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IMPROVING THE PERFORMANCE OF OUR TRANSPORTATION NETWORKS: STAKEHOLDER PERSPECTIVES

HEARING

BEFORE THE

SUBCOMMITTEE ON SURFACE TRANSPORTATION AND MERCHANT MARINE INFRASTRUCTURE, SAFETY AND SECURITY

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION UNITED STATES SENATE

ONE HUNDRED FOURTEENTH CONGRESS

FIRST SESSION

JANUARY 29, 2015

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ONE HUNDRED FOURTEENTH CONGRESS

FIRST SESSION

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[1] On March 3, 2015 the Committee finalized Member assignments for its subcommittees. The list below reflects March 3, 2015 assignments. When this hearing was held, on January 29, 2015, formal assignments had not yet been made.

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IMPROVING THE PERFORMANCE OF OUR TRANSPORTATION NETWORKS: STAKEHOLDER PERSPECTIVES

THURSDAY, JANUARY 29, 2015

U.S. SENATE,
SUBCOMMITTEE ON SURFACE TRANSPORTATION AND MERCHANT MARINE INFRASTRUCTURE, SAFETY, AND SECURITY,
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
Washington, DC.

The Subcommittee met, pursuant to notice, at 10:04 a.m. in room SR–253, Russell Senate Office Building, Hon. Deb Fischer, presiding.

Present: Senators Fischer [presiding], Wicker, Moran, Johnson, Gardner, Blumenthal, Klobuchar, Markey, and Booker.

OPENING STATEMENT OF HON. DEB FISCHER, U.S. SENATOR FROM NEBRASKA

Senator FISCHER. Good morning. The hearing will come to order.

I am pleased to convene the 114th Congress's first hearing of the Subcommittee on Surface Transportation and Merchant Marine Infrastructure, Safety, and Security, which we have titled "Improving the Performance of our Transportation Networks: Stakeholder Perspectives."

It is an honor to serve as Chairman of this subcommittee, and I want to thank Chairman Thune and my colleagues for entrusting me with the responsibility to do so. Transportation safety and infrastructure development are issues that I care deeply about, and I am grateful for the opportunity to further engage on these matters.

I look forward to working with all members of this committee in the 114th Congress on issues that I see as bipartisan and core to the role of the Federal Government.

I would also like to acknowledge the hard work and achievement of Senators Blumenthal and Blunt, who served as Chair and Ranking Member of this subcommittee last Congress. They have laid a solid foundation and worked tirelessly together on this subcommittee with a degree of substance and attention to detail that is rarely seen.

It is my hope to carry on the standard that these two Senators have set, and I look forward to working with our new Ranking Member when that person is announced. Senator Blumenthal will be serving in that position today.

The goal of today's hearing is to explore ways in which to expand and improve the Nation's transportation networks.

This subcommittee's broad jurisdiction stretches from transportation safety regulations to incentivizing and regulating infrastructure development. With such expansive authority comes great responsibility to govern appropriately.

For too long, Washington-centric policies have impeded progress and frustrated citizens across this country. Repeatedly, I have heard from Americans who are dismayed by the Federal Government's tendency to tell communities, both large and small alike, what they will receive without ever asking what is needed. Nebraskans and all Americans deserve to have their voices heard when Congress considers how transportation policies will impact their states and their local communities.

In the Nebraska Unicameral, I served as Chairman of the Transportation and Telecommunications Committee. My father also served as the Director State Engineer of the Nebraska Department of Roads, so transportation is in my blood. And I have seen how hard work, good policies, and a good attitude can lead to favorable results. Unfortunately, I have also witnessed the waste and harm that can result when proper oversight is not exercised.

Congress should develop policies that address the unique challenges and the opportunities that have arisen across this Nation. These goals cannot be satisfied by a one-size-fits-all approach. Rather, input and consultation from a variety of stakeholders will be required to develop dynamic strategies to respond to these diverse circumstances.

To that end, it is important that we include stakeholders from across the country in our decisionmaking process. Their varied and extensive expertise will be invaluable to this subcommittee.

The panel before us today represents just a few of the many stakeholders from private industries. What these individuals lack in shared backgrounds they make up for in common interests—namely, fostering sensible policies that ensure the highest safety standards while also promoting economic growth.

We have asked our witnesses to share their high-level views on transportation—what is working, what is not working, how we can improve, and how we can better prioritize our resources. It is also a chance for members of this committee to raise the issues that they care about, and I hope they will continue to do so throughout this Congress.

I am optimistic that cooperation and consultation between the Federal Government and private enterprise will result in more effective and efficient policies.

I would also now invite my colleague Senator Blumenthal to deliver some opening remarks.

STATEMENT OF HON. RICHARD BLUMENTHAL, U.S. SENATOR FROM CONNECTICUT

Senator BLUMENTHAL. Thank you very, very much, Madam Chairwoman. Thank you for your interest and your passion on this subject, which I think is well-warranted by the challenge that we face as a country. None of the challenges faced by our Nation today are more important, long term, than the need to rebuild our critical

infrastructure, whether it is roads, bridges, airports, and, of course, railroads.

And we are fortunate to have with us this morning leaders in this industry and one of our Nation's very distinguished public servants, Governor Rendell, who knows better than anyone about the need to rebuild the infrastructure.

Literally just yesterday, in Grand Central Station in New York, a train derailed. More than a minor inconvenience, this incident recalled the even more serious derailments that caused injuries and deaths over the past 2 years and reminded us that safety and reliability continue to be in question on our Nation's railroads and in our infrastructure.

We face enormous challenges as a country to maintain trust and confidence in our railroads and in our roads and bridges. And I am enormously excited to continue on this subcommittee, even though I won't be its Ranking Member, because I think that it offers a forum and a means of creating even more momentum behind this cause.

The fact of the matter is that passenger rail is a vital lifeline for this country, as is freight, in delivering people and goods and services. We have learned that the failure of a single bridge or the derailment of a single line can literally paralyze rail transportation up and down the East Coast. The outage of a single bridge in Norwalk, Connecticut, the Walk Bridge, can cripple passenger traffic, as well as freight, on the busiest railroad artery in the country. And that is why rebuilding those bridges and our roads and other critical infrastructure is absolutely critical.

Resources will have to be devoted because that infrastructure is a critical prop for our entire economy. It is the foundation for the vital lifelines, economic lifelines, that are critical to our Nation. And so I look forward to supporting investment—and it is investment—it is not spending. It really is investment that is vitally important to making sure that trust and confidence is restored and sustained.

That is ultimately the lesson of a derailment like the one that occurred yesterday. It threatens not only the movement of people to their homes and businesses, it threatens trust and confidence in the ability of that kind of lifeline to function well.

So I look forward to today's testimony and to the continuing oversight and scrutiny that this subcommittee will impose. Because, ultimately, the task is not only one of private industry, it also is one of our government agencies—the Federal Railroad Administration, the National Transportation Safety Board, etc.

And the failure of those agencies to properly oversee what is happening on the rails and roads is, itself, a jeopardy to safety and reliability. What we have seen is a failure to implement more than 100 critical recommendations from the NTSB on rail safety. And part of our task on this subcommittee will be to make sure that we oversee and scrutinize what those critical government agencies do to make sure that trust and confidence is sustained and enhanced.

Thank you, Madam Chairwoman. And I look forward to the testimony today.

Senator FISCHER. Thank you, Senator Blumenthal.

With that, I would like to introduce our witnesses today on the panel.

Mr. James Mullen is the Executive Vice President and General Counsel for Werner Enterprises.

Werner is a member company of the American Trucking Association, and it is among the five largest truckload carriers in the United States. Based in Omaha, Nebraska, Werner was founded in 1956. It is a prime transportation and logistics company with coverage throughout North America, Asia, Europe, South America, Africa, and Australia.

Mr. Mullen joined Werner Enterprises in 2006, and he is ultimately responsible for the safety and risk departments within his company.

Mr. Lance Fritz is the President and Chief Operating Officer at Union Pacific Railroad, which is a Class I freight railroad headquartered in Omaha, Nebraska. As many of you know, Union Pacific links 23 states in the western two-thirds of the United States, providing freight solutions and logistics expertise to the global supply chain.

Mr. Fritz has been responsible for operations, marketing, and sales, information technology, continuous improvement, supply, and labor relations at Union Pacific. As someone with such broad experience with the rail industry, Mr. Fritz is very familiar with UP's capabilities, safety and capital programs, and network planning.

Mr. Douglas Means has served as the Chief—or is Executive Vice President and Chief Supply Chain Officer for Cabela's since April 2010.

Cabela's is a Nebraska success story. It was founded around a kitchen table in 1961. Now headquartered in Sidney, Nebraska, Cabela's has become a global retailer of outdoor recreation merchandise, shipping its catalog to all 50 states and over 120 countries.

Mr. Means joined Cabela's after an 18-year career with Jones Apparel Group, and he is now responsible for overseeing Cabela's global supply chain.

We see a pattern here.

But we are also very, very pleased to welcome the Honorable Ed Rendell. He is Co-Chair of Building America's Future educational fund, which is a bipartisan coalition working to enhance our Nation's prosperity and quality of life through investment in infrastructure.

As everyone here knows, Mr. Rendell served two terms as Pennsylvania's 45th Governor, from 2003 to 2011. Governor Rendell also served as the Mayor of Philadelphia and as District Attorney of the city. He is now lending his talent and energy to promoting Federal infrastructure support to keep the United States competitive with our global partners.

We are pleased to welcome all of you here. We look forward to your testimony.

And, Mr. Mullen, if you would begin, please.

STATEMENT OF JAMES MULLEN, EXECUTIVE VICE PRESIDENT AND GENERAL COUNSEL, WERNER ENTERPRISES

Mr. MULLEN. Chairman Fischer, members of the Subcommittee, thank you for the opportunity to testify today about the performance of our transportation networks and, more specifically, on ways to improve commercial motor vehicle safety.

I am Jim Mullen, Executive Vice President and General Counsel for Werner Enterprises, which is one of the five largest truckload carriers in the United States and headquartered in Omaha, Nebraska.

The trucking industry is justifiably proud of its commitment to safety. Together, Werner and approximately 500,000 other carriers invest over an estimated $7 billion in safety annually. At Werner alone, we spend $40 million annually on safety, much of it on voluntary initiatives and crash-prevention technology.

As the industry continues to invest time and resources into safety, there has been a noted drop in the large truck fatality rate by 37 percent over the last decade. At Werner, preventable reportable crashes dropped 22 percent from 2007 to 2014. Contributing to this accomplishment are strategies that go beyond minimum regulatory requirements, including the use of driver training simulators and the adoption of onboard safety technologies.

To continue this long-term trend requires a commitment on the part of the government and the industry to focus on the primary causes of crashes and effective countermeasures. The vast majority of crashes, close to 90 percent, are the result of driver error. It is quite logical, then, for FMCSA to focus on driver behavior and means to impact it.

Now I would like to discuss some of the current regulatory issues impacting Werner and the industry.

Electronic logging devices. In 2012, Congress mandated that FMCSA require the use of electronic logging devices, ELDs, to monitor hours-of-service compliance. Werner is a strong advocate of this mandate and was an early pioneer of ELD use. In 1998, Werner became the first motor carrier in the country to implement electronic logs. Though FMCSA is making progress on this issue, congressional oversight is still needed to ensure a timely final rule that includes reasonable requirements.

The hours of service and the restart rule. Last month, Congress temporarily suspended the restart restrictions, pending additional FMCSA research. The GAO is also conducting a review of FMCSA's previous restart field study. Congress should provide close oversight of these studies and, if warranted, permanently vacate the restart restrictions.

Entry-level driving training requirements. Requirements should be based on performance, not hours-based. No responsible trucking company has a place for drivers who have completed a minimum number of hours but have failed to master the necessary skills to safely operate a truck.

Compliance, safety, and accountability, CSA. Werner supports the objectives of FMCSA's CSA program. However, we have serious concerns about CSA's ability to accurately identify the least safe motor carriers and the impact on safe motor carriers who are erroneously labeled otherwise.

Issues with CSA that are of importance to Werner include the disparate enforcement amongst the states, the flaws in the mileage utilization factor, and flaws in the unsafe driving and the hazmat BASICs. All of these create an uneven playing field for certain motor carriers under CSA.

Inaccurate scores can have serious implications. Werner is deeply bothered by FMCSA's use of crash data to measure fleet safety performance. Specifically, the CSA Safety Measurement System uses all crashes, including those that truck drivers neither caused nor could have prevented, to assess a carrier's performance. A truck driver who is the victim in a crash is scored the same as one who causes a crash.

This is a significant point. At Werner, the most common DOT reportable crash involving a Werner truck is being struck from behind by another vehicle, yet that is scored the same as if we caused the accident. FMCSA has avoided correcting this issue for 5 years. Hence, Werner supports the industry's call and its legislative efforts to remove CSA scores from public view until necessary improvements are made.

Last, I would like to comment on the infrastructure investment. A commitment to infrastructure investment is needed to provide for the safe and efficient flow of commerce and the foundation for economic growth. Congestion on the interstate system alone cost the trucking industry $9.2 billion in 2013 and wasted more than 141 million hours. Further, congestion wastes fuel and increases the output of emissions. And last but certainly not of the least importance, sitting in traffic adds stress to drivers, which limits their compensation and leads to unsafe driving conditions.

Werner Enterprises and the trucking industry have a strong commitment to safety and an impressive record to show for it. Continued improvement will require a focus on the primary causes of crashes, especially driver behavior, and incentives for the voluntary adoption of progressive safety programs.

Werner looks forward to continue to work jointly with you, policymakers, FMCSA, and stakeholders to find innovative ways to fund and improve our transportation networks and commercial motor vehicle safety.

Thank you again for the opportunity to share our industry's perspective this morning, and I look forward to answering any of your questions. Thank you.

[The prepared statement of Mr. Mullen follows:]

PREPARED STATEMENT OF JAMES MULLEN, EXECUTIVE VICE PRESIDENT AND GENERAL COUNSEL, WERNER ENTERPRISES

Introduction

Chairwoman Fischer, Members of the Subcommittee, thank you for the opportunity to testify today about the performance of our transportation networks and, more specifically, on ways to improve commercial motor vehicle safety. My name is Jim Mullen, and I am the Executive Vice President and General Counsel for Werner Enterprises, headquartered in Omaha, Nebraska. Founded in 1956, Werner is now among the five largest truckload carriers in the United States, with a diversified portfolio of transportation services that includes dedicated; medium-to-long-haul, regional and local van; expedited; temperature-controlled; and flatbed services. Werner also provides value-added services such as freight management, truck brokerage, intermodal, and international logistics.

Madam Chairwoman, today I will speak about Werner's and the trucking industry's commitment to safety, our safety record, and measures we support to continue this long-term trend. I will also talk about opportunities that the Federal Motor Carrier Safety Administration (FMCSA) has to improve safety, the need to sharpen the agency's focus, and the unnecessary regulatory burdens that have been placed on Werner and companies like ours. Finally, I will touch briefly on the investment our country must place in its infrastructure to ensure the safe and efficient flow of commerce and much needed economic growth.

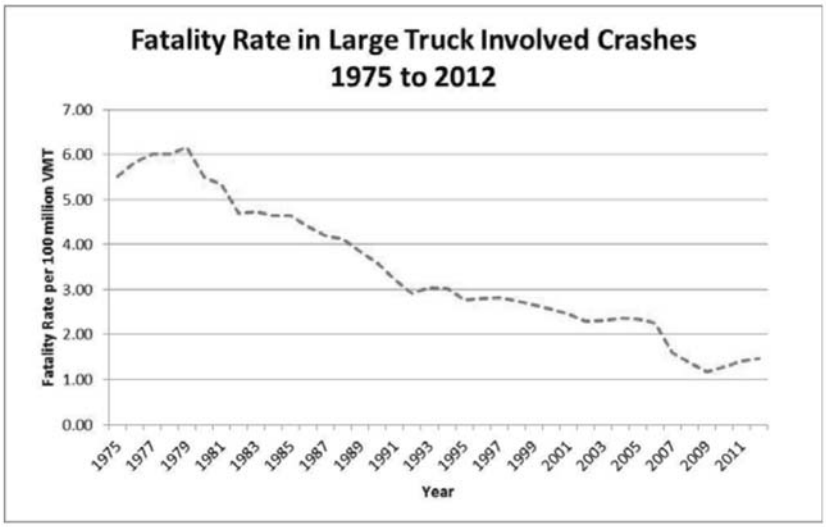
The Industry's Commitment to Safety

The trucking industry is justifiably proud of its commitment to safety. Together, Werner Enterprises and the approximately five hundred thousand other carriers who comprise the industry invest over an estimated $7 billion in safety annually. At Werner alone we spend $40 million on safety, some of it to meet a myriad of regulatory requirements, but much of it on voluntary, progressive safety initiatives. This includes the adoption of emerging crash prevention technology such as forward collision warning and lane departure devices. During 2015, Werner will spend an approximately $6.0 million on these systems, and approximately half of our fleet will be equipped with this technology.

	2013	2014
Annual Cost of Safety Compliance	$7,316,302.00	$7,454,341.00
Annual Safety Technology Spend	$4,870,957.00	$5,091,179.00
Annual Driver & Safety Training Spend	$353,803.00	$378,561.00
Annual Driver Safety Pay	$30,686,630.00	$28,223,848.00
Total Spend	**$43,227,692.00**	**$41,147,929.00**

Descriptions of spend:	
Annual Cost of Safety Compliance	*Desc: Include costs like: staff wages and benefits, drug tests, consultants (e.g., 3rd party compliance providers), MVR costs, PSP costs, etc.*
Annual Safety Technology Spend	*Desc: Include costs like: ELDs, on-board safety, back-office safety technology, spec'ing trucks with added safety technology, etc.*
Annual Driver & Safety Training Spend	*Desc: Include costs like: training material costs, training consultants, staff wages, if not above in question #4. Do not include lost revenue from down days of training.*
Annual Driver Safety Pay	*Desc: Include costs like: quarterly and/or annual safety bonuses, bonuses for clean DOT inspections, etc.*

These investments in safety have yielded impressive dividends for the industry. Over the past decade the number of large truck-related fatalities has dropped 21 percent and the large truck fatality rate has dropped 37 percent. At Werner, we have experienced a 22 percent decrease in preventable Department of Transportation (DOT) reportable crashes from 2007 through the end of 2014. We use 2007 as the baseline because a change in Werner's data systems in 2007 makes previous years' data unreliable.



Much of this improvement is due to progressive safety initiatives supported by Werner and fellow industry members. For example, in addition to the aforementioned crash prevention technologies, Werner has invested in state of the art driver training simulators, critical event recording, predictive modeling, and other items. It is the motor carrier's responsibility to put the professional driver in the best position to be as safe as possible. Technology, training, and placing safety as a company core value are vital to providing the driver with the tools and culture to drive safely.

Necessary Steps for Continued Improvement

To continue this long term trend requires a commitment on the part of the government and industry to focus on the primary causes of crashes and effective countermeasures. The data on these factors are very clear and compelling; the vast majority of crashes, close to 90 percent, are the result of driver error. It is quite logical, then, for FMCSA to focus on driver behavior and means to impact it. However, the agency's plans and priorities suggest a much different focus.

For example, because speeding is the greatest single contributor to truck crashes, the industry petitioned FMCSA and the National Highway Traffic Safety Administration in 2006 to establish a rule requiring the use of speed limiters on all trucks over 26,000 lbs. Yet, to date, neither agency has issued a proposed rule to this end. We understand a proposal is in the works, but have yet to see it. The industry and FMCSA must work together to focus on efforts that have a direct impact on driver safety, as opposed to issues that may be driven by political or economic issues. We owe that to the motoring public.

FMCSA's use of enforcement funding and resulting activity demonstrates a similar need to redirect the agency's focus. For example, FMCSA's *Safety Program Effectiveness Measurement Report,* shows that on-road traffic enforcement activity is far more effective at preventing future crashes than standard roadside inspection activity. The latter typically involves a vehicle inspection to detect component defects and a review of the driver's paper work (*e.g.,* hours of service records of duty status) and credentials (*e.g.,* license and medical examiner's certificate). The former, traffic enforcement, consists of on-road monitoring of driver behavior (*e.g.,* moving violations) coupled with some form of inspection activity (*e.g.,* a "walk-around" inspection of vehicle components).

FMCSA's aforementioned report reflects that for every 1,000 traffic enforcements 12.05 crashes are prevented compared to 2.7 crashes per 1,000 standard roadside

inspections. Similarly, .41 lives are saved per 1,000 traffic enforcements compared with only .09 lives per 1,000 roadside inspections. In other words, traffic enforcements are more than four times more effective at preventing crashes and saving lives.[1]

The table below, taken from the FMCSA effectiveness report, shows the breakdown of crashes and injuries avoided and lives saved by roadside inspections and traffic enforcements respectively.

Table 7. Program Effectiveness: U.S. Domiciled vs. Non-U.S. Domiciled Carriers, FY 2009

Types of Benefits	Estimated Benefits: U.S.	Estimated Benefits: Non-U.S.	Estimated Benefits per 1,000 Interventions: U.S.	Estimated Benefits per 1,000 Interventions: Non-U.S.
Crashes Avoided Due to Roadside Inspections	6,768	1,375	2.70	4.91
Crashes Avoided Due to Traffic Enforcements	8587	201	12.05	11.13
Total Crashes Avoided	***15,355***	***1,576***	***4.77***	***5.29***
Injuries Avoided Due to Roadside Inspections	4,324	878	1.72	3.14
Injuries Avoided Due to Traffic Enforcements	5486	128	7.70	7.11
Total Injuries Avoided	***9,810***	***1,006***	***3.05***	***3.38***
Lives Saved Due to Roadside Inspections	229	47	0.09	0.17
Lives Saved Due to Traffic Enforcements	290	7	0.41	0.37
Total Lives Saved	***519***	***54***	***0.16***	***0.18***

Given this compelling data, it is logical to place more emphasis on traffic enforcements than on roadside inspections. However, figures available on FMCSA's website indicate that traffic enforcements only comprise a small portion of field enforcement interventions (*e.g.,* 10 percent) and suggest that this percentage has been dropping over the past seven years. The agency should find this trend both alarming and compelling.

