

S. HRG. 114-227

**NOMINATION OF SARAH E. FEINBERG  
TO BE ADMINISTRATOR,  
FEDERAL RAILROAD ADMINISTRATION,  
U.S. DEPARTMENT OF TRANSPORTATION**

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**HEARING**

BEFORE THE

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

ONE HUNDRED FOURTEENTH CONGRESS

FIRST SESSION

SEPTEMBER 17, 2015

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SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED FOURTEENTH CONGRESS

FIRST SESSION

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**THURSDAY, SEPTEMBER 17, 2015**

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

The Committee met, pursuant to notice, at 9:52 a.m., in room SR-253, Russell Senate Office Building, Hon. John Thune, Chairman of the Committee, presiding.

Present: Senators Thune [presiding], Wicker, Blunt, Fischer, Daines, Nelson, Cantwell, McCaskill, Klobuchar, Blumenthal, Manchin, and Peters.

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

The CHAIRMAN. I want to welcome our nominee here this morning and get this confirmation hearing underway.

Today, we are going to consider the nomination of Sarah Feinberg to be the next Administrator of the Federal Railroad Administration.

The FRA's mission is to oversee the safe, reliable, and efficient movement of people and goods throughout our nation's rail network. That rail network is absolutely vital to the Nation's economy, so it is important that those who directly oversee the safety and efficiency of this network have the requisite skills and experience.

Ms. Feinberg has been serving as the acting FRA Administrator since January. Prior to her current assignment, she served as Chief of Staff to Transportation Secretary Anthony Foxx from 2013 to 2014. From 2011 to 2013, Ms. Feinberg was the Policy and Crisis Communications Director at Facebook. And from 2009 to 2010, she served as Special Assistant to the President and Senior Advisor to then-White House Chief of Staff Rahm Emanuel. Before that, she served as Mr. Emanuel's Communications Director for the House Democratic Caucus.

While Ms. Feinberg clearly has substantial communications experience and an admirable commitment to public service, some have raised concern that her background does not include a deep expertise or experience on issues regarding railroads or railroad safety. As noted in an April 11, 2015, article in *Politico*, "At this crucial moment the nation's top railroad safety regulator is a former Facebook executive and White House advisor whose resumé is long

on communications and policy posts and noticeably short on railroad experience.”

So, in addition to asking Ms. Feinberg to respond to those concerns, I will be also asking her about the looming deadline for railroads to implement Positive Train Control. As those in the rail industry are well aware, PTC is a communications system designed to prevent rail collisions, over-speed derailments, and other accidents by automatically slowing or stopping a train that is not being operated safely by locomotive engineers.

The Rail Safety Improvement Act of 2008 mandated the implementation of PTC systems by December 31, 2015. However, complex and interrelated implementation challenges have prevented most railroads from meeting this deadline, which is rapidly approaching.

Yesterday, the independent Government Accountability Office issued an updated report that found that freight and passenger railroads continue to face significant challenges in implementing PTC, and the vast majority of railroads would need 1 to 5 years to complete implementation. Even the small fraction of railroads that will be able to install PTC on their own tracks by December 31st of 2015 will face testing, certification, and interoperability issues prior to full implementation.

As profiled at many hearings convened by this committee, PTC is not an off-the-shelf technology. The GAO attributed implementation difficulties to the development of first-generation components, the limited number of manufacturers of those components, and complex system integration and testing, among other challenges.

Some of the implementation issues have also been government-created. The GAO pointed out that, as a result of permitting review issues, the Federal Communications Commission halted the construction of critical communication towers for a year, effectively delaying implementation.

The GAO also pointed out that FRA’s review of safety plans has been slow and its oversight efforts have been insufficient. GAO ultimately found that railroads pushing to meet the current unrealistic deadline—installing components before defects are identified and addressed—could be counterproductive to successful implementation.

These findings should not come as a surprise. The FRA itself issued a report in 2012 that identified several technical and programmatic issues affecting implementation, such as spectrum availability, installation and engineering challenges, and technical capacity. It has said for years that the vast majority of railroads will not meet the current deadline.

Railroads have spent billions of dollars working through these challenges. CSX testified at a Commerce Committee hearing in January that the freight railroad industry has spent over \$5 billion of private funds on PTC development and deployment, and they expect to spend at least \$9 billion to make PTC fully operational nationwide.

The reality is that if only a few railroads could not meet the deadline perhaps we could conclude there is an issue with those railroads, but if nearly every railroad in the country will not meet

the deadline, we need to acknowledge that there is an issue with the deadline.

Congress has the responsibility to fix the issue. That is why legislative action is needed to extend the deadline and provide operating authority for railroads that have not completed PTC implementation, while still motivating compliance and enhancing safety.

