODAL ADMINISTRATORS

**(113–6)**

## HEARING

BEFORE THE

SUBCOMMITTEE ON
HIGHWAYS AND TRANSIT

OF THE

COMMITTEE ON
TRANSPORTATION AND
INFRASTRUCTURE
HOUSE OF REPRESENTATIVES

ONE HUNDRED THIRTEENTH CONGRESS

FIRST SESSION

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# CONTENTS

Page

Summary of Subject Matter ..... vi

TESTIMONY

Hon. Victor M. Mendez, Administrator, Federal Highway Administration ..... 5
Hon. Peter M. Rogoff, Administrator, Federal Transit Administration ..... 5
Hon. Anne S. Ferro, Administrator, Federal Motor Carrier Safety Administration ..... 5
Hon. David L. Strickland, Administrator, National Highway Traffic Safety Administration ..... 5

PREPARED STATEMENTS SUBMITTED BY MEMBERS OF CONGRESS

Hon. Thomas E. Petri, of Wisconsin ..... 50
Hon. Nick J. Rahall, II, of West Virginia ..... 58

PREPARED STATEMENTS AND ANSWERS TO QUESTIONS FOR THE RECORD SUBMITTED BY WITNESSES

Hon. Victor M. Mendez:
Prepared statement ..... 60
Answers to questions from the following Representatives:
Hon. Thomas E. Petri, of Wisconsin ..... 68
Hon. John J. Duncan, Jr., of Tennessee ..... 70
Hon. Gary G. Miller, of California ..... 71
Hon. Lou Barletta, of Pennsylvania ..... 72
Hon. Tom Rice, of South Carolina ..... 72
Hon. Eddie Bernice Johnson, of Texas ..... 76
Hon. Peter M. Rogoff:
Prepared statement ..... 79
Hon. Anne S. Ferro:
Prepared statement ..... 85
Answers to questions from the following Representatives:
Hon. Thomas E. Petri, of Wisconsin ..... 90
Hon. André Carson, of Indiana ..... 91
Hon. Jerrold Nadler, of New York ..... 93
Hon. Markwayne Mullin, of Oklahoma ..... 94
Hon. David L. Strickland:
Prepared statement ..... 96
Answers to questions from the following Representative:
Hon. Jerrold Nadler, of New York ..... 100

SUBMISSIONS FOR THE RECORD

Hon. Peter M. Rogoff, Administrator, Federal Transit Administration, list of FTA projects and funding levels ..... 25
Hon. Victor M. Mendez, Administrator, Federal Highway Administration, 5 inserts for the record ..... 31, 36 (2), 38, 44

ADDITION TO THE RECORD

Cynthia Hilton, Executive Vice President, Institute of Makers of Explosives, written statement ..... 103

**Committee on Transportation and Infrastructure**
**U.S. House of Representatives**

| Bill Shuster<br>Chairman | Washington, DC 20515 | Nick J. Rahall, II<br>Ranking Member |
|---|---|---|
| Christopher P. Bertram, Staff Director | March 8, 2013 | James H. Zoia, Democrat Staff Director |

**SUMMARY OF SUBJECT MATTER**

**TO:** Members, Subcommittee on Highways and Transit
**FROM:** Staff, Subcommittee on Highways and Transit
**RE:** Subcommittee Hearing on "Implementing MAP-21: Progress Report from U.S. DOT Modal Administrators"

## PURPOSE

The Subcommittee on Highways and Transit will meet on Thursday, March 14, 2013, at 10:00 a.m. in 2167 Rayburn House Office Building to receive testimony related to implementing the Moving Ahead for Progress in the 21st Century Act (MAP-21; P.L. 112-141). At this hearing, the Subcommittee will review the progress of the U.S. Department of Transportation (DOT) toward implementing programmatic reforms and meeting deadlines mandated in MAP-21. The Committee will hear from Administrator Victor Mendez of the Federal Highway Administration (FHWA), Administrator Peter Rogoff of the Federal Transit Administration (FTA), Administrator Anne Ferro of the Federal Motor Carrier Safety Administration (FMCSA) and Administrator David Strickland of the National Highway Traffic Safety Administration (NHTSA).

## BACKGROUND

MAP-21 was enacted on July 6, 2012, and reauthorized Federal surface transportation programs through September 30, 2014. MAP-21 is set to expire before the end of the 113th Congress. As a result, reauthorization of MAP-21 without having to resort to any short-term extensions is a priority for the Committee.

### Project Delivery/Streamlining

MAP-21 reformed the project approval and delivery process for highway and transit projects. MAP-21 streamlined this process by: allowing Federal agencies to carry out their obligations for a project concurrently with the National Environmental Policy Act (NEPA) environmental review for that project; instituting a financial penalty to each Federal agency that misses a deadline as part of the NEPA review process; and providing categorical exclusions for repair or reconstruction of an existing facility damaged by an emergency, for projects within the right-of-way, and for projects that receive limited Federal funding ($5 million or less). MAP-21

also requires that all environmental reviews for a project be completed within four years.

Program Consolidation and Elimination

MAP-21 consolidated or eliminated nearly 70 DOT programs. Many of these programs served similar purposes and several of them were no longer necessary because the nature of the Nation's transportation system has changed over time. By consolidating some DOT programs and eliminating others, MAP-21 allows DOT to become more effective and efficient through organizational and staffing changes.

Performance and Accountability

MAP-21 emphasized performance management by incorporating performance measures into the highway, transit, and highway safety programs. These performance measures will provide a more efficient Federal investment by focusing Federal funding on national transportation goals, increasing accountability and transparency, and improving transportation planning and project selection. State DOTs, localities, and public transit agencies are required to consider performance objectives in their transportation plans and project selection.

Innovative Financing for Transportation Infrastructure Projects

MAP-21 increased funding for the Transportation Infrastructure Finance and Innovation Act (TIFIA) program from $122 million a year to approximately $1 billion a year. This increase in funding, combined with a change in law to allow a TIFIA loan to account for 49 percent of the project costs (previously 33 percent), will allow DOT to issue about $35 billion in loans over the next two years. State governments, local governments, toll authorities, and public-private partnerships are eligible to apply for TIFIA loans.

MAP-21 also expanded the ability of states to collect toll revenue from the Federal-aid system. Specifically, any project that adds new lane capacity to the Interstate System can be tolled, and states continue to have the ability to toll roads that are not on the Interstate System. Furthermore, high occupancy vehicle lanes on the Interstate System may be converted to toll lanes.

Transit New Starts /Small Starts

MAP-21 streamlines the project development process for New Starts by setting time limits on environmental reviews and consolidating the steps FTA must take in the project approval process. MAP-21 eliminates the alternatives analysis requirement and instead relies on the review of alternatives performed during the metropolitan planning and environmental review processes.

Transit State of Good Repair

MAP-21 established a new grant program to maintain public transportation systems in a state of good repair. This program replaced the fixed guideway modernization program. Funding of State of Good Repair grants is limited to fixed guideway systems, including rail, bus rapid

transit, and passenger ferries, as well as high intensity bus operations (buses operating in high occupancy vehicle lanes).

Transit Bus and Bus Facility Grants

MAP-21 created a new formula grant program for bus and bus facilities, which replaces the previous discretionary Bus and Bus Facilities program. This grant program provides funding to replace, rehabilitate, and purchase buses and related equipment and to construct bus-related facilities.

Public Transportation Emergency Relief Program

MAP-21 establishes a public transportation emergency relief program to fund transit projects that have suffered damage as a result of a natural disaster or a catastrophic failure. This program may also fund transit operating expenses in areas impacted by a disaster or catastrophic failure if the area meets certain eligibility criteria. The Disaster Relief Appropriations Act, 2013 appropriated $10.9 billion for the Public Transportation Emergency Relief Program.

Electronic Logging Devices for Commercial Motor Vehicles

MAP-21 requires the Secretary to prescribe regulations that require commercial motor vehicles involved in interstate commerce to be equipped with an electronic logging device that monitors a driver's compliance with Federal hours of service regulations by September 30, 2013. Commercial motor vehicles are required to comply with the electronic logging regulations two years after the regulations are published as a final rule. The Secretary is also required to conduct a study on the efficacy of the restart rule in the Federal hours of service regulations and to report to Congress no later than September 30, 2013.

Reincarnated Carriers (Truck and Bus Companies)

MAP-21 requires the Secretary to strengthen motor carrier registration requirements to better identify motor carriers with a history of noncompliance. Motor carrier registrants are required to disclose prior relationships through common management, common control, or familial relations in regards to their previous employment history.

NHTSA Highway Safety Program

MAP-21 continued the behavioral highway safety program from SAFETEA-LU. States are now required to incorporate performance measures into their annual state highway safety plans and set performance targets that will focus each state's funding on the most effective safety projects. The Secretary will monitor each state's progress toward meeting their performance targets.

NHTSA National Priority Safety Program

MAP-21 consolidated several incentive grant programs from SAFETEA-LU into the National Priority Safety Program. States must meet specific criteria to receive funding for

highway safety programs such as occupant protection, safety information systems improvements, impaired driving, distracted driving, motorcycle safety and graduated drivers licensing.

**WITNESS LIST**

The Honorable Victor M. Mendez
Administrator
Federal Highway Administration

The Honorable Peter M. Rogoff
Administrator
Federal Transit Administration

The Honorable Anne S. Ferro
Administrator
Federal Motor Carrier Safety Administration

The Honorable David L. Strickland
Administrator
National Highway Traffic Safety Administration

# IMPLEMENTING MAP–21: PROGRESS REPORT FROM U.S. DEPARTMENT OF TRANSPORTATION MODAL ADMINISTRATORS

**THURSDAY, MARCH 14, 2013**

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON HIGHWAYS AND TRANSIT,
COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE,
*Washington, DC.*

The subcommittee met, pursuant to call, at 10:00 a.m., in Room 2167, Rayburn House Office Building, Hon. Thomas E. Petri (Chairman of the subcommittee) presiding.

Mr. PETRI. The subcommittee will come to order. Our Senior Minority Member, Mr. DeFazio, I know is here. I saw him in the hall a minute ago, so I think he will be here in plenty of time to make his statement.

I should just note that we appreciate the good work that you and your staff did in preparing the statements and that you will be doing your best to summarize them in approximately 5 minutes or so. There was a delay in the receipt of one or two of the statements, and I understand it is not anyone's fault in The Department, that OMB was a little slow in reviewing the testimony. And we join with you in urging them to do it in a timely fashion, because it enables staff and Members to do a better job of reviewing your testimony and preparing to ask questions, and so it is an important part of the process to do things in a timely manner.

Today's hearing will focus on oversight of the Department of Transportation's implementation of the law Moving Ahead for Progress in the 21st Century, better known as MAP–21. MAP–21 was signed into law by the President on July 6th, 2012, and authorizes the Federal Highway Transit and Highway Safety Programs through September 30th of 2014. It consolidated or eliminated over 70 Federal programs that were duplicative. These changes provide greater focus on the core national systems and give States greater flexibility to meet their transportation needs.

MAP–21 also started the process of holding States and transit agencies accountable for their funding decisions. States and transit agencies, in conjunction with metropolitan planning organizations, will have to incorporate performance measures into their long-term transportation plans. These performance measures will help States and transit agencies focus their limited Federal resources on projects that have the greatest benefit.

MAP–21 made major reforms and improvements to the project delivery process. It currently can take almost 14 years for a trans-

portation project to be completed if Federal funding is involved. This is unacceptable. Some of the MAP–21 reforms include allowing Federal agencies to review projects concurrently, penalties for agencies that don't meet project review deadlines, and expanded categorical exclusions for projects in the existing right-of-way or with limited Federal investment. These reforms will help cut bureaucratic red tape and quickly deliver the economic and safety benefits of transportation projects.

MAP–21 also created a program to provide relief for public transportation systems that were affected by a natural disaster or catastrophic failure. Previously, transit agencies had to work through FEMA to replace equipment or rebuild their systems after a disaster, but after Hurricane Katrina, transit agencies sought an emergency program similar to the Emergency Relief Program operated at Federal Highways Administration. This program was recently utilized by States and communities that were affected by Hurricane Sandy.

Numerous trucking safety provisions were included in MAP–21, which reflects Congress' commitment to keeping truckers and the traveling public safe. The Federal Motor Carrier Safety Administration is tasked with implementing new regulations on electronic logging devices, hazardous materials, safety permits, a drug and alcohol clearing house, and motor carrier registration requirements related to unsafe reincarnated carriers. These regulations will keep drivers safe while maximizing the efficiency of the trucking industry.

Congress recognized that new challenges have emerged affecting highway safety. The National Highway Traffic Safety Administration is required to implement a national priority safety program that incentivizes States to pass and enforce laws that address important safety issues. The program focuses on impaired driving countermeasures, occupant protection, motorcycle safety, distracted driving, and graduated driver's licensing.

These reforms are only part of the sweeping changes made in MAP–21, and I look forward to hearing from the Administrators on how their agencies are implementing the reforms that I have highlighted and others that we will include in MAP–21.

Now I would recognize Ranking Member DeFazio for an opening statement, should he care to make one.

Mr. DEFAZIO. Thank you, Mr. Chairman. I will be brief. I want to hear from the witnesses here before us today. In the last Congress, MAP–21 was one of the few products of any note, and it did provide for essentially a status quo continuation of our existing service transportation programs; however, as we know from numerous commission reports and reports from the American Society of Civil Engineers and others, that level of investment is inadequate. Our systems are deteriorating more quickly than we are repairing them and we are failing to undertake major new initiatives to get people out of congestion, make the country more competitive in the world, and we are lagging far, far, far behind our international competitors, who realize the importance of investing in transportation, moving goods and people more efficiently.

It has been, you know, a given since the founding of the Nation, George Washington with canals, Abraham Lincoln with railroads,

Dwight David Eisenhower with highways, and Ronald Reagan incorporating transit into the Highway Trust Fund, that these are basic and important investments that need to be made by the Federal Government on behalf of the States and territories, you know, the problem of, you know, us continuing to grow.

And I look forward to having a dialogue today and I will be in particular focused on the fact, and most of our colleagues who aren't on this committee don't know this and many of our colleagues on this committee don't know this, that in 2014, Federal investment in service transportation, which is currently about $50 billion a year, will drop to $6 to $7 billion in 1 year. That will mean basically the States will have to get in line to get reimbursed for projects that they have already undertaken, and the States are very unlikely to initiate new projects in that year, given the dearth of Federal funds.

And this is something that we need to begin talking about in this committee. I know no one wants to talk about taxes or revenues of any sort, but that is the reality: $50 billion this year; 2014, $7 billion. That is pathetic, and we have to do something about it. And I am going to be asking the various witnesses how they plan to handle that in the agencies under their jurisdiction.

Thank you, Mr. Chairman.

Mr. PETRI. Thank you. I would now like to recognize the chairman of the full committee, Bill Shuster.

Mr. SHUSTER. Thank you, Mr. Chairman. And I just want to echo what Mr. DeFazio said there. That is our biggest challenge we face moving forward, and so we need to—as I have said over and over, we have got to look at all of the options that are out there and look at some new options to funding the transportation system. Think outside the box, if you will.

But today here we appreciate the witnesses being here and this oversight. Thank you, Mr. Chairman, for having this oversight hearing how MAP–21 is being implemented. I think it is important. It is a historic piece of legislation with the many reforms and the consolidations that we have put in place.

I would be remiss by not thanking Chairman Mica for his leadership on shepherding the bill through the last Congress, and as Mr. DeFazio says, one of the success stories of the 112th Congress.

I am especially interested in the performance measures and the planning process. I think that is something that will go a long way to improving the system, but again, we need to make sure we are on top of what is happening, what is not happening, what is working, what is not working, so as we move towards next year and reauthorizing another surface transportation bill, we can learn from the past.

I also just want to let folks know that starting sometime this spring, the vice chair of the full committee, Mr. Duncan, we have set up a special panel, strengthening the economy by improving freight transportation, something the Hill for 6 months will be studying hard, not only here in Washington, but we will get out into the countryside trying to figure out, trying to make recommendations to us on legislation that will improve the movement of freight, the movement of goods in this country.

So I look forward. As I look out in the audience today, a lot of folks are interested in those things. And as we move forward, Chairman Duncan will be looking at those in an in-depth way.

So again, thank you, Mr. Chairman, for having this hearing today, and look forward to the testimony. I yield back.

Mr. PETRI. Thank you. I would like to recognize the Senior Minority Member of the full committee, Nick Rahall.

Mr. RAHALL. Thank you, Mr. Chairman. And I first want to commend all the Administrators with us this morning for the tremendous job they do under very difficult circumstances and in the face of such adversity, certainly with respect to the sequester and the fact that here in the middle of March they still do not know what their budgets will look like for the remainder of the fiscal year. So that has to be an extremely challenging proposition for each of you. To those who say that the Federal Government should be run like a business, well, this is no way to run a business.

Today I do look forward to hearing about and discussing some of the initiatives that I spearheaded in MAP–21, such as closing the loopholes that allowed projects to be subdivided into separate contracts to avoid complying with the Buy America provisions.

I am also concerned with an administrative effort by FHWA to expand the 30-year standing waiver exempting all manufactured projects from Buy America. This expansion of the waiver was done by memo, without public input and no opportunity for comment.

In the area of transit, I have concerns with the new Bus and Bus Facilities Formula Grant Program, which is being implemented as grants to the States rather than directly to transit systems in areas with a population of less than 200,000. And I look forward to some discussion of that during this hearing.

There is one additional area that I believe deserves discussion, and although today may not be the appropriate time since not enough time has elapsed since enactment of MAP–21, and that is how the States are addressing what were formerly called transportation enhancements, scenic byways and recreational trails under the new TAP program, the Transportation Alternatives Program. And in this regard, I commend you, Chairman Petri, for the leadership and strong advocacy that you have been over this program.

So these initiatives first authorized in landmark ISTEA in 1991 have done so much to improve the quality of life in rural and urban areas as well.

Thank you, Mr. Chairman.

Mr. PETRI. Thank you. And now we turn to our distinguished panel, consisting of Administrator Victor Mendez, Federal Highway Administration; Peter Rogoff, Federal Transit Administration; Administrator Anne Ferro, Federal Motor Carrier Safety Administration; and David Strickland, National Highway Traffic Safety Administration.

Again, we thank you for the effort that went into this, invite you to summarize the remarks, the statements in about 5 minutes. And I think we will begin with Administrator Mendez.

**TESTIMONY OF HON. VICTOR M. MENDEZ, ADMINISTRATOR, FEDERAL HIGHWAY ADMINISTRATION; HON. PETER M. ROGOFF, ADMINISTRATOR, FEDERAL TRANSIT ADMINISTRATION; HON. ANNE S. FERRO, ADMINISTRATOR, FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION; AND HON. DAVID L. STRICKLAND, ADMINISTRATOR, NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION**

Mr. MENDEZ. Well, thank you. And good morning everyone. Mr. Chairman, Ranking Member DeFazio, members of the subcommittee, thank you for this opportunity to discuss the Federal Highway Administration's progress in implementing MAP–21.

Immediately after President Obama signed MAP–21 last year, FHWA moved very quickly to effectively carry out its provisions, and I am pleased to highlight our extensive efforts to date. Transportation moves our economy, and your bipartisan support for MAP–21 is a recognition of the national priority to keep America's transportation network operating safely and reliably. MAP–21 sustains our Highway Trust Fund and provides States and local communities with a 2-year horizon of funding to build the roads, bridges, tunnels and transit systems that our economy needs to stay competitive. That means contractors and construction companies are able to plan for big projects and make the kind of employment decisions that put hardworking Americans back to work.

Under MAP–21, Congress provided $81 billion for a restructured performance-based Federal-aid highway program to better target investments and increase transparency and accountability. And FHWA wasted no time to provide States guidance and other information, including anticipated funding amounts, to ensure States could adequately plan and begin obligating funds on October 1st for critical projects.

MAP–21 also makes great progress in improving safety, expanding the TIFIA credit program, and ensuring better transportation planning. It also includes many provisions that complement the successes of FHWA's Every Day Counts innovation initiative, which I launched 3 years ago to present new technologies, new ideas, and new ways of thinking to deliver projects faster and expedite the deployment of new and proven technologies into the marketplace. These provisions will help us become more innovative, allow the public to enjoy the benefits of upgraded infrastructure sooner, and ensure the best value for every taxpayer dollar.

MAP–21 provided DOT with unprecedented opportunities to improve freight movement throughout our Nation, including the establishment of a national freight policy and national freight network, and the development of national and State freight plans. Our implementation efforts to date are very extensive, beginning with Secretary LaHood's announcement of the creation of our Freight Policy Council last summer, which brings together senior DOT leadership and a variety of experts.

We are also creating a National Freight Advisory Committee to engage the public and private sector to help us improve the way we move freight. And, we are actively working to designate the national freight network to better focus attention on the highways most critical to the movement of goods.

MAP–21 made a number of other reforms to existing programs and provisions that required our immediate attention and action to ensure that Federal, State, local and tribal transportation partners were ready on October 1st. Accordingly, shortly after MAP–21 passed, we created a MAP–21 Web site to link our employees, stakeholders, and the public to the new act and to provide related resources as they became available. We held 26 informational Webinars across the spectrum of our programs that reached over 10,000 stakeholders. We also provided several opportunities to hear from the public. For example, in the area of performance management, we held a series of listening sessions and other meetings last summer. And in September, we held a National Online Dialogue with more than 8,000 visitors, who contributed 228 ideas for our consideration.

Additionally, we developed and posted on the Web site numerous guidance documents, questions and answers, and other information in a timely manner to help the Nation's Federal, State, local, and tribal transportation agencies implement MAP–21 programs and provisions, and to highlight opportunities available under the new law.

We also took swift action to implement MAP–21 provisions requiring regulatory changes. Our collaborative efforts with FTA and other Federal agencies helped us to meet several rulemaking deadlines, and we are on track to complete all of the remaining requirements.

The achievements I have highlighted today represent just some of the efforts we have underway at FHWA to implement MAP–21. We look forward to working with all of you as we continue to make progress toward full and effective implementation of these critical programs and provisions.

So with that, Mr. Chairman, I conclude my remarks and would be happy to answer your questions.

Mr. PETRI. Thank you. Administrator Rogoff.

Mr. ROGOFF. Thank you, Mr. Chairman, Ranking Member DeFazio, and other members of the committee. I appreciate the opportunity to highlight the Federal Transit Administration's progress toward implementing key provisions of MAP–21, which makes many bold policy changes that the administration has sought. Despite facing an array of funding challenges, I am pleased by the progress we are making to implement MAP–21 at the FTA.

As you pointed out, Mr. Chairman, in your opening remarks, we have a new Emergency Relief Program, which the President first proposed in his budget for 2012. It was authorized in MAP–21, and thankfully it was enacted in time for the worst natural disaster ever to befall public transportation in the United States, Hurricane Sandy, which affected more than 40 percent of the Nation's transit ridership at the height of the storm.

The Disaster Relief Appropriations Act originally granted $10.9 billion to FTA to reimburse transit agencies for response and immediate recovery and to mitigate the impact of future disasters. To date, we have allocated more than $390 million of that amount to reimburse the hardest hit agencies in New York, New Jersey, and elsewhere. By next week, we intend to award more than $150 million in additional funds. By the end of this month, we will an-

nounce the distribution of the first $2 billion made available under that program.

At the Obama administration's urging, Congress granted FTA historic new authority to provide long overdue Federal safety oversight, and we welcome this new responsibility. Our goal is to implement a safety management system approach that improves safety using commonsense standards that will add value without adding a great deal of cost or burdensome regulations to our transit agencies.

We recognize going in that a one-size-fits-all approach to safety is not the best approach for the unique needs of individual transit providers. FTA will set a national framework and then work with each agency to develop a safety system that targets its greatest safety vulnerabilities, and those vulnerabilities will not be the same from one transit agency to the next.

Meanwhile, we have begun to work closely with all of the affected Governors, our transit rail safety advisory committee—TRACS—and other stakeholders to embark on the necessary rulemaking and public education process.

I would like to follow up on something that Mr. DeFazio spoke to, namely the condition of our infrastructure, because keeping our transit system safe goes hand in hand with bringing our aging systems into a state of good repair. Following on the Administration's budget proposal, MAP–21 established a new, vitally needed formula program for railways and busways, and initiated a new national transit asset management program that will cover all transit systems. This program will help the industry tackle deferred rehabilitation, replace outdated transit assets, and support ongoing maintenance efforts that are key to maintaining a transit network that continues to provide reliable and desirable service for the American public.

I appreciate the committee's support for the policy goals in MAP–21; however, I need to remind the committee that FTA faces budget challenges that hamper our ability to address these goals. Some of those challenges Mr. Rahall spoke to in his statement.

Overall, the sequester struck $656 million from FTA's budget. It reduced program funding for our capital investment grants program by almost $100 million. This will mean that few, if any, additional New Starts construction projects will be fundable in the near term. Even more troubling is the fact that ongoing major New Starts and Small Starts projects will experience increasing borrowing costs as FTA will now be required by sequestration to slow its scheduled grant payments to projects for which we have already made written financing agreements.

Even without the sequester, under MAP–21, our New Starts/Small Starts capital investment program was authorized to receive 10 percent less in funding when compared with amounts available to carry out the projects in recent fiscal years.

These are just some of the significant funding challenges that direct our programs and really undermine some of our efforts to serve a record number of transit riders. And I would emphasize that: we are seeing a record number of transit riders across the country today. FTA will still do all it can to continue making

progress to live up to the promise of MAP–21 with the resources we have available to us.

And if I could just speak to one other thing that Chairman Shuster mentioned and Administrator Mendez mentioned. The area of freight policy is one that holds great promise for coordination between the new task force that the chairman mentioned and what we are doing at DOT. Administrator Mendez spoke to the fact that the Secretary has stood up a new Freight Policy Council and has brought together a freight advisory committee that we are convening now. It just seems to me that this is a unique opportunity to have those two entities work together with Chairman Shuster's task force toward identifying common challenges and work toward common goals, and we look forward to that partnership going forward.

Thank you.

Mr. PETRI. Thank you. Administrator Ferro.

Ms. FERRO. Thank you, Chairman Petri, Ranking Member DeFazio and subcommittee members. Thank you for the opportunity to join my colleagues today in sharing the Federal Motor Carrier Safety Administration's plans to implement the provisions of MAP–21.

Let me start by thanking the subcommittee and the full committee for your work on this important legislation. It absolutely has provided the FMCSA key enforcement tools to carry out its mission to reduce crashes and injuries involving large trucks and buses. Every life is precious, any one is one too many to lose, and we are absolutely grateful for the provisions in MAP–21 that really strengthen our overall authority.

The legislation enhances enforcement strategies consistent with the agency's three core principles, which are raising the bar to come into this industry, to ensure that those who are operating are maintaining high standards as they operate on our highways, and to make sure everybody has the tools to get the bad actors off the road.

FMCSA began putting our new safety tools into place quickly after enactment of the legislation. Late last year, for example, we ordered a rogue moving company in California that was holding hostage the goods of 54 consumers, refusing to release them until they pay a significantly higher rate. We were able to use the new authority under MAP–21 not just to order the company to release the goods, but to promptly revoke their authority as well.

Just a couple weeks ago we used new authorities within MAP–21 to shut down a bus company that had refused us access to their records as we were completing a thorough investigation of their operations. We promptly revoked that company's authority. We are working with them today.

MAP–21 rulemaking provisions are a key element of our priority work plan, as they need to be. We are implementing them very carefully and deliberately.

The drug and alcohol clearinghouse, for example, that is required in MAP–21 is one that we expect to have on the street as a proposed rule this spring. That is a clearinghouse provision that will provide employers preemployment knowledge of applicants who may have tested positive for drugs or alcohol, or test refusals, and

thereby avoid hiring someone that is not qualified to operate a commercial vehicle.

MAP–21 also directs FMCSA to implement a full-scale electronic logging requirement for all entities operating under hours of service, maintaining records of duty status. We cannot move quickly enough on this important legislation that transitions the paper logbook world into one where hours of service are monitored electronically, thereby improving overall compliance with a very important provision.

We have met extensively through listening sessions and other meetings with our advisory committee, listening sessions with a broad audience of drivers, enforcement personnel, industry specialists, technology providers to ensure we are getting the provisions right in that rule, and we expect that to be a supplemental notice of proposed rulemaking incorporating all the requirements within MAP–21 by September of this year.

We are actively working on other requirements as well within the new MAP–21 legislation. That includes implementing a knowledge test for any applicant for authority prior to gaining their authority, to demonstrate their knowledge not only in our safety rules, but where applicable in consumer and commercial rules as well.

We are proceeding ahead with behind the wheel and classroom training requirements for CDL operators, and moving forward with very important research, including a field test on a 34-hour restart provision, including examining insurance minimums, and assessing crash rates under the new agricultural exemptions, which just went into a final rule actually posted today.

All in all, MAP–21 helps this agency raise the safety bar for operators on our highways, making our roads safer for everybody.

And with that, again, Mr. Chairman, Ranking Member DeFazio and Members, we thank you, and I will be pleased to answer any questions.

Mr. PETRI. Thank you. Administrator Strickland.

Mr. STRICKLAND. Thank you. Good morning, Mr. Chairman and Ranking Member DeFazio and members of the committee. I appreciate on behalf of National Highway Traffic Safety Administration to testify about the implementation of our agency's work on MAP–21.