FMCSA's program effectiveness document points out that the "*evaluation provides FMCSA and State MCSAP partners with a quantitative basis for optimizing the allocation of safety resources in the field.*" This statement is true, but it appears as though FMCSA and its state partners have not actually used the evaluation for this purpose. If the agency and states had done so, we would have observed an *increase* in traffic enforcement activity, not a *decline.* This troubling decline begs the question: "How many lives would not have been lost if FMCSA had devoted greater resources to traffic enforcement over the past several years?"

Faced with this data, FMCSA recently announced its plan to train *other* law enforcement officers (*e.g.,* municipalities)—not those funded under its commercial motor vehicle (CMV) enforcement program—to conduct traffic enforcement on large trucks. While we appreciate FMCSA's acknowledgement and the need to focus on driver behavior, their actions miss the mark. The training of non-CMV enforcement personnel appears to be an attempt to deflect the criticism of FMCSA's management of its CMV enforcement program. To be clear, the agency has not announced *any* steps to ensure that the funds spent in its Motor Carrier Safety Assistance Program (MCSAP) are used more efficiently by devoting a greater percentage of these funds to traffic enforcement.

The plan to train non-CMV enforcement officers to conduct traffic enforcement on CMVs is flawed for a number of reasons. First, FMCSA's Program Effectiveness Report points out that traffic enforcement coupled with some vehicle inspection activity is four times more effective than vehicle inspection activity alone. The non-CMV officers conducting traffic enforcement will not be conducting vehicle inspections. Sec-

[1] *FMCSA Safety Program Effectiveness Measurement: Intervention Model Fiscal Year 2009,* FMCSA, April 2013.

ond, the traffic enforcement data (*e.g.,* violations, citations) will not be captured and uploaded into FMCSA's Motor Carrier Management Information System, which feeds the agency's safety monitoring and measurement system. This is a critical flaw since FMCSA's research shows that data on driver behavior (*e.g.,* moving violations) has the strongest correlation to crash risk and provides the best means for identifying unsafe fleets. Finally, training non-CMV officers to conduct CMV enforcement activity raises the strong potential that some time and resources will be shifted away from passenger vehicle enforcement as a result.

In addition to focusing its research, regulatory, and enforcement programs on the primary cause of crashes, FMCSA should consider ways to promote voluntary safety initiatives embraced by the industry. Werner and other motor carriers like us have found that several emerging, non-mandated, safety technologies hold tremendous promise for reducing crashes. However, the government lacks data on their efficacy given their relatively limited use. By providing incentives to fleets like ours to use such technologies, the agency can promote broader adoption and, as a result, gather data to better understand their safety benefits. FMCSA has indicated their interest and willingness to consider such incentives; we look forward to collaborating with the agency on future efforts to this end.

Views on Current Safety Issues

I want to take this opportunity to offer the industry's views on a number of current safety issues, with the hope that Congress will provide greater oversight of them.

Electronic Logging Devices

The most recent highway reauthorization legislation, Moving Ahead for Progress in the 21st Century Act (MAP–21), mandated that FMCSA complete a rulemaking to require the use of electronic logging devices (ELDs) to monitor hours of service compliance. Such a mandate is logical and appropriate. Previous FMCSA research has shown a strong correlation between compliance with the hours of service regulations (in place at the time, 2010) and safety outcomes. For this reason, the call for a mandate had broad support from industry, law enforcement, and consumer advocacy groups.

Werner is a strong advocate of an ELD mandate and was an early pioneer of ELD use. In 1998, Werner became the first motor carrier in the country to implement electronic logs for recording drivers' work and driving hours. Six years later, in 2004, Werner became the first carrier granted an exemption by DOT from the requirement to complete and maintain paper records of duty status.

Werner, like much of the industry, is pleased to see that FMCSA is making progress on this issue and is on track to issue a final rule later this year. However, Congressional oversight is still needed in this area. First, Congress should watch carefully to ensure that the publication of the final rule mandating ELDs is not further delayed. Though the MAP–21 deadline for this final rule was October of 2013, FMCSA does not project publication of it until the end of September, 2015. Second, Congress should be alert to the potential that the rule could include some unreasonable requirements, especially with respect to the grandfathering of existing devices. It is important that early adopters of such devices should not ultimately be penalized for the investments they have made in safety by having their devices declared obsolete by regulation.

Entry Level Driver Training

Werner and the trucking industry believe that the current CDL safety training requirements can be, in some instances, insufficient to properly prepare new drivers for the rigors of the road. At Werner, we hire a large number of drivers directly out of truck driving school and have very close relationships with the largest schools in the Nation. Therefore, we have first-hand knowledge of the current system's limitations. Werner and the trucking industry as a whole support an entry-level driver training rule. Such a rule should map to the safety skills all drivers should possess. Its requirements should be performance-based rather than hours-based. Neither Werner nor any other responsible trucking company has a place for drivers who have completed a minimum number of hours, but failed to internalize the necessary skills to safely operate a truck.

A previous attempt at promulgating an entry-level driver training rule failed cost-benefit analysis and had to be withdrawn. Werner supports FMCSA's current proposed negotiated rulemaking process. It is the industry's hope that the process reaches a consensus recommendation, one which has benefits that exceed its costs.

Hours of Service

In December 2011, FMCSA issued a final rule making changes to the hours of service regulations for truck drivers. This action on the part of the agency represents government overreach of the worst kind. Operating under the previous hours of service regulations, the number and rate of truck involved crashes, injuries, and fatalities all declined dramatically. Nonetheless, FMCSA elected to revise them.

The result was a set of rules that were unjustified and harmful both to highway safety and the economy. In the rulemaking process, FMCSA acknowledged that the modest safety benefits of the changes would come nowhere near to offsetting their huge costs to productivity. To justify these revisions, the agency relied on the speculative theory that drivers working under the new rules would use additional off-duty time to get rest, would then become healthier, and would live longer lives as a result. By monetizing this theoretical benefit, and understating the negative economic impacts, FMCSA was able to convince the White House Office of Management and Budget that the new rules met the required cost-benefit test.

Subsequent experience with the new hours of service rules demonstrated that FMCSA's estimate of the impact to drivers, trucking companies, and the economy was substantially off the mark. For example, FMCSA predicted that new restrictions it imposed on driver use of the hours of service weekly "restart" provision would result in a net societal benefit of $133 million. However, a subsequent analysis conducted by the American Transportation Research Institute, after the "restart" restrictions went into effect, found that the rules were resulting in a net cost to the industry of between $95 million and $376 million annually.

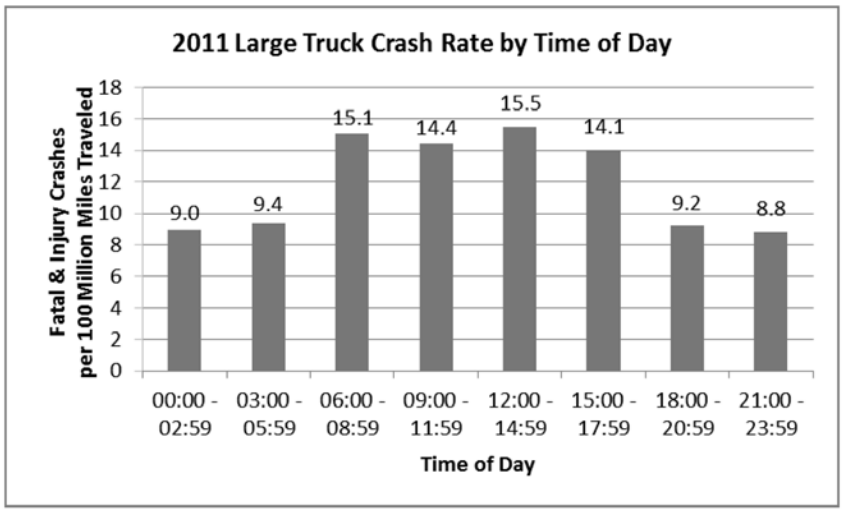
One of the restrictions FMCSA imposed in July 2011 was that driver weekly "restart" rest periods must include two consecutive nighttime segments of 1–5 a.m. However, the results of Congressionally-mandated FMCSA research released in January of last year showed that drivers meeting this restriction were more likely to operate in the daytime when the risk of crashes is greater. FMCSA later admitted that it did not take this safety impact into account when the agency calculated the net safety benefits of the new rules.

Crashes Table 4. Crashes Involving Large Trucks by Time of Day and Crash Severity, 2012

	Fatal Crashes		Injury Crashes		Property Damage Only Crashes	
Time of Day	Number	Percent	Number	Percent	Number	Percent
12am - 3am	294	8.5%	2,000	3.3%	6,000	2.4%
3am - 6am	340	9.8%	3,000	4.7%	7,000	2.8%
6am - 9am	515	14.9%	12,000	16.8%	41,000	17.0%
9am - 12pm	552	15.9%	15,000	20.3%	53,000	22.1%
12pm - 3pm	626	18.1%	16,000	22.5%	55,000	22.6%
3pm - 6pm	529	15.3%	12,000	17.0%	49,000	20.2%
6pm - 9pm	331	9.6%	7,000	10.3%	21,000	8.6%
9pm - 12am	276	8.0%	4,000	5.1%	10,000	4.2%
Unknown	1	*	*	*	*	*
Daytime (6am - 6pm)	*2,222*	*64.1%*	*56,000*	*76.6%*	*198,000*	*81.9%*
Nighttime (6pm - 6am)	*1,242*	*35.9%*	*17,000*	*23.4%*	*44,000*	*18.1%*
Total	**3,464**	**100.0%**	**73,000**	**100.0%**	**241,000**	**100.0%**

*Less than 500 or less than 0.05 percent.
Note: A large truck is defined as a truck with a gross vehicle weight rating (GVWR) greater than 10,000 pounds.
Sources: Fatal Crashes: National Highway Traffic Safety Administration, Fatality Analysis Reporting System (FARS). Injury and Property Damage Only Crashes: National Highway Traffic Safety Administration, General Estimates System (GES).

FMCSA Large Truck and Bus Factbook 2012, page 48, June 2014.



Assessment of the FMCSA Naturalistic Field Study 5 on Hours-of-Service Restart Provisions, American Transportation Research Institute, Page 10, April 2014.

Given this elevated risk of increased daytime traffic and the disparity between the real-world impacts of the rules and FMCSA's projected impacts, Congress recently suspended the "restart" restrictions pending additional research. The agency quickly began this research to meet a 12 month deadline. At the same time, the Government Accountability Office (GAO) is also conducting a review of FMCSA's previous "restart" field study. The industry sincerely hopes Congress provides close oversight of these studies and, unless they surprisingly demonstrate compelling reasons to the contrary, takes action to permanently vacate the "restart" restrictions that have been suspended only temporarily.

Compliance, Safety, Accountability

Werner Enterprises, like much of the industry, strongly supports the objectives of FMCSA's Compliance, Safety, Accountability (CSA) program. Such a data-driven approach to identifying the least safe operators and targeting them for intervention is laudable. Further, a prioritization approach of this type is necessary, given FMCSA's limited resources and ability to audit only a small percentage of the industry each year.

However, we have grave concerns about CSA's ability to accurately identify the least safe motor carriers, and the impact on safe motor carriers who are erroneously labeled otherwise. Many of Werner's concerns were highlighted by a GAO report, *Modifying the Compliance, Safety, Accountability Program Would Improve the Ability to Identify High Risk Carriers.*[2] The study confirmed many shortcomings of the program including: a dearth of data which results in a great majority of motor carriers not being scored; a lack of a statistical correlation between the vast majority of regulatory violations and crash risk, and the fact that carriers' scores are often unreliable indicators of future crash risk. Moreover, GAO found that CSA is an imprecise tool that cannot accurately identify an individual fleet's crash risk, and until deficiencies are addressed, it is inappropriate to pursue a rulemaking to tie safety fitness determinations to CSA Safety Measurement System (SMS) scores. Issues with CSA that are of importance to Werner and other industry members also include the disparate enforcement among the states, the flaws in the mileage utilization factor to the detriment of fleets with teams and high productivity, and flaws in the scoring system in Unsafe Driving BASIC and Hazmat BASIC. All of these create an uneven playing field for carriers under CSA.

These limitations are of great concern to the trucking industry because third parties (*e.g.,* shippers, brokers, insurers, banks, etc.) use publicly available CSA SMS scores to make important business decisions. In these cases, inaccurate scores can

[2] *Modifying the Compliance, Safety, Accountability Program Would Improve the Ability to Identify High Risk Carriers,* Government (Washington, D.C.: Government Accountability Office, February 2014), *http://www.gao.gov/assets/670/660610.pdf.*

have serious implications. As such, Werner supports the industry's call to remove CSA scores from public view until peer reviewed research confirms a strong statistical correlation between individual fleets' scores in each measurement category and future crash risk.

Werner is also deeply bothered by FMCSA's use of crash data to measure fleet safety performance. Specifically, the CSA Safety Measurement System (SMS) uses all crashes, including those motor carriers neither caused nor could have prevented, to assess their safety performance. As a result, a truck driver who is the victim in a crash (*e.g.,* rear-ended by a drunk driver) is scored the same as one who causes such a crash. This is significant, since the most common DOT reportable crash involving a Werner driver is being struck from behind by another vehicle.

The trucking industry has long held that it is patently illogical to use obvious not-at-fault crashes to measure fleet safety performance. The ill-effect of doing so is twofold. First, carriers involved in such crashes are erroneously labeled as being unsafe. Second, these carriers are then more likely to be targeted for agency interventions, a waste of FMCSA's limited enforcement resources.

FMCSA has responded to this concern not by removing such obvious crashes from the system, but by conducting a multiyear study of the efficacy of using police accident reports (PARs) to make crash accountability determinations. Just recently, FMCSA released this report and contended that PARs were not sufficiently reliable for this purpose and that a process to make such crash accountability determinations would not be cost-beneficial.

FMCSA issued the results of this study a full *five years* after the industry urged the agency to remove crashes where it is plainly evident that the truck driver did not cause the crash. For example, the American Trucking Associations suggested that FMCSA address crashes such as when a motorist driving the wrong way on a divided highway strikes a truck head-on, or when a passenger vehicle rear-ends a truck stopped at an intersection. Rather than taking the appropriate action to address these crashes, FMCSA is obfuscating the issue by conducting lengthy research on the ability to make determinations on *all* crashes. In addition, now that the research is complete, the agency is still not proposing any specific action, but soliciting suggestions for next steps, instead.

Recognizing the inequity of scoring fleets based on crashes they did not cause, and how targeting fleets for enforcement action based on such crashes wastes Federal enforcement resources, Congress should take action. FMCSA should be required to immediately erect a process to remove from consideration those crashes where it was plainly obvious the truck driver did not cause the crash.

Infrastructure Investment

Much like the rest of the industry, Werner is deeply concerned about the state of our national infrastructure. Underinvestment in the highway system has caused transportation arteries to deteriorate, producing significant inefficiencies for the trucking industry and disrupting supply chains. Congestion on the Interstate System alone cost the trucking industry $9.2 billion in 2013 and wasted more than 141 million hours.[3] This was equivalent to 51,000 drivers sitting idle for a full working year. Furthermore, congestion wastes fuel and increases the output of emissions. In addition, sitting in traffic adds stress to drivers and may limit their compensation, exacerbating the challenges associated with hiring and retaining employees.

Interestingly, 89 percent of Interstate System congestion occurred on just 12 percent of the network,[4] suggesting that focused attention on the most problematic locations can resolve much of the gridlock that plagues trucking companies and their drivers. To address this fact, the trucking industry recommends dedicating Federal revenue toward addressing major freight bottlenecks.

It is also important to note that highway congestion does not just affect truck deliveries. The intermodal movement of freight by railroads, barges, ships and aircraft often relies on trucks for part of the delivery. Any disruption to truck travel can severely affect the efficiencies of these other freight modes. Due to these interdependencies, the trucking industry has joined with other interested parties in a Freight Stakeholders Coalition. The coalition has released a platform of recommendations for reauthorization,[5] many of which are of interest to this Committee. The coalition recommends establishment of a new multimodal freight fund outside of the Highway Trust Fund to address the many infrastructure challenges that hamper delivery of goods. In addition, the coalition believes that establishment

[3] American Transportation Research Institute, *Cost of Congestion to the Trucking Industry,* April 2014.

[4] *Ibid.*

[5] *https://www.intermodal.org/assets/private/2014freightstakeholderscoalitionplatform.pdf*

of a freight office within the Office of the Secretary of Transportation would raise the profile of goods movement within DOT and help to coordinate efforts across modal administrations. Finally, the coalition believes that Congress should continue to encourage states, metropolitan planning organizations, and localities to develop freight planning expertise to address multi-modal freight mobility as part of their planning processes.

Summary and Conclusion

Chairwoman Fischer, as I have explained, the trucking industry has a strong commitment to safety and an impressive record to show for it. Continued improvement will require a focus on the primary causes of crashes, especially driver behavior, and incentives for the voluntary adoption of progressive safety programs. It will also require close Congressional oversight of FMCSA's current activities. For instance, Congress should ensure that the final rule mandating ELD use is issued in a timely fashion. A future entry level driver training proposal must be reasonable, appropriate and effective. The agency's CSA SMS must be improved so that motor carriers' scores reliably and accurately reflect their safety performance and, until then, these scores should be removed from public view. Congress should carefully evaluate FMCSA and GAO studies of the hours of service rules and, unless the studies can demonstrate that the true net safety benefits outweigh the real impacts, permanently suspend the "restart" restrictions implemented in 2011. Finally, a commitment to infrastructure investment is needed to provide for the safe and efficient flow of commerce and a foundation for economic growth.

Senator FISCHER. Thank you, Mr. Mullen.

Mr. Fritz?

STATEMENT OF LANCE M. FRITZ, PRESIDENT AND CHIEF OPERATING OFFICER, UNION PACIFIC RAILROAD

Mr. FRITZ. Thank you. Thank you, Chairman Fischer and members of the Subcommittee. Thank you for the opportunity to testify today about how to improve the performance of the transportation network.

My written testimony goes into much more detail, but in just a few words, the best way to improve performance in the rail industry is to ensure we have policies that support safety, service, and efficiency. These three things—— safety, service, and efficiency—complement and are foundational to one another.

Let me give you several examples of what I am talking about.

First and foremost, our industry must be able to earn sufficient revenues that allow us to invest in and grow our infrastructure. This is really the key to everything. Unlike other transportation modes, we must build and maintain our own networks. This takes huge amounts of capital and more than any other industry as a percentage of revenue.

At the same time, we are publicly traded companies that must provide a return to our shareholders that entices them to invest in our companies. The ability to make these investments allows us to improve safety, provide the service levels our customers demand, and create the efficiencies we need to ensure our economy is competitive on the world stage.

Unfortunately, the Surface Transportation Board is considering proposals that would create a new economic regulatory scheme that would cap our rates and limit our revenues to some level set by regulation as part of a revenue adequacy proceeding.

Those shippers who advocate this do so even though all the Class I railroads' average return on invested capital is below the average of companies in the S&P 500. Moreover, Union Pacific has allocated a larger portion of cash to capital expenditures than the aver-

age of companies in the S&P 500, and we lag these same companies in returning value to shareholders in the form of dividends and stock buybacks. Yet we must compete with these same companies for investment dollars.

Capping returns would be a terrible mistake, as it would prevent us from being able to grow our networks, as our investors would seek other more favorable returns on their money. This would ultimately hurt all shippers and our country's economic vitality.

Second, we must ensure we have fact-based safety regulation. Safety is of paramount importance to our industry and to Union Pacific. We are absolutely dedicated to safely serving our customers and communities. Our goal is that each and every one of our employees goes home safely and secure at the end of their shifts.

An example of what I mean by "fact-based safety regulation" is proposals that require two people in the cab of a locomotive. There is no safety data to back this up. Commuter railroads and Amtrak only have one person in the cab. Now, Union Pacific is not attempting to go to one person in the cab, but someday technology may allow us to get to that, and we believe legislation or regulations that prevent us from using technology to become safer and more efficient would be a mistake.

Another way to address safety in the rail industry is to get away from the command-and-control type of regulation that is in place today and, instead, adopt a performance-based regulatory system. This would empower the FRA and the railroads to drive down accidents and improve safety using best practices rather than a cookie-cutter approach.

In order to meet our customers' demands and changing markets, environmental streamlining or permitting reform is also important. The amount of time and energy it takes to get projects from the drawing board to construction and completion is growing longer every day. Congress should look at ways to make this process work more quickly, and I outline some of those ideas in my written testimony.

The last thought I want to leave you with is that we are a network, and because we are a network, actions in one place create ripples in another. We have seen this in the service issues our industry had experienced over the past year. Congestion or extreme weather in one place can cause impacts throughout the system.

So when contemplating laws or regulations, policymakers shouldn't do things that balkanize the industry—that is, provide service requirements to one segment of customers that would happen if the STB implemented some form of forced access proposal, or have environmental or safety regulations in one area but not in another, as many states and localities would like you to do. That would be just a prescription for inefficiency and poor service.

Again, thank you for the opportunity to testify, and I would be happy to answer any questions.