The surface transportation reauthorization bill, which passed the Senate by a vote of 65 to 34, includes a bipartisan proposal to extend the PTC deadline on a case-by-case basis with enforceable milestones and metrics and sets commonsense safety requirements, such as cameras and speed limit action plans for passenger trains while PTC is being implemented.

I believe that failing to extend the PTC deadline will result in large-scale disruptions to the Nation's economy that would make the West Coast port disruption or the 2013 to 15 rail service problems that impacted a large portion of the country look small in comparison.

That is why I recently sent letters to the Surface Transportation Board, all seven Class I railroads, and all covered commuter railroads inquiring about the effects of failing to extend the PTC deadline. Responses to my letters indicate tremendous risk of service disruption, including the cessation of passenger rail traffic and major delays that will impact freight railroads, including the inability to ship critical chemicals such as chlorine for water treatment plants across the country and anhydrous ammonia for the fertilizer that our agriculture sector requires.

MTA in New York, responsible for Metro-North and the Long Island Rail Road, two of the three largest commuter railroads in the country that collectively provide nearly 180 million rides annually stated, and I quote, "Railroads face serious potential disruptions to operations and exposure to unacceptable risks of liability and civil fines, all of which would divert railroad resources from the critical task of speeding final implementation of PTC," end quote.

Union Pacific, the largest freight railroad in the country, clearly stated in its response to my letter that it will embargo all passenger and toxic-by-inhalation chemical traffic starting on January 1, 2016. This includes chemicals essential for clean drinking water and healthy crops.

In fact, the Chairman of the Surface Transportation Board stated in his response to me that railroads may not be obligated to ship such TIH chemicals after the December 31st deadline, which could redirect them to other modes that are less efficient and, importantly, less safe.

We cannot wait until the last minute to act. I believe absent congressional action we will begin to see the effects of the deadline 4 to 6 weeks prior to the December 31 deadline as railroads begin to cycle traffic off their lines. This is a looming economic and safety disaster that is completely avoidable.

So now, more than ever, I believe that Ms. Feinberg, as the Acting Administrator of the FRA, has a responsibility to work with us in Congress to avoid the potential service disruptions. The time for anyone to play politics with the PTC deadline is past, and we as policymakers must work together to avoid disrupting the Nation's economy.

Having said all this, I want to thank Ms. Feinberg for her willingness to serve at the DOT. Despite some of the criticisms that I mentioned earlier, Ms. Feinberg has received many compliments for her willingness to be transparent and responsive to Congress, which will be essential if she is confirmed.

With that, I want to turn now to the Ranking Member of the Committee, the distinguished Senator from Florida, and recognize him for any remarks that he would like to make before we turn to our nominee.

Senator Nelson?

**STATEMENT OF HON. BILL NELSON,  
U.S. SENATOR FROM FLORIDA**

Senator NELSON. Mr. Chairman, you have laid out a lot of the issues, and I would be duplicative to repeat. And, therefore, what I am going to do is insert into the record my opening statement.

Let me say, at a critical time, a time in which there are questions of safety, the millions of people that use commuter rail, at a time essential to the economy of this country that we have healthy railroads, that they can be competitive, they can operate safely, reliably, and efficiently, and with safety being central to the FRA's mission. Indeed, we have seen train accidents decline and fatalities decline, but then we have huge incidents of fatalities that bring it back to the fore.

And so, Ms. Feinberg, for you to be willing to step into the breach and try to offer the leadership that is so desperately needed of the Federal Railroad Administration, which oversees the safety and development of the nation's freight and intercity passenger rail networks.

So it is a critical appointment, it is a critical time. It is a time that the FRA cannot let anything be slack and drop.

So I will insert my opening statement in the record.

[The prepared statement of Senator Nelson follows:]

PREPARED STATEMENT OF HON. BILL NELSON, U.S. SENATOR FROM FLORIDA

I would like to thank the Chairman for calling this important nominations hearing to consider Ms. Sarah Feinberg to be the next Administrator of the Federal Railroad Administration.

Ms. Feinberg, congratulations on your nomination. I want to thank you for your willingness to serve the American people.

The Federal Railroad Administration, within the U.S. Department of Transportation, oversees the safety and development of the Nation's freight and intercity passenger rail networks.

Railroads have played a critical role in developing and uniting our Nation.

Each day, millions of passengers rely on our rail system to commute to and from work or travel to destinations all across the country. Amtrak alone carries more than 30 million passengers annually.

Railroads also connect thousands of communities to the global economy by bringing American goods to ports, such as the Port of Miami, where they are then exported abroad.

Today, freight railroads remain the backbone of the Nation's economy. About 40 percent of all freight in the U.S. moves by rail, more than any other mode.

For our country to remain competitive, railroads must operate safely, reliably, and efficiently.

With safety being central to FRA's mission, I am encouraged that since 2005, train accidents have declined by 45 percent, and fatalities have declined by 16 percent.

