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U.S. Department
of Transportation

Office of the Secretary
of Transportation (OST)

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Washington, DC 20590

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August 23, 2017

File No.: FY 2017-0301

This is in response to your Freedom of Information Act (FOIA) request dated July 5, 2017. You requested copies of each Department of Transportation (DOT) Views Letters -- statements of the DOT's position, thoughts and comments on specific issues or legislation being considered by Congress for FY 2015, FY 2016, and FY 2017.

We located three records responsive to your request, and they are enclosed in their entirety.

For further assistance, please see contact information above.

Sincerely,

KATHLEEN M RAY

Digitally signed by KATHLEEN M RAY
DN: c=US, o=U.S. Government, ou=OSTHQ,
ou=DOT Headquarters, cn=KATHLEEN M RAY
Date: 2017.08.23 13:28:45 -04'00'

Kathy Ray
FOIA Officer

Enclosures



U.S. Department
of Transportation
**National Highway
Traffic Safety
Administration**

Deputy Administrator

1200 New Jersey Avenue SE.
Washington, DC 20590

November 5, 2014

The Honorable Claire McCaskill
United States Senate
Washington, D.C. 20510

Dear Senator McCaskill:

This responds to your October 8, 2014 letter requesting the National Highway Traffic Safety Administration's (NHTSA) position on the Alliance of Automobile Manufacturers' Rental Car Legislative Proposal ("Alliance Proposal") for the record of the September 16, 2014 hearing on "Oversight of and Policy Considerations for the National Highway Traffic Safety Administration." Specifically, you asked that the agency provide its views and analysis of the Alliance Proposal, particularly in comparison to your legislation (S. 2819) and the Administration's proposal (GROW AMERICA Act) regarding the grounding of rental car vehicles subject to a safety recall.

Summary of Relevant Limitation on Rental Provisions (Alliance Proposal, S. 2819 and GROW AMERICA Act)

The Alliance Proposal provides that a rental car company may not rent a motor vehicle subject to a recall until the company notifies the renter of the recall and the renter provides acknowledgement in writing ("informed consent"). The Proposal permits exceptions from these requirements if the defect or noncompliance which is the subject of a recall is remedied or enforcement of the order regarding the recall is set aside by a civil action. Finally, the Alliance Proposal states that notwithstanding the informed consent provisions, a motor vehicle subject to a recall may not be rented if the defect notice from a manufacturer contains precautionary advice to refrain from driving the vehicle until the specified remedy is completed.

In contrast to the Alliance Proposal, both S. 2819 (Section 3) and the GROW AMERICA Act (Section 4109) prohibit rental companies that receive a defect notification from a manufacturer from renting vehicles subject to a recall unless the defect or noncompliance is remedied. Both bills provide limited exceptions from these requirements, but neither bill permits the rental company to rent the motor vehicle even after obtaining consent from the consumer. In addition, neither bill makes the prohibition on rental dependent upon the defect notification containing precautionary advice to refrain from driving. Further, the GROW AMERICA Act also prohibits used car dealers from selling a vehicle with a defect or noncompliance that has not been fixed.



Agency Views and Analysis

The agency opposes the Alliance Proposal because it would not adequately protect rental consumers and the driving public in the event of a recall. The Proposal allows vehicles subject to recall to be rented if consumers acknowledge and consent to the risks and dangers of the defect. A consumer who is renting a short term vehicle usually is not in an informed position to understand the nature and extent of a defect or noncompliance. The consumer is therefore put in a position of quickly choosing between risking their safety and their ability to fulfill the purpose of their trip as planned. The agency believes it is unreasonable to place the burden on the consumer in this context or to expect that rental car companies and their employees could adequately educate a consumer on the risks and dangers of the defective vehicle.

In addition, the Alliance Proposal prohibiting the rental of vehicles subject to a recall only when the defect notice from manufacturers contains precautionary advice to refrain from driving would apply to very few recalls and thus, would be wholly ineffective in protecting the American public. The agency issued an information request (IR) on October 14, 2014 to the nine motor vehicle manufacturers who support the Alliance proposal directing them to report the number of instances since January 1, 2000 that they have issued a notice in the circumstance suggested in the Alliance Proposal – a defect or noncompliance notice with precautionary advice to refrain from driving a vehicle.

In response to our request, the Alliance provided information for their members for the years 2010-2013. The Alliance reported only six (6) recalls where unconditional “do not drive” instructions were issued by manufacturers, covering only 53,300 vehicles. This represents 0.24% of the total vehicle recalls (2,459) for the time period of 2010-2013, and a mere 0.07% of the total number of vehicles recalled during this period (73,910,203). The Alliance also reported 45 instances where conditional “do not drive” recall notices were issued – recalls that instructed the owner not to drive the vehicle under certain circumstances. Because these recalls include instructions that indicate the driver can keep driving the car if the conditions are first satisfied (e.g., the vehicle owner should examine the vehicle to determine if the defect is apparent) the Alliance’s proposed language would not appear to prohibit rental companies from renting vehicles in these recalls. However, the Alliance’s analysis shows that even including conditional “do not drive” recalls in the calculation, the 45 recalls still make up only 10% of the recalls during the period 2010-2013 that were examined by the Alliance. By NHTSA’s calculation, these recalls represent only 1.8% of the total recalls, and only 4.9% (3,646,904) of the total number of vehicles recalled, during the period 2010-2013.