[The prepared statement of Mr. Fritz follows:]

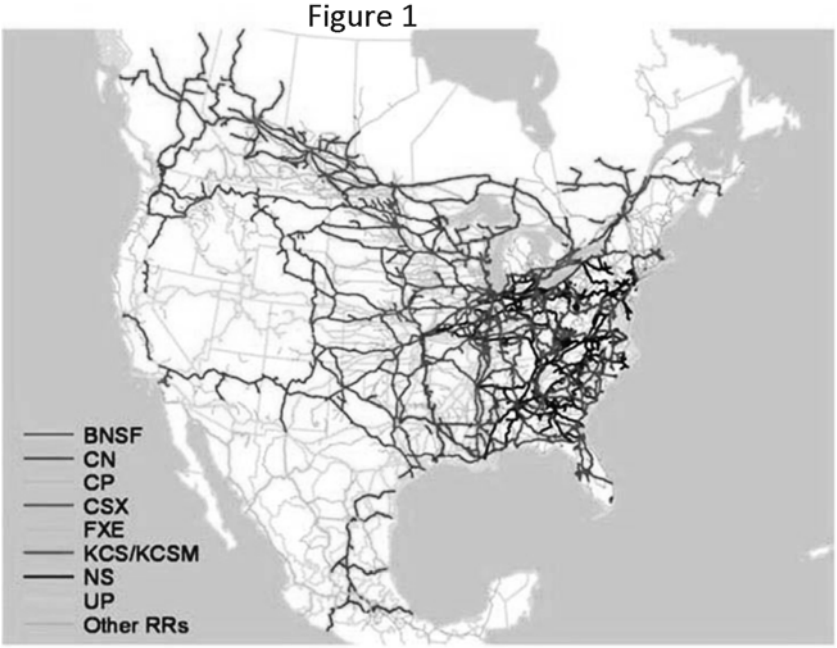
PREPARED STATEMENT OF LANCE M. FRITZ, PRESIDENT AND CHIEF OPERATING OFFICER, UNION PACIFIC RAILROAD

On behalf of Union Pacific Railroad (UP) and the Association of American Railroads (AAR), thank you for the opportunity to appear before you today to discuss ways to improve the performance of America's freight transportation network.

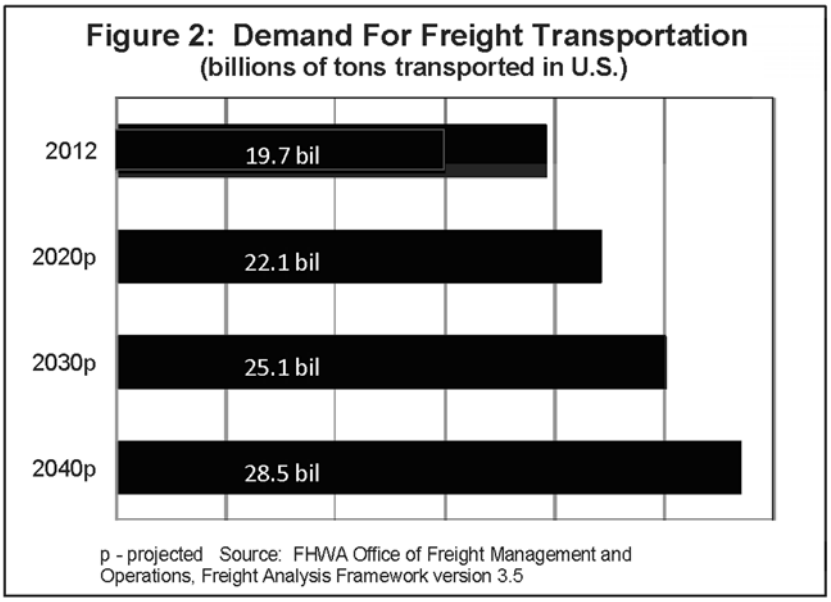
Union Pacific, like the other Class I freight railroads that operate in the United States, relies on its own funds, not taxpayer funds,to pay for its infrastructure, and the rail industry provides a critical link in the global supply chain. UP's 10,000 customers depend on us to deliver their products in a safe, reliable, and environmentally responsible manner.

Serving 23 states over 32,000 miles in the western two-thirds of the country, we are proud to be part of a 140,000-mile U.S. freight rail network that is part of an integrated North American rail network that provides the world's safest, most productive, and most cost-effective freight rail service. Union Pacific and other freight railroads work hard every day to help keep our Nation moving on the right track.

Figure 1



There is a tremendous amount of strength and flexibility in our Nation's freight transportation systems—more so, in fact, than in any other country. It's also clear, however, that our Nation faces significant challenges in maintaining the freight-moving capability we have today and improving it to meet the even greater needs of tomorrow. Indeed, as America's economy and population grow, the need to move more freight will grow too. Forecasts vary—for its part, the Federal Highway Administration recently projected that total U.S. freight shipments will rise from an estimated 19.7 billion tons in 2012 to 28.5 billion tons in 2040, a 45 percent increase (see Figure 2)—but it's clear that, as a nation, we need to prepare now.



Union Pacific and America's other freight railroads are trying to do just that. Through massive, record private investments in infrastructure and equipment, the development and implementation of innovative technologies, and operational enhancements, we are working to help make sure that railroad performance meets our customers' current and future needs.

Policymakers, including members of this committee, can help or hinder railroads in this effort. I respectfully suggest that you and other policymakers, when thinking about freight railroads, should keep foremost in mind the need for railroads to be able to earn enough to maintain their existing networks and create the substantial new capacity that will be needed to transport the additional freight our economy will generate in the years ahead. You should ensure that rail-related regulation and legislation do not hinder railroads' ability to serve their customers as efficiently as possible. And you should work to make sure that railroad safety oversight is fact-based, rather than based on perceptions that upon closer inspection may not be well founded.

At Union Pacific, our goal is to provide service to our customers that is as safe, efficient, and cost effective as possible. I know that other railroads share these goals. Below I will address some of the actions we think policymakers should take—and, just as importantly, steps policymakers should refrain from taking—to help make this happen. Taking these steps would serve the public good by providing our Nation's producers and consumers with a stronger, more capable transportation option.

Railroads Are the Transportation Backbone of America

The public benefits associated with freight rail suggest that it is in the public interest for policymakers to enact policies that result in as much freight as possible moving by rail:

- America's freight railroads are privately owned and operate almost exclusively on infrastructure that they own, build, maintain, and pay for themselves. When railroads reinvest in their networks—which they've been doing in record amounts in recent years—it means taxpayers don't have to.
- Railroads are, on average, four times more fuel efficient than trucks. That means that moving freight by rail helps our environment by reducing energy consumption, pollution, and greenhouse gases.
- Because a single train can carry the freight of several hundred trucks—enough to replace a 12-mile long convoy of trucks on the highways—railroads cut high-

way gridlock and reduce the high costs of highway construction and maintenance.

- Thanks to competitive rail rates—42 percent lower, on average, in 2013 than in 1980[1]—freight railroads save consumers billions of dollars every year, making U.S. goods more competitive here and abroad and improving our standard of living.
- Railroads are safe and getting safer. Recent years have been the safest in rail history. Preliminary data suggest that 2014 saw the lowest train accident rate in history.
- America's freight railroads sustain 1.2 million jobs, including 180,000 high-paying jobs in the freight rail industry itself. Millions of other Americans work in industries that are more competitive in the global economy thanks to the affordability and productivity of America's freight railroads.

Of course, no one, and certainly not railroads, disputes that motor carriers (and other freight transportation modes, for that matter) are indispensable to our economy and quality of life, and will remain so long into the future. But because of the enormous cost involved in building new highways, as well as environmental and land use concerns, it is highly unlikely that sufficient highway capacity can be built to handle expected future growth in freight transportation demand.

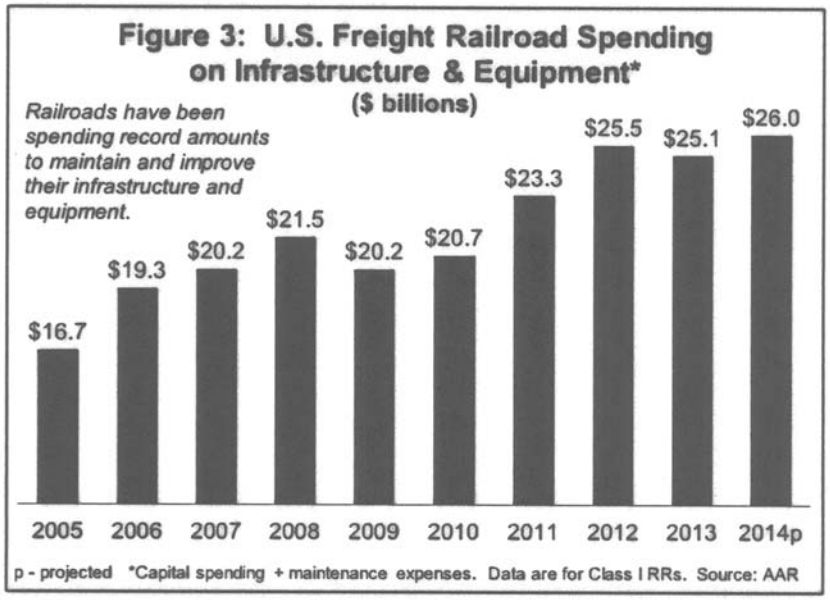
Fortunately, freight rail represents a viable and socially beneficial complement to highway freight movement. This does not mean we should stop building highways or that we should no longer recognize the importance of trucks and highways, but it does mean that policymakers should be doubly aware of the role railroads can play in providing the freight transportation our Nation needs.

Investing for the Future

As noted above, as America's economy and population grow, the need to move more freight will grow too. All transportation modes have key roles to play. But whereas trucks, airlines, and barges operate mainly on highways, airways, and waterways that are publicly funded, Union Pacific and America's other freight railroads are privately owned and operate overwhelmingly on infrastructure that they own, build, maintain, and pay for themselves.[2] From 1980 to 2014, U.S. freight railroads spent $575 billion—of their own funds, not government funds—on capital expenditures and maintenance expenses related to locomotives, freight cars, tracks, bridges, tunnels and other infrastructure and equipment. That's more than 40 cents out of every revenue dollar. In recent years, despite the recession, freight railroads have been spending more than ever before, an estimated $26 billion in 2014 and, mostlikely, even more in 2015—back into a rail network that keeps our economy moving (see Figure 3).

[1] Based on inflation-adjusted revenue per ton-mile.

[2] A few small railroads are owned by port authorities, economic development agencies, or other governmental entities. The Alaska Railroad is owned by the state of Alaska.



One of the reasons railroads reinvest so much is that railroading is among the most capital-intensive of all industries. The average U.S. manufacturer spends about 3 percent of its dsrevenue on capital expenditures. The comparable figure for Union Pacific and other U.S. freight railroads is around 18 percent, or about six times more. As members of this committee are well aware, building and maintaining an infrastructure network is very expensive whether done with public or private funds.

Because U.S. freight railroads are overwhelmingly privately owned and must finance the vast majority of their infrastructure spending themselves, these investments are accompanied by substantial financial risk. Back in 2006, the Government Accountability Office correctly noted that, "Rail investment involves private companies taking a substantial risk which becomes a fixed cost on their balance sheets, one on which they are accountable to stockholders and for which they must make capital charges year in and year out for the life of the investment. A railroad contemplating such an investment must be confident that the market demand for that infrastructure will hold up for 30 to 50 years. This is in sharp contrast to other modes such as highway infrastructure, which is paid for largely by public funds."[3]

Accordingly, at Union Pacific, as at other railroads, capacity investments must pass appropriate internal railroad investment hurdles. That means that investments will be made only if they are expected to generate an adequate return over a long period of time. For this reason, adequate rail earnings—again, over the long term—are critical for capacity investment. As the Congressional Budget Office (CBO) noted, also in 2006, "As demand increases, the railroads' ability to generate profits from which to finance new investments will be critical. Profits are key to increasing capacity because they provide both the incentives and the means to make new investments."[4]

The GAO's and CBO's comments are just as valid today as they were when first made. If Union Pacific or any other railroad is not financially sustainable over the long term, it will not be able to make capacity investments to maintain its existing network in a condition to meet reasonable transportation demand, or make additional investments in the replacement or expansion of infrastructure required by growing demand.

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[3] Government Accountability Office, *Freight Railroads: Industry Health Has Improved, but Concerns About Competition and Capacity Should Be Addressed,* October 2006, p. 56.

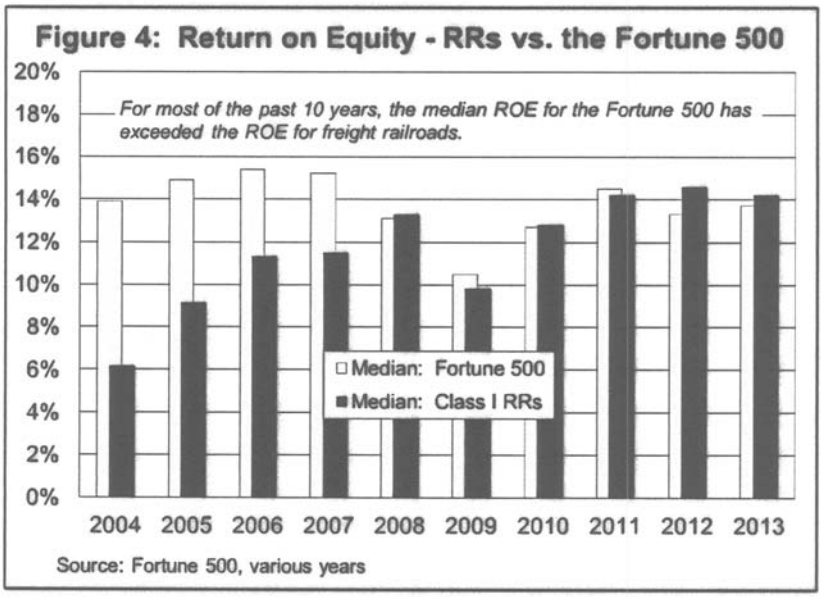
[4] Congressional Budget Office, *Freight Rail Transportation: Long-Term Issues,* January 2006, p. 11.

Major freight railroads face additional constraints because they are either publicly traded or are subsidiaries of publicly traded companies. As such, they must provide their shareholders a return commensurate with what those shareholders could obtain in other markets with comparable risk. I spend a considerable amount of my time interacting with members of the investment community, and I can tell you that they are well aware that no law or regulation can force investors to provide resources to an industry whose returns are lower than what the investors can obtain elsewhere. If railroads are viewed as returning less to shareholders, for whatever reason, than comparable alternatives, then capital will flee the rail industry or will only be available at much higher costs than we see today, as evidenced by the cost of capital to the rail industry in the recent past when our financial performance was much less robust. The capital markets will have it no other way.

These points—that railroads must be able to earn sufficient revenue that we can invest in and grow our networks, and that, as public companies, we must provide our shareholders with a return that will entice them to invest their money with us—are foundational. The ability to invest in our networks allows us to improve safety, provide the levels of service that our customers demand, and create the efficiencies we need to help ensure that our economy is competitive in global markets.

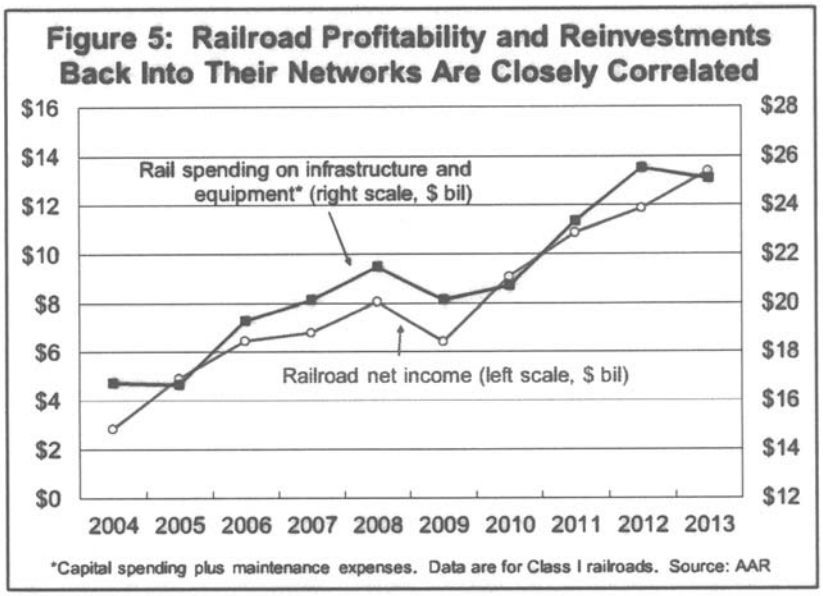
Now, it is true that freight railroad financial performance in recent years has been much improved compared to earlier years. I'm proud that, at Union Pacific, we announced last week that 2014 saw record operating revenue and operating income. But statements about railroads' "record profits" often ignore the fact that, until recently, rail profitability was generally relatively poor. Thus, an improvement from earlier years may be a "record," yet may still be only about average compared with the earnings achieved by most of the other industries against which railroads compete for capital.

Just one example to illustrate this point: return on equity (ROE) is a well-known measure of profitability. It reveals how much profit a company generates with the money shareholders have invested. Figure 4 shows that the ROE for the rail industry has much improved over the past few years, but is still only about average compared to the Fortune 500.



Make no mistake, Union Pacific is encouraged by our improvements in our financial condition in recent years, and by the rail industry's overall progress. At Union Pacific, we will continue to work very hard every day to see that those improvements continue so that we can return more value to our shareholders. But it would be a tremendous mistake for policymakers to view these improvements as a reason to cap rail earnings through price controls, artificial competitive constraints, or by other means. This would cause capital to flee the industry and severely harm rail-

roads' ability to reinvest in their networks. Figure 5 shows that, as rail industry profitability has risen in recent years, so has our spending back into our networks. You can't have one without the other. Indeed, if the American freight railroad industry is to fully deliver its potential benefits to the economy, its current financial performance should only be regarded as one step along the path toward sustainability, not as a final destination.



At a time when the pressure to reduce government spending on just about everything—including transportation infrastructure—is enormous, it makes no sense to enact public policies that would discourage private investments in rail infrastructure that would boost our economy and enhance our competitiveness. Improvements in rail profitability reflect the fact that the current system of rail regulation is working. After all, long-term sustainability through higher earnings is precisely what Congress meant for railroads to achieve when it passed the Staggers Act in 1980.

The Need for Efficiency

America's freight railroads, along with their Canadian counterparts, are the most productive and efficient in the world, and their productivity has skyrocketed since the Staggers Act instituted a system of balanced regulation in 1980. Today, U.S. railroads generate approximately double the freight volume they had in 1980, but they use far fewer miles of track, employees, locomotives, and gallons of fuel. These efficiency gains have largely been passed on to rail customers in the form of lower average rates—as mentioned earlier, down an average of 42 percent from 1980 through 2013 in inflation-adjusted terms.

Future rail efficiency gains will require continued significant expenditures on infrastructure and equipment (including large amounts of new capacity) and innovative new technologies, but they will also require appropriate public policies.

For example, the need for efficiency helps explain why railroads strongly oppose efforts to reverse existing policy under which the STB must first find that a railroad serving a terminal area is engaged in anti-competitive conduct before the STB can order the railroad to "switch," or interchange, traffic to another railroad when such an interchange is not necessary for freight delivery. Adding an interchange to a movement that is currently handled in single-line service adds substantial time, complexity, and costs to that movement. Over the years, railroads have invested tens of billions of dollars and enormous effort into concentrating traffic onto routes that are the most efficient for rail customers as a whole; part of this effort has been the development of very efficient and streamlined terminal switching. The result? Sharply higher productivity, reliability, and asset utilization, and lower freight rates for most rail customers. Forced reciprocal switching would destroy these terminal efficiencies, compromise the service improvements they have created for rail cus-

tomers, and raise rail costs. The added switching activity that would be required, the increased possibility of service failures caused by that new switching activity, and the complex operations that would be required to bring about the new interchanges would disrupt rail traffic patterns, produce congestion in rail yards, and undermine efficient service to customers.[5]

Likewise, one of the major reasons why railroads oppose changes in existing "bottleneck" policy at the STB is the sharply negative effect such changes would have on the efficiency of rail operations.[6] Requiring "bottleneck" service on demand could substantially change the physical routing of rail cars, forcing railroads to use routes and connecting points chosen by shippers, rather than by the railroads themselves. If bottleneck policy were reversed, efficiency and predictability would be lost, with potentially negative effects on rail safety as well. Rail traffic could by forced through little-used and physically inadequate connections and rail lines. Railroads would have to make costly new investments to support the new routings (at the expense of investments in more deserving areas), yet shippers could change their minds about those routes on a whim.

Changes to existing terminal switching and bottleneck policies would introduce an enormous amount of uncertainty into the rail system. Over the years, we've been working extremely hard to *remove* uncertainty from the rail system, because it detracts so much from the provision of reliable and cost effective service. Adding more can't possibly help railroads improve the performance of their networks, especially as railroads face increasing capacity constraints due to higher volumes associated with economic growth and changing shipping patterns.

The need for efficiency also helps explain why railroads oppose a variety of other proposals that have been proffered in recent years, including (but not limited to) forcing railroads to prioritize certain types of traffic over other types, the imposition of speed limits on certain types of traffic that are not necessary from a safety standpoint, and local bans on the transport of certain commodities in certain areas. When considering these and similar proposals, policymakers should take great care in weighing the supposed benefits of the proposals with the substantial harm they would cause to railroad efficiency and, consequently, to our Nation's economic well-being. It's also crucial that policymakers remember that railroads are integrated and interconnected networks: what happens in one location could easily have ramifications in locations hundreds or even thousands of miles away.

Fact-Based Safety Regulation

For our Nation's railroads, including Union Pacific, pursuing safe operations is not an option, it's an imperative. We have an obligation to operate safely for the benefit of our employees, our customers, and the communities we serve. The rail industry's strong and pervasive commitment to safety is reflected in its excellent safety record. In fact, as Figure 6 shows, recent years have been the safest in history for railroads. Preliminary data indicate that railroads had the lowest train accident rate in history in 2014.