Every member of this committee is aware of the challenges that the Department faces in roadway safety, and that is why we appreciate the prioritization that was enumerated in MAP–21.

Highway fatalities fell to 32,367 in 2011, making it the lowest level since 1949 and a 1.9-percent decrease from the previous year. The historic downward trend in recent years continued through 2011 and represents a 26-percent decline in traffic fatalities since 2005. For the first time since 1981, motor vehicle crashes were not among the top ten causes of death in the United States. In 2011 we also saw the lowest fatality rate ever recorded with 1.10 deaths per 100 million vehicle miles traveled.

Other important data points include that fatalities declined by 4.6 percent for occupants of passenger cars and light trucks. Drunk driving fatalities dropped 2.5 percent in 2011.

The number of people killed in distracted affected crashes rose by 1.9 percent. Fatalities increased amongst large truck occupants by 20 percent. I would like to assure the committee that we are working closely with my fellow Administrator, Anne Ferro, and the Federal Motor Carrier Safety Administration to gather more detailed information about the issues around large truck occupant crashes to better understand this increase that we saw.

Bicycle and pedestrian fatalities increased by 8.7 percent and 3 percent, respectively. This spike is alarming, and we are taking a number of steps in addressing this. First, the Department will be hosting two bicycle safety summits in the coming year. We will be working with advocates, safety experts and average riders. We look to examine what safety strategies work and what isn't working, and will use this information to make bicycling safer throughout the Nation. We will target a series of events in the areas that have experienced the most fatalities and will work with State and local officials to make sure they are taking advantage of the resources available to them.

We will challenge our State and local partners to help us better understand what is happening on the ground; for example, to what extent changes in bicycle fatalities might be related to increased ridership. And, finally, we will launch a new demonstration program to improve driver and pedestrian interactions and behavior.

In spite of all of our gains in lowering overall fatalities, motor vehicle traffic crashes continue to be a leading cause of death for those that are in our younger age groups. That is why programs such as graduated driver licenses, or GDLs, are so important. And I am pleased that the Congress authorized incentive grants in MAP–21 to encourage more States to adopt such an approach for younger, inexperienced drivers.

MAP–21's consolidation of the various grant programs from SAFETEA–LU into the new Section 405 National Priority Safety Program is actually a great bonus and administrative relief for the States that actually use our programs. We have been looking to have a consolidated application and annual deadline and greater flexibility to ensure grant funds are directed to priority highway safety programs.

We have acted quickly to implement these particular programs. Less than 2 months after enactment, we have issued a notice of fund availability for the distracted driving grants. At the last deadline of the month, 34 States, including the District of Columbia and three territories, have submitted applications for these grants. We published an interim final rule for the National Priority Safety Program in January 2013. This IFR provides States the guidance about the application process for all NHTSA highway safety grants. The comment period will remain open until April 23rd, 2013.

In support of learning about these new programs, we have conducted three Webinars with the State Highway Safety Program offices and with a step-by-step process of how the new grant processes work. We will have two additional Webinars scheduled for March.

Please be aware that the full year continuing resolution passed by the House last week would fail to provide funds for NHTSA in a manner consistent with MAP–21. Specifically, it would not pro-

vide funding for the two new important MAP–21 grant programs, the distracted driving grant and the graduated driver's licenses program for young drivers. The Senate's version of the CR fully implements this MAP–21 authorization. We urge this committee to work with the Congress and make sure that resources for NHTSA can support these important priority safety programs.

As an agency, we are dedicated for our mission for safety. We work closely with the States and will continue our partnership to make sure that MAP–21 is effectively implemented.

Thank you again for this opportunity, and I look forward to answering your questions.

Mr. PETRI. Thank you. Thank you all for your statement. And I think I will begin the questioning. I would be remiss if I didn't state that the biggest thing facing the committee and the country within the transportation area is how to maintain our infrastructure and adapt it to the opportunities and needs of the times. And as you all know, the Highway Trust Fund provides funding for most highway transit and highway safety programs and is projected to run out of money in 2015. I understand the income, covering about 60 percent of the total that is going out, is something that needs to be addressed.

Does the Administration have any recommendation on how to address the long-term solvency of the Highway Trust Fund?

Mr. MENDEZ. Mr. Chairman, let me address some of it, and the other Administrators may wish to chime in on this.

I think one of the really important issues that we are facing, as you mentioned, is the issue of funding. And as we move forward, I can tell you one of the really critical pieces of MAP–21 is the TIFIA program. Certainly we have raised the awareness of bringing the private sector into the industry to help us with the funding issues. So I think that is really a good thing that you have done and increased, within MAP–21.

Obviously, the bigger issue is, of course, working with the administration and with Congress finding solutions to move us to where we need to be and be able to invest as a Nation to move forward.

Mr. ROGOFF. Sir, obviously the condition of the Highway Trust Fund is a concern to all of us, as we have to monitor the balances to make sure that we are going to get through the MAP–21 period in a fashion that will enable us to continue to make grants through 2014.

I think it is notable the President did propose in his budget last year a proposal to use half the savings from the drawdown in the wars in Iraq and Afghanistan to maintain transportation spending at robust levels absent a trust fund solution. So there is a proposal to make sure that we do not fall off the cliff. It is not necessarily a trust fund solution.

Ms. FERRO. I have nothing further to add.

Mr. STRICKLAND. Likewise.

Mr. PETRI. I would just note that the association representing the trucking industry is now endorsing an increase in diesel fuel taxes, which have not been increased since 1993, not because they want it, but because they need the infrastructure for their industry, and feel that of the different choices that they confront this is probably the most feasible.

And we do see a number of States—and of course, these programs are Federal, but they are administered through the States in the highway area, and they face many, many challenges and opportunities at that level, and raise their own funding. A number of States are stepping up, whether it is Virginia or Wyoming recently, or others. So we are at some point going to have to do our duty however we can at the national level so that our country has adequate transportation infrastructure going forward.

I am interested in Administrator Ferro's discussion of electronic log recordkeeping for drivers. And this is clearly a way to make it much more accurate. It also runs some risks of being sort of too rigid in the sense that if you run into situations, you must have some fudge factor or if a driver is within a few miles of being at home and suddenly runs up against the limit, is supposed to lay over for a period of time. How do you reconcile the standards that are written down that look very precise with the reality that people's fatigue level and so on on an individual basis varies quite a bit, and one-size-fits-all is easy to administer, but it is not necessarily sensible in the individual situation? We are going to get a lot of pushback, as you know, and you already are, on some of this.

Ms. FERRO. Well, Mr. Chairman, your point with regard to the value of a uniform electronic logging rule is a very strong one as it pertains to safety and ensuring, again, that everyone is sort of operating on a level playing field when it comes to hours of service compliance.

We have seen a number of companies, large and small, transition to the use of electronic logging devices, and doing so very effectively, very profitably and finding that it is a very efficient mechanism, and over time, sometimes almost immediately, drivers prefer it as well.

With regard to developing the rule, as committee members know, we have been working on this issue and the development of a strong electronic logging rule for several years now and have included in that development a number of listening sessions with industry, with drivers at the Mid-America Truck Show, with a broad cross-section of interest groups, and I feel very strongly that we are incorporating a number of those comments and that input into the SNPRM that we are developing.

It really has four core factors in the rule itself: first are just the technical specifications for the equipment, which shares its own complexity and requires flexibility with the new technologies today; ensuring that drivers are not harassed with the use of those devices; ensuring that any sort of supporting documents requirements that are required to document and prove an operator's hours are reduced and streamlined through the use of those devices; and then the requirement itself. Again, we are taking that concern that you raised into account.

Mr. PETRI. Mr. DeFazio.

Mr. DEFAZIO. Thank you, Mr. Chairman. Mr. Rogoff, the new Transit Safety Oversight Program, what is going to happen to that with sequestration in terms of implementation?

Mr. ROGOFF. Well, it certainly——

Mr. DEFAZIO. Turn on your——

Mr. ROGOFF. I am sorry. It certainly holds us back. Like a number of the other MAP–21 regulatory requirements, sequestration is going to result in a sizeable hit to my administrative budget, which is likely to result in us having to furlough people before the end of the year unless some relief is found.

And obviously we have always treated safety as the highest priority. That has been the Secretary's entreaty to us, and we have always followed that, but this new safety authority is one where this committee actually authorized some increased administrative funding for us, recognizing that we needed that additional staff complement to take on this new responsibility.

Mr. DEFAZIO. Uh-huh. OK.

Mr. ROGOFF. What is happening is the reverse. Rather than get the added authorized levels, we are getting a freeze minus the sequester.

Mr. DEFAZIO. OK. Good. So we have got a problem there. And I just got—my most recent numbers I have are that the National State of Good Repair Assessment estimates that $77.7 billion of the assets for the entire transit industry are past their expected period of reliable service, which would sort of point to me the need for this oversight and safety. I mean, we killed some people here in DC because of the outmoded equipment, and so I am sure elsewhere we have problems.

Mr. ROGOFF. Indeed. We have viewed the safety responsibility and the new state of good repair challenges as one in the same in many ways. Unfortunately, I have to point out that that $78 billion estimate is now a couple of years old and it is probably higher.

Mr. DEFAZIO. Thanks. Ms. Ferro, just two quick questions. One is the drug and alcohol clearinghouse, great, but I held a hearing a few years ago here where we found that the chain of custody doesn't exist, that there were onsite, you know, coaching to fake up your drug tests, the collection points are not monitored in any way, and, in fact, are often a point of fraud.

So have we done anything to deal with the collection sites and put a little more integrity in this chain of testing?

Ms. FERRO. Actually, the MAP–21 provisions incorporated—gave us a stronger level of oversight on the collection sites. I can't cite it right now, but I will be happy to follow up with you——

Mr. DEFAZIO. OK.

Ms. FERRO [continuing]. Because we share that concern.

Mr. DEFAZIO. All right. Thank you. And then also, you know, I have been on an issue for quite some time now, and we are talking about the logbooks and we are talking about safety, that is all great, but you know, I know, people in the audience know that a lot of truckers are detained past their operating hours at points of dropping off their loads. You know, I mean, what are we going to do about that? I mean, you know, they have got to move. I mean, come on. We know they are going to move, we know they are going to violate their operating hours.

Ms. FERRO. I agree that drivers who are detained absolutely are pressured to finish the leg of their journey. They may be detained beyond hours of service. They are going to be pressed to complete that journey, probably over hours and probably very tired, and clearly very stressed.

We are continuing some of the work that I think you had identified and had GAO do with regard to additional studies on the impact of detention time on driver safety.

MAP–21 also incorporates a provision called a prohibition on coercion, which doesn't speak directly to detention time, but does speak to the agency's now new opportunity to take action in cases where a driver files a complaint that a shipper or receiver or another party is exercising some sort of leverage or coercion through economic withholding or perhaps even physical harm at the point of loading, unloading. And so, again, back real quickly on detention, we are completing a study. We expect that to be done in 2015, if not sooner.

Mr. DEFAZIO. OK. Thank you. And then just quickly anybody on what is—what the plans are for 2015? I mean, the chairman referenced it, but I am just curious. Are we going to start slowing down in 2014 or 2013? I mean, if you see this cliff coming, you know, have you made the States aware of it, because if they have a 2-year project where the payout would be in 2015, that might be a problem. Either highways or transit, quickly.

Mr. ROGOFF. All I would add, sir, is that we unfortunately have had to grow accustomed to this when trust fund balances have gotten low. And we do have a mechanism to monitor them, and we would have to slow payments. What I can't give you a good fix on right now, because we are still a ways out from the end of 2014, is whether we are going to have a solvency problem within 2014 or not. The Transit Account has sort of teetered on both sides of the margin, depending on when you ask, but Victor may have other insights on this.

Mr. MENDEZ. Yes, sir. In 2008 I believe we faced the situation you are talking about. At that point in time, FHWA did develop a process.

Now, I won't go through the entire process, but basically at the end of the day what happens, is if you don't have sufficient funds in the account, you begin to then delay Federal payments to the State DOTs and other recipients.

Being a former State DOT director, I know on the State level what you will be finding is that then you would start looking at contracts that you will not issue; you will start delaying projects. Critical infrastructure that needs to move forward, you won't move forward with those contracts.

Mr. DEFAZIO. OK. Thank you. Thank you, Mr. Chairman.

Mr. PETRI. Thank you.

Mr. Miller.

Mr. MILLER. Thank you, Mr. Chairman. Mr. Mendez, I have a couple questions for you. In 2005, I authored the NEPA reciprocity law that allowed States that equaled or exceeded NEPA to only go through one process. They sort of filled the paperwork out, but they didn't have to go through the duplicative process. And only one State took advantage of it, California, and they have really done well. They have probably saved 17 months off the process time, and delivery time about 30 months.

And I authored the language in Section 1313 of MAP–21 that also would have allowed all the States to do it. It is a permanent program. I am sad that the Senate didn't accept our language. We

don't have to fill out one piece of paper, but we have to do the duplicative process still, but it allows States with environmental laws that equal or exceed NEPA not to have to go through both processes. The original language I authored would have allowed counties and cities to do that, but it was stricken in the Senate.

But California has done a very good job on the process. But do you kind of agree that to avoid the duplicative process would be beneficial to all the States?

Mr. MENDEZ. If you look at MAP–21, you did open up that provision to allow other States to actually participate. So we are looking very hard, working with AASHTO and the States to once again take a look at that and see how we might be able to encourage other States to participate within that provision.

And it is very true. We have found in California as we looked at some of the data that the environmental process they follow has actually been very beneficial. I believe the numbers you quoted are pretty accurate, 17 to 18 months' reduction in the process. So we are going to continue to work with the States and see what we can do to encourage others to participate.

Mr. MILLER. Well, if you can do it in California, I believe you can probably do it anywhere, because California's a very tough State on the process of environmental review. Do you expect DOT to grant the eligible States ability to do this to qualify in the near future?

Mr. MENDEZ. Oh, absolutely. We will implement the provisions as you have mandated.

Mr. MILLER. And what methods are you using to determine the effectiveness of the streamlining regulations and implementing the plan?

Mr. MENDEZ. Well, with regard to the overall streamlining, because you did provide to us various provisions for streamlining the environmental process, we have undertaken many—we have implemented a lot of guidance to help the States move forward in that regard.

We also have quite a few rulemaking processes that are underway to help us implement all the provisions for environmental streamlining. I have a whole list that I probably could provide to you after the fact, but we are working very hard to implement all these provisions.

I can tell you moving a project forward in terms of project delivery, environmental streamlining, has been a very major issue, not only for us at FHWA since I have been there, but really for the entire administration. I can tell you as an outgrowth of an Executive order we worked with the Transportation Rapid Response Team to coordinate with other Federal agencies to move some of these projects forward, and we have been very successful.

Mr. MILLER. It seems like every project that they put out to bid comes in under the engineer's estimates, probably considerably, because people aren't busy right now and they can deliver projects quicker. Is your focus right now on timeline on project delivery?

Mr. MENDEZ. Absolutely. Since I have been at FHWA, about 3½ years, one of my major priorities has been implementing innovation initiatives to help deliver projects in half the time. I believe the chairman mentioned it takes about 14 to 15 years to deliver major projects. My challenge to the industry has been to cut that in half.

We have implemented the Every Day Counts initiative to help us do that.

And I think at the larger level, I believe if you listen to President Obama talk to every individual Federal agency asking us to cut the red tape, that is what we are looking at.

Mr. MILLER. You briefly mentioned challenges. What do you see as the biggest challenge in implementing this process?

Mr. MENDEZ. Well, I think it is just a matter of getting the industry on board. We are working, by the way, with the private sector and the public sector on a lot of these strategies that we have identified to move projects forward. And, you know, we are in a fairly conservative industry, so taking new ideas and implementing them takes a little bit longer. I think what we have provided at FHWA is a venue or a channel, if you will, for all State agencies to work with us and deploy these strategies nationwide.

Mr. MILLER. Freight delivery is huge in my district, because we have the ports of Long Beach and L.A. in California. And what do you see in your process to ensure we have a solid, well-funded freight line plan that comes out of the DOT to the States in the near future?

Mr. MENDEZ. Well, as you are aware, within MAP–21, there is a big focus on freight movement in a reliable manner and reducing congestion. And, by the way, I was at the Gerald Desmond Bridge about 2 months or so ago, so I understand the challenges you face there.

As you are aware, within MAP–21, there are certain provisions that we need to implement, things like creating a national freight network, and we have that process underway. In fact, we issued a notice in early February outlining for everybody what that process will be to identify the freight network.

We also will be looking at other elements within DOT. The Secretary did form the Freight Policy Council. And as was mentioned earlier, we are looking to create a National Freight Advisory Committee. And, by the way, we are looking for nominees, and the deadline for that is March 21st. So it is important for us to bring in stakeholders with the right kind of experience, both public and private. And whether it is safety issues or trucking issues, rail issues, we need all that at the table to come up with a strategy that makes sense for the entire Nation.

Mr. MILLER. I will have more questions, but the chairman has been very generous. Thank you. I yield back.

Mr. PETRI. Thank you.

Mr. Rahall.

Mr. RAHALL. Thank you, Mr. Chairman. Administrator Mendez, let me follow up on something I mentioned in my opening statement. You recently issued a memo to division officers expanding the current 30-year standing waiver exempting all manufacturing products from Buy America. Many in the industry have questioned the need for the existing waiver, let alone the need to expand it.

FHWA claims that the intent of the memo was to clarify that miscellaneous items like faucets, door hinges, fittings, clamps, washers, nuts and bolts used on Federal highway projects are not subject to Buy America.

Mr. Administrator, I would ask you to look at the images that are on the screen. It is my understanding that these items would no longer be subject to Buy America under your memo. Now, the last time that I was in Lowe's, if I recall, I could not find anything that looked like these items on the shelf, so I don't see these as miscellaneous, off-the-shelf items that should not be subject to Buy America, but they would be under your memo.

Can you explain to me why the FHWA issued this memo and why your agency spoke—or who your agency spoke to prior to issuing this memo? Did the agency engage manufacturers and other stakeholders prior to issuing the memo?

And then I am also interested in why FHWA thought it was appropriate to make the determination to expand this 30-year-old waiver through a memo with no notice and opportunity for comment.

Mr. MENDEZ. Well, thank you. And I do understand the concern that has been out there and certainly has been expressed to us directly by many stakeholders, but I do want to go back to some of your comments. The intent genuinely was not to expand or reduce what was already in place. What we believed internally was to try and provide to all of our offices throughout the Nation—in case you are not aware, we have an office in every State—and so we wanted to ensure that this waiver for manufactured products was being implemented throughout the Nation in a consistent manner. And so that was clearly the intent from our standpoint, was internally to ensure everybody was doing things consistently.

And let me point to what we do on a national level, because I think I need to put this into context. When it comes to Buy America, nobody has set a higher standard than Secretary LaHood and our Deputy Secretary Porcari. Whenever we receive a waiver request, it is very difficult for us to get them approved. I know that, our division administrators know that. So waivers are very, very minimal. Within our $40 billion program nationwide, I believe in 2011 we issued six waivers at a cost of $6 million, which if you look at percentages, it is way less than one-tenth of a percent that received a waiver.

I just want to assure you that we are very focused on Buy America, and really our standard has been very high. And on that, I can assure you the intent was not to expand the authorities.

Now, since that time, though, a group has issued or submitted a legal action against us on that memo, and so we are working with the Department of Justice on that issue to see how we are going to deal with that legally.

Mr. RAHALL. Do you have any input from stakeholders when you issue waivers?

Mr. MENDEZ. You mean on this particular issue?

Mr. RAHALL. Yes.

Mr. MENDEZ. No, we did not. Like I said, our intent was really strictly to ensure consistency within our operations throughout the Nation.

Mr. RAHALL. All right. Administrator Rogoff, let me turn to you real quickly. As a result of the 2010 census, Huntington, West Virginia, Ironton, Ohio, and Ashland, Kentucky, are now part of a single new urbanized area, which has a population just over FTA's

threshold of 200,000 for large urbanized areas. There are three small transit systems in the region, but they are now each saddled with Federal transit rules designed for much larger urban areas.

One challenge raised by my local transit agency this week in Huntington, West Virginia, is that one of the other agencies, the Ashland bus system, has refused to negotiate how Federal transit dollars are to be divided among the three systems in the region. FTA has indicated that until they come to an agreement at the local level, all Federal formula funding to the UZA will be held up.

Does FTA have any process in place to address this situation? And I am wondering what recourse does a transit agency have if another agency in the UZA refuses to come to the table?

Mr. ROGOFF. Well, a couple of things. First, the 200,000 population threshold is not an FTA threshold. It is a threshold in the law. So we are limited in our ability in terms of how we must interpret it. The census tells us who is in what urbanized area and who is not. I have just been made aware of this problem between Huntington and Ashland. I think in the old days Vicki would have called me in a heartbeat, but she didn't.

Mr. RAHALL. She is not there anymore.

Mr. ROGOFF. She is not there anymore.

Mr. RAHALL. She would have to call from the farm.

Mr. ROGOFF. Right. But I think more importantly, this needs to come to closure by the end of this month. The deadline is March 27th for them to come to an agreement.

Now, I am not supposed to intervene in these local discussions; however, what I can do is facilitate a conversation, and if I need to go out there, I will, and sit everyone down and try to force a resolution, because our focus is on the passengers and whether the passengers are being served, and one of the ways that happens is by being sure that our dollars can continue to flow so that transit agencies can serve them.

So I will talk to my regional administrator on this, see what the state of play is to date. The problem is, as I understand it, the operating cap that would go to Ashland, Kentucky, is not sufficient to let them even run their current operations, and there is a lot of concern over that. And it is a three-State challenge: it also includes Ohio. They need to come to some resolution so the dollars can continue to flow. And we will help facilitate that conversation if we don't see anything coming together by the end of the month.

Mr. RAHALL. All right. I appreciate that. Thank you.

Mr. PETRI. Representative Southerland.

Mr. SOUTHERLAND. Thank you, Mr. Chairman. I am proud of Florida's Department of DOT for delivering, I know, to my office last week the MAP–21 performance report almost 3 years early. And I am pleased that the report shows that Florida, our roads, our bridges are in good shape. We can always strive to do more, but overall I am very pleased by what I see in the report, which is a requirement of MAP–21.

Given that today's hearing is focused on the implementation of MAP–21, I am curious, Administrator Mendez and Administrator Rogoff, what are you hearing from other States? Are you hearing initial reports as far as the conditions of their reports?

Mr. ROGOFF. Well, I would just make the point from the transit perspective: we appreciate Florida's leadership in sort of stepping out there. They have stepped out ahead of us, frankly, in that we have not yet issued the performance measures that we are charged with developing in MAP–21. So, you know, we view the Florida report as a good, informative document where they are saying to us, "Well, this is how we look at it in Florida," and that will certainly inform our thinking nationally as we develop performance measures for both highways and transit.

I think, importantly, we have a—and I will be interested in seeing how Florida addressed this question—we have an interesting challenge that you all have charged us with—I commend you for doing that—and that is that both agencies have a congestion performance measure to come up with, and I think it will be the proof that we will come out of our model silos if we come up with the identical measure of congestion. That may be a challenge. We have been measuring congestion for the FTA New Starts program in a variety of ways. FHWA has come at it from a different angle. We are going to try and merge these approaches and come up to commonality so all 50 States and the local communities and the local transit agencies have one goal to shoot for.

Mr. MENDEZ. I agree with my colleague. I would add one other element here, which is that one thing that I have learned about the performance management concept is that what I thought would be straightforward really is a very complex issue when you start talking to all the stakeholders. And then like Peter was saying, when you look at a transit congestion approach versus a highway approach, what does that look like if you are going to be looking at congestion in an overall picture? So it is a very complex issue, and we are working on it. I think the States recognize and all the other stakeholders recognize the complexity, and we are receiving a lot of different ideas.

Mr. SOUTHERLAND. Thank you very much. A followup question. I know the President has mentioned the number of structurally deficient bridges we have around the entire country, and so it is a global challenge that we face. But doesn't MAP–21 require States to use the funds they receive to improve performance rather than redirecting funds from those States, such as my own State of Florida, that are already demonstrating good performance? I say that because Florida has traditionally been penalized for keeping our bridges and roads in good condition using State dollars, so we don't just depend on Federal dollars, while some other States may get rewarded because they don't do some of the usage of their State dollars. So it seems to me to kind of be a weird disincentive to do the right thing. How do you interpret MAP–21, as I interpret it regarding those funds?

Mr. MENDEZ. There are a couple of major programs within MAP–21. One is the National Highway Performance Program, which is geared toward state of good repair, maintaining the system, or adding capacity, if you choose to do that, or other improvements. There is also another program called the Surface Transportation Program, that is STP. That is geared primarily toward state of good repair.

Now, there are some criteria that I don't have right off the top of my mind here. But on the safety aspect, if you meet some of those performance measures in safety, you then can actually utilize some of that for other purposes. So I don't really see that as a disincentive or a penalty, if you will. MAP–21 actually provided a lot of flexibility to the States and the MPOs.

Mr. SOUTHERLAND. All right. OK.

Mr. ROGOFF. I don't have anything to add to that, sir.

Mr. SOUTHERLAND. That is fine. Thank you very much.

Mr. Chairman, thank you for holding this hearing, and I yield back.

Mr. PETRI. Thank you.

Mr. Carson.

Mr. CARSON. Thank you, Mr. Chairman. I am particularly interested in working on issues related to intelligent transportation systems. I want to build on the limited language included in MAP–21 and see better utilization of smart technologies with our existing infrastructure and really begin to implement new technologies. I strongly believe that the utilization of intelligent transportation technology can improve safety, lower highway fatalities, reduce congestion, and help make our transportation system smarter and more sustainable.

Please tell us what your agencies are undertaking at this point and the status of this work. Also, tell us about any collaborations with non-Federal partners, including educational or research institutions, or corporate partners for that matter, in terms of helping move this issue forward.

Mr. STRICKLAND. Well, Mr. Carson, if you don't mind, I will start, and I guess my colleagues can definitely follow on. Right now the Department is actually at a fairly significant point in the Vehicle-to-Vehicle Safety Program and the ITS program in general. This year the National Highway Traffic Safety Administration will be making an agency decision on whether to go forward in issuing a rule or other action in regards to vehicle-to-vehicle communications, and it really is a landmark moment. We currently right now are running a pilot project in Ann Arbor, Michigan, which is going to involve 3,000 vehicles which all have the V2V beacons and it is actually going very well. We are getting an incredible amount of data and results from that.

And you are absolutely right, the prospects of V2V alone fully integrated in the fleet, our research has shown, it could address up to 80 percent of crash scenarios involving unimpaired drivers. That is 8–0 percent. But it is really one piece of the entire program. Clearly, the other modes are very much involved in being part of the ITS project and Administrator Mendez can speak to the work that Federal Highway is undergoing for vehicle to infrastructure. But in terms of safety and congestion relief and a number of other issues, it holds tremendous progress.

Ms. FERRO. So the area and the use of technology to improve the efficiency and safety of the commercial vehicle operating industry or sector has been extremely valuable, tying into the initiatives that Dave Strickland just walked through. The primary area of funding to support States in the area of intelligent vehicle implementation is called the Commercial Vehicle Information Systems

Network grant. It is a grant program through the FMCSA and it supports States' efforts to implement core technologies that provide for both electronic transaction processing, but also electronic bypass capability for carriers that demonstrate a level of safety that, as I spoke of before, is maintaining the standards expected under national law.

Just last year, in fact, Indiana launched a great event demonstrating a partnership between Indiana, Illinois, and Ohio with the use of these smart roadside technologies and demonstrating how well it works together with States and the use of some of the newest, to be sure that law enforcement can pull over the highest risk carriers—that is the efficiency piece—both checking State credentials, Federal credentials, and on-board status. So it is an outstanding approach. Thank you.

Mr. CARSON. Thank you.

Mr. ROGOFF. I would add, Mr. Carson, that there are transit buses also involved in that V2V project out in Ann Arbor, and it captures an opportunity to look at the surface transportation system as a system and to be able to give, for example, a passenger—if you have a common operating picture of how the system is working—bus plus rail plus the streets in a car. Eventually we will be able to pick up a smartphone and be told what is the fastest way I can get there using a variety of options, and especially using options like bus rapid transit, which is being contemplated for Indianapolis at the current time. So there is great opportunity there.

As it is right now, the ability to see when the next bus and the next train are coming from the PDA has not only been a great advent for convenience for the passenger; it has actually enabled transit agencies—we don't talk about this much—to run less frequent service without a lot of complaint because the passenger knows when the bus is going to be there, as opposed to needing very short headways to provide reliability.

Go ahead, Victor.

Mr. MENDEZ. One of the items we need to talk about, it is one of my favorite topics, is innovation through technology. And right now, through our research agency, RITA, a lot of research is underway through a joint program office to look at vehicle-to-vehicle communication and vehicle-to-infrastructure communication and to improve safety, reduce congestion, and really improve the quality of life. So a lot of research in that arena is underway. I know they are engaged with the auto manufacturing companies, along with other private sector companies that are out there that deal with this kind of technology.