In addition, NHTSA received responses from the nine manufacturers who received the information request from NHTSA. The manufacturers confirmed NHTSA’s initial assessment that the manufacturers very rarely issue “do not drive” recalls. Specifically, these manufacturers reported only 29 vehicle recalls since 2000 in which they have issued “do not drive” instructions (BMW (10), Jaguar Land Rover (5), Chrysler (1), Ford (6), VW (6), Mazda (0), Volvo (0), Toyota (1), and Mercedes (0)).


The Honorable Claire McCaskill

These results show that the Alliance Proposal is not a serious, comprehensive approach to redress the problem of defective rental vehicles on our nation's roads and highways. The agency is also concerned that this approach is counterproductive, making consumers believe that defects and noncompliance in motor vehicles are only serious and dangerous if the defect notice tells consumer not to drive the vehicle.

The agency submits to the record its opposition to the Alliance Proposal. The informed consent provisions and the requirement to ground rental vehicles only in the limited circumstance when the defect or noncompliance notice contains advice not to drive does not adequately protect consumers and the driving public. The agency supports S. 2819 to the extent that it is consistent with our GROW AMERICA proposal – to protect consumers from renting vehicles subject to a recall unless the defect or noncompliance is remedied. The agency further supports Section 4109 of the GROW AMERICA Act, that would extend these requirements to used car dealers. All defects and noncompliance should be addressed and remedied prior to selling or renting a motor vehicle to the public.

I have sent a similar response to Senator Barbara Boxer. If I can provide additional information or assistance, please feel free to call me. If members of your staff have questions, they may contact Alison Pascale, Director, Office of Governmental Affairs, Policy and Strategic Planning at (202) 366-2386.

Sincerely yours,



David J. Friedman
Deputy Administrator



THE SECRETARY OF TRANSPORTATION

WASHINGTON, DC 20590

November 13, 2015

The Honorable Bill Shuster
Chairman, Committee on Transportation,
and Infrastructure
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

I write to express my appreciation for efforts thus far to achieve a bipartisan long-term surface transportation bill. For the first time in more than a decade, our Nation may gain the fiscal and policy certainty to allow us to get serious about building for the future. The Administration is encouraged by the bipartisanship demonstrated in both chambers throughout this process. We hope and expect that pattern will continue as you negotiate and advance a final conference agreement for the President's consideration.

We especially appreciate the inclusion of some key provisions from the GROW AMERICA Act in both House- and Senate-passed proposals. Both versions of the bill make efforts to codify the Administration's focus on permitting reform and its commitment to efficient project delivery. Both versions, like GROW AMERICA, also establish new and distinct programs focused on the unique needs of our freight networks. They also make progress toward the Administration's goals to strengthen the Federal Transit Administration's Buy America vehicle content requirements to boost U.S. manufacturing. We certainly hope that you build on these provisions, and you can count on the Department to help on these issues.

FUNDING CONCERNS

Now, as the House and Senate enter into conference on the remaining policy questions, I write to ask you to ensure the final product does justice to the needs of the American public, present and future. First and foremost, I urge you to work with the Administration to raise overall funding levels to ensure a brighter economic future and quality of life for the American people. Our Nation's population is growing, our infrastructure is aging, and our economic position in the world continues to get stronger. These forces, taken together, present a huge opportunity for gain, yet also pose a huge threat if we continue to underinvest in the Nation's infrastructure.

As you know, the Administration's proposed six-year, \$478 billion GROW AMERICA Act would ensure that our businesses can compete effectively in the global economy. The Department recently completed an analysis to determine the amounts the Federal government would need to invest in the years ahead to ensure that congestion and road conditions get no worse. Funding levels in the House version set the Nation on a course of worsening traffic and steadily deteriorating roadways. While the Senate version importantly provides an increase over current

funding levels, even more is needed to reverse the declining condition of our surface transportation system and enable real improvement. As the President has said repeatedly, to compete in today's economy, we must have a first-class transportation system that takes American goods to the world.