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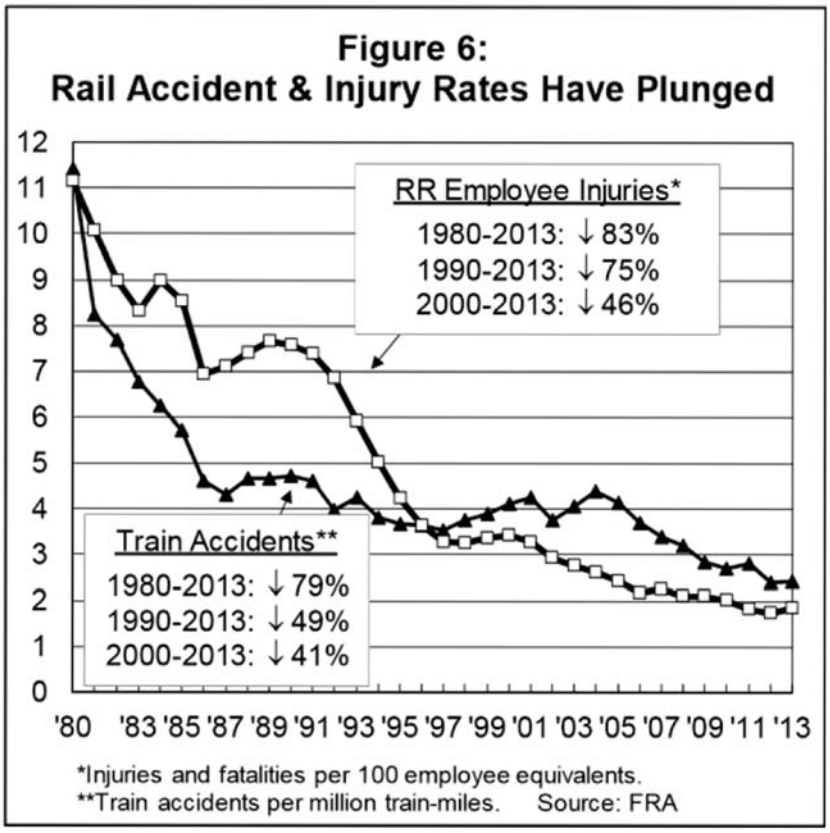
[5] For more on reciprocal switching, see *https://www.aar.org/BackgroundPapers/Reject%20Calls%20For%20Mandatory%20Reciprocal%20Switching.pdf.*

[6] In "bottleneck" situations, one railroad can move freight from an origin to an intermediate point, and from that intermediate point on to a final destination, and at least one other railroad can also move the freight from that intermediate point to the final destination. For a more detailed explanation of the bottleneck issue, see: *https://www.aar.org/BackgroundPapers/Bottleneck%20Policy%20%20Dont%20Fix%20What%20Isnt%20Broken.pdf.*



Virtually every aspect of rail operations is subject to strict safety oversight by the Federal Railroad Administration (FRA). Among many other areas, railroads are subject to FRA regulation regarding track and equipment inspections; employee certification; allowable operating speeds; and the capabilities and performance of signaling systems. Hundreds of FRA personnel perform regular inspections of rail facilities and operations throughout the country, and in many states, FRA safety inspectors are supplemented by state safety inspectors.

It makes no financial sense to operate an unsafe railroad, so even if the FRA did not exist, I submit to you that railroads would have very strong incentives to operate safely. That said, railroads agree that some level of rail safety regulation is necessary—reasonable people can disagree over what that level should be—if for no other reason than to instill public confidence in the safety of railroads. But I also submit that, whatever the level, it is critical that rail safety oversight should be well grounded in evidence-based, scientific understanding, rather than in unsubstantiated claims or perceptions.

Two-Person Crews

The current debate over the number of crew members inside a freight train's locomotive cab is a case in point. Legislation has been proposed that would mandate that all over-the-road freight trains must operate with a certified locomotive engineer and a certified conductor in the locomotive cab. Railroads respectfully, but strongly, oppose this legislation.

Existing FRA regulations do not mandate minimum crew staffing requirements. Some non-Class I railroads have long operated with just one person in the locomotive cab, and thousands of Amtrak and commuter passenger trains, carrying hundreds of thousands of passengers, operate every day with just one person in the locomotive cab. On Union Pacific and other Class I railroads, the subject of crew size has typically been addressed as part of the collective bargaining process with rail

labor. For Class I railroads, industry practice to date has been to have two-person crews (and in a few areas three-person crews) for over-the-road mainline operations. That said, it is important for Class I railroads to retain the flexibility to seek agreement with labor, at the appropriate time, to operate over-the-road mainline trains with one crew member.

The major reason offered by proponents of a two-person crew mandate is that it would enhance rail safety. Yet no one—not the FRA, not sponsors of the legislation in Congress, not rail labor—can point to hard data that support this contention. In fact, an AAR review of the FRA train accident database going back many years can find no evidence that trains with oneperson crews have accidents at a higher rate than trains with two-person crews. Put another way, there is no demonstrated correlation between the number of crew members in the cab and train safety. The FRA itself, after its own review, stated in 2009 that it found no "factual evidence to support the prohibition against one-person operations." [7]

Railroads believe that the forthcoming implementation of positive train control (PTC) potentially presents an opportunity to move to one-person crews with no degradation of safety. PTC describes technologies designed to automatically stop a train before certain accidents caused by human error occur. Specifically, the Rail Safety Improvement Act of 2008 (RSIA) mandates that railroads' PTC systems must be designed to prevent train-to-train collisions, derailments caused by excessive speed, unauthorized incursions by trains onto sections of track where maintenance activities are taking place, and the movement of a train through a track switch left in the wrong position.[8]

When fully operational, railroads' PTC systems will be able to determine the precise location, direction, and speed of trains; warn train operators of certain potential problems; and take immediate action if the operator does not respond to the warning provided by the PTC system. For example, if a train operator fails to begin stopping a train before a stop signal or slowing down for a speed-restricted area, the PTC system would apply the brakes automatically before the train passed the stop signal or entered the speed-restricted area.[9] As such, PTC advances rail safety through the use of advanced technology, while at the same time eliminating any need for "a second set of eyes" in locomotive cabs.

Neither Union Pacific nor other Class I railroads seek the ability to impose one-person crews unilaterally or haphazardly. Rather, we seek the flexibility to continue to work with rail labor under the existing collective bargaining framework to identify when the presence of PTC allows a reduction in the number of crewmembers in a locomotive cab without jeopardizing rail safety. It is very clear to me, as it is to my industry colleagues, that it is in no one's best interest—certainly not a railroad's—to take steps that degrade safety.

Safety Performance Standards

Moving beyond one particular safety-related issue, I respectfully suggest that it's time to consider a change in the broad focus of rail safety oversight.

There are two general approaches to workplace safety regulation. The first, so-called "design-based standards," is the method most commonly used by the FRA. Design-based standards specify the precise characteristics of workplace facilities, equipment, and processes a firm must use in the manufacture and delivery of its product or service. For example, the FRA regulation mandating the interval between certain types of locomotive inspections is a designbased standard.

"Performance-based standards," on the other hand, define the desired result rather than mandating the precise characteristics that a workplace must exhibit. The point of a performancebased goal is to focus attention and effort on the outcome, not the method.

Some of the old regulations would be replaced under a performance standard regime. That said, risk-based performance standards are a reform, not an abandonment, of safety regulation. Railroads would remain accountable. Except in emergencies or after continued failure to meet targets, the FRA would no longer specify how a railroad would achieve its safety goals. Instead, the FRA would oversee and validate the goal-setting process, ensure that the measures and data used are accurate, and impose any necessary sanctions. The use of performance standards would recognize that railroads and their employees are in the best position to know how to improve safety and reduce the costs of injuries and accidents.

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[7] From a 2009 FRA letter rejecting a rail labor request to prohibit one-person crews.

[8] In this context, a switch is equipment that controls the path of trains where two sets of track diverge.

[9] For more detail on PTC, see the June 19, 2013 testimony of Edward Hamberger, President and CEO of the Association of American Railroads, to the Senate Commerce Committee.

There is little evidence that rigid design-based standards have a positive impact on railroad safety. They are, however, very costly for both railroads and the FRA to administer and maintain. They also tend to impede innovation because they "lock in" existing designs, technology, and ways of thinking. Reliance on a performance-based approach would allow the FRA the best opportunity to ensure the attainment of desired safety rates at lower cost for the FRA as well as for railroads.

Performance standards have been encouraged elsewhere in the U.S. government. For example, the 1990 Amendments to the Clean Air Act directed electric utilities to limit their emissions of sulfur dioxide and nitrogen oxide, but did not tell the utilities how to meet those standards. In the area of meat and poultry inspection, scientific practices for identifying and reducing microbial contamination have partly displaced strict regulations that prescribe in detail how food safety objectives are to be achieved. The National Highway Traffic Safety Administration (NHTSA) sets and enforces safety performance standards for motor vehicles and equipment, and the Pipeline and Hazardous Materials Safety Administration (PHMSA) has developed and issued regulations that address risk analysis and integrity management programs for pipeline operators that largely utilize a performance standard process.

Capacity Enhancement Through Permitting Reform

Under existing law, state and local regulations (other than local health and safety regulations) that unreasonably interfere with freight rail operations are preempted by Federal regulations. These Federal regulations protect the public interest while recognizing that freight railroads form an integrated, national network that requires a uniform basic set of rules to operate effectively.

Nevertheless, rail expansion projects often face vocal opposition from members of affected local communities or even larger, more sophisticated special interest groups from around the country. In many cases, railroads face a classic "not-in-my-backyard" problem, even for projects for which the benefits to a locality or region far outweigh the drawbacks. This means that the amount of time and energy it takes to get projects from the drawing board to construction and completion is growing longer every day.

In the face of local opposition, railroads try to work with the local community to find a mutually satisfactory arrangement, and these efforts are usually successful. When agreement is not reached, however, projects can face lawsuits, seemingly interminable delays, and sharply higher costs.

A number of major rail intermodal terminal projects that yield tremendous gains for the overall logistical system, for example, have been and continue to be unduly delayed. Just one of the many examples involves the modernization and expansion of an intermodal terminal UP has been planning for years in San Joaquin County, California. UP participated in reviews of projected environmental benefits and less favorable impacts of the project in a process following California's Environmental Quality Act (CEQA) guidelines with the county. CEQA is the California statute that is very similar to the National Environmental Policy Act (NEPA), requiring transparency and public participation in certain projects. Unlike NEPA, CEQA requires mitigation of environmental impacts. UP and the county, with input from other

agencies, identified suitable mitigation of the unfavorable impacts. However, even though the county has been a proponent of the project and UP has now obtained its permit, delays resulting from various agencies' lack of resources or outright challenges have stalled UP's progress and ultimately required UP to postpone its investment in this facility.

Some of the ways that policymakers can streamline rail-related environmental permitting include:

- *Extend environmental review provisions of MAP–21 to railroads.* MAP–21 contains a number of provisions to facilitate the construction of transportation projects, such as timelines, but the relevant statute is written in a way that excludes rail projects.
- *The U.S. Department of Transportation (DOT) should have a single, uniform set of categorical exclusions.* A uniform set of categorical exclusions for all DOT agencies would lead to better coordination of project review.
- *Extend highway exemption in Section 106 of the National Historic Preservation Act to railroads.* In 2005, the DOT generally exempted Federal agencies from the Section 106 requirement of having to take into account the effects of their undertakings on the interstate highway system. This exemption should be extended to rail rights-of-way.

Railroads are not asking policymakers to allow railroads to wantonly harm the environment. They do want policymakers to help improve the movement of freight by taking steps to shorten the time it takes for reviews of rail expansion projects in ways that do not adversely affect the quality of those reviews.

Extending the Statutory Deadline for Positive Train Control

I spoke earlier in this testimony about the potential for positive train control to help ensure that a train will be able to be safely operated with one person in the locomotive cab. Before that day comes, however, railroads must finish developing and installing PTC systems on their networks.

Frank Lonegro from CSX provided testimony to the full Senate Commerce Committee yesterday on PTC. I won't repeat everything he said here. For the purposes of this testimony, I simply want to reiterate his point about the need to extend the existing December 31, 2015 statutory deadline regarding PTC implementation.

As Mr. Lonegro stated, freight railroads have been working tirelessly, and spending tremendous amounts of money, to meet the PTC mandate. As of the end of 2014, UP has invested more than $1.5 billion on PTC, and we expect to spend close to $400 million this year. Our current estimate for the total cost of PTC on our railroad is approximately $2 billion.

Despite these huge expenditures, PTC's complexity means that more time is needed so that a logical plan for sequencing PTC's implementation can be instituted. Under the existing statute, however, there are no provisions that allow for a phased roll out, including comprehensive testing, of the technology. That's an extremely risky approach. In the technology world, major technology projects typically involve "beta versions" or their equivalent in which the technology is introduced in a deliberate fashion so that the inevitable bugs are identified and addressed. We need that for PTC. Adjusting the implementation deadline would more accurately reflect railroads' tremendous efforts to design, install, and properly test this incredibly complex technology.

The freight railroad industry is fully committed to PTC, but it must be done correctly and we must make absolutely certain that the system will work as it should. That's simply not possible by the end of this year.

Conclusion

America today is connected by the best freight rail system in the world. Looking ahead, our Nation cannot prosper in an increasingly competitive global marketplace if we do not maintain our best-in-the-world freight rail system.

That's why we cannot afford to be complacent. To be viable and effective, especially in the face of projected increases in freight transportation demand over the next 20 years, railroads must be able to both maintain their existing infrastructure and equipment and build the substantial new capacity required to handle the additional traffic they will be called upon to haul. They must be allowed to find the most efficient ways possible to meet their customers' needs. And they must use the best possible techniques and processes to ensure that rail safety continues to improve.

I'm sure I speak for the other freight railroads when I say that we will continue to work with you, other policymakers, our employees, our customers, and others to ensure that America's freight railroads retain their best-in-world status.

Senator FISCHER. Thank you, Mr. Fritz.

Mr. Means?

STATEMENT OF DOUGLAS MEANS, EXECUTIVE VICE PRESIDENT AND CHIEF SUPPLY CHAIN OFFICER, CABELA'S

Mr. MEANS. Chairman Fischer and members of the Subcommittee, thank you for inviting me to testify before you today.

My testimony will specifically address some of the challenges Cabela's experiences today in today's supply chain and suggests some solutions to ensure that our nation's transportation system remains reliable and efficient for the movement of goods.

Shippers are facing a unique set of challenges in today's climate. Managing inventory and operating a just-in-time network is essential to the health of any retailer and requires a predictable and efficient transportation network. When the efficient system fails to exist, significant costs are added to the supply chain. These actual costs also impact the selection of gateways to the U.S. and decisions on the locations of domestic distribution centers.

As we make significant long-term investments in our own facilities, there must be an assumption that the transportation infrastructure will support those decisions far into the future. Presently, Cabela's and many of our suppliers are experiencing a number of inefficiencies as a result of the infrastructure not keeping pace with demand.

We are all aware that the current congestion at the West Coast ports is causing significant negative impacts to our supply chain. Besides the increased costs being incurred, we have added anywhere between 5 and 15 days of lead time to our supply chain. An important factor to remember is that those additional days of lead time are unplanned time, which in today's just-in-time environment will likely result in lost sales, increased costs, and poor customer service.

A cohesive national freight policy that concentrates on improving all services in a cooperative manner must be part of the next transportation authorization bill. The efficiency of our supply chain is compromised if any of those services are interrupted or become unpredictable. A strong and integrated transportation system is vital to our industry.

We support surface transportation reauthorization legislation that focuses on improving the fluidity and flexibility of our Nation's transportation system. Congestion leads to increased travel times, which increases cost and negates the efficiencies developed in a retailer's supply chain, including our sustainability initiatives.

Along with volume, customer expectations of shorter delivery times, improved visibility to product, and more reliable service requires the transportation infrastructure to support these needs. Without a high level of confidence in the reliability of the network, we lose our ability to satisfy our customers.

As the driver shortage issues continue to impact capacity, alternatives must continue to be assessed. First and foremost, a national intermodal structure is needed. We must have a national system that places priority on connectivity and accountability if we are to confront our transportation needs and wants, while keeping in mind that our choices affect this Nation's economic growth.

It is a vital necessity that Congress take into consideration the impact that last-mile connectors have on the viability of the supply chain. It is critical to have a smooth transition between the highway system, freight facilities, and our distribution centers. Any weak link in the supply chain negatively impacts the entire chain, raising costs and lowering productivity.

A multimodal, efficient, predictable, and fluid transportation network is essential to the success of retailers. The long-term health of the entire network is critical to protecting our investments and to being competitive. With this kind of network in place, we can utilize all of its assets to support the specific needs of our customer and our many customers.

Senators, thank you again for the opportunity to address the topic of a need for a comprehensive national transportation policy. And I would be pleased to respond to any additional questions you may have.

[The prepared statement of Mr. Means follows:]

PREPARED STATEMENT OF DOUGLAS MEANS, EXECUTIVE VICE PRESIDENT AND CHIEF SUPPLY CHAIN OFFICER, CABELA'S

Chairman Fischer, Ranking Member and members of the Subcommittee, thank you for inviting Cabela's to testify before you today. Thank you for giving us this opportunity to provide a retailer's perspective on improving the performance of our Nation's transportation network. My name is Douglas Means, and I am responsible for overseeing Cabela's global supply chain. My testimony will specifically address some of the challenges Cabela's experiences in today's supply chain and our suggested solutions to ensure that our Nation's transportation system remains reliable and efficient for the movement of our goods.

Background

For background, Cabela's is a leading specialty retailer and the world's largest direct marketer of hunting, fishing, camping, and related outdoor merchandise. Since our founding in 1961, Cabela's® has grown to become one of the most well-known outdoor recreation brands in the world and has long been recognized as the World's Foremost Outfitter®. Through our established direct business and our growing number of destination retail stores, we offer a wide and distinctive selection of high-quality outdoor products at competitive prices, while providing superior customer service. We also issue the Cabela's CLUB Visa credit card, which serves as our primary customer loyalty reward program.

We are headquartered in Nebraska with 64 stores, 5 customer contact centers, 4 Distribution centers, and 1 Returns Center in 33 states and Canada. Our supply chain relies on a well-connected and fluid transportation network. As a retailer, we are a customer of the entire system with more than 6,500 vendors in the US. This is not limited to the U.S. infrastructure. To support our private labels, we import goods directly from 20 countries to be distributed to either stores or direct to customers, supporting our E-Commerce and Catalog channels. We utilize U.S. ports, and the surface transportation corridors, both truck and rail. My supply chain team works hard deliver goods to our customers efficiently, so that we can guarantee the lowest possible cost while also ensuring the best service to meet our customer expectations. Congestion or lack of capacity at any point in the supply chain greatly increases the risk of disappointing our customers by either not providing the merchandise our customers expect or not meeting our customer delivery expectations.

Current Environment

Shippers are facing a unique set of challenges in today's climate. Managing inventory and operating a just in time network is essential to the health of any retailer and requires a predictable and efficient transportation network. When an efficient system fails to exist, then significant costs are added to the supply chain. For example, take into consideration the congestion and substantial slowdown issues that are currently taking place at the ports, driver shortages that are leading to trucking capacity issue, and the congestion complications at various intermodal yards; significant costs are being added to the supply chain. Besides the obvious higher transportation costs from these developing circumstances, delivery lead times are also being

increased, adding to the costs of managing inventory. Actual results also impact the selection of gateways to the U.S. and decisions on the locations of domestic distribution center locations. As we make significant long term investments in our own facilities, there must be an assumption that the transportation infrastructure will support those decisions far in to the future. Presently, Cabela's and many of our suppliers are experiencing a number of inefficiencies as a result of infrastructure not keeping pace with demand.

We are all aware that the current congestion at the West Coast Ports is causing significant negative impacts to our supply chain. Besides the increased costs being incurred, we have added anywhere from 5–15 days of lead time to the supply chain. An important factor to remember is that these additional days of lead time are unplanned time, which in today's just in time environment will likely result in lost sales, increased costs, and poor customer service.

Compounding the port issues are capacity issues for over the road drivers; capacity which is needed to make up time. Bottlenecks and delays at the intermodal rail yards also forces this volume onto trucks that should have moved on the intermodal rail network.

The Importance of a National Freight Policy

Retailers use all modes of transportation to deliver our products from factory to store including planes, trains, ships, and trucks. A cohesive national freight policy that concentrates on improving all services in a cooperative manner must be part of the next transportation authorization bill. Retailers have maximized the efficiency of moving goods through the supply chain in part by ensuring our transportation decisions reflect the multitude of services that exist. The efficiency of our supply chain is compromised if any of those services are interrupted or become unpredictable. A strong and integrated transportation system is vital to our industry. We support surface transportation reauthorization legislation that focuses on improving the fluidity and flexibility of our Nation's transportation system.

For the future of our economy and to maintain our global competitiveness, it is critical that a national freight policy be developed. As freight volumes increase, so will the strain on the transportation network. Congestion leads to increased travel times, which increase costs and negates the efficiencies developed in retailer's supply chains, including sustainability initiatives.

Along with volume, customer expectations of shorter delivery times, improved visibility to product, and more reliable service requires the transportation infrastructure to support these needs. Without a high level of confidence in the reliability of the network, we lose our ability to satisfy our customers.

As a comprehensive transportation policy is developed, safety must be a primary consideration throughout the entire system. A national policy that enables the free flow of commerce is essential. Investments in vital infrastructure are necessary to remain competitive in a global economy.

KEY INITIATIVES

A National Intermodal Structure

As the driver shortage issue continues to impact capacity, alternatives must continue to be assessed. First and foremost, a national intermodal structure is needed. While making decisions, the flow of freight across all modes needs to be taken into account. We must have a national system that places a priority on connectivity and accountability if we are to confront our transportation needs and wants, while keeping in mind that our choices affect our Nation's economic growth.

Support For Last Mile Connectors

It is a vital necessity that Congress take into consideration the impact that last mile connectors have on the viability of the supply chain. It is critical to have a smooth transition between the highway system, freight facilities, and our distribution centers. Any weak link in the supply chain negatively impacts the entire supply chain, raising costs and lowering productivity.