At the same time however, we continue to witness tragic train accidents.



In December 2013, a commuter train derailed in New York, resulting in 4 fatalities and close to 70 injuries.

In January 2015, a Metro-North commuter train, also in New York, struck an SUV on its tracks, killing six and injuring many more—the deadliest accident in Metro-North’s history.

Most recently, in May, an Amtrak train derailed in Philadelphia, killing eight passengers and injuring more than 200.

These high profile incidents, just to name a few, are unfortunately not the only tragedy we see on the Nation’s rails.

Across the country, accidents at grade crossings kill over 200 people each year.

These accidents are stark reminders that we can and must do more. I look forward to hearing how the FRA can assist in these efforts, especially with respect to implementing positive train control, enforcing DOT’s new regulations on transporting crude oil, and efforts to further reduce accidents at grade crossings.

And I also look forward to hearing your ideas about the role, going forward, that our Nation’s freight and passenger rail systems can play within the broader transportation network.

Our population is growing, our highways and airports are congested, and we have to find a way to catch up with the rest of the world on developing modern, high-speed passenger rail lines.

Again, thank you for appearing before us today Ms. Feinberg and I look forward to your testimony.

The CHAIRMAN. Thank you, Senator Nelson. And we will make sure that that is all included for the record.

We have with us today one of our very distinguished colleagues and a member, a very active member of this committee, I might add, and the home state senator of Ms. Feinberg to introduce her. And so we want to welcome to the other panel—he is normally up here on the dais—our colleague from West Virginia, Senator Manchin.

Senator Manchin, do you want to proceed? Thank you.

**STATEMENT OF HON. JOE MANCHIN,  
U.S. SENATOR FROM WEST VIRGINIA**

Senator MANCHIN. Thank you, first of all, to my colleagues and to you, Mr. Chairman, for allowing me this opportunity to introduce a most accomplished young woman. It is really an honor to introduce the Acting Administrator of the Federal Railroad Administration and a friend of mine, Sarah Feinberg.

As you know, she is from West Virginia and grew up in the most commonsense, nonpartisan state, if you will. As a native West Virginian, she has the same pragmatic approach to problem-solving that you see among our congressional delegation every day. In West Virginia, it doesn’t matter if you are a Republican or a Democrat; you just have to get something done. People expect you to do your job.

I want to tell you, when I first was introduced to this young lady in 1983, her daddy was in the state legislature with me, Lee Feinberg, and he brought this little girl in, 6 years old—5 or 6, I think, at the time. And we all bring our kids and show our kids off—you all remember that—in the state legislature. And here comes this little girl, just rambunctious, jumping around and running around the chamber and everything.

That was my first introduction to Sarah. I watched her grow into a young lady and then to a most accomplished young woman. And she has done such a fantastic job, and we are so proud.

She comes out of the same—she is cut from the same cloth as we have in Sylvia Burwell, a West Virginia native I think you have found to be very pragmatic and responsive to all of us.

But today she sits before the Committee seeking to continue her public service as the Administrator of the Federal Railroad Administration. Over the past 9 months, I believe she has proven herself to be an effective and engaged leader with the courage to make tough decisions and the character to accept criticism that they often incite.

She was baptized by fire after being appointed to this position January 9 of this year, leading the agency's response to five major incidents within her first 60 days on the job.

On February 3, six people were killed when a commuter train hit an SUV at a grade crossing in Valhalla, New York. On February 4, 14 tank cars carrying ethanol derailed just north of Dubuque, Iowa; 3 of them caught fire.

On February 16, 27 tank cars derailed outside Mount Carbon, West Virginia. They released 378,000 gallons of crude oil and ignited a fire that destroyed a nearby house. It could have wiped out a whole community if it had been a mile down the track.

On February 24, a commuter train in Oxnard, California, hit a tractor trailer at a grade crossing and jumped the tracks. On March 6, 21 cars derailed outside of Galena, Illinois, near the border with Wisconsin; 5 of them caught fire.

I am a firm believer that elected officials need to be on the ground in emergency situations supporting first responders and assisting those in need, and I was impressed by Sarah's response to the Mount Carbon derailment in West Virginia, which I witnessed firsthand. Five weeks into her new job, she executed an efficient and effective Federal response that was one of the best I have ever seen in my experience as an elected official who has been through many tragedies in my state.

There are a lot of smart policy people here in Washington, D.C., but the best policy in the world won't mean a thing if it doesn't translate into the real world. Sarah's response to the Mount Carbon accident showed me that she understood that and gave me faith in her ability not just to lead but to listen to the people that we are here to serve.

Over the past 10 years, the increase of domestic energy production has been an engine of economic growth for our great country, and the Energy Information Administration predicts that growth will continue through 2020. From 2009 to 2014, crude oil production in the United States increased by more than 62 percent, up from 5.35 million barrels per day in 2009 to 8.68 million barrels per day in 2014.