The Administration is concerned that both proposals significantly cut funding for the Transportation Infrastructure Finance and Innovation Act (TIFIA) loan program. The TIFIA program is a critical tool for financing roads, rails, and other surface transportation projects that help move people and goods and grow our economy. The program leverages Federal funds by attracting substantial private and other non-Federal investment to make important improvements to the Nation's surface transportation system. Each dollar of Federal funds can provide up to \$10 in TIFIA credit assistance and leverage \$30 in transportation infrastructure investment. While both the Senate and House versions of the bill provide important flexibility to allow the Department to make use of carryover funds from previous years to supplement these amounts, the levels in these bills would be insufficient to sustain the TIFIA program at its current level of activity—much less manage the increased interest we are seeing in public-private partnerships. The TIFIA program is one of the Department's best tools to encourage public-private partnerships, and predictable funding is essential in encouraging State and local governments to launch such projects. I urge the Conference not to hamstring the program by reducing its funding below current levels.

The bill also lacks any funding or authorization for the TIGER grant program. TIGER provides a unique opportunity for the Department to invest in road, rail, transit and port projects that promise to achieve national objectives. Since 2009, TIGER has provided nearly \$4.6 billion to 381 projects in all 50 States, the District of Columbia and Puerto Rico, including 134 projects to support rural and tribal communities. Demand for TIGER has been overwhelming, with the Department receiving more than 6,700 applications requesting more than \$134 billion through the program's seven rounds. GROW AMERICA requested \$7.5 billion over 6 years for the highly successful program.

As rail is a critical component of our Nation's surface transportation system, I applaud the Senate for working to include a rail title as part of the Senate version of the bill and we support inclusion of a rail title with increased funding as part of any final comprehensive surface transportation bill. Cities in the South and West are growing at a rapid pace and we believe that rail transportation will be a critical tool in alleviating worsening congestion in these communities. At the same time, our rail infrastructure in the Northeast and Midwest is in desperate need of modernization, including century-old rail tunnels that support the busiest rail corridor in the Nation. I also support the Senate's proposal to include \$199 million to help commuter railroads install critically important positive train control, but more is needed.

The funding levels for administrative activities included in the House version of the bill are not sufficient to administer the programs supported by the bill and required under existing law, and will likely make it impossible to staff programs at needed levels. While we always focus on managing as efficiently as possible given a resource-constrained funding environment, we are concerned that the funding levels proposed in the House version will, for instance, hamper efforts to successfully respond to the increasing demands on managing defect investigations and recalls, implement transit safety authorities, and support research in key safety areas, such as crash avoidance technologies and vehicle-to-vehicle technologies.

SAFETY CONCERNS

I urge you to help our Department raise, not lower, the bar on safety. Both versions of the bill contain several highly objectionable provisions that would undermine the safety of the Nation's transportation system. For example, the House version limits our ability to recall dangerous and unsafe rental cars, thus allowing Americans to rent cars with known safety defects. Despite the fact that motorcycle deaths are on the rise, and that motorcycle helmets saved more than 1,600 lives in 2013, both versions prevent States from using Federal dollars to enforce motorcycle helmet laws. Similarly, the Senate version allows States to weaken mandatory incarceration requirements for repeat DUI offenders when qualifying for Federal grants. To differing degrees, the House and Senate versions require the Department to mask from the general public critical safety data about truck and bus companies. The House version also limits the Department's ability to perform safety inspections of operating passenger motor coaches. Both the House and Senate versions create new obstacles to implementing the Department's recent rule on electronically controlled pneumatic brake system technology that will help reduce the risk and impact of accidents involving rail cars carrying high-hazard flammable liquids.

I ask the conferees to take a clear-headed look at these many safety-weakening measures and I renew our earlier call in GROW AMERICA for additional safety-enforcing authority. This authority includes sufficiently raising penalties for automobile manufacturers that do not fix defective and dangerous vehicles and equipment; allowing the Department to take immediate steps to take defective vehicles off the road; making motorcoach brokers accountable to many of the same safety rules as the rest of the motorcoach industry; and providing tools to help the Department better administer the transit safety program established under MAP-21. All of these safety provisions would result in lives saved.

PERMITTING AND PROJECT DELIVERY CONCERNS

The Administration shares the commitment in both versions of the bill to expedite project delivery and appreciates the inclusion of many Administration proposals to accomplish this goal. However, as currently drafted, some provisions, such as those encouraging further delegation of Federal authorities to States, could create inconsistency and confusion across the country, result in inefficiency in implementation, and lead to litigation likely to delay rather than expedite projects. We believe, in particular, the pilot provision delegating Federal authorities to States in the House version should be struck. Similarly, the Senate version includes three competing and contradictory sets of project delivery provisions with differing scopes and authorities, some of which would limit judicial review and weaken critical environmental laws. We are also concerned with a House provision that would exclude EPA from the proposed steering committee, which would undermine the intended streamlining and coordination effort.

Thank you for the opportunity to provide the Administration's views on this important legislation. We look forward to working with Congress to address these and other important issues. Attached, you will find a more detailed listing of the Administration's concerns across the House and Senate version of the bill. The Office of Management and Budget has advised that there is no objection, from the standpoint of the Administration's program, to the submission of this letter to Congress.