Reduce Regulatory Burdens On Transportation

Truck size and weight regulations should be reconsidered by Congress. Increasing these standards would enable fleets to be more efficient, moving more product with fewer trucks. This would also improve sustainability, using less fuel, thus reducing greenhouse gas emissions. Changes to current standards would allow us to deliver the same amount of goods by making fewer trips either between distribution centers or from distribution centers to the stores.

The impact of the Hours of Service rules that were suspended in September for one year should be reviewed with results from more detailed studies. It is critical

to give carriers the ability to craft specific solutions to support the business needs in a more efficient manner. Any regulations should be developed with an eye towards practical solutions to specific problems.

Innovative Broad Based Funding

Cabela's is well aware that the improvement of our transportation system is costly and that integrating key policy decisions into the next surface transportation legislation requires additional revenue. Our transportation system is vital to our economy and must be protected by adequate Federal funding.

Innovative funding methods must be considered where there are dedicated funding sources for transportation needs. Revenue sources should be fairly assessed against all users and should not single out a small portion of users of the system. We believe everyone benefits from an efficient transportation network.

Conclusion

A multimodal, efficient, predictable, and fluid transportation network is essential to the success of retailers. The long term health of the entire network is critical to protecting our investments and to being competitive. With this kind of network in place, we can utilize all of its assets to support the specific needs of our company and our customers.

Senators, thank you again for the opportunity to address the topic of a need for a comprehensive national transportation policy, and I would be pleased to respond to any additional questions you may have.

Senator FISCHER. Thank you, Mr. Means.

Governor Rendell?

STATEMENT OF HON. EDWARD G. RENDELL, CO-CHAIR, BUILDING AMERICA'S FUTURE

Mr. RENDELL. Madam Chairman, thanks for the opportunity to testify.

I am here representing Building America's Future, which is a nonprofit organization dedicated to the proposition that we need to revitalize America's infrastructure before it is too late. And I am here to report to you that it is almost too late.

My co-chairs in this venture were Mayor Bloomberg of New York and Governor Schwarzenegger from California. Governor Schwarzenegger has withdrawn to go back to the movie industry, but he left us with the most endearing description and definition of "infrastructure." When asked by his 8-year-old son, "Daddy, what's infrastructure?", he said, "What Daddy used to blow up in the movies." He has been replaced by Ray LaHood, former Secretary of Transportation, as one of our co-chairs.

Building America's Future wants to be clear about one thing: Our infrastructure is deteriorating. It is falling apart, and we are falling behind. Just 10 years ago, the World Economic Forum ranked our infrastructure best in the world. Last year, we were ranked 12th best in the world. We are falling behind. It is endangering public safety. It is ruining quality of life. And as these gentlemen have testified, it is hurting the American economy.

One example: we have 12 major Atlantic Coast ports. As the Panama Canal gets dredged deeper and deeper, these supertankers they call Panamax tankers are coming to the East Coast. Only 2 of the 12 Atlantic ports are dredged sufficiently to receive them, so they are going to go to Canada to unload their cargo, and Canada is going to get the longshoremen jobs and trucker jobs that pay $60,000, $70,000 a year.

Congress talks about middle-class jobs; those are middle-class jobs that pay a family-sustaining income. And because we don't

have a sufficient infrastructure, because we have raided the Harbor Maintenance Trust Fund, something that WRDA finally corrected, we don't have the money to dredge sufficiently and we are losing those jobs.

Metallurgical coal is highly in demand in China. You find it in Australia and the United States. Labor costs to mine it are about the same in both countries, but because it is four times as expensive to get the metallurgical coal in the U.S. to the ports as it is in Australia, China buys from Australia first and only comes to us when the Australian coalmining can't meet the demand.

We are losing dollars in every way we look. We are losing jobs everywhere we look.

The answer, as Ranking Member Blumenthal said, is one single word. And you know that to be true, Madam Chairman—it is "investment"—because you invested in fixing the roads in Nebraska with L.B. 84, something that was highly praised and has spurred the Nebraska economy. We have to invest.

There are three ways to invest: by bringing private capital to bear, by having the states invest, and having the Federal Government invest.

I am happy, as a former Governor, to tell you that the states are doing their job. In 2014, red states and blue states alike raised their gas tax or increased their sales tax. Governor McConnell did it in Virginia. Governor Corbett, with a Republican legislature, did it in Pennsylvania. Wyoming, with an all-Republican cast of characters, raised their gas tax 10 cents. Pennsylvania actually raised it 28 cents over 5 years. Blue states did it. This year, South Carolina, South Dakota, Minnesota, Michigan, and Missouri are proposing significant increases in gas taxes.

But they cannot do it alone. I will give you one example. I–95, the Nation's busiest highway, goes through Philadelphia for 18 miles. There are 26 bridges that support I–95 in Philadelphia. Nineteen of them are structurally deficient. To fix those bridges alone, to make them safe—and one of them almost buckled in 2008. To fix those bridges alone would cost $3.2 billion. The city and the state alone can no way, no how meet that demand.

The American infrastructure is crumbling, and the time to do something about it is now. When Ronald Reagan raised the gas tax—and, yes, for our Republican members, Ronald Reagan raised the gas tax—when he raised the gas tax, he said, why would we put off for 5 or 10 years doing something that we need to do today, because it is going to be twice as expensive in 10 years. President Reagan was right. The time to act is now.

On the private sector, BAF recommends that the Congress do a series of things. In MAP–21, you raised TIFIA from about—the limit—from $220 million to $1 billion. Still doesn't meet the demand for TIFIA. We propose to raise it to $2 billion.

Lift the cap, the volume cap, on private activity bonds. The qualified public infrastructure bonds that the president recommended in his State of the Union are also a very good step in the right direction because it shields the PABs from the AMT tax, which makes it a very good investment vehicle. Let's get the private sector involved.

Create a Federal infrastructure bank. Create a Federal infrastructure bank funded with $5 billion. You will get it back. The European infrastructure bank makes money every year because they loan the money out and the money is returned with interest. They make money. That $5 million would not be spent; it would generate a lot of activity, and you would make the money back.

Remove the Federal ban on tolling interstates. That is one of the greatest disincentives. If we want the private sector to get involved, we have to give them a reasonable return on their investment. Tolling is one way for states to do that.

We used to be able to toll freely. In, I think, the late 1990s, Congress put a bar on tolling Federal interstates. It makes no rhyme or reason. People say, well, we don't want to pay for it twice. Well, when you buy a car, you pay for it once, and then you pay to maintain it. And we need to do the same thing.

Lift the ban on tolling. If you are unwilling to do the job federally, give the states the power to do it. And tolling is an important vehicle to give a rate of return on private investment.

So the states will do their part; you can do things to free up private capital. But, in the end, it is inescapable that the Federal Government must invest more in our infrastructure. You knew that in Nebraska. Senator Klobuchar knows it in Minnesota. We all know that that is the only way to do it. It costs money to repair roads, to build new roads. It costs money to repair bridges.

The Federal Government ought to invest money. The best vehicle for doing it, for the time being, is the Corker-Murphy bill. It raises the gas tax 10 cents and then adjusts it for inflation going forward.

As you all know, the last time the Federal Government raised the gas tax was in 1994 when President Clinton was in office. The Federal gas tax is now 18 cents, but if you adjust it for inflation, it is now worth 11 cents a gallon—11 cents a gallon—because it hasn't been raised in 20 years.

We need to raise the gas tax. We need to adjust it for inflation on a yearly basis. It is absolutely the least you can do. That 10-cent increase for a driver who drives 12,000 miles a year, which is the average American driver, who has a vehicle that gets 24 miles a gallon, will cost less than $2 a week, less than $100.

The Texas Transportation Institute did a study and found the cost of inaction. We always talk about how much it is going to cost if we act, but we never talk about how much it is costing when we don't act. The cost of inaction —and the gentleman from the trucking industry talked about repairs and accidents to the trucks that come from bad roads and inadequate bridges. The cost of idling in traffic because we have congested roads, the cost of damage to our vehicles averages $818 a year for every driver. Raising taxes: less than $100. Cost of inaction: $818.

There is no way out. It is inescapable. Do your jobs. Raise the gas tax. The Chamber of Commerce and the AFL–CIO, who probably couldn't agree that today is Thursday, they agree that we need to raise the gas tax.

We will support you. The American people will grumble for a little bit, but after a while they won't even have any idea that you raised the gas tax.

I would like to ask——

Senator FISCHER. That is only because, Governor, you are saying it over and over again.

Mr. RENDELL. I would like to ask your staff a question.

How many of you know what the Federal gas tax is per gallon? Raise your hand if you know exactly what the Federal gas tax is per gallon.

Not the Senators, the staff.

Senator FISCHER. Oh.

Mr. RENDELL. I don't want to embarrass the Senators.

Two out of 20 staff members.

Senator FISCHER. No, no.

Well, if you could wrap up, Governor, please.

Mr. RENDELL. I am done. And we are done if we don't do something.

[The prepared statement of Mr. Rendell follows:]

PREPARED STATEMENT OF HON. EDWARD G. RENDELL, CO-CHAIR, BUILDING AMERICA'S FUTURE

Chairman Fischer and Members of the Subcommittee, thank you for the opportunity to testify before you on the need for investment in the Nation's transportation network. This hearing could not be more important as I believe this is one of the most urgent issues facing our country.

I am here today as a co-chair of Building America's Future, an organization that I co-founded with former New York Mayor Mike Bloomberg and former California Governor Arnold Schwarzenegger. We have been pleased to have former U.S. Secretary of Transportation Ray LaHood join as a co-chair last year.

Building America's Future represents a diverse and bipartisan coalition of state and local officials working to advance infrastructure investment to promote economic growth, global competitiveness and better quality of life for all Americans.

America's infrastructure is falling apart and we as a nation are falling behind.

For too long, Washington has ignored the warning signs. Whether it be the D+ grade that the American Society of Civil Engineers assigned to the Nation's infrastructure or the 25 percent of America's bridges that are in need of major repair or upgrade, policymakers have hid their heads in the sand and have not taken any meaningful action to modernize our transportation network.

If we continue as a nation to put off critical infrastructure investment, we risk falling behind the rest of the world. In fact, it's already happening. In 2005 the World Economic Forum ranked the economic competitiveness of U.S. infrastructure number one in the world. Now, 10 years later, we are ranked at number 12. We are getting beat by France, Iceland and Singapore.

America's railroad network has been neglected and under financed for decades. Once the premier system in the world, U.S. rail infrastructure ranks 15th in the world behind Malaysia and Luxembourg.

Because our rail network is riddled with choke points and outdated crossings and bridges that require slow speeds for safety, passenger trains in the U.S. run at slower speeds today than they did in the mid-20th century.

America's fastest train, the Acela Express running between Boston and Washington reaches a top speed of 150 miles per hour—most of the time it averages speeds closer to 70 or 80 miles per hour.

In Chicago, the Nation's biggest rail center, congestion is so bad that it takes a freight train longer to get through the city's limits that it does to get to Los Angeles. Delays like this inhibit the efficient movement of people and goods and are a drag on our economic competitiveness.

Other countries understand that port innovation and capacity is key to competitiveness in the global economy. Since 2000, China has invested over $3.5 trillion in its ports. Brazil has invested over $250 billion since 2008. And as a result, China is now home to six of the world's ten busiest container ports while the U.S. has none in the top ten. Shanghai's port now moves more container traffic in a year than the top eight U.S. ports combined. A portion of Brazil's investment has gone into its Acu Superport, larger than the island of Manhattan, with state-of-the-art highway, pipeline and conveyor-belt capacity to ease the transfer of raw materials onto ships heading to China.

Here at home, and despite a large surplus in the Harbor Maintenance Trust Fund, the busiest U.S. harbors are under-maintained. The U.S. Army Corps of Engineers estimates that full channel dimensions at the Nation's busiest 59 ports are available less than 35 percent of the time. Only two of our East Coast ports are deep enough to accommodate the post-Panamax ships that will become the norm when the newly widened Panama Canal opens.

The situation on our roads is not much better. The Texas Transportation Institute's 2012 Urban Mobility Report states that traffic congestion had Americans wasting time and 2.9 billion gallons of fuel at a cost of $121 billion—that equates to $818 per commuter. And it's no wonder. From 2000 to 2012 the Nation's population grew by 11.6 percent and the vehicle fleet increased by 10.7 percent but the road system has only grown by four percent.

Although the Federal Government represents roughly 25 percent of transportation and water infrastructure spending, it has provided much of the funding for operating and maintaining the Nation's air traffic control system. Despite that, the United States is living with an outdated aviation system that doesn't serve the needs or expectations of 21st century travelers or cargo shippers. As a result, the World Economic Forum ranks U.S. air transportation infrastructure 9th in the world—behind Panama and Norway.

All of these deficiencies have made our Nation's transportation network less reliable and efficient. And this means higher costs for businesses and consumers. Other sectors of our economy understand this and are eager for action.

Building America's Future recently partnered with the National Association of Manufacturers to survey the NAM membership on their views regarding the state of America's infrastructure.

The survey found that 65 percent of those polled believe that U.S. infrastructure is *not* positioned to respond to the competitive demands of a growing economy over the next 10 to 15 years.

Additionally, 70 percent believe that America's infrastructure needs either "quite a bit of improvement" or "a great deal of improvement."

The nation's governors have grown weary of waiting for Washington to act.

Consequently, actions at the state level have been gaining momentum as governors from red and blue states alike have proposed or signed legislation to increase the gas tax, replace the gas tax with a sales tax on fuels, or referenda allowing voters to increase local sales taxes. States where this has occurred include Wyoming, Virginia, New Hampshire, Massachusetts, Rhode Island, Maryland, Pennsylvania, Delaware, Iowa, Kentucky, Utah, Washington; New Mexico, Georgia, South Dakota, Vermont and Minnesota.

In 2013, Oregon Governor John Kitzhaber signed legislation to establish a 5,000 person pilot program to test the feasibility of transitioning to a system where motorists are charged by miles instead of paying a gas tax.

More states are approving legislation to give them the authority to pursue public private partnerships. 33 states now have such authority.

The success rate for local ballot initiatives that increase revenue or funding for transportation have enjoyed high success rates in recent years. In 2014, 72 percent of such referenda were approved by voters.

Already in the past two months, several governors have either signed legislation to increase revenue or urged their legislatures to approve such proposals during the 2015 session.

Michigan Governor Rick Snyder signed a bill in December that would authorize a ballot initiative on May 5 to allow voters to decide whether or not to increase the sales tax by one percent with revenue going towards transportation. Just last week, South Carolina Governor Nikki Haley said she would sign legislation to increase the gas tax by 10 cents a gallon over three years if it was coupled with a cut in the state's income tax. In his State of the State Address, Missouri Governor Jay Nixon urged his legislature to consider raising the gas tax as way to generate transportation revenue.

While it is encouraging to see such actions at the state level, we must not lose sight of the fact that there is a clear and abiding Federal role in setting the Nation's transportation policy. Without an overriding national vision and network, America's transportation infrastructure would resemble a patchwork of disconnected roads and rails; our aviation system would be untenable; goods movement would be greatly hindered. And all of this would cost businesses and consumers billions of dollars.

It is vital that all modes of transportation from roads to ports to rail to aviation work together to strengthen and modernize America's transportation network.

To regain America's economic status as a world leader, Building America's Future recommends:

- Creating a commission charged with producing a ten-year critical infrastructure plan—covering transportation, water, energy and broadband—that makes significant new investments. The Congressional Budget Office has concluded that an annual investment of $185 billion would be economically justified.
- Passing a long-term transportation bill.
- Identifying a long-term and sustainable source of revenue for the Highway Trust Fund. BAF supports increasing the gas tax by 10 cents and indexing it to inflation.
- Further increasing the authorization for TIFIA and raising or lifting the cap on Private Activity Bonds.
- Eliminating the Federal restrictions on tolling interstates.
- Targeting Federal dollars to economically strategic freight gateways and corridors.
- Investing more strategically in projects of national or regional significance and that will deliver real economic returns.
- Establishing a National Infrastructure Bank.
- Creating a new type of municipal bond called Qualified Public Infrastructure Bonds as proposed by President Obama earlier this month.
- Making the TIGER program permanent.
- Upgrading our airport infrastructure by modernizing the Passenger Facility Charge to $8.50
- Getting NextGen up and operational as soon as possible.

The other option is to let the status quo prevail. We can continue to underinvest in our critical infrastructure. We can continue to sit on the sidelines and watch countries like France, Brazil and Malaysia make the investments in 21st century transportation networks and infrastructure. We can continue to fall apart and fall behind.

Infrastructure is an economic driver and has the added benefit of creating long-term quality jobs. It improves the quality of our lives and it enhances our economic competitiveness. There is no better time to invest in America's future. We have seen interest rates at record lows thereby making it more attractive to build. But as the economy continues to recover, those rates will begin to rise and so will the costs to build and repair our Nation's infrastructure. We must act now.

I urge you to work with your colleagues in the House and with the President to make the hard choices that are necessary to craft a serious long-term infrastructure investment strategy for the future.

Our nation's continued economic prosperity depends on it.

Thank you Chairman Fischer. I look forward to answering the Subcommittee's questions.

Senator FISCHER. OK. Thank you very much, sir.

We do have a vote. I believe it begins at 11 o'clock. And so we will try to get through our questions here in a fairly expedient manner. I will begin, and then our ranking member will follow me with questions. We will have a 5-minute round.

Mr. Mullen, when you talk about Werner's commitment to safety and you tell us the number one thing that FMCSA could do to improve fact- or data-driven safety regulations, what do you think that would be?

Mr. MULLEN. Well, on the commitment to safety, Chairman, there are 5-million-plus drivers out there on the roads every day, and they take commitment to safety very, very seriously. That is their number one priority.

When I talk inside of Werner, we kind of put it in three different buckets. We talk about training, we talk about technology, and we talk about culture.

So if you talk about training, just to kind of give you some idea of where we are spending dollars and resources now, it is on sim-

ulation. So driver simulation is a big issue, and it is improving year over year.

And so we have simulators. We work on new hires. We hire a lot of drivers that come in straight from CDL schools and just have their license, and so we train those folks with the simulators. And we have seen a very marked decrease in accident frequency from those that use the simulators.

And technology, those onboard technology devices I talked about in my opening remarks, whether it is forward-collision-warning devices or lane-departure devices, we have seen marked improvement in accident frequency from that, as well. And that is a spend that is going to be about $6 million, $7 million annually, just on that technology alone. So we are very committed, and we are putting the dollars behind that commitment.

And then, most importantly, culture. The drivers need to know that safety is their top priority. And we talked about the electronic logging devices. And, again, Werner started in the late 1990s to make sure that we dispatched every load knowing that the driver could deliver that load legally and safely. And I think ELDs is where we ought to be going, spending time on ELDs, versus some of the peripheral issues that don't really attack the core.

With regard to the FMCSA and data, I guess I would have two things to say. Look at the data without any political lens. Let's focus on the core factors that cause crashes, speed and those sorts of things, as opposed to things more on the periphery. That might even get into labor issues.

And it is not so much the integrity of the data; it is just the manner in which we are looking at it and what data we are looking at to make sure we are providing the biggest bang for the buck on improving the highway safety.

Senator FISCHER. OK. Thank you.

Mr. Means, we have heard a lot over the past few months about congestion at our Nation's ports. You alluded to that in your testimony, on the effect that that is having on the supply chain. Can you tell us how acute this problem is for Cabela's?

Mr. MEANS. Sure.

Senator FISCHER. How do you manage that situation?

Mr. MEANS. Sure.

You know, we started to see the problem arise last summer. And, as you know, just like most retailers, the fourth quarter, there is a substantial amount of volume for us that comes through as we prepare for a very busy shopping season. You know, as I stated in my testimony, it is critical for us, because we run as just-in-time as we possibly can and we try to keep our investment in inventory to a minimum. So even a day or 2 of delay can create a big problem for us, especially in those busy times of the year.

We literally took people out of role from their jobs at our corporate headquarters and moved them to Seattle just simply to manage every single container that was coming out of that port. So we had two people there full-time for, really, the 6 weeks leading up to Christmas that simply their job was to manage the containers coming out of the port, manage equipment on our own, because we wanted to make sure that we could have equipment available when those containers came free.

It was far, far beyond, I think, what anybody would expect just to get our goods and an extremely inefficient process for us.

Senator FISCHER. Thank you.

Mr. Fritz, in my opening statement, I mentioned my interest in trying to get away from the Washington-centric prescriptions to various transportation challenges.

In your testimony, you compared design-based standards with performance-based standards for safety. Could you share a little bit about that view?

Mr. FRITZ. Thank you. I would love to.

Senator FISCHER. Yes.

Mr. FRITZ. I would also like to start by saying, out of this conversation, it is such a pleasure to tell the Committee that your freight-rail network is the envy of the world and we are part of the solution. We are self-funding; you don't have to raise a tax in order to have us invest in our railroads. And the railroads are in the best condition they have ever been in.

So from a standpoint of safety regulation, when we see a cookie-cutter approach applied to us, a prescriptive mandate, we tend to experience significant dislocation that creates service problems and sometimes even increases safety issues for our customers and for our employees and the communities we serve.

If you think about a current mandate, PTC, PTC has a very specific definition and a very specific, targeted benefit. The PTC mandate is costing the industry $10-billion-plus. We are unsure as to whether or not it is going to be effective. We will miss the mandated date. And we are doing everything in our power to get it installed and working and tested, and that is probably going to take us till 2020.

As an industry, we are dedicated to safety. It is in our DNA. If, instead, Congress had said, Industry, we want you to figure out how you are going to reduce the incidents and severity of incidents that are targeted by PTC, I guarantee you we would come up with a solution that would be less costly and would be implemented in a more timely fashion. We are doing that across the board in how we run our railroads today.

So that is just a small example, Chairman, about how prescriptive safety can be very costly and disruptive.