And the majority of this product is moved by rail. In 2008, our railroads moved a meager 9,500 tank cars carrying crude oil. Remember in figure: In just 2008, only 9,500 tank cars were carrying crude oil. Last year, the number grew to 500,000 tank cars—500,000 from less than 10,000, over a 5,000-percent increase.

Unprecedented new challenges come along with the new economic opportunities presented by the growth in domestic energy production, and Ms. Feinberg's experience makes her uniquely qualified to lead the FRA through this transition.

As Chief of Staff to Secretary Foxx, she helped the Department of Transportation develop a holistic strategy to improving the safety and security of crude oil by rail that required coordination between multiple administrations within the department.

The tough new tank car safety regulations that were finalized in May were dependent on close collaboration between the FRA and the Pipeline and Hazardous Materials Safety Administration. Sarah's experience in the Secretary's office and existing relationships throughout the department allowed her to cut through red tape and get the right people in the room to get the job done. That is what it is about: putting people together that want to get something done.

While the new rules do not solve every problem, they represent a major step in the right direction. They satisfied all or part of the 10 outstanding National Transportation Safety Board's recommendations, including all 4 recommendations that were made in April of this year.

So, since taking the helm at the FRA earlier this year, I have been impressed with Ms. Feinberg's willingness to tackle difficult issues and engage stakeholders about realistic solutions, taking politics out of the equation completely.

In May, she convened the PTC Task Force to try to identify opportunities for the FRA to help railroads meet the December 31, 2015, deadline and become a real partner in the process. I think her proactive approach to problem-solving will be an asset to the FRA and the entire Department of Transportation and to all of us sitting here responsible for the safety of our citizens in our respective states.

So, without further ado, I want to introduce to you not only an accomplished young professional committed to public service—and she inherited that in her genes and her bones; it is with her every day—in a bipartisan way to get things done to move this country forward, my friend Sarah Feinberg.

The CHAIRMAN. Thank you, Senator Manchin. And that just underscored how old you are, when you described that, so—

[Laughter.]

The CHAIRMAN. But thank you for being here, and thank you for that introduction.

And we now look forward to hearing from our nominee.

Ms. Feinberg, please proceed.

**STATEMENT OF SARAH E. FEINBERG, TO BE ADMINISTRATOR,  
FEDERAL RAILROAD ADMINISTRATION, U.S. DEPARTMENT  
OF TRANSPORTATION**

Ms. FEINBERG. Chairman Thune, Ranking Member Nelson, and members of the Committee, thank you for the opportunity to appear before you today.

Senator Manchin, thank you for your kind introduction. I am grateful for your friendship, your decades of service to our state, and your strong support.

I will just briefly note that I am so pleased that my brother Matthew is here with me today and that other members of my family are here with me in spirit.

It is an honor to have been nominated by President Obama to serve as the administrator for the Federal Railroad Administration and to have earned the confidence of Secretary Foxx. It is also a great responsibility and one that I take seriously.

Just one month after I became Acting Administrator, a Metro-North train traveling out of New York City hit a car at a grade crossing. Six people were killed doing what millions of Americans do every day: traveling home from work, visiting friends, or on their way to see their family.

Days later, in Senator Manchin's and my home state of West Virginia, a mile-and-a-half-long train carrying 109 tank cars loaded with crude oil derailed near the town of Montgomery. One person was injured, multiple small communities were evacuated, and a fire burned for days. And anyone who visited the scene would agree that we got lucky.

In May, an Amtrak train traveling significantly over the speed limit derailed in Philadelphia. The horrific accident took the lives of eight people.

These accidents are searing reminders that millions of Americans depend on the railroads and FRA's diligent oversight to transport them safely to their jobs each morning, to their homes and families each night, and to deliver goods and products safely every day.

Next year, FRA will turn a half-century old. The agency has a proud history and a long list of accomplishments, most notably its significant contributions to improving rail safety. Rail deaths and injuries are down dramatically, worker injuries are down, derailments are down, and those decreases are very much a testament to the work of the men and women of the FRA.

But, in some ways, safety in the rail industry has also plateaued. Improvements are generally not as dramatic as they used to be, and we occasionally even see spikes in the wrong direction. And that calls for action.

The American people expect every Federal agency to adapt to new conditions and new realities, to be willing to change, to be open to criticism. Over the last 8 months, I have seen FRA do just this. They have shown a willingness to adapt to change, we have headed in a new direction, and we have brought new thinking to old challenges.

We have tried new solutions aimed at addressing the old challenge of grade crossing incidents. We have partnered with police around the country to step up enforcement. And, in June, Google agreed to integrate our grade crossing data to add crossing alerts to Google Maps.