I have sent similar letters to the Ranking Member of the House Committee on Transportation and

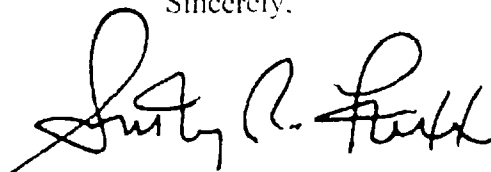
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The Honorable Bill Shuster

Infrastructure; the Chairman and Ranking Member of the Senate Committee on Banking, Housing, and Urban Affairs; the Chairman and Ranking Member of the Senate Committee on Commerce, Science, and Transportation; and the Chairman and Ranking Member of the Senate Committee on Environment and Public Works.

If I can provide further information or assistance, please feel free to call me.

Sincerely,

A handwritten signature in black ink, appearing to read "Anthony R. Foxx". The signature is fluid and cursive, with the first name "Anthony" being the most prominent part.

Anthony R. Foxx

Enclosure

APPENDIX: ADDITIONAL CONCERNS ON HOUSE AND SENATE VERSIONS

FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION (FMCSA)

- *Compliance, Safety and Accountability (CSA)*: Both versions propose to hide enforcement data for trucking companies from public view until the completion of numerous and onerous studies and implementation of expensive programs with little or no safety benefit. The House version takes the additional step of removing motorcoach enforcement data from the public, which would disadvantage the traveling public from making informed decisions on bus companies. Currently, FMCSA and its state partners conduct 3,376,038 inspections a year, most of which discover safety violations and over 20 percent of which have violations so severe that they require the vehicle be immediately placed out-of-service.
- *Motorcoach En-Route Inspections*: The House version would impose restrictive limits on bus safety inspections except under extreme situations. This would degrade and hamper important safety oversight by Federal, State and local inspectors by further limiting the Agency's authority to conduct inspections while a bus is en-route. Inspections would be limited to origin and destination locations many of which are located on private property without sufficient area to safely conduct inspections. The already limited number of inspections conducted on passenger carrying vehicles would be further reduced.
- *Funding Levels*: The House version cripples the Agency's ability to execute congressional mandates while maintaining safety enforcement levels. The House funding flat lines administrative expense authorization at FY 2015 levels over the course of the next six years, which will reduce funding for safety inspectors, travel for safety inspections and audits, and undermine the ability of FMCSA to deploy new safety and registration systems that are critical to more effectively targeting its safety efforts and reducing the compliance burden for commercial motor vehicle operators.
- *Safety Improvement Metrics/Beyond Compliance*: Both the House and Senate versions include proposals to implement a "Beyond Compliance" program. The Agency believes that any proposal must allow for flexibility as well as explicit authorization to allow for a "no-cost" contract and enforcement by third party contractors as part of any successful program. "Beyond Compliance" will require substantial verification of carriers and vehicles in order to apply SMS "credit" to carriers adopting voluntary safety programs, such as enhanced driver training programs. With more than 500,000 motor carriers and 4 million vehicles under FMCSA's jurisdiction, if even 10 percent of these carriers seek credit, enforcement and verification will require significant budget and staffing resources that could divert funding from critical safety programs without appropriate consideration by the Conference Committee. Additionally, being able to restore the Safety Measurement System Public Display is tied to the implementation of this program.
- *Interim Hiring Standard*: The House version would protect brokers and shippers from lawsuits for hiring unsafe carriers, if the carrier has met basic registration requirements, has the appropriate levels of insurance, and has a satisfactory rating. Only 10 percent of the carrier population has a satisfactory rating. The House provision would at the same time shield unscrupulous brokers and shippers and disadvantage the vast majority of carriers who have never had a federal Compliance Review and have not been issued a Safety Fitness Determination by FMCSA.
- *Teenage Drivers*: The Senate version gives the Agency the option to authorize a pilot program to study the safety of allowing persons under the age of 21 to operate large trucks and buses on our Nation's roads and highways. The House bill requires a pilot program be authorized after receiving recommendations of a task force required by the bill. The Department greatly prefers the flexibility provided by the Senate bill, knowing that research has shown that crash rates of drivers under 21

were almost four times the ratio of all large truck drivers in 2013. More than 89 percent of large truck drivers' ages 18-20 who received a roadside inspection in 2013 were likely to be in an injury or property-damage-only crash the same year, as compared to 9.3 percent of all large truck drivers.