Senator FISCHER. Thank you.

Senator Blumenthal?

Senator BLUMENTHAL. Thank you, Madam Chair.

Again, thank you for your testimony.

Let me begin, Mr. Fritz, by pursuing the line of inquiry that Senator Fischer initiated on safety. You mentioned technology as a critical element of safety, and, in fact, your railroad has been one of the leaders in using some of that technology—cameras, for example.

How important are additional measures, such as—and I have advocated them—methods like redundant signal protection, alerters, close-call reporting? Are these measures that you have adopted, and would you recommend them for railroads in general?

Mr. FRITZ. Senator, I am so thankful for you asking that question. We are very aggressive, both as an industry but specifically Union Pacific, at using technology investment and process improve-

ment to improve safety, both for the communities that we serve and our employees.

So you mentioned inward-facing cameras. Without any mandate, we have been working for about a year and a half, on developing a technology, a use, and an understanding with our labor force, our craft professionals, on how to implement inward-facing cameras.

The whole intent is so that we can understand behaviors in the cab of a locomotive and address whatever those behaviors are. We have invited our labor leadership to work with us to try to understand what those issues are and address them.

I view that as a cultural issue that needs to be addressed. That strikes me as a much better way of getting at the issue than some prescriptive target that really doesn't have the reality of the working situation in mind.

You had asked about close-call reporting. In conjunction with our Federal regulator, the Federal Railroad Administration, and our labor again, our craft professionals, we entered into an agreement 6 or 7 years ago at our largest terminal to get into a close-call reporting system called C3RS, which allows employees to report into an anonymous database staffed by both craft professionals and management that they either did get into an issue or almost got into an issue, and they are protected from both discipline ramifications and FRA ramifications for that reporting. In turn, that team is expected to debrief completely, to investigate the issue, and find safety improvements through process, investment, training, et cetera.

It has been a home run. It has been praised by the FRA. We love it, as a management team, and we are taking it across our system. So we are committed. We advocate everything you just said.

Senator BLUMENTHAL. I would invite you, since our time is limited here, to come and meet with us and share perhaps in greater depth that experience, which I think would be enormously valuable in helping to shape this committee's perspective on the safety issue. Because a lot of the pushback that we have received isn't practical, it isn't affordable, but I think you can really bring a story that will help us move the ball forward on safety.

I want to shift to Governor Rendell.

I detected, I think, a modicum of support for the gas tax increase on your part, but I would like to raise some alternatives. Because I agree with you, absolutely, completely, on the urgency and immediacy of these investment needs.

And so there have been discussions and proposals. Senator Blunt and I have a proposal for a public financing authority, also known by some as an infrastructure bank. I have supported this idea. I am hoping that I can be part of its reintroduction in this session of Congress. Senator Bennett has been a leader, Senator Warner. Really, both sides of the aisle have backed this idea, at least in concept, and I think there is a growing consensus and a coalition behind it.

So let me invite your views on that idea.

Mr. RENDELL. Well, we strongly support an infrastructure bank. It is the best vehicle, we think, for getting capital, private capital, into play for projects of regional and national significance.

Interestingly, TIGER, as part of the stimulus, did just that. TIGER allowed states to combine and make requests for money for regional projects.

I don't mean to quarrel with Mr. Fritz, but two of the nation's biggest eastern freight railways, CSX and Norfolk Southern, both came to me when I was Governor, and they had projects called National Gateway and Crescent Corridor; went through six states. They asked me to get all six states' Governors to agree to put money in. And we all did, all the states did. We went before for TIGER grants, and we got TIGER grants from the Federal Government.

Those projects radically improved freight in the eastern half of the country. But there was private capital, state capital, and Federal capital. And an infrastructure bank can be the best vehicle for private capital.

Senator BLUMENTHAL. Thank you very much.

This panel is really enormously valuable. And my time is over, unfortunately, and we will have votes coming up. I don't know whether we will be able to return for another round of questioning. But I want to extend the same invitation to other members of the panel that I did to Mr. Fritz, that, speaking only for myself, I would really value an opportunity to pursue some of these issues, and, Governor Rendell, particularly the infrastructure bank idea.

Thank you, Madam Chair.

Senator FISCHER. Thank you, Senator.

Senator Klobuchar?

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

Senator KLOBUCHAR. Thank you very much, Madam Chair.

Thank you to the panel.

And thank you, especially, Governor Rendell, for coming back and not giving up on this cause. I think it is a cause whose time has come, when you look at what has been going on around the states and the fact that there have been changes made to state laws that have allowed for more investment.

I hope that we will start to see some changes here, because this is one of the top areas that Democrats and Republicans have agreed we can make some bipartisan progress. Senator Boxer, in her last 2 years here, I don't think she is going to exactly back down; I think she is ready to work again on a transportation bill.

And, as we all know, that money is running out. That needs to get done by, I think it is, May. And we have a shortfall in that even going forward beyond what I think we would like to see up here and on your panel, which is more investment.

Our story from Minnesota, Governor, is interesting. It is true that Governor Dayton has now proposed a gas tax increase and some major changes. The state did increase the gas tax after the 35W bridge fell down in the middle of the Mississippi River on a summer day. It is eight blocks from my house, an eight-lane highway. Thirteen people died, 17 cars submerged in the water, 111 people injured. It was a tragedy. And it was because of decaying infrastructure, and we all know that.

The interesting political side of that was that the legislature then went in and passed a gas tax increase. Governor Pawlenty vetoed it. Then the votes got there to override his veto, and there were five or six Republicans that joined the Democrats in that effort. They were pretty much—there was actually a "Wanted" sign put out against them in their own party. One of them changed parties and is now a Democrat. One remained a Republican and got elected, but the rest were not reelected or either kicked out of their party.

That is the true story of what happened in Minnesota. What do I see now? I see a change. I think you see more Republicans, like Senator Corker, being able to talk about this issue. And I just think we are going to need support from the Chamber and other organizations that are willing to have people's back and are willing to stand up for them and not run—you know, fight off negative ads when people are willing to talk about investment.

And I think that is our real problem here. It is not really a policy problem, in that we all know we have to make this investment. It is really a political problem and having the political will to get this done.

My question is just on some of these solutions. And I guess I would start with you, Governor Rendell, and anyone can chime in.

We have obviously talked about the gas tax idea. As you know, Senator Murphy and Senator Corker's proposal, while it is not written, does take the money, I think, out of other parts of the budget.

And so the second proposal that we have out there is the infrastructure bank, the financing authority, as we call it, which Senator Warner and others have put together. I am on that bill. And the issue still is financing it.

One of the ideas out there is repatriation. There is some bipartisan support for that. Or doing some kind of international tax reform and then requiring that a certain amount of that money go into infrastructure financing to supplement the Highway Trust Fund. And I just wonder what people think of that idea.

I guess I would start with you, Governor.

Mr. RENDELL. First of all, one of the points I want to make is, to finance the infrastructure bank, you have to put money in. It is more of a scoring problem for Washington than anything, because if that money gets loaned out, you are going to make money on it. You are not going to lose the $5 billion.

It shouldn't be scored as money taken and increasing the Federal deficit, because it is essentially like a loan guarantee program. You only lose the money if—you have to pay off the guarantee. You only lose the money if the loans aren't repaid.

If you look at the European infrastructure bank's history, they make money on the loans that they loan out, and it is a hugely important vehicle for improving the EU infrastructure.

So that is number one.

The repatriation bill for initial funding for the infrastructure bank, good idea. As a permanent solution, you can't use repatriation——

Senator KLOBUCHAR. Yes. It is just the one shot——

Mr. RENDELL. It is a one shot, right.

Senator KLOBUCHAR. Yes. Exactly. But it could be a big shot.

Mr. FRITZ. America's freight railroads support the user pay systems that are in place right now. So, a gas tax, an infrastructure fund, so long as it is funded by users of the infrastructure, we would support that for sure.

And to the Governor's point, the freight railroads support public-private partnership projects where there is benefit across a spectrum of constituents and the project otherwise would not be done by any one constituent.

Senator KLOBUCHAR. Have you looked at what they have done in Canada? Senator Blunt and Senator Stabenow and I and others went there, and they are doing a huge amount of work there. And that is kind of a public-private partnership.

Mr. FRITZ. Yes. Union Pacific has enjoyed a public-private partnership project recently in Fort Worth, Texas, and it made sense. We paid about a third of the project; our counterpart, BNSF, paid about a third; and public moneys paid about a third. And the division was predicated on who gets what benefit. That was negotiated up front, and then funding was divvied up based on who got what benefit.

Senator KLOBUCHAR. Yes.

Mr. MULLEN. Senator, from the trucking industry, we agree that the user fee is the right way to go, and we think the cleanest and the most efficient way is to increase the gas tax. So we have been an advocate for that for some time.

As far as other proposals that we have heard at Werner, you know, changing the structure and taxing at the barrel, and then you would refund the diesel tax—you would eliminate the gas tax, gasoline tax, and then tax at the barrel. And then on the diesel, you would still pay it at the barrel, but then we would get a refund for that.

So the stats that I saw, it made some sense. It had some tail to it that could withstand things other than the repatriation issue.

So something does have to be done. The Governor is absolutely correct that the numbers are staggering as to what it is costing the industry and the economy and the safety. And the gas tax increase, although not all that attractive, is the best solution, as far as we are concerned.

Senator KLOBUCHAR. Yes.

Now I have a happy ending to my story, and then I will let someone else go. Basically, then, the Democrats who had voted for that, you know, did fine in the election, and we, I think, turned around in the next election even stronger, which I have heard happen in other states.

But I do think the reality of it is that it is a difficult thing, and the only way to do it is bipartisan, and so people agree—something Senator Fischer is pretty good at doing.

Anyway, thank you very much.

Senator FISCHER. Thank you, Senator Klobuchar.

Senator Booker?

STATEMENT OF HON. CORY BOOKER,
U.S. SENATOR FROM NEW JERSEY

Senator BOOKER. Thank you very much, Chairwoman.

Real quick, Governor Rendell—and I want to just say for the record you are a phenomenal leader. When I was a young mayor coming up, you were one of my mentor mayors and shaped my early career. And I am really grateful for that, and I just want to be able to say that now.

Mr. RENDELL. Thank you.

Senator BOOKER. Just really quickly, because you have already made your point, but I just want to highlight something. There is about a $3 trillion deficit, infrastructure deficit, in America. Is that true? Yes?

Mr. RENDELL. It is anywhere between $2 trillion and $3 trillion. The American Society of Civil Engineers estimated it at about $2 trillion.

Senator BOOKER. OK. So let's call it $2 trillion. Let's be conservative with our numbers.

The president's proposal, President Obama's proposal, which is just about $300 billion over, I think, 4 years, if I am correct——

Mr. RENDELL. Right.

Senator BOOKER.—that seems to be an anemic, paltry, inadequate sum to meet the needs. Would you agree with that characterization?

Mr. RENDELL. Well, remember, when we talk about infrastructure deficits, we are talking about more than just transportation. We are talking about water and sewer, we are talking about broadband. The President's investment is not sufficient, but I wouldn't call it anemic. I would call it, in light of what past congressional history has been, it is significant.

Should it be more? Building America's Future, a bipartisan organization——

Senator BOOKER. Sir, forgive me for interrupting one of my mentors. I just want to get to the point, because I have very little time.

If history conspired to make you President of the United States right now, you would be having a much bolder proposal with a lot more investment in infrastructure, correct?

Mr. RENDELL. Sure. I would spend about $100 billion a year additional. The CBO in 2008 said we could sustain spending as a country $180 billion a year more than what we are doing now.

Senator BOOKER. So, in other words, the number is probably closer to what Bernie Sanders is putting forth, when he called for $1 trillion over 5 years. Would that be correct?

Mr. RENDELL. No question.

Senator BOOKER. No question that he is more in the right, as far as meeting our needs, fueling our economy, improving job creation, and, frankly, getting a return for taxpayers that more than meets that investment.

Mr. RENDELL. Right. And we all talk about creating middle-class jobs, both parties. Well, DOT says 25,000 jobs created for $1 billion of infrastructure investment. And that is pretty close to correct; we tracked it in Pennsylvania.

Think about what that would mean in jobs, that type of investment. It would mean about 4 million additional jobs that pay $50,000, $60,000, $70,000, $80,000.

Senator BOOKER. I am happy to hear Ed Rendell and Bernie Sanders in agreement. That is a wonderful day.

Real quick, to Mr. Means and Mr. Mullen, I just want you all to know I respect what you all do. You are phenomenal business leaders, producing incredible jobs. I read a little bit about both your companies and just have a lot of respect.

So please understand that I am not quibbling with the kind of Americans you are and what you are doing for our country. I just have a lot of concerns. My highways are a lot more congested than the highways of your home state, and I have a lot of concerns about truck safety.

And you taught me something today, because I didn't know—and I agree with you. I have seen cars do very dumb, or, I should say, unfortunate things around trucks, causing truck driver accidents. And I think you are right, they shouldn't be scored the same way, and that is something that I agree with you on.

But I have a lot of problems with the—and I do disagree with you, sir. The evidence from the U.S. Department of Transportation Federal Motor Carrier Safety Administration is that truck accidents are going up in a startling and unfortunate way between 2009 and 2012.

And I would like to put in for the record "An Analysis of Truck Size and Weight: Phase I—Safety" summary of findings, a report that was done about the really—when these trucks are involved in accidents, the severe consequences they have.

And so I guess the two questions——

Senator FISCHER. Without objection.

Senator BOOKER. Well, thank you very much, Chairwoman and friend.

[The information referred to follows:]

AN ANALYSIS OF TRUCK SIZE AND WEIGHT: PHASE I—SAFETY

Summary of Findings

Commercial motor vehicles carrying heavier loads or employing multiple trailers present significant concerns regarding the impact of their use in terms of increased accidents, accident severity and fatalities. In 2011, the most recent year for which data is available, 3,757 people were killed in crashes involving large trucks and 88,000 more were injured—absent any increase in truck size and weight.[1]

Several proposals have been made in recent years to increase limits for truck size and weight yet significant disputes exist about the safety of heavier and longer truck configurations. The Multimodal Transportation and Infrastructure Consortium (MTIC) performed a critical evaluation of available crash rate data, prominent safety claims and operating characteristics. Our findings are presented below.

Assessment of Crash Data

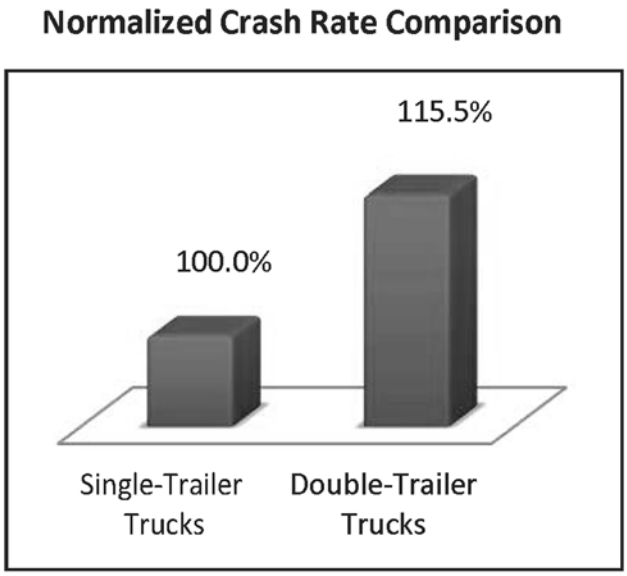
National crash rate data, though limited in several respects, show disturbingly higher crash rates for trucks that are longer or heavier than the current standard 80,000-pound, five-axle truck.

For our analysis, we used average annual fatality data from the Trucks in Fatal Accidents (TIFA) dataset for 2005–2009 and vehicle miles traveled (VMT) estimates from the Federal Highway Administration. TIFA is the most accurate and complete dataset of fatal truck crashes available. It includes reliable information on the number of trailers and axles of trucks involved in fatal accidents. It does not, however, contain the relevant length or weight information needed to calculate crash rates for specific configurations. Nevertheless, existing data shows significantly higher crash rates for multi-trailer configurations and single-trailer trucks with six or more axles relative to the rate for all singles.

[1] *http://www.fmcsa.dot.gov/documents/facts-research/CMV-Facts.pdf.* Retrieved May 13, 2013.

Multi-Trailer Configurations

- The raw data show a 13 percent higher fatal crash rate for double-trailer configurations compared with single-trailer trucks. When the data are normalized to compare similar nation-wide operation, the gap increases. *In nation-wide operation similar to single-trailer combinations, double-trailer trucks are likely to have a fatal crash rate 15.5 percent higher than single-trailer trucks.*



- This finding is consistent with the results of the 2000 U.S. DOT Comprehensive Truck Size and Weight Study, which found an 11 percent higher fatal crash involvement rate for multi-trailer configurations.
- The same raw data show that triple-trailer trucks have a higher fatal crash involvement rate than both doubles and singles. The average number of annual fatalities involving triples and the percentage of VMT attributable to triples are too small to yield a scientifically reliable fatal crash rate finding for triples. However, the data suggest that the finding for doubles is illustrative for longer combination vehicles generally.

Single-Trailer Configurations with Additional Axles

- Single-trailer combination trucks with six or more axles—presumably the heaviest trucks—have dramatically higher crash rates than five-axle singles. *An analysis of TIFA data indicates that single-trailer combination vehicles with six or more axles have a fatal crash involvement rate 867 percent higher than the rate for all single-trailer trucks.*
- Here, too, the relatively small population of six or more axle trucks traveling the Nation's highways precludes a scientifically reliable finding. Further, we have significant concerns about the quality of underlying data, especially VMT estimates for sub-classes of vehicles. Many data collection problems exist, and the smaller the class of vehicles considered, the larger the potential sources for error.
- Even if more reliable data were to show a fatal crash rate increase even a fraction of that above, the negative implications for highway safety would be vast. It would seem unwise to allow expanded operation of six-plus-axle trucks without further serious consideration of the possible impact on fatality rates.

Operating Characteristics

Serious safety concerns about the relative operating characteristics of heavier and longer truck configurations have been documented in both government and independent studies conducted over the past 30 years. Our review of existing research leads us to conclude that in many cases, credible new research does not exist to dis-

pel these concerns. In some cases, new concerns have arisen in recent years. Among the concerns over the operating characteristics of heavier and longer configurations are:

- State safety inspections suggest that brake maladjustment and equipment defects continue to be widespread issues among current truck operations. Heavier loads require more braking capacity and can exacerbate braking issues.
- Heavier vehicles are likely to increase accident severity as they have more kinetic energy at any given speed. This may be exacerbated as autos become smaller and lighter to meet ever more stringent fuel efficiency standards.
- Increases in allowable vehicle weight may mean higher trailer loadings and a higher center of gravity thus increasing the risk of rollover and cause compensatory heavy vehicle operator behavior that will result in greater interference with other vehicles.
- Heavier and longer configurations can cause greater interference with other traffic (including longer acceleration times and increases in speed for trucks traveling up and down hills) that could exacerbate conflicts with other motorists.

Non-Federal Studies

Proponents of increases in truck size or weight often cite state-specific studies or statistics from other nations to support their claim. Our analysis of prominent studies leads us to conclude that these studies have little applicability to nationwide operation of heavier or longer configurations in the US. For example, the VMT and crash exposure findings from a recent Wisconsin study are insufficient for a national analysis that would require more precise truck and rail diversion assumptions. In Idaho, the Transportation Department was unable to make a statistically significant finding about the safety of long doubles because they represent such a small percentage of truck traffic in the State, preventing the application of the Idaho study results nationally. Also, statistics from the United Kingdom showing decreased truck crash rates cannot be distinguished from a decrease in crash rates for all vehicles, have been criticized by the UK Department of Transport for significant underreporting and should not be considered applicable to U.S. operations because of significant geographical, infrastructure and regulatory policy differences between the U.S. and the UK.

Illustrative Quotes from Law Enforcement Interviews

"Maximum braking efficiency is only achieved in the lab."

"A driver would have to be on his 'A' game if he is going to control a vehicle that is 17,000 more pounds."

"We can replace bridges and roads. We cannot replace people."

Professional Experience

Concerns over the quality of available data and the lack of substantiated claims of safety improvements led RTI to conduct interviews with law enforcement officers with expertise conducting truck safety inspections and accident investigations and to conduct a survey of truck drivers themselves.

- 20 of the 21 officers interviewed indicated flatly that heavier and longer trucks would be "more dangerous" because the additional weight and length would add new factors to an already complicated chain of events.
- Officers offered real world observations reinforcing many of the concerns about the operating characteristics of longer and heavier trucks raised in the literature.
- With specific regard to crash severity, officers often noted that larger trucks almost always increase the severity of the crash remarking that it was a simple physical equation of kinetic energy with the potential for significantly more damage.
- Similarly, surveyed truck drivers are consistent in their opinion that heavier and/or longer trucks raise significant concerns over the impacts of these configurations on safety. Full results can be seen in the charts below, but the overall conclusions are that:
  - 90 percent of those surveyed believed that increased use of 97,000-pound, six-axle trucks would negatively impact highway safety, and
  - 88 percent believed that greater use of longer combination vehicles would negatively impact highway safety.

Truck Driver Views of Heavier Trucks' Safety

Characteristic	Positive Impact	Negative Impact	No Impact
Braking distance	9 %	**73 %**	18 %
Require additional effort to prevent rollover	5 %	**86 %**	9 %
Turning radius	5 %	**70 %**	25 %
Emergency maneuver	0 %	**90 %**	10 %
Impact on equipment	5 %	**76 %**	19 %

Truck Driver Views of Longer Combination Vehicles' Safety

Characteristic	Positive Impact	Negative Impact	No Impact
Braking distance	2 %	**91 %**	7 %
Require additional effort to prevent rollover	0 %	**77 %**	23 %
Turning radius	0 %	**66 %**	34 %
Emergency maneuver	0 %	**86 %**	14 %
Impact on equipment	2 %	**81 %**	17 %

Conclusion

The existing literature, research, interviews and statistics provide clear, if not conclusive, evidence. With confidence, we can say that additional axles, vehicle length and weight place pressure on the equipment, maintenance and drivers, which

ultimately increases the potential for error, accident and fatality. Further, existing data, though limited, suggests that heavier and longer trucks are likely to have higher fatal crash rates than the most common trucks on the road today. To better assess the safety impacts of future proposals to increase truck size or weight will require information not currently available. To that end, we make the following recommendations.