We have taken a new approach to the way we handle NTSB recommendations. When I arrived at FRA in January, there were more than 70 NTSB recommendations awaiting action. We have taken action on more than half of them, reducing the number of outstanding recommendations by nearly 15 percent, and we await word on another 30 from the NTSB. Some of these recommendations had been sitting for more than 5 years.

FRA listened to the frustrations that members of this committee expressed about the Railroad Rehabilitation and Improvement Financing program, and we have acted. This year, we have completed

two loans and expect to complete two more shortly. The RRIF program is very much open for business.

While working to try to bring new solutions to these old challenges, the men and women of FRA have stayed laser-focused on our ongoing priorities and have delivered significant results.

During the last 2 years, the United States has seen more than a dozen crude oil train derailments. In May, with our sister DOT agency, PHMSA, we completed the High-Hazard Flammable Train rule—a final, comprehensive rule that aims to prevent these types of accidents and lessen their impact if they do occur.

We have prioritized PTC implementation, hiring staff and creating a task force that reports to me regularly on progress and the performance of each railroad. We were also proud to work with many here today and in the greater New York City region to provide a nearly \$1 billion loan to implement PTC on MTA's system.

Both the administration's budget and its GROW AMERICA Act have requested significant funding to assist commuter railroads on PTC. And, Chairman Thune, Ranking Member Nelson, I want to thank you and members of this committee, in particular, for the recently passed legislation that seeks to leverage nearly \$200 million to cover some of the costs and expenses railroads face when taking out a RRIF loan to implement PTC.

All of this activity is in addition to our continued focus on making sure the agency's partners deliver high-speed intercity passenger rail projects for the American people.

None of this success would have been possible without the tireless work of the nearly 900 public servants at the agency who are dedicated to rail safety, and it has been an honor to lead them as Acting Administrator.

Chairman Thune and Ranking Member Nelson, I am pushing FRA each day to be vigilant in the pursuit of safety, open to paths of innovation from any source. The agency is engaged, enthusiastic, and driven because we know the gravity of our responsibilities and the size of our opportunities.

If confirmed, I would eagerly work with all members of this committee and all Members of Congress to build a stronger and safer rail system and one that we can all be proud of.

Thank you, and I look forward to taking your questions.

[The prepared statement and biographical information of Ms. Feinberg follow:]

PREPARED STATEMENT OF SARAH E. FEINBERG, ACTING ADMINISTRATOR, FEDERAL RAILROAD ADMINISTRATION, U.S. DEPARTMENT OF TRANSPORTATION

Chairman Thune, Ranking Member Nelson, and Members of the Committee, thank you for the opportunity to appear before you today. Senator Manchin, thank you for your kind introduction. I am grateful for your friendship, your decades of service to our home state, and your strong support.

I'll just briefly note that I'm so pleased that my brothers, David and Matthew, are here with me, and other members of my family are with me in spirit.

It is an honor to have been nominated by President Obama to serve as the Administrator for the Federal Railroad Administration and to have earned the confidence of Secretary Foxx. It is also a great responsibility, one that I take seriously.

Just one month after I became Acting Administrator, a Metro-North train traveling out of New York City with hundreds of passengers hit a car at a grade-crossing. Six people were killed doing what millions of Americans do every day: traveling home from work; visiting friends; on the way to see family.

Days later, in Senator Manchin's and my home state of West Virginia, a mile-and-a-half long train carrying 109 tank cars loaded with crude oil derailed near the town of Montgomery. One person was injured; multiple small communities were evacuated; a fire burned for days. And anyone who visited the scene would agree: we got lucky.

In May, an Amtrak train traveling significantly over the speed limit derailed in Philadelphia. The horrific accident took the lives of eight people—again, men and women simply closing out an evening commute and heading home to see their families.

These accidents are searing reminders that millions of Americans depend on railroads, and FRA's diligent oversight, to transport them safely to their jobs each morning, to their homes and families each night, and to deliver goods and products safely every day.

Next year, FRA will be a half-century old. The agency has a proud history and a long list of accomplishments, most notably its significant contributions in recent years to improving rail safety. Rail deaths and injuries are down dramatically, worker injuries are down, derailments and incidents are down. And those decreases are very much a testament to the work of the men and women of FRA and the rail industry too.

But, in many ways, safety in the rail industry has plateaued. Improvements are generally not as dramatic as they used to be, and we occasionally even see spikes in the wrong direction. That calls for action.

The American people expect every Federal agency to adapt to new conditions and new realities, to be willing to change, to be open to criticism. Over the last 8 months, that is what FRA has done—willing to respond to new leadership, and a new direction. Along the way, we found new solutions to old challenges.