- *Hair Testing:* Both the House and Senate versions would allow truck and bus companies to perform drug and alcohol testing using hair testing as an alternative to the standard urine testing for truck and bus companies, which creates inconsistency on the drug testing requirements across modes. The Senate provision is highly problematic as it places much of the responsibility on FMCSA for developing and implementing this program. FMCSA supports the House provision which tasks HHS with first establishing scientific and technical guidelines on hair testing.
- *Guidance Reform:* The House version would add significant procedural requirements for truck and bus safety guidance documents that go far beyond current law. Meeting these requirements will require significant resources, hamper FMCSA's ability to adapt to changing circumstances and restrict its ability to carry out its safety mission, all with little to no enhancement for safety.
- *Reform of Agency's Grant Programs:* Both versions would improve FMCSA's grant programs, but the Department supports the changes in the Senate version. These changes were developed in cooperation with the law enforcement community and will allow greater efficiency in the grant process. The Department also supports the Senate's proposal to re-purpose unobligated grants money into the next fiscal year's grant purposes, which would encourage grantees to expend their safety dollars responsibly and efficiently.
- *Veterans Access to Trucking:* The House version would allow Department of Veterans Affairs physicians to perform driver fitness examinations and issue medical certificates. However, this language would allow these physicians to operate outside of the MAP-21 mandated National Registry of Certified Medical Examiners. The Department supports allowing these physicians to perform medical examinations, but urges the Conference Committee to mandate their inclusion on the Registry (while allowing for reasonable exemptions from certain knowledge testing) to address significant safety concerns and cutting down on heightened risk of fraudulent medical examinations.

NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION (NHTSA)

- *Funding levels:* The House version proposes funding levels for the vehicle and behavioral safety programs that would significantly impair the Department's ability to protect the driving public from dangerous vehicle defects and to research critical safety priorities, such as pedestrian and bicycle safety, impaired and drugged driving. With the significant increase in vehicle recalls over the last several years, the House funding levels would curtail the agency's efforts to increase staffing levels, particularly in the Office of Defects Investigation, to meet these increased demands.
- *Civil Penalties:* The House version provides no increase to NHTSA's civil penalty cap to incentivize greater compliance by motor vehicle companies with Federal safety regulations. The Senate version only increases the cap to a maximum of \$105 million compared to GROW which proposed raising the cap to a maximum of \$300 million.
- *Safety of the driving public:* Neither version provides NHTSA with the imminent hazard authority it sought, and that other transportation modes already have, in order to protect the traveling public. Such authority would authorize NHTSA to require manufacturers to take immediate action to respond to any condition of a motor vehicle or motor vehicle equipment that creates the likelihood of death or serious injury to the public if not discontinued immediately, without prior notice or hearing. Examples of such imminent hazards could include automobile fires.
- *Motorcycle Safety:* Both the House and Senate versions would frustrate many States' efforts combating motorcycle fatalities by prohibiting States from using Federal dollars to enforce State

motorcycle helmet laws. NHTSA estimates that helmets saved the lives of 1,630 motorcyclists in 2013.

- *Highway Safety*: The Senate version would allow States with secondary enforcement of distracted driving laws to qualify for grants (Senate version, Sec. 34132), and weakening mandatory incarceration requirements for repeat DUI offenders (Senate version, Sec. 34104).
- *Recalls*: The House version dilutes DOT/NHTSA's recall authorities by diverting existing agency resources to build and run a system to house recall information for sellers of motor vehicle equipment that is currently being provided by commercial entities and inhibits the ability to recall dangerous and unsafe rental cars from certain vendors.
- *Highway Safety Plans*: The Department opposes a Senate provision that would reduce the amount of time to review States' annual highway safety plans (HSP) from 60 to 45 days. This reduction in review time does not result in a reduction in the amount of materials required to review, and would likely result in more conditional approval of highway safety plans.
- *Electronic Odometer Disclosures*: The Senate version would allow States, without prior approval from the Secretary of Transportation, to provide for electronic odometer disclosures. As required by MAP-21, NHTSA is drafting regulations to allow for electronic odometer disclosures. NHTSA should be allowed to complete its rulemaking to establish a uniform process that supports interstate commerce before Congress considers this provision.
- *Emissions standards and fuel savings*: The House version would undermine EPA and DOT's fuel efficiency and greenhouse gas (GHG) program by requiring changes that would weaken compliance requirements for natural gas vehicles. This would undermine savings from the program which achieves real-world cost savings for American drivers, as well as GHG and fuel reductions. The program was crafted to be equitable with respect to individual technologies, balancing short- and long-term impacts, and this would upset that equity balance.
- *Auto Recalls*: The Department supports the Senate's adoption of two GROW AMERICA proposals that would improve motor vehicle recalls: (1) a pilot program to review the effectiveness of a State process to inform consumers of a recall, (2) and providing authority to require rental car companies and used car dealers to recall defective and unsafe vehicles. The Department supports the inclusion of these two provisions in a final bill.
- *Additional Safety Provisions*: The Department supports the provisions that would impose uniform tire registration requirements (Senate), expand recall requirements (Senate), and extend free recall remedies for vehicles (House) and tires (Senate).