1. *Improve data collection efforts.* Data on fatal accidents by configuration and reliable VMT estimates will be required to fully answer questions about the safety of specific truck configurations. Federal agencies should work to require the collection and reporting of more specific information (including weight and configuration) for vehicles involved in fatal accidents and should significantly improve the collection of VMT data.
2. *Conduct off-road operating characteristic testing.* Industry states that technology has enhanced the operating characteristics of commercial motor vehicles yet there is no research directly comparing the operating characteristics of proposed vehicles. This analysis should be completed on a test track to avoid experiments involving the motoring public.

Senator BOOKER. So just two points I want to make in the remaining seconds that I have.

If truck fatalities are increasing, why is there an attempt to roll back sleep regulations and increase the size of trucks? It seems to me counterintuitive that if the problem is getting worse, why would we let them push further into the endurance levels of human beings, when we know there is a strong correlation, as you admitted in your testimony that these are truck driver mistakes.

And then the second point I would love for you to comment on, and then I am done, is that the cost of these accidents is being borne by my state. Because the annual costs to society from crashes involving commercial motor vehicles is estimated at $99 billion. Minimum insurance levels for trucks are just set at $750,000.

And so a fatal multi-vehicle truck accident, for example, can cost over $20 million to compensate for injured care for families and, more importantly, to our infrastructure—or, not "more importantly," excuse me—also with our infrastructure, to pay for the destruction of the highways that incur.

So those are the two points that I just have, that it seems like the truck industry is pushing for a rollback of commonsense sleep regulations and they have an inadequate investment because the cost right now of those accidents is being borne—it is an externality that is being borne by taxpayers.

Mr. MULLEN. Senator, we absolutely agree that driver error is the top cause of accidents. What I don't think is true is to contribute a percentage of that to fatigue, a large percentage of that to fatigue.

So I would disagree that the industry is trying to roll back the sleep requirements, the restart provisions. You know, we had the restart pre-July of 2013 for a long period of time, and that is when you saw an improvement in accident frequency, and you have seen that improvement over the last decade.

And you hear discussion about the 80-hour workweek. That only happens in a perfect, perfect freight world where the freight is the right freight and the driver has just the right timing to pick up and deliver and to take the 34-hour restart. So, in the real world, the 80-hour-a-week just doesn't really occur.

And so it is not so much the hours of service and the regulations that is causing the accidents, that we should be focused on. It is

other things, like speed, that we talked about. So, for instance, the industry has been asking to have speed limiters. I mean, again, how often do you ask for regulations? We have been asking for speed limiters. And most of the industry govern their trucks at 68 miles per hour or below. Werner governs their trucks at 63 miles an hour because that is the right things to do.

So we just have a difference of opinion on how to go about attacking the safety problem and even the fatigue issue. We just don't believe changing the hours-of-service restart was the answer. We believe that took away from flexibility of the driver. It put more traffic in congestion times, such as 5 in the morning, after the restart, 1 to 5, 1 to 5.

So we have the same goal, which is to have a less fatigued, safer driver, but we have a difference of opinion on how to get there. Our opinion is that the science that the FMCSA relied upon that changed the rules back in July of 2013 was flawed. We think that it contradicted, in fact, the science that FMCSA relied on when they had the previous rule. So just a difference of opinion on that sort of thing.

As far as the insurance minimums, I understand where you are coming from. $750,000 being the minimum—has been for some time—is being looked at. The FMCSA has asked for opinions; we will weigh in on it. It is something that ought to be looked at, as an industry, and hopefully FMCSA will have enough data to make a meaningful decision.

Senator BOOKER. All right.

My time has expired because Governor Rendell gave such long answers.

Senator FISCHER. Because, Senator Booker, he is your mentor.

Senator BOOKER. Yes.

Senator FISCHER. Thank you, Senator Booker.

Senator Markey?

STATEMENT OF HON. EDWARD MARKEY, U.S. SENATOR FROM MASSACHUSETTS

Senator MARKEY. Thank you, Madam Chair.

And this panel is very good. I mean, it is an A list panel. They did a fantastic job here today.

Governor, you said that passenger trains today are slower than they were 50 years ago.

Mr. RENDELL. Yes.

Senator MARKEY. Which is just a stunning statement. What is slower today than it was 50 years ago, except for passenger trains, huh? Everything else is faster.

Mr. RENDELL. Nothing I can think of.

Senator MARKEY. Just amazing. And even in Massachusetts, in Boston, the trains can average 150 miles per hour going into the Boston terminal, but they average only half of that.

Mr. RENDELL. Right.

Senator MARKEY. OK? So that is just a statement of how much we have gone backward over the last 50 years.

Mr. RENDELL. No question.

Senator MARKEY. Can you talk a little bit about that and what you believe to be kind of the two-point program to get us out of that——

Mr. RENDELL. Myself, Governor Pataki, former Secretary of Transportation Mary Peters, we rode a train in Japan, a maglev train, 47 miles. It went 314 miles an hour. It levitated 6 inches above the ground. Governor Pataki, who is a very tall man, stood up, took a pad and a pen and wrote, and his hand didn't move. You ride the Acela when it goes 150 miles an hour, and you take your life in your own hands if you stand up.

Our rail system, passenger rail system, in the United States is a joke. It is a joke compared to European and Asian rail systems. We can build it in California and the Northeast Corridor, where I think there is enough quantity of potential riders to make it feasible, we can build high-speed rail.

We should build it with a combination of private and public funding. The Japanese government is so interested in introducing maglev technology, they are willing to put up $5 billion to build a first leg between Washington and Baltimore. And, by the way, if they build it, you will get to BWI from Washington, D.C., in 6 minutes.

Senator MARKEY. And that is not a fantasy; it is possible.

Mr. RENDELL. It exists in Japan.

Senator MARKEY. For anyone that has ridden a train in Japan or China or, you know, France, it is possible.

But you have to basically get out of this old mentality that we have in the United States and realize that, in a lot of ways, there was greater dedication to rail back 50 years ago and 100 years ago than there has been today. But if we upgraded it at the same rate that we have other technologies—for example, when the president says that fuel-economy standards can go to 54.5 miles per gallon by 2025, make that the law, which it is now, all of a sudden we are not averaging 25 miles per gallon anymore. Now we have hybrids and all-electric cars, and we are about a third of the way through the whole process, but America is ready to go. They love this new technology that is available to them in the showrooms. And we have to have the same attitude about rail.

So let me turn to you, Mr. Fritz, and ask you about the Federal Communications Commission and the 20,000 towers that they have to work through in order to put them along the tracks of the rail system in America to make sure that this new safety system can be implemented in a timely, telescoped time-frame process.

Can you talk a little bit about that and what your commentary is on the FCC process?

Mr. FRITZ. Sure.

About a year ago, year and a half ago, we ran—as part of implementing PTC, we have to install radio towers on our right-of-way. We ran into a problem where one set of Federal regulations administered through the FCC created a bottleneck for us being able to actually install those towers, to the extent that towers were not installed for about a year until that bottleneck could be resolved.

The FCC worked diligently on trying to find a solution. They have found a solution, and we are back installing towers. But that is just a great example of how disjointed regulation can take a

project that has been mandated to us through Congress, PTC, and make it an impossibility to actually fulfill that mandate.

So a little bit more diligent coordination and thoughtfulness would be of value.

Senator MARKEY. So back when we passed the 1996 Telecommunications Act, for example, we had to put together a whole system of towers across the country so that people could talk to each other.

And it was interesting, because the people in wealthier communities did not want cell phone towers in their communities, although when they went to work in the blue collar parts of town, the downtown areas, they wanted their cell phones to work.

But we needed a law, we needed a way of getting that done. And, all of a sudden, everyone could talk on their cell phones, no matter where they were. There are some exceptions, but it is pretty good.

So what would you say today has to happen in order to move at the same pace here along an already-established route in order to accomplish that goal?

Mr. FRITZ. In terms of——

Senator MARKEY. Yes.

Mr. FRITZ.—radio towers?

Senator MARKEY. Getting the cell towers up, making it possible to make rail more safe. What do we have to do? I mean, we did it before, 20 years ago. Why can't we do it right now?

Mr. FRITZ. So I think there is a solution in place now and we are back up to speed in terms of installing radio towers.

Right now, the heavy lift on PTC is the fact that it is unproven technology; we are installing it as we invent it. Union Pacific is going to be largely installed and starting to test, let's say, sometime in 2017; the industry, to varying degrees because of the availability of product and expertise.

What needs to be appreciated from a PTC perspective is it is not an off-the-shelf technology. We have invented a radio, we have built a radio company, we have built a spectrum company—this is as an industry—and we have invented this back-office system that will be able to, on anyone's railroad, anyone's equipment, stop any train prior to one of four different catalysts. That is a hell of a lift, and I am very proud of our industry for having done as good as it has.

It is still unknown as to whether or not it is going to work and what kind of impact it will have on service for our customers, on safety for our communities——

Senator MARKEY. Mr. Fritz, my time has expired. Can you tell the Committee maybe in writing what you need in order to telescope the time-frame to determine whether or not it is going to work?

Because I think we have to put——

Mr. FRITZ. Sure.

Senator MARKEY.—this under a microscope, because it just can't go on and on and on and on. We need a system in place that has all parties accountable, to bring everyone to the table, to say: What is the problem? Why can't we invent this? Or can we bring in new people? You know, maybe we have to bring in Silicon Valley just to say, let's just get this done fast, get the——

Mr. FRITZ. Senator, I——

Senator MARKEY.—smartest people in order to get it done and save money. The longer it goes is the more it is going to cost us.

Mr. FRITZ. Senator, I think at this point the freight rail industry is implementing PTC as quickly as it can possibly be implemented. We support Senator Thune's bill and the concept of giving us an extension, to recognize both our effort and the fact that it is an extremely heavy lift.

And I think that is enough said on that.

Senator MARKEY. OK. Good.

Thank you, Madam Chair.

Senator FISCHER. Thank you, Senator Markey. The record will be open for 2 weeks, Senator, if you want to submit questions, and then the witnesses can respond.

Senator MARKEY. That would be great.

Senator FISCHER. Thank you.

Senator Moran?

STATEMENT OF HON. JERRY MORAN, U.S. SENATOR FROM KANSAS

Senator MORAN. Madam Chairman, thank you. And congratulations on chairing the Subcommittee, and I look forward to working with you. Perhaps once in a while we will have some Kansas witnesses as well as Nebraskans.

Mr. Mullen, let me start with you.

And thank you all for being here.

On trucking, I was interested in your testimony in regard to Senator Booker's questions. And what I take from that is that it may be that the regulators are focused on perhaps the things that are slightly less important than things that are more important, that they are not finding necessarily the solutions to the problems that are out there.

And so my question is, what is it that this committee, this subcommittee can do to make certain that FMCSA is focused on the things that would have the most consequence for improving safety, better protecting the public, better protecting your drivers and your trucks, and still being able to operate an efficient trucking system that allows us to be competitive in a global economy? What is missing? Why do we not have the things focused the way they should be?

Mr. MULLEN. Well, I think first they need to prioritize what it is that has the greatest impact on safety. And our position is the hours-of-service restart was not the way to go about doing it. They spend a lot of time and money and resources in the industry quarrelling over whether it was the right thing to do or the wrong thing to do. When they——

Senator MORAN. So how does the agency get headed down the path of that issue as compared to—is there just disagreement as to what is the most important?

Mr. MULLEN. So they haven't told me why they went down that path. My suspicion is that perhaps it was more politically motivated than it was otherwise. So I think it was just misguided to spend that much time on that thing.

First is, for instance, mandating compliance with the existing rules, buy the electronic logging devices, right? So, again, Werner has been on ELDs for over a decade. You have absolute 24/7 view into what your driver is doing; you know when he is complying with the lie, and, in the event he tries not to, you can prevent that from happening.

So it just doesn't seem to be a good use of time to quarrel on the fringe of the restart.

And, by the way, for instance, on the restart, since July 2013, the 12 months rolling preceding July 1, 2013 versus the next 12 months, there has been no improvement in accident frequency. So the data would suggest that that was a misguided effort. Again, put the science aside; just the data after the fact would suggest that was misguided.

Things you could perhaps do is incentives. Perhaps have FMC having incentives for folks that will do nonregulated measures such as onboard recorders—little too late for the LDs—things of that nature, to have incentives for trucking companies to go above and beyond the regulations to make sure that the roads are safe. That is where we would like to see them go.

And, to some extent, level that playing field. You know, CSA has done some good things for the industry, and certainly anytime you talk about the issue of safety more than you did before, that in itself has some benefit. But let's make it fair.

The stated purpose was to have focused audits. Well, it has gone well, well beyond that. They are now trying to regulate things that have nothing to do accident frequency or accident severity. The hazmat BASIC is a perfect example. You can get a violation because your placard is off-kilter on your truck. Let's not spend time on things like that.

Let's spend time on things like traffic enforcement versus inspections. The data suggests that money spent on traffic enforcement versus roadside inspections has a four-to-one rate of return better than a roadside.

So, again, just focusing on those types of things—enforcement versus inspection, root cause like speed versus peripheral things like the restart—and I think you are going to have time that is better spent and your results are going to be better.

Senator MORAN. Again, Mr. Mullen, tell me about—in a time in our country in which employment is such an important issue and jobs matter, there is a tremendous need for drivers. What is the industry able to accomplish? What are the impediments that we might look at that prevent those who need a job who have the capabilities of driving a truck from finding a job?

Mr. MULLEN. Yes. So it is a tremendous need. That is probably the strongest headwind for trucking right now, is the driver shortage, and there doesn't seem to be any relief in the near future.

And so folks in our industry are doing what they can to make it a more attractive job, whether it is a better way of life, you are getting home more frequently, better amenities and technology in their truck. You know, we work all the time with truck stops to make sure they are adding amenities at a good clip. And, of course, compensation. Compensation has been going up in the industry

lately. At Werner alone, the last 12 months, we have had over a 10 percent pay raise across our fleet.

So those are the types of things we need to do to make it attractive. We need to stop calling them bad people. We need to stop picking on them as if they are the root cause of everything that happens bad on the roadway and just need to have a more positive image of a truck driver. You know, folks that used to want to get into the industry and be a truck driver, they are not interested anymore because it has that black eye. And a lot of it is our own doing.

So it is going to be a problem for some time. And we do all that we can. We are hiring more veterans. We hire about 168 veterans on a weekly basis to drive our——

Senator MORAN. Is there a program by which somebody who is licensed within the military has the capability of easily transitioning to the private sector?

Mr. MULLEN. There is. There is. Some states will allow, whether the transition—if you operated a heavy vehicle in the military, you can get a CDL virtually automatically. Candidly, we are a little skeptical of that, and so that is why we put those types of folks in our finishing school the minute they get to our company.

So, yes, there are programs out there to alleviate the transition from military life into private sector and in trucking specifically.

Senator MORAN. Madam Chairwoman, thank you very much.

Incidentally, we do see the Werner trucks in Kansas, and, certainly, Union Pacific is prevalent in our state, as well. So there is a sense of Kansas to those couple of Nebraskans here.

Thank you.

Mr. MULLEN. Thank you, Senator.

Senator FISCHER. Thank you, Senator Moran.

There is just a few of us here yet, and the votes have not been called, so I would suggest we can each ask one question.

Senator Moran won't be able to do that, but, Senator Booker, would you be interested in doing that?

Senator BOOKER. Yes. Since Senator Moran is leaving, can we ask one and a half questions?

Senator FISCHER. You may. You may. Thank you.

Governor, you had talked about the harbor imports and the fund there and money being stolen from that in the past.

Mr. RENDELL. I don't think I said "stolen."

Senator FISCHER. Well, that is why you are a Governor. But the diversion of funding at the Federal level I think has been a great cause of concern.

Mr. RENDELL. Huge problem.

Senator FISCHER. I personally would like to see the Highway Trust Fund used for roads and bridges. There is much in there that is taken out for other areas that I think needs to be put back in to meet our responsibilities. It is a priority.

I would just be interested in your thoughts on that and if you think that is an area that we can look at to see if we would be able to, I guess, recoup some of that funding so we can meet our obligations.

Mr. RENDELL. So I think, in theory, I would support the idea of making the Highway Trust Fund just limited to roads and bridges.

But I think the effort to expand other modes of transportation are very, very important because they take cars off the road.

One of the questions—I am sorry Senator Markey isn't here. The Northeast Corridor by 2030 will increase our population by 40 percent, and there is not enough I–95 to support that. We have to get people riding trains.

So we have to find alternate modes. In urban centers, bike paths, green paths, walking trails, those things are valuable in getting people out of their cars and off the roads and helping with congestion. So maybe——

Senator FISCHER. Is it fair to be able to increase the gas tax that you promote, a user fee of people who are on highways, and divert that money for mass transit, beautification, trails? Should we be looking at another funding source for those?

Mr. RENDELL. Well, first of all, for transit itself, we need to continue to support that out of the gas tax, because transit is crucial to keeping our highways in some noncongested condition. And "noncongested" is probably an oxymoron these days. So we ought to be doing more for transit.

For other forms, these alternative forms that have cropped up, I would agree with you, but I would urge Congress to find an alternative source of money, because they are valuable. They are valuable.

One of the things we have seen in American cities—and now I am putting my mayor hat on—is young people coming back to live in cities. And one of the reasons they come back to live in the cities is because they are bicycle-friendly, because there are trail paths, because you can ride along the river. Senator Booker knows what I am talking about because Newark is experiencing that to some degree. And that is a great thing for cities, to have young people. They add vitality.

So, yes, if you want to make the Highway Trust Fund for transit, roads, and bridges exclusively, that is OK and it makes sense, but we should find an alternate vehicle for other modes of transportation. Because they all help us do it. And urban needs are different than rural needs, and I think we have to consider that.

Senator FISCHER. Thank you very much.

Senator Booker?

Senator BOOKER. Thank you very much.

I will not be asking any questions to Governor Rendell. But when I was mayor, I had—and this is why I love talking to businesspeople. When I was mayor, I had a saying that in God we trust, but, everybody else, bring me data. And if you get away from the politics, as you were saying, and just focus on the data, they should educate your decisions.

And so I just want to go back, because I think you were giving me some insights that have been valuable about where to focus regulation to get the best in highway safety. But I just want to stick for a second with the fatigue-to-driver issues. And let's put aside the restart rule, which you said might be forcing—that was the argument that was made —might be forcing more traffic on the road at 5 a.m. or other odd hours and just stick to the idea that, should truckers be driving 82-hour weeks versus driving what the rollback was until this temporary halt, just to 70 hours a week?

Now, I don't have the exact data that I quoted in a floor speech that I gave about the large percentage of our accidents that are specifically linked to fatigued drivers. It is a significant percentage. And I can get that for you from the research.

And the data, this wasn't just something thrown together. The research was—and I am not exaggerating the number—hundreds and hundreds of independent studies that showed about what the human limits are before you start going into a very dangerous fatigue in which you are more susceptible to your reaction time being slowed down, toward your focus and concentration being slowed on the roads.

And so, when we see consistently in New Jersey a raising of truck driver accidents, some very high-profile accidents in which people have pushed past that 70 hours a week and were now upwards of 80 and more, whether this is the most bang for your buck on the regulations you need, don't you think it is just common sense that we study and know that there are limits, indeed, for any of us towards human endurance?

And why should we allow people on the roads driving these large vehicles that become like guided missiles should a person lose control? Shouldn't we limit those in a common sense way so that human beings don't push into that danger zone in which their reaction time and their focus makes them more prone to accidents?

Mr. MULLEN. Yes. So there is a lot to cover there.

On the rollback, as you described, so what happened in 2013 was we changed the restart, that 34-hour restart. You could take it whenever you wanted it, as long as you took the 34-hour restart and you reset your clock. In 2013, we changed that, that you had to have a 1-to-5, 1-to-5.

We didn't change the 11-hour driving, 14-hour on-duty driving a day, 70-hour and 8 days—none of that was changed. So all we really changed was the restart.

And it is our position and we believe the data supports that the change wasn't warranted as it relates to safety. In fact, we believe it is not possible that there could be more traffic on that 5 o'clock to 7 o'clock a.m. time period. That is a fact. As an industry member, we have seen that. We had to accommodate, and so more of our trucks were coming out 5 o'clock a.m. to 7 o'clock a.m. on a Monday morning. That is a fact. And we believe that had, actually, a detrimental impact on safety versus a beneficial impact on safety from the other aspects of the change.

So, again, we are talking about the same thing, Senator. We absolutely want a less fatigued driver. Just a different way of going about it.

Senator BOOKER. So let's put, again, the restart rule aside for a second. You and I, then, both agree that a driver who is driving 80-plus hours a week—I am sure all of us are working 80-hour workweeks, but at that amount of time behind a wheel, you would agree, then, that the reams of studies—and I can present them to you if you want—that show that, at that point, a driver has lower focus, a slower reaction time, and is more prone to accidents.

Mr. MULLEN. So my suspicion is the data would support that 80 hours a week on a regular basis does have a detrimental impact on fatigue and your ability to keep watch. But, in practice, Senator,

that just doesn't happen with any regularity. Talking about just getting——

Senator BOOKER. And so, then, why would the trucking industry—if it doesn't happen with regularity, why doesn't the trucking industry just concede to that 70 hours a week then, 72 hours a week?

Mr. MULLEN. Because we are talking about different things. The 70-hour was never changed. What changed was the restart.