We have tried new solutions to end the old challenge of grade crossings accidents and fatalities. We partnered with police around the country to step up enforcement. And, in June, Google agreed to integrate our grade crossing data to add audio and visual alerts on Google maps, marking the first time the agency has partnered with a technology company.

We have taken a new approach to the way we handle old NTSB recommendations. When I arrived at FRA in January, there were more than 70 NTSB recommendations awaiting action. With new determination, we have taken action on more than half of them—reducing the number of outstanding recommendations by nearly 15 percent. Some of these recommendations had been sitting for at least five years. Today, we await word back from the NTSB on another 30. I will not be satisfied until each recommendation is acted upon, implemented, or at the very least responded to.

We've also been looking for new solutions when it comes to our financing programs. FRA listened to the frustrations that many members of this committee expressed about the Railroad Rehabilitation & Improvement Financing (RRIF) program, and we've acted. With more staff and greater attention, we made the program stronger and faster. This year, we have already completed two and expect to complete two more soon. You have my word: the RRIF program is open for business.

While working to try to bring new solutions to these old challenges, we've also stayed focused on our ongoing priorities. The men and women of FRA have spent much of 2015 delivering significant results on those priorities.

With our sister agency, the Pipeline and Hazardous Materials Safety Administration, we completed the High Hazard Flammable Train rule. Since the crude oil train derailment in Lac-Mégantic, Canada, two years ago, the United States has seen more than a dozen crude oil train derailments of our own. In May, the Department of Transportation issued a final, comprehensive rule that aims to prevent these types of accidents—and lessens their impact if they do occur.

We've prioritized PTC implementation—hiring staff and creating a task force that reports to me regularly on progress and the performance of each railroad. We were also proud to work with many here today and in the greater New York City region to provide a nearly \$1 billion loan to implement Positive Train Control on MTA's system.

Both the Administration's budget and its GROW AMERICA Act have requested significant funding to assist commuter railroads on PTC installation. Chairman Thune, I want to thank you and members of this committee, in particular, for the recently passed legislation that seeks to leverage \$200 million to cover some of the costs and expenses railroads face when taking out a RRIF loan to implement PTC.

All this activity is in addition to our continued focus on making sure the Agency's partners deliver High Speed Intercity Passenger Rail projects for the American people. We continue to closely monitor the funding that Congress invested across the country to provide faster, more frequent and more reliable passenger rail service.

None of this success would have been possible without the tireless work of the nearly 900 public servants at the agency who are dedicated to rail safety. It's been my honor to lead them as Acting Administrator.

Chairman Thune and Ranking Member Nelson, I am pushing FRA each day to be vigilant in the pursuit of safety, and open to paths to innovation from any source. The agency is engaged, enthusiastic, and driven, because we know the gravity of our responsibilities and the size of our opportunities. A safe rail system is a strong rail system. And our country continues to need rail to build its future.

If confirmed, I would eagerly work with all members of this committee and all members of Congress to build a stronger and safer rail system. One we can all be proud of.

Thank you Mr. Chairman, and members of the Committee, and I look forward to your questions.

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A. BIOGRAPHICAL INFORMATION

1. Name (Include any former names or nicknames used): Sarah Elizabeth Feinberg.

2. Position to which nominated: Administrator, Federal Railroad Administration (FRA).

3. Date of Nomination: June 2, 2015.

4. Address (List current place of residence and office addresses):

Residence: Information not released to the public.

Office: 200 New Jersey Ave, SE Washington, D.C. 20590.

5. Date and Place of Birth: October 3, 1977; Charleston, West Virginia.

6. Provide the name, position, and place of employment for your spouse (if married) and the names and ages of your children (including stepchildren and children by a previous marriage).

Not Applicable.

7. List all college and graduate degrees. Provide year and school attended.

Washington and Lee University

Bachelor of Arts in Politics (1999)

8. List all post-undergraduate employment, and highlight all management level jobs held and any non-managerial jobs that relate to the position for which you are nominated.

Managerial-related positions are italicized below:

*Acting Administrator*

Federal Railroad Administration (1/2015 to present)

*Deputy Administrator*

Federal Railroad Administration (1/2015 to present)

*Chief of Staff*

U.S. Department of Transportation (9/2013–1/2015)

*Director, Policy and Crisis Communications*

Facebook (8/2011–9/2013)

*Global Communications Director*

Bloomberg LP (7/2010–8/2011)

Special Assistant to the President and Senior Advisor to the Chief of Staff

The White House (1/2009–7/2010)

Advisor

Office of the President-Elect (11/2008–1/2009)

*Communications Director*

House Democratic Caucus (12/2006–11/2008)

National Press Secretary

Democratic Congressional Campaign Committee (1/2005–12/2006)

National/Leadership Press Secretary

Office of Senate Minority Leader Tom Daschle (10/2003–12/2004)