FEDERAL HIGHWAY ADMINISTRATION (FHWA)

- *Administrative funding levels*: The Senate version provides general operating expense (GOE) funding at levels that will support FHWA's operations, enable FHWA to effectively oversee the Federal-aid program, and support State and local agencies in accelerating project delivery and adopting innovations. At the House GOE level, FHWA would need to reduce its current employment level—already cut in recent years—approximately 350 staff over six years (roughly 15 percent of the Federal-aid workforce). This would impair FHWA's ability to effectively oversee the Federal-aid program and fully support our state and local partners. The Administration supports the inclusion of the Senate provision in the final bill.
- *MPO Empowerment and Reform*: During this time of fiscal constraint, it is important that Federal dollars are leveraged to the greatest extent possible. However, neither the House nor Senate versions include incentives for Metropolitan Planning Organization (MPO) reforms that would require greater coordination among MPOs representing a single metropolitan area. Further the Senate version

reduces the amount of funding suballocated to urbanized areas and the House version would shift leverage toward the State (and away from an urbanized areas), by having States provide obligation limitation to the large urbanized areas over a lengthy timeframe.

- *Federal Lands:* Both versions expand eligibility for the Federal Lands Transportation Program from five partner agencies (under current law) to 19 Federal entities with land management responsibilities. However, neither bill sufficiently expands the program's funding level to account for the new participating agencies. In addition, the House version proposes a new tribal self-governance program yet provides no funding to support the costs.
- *Highway Safety:* The Administration is concerned by the Senate version's proposed 8 percent cut (vs. the FY15 enacted level) to the Highway Safety Improvement Program funding level.
- *Institutionalizing Innovation Success:* Every State transportation agency has used eight or more of the 32 innovations promoted under FHWA's Every Day Counts (EDC) program. The Department supports a Senate provision that would codify EDC program, ensuring that this valuable Federal-State innovation partnership will remain a driving force to improve our program delivery and transportation infrastructure for years to come. The Department supports the inclusion of this provision in a final bill.
- *Bike/Ped Safety.* The Administration supports the Senate version's increased consideration of bicycle and pedestrian access and safety in highway design. The Department supports the inclusion of this provision in a final bill.
- *Local Plans.* The Administration supports the Senate version's authorization to use loans and loan guarantees under approved Habitat Conservation Plans because such Plans have proven effective in facilitating transportation projects.

FEDERAL TRANSIT ADMINISTRATION (FTA)

- *Funding levels:* The overall resource levels in the House version are insufficient, which would result in FTA furloughs and severe staffing constraints.
- *New Start Caps:* The House version creates new matching restrictions related to the New Starts program that will reduce the federal share of projects and restrict use of Surface Transportation Program funds, which will disadvantage fast-growing communities and give an advantage to road projects.
- *Oversight:* The Senate version includes prohibitions on FTA doing effective oversight to protect taxpayer money by limiting the frequency of reviews and mandating a delay before FTA can intervene.
- *MPOs:* Transit representation on MPO Boards is reduced from MAP-21 levels in the Senate version, meaning that transit agencies will have a harder time competing for transit projects at the local level.
- *Bus and Bus Facilities:* The Administration supports the increased funding levels in the Senate version for the Bus and Bus Facilities formula program and the proposed competitive bus program focused on age and condition of assets to be replaced; both would help revamp our nation's aging buses and improve the rider experience.
- *Buy America:* The Administration supports the effort to help domestic manufacturers and promote job growth within in the U.S. in both versions by increasing the Buy America percentage content requirements. However, the Administration still prefers a 100 percent domestic content requirement, as proposed in the GROW AMERICA Act.
- *State Safety Oversight (SSO):* The Administration supports the House provision to bolster FTA's safety oversight by allowing FTA to use state funds to intervene and help ineffective SSOs. The Department supports the inclusion of this provision in a final bill.

PIPELINE HAZARDOUS MATERIALS SAFETY ADMINISTRATION (PHMSA)

- *Hazardous Materials Grant Reform:* DOT supports the House version's proposal to reform the hazardous materials grant program by making several changes to ensure greater accountability on behalf of grantees and maximize the impact of grant funds. The proposed approach will greatly reduce administrative burden on PHMSA and Hazardous Materials Emergency Preparedness (HMEP) grantees. The Department supports the inclusion of this provision in a final bill.
- *Emergency Waivers:* DOT supports the House's National Emergency and Disaster Response Waivers for Federally Declared Emergencies, which would grant the Secretary authority to facilitate the movement of hazardous materials during federally declared disasters and emergencies. The Department supports the inclusion of this provision in a final bill.
- *Tank Car Phase-Out:* DOT supports the House version's expansion of the phase-out to additional tank cars, the prioritization of phase-outs by commodity, and the harmonization with Canada. However, this section would create regulatory confusion if it indeed applied to all tank cars used to transport flammable liquids. We recommend revising the scope to address only DOT-111 tank cars.
- *Comprehensive Oil Spill Response Plans:* The House provision would expand the requirement for oil spill response plans to include all Class 3 Flammable liquids and remove quantity limits established to adequately address the risk present in a balanced manner. It also may add confusion between the authority provided in the Hazardous Materials Transportation Law and the Clean Water Act/Oil Pollution Act. The Senate version takes a more balanced approach.