One other element that we are looking at specifically within FHWA, again, through our innovation initiative, is new concepts to help us manage traffic better, things like active traffic management concepts where you can better time your signals on major arterials. Those kinds of ideas are being deployed throughout the Nation as well.

Mr. CARSON. Thank you, Mr. Chairman.

Mr. PETRI. Thank you.

Mr. Ribble.

Mr. RIBBLE. Thank you, Mr. Chairman. And I want to thank the panel for spending some time with us today.

Administrator Mendez, just a quick question on the truck weight study required by MAP–21. MAP–21 specifically references a 97,000-pound vehicle with six axles. However, it is important to note that the legislation we debated last year in this committee allowed the States the option of using the vehicles instead of mandating them. Under this State option approach, a State could decide to not allow those vehicles on a given stretch of road while allowing them on others. Different States might have varying infrastructure needs and particularly compositions of industries. So freight transportation needs vary widely across the States.

I would be concerned if the study ends up looking at this issue as a mandate, and I am hopeful that DOT will recognize that key distinction. I am interested in any comments you might have on this given that this committee will rely heavily on that study in the next highway bill debate.

Mr. MENDEZ. Well, let me give you a rundown on the status of the truck size and weight study because I know there is a lot of interest in that. It is a big issue throughout the entire Nation. It is very important for us at the Federal level as well. We have the study pretty much underway. We have made a lot of effort to make that happen. As you mentioned, within the study some of the things we are going to be looking at are six-axle configurations, longer combination vehicles, and the 97,000 pound issues. But what we have to do and what we are doing here is to provide to all of you a data-driven objective analysis looking at issues that have to be balanced, things like highway safety, impact on infrastructure, the transportation of goods throughout the Nation in a safe manner, and then looking at how that plays out economically in terms of vehicle configuration.

We are in the process of hiring a consultant to help us move through the study itself, and we are going to be looking at overweight issues, both overweight and over dimension, both individually and then in combination to see what the overall impacts would be when you come up with our recommendations. So we are also going to be taking a lot of input from stakeholders to help us get to a final conclusion.

Mr. RIBBLE. Are you including the impact on the environment with having fewer vehicles on the road and things like that as well?

Mr. MENDEZ. Absolutely. And I know one of the concerns that I have heard from some Members here, is what is going to happen not only in the rural areas, but what about the urban areas and what kind of impact do we have on urban areas, because we tend to look at freight maybe more in terms of getting from long distances, if you will. So we are very focused on this, and we will get you a report that is going to be objective and data-driven.

Mr. RIBBLE. I appreciate that, and thank you for that.

Administrator Ferro, one of the concerns I hear frequently from the motor carrier industry is the barriers to entry, as well as finding adequate number of drivers in a growing economy, which gives me a little bit of pause. In your framework, your strategic plan, you State in your testimony that you used three core principles, and two of them I am fully on board with you on. The third one I have some concerns about. It is raising the bar to enter the motor carrier

industry. Raising the bar would imply there was a bar in a wrong place. So the previous bar was X and the new bar is Y. Could you tell me what the changes were between the two?

Ms. FERRO. Absolutely. The first bar of all is at point of entry when a carrier applies for and receives their authority to operate across the United States in interstate commerce. MAP–21 itself sets a stronger bar to come into the industry. And one of the weakest points that we have had for many years is that it is too easy today, if the agency or State enforcement entity takes action against a carrier, identifies where that carrier is perhaps presenting an imminent hazard and makes efforts to shut them down, they can slip through and reapply for authority and in many cases get their authority, stick extra DOT numbers in their back pocket, and pull them out as needed.

That is the bar that is way too low today. So it is that point of entry. MAP–21 incorporates a knowledge-testing requirement prior to obtaining authority that we are building into the process; again, sort of just to tighten that net, to ensure that those who are coming into the industry understand the requirements.

And if I could just touch briefly, the motor carrier industry is small business America. And I am very proud to be part of the agency that influences the safe operation of the industry. We regulate over 500,000 companies and 85 percent of those have 5 trucks or fewer. And it is a very important that we continue to support that sort of an operating environment.

Mr. RIBBLE. Yeah, and my concern, quite frankly, is that, not so much for those that were a bad actor trying to circle back around and get back in, but that new young entrepreneur trying to create something good for their community, their State and family, quite frankly, that we don't get the bar to a place that would make it so difficult that they can't get in. And that is just a caution I would give you. Thank you very much for being here today.

Mr. Chairman, I yield back.

Mr. PETRI. Thank you.

Mr. Capuano.

Mr. CAPUANO. Thank you, Mr. Chairman. I want to thank the panel for being here today and for your testimony. Everything we have talked about today costs money, everything. Everything you do costs money, from safety to repair to construction. Yet we are in the middle of a sequester. We are about to debate a CR that cuts back funding. We probably are looking at a sequester next year. We have a trust fund that is running out of money. And yet it has been very difficult for me, or anyone else that I am aware of, to get detailed information as to what these actions have meant, specifically. And to be perfectly honest, everybody likes to do different things. I am not one who likes to throw around hundreds of millions of dollars or billions of dollars because it doesn't mean much to my constituents. They are kind of used to those numbers and it just flows over their head. For me it is much more interesting, when I go to my constituents, I talk about specific projects. This is what we want to do, or this is what we are trying to do.

I guess what I would like to hear from you, especially Mr. Rogoff and Mr. Mendez, are you preparing to specifically list, hopefully by congressional district, if not maybe by State, specific things that

you will not be able to do because of these items? And actually I am not looking for philosophical statements. That is our job. But, Mr. Rogoff, in specific, in my district transit is the big thing. You know, I am pushing very hard for at least one, actually several major transit projects. They require New Starts funding. And it is one thing to get through all the hoops and bells and whistles to get it there and it is another thing to get the State to have its money. We are having those arguments as well. But none of it means anything if New Starts gets defunded, or you can't give this particular New Starts project to go ahead because you don't have the funding.

And the same would be with you, Mr. Mendez, on other issues.

And I am not today, because I know that you are still in the middle of doing this, are you preparing to be able to give us specific lists of specific projects that have to be cut because of these different items? I would like to know the difference between sequester and trust fund issues. They are separate issues. But yet, they are important issues. What I am looking for is the ability to have an honest discussion with not just my colleagues, but also my constituents, to tell them the truth. And the truth is, if you want this project, we have to come up with this amount of money. And without this amount of money, we can't have the project.

I guess, Mr. Rogoff, I will start with you, because transit is so important to my district.

Mr. ROGOFF. Well, I appreciate that, Mr. Capuano, and let me say that this is not hard when it comes to the New Starts program to identify the precise projects that we are going to have to cut, because we have signed full-funding grant agreements that have a specified dollar amount for each one of them. These are grant agreements that we put before this committee for 60 days in review. Since MAP–21 it is 30 days of review. And we presented to the committee precisely what the funding increment would be for each year. We have the list of these commitments we signed up for in 2013, and I can't afford it now as a result of the sequester. And I have got the list in front of me, and I will be happy to put it in the record at the appropriate time.

[The information follows:]

| Project Type | | FY13 President's Budget Request | FY13 Appropriations | FY14 Budget Recommendations |
|---|---|---|---|---|
| **Fully Funds Planned Commitments - Ongoing Projects** | | | | |
| CA | San Francisco, Third Street Light Rail Phase 2 - Central Subway | $150,000,000 | $141,766,415 | $150,000,000 |
| CA | San Jose, Silicon Valley Berryessa Extension Project | $150,000,000 | $141,766,415 | $150,000,000 |
| CO | Denver, Eagle Commuter Rail | $150,000,000 | $141,766,415 | $150,000,000 |
| CT | Hartford, New Britain - Hartford Busway | $58,715,922 | $55,492,972 | $58,715,923 |
| HI | Honolulu, High Capacity Transit Corridor Project | $250,000,000 | $236,277,358 | $250,000,000 |
| MN | St. Paul-Minneapolis, Central Corridor LRT | $98,443,694 | $93,040,064 | $98,443,964 |
| NC | Charlotte, LYNX Blue Line Extension - Northeast Corridor | $70,000,000 | $66,157,660 | $100,000,000 |
| NY | New York, Long Island Rail Road East Side Access | $215,000,000 | $203,198,528 | $215,000,000 |
| OR | Portland, Portland-Milwaukie Light Rail Project | $100,000,000 | $94,510,943 | $100,000,000 |
| VA | Northern VA, Dulles Corridor Metrorail Project Extension to Wiehle Ave. | $96,000,000 | $90,730,505 | $96,000,000 |
| WA | Seattle, University Link LRT Extension | $110,000,000 | $103,962,037 | $110,000,000 |
| **TOTAL** | | | | **$1,478,159,887** |
| **New Funding for Previously Proposed Projects** | | | | |
| CA | Los Angeles, Regional Connector Transit Corridor | $31,000,000 | $- | $65,000,000 |
| CA | Los Angeles, Westside Subway Extension | $50,000,000 | $- | $65,000,000 |
| CA | Fresno, Fresno Area Express Blackstone/Kings Canyon BRT | $10,000,000 | $- | $10,000,000 |
| FL | Jacksonville, JTA BRT North Corridor | $19,074,600 | $- | $19,074,600 |
| FL | Jacksonville, JTA BRT | $19,101,000 | $- | $19,101,000 |

| | | | | |
|---|---|---|---|---|
| | Southeast Corridor | | | |
| OR | Eugene, West Eugene EmX Extension | $19,410,136 | $- | $24,423,479 |
| TX | El Paso, Dyer Corridor BRT | $15,000,000 | $- | $15,237,058 |
| WA | Vancouver, Columbia River Crossing Project | $39,000,000 | $- | $65,000,000 |
| **TOTAL** | | | | **$282,836,137** |
| **Projects Receiving Final Payments** | | | | |
| AZ | Mesa, Central Mesa LRT Extension | $20,000,000 | $18,902,189 | $20,616,810 |
| CA | Sacramento, South Sacramento Corridor Phase 2 | $45,660,000 | $43,153,697 | $2,506,303 |
| FL | Orlando, Central Florida Commuter Rail Transit -- Initial Op Segment | $30,080,650 | $25,885,271 | $4,195,379 |
| NY | New York, Second Avenue Subway Phase I | $123,384,621 | $106,578,687 | $14,640,127 |
| TX | Dallas, Northwest/Southeast LRT MOS | $79,030,569 | $70,303,715 | $8,726,854 |
| **TOTAL** | | | | **$50,685,473** |
| **Fully Funded FY14 Projects** | | | | |
| TX | Houston, North Corridor LRT | $100,000,000 | $94,510,943 | $88,264,057 |
| TX | Houston, Southeast Corridor LRT | $100,000,000 | $94,510,943 | $88,264,057 |
| MI | Grand Rapids, Silver Line BRT | $14,744,000 | $13,934,693 | $4,468,981 |
| **TOTAL** | | | | **$180,997,095** |
| **Core Capacity Grants (New Under MAP-21)** | | | | |
| | | | $- | **$120,000,000** |
| **Oversight Activities** | | | | **$19,814,720** |
| **GRAND TOTAL** | | | | **$2,132,493,041** |

Mr. CAPUANO. And again, the sequester is only the beginning. We may have another one next year. We have a trust fund issue.

Mr. ROGOFF. Well, that is right, and that raises some very troubling issues for us because, let's understand, the President's budget for this particular program is some $400 million higher than what the post-sequester level is going to be. And we asked for those increased funds precisely because we knew the pipeline was expanding and we have more projects seeking entry into the program like the Green Line Extension in Massachusetts, and if we can't meet the commitments to the projects we have already signed up, it does not bode well for the projects that want to get in the program in the future.

Mr. CAPUANO. I look forward to getting those lists.

Mr. Mendez.

Mr. MENDEZ. Yes. Just to be clear, under the sequester, as we sit here today, the Highway Account has been somewhat walled off, but there are some impacts, and let me run through that. Under the National Highway Performance Program, out of an approximately $40 billion program over 2 years, that portion of the Highway Account will be reduced by approximately $32 million in fiscal year 2013. And sometime here in the next month or so, we will go back to the States and identify State by State how we are going to reduce that $32 million. Now, $32 million is a lot of money, so we will convey that information and obviously, we will share that with you.

It is also important for me to mention that the Emergency Relief Program is going to be reduced by approximately $106 million. What that really means is, because we do have a balance in the Emergency Relief Program, that means that for any future events that may occur in the next few months, we will not be able to expend. We will have to subtract $106 million from the account. We will have less.

Mr. CAPUANO. Again, I want to be clear. I am asking more than just sequester. We have a trust fund issue. We have a CR issue. We have another sequester looming next year. It just doesn't seem to stop. And I don't want people to think that this is a one-time thing. This is a rolling problem that will require updates as we go along. And the highway program is not walled off of the CR. It is not walled off of the trust fund issue.

Mr. ROGOFF. And in fact the sequester next year, you know, would be a higher percentage than we are being hit for this year.

Mr. CAPUANO. Thank you.

Thank you, Mr. Chairman.

Mr. PETRI. Mr. Williams.

Mr. WILLIAMS. Yes, Mr. Chairman. I would like to somewhat follow up on that, then I have another question. You know, I hear the fact that we hear sequester all the time. It has affected a lot of people. But I would say to all of you, I am a small business owner. I still have a business. And the private sector has had to cut out a lot more than 2 percent to survive these last 4 years. And I think it is important that, as was said earlier, you are going to have to have a plan that takes us not only for this year, next year, and so forth, to where you cut expenses, and at the same time not hindering the customer.

We hear that we are not going to be able to pay certain payments on time, this and that. I mean, do you have a plan in your mind that you are going to take care of the customer first as opposed to taking care of maybe reduction of people in your agency or whatever? I mean, the customer comes first, and there is not going to be this great amount of cashflow coming through as you are beginning to see. And, you know, kind of what is your plan with that? I mean, you are having to live like the private sector has to live right now.

Mr. ROGOFF. Well, I will just speak for transit. There is no question. We have identified in terms of the funding reductions that we are taking on the administrative front that we are doing our damnedest to avoid any direct impact on services to the public. But the bottom line is, I can't furlough staff for a number of days that are providing those services and maintain that the service is going to be the same. We are obviously not attending conferences. We are not doing discretionary visits, but this committee charges us with doing oversight of the grant money you give us, and our ability to go out and do oversight of individual projects to make sure the Federal funds are being administered correctly is directly undermined by our inability to travel.

Mr. MENDEZ. We are going to be facing the exact same issue, and I would just lay this out for all of you. It is not a complaint, by the way, it is just a reality check here. Even if we look at MAP–21, for example, the added burden that we have to assume in terms of issuing additional rulemakings, additional reports to Congress, the oversight that Peter has mentioned, at some point all that will come to a head, and we will have to deal with that accordingly. And so, part of our charge on the oversight perspective is to ensure that the Federal funds are being used accordingly and that we are protecting the taxpayer dollars. So it is just something we have to look at very closely, and we will continue to do that.

Mr. WILLIAMS. Well, I appreciate that. I just want to emphasize that the private sector is having to do this now. It is getting in everybody's lap. And the other thing real quick, separate, we talked earlier about any ideas you might have to help create more funding to supply the Highway Trust Fund. Let me ask you a question. You are familiar with the CAFE standards. Do you think if we did away with the CAFE standards that would be a good source of income to the Highway Trust Fund?

Mr. STRICKLAND. Well, in terms of the CAFE standards, what happens is, when there is a noncompliance that automakers will pay a penalty.

Mr. WILLIAMS. I am talking about doing away with the CAFE standards so there is no penalty.

Mr. STRICKLAND. Well, in terms of those funds don't go to the Highway Trust Fund. Those particular penalties go to the General Fund, and those numbers are, frankly, very, very small in terms of the overall penalties that the automakers pay every year. They are very small.

Mr. WILLIAMS. Well, the 18.4 cents goes in the Highway Trust Fund.

Mr. STRICKLAND. OK, you are talking about the entire, the fuel tax. That is not CAFE, so I will defer.

Mr. WILLIAMS. The CAFE requirements of the auto manufacturers and the truckings are to meet a certain standard.

Mr. ROGOFF. I think what Mr. Williams may be putting forward is, if we repeal the CAFE standards, would the American public consume more fuel and thus put more revenue in the Highway Trust Fund? Obviously, sir, the President has been very outspoken on our need to reduce our dependence on foreign fuel—foreign oil—and fuel consumption. That is an administration goal. So repealing CAFE is not anything on our——

Mr. WILLIAMS. Well, the President and I disagree.

Mr. ROGOFF. OK, very well.

Mr. WILLIAMS. Thank you. Appreciate it.

Mr. STRICKLAND. And also to follow up, as well, sir, the natural momentum of the fleet beyond the CAFE standards do have an influence, that every year the actual minimum is actually—these people are making the market decision to buy more efficient vehicles on their own regardless of CAFE. So I think in terms of limiting the CAFE standards, the existing fleet and the momentum of actually the market signals from, you know, fuel costs right now, I would have to question that theory if you actually eliminated the standards whether you would have any type of a——

Mr. WILLIAMS. The private sector will make that decision. Thank you. Appreciate it.

Mr. PETRI. Thank you.

Ms. Frankel.

Ms. FRANKEL. Thank you, Mr. Chairman.

Thank you, panel. A question, to change the subject a little bit. I am from south Florida. We have a very high number of seniors and folks with disabilities. Our paratransit ridership for Palm Tran and Broward Transit is averaging over 3,000 trips per day and far exceeds the national average for the transit system of our size. And our local agencies are concerned that that is not recognized. I guess is there a formula or is there some way that the Congress can address this situation so that they could get their fair share of money.

Mr. ROGOFF. Well, Ms. Frankel, there is a formula, and ridership of the system calculates into that formula. It may not be as immediately sensitive to that ridership year to year as some people may feel is appropriate—it may not reflect as quickly the changes in ridership. We just had implemented the new census, and it had some very dynamic changes in the allocation of funds.

Ms. FRANKEL. But do you take into account the elderly, the disabled that will use a more expensive type of transit?

Mr. ROGOFF. The formula is somewhat sensitive to costs, and paratransit trips, if that is what you are referring to, ma'am, are calculated in that. Here again, I think it is fair to say it is in the formula, but is it dollar for dollar? I don't think you could make that argument because the formula, like most formulas that come forward from consensus legislation, is sort of a hybrid of multiple factors.

Ms. FRANKEL. Well, let me just talk about, they tell me that it costs $26 an hour to operate a paratransit service, but they receive $3. Does that represent the type of formula around the country?

Mr. ROGOFF. Well, paratransit has been an increasingly costly challenge to transit agencies all across the country, and I am quite

sure that an area that is rich with elderly citizens would be even more challenged. But it is a civil right that our disabled and senior citizens have. You know, the solution to that is a statutory formula change. And the solution to that would also be additional funding into the program consistent with some of the numbers that the President has requested in recent years.

Ms. FRANKEL. So what type of formula change could we implement?

Mr. ROGOFF. Well, like I said, the formula is somewhat sensitive to costs in paratransit trips. I cannot say that it necessarily is dollar-for-dollar sensitive to the considerably higher costs that a paratransit trip costs versus a standard trip. And that would have to be statutorily put into the formula.

Ms. FRANKEL. OK, thank you, sir.

Thank you, Mr. Chair.

Mr. PETRI. Thank you.

Mr. Perry.

Mr. PERRY. Thank you, Mr. Chairman.

And, ladies and gentlemen, appreciate your testimony and being here today.

My question, at least initially, Mr. Mendez, regarding the MAP–21 requirements for published rulemaking, I noticed in your testimony, you said that you complied with the declarations for emergency. But I am wondering about the NEPA requirements and the other, the right-of-way, and the $5 million and less standards, and when those are going to be published, if you know; if you know also what new categorical exclusions that you plan to propose.

Mr. MENDEZ. We have a lot of activity underway, a lot of items underway. I think we have done really good work as a Department. As I mentioned, we have had extensive, extensive outreach to stakeholders in moving all of the rulemakings and reports and everything else forward.

Specific to your question, on the right-of-way issue, and the projects with limited Federal assistance, we did issue a proposed rulemaking about 2 or 3 weeks ago, so that is out there. We are soliciting comment, as you are aware. We will take all comments and then we will issue a final rule sometime, I believe, early next year.

Let's see. You asked about one other. What was the other one?

Mr. PERRY. Well, that was, it was right-of-way, and then on the projects below $5 million.

Mr. MENDEZ. Yeah, so that is out. That was out a couple of weeks ago.

Mr. PERRY. It is already out?

Mr. MENDEZ. Not the final, just for comments.

Mr. PERRY. For comments. We have got 30 or 60 days for comment?

Mr. MENDEZ. I don't know that off the top.

Mr. PERRY. And so after that, you said early next year for the right-of-way. I mean, that is a long time.

Mr. MENDEZ. I just heard 60-day comment period, by the way.

Mr. PERRY. OK, 60-day comment period. We are in March.

Mr. MENDEZ. Right.

Mr. PERRY. So we are saying it is going to take until next year until folks. I mean, I thought the requirement was to have the rulemaking out by, I thought it was the end of February.

Mr. MENDEZ. Yeah, we met that deadline for the notice of proposed rulemaking. We have met that deadline as of 2 weeks ago.

Mr. PERRY. Just the notice that you had to——

Mr. MENDEZ. Yes.

Mr. PERRY. So the rulemaking itself is not required. What is the deadline for the rulemaking itself?

Mr. MENDEZ. Can I get back to you on that?

Mr. PERRY. Sure.

[The information follows:]

> Section 1317 of MAP–21 requires the Secretary to establish a categorical exclusion for projects of limited Federal assistance, and requires promulgation of a regulation to carry out this provision by February 28, 2013. FHWA met this statutory deadline by issuing a notice of proposed rulemaking (NPRM) by that date. FHWA is currently soliciting comments through the NPRM. The comment period for this rulemaking closes on April 29, 2013. We will work expeditiously to review and consider all comments, and coordinate with all appropriate Federal agencies before issuing a final rule.

Mr. MENDEZ. Because I know we are on track for almost all of the rulemakings, I do know that. And you know, we have the schedule. I just off the top don't have it.

Mr. PERRY. OK, because I think that is important for folks, I am sure folks in the room that are interested in knowing where they stand.

Let me ask you this: Do you know the Administration's position? I know MAP–21 calls for $5 million and below, but, you know, you don't get much for $5 million. Highway projects, road projects are exceptionally expensive for various reasons. Is there any interest in moving that number up for the NEPA requirements and the exclusions?

Mr. MENDEZ. Well, I think what we need to do right now is to focus on what we currently have on hand, the $5 million, see how that works out. You know, we might hear that as part of the comments we need to take that into consideration. Right now, I am not aware that anyone has made those kinds of comments, but I would suggest we need to finalize this one before we start contemplating some other threshold.

Mr. PERRY. Sure seems like it takes a long time, a 60-day comment and then wait until next year. We need it right now, right? I come from Pennsylvania. We know the condition of roads and bridges, and to wait another year to kind of get these exclusions is a bit long, I would think.

This is probably off the beaten path, certainly with MAP–21, just interested in if the Administration has a position on the CARB standards. To me it is a disincentive for alternative fuel and people modifying their vehicles to alternative fuels. We do a lot of gas in Pennsylvania, Marcellus gas, and Utica shale gas, and it is a dis-

incentive for people to use fuel-efficient vehicles that are also 100 percent more clean for the environment regarding gasoline or diesel utilization. Does the Administration have a position on that?

Mr. ROGOFF. I am not sure you have got the right people here. You might want to talk to the Department of Energy on this.

Mr. PERRY. This is not carbon, CARB, the California Air Resources Board standards that States adopt.

Mr. ROGOFF. Oh. I have not heard us take a position as it relates to the merit of California's standard. We certainly haven't proposed to preempt it.

Mr. PERRY. OK.

All right. Thank you. I yield back.

Mr. PETRI. Thank you.

Ms. Hahn.

Ms. HAHN. Thank you, Mr. Chairman, for holding this hearing.

Thank you, panel, for staying around. You know, during the debate for MAP–21, I was following two pieces of the debate very closely, freight policy and the America Fast Forward. I represent the Port of Los Angeles, and it was great, Victor, to have you out there at the Port of Long Beach as we were dedicating the groundbreaking of the Gerald Desmond Bridge, which is a huge piece of our goods movement projects. This is the largest port complex in the country. I have also cofounded a Port Caucus with Congressmember Ted Poe from Texas so we can highlight the importance of our ports as it relates to goods movement in this country. And I know that unless we develop an effective national freight policy, we cannot move our goods efficiently and be globally competitive.

One example I like to talk about is that goods that leave the Port of Los Angeles take 48 hours to arrive in Chicago and then another 30 hours to travel across the city. And I think that means higher costs for our consumers. It is more congestion, more pollution, less jobs. And so I think a national freight policy, particularly that includes good grade separation across this country, is critical to us being competitive in the future.

The other thing I really support is America Fast Forward and that being in the TIFIA, a provision in the TIFIA. And, you know, in Los Angeles, while there is so much talk about not raising taxes, in Los Angeles, in the county, we voted to tax ourselves to pay for, specifically, for transportation projects. And our idea was to use these funds, this revenue stream to pay back Federal loans for transportation projects in 10 years rather than 30. And now, with the provision in TIFIA, the entire Nation can have this kind of Federal assistance to move their transportation projects forward.

So I know it is getting late. My two questions would be, you know, do you see more local governments, more cities, counties, States using this idea of providing the leverage either through tax increases or the private sector to leverage these kinds of loans for transportation projects? If not, how can we encourage, you know, local governments to really follow the example of Los Angeles?

You know, we could have built these projects in 30 years and paid ourselves back with the revenue stream, but we thought it was better for the economy, better for the projects, better for putting people back to work if we could build these projects in 10

years and then repay the Federal Government with the revenue stream in 30 years. So we think that is a model that really will work as America Fast Forward, and what can you do to encourage, you know, other municipalities across the country to do something similar?

And the other thing, if you could just touch on this, our national freight policy. And I know, Victor, you talked a little bit about. And I know I have nominated someone to be on this advisory council. How is this plan going to be developed, you know, in light of sequestration and other funding cuts? Are we going to have money to develop the plan, implement a freight policy in this country? How do you see that going? Because I really believe that is going to be key to us putting people back to work, being competitive, really working with not only our imports into this country, but I see a national freight policy as really being the backbone of exporting small businesses', you know, services and goods.

So just those two things, if you could touch on the idea of America Fast Forward and the idea of are we really going to get a national freight policy and how are we going to implement it? Thanks.

Mr. MENDEZ. Let me talk about the national freight policy and how is that going to work. There are a lot of components to that. It is going to be very complex. At the same time, we understand and recognize the importance of having the resources to actually execute a program.

I will tell you that I think one of the things that we have done pretty well is utilizing technology, Webinars and teleconferences and such to do the outreach throughout the Nation. I have a little note here that says we did a National Online Dialogue on some of the freight issues. We had, I believe, over 8,000 people on that online dialogue, which is pretty amazing when you think about it. And throughout the Nation you are going to continue to see it.

And we see it just within our own operations. Instead of going to a training session, we now do a lot on teleconferences just within our own operating budget. So I think the use of technology is going to help us get there, given that we have limited resources.

Mr. ROGOFF. I will speak briefly on the topic of America Fast Forward. We obviously recognize the leadership that Los Angeles has exhibited in this area, and the increase in funding in TIFIA under MAP–21 is certainly a great opportunity to, as you said, build a whole lot of projects that would have taken 30 years perhaps as soon as 10.

Just earlier this week—you asked what could we do to better effectuate these things—one of the things this initiative has done is really brought the TIFIA program and the modes together. So, for example, the Regional Connector and the Westside Subway in Los Angeles, which are two projects that want to come in for TIFIA funding, will also use FTA New Starts funds. And we were able to provide joint guidance between the Acting Chief Financial Officer of the Department Sylvia Garcia and myself to Art Leahy at the LACMTA telling him precisely what steps need to be followed for both their process and our process to get them to the finish line.

Now, I have to put out a word of caution as I did earlier in the hearing. The sequester against the New Starts program really is

starting to call into question our ability to admit new projects into the program because we can't fund the commitments we have already made. But with that caveat, we are working together with the TIFIA funding and the New Starts financial plan together to move things forward more rapidly.

Ms. HAHN. Thank you.

Mr. PETRI. Thank you.

Mr. Rice.

Mr. RICE. Thank you. Is this thing on? Test, test. Thank you, Mr. Chairman.

And thank you, members of the panel, for being here today. I know you have a tough job sitting here getting grilled, but, you know, I think that highway funding is incredibly critical infrastructure. Funding is incredibly critical. I believe that it is different than spending and that it is something we get a return on. I agree with the comments that Mr. DeFazio had earlier that we are being left behind in the world, we are becoming less and less competitive, and I worry about that. I think we have to invest in our infrastructure because American competitiveness, American business, middle-class jobs, and our entire economy are at stake.

And I believe we are our own worst enemy. I think with overregulation and the cost and the delay that results that we prevent ourselves from being competitive. We are strangling ourselves. Bloated and inefficient Federal bureaucracy stifles progress. These processes dramatically increase cost and time for infrastructure delivery. And more and more middle-class families lose their jobs to our competitors overseas. A business that purposefully makes itself uncompetitive will not long survive.

Mr. Mendez, you said it takes approximately 15 years, earlier, to deliver a major project. How do you define what a major project is?