So, under the old restart, if, again, in that perfect freight atmosphere that I tried to describe to you earlier where you have the right loads at the right time, the traffic doesn't impede you and you get the restart at the exact right time, you can get over that 70 hours. But it is in a perfect world.

And so when the whole idea of changing the restart came about, we did our own study internally. We did not have drivers getting past 70 hours. It just doesn't happen. It might happen in some small areas, but it just doesn't happen as a routine matter or even a prevalent matter.

So that 80 hours that you keep referring to, that is a perfect world. The rules don't say you can drive 80 hours in 8 days. The rules say 70 hours in 8 days, but the restart can allow you to get over that 70.

So I hear you. And the 80 sounds very compelling when you talk about it, but it just doesn't happen. And what we would prefer is you talk about circumstances that actually are more common and you can actually drive down the frequency at a greater rate than quarrelling about all these other issues.

Senator BOOKER. Right. And I will conclude just by saying that, A, it does happen where drivers—we had a very—you know the accident in New Jersey that got a lot of national headlines. That was somebody that was past 80 hours. So it factually does happen that somebody drives more than 80 hours a week. That is an incontrovertible fact.

You and I can argue about different ways of getting there, but if you and I are in agreement with the fact that in one workweek to get 80 hours endangers people on highways, we should find a way to prevent that. Both industry should want that as well as those who are in charge of trying to keep our highways safe.

Mr. MULLEN. Senator, if we could talk later, that would be fantastic, because I think we have the same passion, just going about it in different ways.

And the tragedy you referred to—again, tragedy. He was within his hours of service. Bad decisions—you can't regulate bad decisions out of the marketplace. He was within his hours of service, but he made personal decisions on his personal time that contributed to the fatigue, unfortunately, which led to that accident.

Thank you for your questions.

Senator BOOKER. No, sir, thank you. And, again, I appreciate the business you do for our country.

Mr. MULLEN. Thank you. I appreciate that.

Senator FISCHER. Thank you, Senator.

The hearing record will remain open for 2 weeks, and during this time Senators may submit any questions for the record. Upon re-

ceipt, the witnesses are requested to submit their written answers to the Committee as soon as possible.

With that, I will conclude the hearing. I thank the witnesses for being here. I think we had a great panel today. Thank you so much.

We are adjourned.

[Whereupon, at 11:32 a.m., the hearing was adjourned.]

A P P E N D I X

PREPARED STATEMENT OF THE COMMERCIAL VEHICLE SAFETY ALLIANCE (CVSA)

The Commercial Vehicle Safety Alliance (CVSA) submits Comments for the Record regarding the hearing held on January 29, 2015 by the Senate Committee on Commerce, Science, and Transportation's Subcommittee on Surface Transportation and Merchant Marine Infrastructure, Safety, and Security, entitled: "Improving the Performance of our Transportation Networks: Stakeholder Perspectives." In these comments, CVSA will address a number of issues raised during the hearing related to commercial motor vehicle (CMV) enforcement and the States' CMV safety programs, which receive funding through the Motor Carrier Safety Assistance Program (MCSAP), as well as remarks related to the Federal Motor Carrier Administration's (FMCSA) pending Safety Fitness Determination (SFD) rulemaking.

Traffic Enforcement

A portion of the remarks made by Mr. Jim Mullen, Executive Vice President and General Counsel, Werner Enterprises, focused on the concept of improving efficiency from State safety programs by focusing efforts on inspection activities *coupled* with traffic enforcement. In his remarks, Mr. Mullen cites data that indicates a decline in the number of traffic enforcement activities associated with an inspection and expresses concern on behalf of the trucking industry that this is negatively impacting roadway safety.

There are two issues that need to be addressed. First, the perceived decrease in traffic enforcement through the MCSAP and second, whether or not requiring States to focus their efforts on increased traffic enforcement will provide an overall safety benefit. Before examining these issues, however, it is important to clarify that the "traffic enforcement" activity referred to in Mr. Mullen's testimony *includes* a North American Standard Inspection in the numbers, and not a simple "walk-around" inspection as suggested. This means that the traffic enforcement data being cited includes both the traffic enforcement activity AND all the aspects that occur with a "standard roadside inspection"—"a vehicle inspection to detect component defects and a review of the driver's paper work (*e.g.,* hours of service records of duty status) and credentials (*e.g.,* license and medical examiner's certificate)."

Therefore, the benefits accrued from the traffic enforcement activity included in the data being referenced also include benefits resulting from roadside inspections. Essentially, we are comparing the effectiveness of traffic enforcement *coupled with* an inspection versus an inspection only. It's not surprising, then, that the more rigorous activity, traffic enforcement and an inspection, delivers more safety benefits.

However, there is a lot of traffic enforcement activity on both CMVs and non-commercial motor vehicles (non-CMVs) operating in the vicinity of CMVs that is not being reported to FMCSA. States are not required to report this information under the MCSAP. The fact is the data being reported is incomplete, and so we are not able to quantify the totality of the MCSAP and non-MCSAP funded traffic enforcement activities being conducted, or the associated benefits, while NOT *coupled* with a roadside inspection. The dataset required for this proper evaluation and analysis just doesn't exist.

It should also be noted that, according to ATA's own analysis of Federal crash data,[1] the large truck fatality crash rate has fallen significantly over the last decade. This decrease coincides with the reported decrease in MCSAP-funded traffic enforcement, indicating that States have, in fact, been successful in delivering comprehensive programs that help reduce crashes and fatalities associated with commercial motor vehicles. These fatality reductions have also came at a time when

[1] "ATA Pleased with Improvement in Truck Crash Rate," American Trucking Associations (ATA) press release, February 2, 2015, on ATA website, *http://www.trucking.org,* accessed February 4, 2015.

Federal and State resources for CMV safety and enforcement have been essentially flat-lined, while truck registrations and traffic increased by about 30 percent.[2]

There are a number of reasons why traffic enforcement *coupled* with an inspection has reportedly decreased. First, recently FMCSA stopped requiring that a traffic enforcement violation documented by a MCSAP-funded inspector be accompanied by a roadside inspection report in order for the State to receive MCSAP reimbursement for the activity. Because MCSAP inspectors can now conduct traffic enforcement on CMVs without also completing an inspection, traffic enforcement *coupled* with an inspection has declined. However, that does not mean that traffic enforcement on CMVs is no longer occurring. Unfortunately, because that activity is not associated with an inspection report, the traffic enforcement dataset is incomplete. In addition, and perhaps most significantly, many State MCSAP agencies have made an effort to share their responsibilities for CMV traffic enforcement activities with non-MCSAP law enforcement officers, asking those officers to increase their traffic enforcement on CMVs. This is not, as Mr. Mullen's testimony suggests "an attempt to deflect the criticism of FMCSA's management of its CMV enforcement program" but rather an effort by States and FMCSA to manage resources and responsibilities as efficiently and effectively as possible. In addition, some State agencies have focused on enforcement of non-CMVs operating around CMVs, as the enforcement community, like industry, understands that not all CMV crashes are the fault of the CMV driver.

Furthermore, as resources at the State level continue to shrink, many sworn law enforcement officers who several years ago were conducting traffic enforcement *coupled* with inspections (under the MCSAP) have been pulled off of those activities for other law enforcement duties, including strictly traffic enforcement.

Because traffic enforcement is no longer required to be conducted along with an inspection, and because in all States non-MCSAP officers are conducting traffic enforcement, the dataset is incomplete. We currently cannot capture traffic enforcement conducted by non-MCSAP officers on CMVs, traffic enforcement conducted by a MCSAP inspector that is not coupled with an inspection, or traffic enforcement on private vehicles operating around CMVs. Because the dataset is incomplete, it is difficult to quantify the benefits of each individual activity. The combined result of these efforts is that we know the States are doing more traffic enforcement, focusing on driver behavior, while continuing to conduct the necessary vehicle inspections. And, as recent data from DOT indicates, crash rates and fatalities are declining.

We agree that traffic enforcement is a critical piece of each State's commercial vehicle safety program. However, it is just that, *a piece* of their program. Under the MCSAP, States are tasked with meeting the requirements of a comprehensive commercial motor vehicle safety program. FMCSA has established five national program elements, of which traffic enforcement is one. In addition, the requirement to enforce traffic laws is only one of more than twenty specific components established for the MCSAP program under 49 U.S. Code § 31102(b)(2) and promulgated by regulation in 49 CFR Part 350. As an example, in addition to enforcing traffic laws, States are required to ensure registrants of commercial motor vehicles "demonstrate knowledge of applicable safety regulations, standards, and orders of the Government and the State."[3]

To meet the goals established under MCSAP, a State's commercial vehicle safety program is comprised of a number of aspects, including roadside inspections, traffic enforcement on commercial vehicles, compliance reviews, safety audits, targeted strike forces, educational activities and even traffic enforcement on non-commercial vehicles—the private citizens operating dangerously around commercial vehicles. The appropriate level for each activity varies from State to State and will change over time within any given State. We firmly believe that the Commercial Vehicle Safety Plan (CVSP) is the appropriate place to evaluate programmatic effectiveness and effect change, not through statute. The CVSP is a living document that dynamically changes from year to year based on a variety of factors. The CVSP is submitted to and approved by FMCSA each year prior to funding being appropriated to the States, so there are checks and balances in place to ensure crash reduction targets and goals are being met.

When developing a CVSP, States must look at all the responsibilities required of them under MCSAP and align those activities with the personnel and funding made available to them under MCSAP. The fact is that MCSAP inspectors and investigators are specially trained to enforce the Federal Motor Carrier Safety and Haz-

[2] Budget Estimates, Fiscal Year 2016, Federal Motor Carrier Safety Administration, U.S. Department of Transportation.

[3] 49 U.S. Code § 31102(b)(2)(l)

ardous Materials Regulations. They've been trained to evaluate regulatory compliance, such as reviewing log books, inspecting vehicles, and interacting with motor carriers, vehicles and drivers, all with the goal of identifying and removing dangerous motor carriers, drivers, and vehicles from the road.

The volume of regulations, exemptions, and exceptions is only getting increasingly complicated and complex, which is demanding more of the personnel conducting these activities. Meanwhile, any law enforcement officer can conduct traffic enforcement, and those assigned traffic enforcement duties do so each day. In addition, the states continue to get inundated with unfunded mandates either through Congressional direction or through policy changes by FMCSA. These unfunded mandates have hampered the ability of the states to do the work that has been asked of them, and take time and energy away from program delivery.

Forcing states to focus more of their efforts on traffic enforcement *coupled* with an inspection could negatively impact safety. For example, Mr. Mullen notes in his testimony that research indicates a strong correlation between compliance with hours of service regulations and safety. Traffic enforcement *coupled* with an inspection takes more time, and requires the presence of a traffic violation, reducing the number of inspections a MCSAP-trained inspector can conduct. This means fewer log books will be reviewed. It also means fewer traffic enforcement activities, as the officer has to then conduct an inspection along with issuing the traffic citation. In order to be the most effective and interact with the highest number of motor carriers, vehicles, and drivers it makes sense to allow the specially-trained MCSAP inspectors and investigators to focus on their area of expertise and allow non-CMV trained officers to focus on traffic enforcement, reaping the benefits of both activities. There are grant programs to help facilitate this activity available through the National Highway Traffic Safety Administration (NHTSA), in which many States participate to varying degrees. And while it's true that MCSAP and non-MCSAP traffic enforcement NOT coupled with an inspection does not currently make its way into the Motor Carrier Management and Information System and thus not accounted for in the CSA algorithm, that does not mean that the activity is not happening and that safety benefits are not accruing. They are simply not being captured in the CSA model. However, we strongly agree that this is a hole in the dataset and we look forward to working with industry and FMCSA on finding a way to collect this data, so a motor carrier's CSA scores can more accurately reflect their drivers' behaviors.

States need more flexibility in how they spend their resources, not more restrictive parameters. Rather than prescribing a "one size fits all" format for State programs, Congress and FMCSA should focus on setting broad parameters, program elements, goals, and expected outcomes for a program. This will allow each State to develop their own CVSP, tailored to the state's needs, with the goal of ensuring that crash reduction targets are being met. Simply saying states should focus more on traffic enforcement ignores the complexity and diversity of each state's CMV safety and enforcement program.

Safety Fitness Determination

Mr. Mullen's written testimony also addresses FMCSA's forthcoming rulemaking on the agency's Safety Fitness Determination, arguing that FMCSA should not move forward with the rulemaking until issues with CSA have been addressed. CVSA strongly disagrees with this argument.

We agree that improvements to the CSA program are necessary. However, the underlying issue is that the CSA program is not being used as it was originally designed or intended and the program is still incomplete. It is our understanding that the CSA program as it has been designed by FMCSA was intended to be a screening tool for enforcement, helping inspectors and investigators to identify the carriers most in need of an intervention and to identify the "bad actors" in industry, NOT to tell shippers which motor carriers are "safe". Further, the BASIC SMS scores as we understand them were not meant to serve as an absolute assessment of a motor carrier's safety culture. The forthcoming SFD rule will help to define what that assessment will look like.

Because CSA is not being used as it was intended, issues like crash accountability, the relative nature of the SMS, and lack of full implementation present real challenges and inequities that need to be addressed. The best way to address these issues is to complete the CSA program, and by moving forward with the SFD rulemaking. When complete, the SFD, which will have undergone a public notice and comment process, will provide for a more complete picture of a motor carrier's safety fitness.

NATIONAL ASSOCIATION OF RAILROAD PASSENGERS
Washington, DC, February 12, 2015

Committee on Commerce, Science, and Transportation,
Subcommittee on Surface Transportation,
Washington, DC.

Following upon the January 29 hearing on improving the performance of U.S. transportation networks, please consider the following policy recommendations from the National Association of Railroad Passengers regarding the implementation of Positive Train Control.

Accepting that compliance with the December 31, 2015, statutory deadline is not feasible, NARP recommends that any new law which changes that deadline should:

(1) Grant authority to the Secretary of Transportation, on an individual company basis, to give up to three, consecutive 18-month extensions, bringing the latest possible date of compliance 4–1/2 years after the current deadline, or June 30, 2020.

(2) Change the law so that heavily traveled mainlines are not exempt because they happen to be owned by other than a Class 1;

(3) Explicitly require the prevention of low-speed, rear-end collisions—of which there have been fatal ones within the past four years [see below]. The system as currently being installed does not know the length of trains and therefore cannot prevent low-speed, rear-end collisions.

Point #1 would be preferable to legislatively forcing the gift to the entire industry of a blanket 5-year extension. It would enable the Secretary to treat with appropriate differences railroads which have worked hard on PTC vs. those who have not.

Point #2 would protect the railroads from a tragic accident that also would be a public relations disaster for the industry—how to explain having installed PTC all across rural America but having taken advantage of a legal loophole either to avoid installation in populated areas like the cities of Kansas City and St. Louis. [Some states may come up with the money to save their passenger trains; other states already choking on the big run-up in Amtrak-related costs under Section 209 of the 2008 law may let the service die and leave PTC absent where most needed.]

Point #3 would make explicit what most people thought the law already meant—train-to-train collisions must be prevented; there is no exception for low-speed, rear-end collisions. The NTSB April 24, 2012, report on the April 17, 2011, fatal collision at Red Oak, Iowa, stated that "the PTC designs that are being deployed and the FRA's final rule on the application of PTC are unlikely to prevent future restricted speed restricted speed rear-end collisions similar to the 58 rear-end collisions reported to the Federal Railroad Administration over the last 10 years or the collision at Red Oak because train speeds at the upper limit of restricted speed are allowed."

FRA's April 25, 2012, advisory in response to the NTSB's report detailed six rear-end collisions over the past year that caused four employee fatalities (the other two were at Mineral Springs, NC, on CSX on May 24, 2011, and DeWitt, NY, on CSX on July 6, 2011), six employee injuries and property damage exceeding $6 million. Thankfully, no passenger trains were involved.

PREPARED STATEMENT OF ROSS B. CAPON, CONSULTANT, AMERICAN ASSOCIATION OF PRIVATE RAILROAD CAR OWNERS *http://aaprco.com/*

Thank you for holding the hearing on this important subject and for the opportunity to submit these comments.

Clearly, the U.S. has under-invested in intercity passenger rail. However, the appropriate steps forward should be based on a firm understanding of the current facts and not on criticism of Amtrak's service. The top priority for investment in the Northeast Corridor must be rehabilitation and expansion of the existing railroad, not development of a new mode of transportation (maglev) that cannot use existing infrastructure. It is vital to avoid the economic disruption that would result from failure of one or more key elements of the commuter rail network or Amtrak service. Such failure, besides reflecting bad policy and threatening the economy, would exact a heavy political price from officials who appeared neglected the existing railroad due to the distraction of creating a brand new infrastructure.

A major strength of the French TGV service is that trains can use existing tracks where needed—whether in the approach to the heart of a congested city or in serv-

ing a remote, singletrack branch line such as that to Annecy. A maglev train could only use brand-new, purposebuilt infrastructure.

Similarly, it is important to be able to utilize key elements of the new railroad Amtrak has proposed as soon as meaningful segments have been completed, rather than be forced to wait until an entire new technology has been extended from Washington to New York or New York to Boston.

The investment needs of course are not confined to the Northeast, as illustrated by the passenger train TIGER grant applications which U.S. DOT has received. Much criticism directed at the Administration's high speed rail program results from the fact that there is no conventional rail program. Less ambitious projects are what many states want and can support. Federal grants which have extended service to Freeport and Brunswick, Maine, improved service within North Carolina, the Midwest, the Pacific Northwest and elsewhere have met important needs.

As Congress grapples with transportation funding issues, it is important to bear in mind that changing demographics are associated with changing demands for transportation. As Secretary Foxx said in a February 11 House hearing, millennials and following generations are moving closer to cities and "we should not plan to return to 1956"

[in terms of near-exclusive focus on automobiles]. He also noted that getting people out of cars produces a major benefit for highway users.

Thank you for considering our views.

The mission of the American Association of Private Railroad Car Owners "is to promote the operation, ownership and enjoyment of the private passenger railcar." Amtrak's Federal operating grant requirement is reduced because of the profit that Amtrak makes from handling private cars. We have a special interest in the viability and development of Amtrak's longdistance train network. Our cars also operate on several of Amtrak's state-supported routes. We have about 600 dues-paying members, including 75 members who own cars which have passed Amtrak's stringent safety certification process for operation on Amtrak trains. These members own about 200 Amtrak-certified cars, as some members own more than one car.

RESPONSE TO WRITTEN QUESTION SUBMITTED BY HON. JOHN THUNE TO DOUGLAS MEANS

Question. West Coast port delays. You stated that the West Coast port labor disputes have caused Cabela's to incur significant costs, and your company has added five to 15 days of lead time to its supply chain as a result of the increased port congestion.

a. Considering the continued failure to reach a much-needed and urgent long-term solution, what are the potential effects—for Cabela's and other retailers—of a complete work stoppage within the affected West Coast ports?
b. Once the dispute is resolved, how long will it take to unwind the congestion and to alleviate the lingering effects of this unnecessary situation for Cabela's and other retailers?

Answer. Although a tentative agreement has been reached, this does not resolve the long term issues associated with the West Coast Ports. Cabela's like many other retailers will continue to develop options to reduce the amount of import freight destined to the west coast.

Long term we cannot be in a position of our entire supply chain being threatened due to a work slow down at either the west coast or the east coast. The current tentative agreement does not bring resolution to the larger long-term issues at the West Coast ports. Port productivity is lower there than either at the East Coast or at other ports around the world. The overall congestion issues and productivity issues were not addressed.

As such we will review options to shift a certain portion to either East Coast, Canadian or Mexican ports. Sourcing locations will also be reviewed to look at near sourcing locations where we can rely on consistent supply chain predictability.

Regarding the current situation, we anticipate that it will take 6–8 weeks for the ports to work through the current backlogs. Furthermore, the industry is guessing it will take 3–6 months until the backlogs in the entire supply chain are resolved and normal sailing schedules and unloading cadences are back to normal. This timeline includes the railroads clearing up their backlogs and correcting their imbalance situation that this work disruption has caused.

Long term, the framework for resolving disputes such as these, need to be reviewed. The port slowdown cost the economy and retailers a significant amount of

money. The ability of the congress or the administration to intercede sooner in a dispute that has such a dire consequence to the entire economy must be enabled.

RESPONSE TO WRITTEN QUESTION SUBMITTED BY HON. KELLY AYOTTE TO DOUGLAS MEANS

Question. In your written testimony you describe the regulatory burdens on the transportation industry, specifically the Federal Motor Carrier Safety Administration's Hours of Service regulations. I have heard concerns regarding these regulations from not only truckers but also numerous industries along the supply chain where commerce has slowed. C&S Wholesale Grocers, the largest food wholesaler in the United States, has expressed to me serious concerns regarding the negative impact these regulations have had on the productivity and efficiency of their operations. In what ways have these regulations impacted Cabela's business? In your experience, how have these regulations impacted consumers?

Answer. There are many challenges within the transportation industry. One of the largest has been the issue of driver shortages, which has led to capacity issues. This has been a concern for a number of years and only continues to worsen.

When regulations are implemented such as new hours of service regulations which reduces the number of hours that drivers can be on the road only tends to worsen the driver shortage and capacity issue. Trucking rates have increased and predictability of shipping has been challenged as a result of lack of capacity. These ultimately impact our customers either in unreliable service or higher costs.

Safety on the roads is a high priority for us. However, when regulations are implemented in the name of safety without supporting studies to validate these rules, this has a negative impact to the shipping community. Capacity issues adds costs to all segments of the supply chain and ultimately the consumer.

The Hours of Service bill was suspended for one year as part of the Cromnibus Appropriations Bill. We ask that this suspension be made permanent. In addition, increases to size and weight of trailers should be considered nationwide as long as the safety concerns are addressed.

A comprehensive National Freight Policy, which addresses these subjects and the overall infrastructure issues, should be a priority for this congress.

Thank you for the opportunity to address you regarding these important concerns.

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