FEDERAL RAILROAD ADMINISTRATION (FRA)

- *Positive Train Control:* We praise the Senate for supporting wide-spread implementation of positive train control, arguably the most significant advancement in rail safety technology in more than a century. The \$199 million in PTC funding for commuter rail lines will help mitigate the costs associated with the implementation of PTC technology. However, in the past two years, as part of the GROW AMERICA Act, the Administration has requested \$825 million for this purpose.
- *Electronically-controlled Pneumatic Braking:* Both versions create new obstacles to implementing DOT's recent rule on electronically controlled pneumatic brake system technology that will help reduce the risk and impact of accidents involving rail cars carrying high-hazard flammable liquids. In addition, the live testing of ECP technology is extremely costly (\$30-40 million estimate).
- *Passenger Rail:* GROW AMERICA provided funding certainty for passenger rail that would help stakeholders more effectively plan and deliver rail projects. Neither version includes Passenger Rail in the Transportation Trust Fund and currently FRA has no reliable and consistent source of rail funds for applicants. These funds would be utilized expeditiously given the amount of planning that has been done on various rail projects and corridors across the country, such as Richmond (VA) to Raleigh (NC), for example.
- *Thermal Blankets:* Both versions create regulatory uncertainty with respect to implementation of the thermal protection requirements of the HHFT rule. Existing regulations are performance based and the proposed language would limit the technologies used to provide thermal protection and could hinder the introduction of new technologies, and could also affect the ability of industry to meet retrofit timelines.
- *Infrastructure and Safety Grants:* The Senate proposal affirms the success of FRA's High-Speed Intercity Passenger Rail (HSIPR) Program by reauthorizing the program; the Senate provides additional resources through a new grant program to fund a wide range of planning, infrastructure,

and safety projects. The Department supports the inclusion of the HSIPR program with additional resources in the final bill.

- *Blocked Crossings*: Neither version includes provisions related to blocked highway-rail grade crossings, which are a significant concern for many communities, as they can impede the movement of emergency response vehicles and induce crossing violations and trespassing. Given increasing public interest in Federal action to address this issue, FRA would benefit from an authorization and funding to study blocked crossings to collect information pertaining to the severity, frequency, and other characteristics of railroad operations that block highway-rail grade crossings.
- *Amtrak*: The Senate version includes a number of problematic concerns regarding Amtrak that would impact Amtrak's ability to effectively manage its funds. Although both versions include some grants for State of Good Repair, which will help address some of the backlog for repairs, the Senate version's authorized funding levels are insufficient to significantly improve the backlog that exists on the Northeast Corridor and elsewhere on the national network.
- *National Cooperative Rail Research Program (NCRRP)*: While the Department is supportive of the NCRRP, the GROW AMERICA Act proposed to fund it out of a separate mechanism; this Senate version would instead divert an excessive portion of FRA's current \$39 million research and development program to NCRRP.
- *Top fittings protections for pressure relief valves*: This requirement could require significant modifications to tank car top fitting nozzles and as a result, could frustrate industry's ability to comply with the retrofit timeline.
- *Recording Devices*: The Department supports inclusion of regulations proposed by the Senate that would require all intercity passenger and commuter railroads to install audio and inward- and outward-facing image recording devices in controlling locomotive cabs and cab car operating compartments.
- *RRIF*: The Senate version includes improvements that would make the RRIF program more accessible for borrowers by expanding eligibility. The Department supports the inclusion of this provision in a final bill. However, the Senate version also increases risk placed on taxpayer money by relaxing RRIF repayment and deferral terms.
- *Amtrak 5-Year Business Plan*: We applaud the Senate for adopting the GROW AMERICA provision requiring Amtrak to develop 5-year business line and asset plans, which are intended to improve the transparency and delivery of Amtrak's services. The Department supports the inclusion of this provision in a final bill.
- *Amtrak State Supported Route Committee*: We support the Senate provision which reinforces actions the States, Amtrak, and FRA are pursuing administratively to form a body to assist states in assuming a greater role in the funding and management of state-supported Amtrak routes. The Department supports the inclusion of this provision in a final bill.

FREIGHT

- *Multimodal Discretionary Freight Program*: Both versions of the bill strengthen the freight provisions enacted in MAP-21, and also propose a program to fund impactful freight projects, as we advocated for in GROW AMERICA. However, freight movements are not confined to highways. We therefore urge Congress to enact a robust freight program that provides additional flexibility to fund projects across all modes, in particular intermodal connectors. The Administration also strongly believes that only through a discretionary grant program can we fund critical needs in multistate freight corridors. Formula apportionments are less likely to have a meaningful nationwide impact.