Mr. MENDEZ. Well, you can look throughout the country and probably talk to——

Mr. RICE. Is there a dollar amount? Is there a length of miles? What is a major project?

Mr. MENDEZ. No, I think the dialogue that we have had has been a general discussion throughout the Nation about major projects that pretty much every State needs to move forward, and on major infrastructure it takes a long time.

Mr. RICE. The Highway Trust Funds that we are concerned about, and the trust fund being depleted, are those funds used for anything other than highways?

Mr. MENDEZ. Well, the Highway Trust Fund itself does have a Highway Account and a Mass Transit Account and some other components, so not everything is geared toward investment directly in highways.

Mr. RICE. What percentage is used, of the Highway Trust Fund, what percentage is used for highway construction?

Mr. MENDEZ. I believe it is an 80–20 breakout in terms of Federal share.

Mr. RICE. OK. And a lot of that money just goes back to the States, right?

Mr. MENDEZ. Yes.

Mr. RICE. What percentage of it goes back to the States?

Mr. MENDEZ. I want to say close to 94 percent goes directly, maybe even higher than that.

Mr. RICE. Well, how is the construction of Federal highways funded then? If it is not funded out of the Highway Trust Fund, how is it funded?

Mr. MENDEZ. Well, let met clarify my statement. The majority goes back to the States. But, we also have a Federal lands program where we do invest in our national parks, and Federal lands. And so there is a portion that goes to that as well.

Mr. RICE. What percentage? So you are saying we are buying land for national parks out of the Highway Trust Fund?

Mr. MENDEZ. No, sir. We are improving access to Federal lands. The roads within national parks are also improved. And so those are the investments that we make within those programs.

Mr. RICE. Are we building interstate highway projects right now?

Mr. MENDEZ. I don't believe we have anything underway. I do know that there are some plans in various States for adding interstate miles.

Mr. RICE. All right. So when you build an interstate highway in a given State, is that included in your numbers when you say that the funds are distributed to the State?

Mr. MENDEZ. Yes, sir.

Mr. RICE. OK. I read recently that South Carolina over the last 50 years has been a donor State, that 93 cents on the dollar that they have put in has come back, where most every other State, I think there were six donor States, most every other State has received pretty much dollar-for-dollar what they put in. Is that still true?

Mr. MENDEZ. I don't believe so. As you are aware, I think in the last 5 years, from 2008 to the current year, the Highway Trust Fund has been bailed out by the General Fund to the tune of $54 billion. So I think if you looked at every State and looked at their return on their original investment, I don't believe there are any donor States.

Mr. ROGOFF. My understanding, Mr. Rice, there hasn't been a donor State since 2010.

Mr. RICE. Two years ago.

Mr. ROGOFF. Well, we are in 2013 now and headed into 2014. But yes, sir.

Mr. RICE. OK. All right. You say current receipts on the Highway Trust Fund cover about 60 percent of current funding levels. Do we have a percentage of Highway Trust Funds that are spent on these environmental regulations and other regulatory compliance? Can you break that out, how much of that money is spent on satisfying these bureaucratic requirements?

Mr. MENDEZ. I don't have that with me. I think we have probably come up with some ballpark figures.

Mr. RICE. I sure would like to know that. I mean, is the actual cost of building the road, you know, is that 80 percent of what is spent out of the Highway Trust Fund? Are we spending, 20 or 30 or 40 percent of our money on these regulatory requirements?

Mr. MENDEZ. I will have to get that information for you.

[The information follows:]

The FHWA does not have any internal reports or data regarding the amount of expenditures from the Highway Trust Fund for regulatory requirements. However, the following reports may be helpful to provide general information regarding regulatory costs associated with highway projects:

- U.S. GOV'T ACCOUNTABILITY OFFICE, GAO–09–36, FEDERAL-AID HIGHWAYS: FEDERAL REQUIREMENTS FOR HIGHWAYS MAY INFLUENCE FUNDING DECISIONS AND CREATE CHALLENGES, BUT BENEFITS AND COSTS ARE NOT TRACKED (2009), *available at* http://www.gao.gov/assets/290/284235.pdf. This report identifies the types of costs and benefits associated with four Federal-aid highway regulatory requirements: NEPA, the Davis-Bacon prevailing wage requirement, the DBE program, and the Buy America program.
- U.S. GOV'T ACCOUNTABILITY OFFICE, GAO–13–193R, HIGHWAY TRUST FUND OBLIGATIONS: FISCAL YEARS 2009–2011 (2013), *available at* http://www.gao.gov/assets/660/651315.pdf. This report details activities funded from the Highway Trust Fund, including for purposes other than construction or maintenance of highways and bridges. The report identifies the non-highway Trust Fund money that goes to the Federal Transit Administration, the National Highway Traffic and Safety Administration, and the Federal Motor Carrier Safety Administration. Within the Federal Highway Administration, the report separates funding into three categories: highway and bridge construction and maintenance; transportation enhancements; and other purposes (such as safety, debt service and planning activities).

Mr. MENDEZ. But just from my experience, I don't know if you were here when I mentioned, I used to be a State DOT director.

Mr. RICE. Right.

Mr. MENDEZ. I believe the actual investment in actual infrastructure is somewhere in the 90-percent range, but we will get that information for you.

Mr. RICE. OK, thank you. Are there any studies that have been done on the economic cost in jobs and tax receipts of delaying projects for 5 and 10 years to comply with all these regulatory requirements?

Mr. MENDEZ. I don't believe we have any within FHWA. I have got to believe somewhere in the industry people have done these kinds of analysis.

Mr. RICE. OK, can you help me find those?

Mr. MENDEZ. We will help you out.

[The information follows:]

The FHWA does not have any internal studies or data on the economic cost in jobs and tax receipts of highway construction delays due to regulatory requirements. In addition, we were not able to locate any such reports amongst

other stakeholders at the State and local level or within private industry.

Mr. RICE. I appreciate it. Now, it says that MAP–21 has a goal of 4 years for an environmental review. How long will it take to put that in process? I know I heard Mr. Perry asking you earlier about what your progress was. I mean, is it going to be years before we can get that in place, months?

Mr. MENDEZ. Off the top, I don't have the regulatory deadline, but like I said, there are so many rulemakings we have to undertake under MAP–21. We are on target for almost all of them, so I can get that information to you specifically on that one. I just don't have it here in front of me.

[The information follows:]

Page 89
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[The information follows:]

There is no statutory deadline for Section 1309; however, FHWA is currently working on issuing guidance on the FHWA MAP-21 website regarding that provision. FHWA has compiled a chart containing all MAP-21 required rulemakings with statutory deadlines which is provided below:

**MAP-21 Required Rulemakings with Statutory Deadlines**

| Section | Title | Statutory Deadline | Status |
|---|---|---|---|
| 1106 | National Highway Performance Program | Final Rule: 04/01/14 | **On Schedule** Drafting Underway |
| 1111 | National Bridge and Tunnel Inventory and Inspection Standards | Final Rule: 10/01/15 | **On Schedule** Drafting Underway |
| 1112 | Highway Safety Improvement Program | Final Rule: 10/01/13 | **On Schedule** Drafting Underway |
| 1203 | National Goals and Performance Management Measures | NPRM: 04/01/14 | **On Schedule** Drafting Underway |
| 1313 | Surface Transportation Project Delivery Program | Final Rule: 06/28/13 | **On Schedule** Drafting Underway |
| 1315 | Categorical Exclusions in Emergencies | Final Rule: 10/30/12 | **Completed Final Rule Issued 02/19/13** |
| 1316 | Categorical Exclusions for Projects within Right-of-Way | NPRM: 02/28/13 | **On Schedule** NPRM Published 02/28/13 |
| 1317 | Categorical Exclusions for Projects of Limited Funding Assistance | NPRM: 02/28/13 | **On Schedule** NPRM Published 02/28/13 |
| 1318 | Programmatic Agreements and Additional Categorical Exclusions | NPRM: 01/29/13 | **Behind Schedule** Drafting Underway |
| 1405 | Highway Worker Safety | Final Rule: 11/30/12 | **Behind Schedule** Drafting Underway |
| 1525 | State Autonomy for Culvert Pipe Selection | Final Rule: 03/30/13 | **Completed Final Rule Issued 01/28/13** |

Mr. RICE. We need rules to enforce the rules that put in place more rules.

Mr. PETRI. Yeah.

Mr. RICE. And I think we are getting back to the source of how we are strangling ourselves and stifling our economy, and forcing American jobs overseas.

I thank you, Mr. Petri. I know I am over my time.

Mr. PETRI. Thank you.

Mr. Michaud.

Mr. MICHAUD. Thank you very much, Mr. Chairman, for having this hearing. This question is for Administrator Mendez.

Section 32801 of MAP–21 authorizes DOT to conduct a comprehensive truck size and weight limit to commence no later than 45 days after MAP–21's enactment and to be completed no later than 2 years after that, the date the study is commenced. Can you tell me if the study will be completed by August of 2014, 2 years after the start date, as required by MAP–21.

Mr. MENDEZ. Our target for completion of that study is the statutory deadline November of 2014. Now, we are working very hard to get that done as soon as possible. As I mentioned earlier, that is a very complex issue, as you are aware, and I know you have a very direct interest in that. We are in the process of hiring a consultant to help with us the study itself; there are a lot of elements that need to be balanced between safety and economic issues and infrastructure issues, as you are aware.

I know we have shared some information, specifically with your office, that indicated we had started the study in August of last year. I think that was an error, and I do apologize. What happened last year in August is that the Secretary created the Freight Policy Council, and I think that may have been misinterpreted as we have started this specific study. That was just part of the process to get ourselves geared up to implement as a Department, multimodally, the overall freight issues within MAP–21.

Mr. MICHAUD. Yeah. Well, actually my office was also told last year that Federal Highway was expected to have a consultant in place and the technical work underway at the end of, you know, 2012. And what you are telling me today is you haven't even picked a consultant yet. So that is really concerning.

And I believe that part of the problem in the delay and the reason why the delay in the study was due to Federal Highway revising its solicitation for consultant services in order to increase the number of vehicle configurations to be studied, including various longer combination vehicles. These vehicles were not statutorily required under MAP–21. What was required under MAP–21 was for Federal Highway to specifically study six-axle trucks.

I, along with my colleagues on this committee, have introduced legislation that would give States the option of permitting six-axle, 97,000-pound trucks on their interstates, the option to do that. The intent of including this specific configuration in the study was to help inform Congress and the States of our proposal and the impact of the benefits of six-axle trucks.

Giving that it appears that Federal Highway is nearly, well, 3-plus months behind in schedule, including one delay to add additional vehicle configuration that was not, I repeat not, included in

any legislation before Congress, I would encourage Federal Highway to provide the study that was required and asked for by Congress, the 97,000 pounds, six axle before the deadline, so we might be able to deal with that issue as we deal with the next highway reauthorization.

So since the department went above and beyond what the law required, are you going to be able to provide this committee with what we asked for, the 97,000 pounds, six axle, so we might be able to include something in the highway reauthorization. Any comment on that, what was specifically required of Federal Highway? Can you provide us with that specific study?

Mr. MENDEZ. Well, we are moving the study forward and we are going to move it as fast as we can, and, we are going to do the best that we can. We will provide to you a data-driven objective study.

Mr. MICHAUD. But the problem is, you went above and beyond what the law required, and that is what, I believe, is causing part of the delay in what we had asked for on the 97,000-pound, six axle. And I would encourage you to get us what we asked for in the timeframe that we asked for it. And if you want to study any other configurations, go ahead and do it. But I would expect what we asked for to be done in the timely fashion that we asked for it because of the reauthorization.

Mr. MENDEZ. OK.

Mr. MICHAUD. And so I would encourage you to consider that as well.

Mr. MENDEZ. OK.

Mr. MICHAUD. I see my time has run out, Mr. Chairman, so I yield back the balance of my time.

Mr. PETRI. Thank you.

Mr. Mullin.

Mr. MULLIN. Thank you, panel, for being here. It is an honor for all of us to be able to serve this great country, and I think we need to always keep that in mind, that we need to put country first.

And, Ms. Ferro, I have got a question for you. By FMCSA's estimate, the trucking industry will spend more than $300 million by July 1st, implement new rules for modifications and preparations for hours of service. And in October of 2012 they asked for an extension on this pending the court case. And your office wrote back, said denying this request, saying they didn't demonstrate the likelihood that the industry will suffer harm due to wasted training resources or confusion.

Well, what is $300 million? I am a small business owner, and the only reason why I sit in front of you today is because I got frustrated with things just like this happening to me when I realized our biggest competition is the Government that is supposed to make things easier for us and safer for us. But when we would get a response that says we didn't demonstrate how much harm it was going to cause to us, yet by your own study $300 million it is going to cost to implement it, and yet it is not even out of the court case, how is this a good idea and how was that decision made?

Ms. FERRO. Mr. Mullin, at the core of your question was the word safety, and that really is at the heart of the decision that I made with regard to that request. The Hours of Service Rule was issued as a final rule over 15, almost 15 months ago, and it made changes

to the hours of service that drivers can operate large vehicles in the context of reducing cumulative hour accumulation. We kept the 14-hour workday, kept the 11-hour drive time. But the concept of, under the rule that is in place today, not the one that takes effect in July, going from a maximum average workweek of 82 hours to 70 hours is at the core of impacting, reducing the risk of cumulative fatigue for a driver. So back to——

Mr. MULLIN. Well——

Ms. FERRO. Go ahead.

Mr. MULLIN. And I understand what you are saying, but since 1975 the industry has been doing a pretty good job, because 77 percent, we have less fatalities. It has dropped by 77 percent. So the industry has been doing pretty good so far taking care of themselves. And now all of a sudden we have got to have someone else tell us how to take care of things. And yet, by you own study also in 2009, you stated that 81 percent of the time an accident happens with a truck it is the car's fault.

So once again, why do we keep putting more and more strain on the backbone of our economy, on our truckers and small businesses? Why are we putting more and more on their backs when they have been doing a pretty good job so far taking care of themselves?

Ms. FERRO. Well, let me reinforce again, at the core of the mission and the mandate for the Federal Motor Carrier Safety Administration is safety, saving lives by reducing the risk of crashes involving trucks and buses. The Hours of Service Rule and the hours within which drivers can operate is a core component of that, and it is true over a period of several years the agency developed and put in place a final rule modifying those hours of service to reduce the risk of cumulative fatigue.

That rule takes effect in July of this year. It has tangible lifesaving benefits, and in fact is a cost-beneficial rule. The number of $300 million was our own estimate in the regulatory evaluation of the rule in what it would cost industry and others to train up for the rule. It is an average of 2 hours of training per driver. We understand and recognize through our own analysis the impact that our rules have on small businesses. As I mentioned earlier, the industry is small business America. So that is a very important sensitivity. But at the core of this rule is safety on our highways and all the people that travel either in a truck, in a bus, or around those vehicles.

Mr. MULLIN. Ma'am, I actually have over 80 vehicles on the road, too, and I can promise you, as a small business owner, that is on our mind every day.

Ms. FERRO. I am sure it is.

Mr. MULLIN. Constantly.

Mr. FERRO. Yeah.

Mr. MULLIN. And it is at the core of our business.

Ms. FERRO. Yeah.

Mr. MULLIN. But typically when the Federal Government estimates the cost of implementation, they grossly underestimate it. And it takes away from other things, like us doing our job. And my only thing is, is I can't come up with a good enough reason to tell individuals when they come up and tell me, why can't we get an

extension when the courts are still hearing this? I say, well, I really don't understand that either. It is still at the safety. I get that. But we are still talking about real dollars that is coming straight out of the pockets of, not your pocket, but my pocket.

It seems very simple. Why can't we just simply give an extension? I mean, get a letter that states that they didn't demonstrate that it is going to do harm? That is a slap in the face. What is $300 million, if that is not harm?

Ms. FERRO. Tired drivers resulting in crashes on our highways is harm to the traveling public. Again, the Hours of Service Rule takes effect, goes into effect in July of this year. The request to delay was related specifically to the court hearing the case. Tomorrow are oral arguments on that case. I have high confidence in this rule. We have also been spending a tremendous amount of money, not tremendous, but mobilizing for training, for implementation of this rule, and it is very——

Mr. MULLIN. The difference between your dollars and our dollars is your dollars are given to you by our tax dollars. Our dollars we have to go out and earn. And I am just asking, please take this into reconsideration because it is going to hurt us. We all have safety in mind, but we should be working together, not against each other.

Ms. FERRO. And I would agree. We are. And the parties have clearly an opportunity to make that same request to the court.

Mr. MULLIN. Thank you.

Ms. FERRO. Thank you.

Mr. PETRI. Ms. Esty.

Ms. ESTY. Thank you very much, Mr. Chairman. A couple of quick questions coming from the State of Connecticut, which has seen enormous infrastructure damage over the last couple of years due to extraordinary storms and circumstances. So the first question is a fairly specific one. It has to do with the rural roads penalties on the 2-year. Frankly, we have had extraordinarily low record of accidents on our rural roads, but in the last 2 years, we have had—I had 3 feet of snow 3 weeks ago in my community. You can imagine when you have those kinds of extraordinary storms, as we did with Sandy, power lines down on the roads, which have nothing to do with maintenance of our roads, but has a lot of do with extraordinary storm events. We would like you to consider the 2-year window and consider whether you can take into account weather conditions or something that would recognize that it should perhaps be a longer window or should recognize when we had storm Irene, storm Sandy, massive power outages, that that did rather artificially spike our numbers, which again are not related to the conditions of our roads or maintenance of them, but frankly measures—truly acts of God outside of it.

We have some issues around tolling and would like you to consider whether there doesn't need to be more flexibility. I understand that MAP–21 provides some greater measure of flexibility, but we have one of the most heavily used interstate corridors in the United States, and 95, we are looking at tolling right now in Connecticut, but the restrictions with only three States being allowed to look at this, the entire eastern seaboard has inadequate funds right now to upgrade and repair our vital, vital highways,

and we would ask you to consider greater flexibility for recognition of the reality that is in the Nation's interest to move people and goods across this country, so greater flexibility on that.

Also the Governor is very concerned that we look at allowing States to be considered entities that can apply for T&A. They would like—Connecticut is a small State. We have a lot of intermodal proposals that are too big for municipalities that States end up coordinating. Connecticut also doesn't have any county government, so you basically go from municipal straight up to the State level, and so, again, recognizing some of our smaller States that are densely populated that you would consider, and I would be happy to work with your staff, I will send more detailed questions, but really to flag these issues for your consideration in our joint efforts to improve the infrastructure in the United States and recognize, though, some of our States which are heavily populated have had some extraordinary demands in recent years, and we are struggling with tough budgets to creatively use the funds that come from the Federal Government in ways that allow us to do right by the citizens of our States.

So if you could have any comments now, that is great, but really mostly to flag those concerns and ask for your assistance in working with us on providing flexibility we need to do what we are all here to do, which is to improve the infrastructure in the United States and improve the lives of our citizens.

Mr. MENDEZ. Let me comment. I do appreciate the issues that you raise. I think the best thing to do is have my office meet with your office so we can run through your issues and see what we can do. OK?

Ms. ESTY. Thank you very much.

Mr. MENDEZ. Sure.

Mr. PETRI. Thank you.

Mr. Barletta.

Mr. BARLETTA. Thank you, Mr. Chairman. Mr. Mendez, back on the truck size and weight study. Pennsylvania, my home State, has 5,000 structurally deficient bridges. Our neighbor State of Ohio has 4,000 structurally deficient bridges. Adding 17,000 pounds to our trucks aren't going to make our bridges any safer in Pennsylvania or in Ohio or in the hills of Tennessee or on a winter road in Minnesota.

The interstate system was designed to move goods across the country efficiently. Having a patchwork, jigsaw interstate system where one State allows heavier trucks, one State does not would be typical of Washington's involvement to take something that works and mess it up.

But I worked on a weigh scale, and I could tell you it doesn't matter if you add 10 axles to that truck. If it is not loaded properly, it is not going to matter how many axles are on the truck.

But my question is, do you agree that Congress should await the results of the study before proceeding to consider any further legislation dealing with heavier trucks?

Mr. MENDEZ. Well, let me just reiterate that our intent, as you directed us to do, is to bring to you a study that is going to hopefully address all the issues and then give you the information so

you as a body can debate what needs to be done on a national basis.

I don't know that I necessarily need to comment on what Congress should or shouldn't do. I think my role is to provide you with the best information, the best study that we can provide to you, as I said earlier, it needs to be objective and data-driven, and then you can figure out through your body, and through your deliberation, what is the best thing to do for the Nation.

Mr. BARLETTA. Thank you. I was in the pavement marking business before I came to Congress, before I was mayor and came to Congress, so I understand the importance of retroreflective pavement markings. When people can see the lines on the roads and the signs along the roads, it saves lives. And I was very proud of that work. And I was also pleased to see that the language that I proposed that would allow for easier access to the Highway Safety Improvement Program for pavement markings and sign retroreflectivity made it into the final bill. However, I find it a bit disturbing that FHWA is still proposing that each project should include data on the need for these safety improvements, when the FHWA has conducted or sponsored research on the systematic benefits of sign and pavement marking retroreflectivity projects already. This seems to be a waste of taxpayer's dollars to require data collection on the need for sign and pavement marking retroreflectivity projects, when the cost-effectiveness of these projects has already been proven.

If the State sees a need to utilize these funds for retroreflectivity projects, will you really require further collection of more data and waste more time, when these projects could be completed quickly and more efficiently?

Mr. MENDEZ. You raise a very good point. Let me take that back to my office, let me get my people together and go through this issue one more time, and we will get back to you.

Mr. BARLETTA. OK. Thank you.

Mr. MENDEZ. I think you framed it in a different perspective, and I do appreciate that.

[The information follows:]

We do not believe an insert is required for this exchange.

Mr. BARLETTA. Well, it is all about saving lives——

Mr. MENDEZ. I agree.

Mr. BARLETTA [continuing]. And here is a way we can do it. Thank you.

Mr. MENDEZ. Thank you.

Mr. PETRI. Mr. Graves.

Mr. GRAVES. Thank you, Mr. Chairman, and I appreciate hearing this. My question is for Administrator Ferro. Last year the subcommittee had the opportunity to hear from you about truck and bus safety programs, and I submitted a question to you about whether or not you would be willing to come up with an alternative for, and what I am talking about as hazardous materials safety permit process, and coming up with an alternative other than having to age out of, you know, whatever the violation is that may not be—you know, that isn't related to a crash or something.

And the alternative approach that I have been looking at or that we have been pushing is for a—you know, either allow that individual to, or company to, you know, put out a full review of their safety management controls, or if the opportunity arose or come up with some sort of an opportunity to provide a corrective action plan prior to denying that permit.

And I very much appreciate your response, which you did give me a response, and you did note that under the current process there is no opportunity allowed to file corrective action plans or demonstrate their fitness, but you also—and you also pointed out, too, that under Section 33.014 that it precluded you from making any changes until you had made an assessment of the program.

But what my question to you is, and I don't see anything that prevents you from requiring that you have to wait until that assessment is done or taking some early action, and I am just simply asking you if you can come up with something, some opportunity to either, you know, bridge that gap between now and when that is all finished and when you have completed your study to be able to have some sort of a waiver process or some sort of an opportunity to be able to—you know, to demonstrate this process without having to be denied and then, you know, coming back through, through that process, because it is a—you know, this is something that is a pretty big deal to me.

Ms. FERRO. Congressman, I appreciate that. And following our meeting with you, we did in fact make a pretty significant modification to how it is calculated by averaging the violation rate over an 8-year period instead of that rolling 2-year average, and I think that helped a great deal to balance, offset some of the, maybe the unfairness of the program to set a better balance.

We have since met with stakeholders on this permit, and we continue to drive towards—let me just simply say, I continue to be open to opportunities to address the areas of concern that stakeholders have raised.

The challenge for an appeal does exist today when it comes to specific elements within their violation history. If there is a specific violation and a permit holder feels was not accurately applied, they go through the DataQ process. If there is a history of crashes that the permit holder feels were preventable, we consider that before we make a final decision. This is one of the areas where we do consider preventability when it comes to crashes.

That final step of allowing a permit holder that we have denied a permit to submit a corrective action plan is the piece that I really want us to finish the analysis that is—we are required to do under MAP–21. I expect to complete that analysis this summer, and so I would like to revisit with you what we identify in that regard after we finish that study and see if there are some interim steps we can take before we move to, if we move to a full rulemaking in that regard.

Mr. GRAVES. Well, I am pleased to hear that you guys might be done with that before summer, you know. And if that isn't the case, I wish we could find some alternative at least to bridge that gap between now and then, because this is really a—I mean, this is a frustrating process, and we just want the opportunity to be able to,

you know, again, appeal that or at least prove up that opportunity. And so, you know, the summer is not far away.

Ms. FERRO. It is not.

Mr. GRAVES. It is not very far away at all, and—but I would—you know, if we could come up with some sort of a way to bridge that—to bridge that gap, that would be a big help. But I look forward to talking to you about it and I do appreciate your openness on this.

Ms. FERRO. Thank you.

Mr. PETRI. Thank you.

Mr. Farenthold.

Mr. FARENTHOLD. Thank you very much, Mr. Chairman. Administrator Mendez, I know Mr. Rice was asking you about interstates currently under works. Interstate 69 in Texas is currently in the works. We are converting some existing highways up to interstate standards. So we are, in fact, growing the system, but it is an awfully slow process and awfully expensive process.

I wanted to ask about a couple of issues. We have spoken a lot about the need for funding our infrastructure, and one of the alternatives that is sometimes floated around is a vehicle miles driven tax. And, frankly, my concern is with this, and I express it when people talk to me, is can this be done in a way that preserves people's privacy. I mean, are we talking—the proposals have included, you know, GPS and things like that. Is the technology in place to do this on a—anonymously and on some sort of pay-as-you-go system where you don't end up getting, you know, a thousand dollar bill when you renew your license tags?

Mr. MENDEZ. There have been a few studies underway, specifically in the State of Oregon, looking at the concept. In fact, I believe they are beginning another pilot on that to try and address the privacy issue. I believe, just thinking back to some of the preliminary findings there, they believe that there is a way to address the privacy issue.

Mr. FARENTHOLD. All right. I was just curious as to whether you thought it could be done and the technology was there.

I want to get into the weeds a little bit with MAP–21. That is, you know, more specifically what we are looking at in this hearing. And Section 1309 addresses accelerated completion of environmental impact studies. It requires completion less than 4 years after the issuance of a notice of intent, but it is not clear how this applies to projects where a notice of intent was already issued before MAP–21, and, in fact, in some cases more than 4 years before MAP–21.

Do you intend to clarify this in regulation or are we going to see an issue where in order to meet the 4-year standard stuff that was previously started is going to be pushed to the back?

Mr. MENDEZ. No. We actually are working on a lot of these issues simultaneously. There are a lot of provisions, including that one that you are talking about, and we are working on that with other Federal agencies just trying to figure out what the issues are, and eventually we will come out with some guidance. We are not there yet, but it is not being pushed to the back, by the way. It is a very important provision.

Mr. FARENTHOLD. All right. And in that rulemaking, I would also encourage you to consider having the 4-year timeframe applies to design-build projects as well, as they are not following the traditional, you know, procedures.

Mr. MENDEZ. Right.

Mr. FARENTHOLD. And let us go to Section 1317 now. It creates a categorical exclusion for projects with limited Federal assistance. And we all recognize that funding estimates frequently change, and unfortunately frequently change for the worse, but before and after a NEPA decision, is it possible that a project could have a change order during construction that would put the Federal participation beyond the threshold established in the statute, and can we look at maybe a regulation to address that as well?

Mr. MENDEZ. We, as I mentioned earlier, for that specific item, we actually issued a notice of proposed rulemaking about 2, 3 weeks ago.

Mr. FARENTHOLD. OK. I hadn't seen that. I apologize.

Mr. MENDEZ. Yes. So that is out there. We will bring in all the comments. As I was reminded, we have a 60-day comment period, and we will get that out, it seems to me, some time this year. I think earlier I had said next year. It is probably going to be this year.

Mr. FARENTHOLD. All right. And also Section 1318 requires DOT to do a survey on the use of categorical exclusions among States and solicit ideas for new categorical exclusions. Have you all thought about what type of other categorical exclusions you all are thinking about?

Mr. MENDEZ. Yes. The survey actually was conducted and was finished, I believe, late last year in 2012.

Mr. FARENTHOLD. And so are we going to get public comment and rulemaking as a result of that?

Mr. MENDEZ. That is correct. We are wrapping those results into rulemaking, along with some other provisions that required us to look at other CEs.

Mr. FARENTHOLD. OK.

Mr. MENDEZ. So all that——

Mr. FARENTHOLD. All right.

Mr. MENDEZ [continuing]. Is being wrapped up together.

Mr. FARENTHOLD. Great. And I am running out of time. I did have a quick question for Mr. Strickland. Having seen your testimony that we are having a lot of success with our seatbelt programs that have come through, are we reaching a time now, especially in time of furloughing Federal employees, that we might be thinking it is time to watch where we are spending our money and not spend it on things that I think have become common sense for most Americans?

Mr. STRICKLAND. Well, Mr. Farenthold, I appreciate the compliment about our success of our programs, but frankly, we have to redouble our efforts on belts, recognizing the fact that of our highway traffic safety fatalities half of them are still unbelted. So that delta of 50 percent of the people not wearing their belts constitutes about 16,000, 17,000 people.