*Deputy Staff Director*

Senate Democratic Technology and Communications Committee

Office of Senate Minority Leader Tom Daschle (12/2002–10/2003)

*Communications Director*

South Dakota Democratic Party and Coordinated Campaign (2/2002–11/2002)

Press Secretary  
 Environmental Working Group (5/2001–2/2002)  
 Consultant  
 Maple Creative, LLC (1/2001–5/2001)  
 West Virginia Press Secretary and Communications Director  
 Gore-Lieberman Presidential Campaign (8/2000–11/2000)  
 Staff Assistant  
 U.S. Senate Committee on Veterans Affairs (8/1999–8/2000)

9. Attach a copy of your resume. A copy is attached.

10. List any advisory, consultative, honorary, or other part-time service or positions with Federal, State, or local governments, other than those listed above, within the last ten years: None.

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

- Member, Amtrak Board of Directors (2015 to present)
- Member, Board of Directors, Union Station Redevelopment Corporation, (2015 to present)
- Member, Board of Directors, Moynihan Station Development Corporation (2015 to present)
- Member, Northeast Corridor Commission (2015 to present)
- Member, Board of Directors, StoryCorps (2012 to present)

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

- Member, Women in Transportation (WTS) (2013 to present)
- Member, Federally Employed Women (FEW) (2013 to present)

13. Have you ever been a candidate for and/or held a public office (elected, non-elected, or appointed)? If so, indicate whether any campaign has any outstanding debt, the amount, and whether you are personally liable for this debt. None.

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

*Contributions:*

Entity	Date	Amount
Facebook, Inc. PAC	05/06/2013	\$500.00
Obama for America	07/31/2012	\$500.00
Obama for America	10/28/2012	\$500.00
Obama for America	09/30/2011	\$500.00

*Positions:*

- National Press Secretary—Democratic Congressional Campaign Committee (2005–2006)
- Communications Director—South Dakota Democratic Party and Coordinated (2002)
- West Virginia Press Secretary and Communications Director Gore Lieberman Presidential Campaign (2000)

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

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

I have done my best to identify any books, articles, columns, or other publications and relevant speeches, including a thorough review of my personal files and



searches of publicly available electronic databases. Despite my searches, there may be other materials that I have been unable to identify, find or remember. I have located the following:

*Publications:*  
None.

*Speeches:*  
Speeches in my time at the Federal Railroad Administration can be found here:  
[http://www.fra.dot.gov/eLib/Find#pl\\_z5\\_gD\\_IPS](http://www.fra.dot.gov/eLib/Find#pl_z5_gD_IPS)

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

My testimonies before Congress and listed below can be found here: [http://www.fra.dot.gov/eLib/Find#pl\\_z5\\_gD\\_IPT](http://www.fra.dot.gov/eLib/Find#pl_z5_gD_IPT)

*June 24, 2015*  
U.S. House of Representatives  
Committee on Transportation and Infrastructure  
Railroads, Pipelines and Hazardous Materials Subcommittee  
Hearing on the State of Positive Train Control Implementation in the United States

*June 2, 2015*  
U.S. House of Representatives  
Committee on Transportation and Infrastructure  
Hearing on the Oversight of the Amtrak Accident in Philadelphia

*May 4, 2015*  
U.S. Senate  
Committee on Commerce, Science, and Transportation  
Surface Transportation and Merchant Marine Infrastructure, Safety and Security Subcommittee  
Field Hearing on the Northeast Corridor, Newark, NJ

*April 14, 2015*  
U.S. House of Representatives  
Committee on Transportation and Infrastructure  
Railroads, Pipelines and Hazardous Materials Subcommittee Hearing on the Oversight of the Ongoing Rail, Pipeline and Hazmat Rulemakings

*March 25, 2015*  
U.S. House of Representatives  
Committee on Appropriations  
Transportation, Housing and Urban Development and Related Agencies Subcommittee  
Hearing on Fiscal Year 2016 Budget Request

18. Given the current mission, major programs, and major operational objectives of the department/agency to which you have been nominated, what in your background or employment experience do you believe affirmatively qualifies you for appointment to the position for which you have been nominated, and why do you wish to serve in that position?

My time as Acting Administrator and as Chief of Staff at the U.S. Department of Transportation has most prepared me to serve in the position of Administrator of the Federal Railroad Administration. In my current capacity as Acting Administrator, I have led the agency's response to multiple, significant rail incidents this year, including the West Virginia crude derailment, the Valhalla/Metro-North grade crossing incident, and the Amtrak # 188 derailment. I have led the agency in becoming a more transparent and accountable organization. I have set clear safety and accountability priorities and goals for the agency, and I have led the FRA in creating a much closer working relationship with the U.S. Congress and the National Transportation Safety Board (NTSB). As USDOT Chief of Staff, I led operational and legislative initiatives across all modes of transportation and served as the direct manager of most USDOT leadership.