RESEARCH

- *Shifts constrained research dollars to deployment purposes:* Research programs are intended to support advanced technologies that are still in the development and test phases, but the House version sets aside funding for a limited number of large-scale deployment projects supporting technologies that are already eligible for funding elsewhere in the version, effectively reducing funding for other priority highway research areas by roughly 30 percent.
- *Intelligent Transportation Systems:* The Senate version reduces the ITS Research Program by \$30 million in order to establish an ITS Deployment Grants program, reducing ITS research support for highway operations, transit, Accessible Transportation Technologies, and connected automated vehicles.
- *Research Ombudsman:* The Senate version includes a provision that would establish research ombudsman with unprecedented independent authority to challenge research and give any party, including regulated industries, the ability to inhibit the Department's ability to explore critical innovations.
- *Port Performance Act:* The Senate version requires the Bureau of Transportation Statistics to collect new metrics from a defined set of ports, which would require rulemakings, create a costly reporting burden on private operators, and require BTS to devote over 10 percent of its budget to implementation, which would put baseline freight-related projects at risk.
- *Bureau of Transportation Statistics:* The Senate version would remove funding stability from BTS, undermining the Commodity Flow Survey, the baseline program required for successful implementation of the freight and performance management programs; and similar activities.
- *Assigns ITS and UTC Programs to FHWA:* The Senate version directs that the Intelligent Transportation Systems (ITS) Research and University Transportation Centers (UTC) programs be administered by FHWA instead of OST-R, reducing the intentionally multimodal nature of those programs and of OST-R, and undermining OST-R's coordination and technology missions. Transfer to FHWA would have a direct impact on FHWA FTE and administrative costs.
- *National Cooperative Freight Transportation Research Program (NCFRP):* Neither version re-establishes the NCFRP, which would enable multi-modal user-generated research to support improved freight movements.



**U.S. Department
of Transportation**

Office of the Secretary
of Transportation

GENERAL COUNSEL

May 4, 2017

1200 New Jersey Avenue, SE
Washington, DC 20590

The Honorable Bill Shuster
Chairman
Committee on Transportation and Infrastructure
United States House of Representatives
2268 Rayburn House Office Building
Washington, DC 20515

Dear Mr. Chairman:

This letter provides the Department of Transportation's views on H.R. 1093 as ordered reported by the Committee on Transportation and Infrastructure on March 29, 2017.

The Department, through the Federal Railroad Administration (FRA), serves as the nation's railroad safety watchdog. In this capacity, FRA conducts inspections and various oversight and assessment activities on a daily basis to monitor and ensure the safety of freight and passenger railroads across the country. We believe the provisions of H.R. 1093 may be detrimental to achieving and promoting safety in our nation's passenger rail operations.

The bill requires notice, within ten days of initiating a comprehensive investigation, to the authorizing committees of Congress and to the members of Congress from the state in which rail service is subject to investigation. This notice requirement could trigger outside pressure on investigators. In many instances where FRA finds significant instances of non-compliance or unsafe practices, FRA will engage in both formal and informal discussions and activities with the involved operator to develop action plans to address both specific safety concerns and the overall safety of the operation. If outside parties disrupt these processes, even unknowingly or unintentionally, safety improvements may actually be frustrated or hindered.

In addition, the legislation has the potential of requiring FRA to release documents that are part of on-going investigations or that may involve civil enforcement actions and are not otherwise publically releasable under applicable law before allowing or permitting a response from the involved party and the Department's consideration of that response. This could result in outside parties reaching conclusions without having complete and relevant information and before the Department has a chance to thoroughly consider the information and reach its own conclusion.


Moreover, FRA annually releases on its public website final information as to civil penalties for passenger railroads consistent with the requirements of Sections 303 and 307 of the Rail Safety Improvement Act of 2008. The most recent report and all prior reports, which facilitate comparisons of enforcement data from year to year, are available at the following link: https://www.fra.dot.gov/eLib/Find#p1_z25_gD_1EA.

Therefore, because we are concerned about the unintended consequences of H.R. 1093, we urge the House of Representatives not to pass this legislation.

The Office of Management and Budget advises that, from the standpoint of the Administration's program, there is no objection to the presentation of this letter to Congress.

Thank you for the opportunity to present the Department's views on this important issue. If you have any questions, please do not hesitate to contact me or Sarah Inderbitzin, FRA's Deputy Chief Counsel, at 202-493-6035. An identical letter has been sent to the Speaker of the House and the Ranking Member of the Committee on Transportation and Infrastructure.

Sincerely,



Judith S. Kaleta
Acting General Counsel