So as opposed to thinking about maybe it is not the time to continue to focus on belts, it is a time to probably get that number up

even higher so that we do not end up losing half of our people to traffic crashes because of not wearing their belts.

Mr. FARENTHOLD. All right. Well, I see my time has expired. I would like to explore that more with you, but we are running late in the day. Thank you very much. I yield back.

Mr. PETRI. Mr. Davis.

Mr. DAVIS. Thank you, Mr. Chairman. And thank you all for being here today. I apologize. As is typical of the committee process, we are in and out, so I may ask you a question that may be somewhat redundant, but it is localized and it matters to my district. And I would like to start first with Mr. Mendez and then Mr. Rogoff. It is about the streamlining process. I know that has been discussed. I have some specific projects in Springfield, Illinois, that will benefit from this streamlining process. They are about ready to undergo the environmental review process that could be costly and add to the length of time this project moves forward. I know those rules have not been finalized yet, and if you have already responded to this, I apologize, but, you know, this has a potential to fast track our projects and it will improve transit throughout my district. Do you know, can you tell me where you are at in terms of this process and speeding it up?

Mr. ROGOFF. Well, as Administrator Mendez just mentioned—he spoke about the categorical exclusion rule—there have been two rulemakings as it relates to categorical exclusions, one specific to natural disasters that we were able to get out quickly. We also have this NPRM on categorical exclusions, which from the transit perspective perhaps holds the greatest promise to shorten the environmental review period, because it would enable some considerable amount of transit investments to go through the CE process rather than an EA or an EIS process.

And that was actually a joint rule that we did together and which is a model that we are hoping to emulate going forward. That is now out for public comment with a goal of getting the comments back soon. We are going to get some comments back, and we are going to address them, but I don't expect so much controversy that the publication of the final rule should be delayed. So we are optimistic.

Mr. DAVIS. Great. Thank you very much. One last question for both of you again, and this has to do with some mass transit systems that I have talked to in my district, specifically in Bloomington, Illinois, and Champaign, Illinois. They are happy with the timeliness of some of the bus grants and how they are being awarded, so thank you for that, but they are a little concerned that once some of the new safety requirements that are tied to MAP–21 are implemented, that their ability to have access to the grants that make them able to serve many of our rural areas could be impacted by that.

Are you working on ways to address these new requirements so that the process still remains as good as it is now?

Mr. ROGOFF. Yes, we are. I believe there is a fair degree of unnecessary worry and anxiety on the part of—especially some of our smaller grantees—about our new transit safety initiatives, and I have sought to address them.

We have made clear that when we talk about launching a safety management system approach, it is going to be scalable. It is going to recognize that, first of all, transit by and large is a very safe mode of travel. And our goal, as I said in my opening testimony, sir, is to try to provide some value-added guidance and standards without adding a great deal of cost or bureaucracy.

We have a great opportunity here in that we are starting with a blank slate, since we were prohibited in law from issuing safety standards since 1964. MAP–21 changes that, but it gives us also an opportunity—rather than having to tweak the old—to really conceive from the ground up what is the right approach for the right type of operator, and we are going to do that. And I think once we do a better job of reaching out and apprising people of our plan to add value without adding a great deal of cost, we will get greater buy-in and less anxiety.

Mr. DAVIS. Well, thank you. Thank you all for coming today. And I would like to yield back the balance of my time.

Mr. PETRI. Thank you.

I ask unanimous consent that the record for today's hearing remain open until such time as our witnesses have provided answers to any question that may be submitted to them in writing, and unanimous consent that the record remain open for 15 days for additional comments and information submitted by Members or witnesses to be included in the record of today's hearing.

Without objection, so ordered.

Gentlemen and the lady, thank very much for being with us this morning. And this hearing is adjourned.

Ms. FERRO. Thank you.

[Whereupon, at 12:30 p.m., the subcommittee was adjourned.]

The Honorable Thomas E. Petri, Chairman
Subcommittee on Highways and Transit
Committee on Transportation and Infrastructure
Subcommittee Hearing on "Implementing MAP-21:
Progress Report from U.S. DOT Modal Administrators"
10 a.m., March 14, 2013

The Subcommittee will come to order.

I feel obligated to say that I am disappointed that the Committee didn't receive the witness's written testimony until 4:30 yesterday. I don't believe that gives Members enough time to review their written remarks and I hope it won't happen again.

Today's hearing will focus on oversight of the Department of Transportation's implementation of the Moving Ahead for Progress in the 21st Century Act, better known as MAP-21. MAP-21 was signed into law by the President on July 6, 2012, and authorizes the federal highway, transit and highway safety programs through September 30, 2014.

MAP-21 consolidated or eliminated over 70 federal programs that were duplicative. These changes provide greater focus on the core national systems and give states greater flexibility to meet their transportation needs.

MAP-21 also started the process of holding states and transit agencies accountable for their funding decisions. States and transit agencies, in conjunction with Metropolitan Planning Organizations, will have to incorporate performance measures into their long-term transportation plans. These performance measures will help States and transit agencies focus their limited federal resources on projects that have the greatest benefits.

MAP-21 made major reforms and improvements to the project delivery process. It currently can take almost 14 years for a transportation project to be completed if federal funding is involved. This is simply unacceptable. Some of the MAP-21 reforms include allowing federal agencies to review projects concurrently, penalties for agencies that don't meet project review deadlines, and expanded categorical exclusions for projects in the existing right-of-way or with limited federal investment. These reforms will help cut bureaucratic red-tape and quickly deliver the economic and safety benefits of transportation projects.

MAP-21 also created a program to provide relief for public transportation systems that were affected by a natural disaster or catastrophic failure. Previously, transit agencies had to work through FEMA to replace equipment or rebuild their systems after a disaster. But after Hurricane Katrina, transit agencies sought an emergency program similar to the Emergency Relief program operated by Federal Highways Administration. This program was recently utilized by the states and communities that were affected by Hurricane Sandy.

Numerous trucking safety provisions were included in MAP-21, which reflects Congress's commitment to keeping truckers and the traveling public safe. The Federal Motor Carrier Safety Administration is tasked with implementing new regulations on electronic logging devices, hazardous materials safety permits, a drug and alcohol clearinghouse, and motor carrier registration requirements related to unsafe reincarnated carriers. These regulations will keep drivers safe while maximizing the efficiency of the trucking industry.

Congress recognized that new challenges have emerged affecting highway safety. The National Highway Traffic Safety Administration is required to implement a national priority safety program that incentivizes states to pass and enforce laws that address important safety issues. The program focuses on impaired driving countermeasures, occupant protection, motorcycle safety, distracted driving, and graduated drivers licensing.

These reforms are only part of the sweeping changes made in MAP-21. I look forward to hearing from the Administrators on how their agencies are implementing the reforms that I've highlighted and others that were included in MAP-21.

I now recognize Mr. DeFazio for an opening statement.

**Remarks of U.S. Rep. Nick J. Rahall, II**
**before the**
**Subcommittee on Highways and Transit**
**March 14, 2013**

**Mr. Chairman, I would like to commend the administrators for the great jobs they are doing in the face of such adversity, certainly with respect to the sequester and the fact that here, in the middle of March, they still do not know what their budgets will look like for the remainder of the fiscal year.**

**To those who say that the federal government should be run like a business, this is no way to run a business.**

**Today, I look forward to hearing about and discussing some of the initiatives I spearheaded in MAP-21, such as closing the loophole that allowed projects to be subdivided into separate contracts to avoid complying with Buy America requirements.**

**I am also concerned with an administrative effort by FHWA to expand the 30-year standing waiver exempting all manufactured ~~projects~~ products from Buy America. This expansion of the waiver was done by memo, without public input and no opportunity for comment.**

**In the area of transit, I have concerns with the new Bus and Bus Facilities formula grant program, which is being implemented as grants to the States, rather than directly to transit systems in areas with a population under 200,000 and I look forward to some discussion of that during this hearing.**

**There is one additional area that I believe deserves discussion, although today may not be the appropriate time since not enough time has passed since enactment of MAP-21 – and that is how the States are addressing what were formerly called transportation enhancements, scenic byways and recreational trails under the new Transportation Alternatives Program.**

**These initiatives, first authorized by the landmark ISTEA in 1991, have done so much to improve the quality of life in rural and urban areas as well.**

**Thank you.**

**STATEMENT OF**
**VICTOR M. MENDEZ**
**ADMINISTRATOR, FEDERAL HIGHWAY ADMINISTRATION**

**BEFORE THE**
**COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE**
**SUBCOMMITTEE ON HIGHWAYS AND TRANSIT**
**UNITED STATES HOUSE OF REPRESENTATIVES**

***Implementing MAP-21: Progress Report from U.S. DOT Modal Administrators***

**MARCH 14, 2013**

Chairman Petri, Ranking Member DeFazio, Members of the Subcommittee, thank you for the invitation to appear before you today to discuss the Federal Highway Administration's (FHWA's) progress in implementing the Moving Ahead for Progress in the 21st Century Act (MAP-21). Immediately after President Obama signed MAP-21 in July last year, FHWA moved quickly to effectively carry out its provisions, and I am pleased to highlight our extensive efforts to date on behalf of the American people.

Transportation moves our economy, and the bipartisan support for MAP-21 is a recognition of the national priority to keep America's transportation network operating safely and reliably. Since it took effect, MAP-21 has given States and localities the certainty they need to move forward with projects that employ people and strengthen our transportation system. It sustains our Highway Trust Fund (HTF) and provides State and local communities with a two-year horizon of funding for the roads, bridges, tunnels, and transit our economy needs to stay competitive. That means contractors and construction companies are able to plan for big projects and make the kind of employment decisions that will put hard-working Americans back on the job.

MAP-21 builds on the Department of Transportation's (DOT's) efforts to improve safety across all forms of transportation and offer people safe transportation choices. MAP-21 supports DOT's efforts to shorten project delivery times while protecting the environment. MAP-21 also includes provisions reflecting the importance of freight movement to our economy, streamlines and transforms the Federal-aid program into a performance-based program to better target investment and increase transparency and accountability, and contains a major expansion of the TIFIA program.

As we continue to implement MAP-21's critical provisions and improve our infrastructure, the President wants to build upon this momentum. In his State of the Union address last month, the President called for $50 billion in increased transportation infrastructure investment to spur economic growth. The President proposed a "Fix-It-First" Program that would direct $40 billion toward reducing the backlog of deferred maintenance on highways, bridges, transit systems, and airports nationwide and put U.S. workers on the job, along with $10 billion for innovative transportation investments. President Obama also proposed a Partnership to Rebuild America to attract private capital to upgrade what our businesses need most—efficient roads, rails, mass transit systems, waterways, and ports to move people and goods; and safe and modern energy and telecommunications systems.

## FHWA MAP-21 IMPLEMENTATION PROGRESS

Under MAP-21, Congress provided for an investment of $40.4 billion for Fiscal Year (FY) 2013 and $41.0 billion for FY 2014 for critical highway infrastructure programs. MAP-21 streamlined and consolidated many of FHWA's programs and made a number of other reforms to existing programs and provisions that required our immediate action to ensure that Federal, State, local, and tribal transportation partners were ready when the Act became effective on October 1. Through our aggressive outreach to partners, development of guidance and rulemakings, and establishment of financial management procedures, FHWA has met and exceeded Congress' challenge. As a result, MAP-21 is having its intended effect nationwide.

### Conducting Outreach to Partners and Stakeholders

Very shortly after enactment of MAP-21, FHWA established a MAP-21 website to help link FHWA employees, stakeholders, and the public to the new Act and provide related resources as they became available. Prior to October 1, FHWA developed and delivered 26 informational webinars for FHWA staff, State Departments of Transportation (State DOTs), Metropolitan Planning Organizations (MPOs), local governments, and other stakeholders. FHWA estimates that approximately 10,000 individuals participated in these webinars, which does not include the many others who subsequently have viewed webinar recordings on FHWA's MAP-21 website. These webinars focused on a wide array of topics covering all of FHWA's programs, including safety, project delivery, freight, performance management, planning, environment, innovative finance, transportation alternatives, tribal transportation, and research.

In addition to webinars, we conducted extensive outreach with stakeholders by hosting numerous listening sessions and roundtables. For example, in the freight area, the Department held a National Online Dialogue in September 2012 and a "Talking Freight" webinar in November 2012 attended by more than 300 people. DOT is continuing to hold freight-related roundtables with stakeholders across the country regarding MAP-21 deliverables, including freight performance measures and the National Freight Strategic Plan.

With respect to performance management, last summer, FHWA held a series of webinars, listening sessions, and meetings with stakeholders. In September 2012, we held a National Online Dialogue with more than 8,000 visitors, who contributed 228 ideas for our consideration. In addition, we have held targeted sessions on traffic congestion and National Highway System (NHS) performance with attendance of nearly 1,000 stakeholders, and we recently held a focused listening session with States, MPOs, and transit agencies on target setting where we connected 16 locations around the country using video and web conferencing technologies. This type of outreach is critical as we implement the MAP-21 provisions that, collectively, will transform many elements of our programs to focus on the achievement of performance outcomes.

### Issuing Guidance and Rulemakings

The timely development and issuance of guidance and rulemakings is a central component to FHWA's implementation efforts. In order to ensure implementation could begin on October 1, we developed and posted on the MAP-21 website guidance documents and other information, including a bill summary, fact sheets, funding tables, and questions and answers (Q&As) on a

wide range of program and policy changes. FHWA continues to issue guidance and other information to help the Nation's Federal, State, local, and tribal transportation agencies implement MAP-21 programs and provisions and to highlight opportunities available under the new law.

We also took swift action to implement MAP-21 provisions requiring regulatory changes. Many of these requirements provide important changes in the areas of improving safety, accelerating project delivery, achieving performance outcomes, and rebuilding infrastructure. I am pleased to report that FHWA is on track to meet or surpass statutory deadlines for nearly all of the required rulemakings under MAP-21. We have already met statutory deadlines for two final rules and two proposed rules and are actively working on the remainder. For example, jointly with the Federal Transit Administration, FHWA completed a final rule well ahead of the statutory deadline implementing the exclusion from requirements under the National Environmental Policy Act to prepare an environmental impact statement or environmental assessment for actions following declarations of emergency. FHWA and FTA also published a notice of proposed rulemaking for new categorical exclusions related to actions within the operational right-of-way and for projects with limited Federal financial assistance.

In the area of performance management, FHWA is using a comprehensive approach to develop rulemakings that will help States and MPOs make data-driven decisions and efficient use of limited resources. We are planning to publish proposed rules in three phases to establish performance measures: (1) safety; (2) infrastructure; and (3) freight, traffic congestion, and air quality. FHWA is also planning to issue program-related rulemakings that have performance components in a timeframe coinciding with the three phases. This approach will provide a comprehensive overall approach to implementation of the MAP-21 performance requirements.

**Providing Needed Resources**

Mindful of the need to give States ample time to plan for projects under the newly structured Federal-aid highway apportioned programs, FHWA moved promptly upon MAP-21's passage to provide States needed funding information. Less than two weeks after passage, FHWA issued an Advance Notice of Federal-aid Highway Funds to be Apportioned for FY 2013, which provided States anticipated amounts of funds to be apportioned under MAP-21 in FY 2013. FHWA also provided funding tables for our MAP-21 website as well as guidance and Q&As on a number of related topics, including the apportionment structure and the program codes necessary to obligate funding.

On October 1, 2012, as required by law, FHWA issued a Notice of Apportionment of Federal-aid Highway Program Funds for FY 2013, which apportioned approximately $37.5 billion to the States under the new MAP-21 structure. Two days later, FHWA issued the Notice of Distribution of Federal-aid Highway Program Obligation Limitation for FY 2013, which provided approximately $19.1 billion in obligation limitation, the maximum available under the Continuing Resolution. FHWA's actions allowed the States to prepare, plan, and begin obligating the MAP-21 apportionments immediately upon the Act taking effect.

In addition to our efforts related to Federal-aid highway apportioned programs under MAP-21, we have moved quickly to make Emergency Relief funds available to States to help repair the damage to highways and bridges caused by Hurricane Sandy and other disasters. To date, we

have made $548 million available to States affected by Hurricane Sandy alone. Additionally, we have issued implementing guidance and conducted outreach to help States utilize additional authorities provided under MAP-21, including the delivery of needed supplies to areas affected by disasters.

**KEY PROGRAMS AND PROVISIONS**

MAP-21 makes great progress in improving safety, rebuilding highways and bridges, expanding the TIFIA credit program, focusing on freight policy, accelerating project delivery, ensuring better transportation planning, and moving us toward a more performance-driven system.

**Program Features**

MAP-21 consolidated a complex array of programs into a smaller number of broader programs, with the eligibilities generally continuing under such programs. This new program structure is helping to provide our grantees with flexibility to deliver projects more efficiently.

MAP-21 ensures we are investing in the Nation's most important highways. The NHS constitutes only 5 percent of our Nation's 4 million miles of public roads, but it is the network that ties together major points of population and commerce, supporting our economy. The NHS carries more than 55 percent of all highway travel and a significant amount of truck-borne freight. Recognizing the vital service that the NHS provides, MAP-21 authorized the National Highway Performance Program (NHPP), devoting 58 percent of the apportioned highway funds to the improvement of this critical network. The NHPP provides support for the condition and performance of the NHS, for the construction of new facilities on the NHS, and to ensure that investments of Federal-aid funds in highway construction are directed to support progress toward the achievement of performance targets set by a State using an asset management planning process for the NHS.

The Surface Transportation Program (STP) provides funding that may be used by States and localities for projects to preserve and improve the conditions and performance on any Federal-aid highway, bridge and tunnel projects on any public road, pedestrian and bicycle infrastructure, and transit capital projects, including intercity bus terminals. The STP directs funding to maintain and improve Federal-aid highways and bridges on public roads in urban and rural areas, while giving States flexibility to make transportation decisions.

At DOT, where safety is our number one priority, we were excited to see a transportation plan that builds on our aggressive safety efforts, including doubling funding for FHWA's successful Highway Safety Improvement Program (HSIP). With broad eligibilities to achieve a significant reduction in fatalities and serious injuries on *all* public roads, an increased focus on performance, and new data system and improvement provisions, States have an opportunity to make strategic, data-driven investments that will continue to provide safety benefits long after HSIP funds are expended. FHWA works closely with the National Highway Traffic Safety Administration and the Federal Motor Carrier Safety Administration to coordinate our respective efforts to improve safety on a system that is common to all three agencies.

FHWA programs are also helping to improve the environment and provide safe transportation choices. The Congestion Mitigation and Air Quality Improvement Program provides funding to State and local governments for transportation projects and programs to help meet the requirements of the Clean Air Act. The new Transportation Alternatives Program provides for a variety of alternative transportation projects previously eligible under separately funded programs, including projects for recreational trails and safe routes to school.

MAP-21 included programs designed to improve transportation to and within Federal and tribal lands. The Tribal Transportation Program provides funding for transportation facilities that are located on or provide access to Indian Country. In many cases, these facilities provide tribal members with access to basic community services such as health care or educational centers. The Federal Lands Transportation Program provides funding for Federal land transportation facilities that provide access to the most popular recreational destination points within the Federal estate. The Federal Lands Access Program provides funds for facilities that are owned by State and local agencies and are located on, or provide access to, Federal lands, with preference given to facilities that provide access to high-use Federal recreation sites or Federal economic generators.

In addition to these programs, MAP-21 enhanced flexibility to conduct innovative highway-related research, development, deployment, and training activities to address current and emerging needs facing our Nation's transportation system. At our Turner-Fairbank Highway Research Center Facility, we are providing the highway community with advanced and applied research and development related to new and existing highway technologies. The center reviews, tests, studies, researches, and finds solutions to complex technical problems through the development of more economical, environmentally sensitive designs; more efficient, quality controlled construction, operational, and safety practices; and more durable materials. These efforts result in a safer, longer-lasting, and more reliable highway transportation system.

MAP-21 also reauthorized important programs designed to foster the training and development of surface transportation-related workforces and to support disadvantaged business enterprises. FHWA continues to work collaboratively with our State partners to ensure that small businesses owned and controlled by socially and economically disadvantaged individuals are provided fair opportunities to compete for highway construction contracts. FHWA also supports State DOT and local agency workforce development through our National Highway Institute and Local Technical Assistance Program.

**Accelerating Project Delivery**

Three years ago, I launched the "Every Day Counts" innovation initiative to present new technologies, new ideas and new ways of thinking about shortening project delivery time and expediting the deployment of new and proven technologies into the marketplace. I am pleased that the accelerating project delivery provisions in MAP-21 complement the successes of our initiative by providing an array of provisions designed to further increase innovation and improve efficiency, effectiveness, and accountability in the planning, design, engineering, construction and financing of transportation projects. These provisions will move projects from concept to completion more efficiently to yield broad benefits nationwide, saving time and money, and allowing the public to enjoy the benefits of upgraded infrastructure more quickly.

Immediately after passage of MAP-21, we began working aggressively to implement these provisions by conducting outreach sessions with stakeholders, issuing guidance, and working collaboratively with other Federal agencies. In order to meet the aggressive statutory deadlines and challenges presented by these provisions, we worked extensively with the Transportation Rapid Response Team, composed of representatives from more than 10 Federal agencies and components of the Executive Office of the President, to facilitate the interagency coordination needed to advance rulemaking and guidance documents in accordance with statutory deadlines and to identify and resolve concerns from agency partners. This collaborative effort enabled us to publish two rulemakings ahead of the statutory deadline and issue guidance in a timely manner. Additionally, States such as Illinois, for example, have already utilized our guidance to apply the provision that allows for the consolidation of a final Environmental Impact Statement and Record of Decision in order to expedite the environmental review process.

In addition to our rulemaking and guidance efforts, we also recently concluded a survey of stakeholders to meet the statutory mandate to consider additional categorical exclusions that could be created to help sponsors advance their transportation priorities without unnecessary delays. We are currently assessing the survey results. Going forward, we will continue to engage in a number of activities to implement important provisions and technologies to further improve the efficiency of infrastructure project delivery.

**Freight**

At DOT, we have taken the lead on improving our Nation's freight movement because we know that in order to compete in a global economy, we need to move quickly and efficiently more than 48 million tons of goods each day, worth nearly 46 billion dollars. MAP-21 provided DOT with unprecedented opportunities to improve freight movement throughout our Nation. MAP-21 establishes a national freight policy, requires the Secretary to establish a National Freight Network (NFN), calls for the creation of a National Freight Strategic Plan, and directs the Secretary to encourage States to develop comprehensive State Freight Plans that include both immediate and long-range freight planning activities and investments.

Last summer, Secretary LaHood announced the creation of our Freight Policy Council. The Council, chaired by Deputy Secretary Porcari, brings together senior leadership, including modal administrators as well as policy, budget, economic, and research experts, to oversee the implementation of MAP-21's freight provisions, including development of the National Freight Strategic Plan. Secretary LaHood also announced the creation of the National Freight Advisory Committee to engage both the public and private sector as we implement MAP-21 provisions, including the development of the National Freight Strategic Plan, and we want representatives from across the transportation spectrum to help us improve the way we move freight. The Department is accepting nominations for committee members until March 21.

Designating the NFN will help us better focus attention on the highways that are most critical to the movement of goods. The NFN will include three components: the Primary Freight Network (PFN) designated by the Secretary, portions of the Interstate System that are not designated as part of the PFN, and critical rural freight corridors. The Secretary will designate up to 27,000 miles of the Nation's most critical existing Interstates and other roads as part of the PFN and will consider adding as many as 3,000 miles of existing and planned roadways necessary for the

efficient movement of goods in the future. In February 2012, FHWA issued a notice regarding the process for designation of the NFN to assist States in strategically directing resources toward improved system performance for the efficient movement of freight. We have established a multi-modal technical advisory team with representatives from DOT and the U.S. Army Corps of Engineers to undertake preliminary analysis for the PFN. This Spring, FHWA will release a draft PFN map for review and comment. We are also developing guidance and technical assistance for critical rural freight corridors and will request submission of such corridors from States this Fall.

The Department issued interim guidance and requested comments in the Fall of 2012 on State Freight Plans, and we expect to publish final guidance this Spring. FHWA is actively working through our Division Offices in each State to encourage States to develop freight plans and establish freight advisory committees. We have asked the American Association of State Highway and Transportation Officials to let States know that we are eager to receive and review their freight plans and that we are available to serve as a technical resource. On March 18, we will conduct a webinar with State DOTs on developing State Freight Plans.

**TIFIA**

To support infrastructure efforts and job creation, MAP-21 offered a significant boost to our TIFIA program. MAP-21 transforms TIFIA into the largest transportation infrastructure loan program in history, providing communities across America yet another great resource to help them invest in major transportation projects and create jobs in the process. The $1.75 billion Congress has made available for TIFIA, assuming the same general subsidy level as for the present portfolio, can lead to $17 billion in loans for needed transportation projects around the country. And those loans can then lead to billions more in private sector and other investments.

That is a very effective multiplier, and there is no shortage of good projects that can use the needed resources TIFIA provides. In the past, TIFIA has supported signature projects like the Presidio Parkway Project in California, which is replacing the structurally and seismically deficient access road to the Golden Gate Bridge and will connect San Francisco and Marin Counties with a safe and modern roadway.

Shortly after enactment of MAP-21, on July 31, DOT published a notice inviting project sponsors to submit letters of interest (LOIs) for TIFIA credit assistance. The Notice also outlined important process changes that we have implemented within the Department to review LOIs on a rolling, first-come, first-served basis. To date, we have received 29 LOIs from project sponsors requesting credit support under the MAP-21 authority. DOT has engaged with all of the project sponsors and is prepared to move expeditiously in advancing eligible projects.

To help the transportation community better understand the new TIFIA process, we have conducted several broad-based webinars and on-site workshops. We posted updated Q&As on the TIFIA and MAP-21 websites, focusing largely on changes in the application process. DOT also is developing an updated TIFIA Program Guide and updated standard Loan Agreement Template.

**Performance Management**

The cornerstone of MAP-21's Federal highway program transformation is the transition to a performance and outcome-based program, which will provide a means to more efficient investment of Federal transportation funds by focusing on national transportation goals, increasing the accountability and transparency of the Federal highway programs, and helping States and MPOs make targeted investments through performance-based planning and programming.

Over the past several years, FHWA has taken a number of proactive steps to prepare the Agency to move toward a more performance-based Federal highway program. Beginning in 2009, we formed a Performance Management Transition Team to recommend how FHWA could be better prepared to carry out the Federal role of performance management in the Federal highway program. In 2011, we created a new Office of Transportation Performance Management within FHWA to lead, guide, coordinate, and develop the cross-cutting aspects of a performance-related highway program. Taking these steps has enhanced our ability to lead the move toward a more performance-based Federal highway program immediately upon the passage of MAP-21.

In addition to our continued outreach and rulemaking efforts highlighted above, last month, FHWA created a Transportation Performance Management website that serves as a complementary resource to the FHWA MAP-21 website. This new site provides a common place for our partners and stakeholders to share and find resources and information on transportation performance management. For example, the website includes information on the implementation schedule for performance provisions under MAP-21, noteworthy practices from States and local governments, a library of resources including presentations and other tools from FHWA and our partners, and news and events hosted by both FHWA and our partners related to transportation performance management. This site will be a key tool for engaging with our partners and stakeholders. In addition, as the site grows, it will become a forum for collaboration, ensuring that our stakeholders have a place to work with one another and dialogue with FHWA on advancing the state of practice for transportation performance management.

**CONCLUSION**

Thank you again for the invitation to appear before you today to highlight our achievements in implementing MAP-21. We look forward to working with you as we make continued progress toward full and effective implementation of these critical and important programs and provisions.

**Committee on Transportation and Infrastructure**
**Subcommittee on Highways and Transit**
**Hearing on "Implementing MAP-21: Progress Report from U.S. DOT Modal Administrators"**
**March 14, 2013**
**Questions for the Record**

Questions from Chairman Tom Petri

1. MAP-21 requires the Secretary to encourage states to develop their own freight plans. Last fall, FHWA published interim guidance and sought public comment. Some of the comments submitted expressed concerns that additional requirements for the plans in the guidance could actually deter states from developing them. What steps is FHWA taking to ensure that these comments and others are taken into account?

**Response:**

The Department will be addressing these and all comments received in our final guidance document, which we plan to publish this spring. In addition, we convened a public webinar on March 18, 2013 on the topic of State freight planning in which over 300 people participated. The purpose of the webinar was to encourage States to move forward with their plans in compliance with the statutory requirements and to answer questions posed prior to and during the webinar about freight planning. The webinar is available as a download, and supplemental Q&As will be posted on the website as necessary to address questions on emerging issues.

2. Section 1116 of MAP-21 allows the Secretary to increase the Federal share of an eligible freight project so long as it meets certain criteria. Last fall, FHWA issued preliminary guidance on this section. This guidance included an "interim implementation" provision because of the linkages between Section 1116 and the other freight sections in MAP-21. This provision limits the total amount of project(s) costs that can receive the higher Federal share to 10 percent of a state's allotment (unless otherwise approved by the Secretary) and places a higher priority on certain types of eligible projects. Since neither of these was included in Section 1116, what rationale does FHWA have for including them in its guidance?

**Response:**

Section 1116 provides the Secretary discretionary authority to approve an increased Federal share for a project. The purpose behind the interim guidance was to provide for a limited and targeted use of the higher match provision until final guidance is issued.

3. Section 1318 of MAP-21 required you to publish a Notice of Proposed Rulemaking in the Federal Register by January 29, 2013, proposing new types of categorical exclusions to the NEPA environmental review process. This notice has not yet been published. What is the status of your efforts to comply with this section of MAP-21? What new categorical exclusions do you plan to propose?

**Response:**

FHWA is currently working with the Federal Transit Administration (FTA) to develop the Notice of Proposed Rulemaking (NPRM) required by Section 1318 of MAP-21, which will propose new types of categorical exclusions (CEs) and, as required under Section 1318(c), will propose to move certain CEs to 23 CFR 771.117(c) to the extent the change complies with 40 CFR 1508.4. The proposed new CEs will be based on the results of the survey that we conducted with FTA, as required by Section 1318(a) of MAP-21. We completed the survey by the statutory deadline and published a report on November 27, 2012 on our website (http://www.fhwa.dot.gov/map21/reports/sec1318report.cfm).

In accordance with the Council on Environmental Quality NEPA procedures, we are currently gathering the data needed to substantiate the types of projects that would be covered by the CEs proposed in the NPRM. Once we have the data, we will be in a position to make a final determination about which new CEs will be included in the proposed rulemaking.

4. Section 1309 of MAP-21 addresses accelerated completion of environmental impact statements. The statute requires completion less than 4 years after issuance of a Notice of Intent, but it is not clear how this will apply to projects where a Notice of Intent was already issued more than 4 years ago. Do you intend to clarify this in regulation? In addition, do you intend to address how the 4-year timeframe is to be met for projects applying design-build and other alternative project delivery methods as well as traditional design-bid-build projects?

**Response:**

Section 1309 of MAP-21 requires the Secretary to provide technical assistance on projects with an ongoing environmental impact statement (EIS) process for which at least two years has elapsed from a notice of intent (NOI) without issuance of a record of decision (ROD) if such assistance is requested by a project sponsor or the Governor of the State in which the project is located. At that time, a schedule is to be developed for completion of any permit, review, or study by a date no later than four years after issuance of the NOI. In cases where the NOI date is more than 4 years prior to the request for technical assistance, we will establish a schedule that meets the statutory intent as closely as possible. We have not yet decided on whether to issue a rulemaking related to this provision, but we have issued implementing guidance, which is available on our MAP-21 web site (http://www.fhwa.dot.gov/map21/).

Regarding the 4-year timeframe and projects applying design-build or other project delivery methods, these methods can be pursued in parallel with the NEPA process review, and can be accommodated by the schedules adopted for project development.

5. Section 1317 of MAP-21 creates a categorical exclusion for projects with limited Federal assistance. Funding estimates frequently change, both before and after a NEPA decision. It is possible that a project could have a change order during construction that would put the Federal participation beyond the threshold established in MAP-21. Will

you develop regulations to specify what would happen if the amount of Federal funding on a project increases above the threshold during project development or construction?

**Response:**

Current Federal Highway Administration (FHWA) and Federal Transit Administration (FTA) National Environmental Policy Act (NEPA) regulations address changes that occur after the NEPA decision. These regulations would apply to the categorical exclusion (CE) for projects with limited Federal assistance once it is designated through the rulemaking process. During the NEPA process, FHWA and FTA would consider whether the projected level of Federal funding and the estimated project cost, as applicable, are reasonably supported by the facts available at the time of the NEPA decision. If a change occurs after the NEPA determination that raises the level of Federal funding beyond the thresholds specified in the CE and there is still an FHWA/FTA action to be taken (e.g., authorization of Federal funding), a re-evaluation will be triggered pursuant to 23 CFR 771.129. The regulation requires the applicant to consult with the FHWA/FTA prior to requesting any major approvals or grants (including approval of project plans, specifications, or estimates) to establish whether the CE designation remains valid for the project.

Questions from Rep. John Duncan

MAP 21 included language in Section 1517 of the bill which stated that FHWA shall encourage state departments of transportation to utilize the private sector to the maximum extent possible for surveying and mapping services.

However, the guidance (titled, "Preconstruction Provisions Questions & Answers" http://www.fhwa.dot.gov/map21/gandas/gapreconstruction.cfm) that FHWA issued this policy states, ""FHWA continues to encourage States to utilize, to the maximum extent practicable, private sector sources for surveying and mapping services. FHWA does not have the authority to require state transportation agencies (STAs) and local public agencies (LPAs) to utilize private sector surveying and mapping services."

Section 1517 changed the language that has been part of the Highway Act since the original Act in 1956, from "may" to "shall".

1. Can you explain how FHWA does not have the authority to require state transportation agencies to use the private sector, because that is exactly the intent of the provision?
2. Also, can you tell the Committee what specific steps FHWA has taken or will take to encourage states to utilize to private sector sources for mapping and surveying?

Section 1517 also states that within 2 years of the enactment of MAP-21, FHWA will conduct a survey of all States to determine the percentage of Federal-aid highway projects in each State that utilize private sector sources for surveying and mapping services. Has the survey started? If so, how far along are you or when do you expect it to be completed?

**Response:**

Section 1517 of MAP-21 requires the Secretary to issue guidance to encourage States to use, to the maximum extent practicable, private sector sources for surveying and mapping services for title 23 projects. This language does not require States to use private sector sources for such services. Pursuant to Section 1517, we have already issued guidance that addresses implementation of this provision (http://www.fhwa.dot.gov/map21/qandas/qapreconstruction.cfm).

Surveying and mapping services performed by private sector sources are an eligible expense for reimbursement on Federal-aid projects. We also plan to survey State Transportation Agencies to identify successful State practices used to procure, manage and use private sector sources for surveying and mapping services. We plan to publish these best practices in the form of guidance on our MAP-21 website.

Questions from Rep. Gary Miller

"Southern California's "Inland Empire" is an intermodal gateway for the freight entering and leaving the ports of Los Angeles and Long Beach. These ports account for more than 40% of all imports entering our country. The region I represent is highly impacted by truck and rail transportation to-and-from our ports and the logistics industry generates thousands of jobs in my district. MAP-21 requires DOT to create a National Freight Network and establish a National Freight Policy Council. Specifically, Map-21 requires the designation of the Primary Freight Network in the coming months. I am concerned that the 27,000 miles of centerline roadway definition might not appropriately reflect the goods movement system in Southern California where we have a variety of east-west corridors in very close proximity. These parallel options spread truck traffic across several independent highways and thus, counted independently, might not compete well against other parts of the country where traffic is focused on one primary route.

1. What is the Department doing to ensure that the creation of the National Freight Network and membership of the National Freight Policy Council adequately consider regions such as the Inland Empire which do not include the ports but are impacted directly by the freight traffic to and from the ports? In addition, in order to ensure that the communities we serve are treated equitably based on the impacts they are feeling, whether the traffic is focused on one route or three in less than 10 miles, will the Administration consider the combined impacts of parallel routes in the development of the Primary Freight Network?"

**Response:**

The Department is analyzing various approaches to identify an initial designation of the Primary Freight Network (PFN) that will reflect facilities that are most critical to the movement of freight at the national level. As part of the analysis, we are considering the factors that Congress identified in MAP-21, which are the origins and destinations of freight movement, the total freight tonnage; the total freight tonnage and value of freight moved by highways; the percentage of annual average daily truck traffic in the annual average traffic on principal arterials; the annual average daily truck traffic on principal arterials; land and maritime ports of entry; access to energy exploration, development, installation, or production areas; population centers; and

network connectivity. Therefore, our analysis will include facilities that are impacted directly by freight traffic to and from ports. In the coming weeks, FHWA will publish an initial analysis of the PFN for public review and comment.

Questions from Rep. Lou Barletta

I was pleased to see that language I proposed that would allow for easier access to the Highway Safety Improvement Program for pavement marking and sign retroreflectivity, or brightness regardless of its inclusion in a state's Strategic Highway Safety Plan (SHSP) made it into the final bill. I found it disturbing that the FHW A is still proposing that each project should include data on the need for these cost-effective safety improvements when the FHWA has conducted or sponsored research on the systemic benefits of sign and pavement marking retroreflectivity projects already. This seems to be a waste of taxpayer dollars to require data collection on the need for sign and pavement marking retroreflectivity projects when the cost effectiveness of these projects has already been proven.

1. If a state sees a need to utilize these funds for retroreflectivity projects, will you really require further collection of more data and waste more time when these projects could be completed quickly and efficiently?

**Response:**

If a State identifies improvements in retroreflectivity as the most appropriate countermeasure to correct or improve a hazardous road location or feature or address a highway safety problem, no additional data analysis is required, and the State can proceed with such a project even if the project is not specifically identified in the Strategic Highway Safety Plan (SHSP).

Questions from Rep. Tom Rice

1. How much of total federal-aid funds and state matching funds are used by the states to meet all federal environmental reviews and regulations for a federal-aid eligible project?

**Response:**

We do not have any internal reports or data regarding total expenditures of Federal-aid funds or State matching funds in order to meet environmental regulatory requirements. However, the following reports may be helpful to provide general information regarding regulatory costs associated with highway projects:

- U.S. GOV'T ACCOUNTABILITY OFFICE, GAO-09-36, FEDERAL-AID HIGHWAYS: FEDERAL REQUIREMENTS FOR HIGHWAYS MAY INFLUENCE FUNDING DECISIONS AND CREATE CHALLENGES, BUT BENEFITS AND COSTS ARE NOT TRACKED (2009), *available at* http://www.gao.gov/assets/290/284235.pdf. This report identifies the types of costs and benefits associated with four Federal-aid highway regulatory requirements: NEPA, the Davis-Bacon prevailing wage requirement, the DBE program, and the Buy America program.

- U.S. GOV'T ACCOUNTABILITY OFFICE, GAO-13-193R, HIGHWAY TRUST FUND OBLIGATIONS: FISCAL YEARS 2009-2011 (2013), *available at* http://gao.gov/assets/660/651315.pdf. This report details activities funded from the Highway Trust Fund, including for purposes other than construction or maintenance of highways and bridges. The report identifies the non-highway Trust Fund money that goes to the Federal Transit Administration, the National Highway Traffic and Safety Administration, and the Federal Motor Carrier Safety Administration. Within the Federal Highway Administration, the report separates funding into three categories: highway and bridge construction and maintenance; transportation enhancements; and other purposes (such as safety, debt service and planning activities).

2. Can you provide me with the total amount of apportioned and allocated federal-aid funds that have been distributed to each state since 1970?

**Response:**

FHWA does not have data available prior to 1974. However, we have provided below the available data (from 1974-2011) reflecting the cumulative apportionments and allocations made to each State from the Highway Account of the Highway Trust Fund.

**Apportionments and Allocations from the Highway Account of the Highway Trust Fund (1974-2011) (Thousands of Dollars)**

| State | Cumulative Apportionments and Allocations from 1974 to 2011 |
|---|---|
| Alabama | $15,870,438 |
| Alaska | $10,268,041 |
| Arizona | $13,477,102 |
| Arkansas | $10,416,568 |
| California | $74,234,187 |
| Colorado | $11,240,383 |
| Connecticut | $13,126,669 |
| Delaware | $3,422,889 |
| Dist. of Col. | $4,211,152 |
| Florida | $35,729,484 |
| Georgia | $25,393,188 |
| Hawaii | $5,554,516 |
| Idaho | $6,110,336 |

| | |
|---|---|
| Illinois | $29,010,361 |
| Indiana | $18,001,427 |
| Iowa | $10,107,565 |
| Kansas | $9,078,685 |
| Kentucky | $13,539,016 |
| Louisiana | $14,372,253 |
| Maine | $4,231,828 |
| Maryland | $15,274,190 |
| Massachusetts | $19,132,490 |
| Michigan | $23,120,147 |
| Minnesota | $14,077,848 |
| Mississippi | $9,840,706 |
| Missouri | $18,543,899 |
| Montana | $7,952,842 |
| Nebraska | $6,251,695 |
| Nevada | $6,151,382 |
| New Hampshire | $3,781,811 |
| New Jersey | $21,091,980 |
| New Mexico | $7,641,310 |
| New York | $39,804,075 |
| North Carolina | $20,922,031 |
| North Dakota | $5,452,121 |
| Ohio | $27,577,585 |
| Oklahoma | $11,943,699 |
| Oregon | $10,540,656 |
| Pennsylvania | $36,469,781 |
| Rhode Island | $5,049,314 |
| South Carolina | $12,063,161 |
| South Dakota | $5,671,084 |
| Tennessee | $17,205,612 |
| Texas | $56,793,100 |
| Utah | $7,075,065 |
| Vermont | $3,836,266 |
| Virginia | $21,165,006 |
| Washington | $17,096,754 |
| West Virginia | $9,929,637 |
| Wisconsin | $14,766,674 |
| Wyoming | $5,521,079 |
| **Total** | **$809,139,088** |
| American Samoa | $216,490 |
| Guam | $490,455 |
| N. Marianas | $142,899 |

| | |
|---|---|
| Puerto Rico | $3,041,680 |
| Virgin Islands | $475,502 |
| **Grand Total** | **$813,506,114** |

3. Can FHWA provide a list of Highway Trust Fund (Highway Account) receipts attributable to South Carolina compared to the amount of federal-aid apportionments and allocations from the Highway Trust Fund to South Carolina for every year going back to 1956?

**Response:**

FHWA does not have annual data available prior to 1974. However, we have provided below data reflecting the cumulative apportionments and allocations made to South Carolina from the Highway Account of the Highway Trust Fund between 1957 and 1973, and annual data available for every year thereafter through 2011.

**SOUTH CAROLINA'S PAYMENTS INTO AND APPORTIONMENTS/ALLOCATIONS FROM THE HIGHWAY ACCOUNT OF THE HIGHWAY TRUST FUND (HTF)**
**1957- 2011**
**Thousands of Dollars**

| YEARS | PAYMENTS INTO THE HTF | | APPORTIONMENTS AND ALLOCATIONS FROM THE HTF | |
|---|---|---|---|---|
| | Fiscal Year | Cumulative | Fiscal Year | Cumulative |
| 1957- 1973 1/ | na | $ 837,444 | na | $ 648,424 |
| 1974 | $ 88,660 | $ 926,104 | $ 48,404 | $ 696,828 |
| 1975 | $ 87,885 | $ 1,013,989 | $ 69,206 | $ 766,034 |
| 1976 | $ 78,133 | $ 1,092,122 | $ 69,264 | $ 835,298 |
| 1977 | $ 96,092 | $ 1,188,214 | $ 60,141 | $ 895,439 |
| 1978 | $ 97,467 | $ 1,285,681 | $ 63,340 | $ 958,779 |
| 1979 | $ 102,100 | $ 1,387,781 | $ 112,014 | $ 1,070,793 |
| 1980 | $ 95,213 | $ 1,482,994 | $ 134,533 | $ 1,205,326 |
| 1981 | $ 92,068 | $ 1,575,062 | $ 126,081 | $ 1,331,407 |
| 1982 | $ 98,835 | $ 1,673,897 | $ 102,572 | $ 1,433,979 |
| 1983 | $ 117,293 | $ 1,791,190 | $ 142,526 | $ 1,576,505 |
| 1984 | $ 164,753 | $ 1,955,943 | $ 136,148 | $ 1,712,653 |
| 1985 | $ 192,831 | $ 2,148,774 | $ 171,552 | $ 1,884,205 |
| 1986 | $ 199,332 | $ 2,348,106 | $ 229,818 | $ 2,114,023 |
| 1987 | $ 196,546 | $ 2,544,652 | $ 209,998 | $ 2,324,021 |
| 1988 | $ 194,184 | $ 2,738,836 | $ 211,549 | $ 2,535,570 |
| 1989 | $ 209,305 | $ 2,948,141 | $ 136,982 | $ 2,672,552 |
| 1990 | $ 212,662 | $ 3,160,803 | $ 206,838 | $ 2,879,390 |
| 1991 | $ 256,543 | $ 3,417,346 | $ 221,165 | $ 3,100,555 |

| | | | | |
|---|---|---|---|---|
| 1992 | $ 262,734 | $ 3,680,080 | $ 210,753 | $ 3,311,308 |
| 1993 | $ 274,308 | $ 3,954,388 | $ 227,616 | $ 3,538,924 |
| 1994 | $ 280,577 | $ 4,234,965 | $ 337,016 | $ 3,875,940 |
| 1995 | $ 377,251 | $ 4,612,216 | $ 283,498 | $ 4,159,438 |
| 1996 | $ 387,354 | $ 4,999,570 | $ 242,584 | $ 4,402,022 |
| 1997 | $ 352,860 | $ 5,352,430 | $ 332,688 | $ 4,734,710 |
| 1998 | $ 511,540 | $ 5,863,970 | $ 365,515 | $ 5,100,225 |
| 1999 | $ 526,796 | $ 6,390,766 | $ 431,620 | $ 5,531,845 |
| 2000 | $ 554,376 | $ 6,945,142 | $ 483,066 | $ 6,014,911 |
| 2001 | $ 489,539 | $ 7,434,681 | $ 568,356 | $ 6,583,267 |
| 2002 | $ 513,735 | $ 7,948,416 | $ 569,123 | $ 7,152,390 |
| 2003 | $ 521,977 | $ 8,470,393 | $ 475,236 | $ 7,627,626 |
| 2004 | $ 521,214 | $ 8,991,607 | $ 569,036 | $ 8,196,662 |
| 2005 | $ 604,039 | $ 9,595,646 | $ 579,424 | $ 8,776,086 |
| 2006 | $ 596,969 | $ 10,192,615 | $ 597,083 | $ 9,373,169 |
| 2007 | $ 627,136 | $ 10,819,751 | $ 638,376 | $ 10,011,545 |
| 2008 | $ 555,676 | $ 11,375,427 | $ 673,927 | $ 10,685,472 |
| 2009 | $ 554,898 | $ 11,930,325 | $ 671,243 | $ 11,356,715 |
| 2010 | $ 583,364 | $ 12,513,689 | $ 687,554 | $ 12,044,269 |
| 2011 | $ 602,030 | $ 13,115,719 | $ 667,316 | $ 12,711,585 |

1/ Data by year is not available

Questions from Eddie Bernice Johnson

1. Mr. Mendez, MAP-21 substantially increased funding available for the Transportation Infrastructure Financing and Innovation Act (TIFIA) program, authorizing $750 million in FY 2013 and $1 billion in FY 2014 to pay the subsidy cost of supporting Federal credit. MAP-21 also calls for a number of significant program reforms, including an increase in the share of eligible project costs that TIFIA may support and a rolling application process.

    a. How is DOT making certain that TIFIA funding is being obligated quickly and efficiently? What additional steps can be taken to facilitate up the process?

**Response:**

DOT moved quickly to issue a Notice of Funding Availability after the passage of MAP-21, and the TIFIA office has been accepting letters of interest (LOIs) from project sponsors on a first-come, first-served basis since July 31, 2012. We have received 29 LOIs to date to finance approximately $41 billion in infrastructure investment around the United States.

DOT has also developed a process to review requests for TIFIA credit assistance under MAP-21. The initial review is aimed at ensuring eligibility and identifying and resolving any potential issues that could impact whether a project will reach financial close. After the initial review, we conduct a comprehensive financial review to ensure that the project meets applicable

creditworthiness criteria. As of April 10, 2013, DOT has advanced 15 projects to the creditworthiness phase of the review process. On a parallel track, we are working to ensure that the TIFIA Joint Program Office has the necessary staff to review applications and negotiate credit agreements. The TIFIA Office developed a staffing plan that is now being implemented. However, it is important to note that while DOT is prepared to move expeditiously in advancing all MAP-21 eligible projects, it is the project sponsor that determines the speed at which a project will move forward in the review process.

b. Is DOT implementing any TIFIA project selection criteria in addition to that authorized in MAP-21?

**Response:**

No, DOT is using the eligibility criteria specified in 23 U.S.C. 602(a).

c. Can you provide a status update on the progress of the TIFIA office issuing its new TIFIA program guide and proposed TIFIA regulations under MAP-21?

**Response:**

Since the passage of MAP-21, DOT has developed guidance material for project sponsors interested in submitting TIFIA LOIs. For example, we have posted an updated LOI form, developed new presentations and webinars on MAP-21, published questions and answers, and updated the frequently asked questions on the FHWA MAP-21 website. We are also currently updating the TIFIA program guide to reflect the changes made to the program by MAP-21 and plan to publish this on our website soon.

2. While the goal of DOT's Disadvantaged Business Entity program is to increase participation of small and minority-owned businesses, without any measure to enforce the requirement of minority participation, the program's goals are not being realized. As you know, the October 2011 GAO Report on DBEs emphasizes that the Federal Highway Administration is currently unable to effectively track whether state DOTs are meeting their DBE goals, and there is no comprehensive way of determining whether committed DBE spending reflects actual spending.

   a. What efforts are under way in the rulemaking process to improve the accuracy and transparency of the DBE program?

**Response:**

The Disadvantaged Business Enterprise (DBE) program is a Departmental program administered by the recipients of financial assistance from FHWA, as well as the Federal Transit Administration and the Federal Aviation Administration within the Department. The Department uses the current Uniform Report form of DBE Awards or Commitments and Payments to collect from recipients certain program data, which is designed to meet the needs of all components of the Department in carrying out its oversight responsibilities. The

GAO report indicated that the Uniform Report form does not require data that matches recipients' DBE commitments in a given year with actual payments made to DBEs on the contracts to which the commitments pertain. However, GAO noted in its report that it is a challenge to compare annual statewide DBE goals with annual commitments or awards that often involve multiyear projects and actual payments tied to those commitments or awards, as actual payments reported often correspond to commitments made one or more years earlier than the period covered by the report. The Department is examining whether alternative ways of collecting commitments data may provide a reasonable approximation for the kind of comparison GAO recommends.

The DBE Notice of Proposed Rulemaking (NPRM) published in the Federal Register on September 11, 2012, requested comment on proposals that seek to respond to GAO concerns and invited commenters to suggest other ways in which the Department might accomplish this objective. The comment period closed on February 29, 2013, and the Department is considering comments on various options for capturing data that more closely compares commitments and actual payments data.

b. The DBE program centers on setting goals to increase minority participation in contracts utilizing federal funding. While these goals are laudable, they are in effect a carrot without a stick. I have heard consistently from my constituents and minority contractors throughout the U.S. that DBE firms are used in the application process strictly for the appearance of compliance with the goals, yet after the contract is awarded, these DBE firms never again hear from the prime contractor, much less receive any of the work they were held out in the application to perform. Without the enforcement of these goals, the intent of the program is not being fulfilled. How is the agency addressing this? What efforts are underway by the agency to establish enforcement mechanisms for the DBE program?

**Response:**

The DBE regulations were strengthened in 2011 to specifically address this concern.

- First, prime contractors may not terminate a DBE relied upon to obtain the contract without good cause and the recipient's prior written consent. Examples of what does and does not constitute good cause are set forth in the regulation (e.g., a prime contractor cannot terminate a DBE so that it can self-perform the work or substitute the DBE with another subcontractor after contract award).
- Second, the recipient must provide written certification that it has monitored work sites to ensure that work committed to DBEs is actually performed by DBEs to which the work was committed.
- Finally, the NPRM published in September 2012 proposes additional safeguards for DBEs by requiring each prime contract to include a provision stating that, as a condition of award, the prime contractor is not entitled to any payment for work or materials performed by its own or any other forces if the work was committed to a DBE, unless there is good cause to replace the DBE and the State DOT provides prior written consent.

**STATEMENT OF**

**PETER M. ROGOFF**
**ADMINISTRATOR**
**FEDERAL TRANSIT ADMINISTRATION**
**U.S. DEPARTMENT OF TRANSPORTATION**

**BEFORE THE COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE**

**SUBCOMMITTEE ON HIGHWAYS AND TRANSIT**

**U.S. HOUSE OF REPRESENTATIVES**

**MARCH 14, 2013**

Mr. Chairman, Ranking Member DeFazio, and Members of the Committee:

Thank you for inviting me to appear before you today to highlight the Federal Transit Administration's (FTA) progress toward implementing key provisions in the Moving Ahead for Progress in the 21st Century Act, known as MAP-21. This two-year reauthorization codifies some of President Obama's highest priorities for enhancing the safety of public transportation, strengthening our nation's transportation infrastructure, and streamlining government to serve taxpayers' needs more efficiently. I want to thank the Committee for its support in passing MAP-21, which offers an opportunity for us to work together to support transit systems across the country at a time when national ridership has grown by 154 million trips in 2012 to 10.5 billion trips, the second highest level since 1957. This was the seventh year in a row that ridership has exceeded more than 10 billion trips. These investments spur new economic development to help build strong communities in cities, suburbs, and rural areas alike.

MAP-21, which took effect on October 1, 2012, authorizes $10.6 billion in FY 2013 and $10.7 billion in FY 2014 for public transportation. FTA has made a significant start toward implementation within the law's first six months by implementing key provisions and providing guidance to states, metropolitan planning organizations and transit agencies. We have an active and engaged legislative implementation team and an aggressive timetable in place.

We recognize, however, that much work and many challenges lie ahead. Our ability to fully implement MAP-21 is significantly hampered by the funding constraints imposed by the current fiscal year continuing resolution as well as the budget cuts imposed by the Budget Control Act of 2011. Nearly $5 million of cuts into our administrative budget will undoubtedly delay some aspects of MAP-21 implementation and reduce our ability to conduct outreach and training with stakeholders. Every budget request under my stewardship has sought additional funding to allow for additional staffing at the FTA to better address our core responsibilities as well as our new safety responsibilities. The Congress has yet to provide those resources. Moreover, reductions in FTA's capital investment program funding will mean few, if any, additional New Starts construction projects will be fundable in the near term. Also, sponsors of ongoing major capital projects will experience increased borrowing costs as FTA will be required by sequestration to

slow its pay-out schedule on projects to which it has already made financing commitments. Nevertheless, FTA is committed to moving forward as quickly as possible to implement MAP-21 so that the American people may reap the benefits that come with investing in public transportation that improves transportation equity, provides access to jobs and services, reduces congestion, and stimulates our economic development in cities and communities throughout the nation.

Because MAP-21 closely reflects some key program and policy priorities well under way at FTA prior to its passage, our agency has been able to move ahead quickly in two important areas. First, FTA published in January 2013 a final rule for Major Capital Investment Projects—years in the making—that adopts a more straightforward approach for measuring a proposed transit project's cost-effectiveness; expands the range of environmental benefits used to evaluate proposed projects; adds new economic development factors to its ratings process; and streamlines the project evaluation process. The revised ratings and evaluation criteria will better capture the full range of benefits that FTA's transit investments provide through the New Starts/Small Starts program, while continuing an appropriate level of oversight of taxpayer dollars. These revisions align with major purposes of MAP-21, including improving the development and delivery of capital projects and moving us toward a more performance-driven system. We appreciate the Committee's support for this important achievement.

Second, on February 7, 2013, FTA jointly with the Federal Highway Administration (FHWA) published an important final rule streamlining the environmental review process under the National Environmental Policy Act (NEPA) that a proposed transit project seeking Federal funds must undergo. The rule establishes ten new categorical exclusions (CEs) defined specifically for transit projects. CEs significantly expedite FTA's environmental review of projects that have been shown to have little environmental impact while preserving critical community input on how planned transit projects affect the local environment. These NEPA revisions, like the New Starts changes, are closely aligned with the policy goals of MAP-21.

In addition to these significant rulemakings, FTA is making progress to implement MAP-21 on several fronts. For example, at the outset of FY 2013, FTA published interim guidance on all of our MAP-21 programs as part of our annual funding notice for the first half of the year under the continuing resolution. This guidance allowed FTA's funding recipients to begin compiling their FY 2013 funding applications without delay, and laid the groundwork for future-year grants. FTA is making good progress on developing more detailed guidance on which we will seek comment in the near future.

**Public Transportation Emergency Relief Program**

Nowhere has FTA made more aggressive progress in implementing the provisions of MAP-21 than in the area of emergency relief. The President's Budget first proposed in FY 2012 a new emergency relief program for the FTA to parallel a similar capability in the Federal Highway Administration. The President proposed this program to strengthen the agency's authority to provide disaster assistance to transit agencies in the wake of major natural disasters and other emergencies, and the program was authorized by Congress in MAP-21.

The authorization of this new program arrived just in time for Hurricane Sandy, which, based on the extent of storm damage, was the worst public transit disaster in the history of the United

States. Hurricane Sandy devastated transportation systems in the hardest-hit parts of New York and New Jersey—which together represent more than one-third of our nation's transit ridership—and triggered a very rapid implementation path for the program. The Disaster Relief Appropriations Act of 2013 (Pub. L. 113-2) appropriated $10.9 billion to FTA to help transit agencies repair and replace damaged vehicles and equipment affected by this storm, as well as to undertake work to mitigate the impact of future floods and other disasters on transportation assets and systems both inside and outside of public transit. Unfortunately, this amount was then reduced by $545 million as part of sequestration.

In accordance with the Disaster Relief Act, FTA announced on February 6, 2013, the availability of the first $2 billion in aid to reimburse FTA recipients for capital costs to repair, reconstruct, or replace equipment and public transportation systems facilities that suffered serious damage in the states impacted by Hurricane Sandy. To date, FTA has allocated more than $390 million to the New York Metropolitan Transit Authority (MTA), the Port Authority Trans-Hudson Corp. (PATH), and the Southeastern Pennsylvania Transportation Authority (SEPTA) for expenses incurred while preparing for and recovering from Hurricane Sandy. By the end of March, 2013, FTA intends to allocate the remainder of the initial $2 billion to impacted agencies that submit applications for assistance. We continue to accept applications from affected transit agencies on a rolling basis and expect to allocate funds to New Jersey Transit and others shortly.

The release of the remaining funds authorized in the Disaster Relief Appropriations Act is contingent on two activities. First, FTA and FEMA have signed a Memorandum of Agreement, which MAP-21 also stipulated, that clarifies coordination of roles and responsibilities of both agencies to ensure that assistance is delivered in a timely, responsible, and transparent manner. Second, FTA must publish an interim final rule for the Emergency Relief Program, laying out eligible activities and the criteria FTA will use to identify projects for future funding. The interim final rule is under review within the Administration and will become effective immediately, once it is finalized.

**Safety Authority**

MAP-21 gives FTA long-sought authority to establish safety performance criteria for all modes of public transportation and establish minimum safety performance standards for public transportation. In addition, MAP-21 significantly strengthens FTA's ability to oversee and enforce common-sense safety standards for rail fixed-guideway transit systems. The Administration first transmitted transit safety legislation to the Congress in December, 2009, and many of the provisions sought in the Administration's bill were included in MAP-21. At the time the Administration's bill was transmitted to Congress, Secretary LaHood also formally established the Department of Transportation's Transit Rail Advisory Committee on Safety (TRACS).

While Congress has yet to appropriate additional administrative funds to carry out this new area of responsibility, FTA has proceeded to stand up a new safety office as expeditiously as possible using already strained existing resources. We are developing a roadmap for a comprehensive MAP-21 safety roll-out plan that is sensitive to stakeholder's concerns about this new oversight initiative. FTA will build a 21st century regulatory program over a period of several years.

In the short term, FTA has tasked TRACS to provide strategic guidance on the forthcoming rulemaking framework. FTA has also articulated a strategic framework for safety oversight, predicated on a safety management systems approach that takes into account the differing characteristics among rail systems and operators. We will pursue an approach that is scalable—not a one-size-fits-all model. Our initial focus in the first few years is on establishing a safety oversight regime that is expressed through Federal rulemakings, and complemented by development assistance packages for state safety oversight organizations (SSOA) and agencies. We will administer grants to assist agencies in becoming eligible for state certification and devise strong safety training programs.

With respect to strengthening and adequately funding the SSOAs—a key provision of section 5329 under MAP-21—FTA has issued clear instructions to the governors in each of the 28 states that operate a rail fixed-guideway transit system (or where such a system is in engineering or construction) that is not already subject to regulation by the Federal Railroad Administration. Specifically, in August 2012, Secretary LaHood first informed every affected governor by letter that financial arrangements must be made to secure the matching funds necessary for receipt of FTA's state safety oversight funds. Under MAP-21, a percentage of the section 5307 Urbanized Area formula funds are set aside to assist eligible states with their state safety oversight programs. FTA is currently developing a formula to make those funds available to eligible states. MAP-21 requires a 20 percent state match to help cover reasonable costs of a state safety oversight program. Every eligible state will be expected to use program funds to strengthen their SSOA and to position them to comply with the requirements of MAP-21.

Going forward, FTA will act as the leader, facilitator, and final regulatory authority setting minimum safety standards, and be held fundamentally accountable for the overall safety performance of the nation's fixed-guideway rail transit systems. To achieve these goals, FTA will concentrate on strengthening the capacity of SSOs to serve as effective day-to-day safety regulators capable of holding these transit systems accountable for safe operations at the local level and ensuring they comply with minimum safety standards.

Additionally, FTA will work to adapt its comprehensive safety approach to all modes of public transportation within its safety authority. Specifically, we will work to ensure that the bus segment of public transportation, upon which millions of riders depend every day, receives the resources, tools and technical assistance it too will need to ensure the safety of the riding public.

However, we must sound an important note of caution. Regrettably, the House Continuing Resolution does not provide FTA with sufficient funds to carry out the safety provisions in MAP-21 that are at the heart of our effort to greatly improve an oversight regime that has been inadequate for half a century. This allows the current inefficient safety oversight mechanisms to remain in place longer than they otherwise would.

**State of Good Repair and Transit Asset Management**

Since 2008, FTA has staked out a leadership role in highlighting the critical need to bring the nation's aging transit assets into a state of good repair, especially in large urban areas—and to hold transit agencies accountable for implementing a more strategic approach to managing the lifecycle of their assets. The momentum we have initiated is real, but the gains that will truly

benefit the American people require sustained investment. FTA obligated $1.9 billion—about one-fifth of our share of funds under the American Recovery and Reinvestment Act of 2009 for this very purpose, along with more than $2.2 billion in discretionary dollars over the last four years. Indeed, the Administration has made increased funding for a new State of Good Repair program the centerpiece of its annual budget requests for the FTA and a focal point of the President's American Jobs Act proposal. Congress incorporated our proposal on this essential area into MAP-21 by creating a more needs-based state-of-good-repair formula program for rail, ferry, and busway systems, and by folding the discretionary bus program into two formula-based programs. This new program will help further address our state-of-good-repair needs, so both bus and fixed guideway agencies have a predictable two-year stream of Federal funds to help them address an enormous maintenance and repair backlog that exceeds $78 billion nationwide. We have already awarded two grants totaling $8.4 million under the MAP-21 section 5337 State of Good Repair Program. Once FTA receives a full year of FY 2013 funding, we expect to roll out the remaining program funds as quickly as possible.

FTA recognizes that while a sustained Federal contribution to our state-of-good-repair needs is in the interest to our nation's public transportation system, this problem cannot be solved by Federal action alone. Tackling this problem requires a concerted effort by Federal, state, and local resources in a coordinated, strategic manner. That is why FTA is establishing a national Transit Asset Management System. The new section 5326 Transit Asset Management program established under MAP-21 is vitally important to carrying out these infrastructure investments effectively and responsibly. This innovative program requires all FTA funding recipients to adopt a strategic approach for managing their capital assets and be accountable for leveraging all available resources to bring their systems into a state of good repair. FTA has sponsored a successful public dialogue with over 700 stakeholders to obtain critical input on policy implementation. A rulemaking is expected to be issued soon. And FTA will shortly solicit comments in the *Federal Register* on ways to improve how asset inventories and asset conditions are reported to the National Transit Database—an important first step toward refining estimates of the nation's transit-related state-of-good-repair backlog. This is a very important initiative that will assist the FTA in ensuring that local transit investment financed with Federal dollars are being effectively targeted on each transit agency's greatest needs. It will also assist us in ensuring that Federal investments are being well managed and well utilized.

As part of our ongoing broader effort in this area, we are developing interim policy guidance to establish the agency's first formal definition for "state of good repair," which is important for setting funding criteria for the future. The new definition will also have a direct bearing on the implementation of two cross-cutting FTA programs under MAP-21, namely, the Core Capacity Improvement Program (which excludes state of good repair projects from eligibility) and the Pilot Program on Expedited Project Delivery (which requires grant applicants to certify that their existing systems are in a state of good repair).

**Accelerated Project Delivery**

Improving the development and delivery of capital transportation projects is a primary policy goal of the Administration. MAP-21 incorporates this effort to streamline and expedite infrastructure projects of regional and national significance. As cited above, FTA has already issued two significant rulemakings that streamline and in some cases accelerate the New Starts program and the NEPA process.

In addition, FTA and FHWA have jointly issued two other actions in February to improve project delivery. First, the two agencies jointly issued a regulation creating a categorical exclusion (CE) under NEPA for emergency actions pursuant to Section 1315 of MAP-21. This CE applies to all transit facilities and covers emergency repairs undertaken as part of FTA's Emergency Relief Program. And second, they jointly issued a notice of proposed rulemaking for CEs for projects within a rail transit system's operational right-of-way and projects receiving limited Federal assistance. These types of actions effectively cut red tape for funding recipients, reduce the administrative burden on state and local governments, and expedite results for the American public.

**Public-Private Partnerships**

FTA also recognizes the value of public-private partnerships as a means of augmenting public investments in infrastructure. On March 7, 2013, FTA published a proposed circular on Joint Development that clearly explains how FTA funds and FTA-funded real property may be used for public transportation projects that are related to and often co-located with commercial, residential, or mixed-use development. The circular emphasizes the concept of "value capture," which encourages FTA grantees to leverage Federal investments to capture revenue (such as the sale of publicly held land near transit facilities) that can in turn be used to offset capital and operating expenses.

**Conclusion**

MAP-21 offers an important opportunity to recalibrate the way our government evaluates and invests in our federally funded public transportation infrastructure. From a transit perspective, the law's major provisions enable FTA to focus limited resources on strategic investments that will result in a better riding experience for millions of Americans, while repairing and modernizing transit systems for generations to come.

Thank you and I am happy to answer any questions you may have.

**STATEMENT OF THE HONORABLE ANNE S. FERRO, ADMINISTRATOR**
**FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION**
**U.S. DEPARTMENT OF TRANSPORTATION**
**BEFORE THE**
**SUBCOMMITTEE ON HIGHWAYS AND TRANSIT**
**COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE**
**U.S. HOUSE OF REPRESENTATIVES**
***IMPLEMENTING MAP-21: PROGRESS REPORT FROM U.S. DOT MODAL ADMINISTRATORS***

**MARCH 14, 2013**

Mr. Chairman, Ranking Member DeFazio, and Members of the Subcommittee, thank you for inviting me to testify today on the Federal Motor Carrier Safety Administration's (FMCSA) progress in implementing the Moving Ahead for Progress in the 21st Century Act (MAP-21). MAP-21 provides the Agency with important new tools to improve commercial motor vehicle (CMV) safety and remove unsafe operators from our roads.

Safety is FMCSA's number one priority and while the Agency has realized great success in reducing crashes, injuries, and fatalities, there is more to be done. Every life is precious and even one fatality is one too many. To direct how we will use our resources to achieve greater success in saving lives, the Agency developed a Strategic Plan guided by a framework shaped by three core principles to: **raise the bar to enter the motor carrier industry; maintain high safety standards to remain in the industry; and remove high-risk carriers, drivers, and service providers from operation.** MAP-21 aligns well with these core principles and supports a number of our Agency's important safety initiatives.

Already, the Agency has started taking advantage of a number of MAP-21 provisions. Just two weeks ago, for example, FMCSA used the new authority granted under section 32110 of MAP-21 to revoke the operating authority of a passenger carrier that had refused to produce its safety records during the course of a safety investigation. Other examples of FMCSA's steps to implement MAP-21 include revising our agreements with States to reflect the changes to the Agency's CMV safety grants, increasing enforcement penalties for unsafe property carriers, and clarifying the application of certain CMV rules on the agricultural community. The Agency is also developing two new rules to codify a number of similar provisions in MAP-21. As we continue to implement the CMV safety provisions of this Act, I would like to focus my testimony on a few of MAP-21's key provisions.

***Agricultural Exemptions***

MAP–21 includes two provisions applicable to the operation of CMVs for agricultural purposes. The first provides a statutory exemption from the Federal hours-of-service (HOS) rules for certain CMV drivers engaged in the transportation of agricultural commodities and farm supplies. The second provides a statutory exemption from most of the Federal Motor Carrier Safety Regulations (FMCSRs), including those pertaining to commercial driver's licenses (CDL)

and driver physical qualifications (medical) requirements, for the operation of covered farm vehicles by farm and ranch operators, their employees, and certain other specified individuals under specific circumstances. These statutory provisions are self-executing and took effect on October 1, 2012.

In order to notify the public of these provisions, the Agency published a notice in the Federal Register last October, alerting motor carriers and enforcement officials about these exemptions. Additionally, the Agency worked with the U. S. Department of Agriculture to make the agricultural community aware of these provisions. As we speak, FMCSA is developing a final rule to conform the FMCSRs to the statutory provisions in MAP-21.

While these statutory amendments do not, in and of themselves, require any actions by the States, FMCSA has requested that States take immediate action to put policies and procedures in place to provide this regulatory relief. Once the Agency completes a final rule to conform the FMCSRs to these provisions, States will be required to adopt and enforce compatible safety regulations as a condition of receiving Motor Carrier Safety Assistance Program funding. States will have three years from the rule's effective date to adopt compatible regulations.

***Drug and Alcohol Clearinghouse***

MAP-21 provides explicit authority for the Secretary to create an electronic repository for positive alcohol and controlled substances test results. This new Clearinghouse will improve both driver and employer compliance with DOT's alcohol and controlled substance testing program, providing employers with important information about drivers before they hire them.

The Agency is developing a rulemaking that would require employers of CDL holders and service agents to report positive test results and refusals to test to the Clearinghouse. Prospective employers, acting on a CDL driver's application and with his or her written consent, would query the Clearinghouse for information about the driver prior to hiring the applicant to drive CMVs.

***Compliance, Safety, Accountability***

Compliance, Safety, Accountability, or CSA is FMCSA's compliance model to improve CMV safety and ultimately reduce large truck and bus crashes, injuries, and fatalities on our nation's highways. CSA enables the Agency to identify high risk motor carriers and achieve improved levels of compliance with Federal commercial motor vehicle safety and hazardous materials regulations. Additionally, through increased operational efficiencies, CSA is enabling FMCSA and its State safety enforcement partners to identify and address compliance and safety deficiencies of a larger segment of the motor carrier industry than we did previously with less interruption to motor carriers' business operations. Developed with an unprecedented level of stakeholder input, analysis, and planning, the Agency recently implemented enhancements to our Safety Measurement System (SMS) that reflect input collected from the comments of more than 19,000 carriers and 2,900 law enforcement personnel.

MAP-21 includes a number of statutory revisions and additional authorities needed to bring CSA to fruition. For example, MAP-21 provides the Agency with flexibility to allow an investigator's credentials to be displayed in writing rather than in person. This will allow FMCSA and its investigators – with clear statutory authority to conduct enforcement interventions – to formally demand that a motor carrier provide records without having to travel to the motor carrier's business location. This is vital to expanding FMCSA's and our State partners' enforcement repertoire to include off-site reviews and investigations and will increase the number of reviews that we conduct.

***Electronic Logging Devices***

MAP-21 included a provision mandating the use of electronic logging devices (ELD) for any driver regulated by the HOS regulations. Currently, the Agency is preparing a supplemental notice of proposed rulemaking (SNPRM) that would establish the following: (1) minimum performance standards for ELDs; (2) mandatory requirements for use of the devices by drivers required to prepare handwritten records of duty status (RODS); (3) requirements concerning HOS supporting documents; and (4) measures to ensure that the mandatory use of ELDs will not result in harassment of drivers by motor carriers and enforcement officials. This rulemaking supplements the Agency's 2011 Notice of Proposed Rulemaking (NPRM) and addresses issues raised by the U.S. Court of Appeals for the Seventh Circuit Court in its 2011 decision vacating the Agency's 2010 final rule concerning ELDs. The ELD requirements will improve HOS compliance, thereby decreasing the risk of fatigue-related crashes attributable to HOS non-compliance.

In 2012, FMCSA held two public listening sessions to solicit information, ideas and comments on ELDs and the issue of driver harassment. Specifically, the Agency sought public comment on what factors, issues, and data it should consider as it addresses the distinction between productivity and harassment. These listening sessions were held March 23, 2012, at the Mid-America Trucking Show in Louisville, Kentucky; and on April 26, 2012, at the Commercial Vehicle Safety Alliance meeting in Bellevue, Washington.

***Registration Requirements***

MAP-21 helps the Agency crack down on carriers that commit safety violations and then change their corporate identity slightly, or "reincarnate", so that they can either continue operating after being placed out of service, avoid paying civil penalties, or otherwise avoid the regulatory consequences of poor safety performance. This growing and disturbing practice poses a real enforcement challenge to FMCSA's investigators and to commercial law enforcement officers nationwide.

MAP-21 expressly authorizes the Secretary to withhold, suspend, amend or revoke a motor carrier's registration if the carrier fails to disclose its adverse safety history or other material facts on its application or if the applicant is a successor or closely related to another company with a poor compliance history within the preceding 3 years. MAP-21 also authorizes the Secretary to withhold, suspend, amend, or revoke the registration of a motor carrier, employer, owner or operator if the Secretary determines that there is a failure to disclose any relationship

involving common ownership, management, control, or familial relationship to any other motor carrier, employer, or owner operator.

MAP-21 grants the Secretary new authority to deny operational licenses to private motor carriers and express authority to refuse to issue the USDOT number if the applicant company is, or was, a close affiliate or successor to a motor carrier that is not or was not fit, willing, and able to comply with the regulations. The registration provision will require motor carriers to update their registrations within 30 days of a change of certain essential information, as well as quarterly for the first two years of operation for a motorcoach operator. The Agency plans to implement this provision as part of an omnibus rulemaking that will capture a number of self-executing MAP-21 provisions.

Finally, MAP-21 directs the Agency to establish a written proficiency examination for all new applicants to test their knowledge of the safety regulations, applicable commercial regulations, and regulations relating to accessibility for disabled persons. This provision will improve familiarity with these regulations before beginning operations. The Agency has begun work on implementing this provision.

***Minimum Training Requirements for Entry-Level Commercial Motor Vehicle Operators***

MAP-21 directs the Agency to complete its proposed rule to require behind-the-wheel and classroom training for persons who must hold a CDL to operate CMVs in interstate commerce. The Agency's rulemaking will consider the effectiveness of CMV driver training in reducing crashes, the appropriate types and levels of training, and related costs. On January 7, 2013, FMCSA held a public listening session at the American Bus Association annual Marketplace in Charlotte, NC, to hear comments on this proposed rule. The Agency will hold a second listening session on entry-level driver training next week, on March 22, at the Mid-America Trucking Show in Louisville, KY.

***National Registry of Certified Medical Examiners***

In April 2012, FMCSA issued a final rule as required by a previous statutory requirement, reaffirmed and modified in MAP-21, to establish a National Registry of Certified Medical Examiners (National Registry). The National Registry will improve highway safety and driver health by requiring that medical examiners be trained and certified so they can determine effectively whether a CMV driver is medically fit under FMCSA's standards. The National Registry will require that all medical examiners who conduct physical examinations for interstate CMV drivers meet the following criteria: (1) complete certain training concerning FMCSA's physical qualification standards; (2) pass a test to verify an understanding of those standards; and (3) maintain and demonstrate competence through periodic training and testing. Once the National Registry is fully implemented by May, 2014, FMCSA will require that motor carriers and drivers use only those medical examiners listed on the National Registry and will only accept as valid medical examiner's certificates issued by medical examiners listed on the National Registry.

***Household Goods Provisions***

With regard to household goods transportation, MAP-21 authorizes FMCSA to assign all or a portion of the penalties it receives from noncompliant moving companies to the aggrieved shipper. The Agency has formed a working group and is examining how to implement this new restitution authority. A second provision authorizes the Agency to be able to order moving companies to return household goods held hostage. The Agency has implemented the provision and has already ordered a noncompliant moving company to return hostage goods to an aggrieved shipper.

***Conclusion***

As you can see, FMCSA is working hard to implement MAP-21. These provisions will enhance our enforcement efforts and program delivery capabilities. Mr. Chairman, we look forward to continuing our close work with your Subcommittee in our efforts to improve safety, reduce crashes, and save lives on our Nation's highways.

Thank you for the opportunity to discuss FMCSA's implementation of MAP-21. I would gladly answer any questions you may have.

**Committee on Transportation and Infrastructure**
**Subcommittee on Highways and Transit**
**Hearing on "Implementing MAP-21: Progress Report from U.S. DOT Modal Administrators"**
**March 14, 2013**
**Questions for the Record**

Questions from Chairman Tom Petri:

1. How does FMCSA plan to implement the broker bond increase from $10,000 to $75,000?

**Response**:
FMCSA is developing a final rule to address many of the ministerial changes in MAP-21 that do not require notice and comment rulemaking. This change is one of the requirements that will be captured in our omnibus rulemaking. The final rule will be published before September 30, 2013, so that this change is effective on October 1, 2013. In addition, the Agency is conducting outreach to make brokers aware of the change in advance of the rule.

2. Has FMCSA allowed carriers to appeal certain types of motor carrier crashes through the CSA DataQs process, such as when an intoxicated driver rear-ends a truck? If not, what is FMCSA doing to understand what the appropriate action should be in such cases?

**Response:**
A motor carrier may file a request for data review (RDR) through the Agency's DataQ system concerning, the accuracy of data uploaded to FMCSA's Motor Carrier Management Information Systems (MCMIS) database. MCMIS includes all reportable crashes (i.e., a crash involving a commercial motor vehicle which involves a fatality, an injury, or a tow-away) but the data does not assign fault or preventability to the reported crash. While a motor carrier may DataQ a crash uploaded in MCMIS, the only element of a crash that may be appealed is if the crash report is improperly assigned to the motor carrier, for example if the report cites a carrier's DOT number if that carrier is operating under the lease of another carrier. In that instance, the DOT number of the leasing carrier should be made part of the crash report. In Fiscal Year 2012, the DataQs system received 4,853 "requests for data reviews" on crash-specific data under MCMIS, resulting in amended data on 3,005 of these requests, or 62% of the 4,853 requests.

The Agency offers an appeals process for carriers seeking to contest crash data through its administrative review process under 49 CFR 385.15. When FMCSA conducts an investigation of a motor carrier's safety fitness, the safety investigator reviews all reportable crashes. If those crashes would negatively affect the carrier's safety rating, the FMCSA Division Administrator will determine if any of those crashes clearly were non-preventable by the motor carrier, in which case they will not be used to calculate the rating. If a motor carrier believes that FMCSA made an error by counting an accident that was not preventable, the motor carrier may submit a request for administrative review to the Agency's Assistant Administrator. However, a successfully appealed crash is not removed from the carrier's profile, public display, or crash indicator. Instead, the crash would not be counted for purposes of establishing the carrier's safety rating.

While FMCSA does provide these two appeals processes for motor carriers, it is aware of the industry's desire to exclude crashes for which there is a determination of non-preventability for the purposes of the Crash Indicator Behavior Analysis and Safety Improvement Category. While the Agency is careful to clarify that all reportable crashes uploaded into MCMIS only show a motor carrier's involvement and makes no determination as to a carrier's responsibility, the Agency is conducting research to determine whether a motor carrier's role in a crash should be factored into the Safety Measurement System (SMS) to provide a better predictor of future crash risk, rather than using crash involvement alone. The results of this research are expected this summer. Information about the Agency's research plan is available at: http://csa.fmcsa.dot.gov/documents/CrashWeightingResearchPlan_7-2012.pdf.

3. As part of the electronic logging device rulemaking, would FMCSA be willing to install electronic logging devices in your safety investigators' vehicles in the field? By requiring your investigators to use the technology, they could better understand how the technology works and what will be required of truck drivers.

**Response:**
Over the past two years, the FMCSA has revised its training curriculum concerning hours-of-service (HOS) recording devices, including automatic on-board recording devices, fleet management systems with an HOS monitoring function, and electronic logging devices (ELDs). As part of that activity, several of the Agency's special agents with extensive expertise in HOS enforcement used ELDs installed in their own vehicles. They used three different providers' fleet management systems and ELDs to enable them to assess the functionality of the current operating systems from a driver's perspective. The use of these devices by the Agency's special agents will help ensure that FMCSA training materials for Federal and State officials include practical insights on device use and functionality. In addition, practical experiences with the devices will help inform the drafting of technical specifications for the ELD rulemaking. The Agency anticipates publication of the supplemental proposed rule later this year and encourages public comment on all aspects of the rulemaking, including the technical specifications.

Questions from Rep. Andre Carson:
Regarding driver training, MAP-21 includes language requiring the DOT to issue final regulations establishing minimum entry-level truck driver training requirements which would include both classroom and behind the wheel training for first time Commercial Driver's License (CDL) holders or those drivers wishing to upgrade their licensing credentials.

1. Can you talk a little about the importance of "behind the wheel" training, which from what I understand wasn't even mandatory prior to this language and whether you agree that a truck driver should spend time training behind-the-wheel of a truck before obtaining a CDL? From what I understand, there are driver training schools offering programs that advertise drivers can obtain a commercial driver's license in as little as 24 hours, or other short periods of time, if they attend this commercial driver training school. Will the upcoming rulemaking include creating a core curriculum that every driver training school must instruct before truck drivers can graduate?

**Response:**
Consideration of mandatory entry-level driver training (ELDT) for commercial vehicle drivers began as early as 1991, when the Motor Carrier Act of 1991 (Sec. 4007) of the Intermodal Surface Transportation Efficiency Act) required the Federal Highway Administration (FHWA)[1] to study "...the effectiveness of the efforts of the private sector to ensure adequate training of entry-level drivers of commercial motor vehicles..." and to "...commence a rulemaking proceeding on the need to require training of all entry-level drivers of commercial motor vehicles...."

From 1992 to 1995, the FHWA conducted an extensive study resulting in a report entitled "Assessing the Adequacy of Commercial Motor Vehicle Driver Training..." This "Adequacy Report," was submitted to Congress in 1996 and emphasized the importance of behind-the-wheel training while at the same time noting a lack of proof that training results in a safer driver. As a result of the absence of behind-the-wheel training in the Agency's final rule on ELDT, which was published on May 21, 2004 (69 FR 29384), the U.S. Court of Appeals for the District of Columbia Circuit (D.C. Circuit) vacated that rule. *Advocates for Highway and Auto Safety v. Federal Motor Carrier Safety Administration*, 429 F.3d 1136 (2005) (remanding to FMCSA). The D.C. Circuit found that the absence of behind-the-wheel training in the 2004 ELDT rule made the rule "plainly inadequate."

In response to that decision, FMCSA published a Notice of Proposed Rulemaking (NPRM) on December 26, 2007 (72 FR 73226). This NPRM, which is still active, would require an applicant for a new or upgraded interstate CDL to successfully complete a specified ELDT course (including classroom and behind-the-wheel instruction) at an accredited institution. A "Class A" CDL applicant, for example, would be required to complete a minimum of 76 hours of classroom and 44 hours of on-street training.

The FMCSA received public comments regarding the NPRM, held listening sessions to seek further input, and asked its Motor Carrier Safety Advisory Committee for comments. The Agency is analyzing that information and also undertaking further research and studies. Two of the primary concerns with the NPRM that are being addressed are the potentially high cost of the proposal, and the scarcity of formal data to prove that pre-CDL training actually results in safer driving after the driver begins his/her career.

The 2007 NPRM included a "core curriculum." All schools providing qualifying training would be required to adhere to the proposed curriculum, which was based on a 1985 "Model Curriculum..." developed by FHWA and the trucking industry, and updated through the years. The Model Curriculum, as updated, is well-accepted by the industry and by reputable commercial driver training schools.

2. Following up with that question, I also have heard stories about CDL instructors who themselves only have a short period of time on the road before becoming trainers themselves.

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[1] Motor carrier safety regulatory functions were a responsibility of the Federal Highway Administration (FHWA) before being transferred to the Federal Motor Carrier Safety Administration (FMCSA) when, in 2000, the Motor Carrier Safety Improvement Act of 1999 established the FMCSA as a separate operating agency of the U.S. Department of Transportation.

It seems as if Congress gives DOT the authority to address this issue. Can you talk to any specifics about "training the trainers"?

**Response:**
The 2007 NPRM, discussed in Question 1 above, proposed that instructors must meet specified minimum qualifications, including certain numbers of years of experience driving commercial motor vehicles. By requiring that the training be conducted at accredited schools, the rule would require additional professional standards for instructors.

Questions from Rep. Jerry Nadler:

1. In recent years, a number of motorcoaches, tour buses, and other vehicles have struck bridge and overpass structures because they exceeded the height clearance restriction. Since GPS and electronic mapping applications are readily available, what can be done to ensure that motorcoaches and tour buses do not use roads or lanes on highways where the height clearance is not sufficient for the size of the vehicle?

**Response:**
The FMCSA believes bridge strikes are avoidable through better awareness of route restrictions, by paying closer attention to road signs, and by using only those electronic navigation systems intended for trucks and buses. The Agency continues to work with its State partners and the truck and bus industries to prevent bridge strikes. These efforts include distributing the Agency's new visor card "GPS Selection Guide for CMVs." FMCSA is also engaging with commercial driver training school associations to encourage them to include electronic navigation system selection information in their training programs. FMCSA will also address electronic navigation system selection as it moves forward with the entry-level driver training rule required by the Moving Ahead for Progress in the 21st Century (MAP-21) reauthorization legislation.

The Agency has highlighted this issue on its website and provides tips for correctly using GPS systems – emphasizing the need to select an electronic navigation system intended for use by truck and bus drivers, and following the prescribed route.

2. What is the status of the Pilot Program for Mexican trucks entering the U.S.? How many companies and trucks and drivers are involved? How many inspections have been conducted and how many inspections have been at the border crossing, compared to inspections at inland locations?

**Response:**
The FMCSA has received 37 applications for the Pilot Program. As of April 8, 10 carriers – operating 22 trucks with 24 drivers – have been issued operating authority under the Pilot Program. Four additional carriers have completed the required Pre-Authorization Safety Audits (PASAs) and are in various stages of clearance. One additional PASA is being scheduled and the Agency is working with one motor carrier to complete the application process. To date, 21 carriers have withdrawn or their applications were dismissed.

As of March 31, 839 inspections had been conducted on the participating vehicles or drivers.

On April 19, the D.C. Circuit Court of Appeals upheld the legality of the Mexican Long Haul Pilot Program and denied all challenges to the program raised in two separate petitions for review.

3. It has been brought to my attention that FMCSA's websites that provide information on motor carrier safety to the public appear to contain different and sometimes conflicting and incomplete information. This can be confusing and typically requires additional searches through multiple websites in order to obtain detailed data on specific motorcoach or freight carriers. Even then, the information can be misleading because under the agency grading system the best, safest companies have low scores and the worst companies have high scores. What is FMCSA doing to make public safety information on motorcoach and truck companies reliable and consumer friendly?

**Response:**
The FMCSA is currently working to enhance the display of safety information on SMS Online. The Agency is also working to implement Section 32707 of MAP-21 which requires the Agency to improve public access to motorcoach safety ratings through a simple and understandable system which allows passengers to compare the safety performance of motor carriers. We are gathering stakeholder input from a variety of groups and will have a preview and comment period for the industry and public to provide comments.

The Agency has three safety and compliance data sources available to the public – the Safety and Fitness Electronic Records (SAFER) system, the Licensing and Insurance (L&I) website, and the Safety Measurement System (SMS). Outreach materials explaining these systems are available on the FMCSA website.

- The SAFER Website (http://www.safersys.org) provides a motor carrier's safety rating, which can be Satisfactory, Conditional, or Unsatisfactory. Safety ratings are based on an evaluation of 6 safety factors following an Onsite Investigation: General, Driver, Operational, Vehicle, Hazardous Materials (HM), and Accident Factor.
- The L&I system contains FMCSA licensing and insurance data. The L&I website (http://li-public.fmcsa.dot.gov) allows users to confirm that a motor carrier has active operating authority and adequate insurance.
- The SMS Online system (http://ai.fmcsa.dot.gov/sms/), which FMCSA uses to prioritize enforcement resources, analyzes carrier roadside inspection and crash data. The SMS examines a motor carrier's on-road performance (crashes and roadside inspections) and investigation results over the last 24 months.

Questions from Rep. Markwayne Mullin:

1. FMCSA's final rule on hours-of-service suggested that, due to technical changes by FHWA that affected how vehicle miles traveled are assigned for different vehicle classes, year-to-year comparisons of fatality rates for years prior to the changes with rates from subsequent

years, are not valid. In its recently released Table VM-1, which included truck VMT data for 2011, FHWA warned that because of changes in the way VMT data was assigned in some states, national VMT data trends were impacted. Do you agree that, as with the previous technical changes pointed out by FMCSA during its HOS rulemaking, no conclusions can be drawn with regard to truck safety trends when comparing 2011 data with prior year figures?

**Response:**
The changes made by FHWA in the manner in which VMT is assigned to different classes of vehicles were reflected for the first time in 2007 data. In response to the changes FMCSA decided that using crash trends across the divide between 2006 and 2007 data would be misleading. In the annual summary of large truck crashes in the "Large Truck Crash Overview 2010" – released in June 2012 -- the trend data for both fatal and injury crash rates based on FHWA's VMT numbers covers the years 2007 through 2010. In our complete annual report "Large Truck and Bus Crash Facts 2010 both the Trends Table 4 on large truck fatal crashes and Trends Table 7 on large truck injury crashes report trend data before and after the 2006/2007 divide. Both tables show 30 percent drops in crash rates from 2006 to 2007 which FMCSA believes is due in part to the change in VMT calculations for large trucks by FHWA. Despite its recent changes, FHWA consistently used one method to calculate VMT for many years before 2006/2007 and a different method consistently thereafter. Within those two periods, VMT data can certainly be used to help discern safety trends.

In summary FMCSA believes that reporting trend data only from 2007 to the latest year for which data is available is the best way to examine large truck crash trends. Thus, the first sentence in the question above correctly states the position of FMCSA.

**Hearing on MAP-21 Implementation**

**Statement of the Honorable David L. Strickland**
**Administrator, National Highway Traffic Safety Administration**

**House Transportation and Infrastructure Subcommittee on Highway and Transit**

**March 14, 2013**

Good morning Mr. Chairman, ranking member DeFazio and members of the subcommittee. I appreciate this opportunity to testify before you today on the National Highway Traffic Safety Administration's implementation of the Moving Ahead for Progress in the 21st Century Act (MAP-21).

Before I begin my comments on our implementation efforts, I would like to thank the members of this committee for your work on reauthorizing the Nation's surface transportation programs. Every member of this committee is aware of the challenges we face in ensuring roadway safety and that's why we appreciate the highway safety priorities enumerated in MAP-21. We also appreciate the authorization for two years of predictable surface transportation funding that will enable states to plan their highway safety programs.

Highway fatalities fell to 32,367 in 2011, marking the lowest level since 1949 and a 1.9 percent decrease from the previous year. The historic downward trend in recent years continued through 2011 and represent a 26 percent decline in traffic fatalities overall since 2005. For the first time since 1981 (when data were first available), motor vehicle traffic crashes **were not** among the top 10 causes of death in the United States.

While Americans drove fewer miles in 2011 than in 2010, the nearly two percent drop in roadway fatalities significantly outpaced the corresponding 1.2 percent decrease in vehicle miles traveled. In 2011 we also saw the lowest fatality rate ever recorded, with 1.10 deaths per 100 million vehicle miles traveled in 2011, down from 1.11 deaths per 100 million vehicle miles traveled in 2010. Other key statistics include:

- Fatalities declined by 4.6 percent for occupants of passenger cars and light trucks (including SUVs, minivans and pickups).
- Drunk driving fatalities dropped 2.5 percent in 2011, taking 9,878 lives compared to 10,136 in 2010.
- The number of people killed in distraction-affected crashes rose to 3,331 in 2011 from 3,267 in 2010, an increase of 1.9 percent. I believe this increase can be attributed in part to increased awareness and reporting.
- Fatalities increased among large truck occupants by 20 percent. I want to assure the committee that we are working closely with my fellow administrator, Anne Ferro, and the Federal Motor Carrier Safety Administration to gather more detailed information on the large truck occupant crashes to better understand the increase in fatalities in 2011.
- Bicycle and pedestrian fatalities increased by 8.7 percent and 3.0 percent respectively. This spike is alarming and we are taking a number of steps in addressing this. First, the department will be hosting two bike safety summits in the coming year. We will be working with advocates, safety experts, and average riders. We will examine what safety strategies work and what isn't working and we'll use this information to make bicycling safer throughout the Nation. We will target a series of events in the areas that have experienced the most fatalities and work with state and local officials to make sure they are taking advantage of the resources available to them. We challenge our State and local partners to help us better understand what is happening on the ground, for example, by trying to determine to what extent changes in bicycle fatalities might be related to

increased ridership. Finally, we will launch new demonstration programs to help improve driver and pedestrian behavior.

As you know, one of the most important things we can do to reduce roadway fatalities is to wear a seat belt. The Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) included a seat belt incentive grant program to encourage states to enact and enforce primary belt use laws. Seat belt use continues to be higher in states that have primary belt laws, which permit law enforcement officers to issue citations to motorists solely for not using a seat belt rather than requiring additional traffic violations. I am pleased to report that the Section 406 Safety Belt Performance Grant program was a success, as 13 states received grants for enacting primary belt laws. Among the most dramatic increases in seat belt use were in the southern states, rising to 85 percent in 2012—up from 80 percent in 2011. Seat belt use continues to be higher in states that have primary belt laws, which permit law enforcement officers to issue citations to motorists solely for not using a seat belt rather than requiring additional traffic violations.

In spite of these changes, motor vehicle traffic crashes continue to be a leading cause of death in the younger age groups. In 2009, motor vehicle traffic crashes were the leading cause of death for age 4 and each age 11 through 27. That is why programs such as the Graduated Driver's License (GDL) are so important and I am pleased that Congress authorized incentive grants in MAP-21 to encourage more states to adopt such an approach for younger, inexperienced drivers.

MAP-21 consolidated the various grant programs from SAFETEA-LU, including impaired driving and motorcycle grants, have been consolidated along with the new GDL and distracted driving grants, into a new Section 405 National Priority Safety program. This unified grant program provides the states a single, consolidated application and annual deadline, and greater flexibility to ensure grant funds are directed to priority highway safety programs.

Since enactment, implementing MAP-21 has been a major priority for NHTSA and the Department. I am proud of how quickly the NHTSA staff worked to implement key programs and get guidance out to the States as quickly as possible. Less than two months after enactment, we issued a Notice of Funding Availability (NOFA) for the distracted driving grants. The deadline for the driver distraction grant applications was February 28, 2013 and I can report that 34 states, the District of Columbia, and three territories have submitted applications for grants. We are encouraged by the strong interest from the states and look forward to reviewing the grant applications.

Following closely on the distraction NOFA, we issued an interim final rule (IFR) for the national priority safety program grants. The IFR provides states guidance about the application procedures for all NHTSA highway safety grants. We published the IFR on January 23, 2013 and the comment period will remain open until April 23, 2013. In an effort to be as responsive to the states as possible, we have conducted several webinars with the state highway safety program offices to walk them step-by-step through the new grant programs and the consolidated application process. We have additional webinars scheduled for March. The deadline for the remaining Section 405 national priority safety programs is March 25, 2013. Starting in FY2014,

the deadline for all grants will be July 1. This will simplify the application process for states and allow for better highway safety planning and performance management.

Please be aware that the full year continuing resolution (CR) passed by the House last week would fail to provide funds for our agency in a manner consistent with MAP 21. Specifically, it would not provide funding for two new important MAP-21 grant programs—Distracted Driving and Graduated Driver's Licenses for young drivers. The Senate's version of the CR fully implements the MAP-21 authorization. We urge this Committee to work with the Congress and make sure that the resources for NHTSA can support the MAP-21 Priority Safety programs.

As an agency, we at NHTSA are dedicated to our mission of safety. To that end, we work closely with the states and assist them in achieving their respective highway safety goals. We will continue this partnership to ensure that MAP-21 is effectively implemented and we can continue to see improvements in highway safety and reductions in roadway fatalities.

Thank you again for inviting me to testify before the committee and I am happy to take any questions that you may have.

**Committee on Transportation and Infrastructure**
**Subcommittee on Highways and Transit**
**Hearing on "Implementing MAP-21: Progress Report from U.S. DOT Modal Administrators"**
**March 14, 2013**
**Questions for the Record**

Questions from Rep. Jerry Nadler

**1. The rule to require seat belts on motorcoaches has also been pending for a long time. When will that rule be issued? Will NHTSA meet the one-year deadline in MAP-21?**

RESPONSE: The final rule is currently under Executive Order 12866 review.

**2. Incidents including crashes and fires involving motorcoaches continue to occur and endanger passengers on our highways. What is NHTSA doing to ensure that motorcoaches are equipped with the maximum level of occupant safety systems needed to provide state-of-the-art protection to passengers? Are you expediting the research and rulemaking efforts included in the DOT Motorcoach Safety Action Plan? Are the motorcoach safety requirements included in MAP-21 adequate to advance public safety in the near future?**

RESPONSE: NHTSA is currently undertaking an extensive array of research activities and considering rulemakings to improve occupant safety on motorcoaches that are described in the 2012 update of the Department's Motorcoach Safety Action Plan. See http://www.fmcsa.dot.gov/safety-security/pcs/Motorcoach-Safety-Action-Plan.aspx. Motorcoach-related rulemakings under consideration include Motorcoach Rollover Structural Integrity, Heavy Vehicle Speed Limiters, Installation of Seat Belts on Motorcoaches and Electronic Stability Control Systems for Heavy Vehicles. NHTSA is working to address the other rulemaking and research motorcoach projects contained in MAP-21 to achieve the maximum level of occupant safety that is reasonable, practicable, and appropriate in as expeditious a manner as possible. We believe that the MAP-21 requirements are adequate to improve motorcoach safety in the near future.

**3. The Governor's Highway Safety Association (GHSA) recent study showed a 19% increase in the first 6 months in teen driving fatalities and in the past weeks there have been some multiple fatality crashes involving teens. What specific actions is NHTSA taking to address this problem?**

RESPONSE: Young drivers are at a high risk for crashes due to their inexperience. Inattention, poor driving strategies, and high-risk behaviors continue to be major problem areas for young drivers. NHTSA is very concerned about the safety of teen drivers and passengers and has an active, multi-pronged approach to enhancing teen driving safety that includes increasing seat belt use, ensuring that young drivers are adequately trained and tested, reducing their access to alcohol, and heightening their awareness about the dangers of distracted driving.

NHTSA works with the driver education community to improve novice driver training. Through collaborative efforts with these stakeholders, we have developed model curricula, education standards addressing critical topics, and administrative standards outlining how the education system should be managed and overseen. We are working with State motor vehicle administrators and licensing officials to finalize and test a new driver manual, implement minimum driver education standards, and explore development of an on-line training program for the in-class portion of the instruction.

NHTSA is also working with States and safety organizations to implement graduated drivers licensing (GDL) programs, to mitigate the risks that new drivers face and ensure that all drivers have the knowledge and skills necessary to drive safely. We are conducting research on key components of a successful GDL program, providing technical assistance to State agencies on implementing GDL programs, and sharing information among States.

In addition, NHTSA offers State-wide assessments of State teen driver education programs by sending a team of experts to analyze and make recommendations to improve a State's driver education program. NHTSA is also working to implement the GDL State grant program authorized in MAP-21.

NHTSA has also developed a range of resources to improve teen seat belt use, including driver education curricula that emphasize crash risk and the benefits of occupant protection devices, peer-to-peer programs that appeal to teens' tendency to conform to the behaviors of their friends and classmates, and policy materials to assist in formulating graduated licensing laws that include added incentives for teen seat belt use.

NHTSA's teen safety program also focuses on preventing underage drinking, which remains a problem, even though drinking is illegal for individuals under age 21. NHTSA continues our long-standing efforts with medical professionals, teen advocacy groups, educators, and alcohol control boards to limit teen access to and use of alcohol. We also recently initiated a demonstration program in four cities (Mason City, IA; Louisville, KY; Greenville, SC; and Aroostook County, ME) to test the application of the High Visibility Enforcement model and its effect on reducing underage drinking and driving. The results of the program should be available in early 2014.

Finally, under Secretary LaHood's leadership, the Department has launched a variety of creative campaigns to raise awareness about the dangers of distracted driving, especially for teen drivers. For example, the Department has worked with and continues to work with safety partners, such as the National Organizations for Youth Safety (NOYS), Ad Council, *Consumer Reports*, *Seventeen* magazine, *American Idol* winner Jordin Sparks, the television show *Glee*, among others, in an effort to educate teen drivers about the dangers of distracted driving. NHTSA Administrator David Strickland provided an interview for the FHWA-sponsored electronic transportation magazine "*FAST FORWARD*" that is directed to middle school, high school and community college students and teachers throughout the U.S. on the dangers of distracted driving and the responsibility young people have to be good drivers.

Safety is NHTSA's number one priority. Through collaborative efforts with safety stakeholders and States and a comprehensive multi-tiered approach to teen driver safety, NHTSA will continue to work to improve the safety of young drivers and their passengers.

IME
institute of makers of explosives

*The safety and security institute of the commercial explosives industry since 1913*

March 12, 2013

The Honorable Thomas E. Petri
Chairman
Subcommittee on Highways and Transit
Committee on Transportation and Infrastructure
U.S. House of Representatives
Washington, DC 20515

The Honorable Peter A. DeFazio
Ranking Member
Subcommittee on Highways and Transit
Committee on Transportation and Infrastructure
U.S. House of Representatives
Washington, DC 20515

RE: Implementing MAP-21: Progress Report from U.S. DOT Modal Administrators

Dear Mr. Chairman and Representative DeFazio:

On behalf of the members of the Institute of Makers of Explosives (IME)[1], I am submitting a statement for the record of the hearing you are holding on March 14, 2013, to evaluate the progress being made by various U.S. modal administrators to implement provisions of " MAP-21," the Moving Ahead for Progress in the 21st Century Act.

Interest of IME

Our interest in this hearing stems from the critical need to substantively reform the Hazardous Materials Safety Permit (HMSP) administered by the Federal Motor Carrier Safety Administration (FMCSA). Motor carriers transporting placarded quantities of Division 1.1, 1.2, 1.3 and 1.5 explosives, and other specified hazardous materials are required to obtain a HMSP. Motor carriers of explosive materials make up the largest segment of permit holders. Because the vast majority of explosive materials and blasting agents are transported in specialized vehicles that are not suitable to engage in the commerce of other products, loss of an HMSP is a virtual "out-of-business" order in our industry.

Background

As originally envisioned, the program was only supposed to disqualify the worst 30 percent of carriers who transport specified hazardous materials that are not already in possession of a "satisfactory" safety rating. The premise underlying the establishment of the HMSP program was that it was going to prevent seven hazmat truck-related crashes per year. FMCSA stated that the safety benefits to be derived from the projected crash reductions would be "large

[1] The IME is the safety and security institute of the U.S. commercial explosives industry. Our mission is to promote safety and the protection of employees, users, the public and the environment; and to encourage the adoption of uniform rules and regulations in the manufacture, transportation, storage, handling, use and disposal of explosive materials used in blasting and other essential operations. The Institute does not sponsor trade shows or other marketing events.

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because of the number of conventional crashes that may be prevented." This has not proved to be the case. Analysis of the data collected during the eight years of the HMSP and during the eight years immediately preceding the implementation of the HMSP shows that the HMSP program has had almost no effect on the crash rates of holders:

**Comparison of Safety Data from the Eight Years Before and Since the HMSP**

| HMSP Material | 1997-2004 | | 2005-2012 | | All Hazmat Highway Incidents | | | |
|---|---|---|---|---|---|---|---|---|
| | | | | | 1998-2004 | | 2005-2011 | |
| | Crashes | Fatalities | Crashes | Fatalities | Crashes | Fatalities | Crashes | Fatalities |
| Explosives (25 kg. 1.1, 1.2, 1.3 & placarded 1.5) | 36 | 0 | 29 | 0 | | | | |
| RAM (HRCQ*) | 16 | 0 | 19 | 0 | | | | |
| TIH | 55 | **1 | 61 | **1 | | | | |
| Methane | 4 | 0 | 3 | 0 | | | | |
| **TOTAL** | **111** | **1** | **112** | **1** | **2,461** | **85** | **2,448** | **81** |

Data from the Hazardous Materials Information System (HMIS), 3/11/2013.
* It may be that none of these crashes are highway route controlled quantities (HRCQ). From the data in HMIS, it was possible to eliminate some incidents that were clearly not HRCQ. Where there was doubt the incident was counted.
** Anhydrous ammonia intended for agricultural use.

FMCSA has not realized either the reductions in crash magnitude or severity predicted to result after the permit was established. At the same time, an examination of the HMSP program and its regulatory history has revealed due process omissions and a program-changing clerical error that negates the option to obtain a HMSP based on a carrier's satisfactory safety rating. As a result of these flaws, all carriers, even those with satisfactory safety ratings, must maintain a crash rate, and driver, vehicle and HM out-of-service (OOS) rates below the 30 percentile of the national average.[2] These regulatory defects, which expose covered carriers to the risk of being automatically shut down by as few as two, point-in-time, non-crash causal OOS violations with no opportunity to appeal[3] or to seek a waiver, are neither justified nor equitable. Nor are they what Congress intended when this program was authorized.

The program is seriously flawed and in need of regulatory reform. Section 33014 of MAP-21 directs FMCSA to assess the weaknesses in the program and to initiate rulemaking to correct

[2] Currently, these disqualification thresholds are: 9.68% Driver OOS; 33.3% Vehicle OOS; and 6.82% HM OOS.
[3] FMCSA provides an administrative review of a HMSP denial but only after a permit has been denied. [49 CFR 385.423(c).] FMCSA asserts that appeals are handled through its "DataQs" system. However, the DataQs process itself is seriously flawed. Challenges to state roadside inspections are routed back to the issuing jurisdiction and basically require the officer who issued the citation to admit error. It is one thing for FMCSA to delegate its enforcement responsibilities to states. It is another thing to charge these same entities with being the judge and jury of their own actions.

program deficiencies by October 1, 2014, or publish in the Federal Register reasons why rulemaking is not needed. FMCSA has already acknowledged shortcomings with the program and has accepted a petition for rulemaking. However, in accepting the petition for rulemaking, the agency stated that the HMSP rulemaking would have to wait until the CSA safety fitness determination (SFD) rule is finalized. FMCSA has yet to issue its proposed SFD rulemaking, and stakeholders believe it will be years before a rule is finalized. In the meantime, our members and other HMSP holders continue to be subjected to a flawed program that harms good carriers for reasons, in most cases, that are not causal factors in vehicle crashes.

Last September, this Subcommittee held an oversight hearing on the effectiveness of FMCSA's truck and bus safety program.[4] At that time, IME submitted a statement for the record outlining the HMSP inequities and the virtual impossibility of recovering from a disqualifying OOS inspection, given systemic difficulties in accruing sufficient "clean" inspections to overcome the disqualification. Given the uncertainty of when FMCSA would be able to finalize the comprehensive reform rulemaking mandated by MAP-21, we advocated for the agency to provide an opportunity for HMSP holders to request a more extensive assessment of their safety management controls, what we call an "additional level of safety review" (ALSR), prior to the automatic denial of this permit.

Recent Developments

Shortly after the Subcommittee's September hearing, FMCSA Administrator Anne Ferro held a meeting with stakeholders to discuss the agency's priorities for implementing MAP-21.[5] As would be expected, the comprehensive HMSP reform rulemaking contemplated by Section 33014 was not among these priorities. However, Ms. Ferro promised to consider the possibility of including the provision of an ALSR option in her FY 2013 work plan.

In January 2013, IME and others supporting an ALSR met with Ms. Ferro to discuss potential options for moving forward. At this meeting, FMCSA felt it could not advance our ALSR proposal because (1) it would require rulemaking, and the agency was already inundated with pending rulemaking requirements; (2) FMCSA questioned its the ability to go forward with an ALSR given the SEC. 33014 requirement that the agency conduct an assessment of the program prior to rulemaking; and (3) the ALSR option envisions a process that would permit HMSP holders to remedy identified deficiencies by filing "corrective action plans" (CAP), and the agency does not believe it has the resources to monitor any more CAPs than it is already monitoring. Rather, FMCSA proposed to increase the minimum number of OOS inspections from two to three and/or the number of inspections a HMSP holder would have to undergo before the holder would be considered "statistically significant" and at risk of triggering the OOS disqualification threshold.[6]

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[4] "Evaluating the Effectiveness of DOT's Truck and Bus Safety Program," September 10, 2012.

[5] We acknowledge that FMCSA has a daunting task under MAP-21 with, according to the agency's count, 29 rulemakings to accomplish in 24 months.

[6] To be considered "statistically significant" and subject to the OOS disqualification rates, a permit holder currently must have at least three inspections of which two must be OOS.

This option could be accomplished under administrative discretionary authority, and it would not create an opportunity for a CAP.

While we appreciate FMCSA's good faith offer, this option would not address the key request of HMSP holders for some modicum of operational certainty. Increasing the minimum number of OOS inspections from two to three just boosts the multiple number of clean inspections required before the third HM OOS may occur without consequence. No one can predict when the next inspection will be or what will be the outcome. This uncertainty deprives businesses of a level of predictability necessary to thrive.

From a safety point of view, the myopic OOS disqualification trigger is not a reliable metric. Simply because one carrier accrues as few as two disqualifying OOS inspections in the first 12 months of the permit cycle does not mean that this carrier is any safer than another identically situated carrier that receives the same OOS inspections in the final 12 months of the permit cycle. Both carriers had the same number of OOS inspections. One will be able to continue operating; the other will lose its HMSP and will not. Likewise, if two similarly situated carriers obtain two OOS inspections and subsequently one of the carriers obtains a third clean inspection in the final 12 months of the permit, the carrier that obtained the one clean inspection will lose its permit and the other will not. Justice requires that HMSP holders be afforded some process to demonstrate that the absolute number of OOS inspections alone is not reason to deny a permit.

At the end of the meeting, we acknowledged the agency's concern that implementation of an ALSR option would require rulemaking. To accommodate this concern, we suggested that the agency consider proposing the ALSR reform as an interim final rule (IFR). IFRs minimize agency effort in the short run with the corollary benefit that they provide immediate effect. We disagreed that current law precludes the agency from taking action in advance of the program assessment required by Section 33014(a). We both agreed to continue to think about solutions. Subsequently, we submitted to FMCSA additional options to increase the agency's resources and flexibility in committing to the ALSR option.[7]

- First, to address FMCSA's concern about limited resources, we suggested that a reasonable administrative fee could be charged if the ALSR option were exercised where a waiver was requested. Such a fee would minimize frivolous requests and would be far preferable to shutting down a business. This option may require legislation.

- Second, we envisioned the ALR as an open agency investigation ranging from a desk records audit to an onsite safety compliance review, as deemed appropriate. Simply extending the "show cause letter" approach FMCSA uses prior to the revocation or suspension HMSP permits to include permit denials may better focus agency review and require fewer resources to implement.[8] Under this approach, the agency sends a letter to the permit

[7] Letter to Anne Ferro, FMCSA, from Cynthia Hilton, IME, dated January 30, 2013.
[8] See 49 CFR 385.423(c).

holder giving the holder 30 days to "show cause" why the proposed action should not be taken. The option may require rulemaking.

- Third, instead of an automatic denial of the HMSP based on an OOS disqualification, we suggested that FMCSA establish a probationary period during which the carrier would have to demonstrate that the cause of the OOS disqualification has been addressed. Such a period might operate as a month-to-month extension of the carrier's permit with reports from the HMSP holder to the agency including information as to numbers of trips, inspections, outcomes, and the like. This option may require rulemaking.

- Fourth, some HMSP holders find themselves underwater because they believe a particular OOS may be without merit. FMCSA has set up the DataQs system which relies on action by the issuing jurisdiction to address these concerns. However, the motor carrier industry often finds this process wanting. We would suggest that the DataQs process be enhanced to allow a second appeal to FMCSA capable of overriding state actions and correcting safety records when error is found. We believe this option can be effected administratively.

We have yet to hear from the agency about the prospect that any or a combination of these options would be doable this year.

Every year, IME requests data from FMCSA on the status of permit holders in terms of their OOS inspection experience. Since September's hearing, FMCSA has provided 2012 data. According to this data, there were 1447 HMSP holders in 2012, a 0.3% drop in the total number of permits over 2011. If all HMSP holders had applied for renewal on December 31, 2012, 87 would have been automatically disqualified, up 9% over the year before. However, an additional 50 permit holders would have lost their permits with one more HMOOS inspection.

Of the universe of permit holders, 93% were statistically insignificant in 2012 and not subject to the OOS disqualification thresholds, 88% were in this category in 2011, a 6% increase. This means that 93% of current HMSP holders had fewer than three inspections or less than one OOS. This statistic points out the difficulty in accruing the number of clean inspections that would be necessary to overcome the effects of receiving two triggering OOS inspections. For example, a carrier receiving two HMOOS inspections would have to obtain 28 clean inspections in order to remain below the current HMOOS disqualification threshold of 6.82%.

At the same time, HMSP holders, collectively, are some of the safest, most compliant in the Nation. These are the type of motor carrier that FMCSA should want to keep operating.

**Safety Performance of HMSP Holders**

| | DOOS Rate 2011 | DOOS Rate 2012 | VOOS Rate 2011 | VOOS Rate 2012 | HMOOS Rate 2011 | HMOOS Rate 2012 |
|---|---|---|---|---|---|---|
| Non HMSP | 2.9% | 2.6% | 15.4% | 15.4% | 3.7% | 3.4% |
| HMSP | 1.8% | 1.6% | 11.2% | 10.9% | 1.6% | 1.4% |

Request

Our system of justice demands that persons facing harm by government action have access to a credible appeal process. IME has put options on the table for FMCSA to consider as a way to expeditiously provide some ALSR process for HMSP holders who find themselves underwater and facing the automatic loss of their permits. The administrative process we envision would not be available to carriers presenting an imminent hazard or to those demonstrating a pattern of non-compliance, and it would not eliminate the agency's discretion to ultimately find that a carrier's performance justifies the loss of its permit. We ask the Subcommittee to express support for prompt agency action to establish an ALSR process in the absence of comprehensive rulemaking to reform the HMSP program.

Conclusion

We share FMCSA's commitment to safety. No deaths have been attributed to the transportation of commercial explosives since the 1970s. Yet, FMCSA's reliance on inspection frequency and outcomes do not seem to correlate to crashes or fatalities for carriers subject to the HMSP. Providing carriers an opportunity for additional review of their safety controls and to take corrective actions will still enable FMCSA to ensure that only fit carriers are allowed to transport materials subject to the HMSP. HMSP holders should not have to face the uncertainty of years of unjustified disqualification under this flawed program.

Respectfully,

Cynthia Hilton

Cynthia Hilton
Executive Vice President

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