I want to serve as the Administrator of the Federal Railroad Administration because in my short time at U.S. DOT, I have become singularly focused on improving rail safety—ensuring those who travel by and work or live on or near railroads are safe, and ensuring that passenger rail service is an efficient, affordable, and safe mode of transportation, and continues to be available and accessible to the millions of Americans that depend on it for travel from and between major urban areas, and small rural towns across the country.

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

If confirmed, I believe I have a responsibility to hire, manage and oversee staff and managers that must prioritize efficient, careful and appropriate use and deployment of taxpayer dollars and resources. Managing each individual is a challenge, but I am responsible for them—and will continue to keep in place management controls I implemented upon becoming the Acting Administrator. Those controls include weekly and sometimes daily meetings with individual managers and directors across the agency, frequent reports detailing progress on agency initiatives, and detailed questioning from the Acting Administrator and other managers around specific projects and high priority issues and challenges, such as the hiring of safety inspectors. I also meet frequently with the FRA CFO and FRA Budget Office, maintaining close contact and oversight of the FRA budget.

My experience in managing a large organization is derived most specifically from my time as Chief of Staff of the U.S. Department of Transportation, an agency employing more than 55,000 individuals. In my capacity as Chief of Staff, I led operational and legislative initiatives across all modes of transportation.

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

*Implementing Positive Train Control.* Congress has mandated that PTC be implemented by December 31, 2015. Most Class 1 railroads and commuter railroads are unlikely to meet this deadline. Enforcing against this deadline and supporting railroads in full PTC implementation will be a priority for the FRA.

*Constantly improving safety.* While recent years have proven to be the safest years on record for the rail industry, it is imperative that the FRA continue to raise the bar on safety. Of particular concern is the increased transport of crude by rail, resulting in increased risk to passenger rail sharing track, and to the individuals, families, and communities along crude routes. To that end, implementation of the recent HHFT final rule will be critical.

*Ensuring the RRIF program can be utilized by appropriate entities.* With approximately \$34 billion remaining in the RRIF program, it is critically important that the FRA take measures to increase flexibility in the program to ensure the funds can be loaned to appropriate applicants.

#### B. POTENTIAL CONFLICTS OF INTEREST

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

I currently have investments in a managed account with Main Street Financial Solutions, LLC. In connection with the nomination process, I have consulted with the Office of Government Ethics and the Department of Transportation's Designated Agency Ethics Official to identify any potential conflicts of interest. Upon their advice, if confirmed, I will terminate my managed account and move all investments from that account into one that I personally manage.

2. Do you have any commitments or agreements, formal or informal, to maintain employment, affiliation, or practice with any business, association or other organization during your appointment? If so, please explain: No.

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

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

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

In connection with the nomination process, I have consulted with the Office of Government Ethics and the Department of Transportation's Designated Agency Ethics Official to identify any potential conflicts of interest. Any potential conflicts of interest will be resolved in accordance with the terms of an ethics agreement that I have entered into with DOT's Designated Agency Ethics Official and that has been

provided to this Committee. I am not aware of any other potential conflicts of interest.

5. Describe any activity during the past ten years in which you have been engaged for the purpose of directly or indirectly influencing the passage, defeat, or modification of any legislation or affecting the administration and execution of law or public policy.

Nothing applicable beyond the day-to-day work of the Chief of Staff's office in the White House. In 2009–2010, the significant issues I worked on included the financial crisis and ARRA.

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

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

#### C. LEGAL MATTERS

1. Have you ever been disciplined or cited for a breach of ethics, professional misconduct, or retaliation by, or been the subject of a complaint to, any court, administrative agency, the Office of Special Counsel, professional association, disciplinary committee, or other professional group? No.

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

3. Have you or any business of which you are or were an officer ever been involved as a party in an administrative agency proceeding or civil litigation? If so, please explain. No.

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

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

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

None to my knowledge.

#### D. RELATIONSHIP WITH COMMITTEE

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

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

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

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

#### RESUMÉ OF SARAH ELIZABETH FEINBERG

##### Employment

*Deputy Administrator, Federal Railroad Administration.* Currently serves as Acting Administrator of agency. Principal advisor to the Secretary on railroad affairs and other intercity fixed guide way transportation matters. Provides executive direction and leadership to the agency charged with promulgating and enforce rail safety regulations, administering railroad assistance programs, and improving railroad safety for the traveling public. *January 2015–present.*

*Chief of Staff, U.S. Department of Transportation.* Chief advisor to the Secretary. Responsible for management of all operational, strategic, legislative initiatives across the department. Managed the day-to-day operations of the multi-modal, 55,000 person agency, implementing the Secretary's operational and policy visions, and executing upon secretarial and department priorities. Led DOT's efforts with regard to the immediate challenges facing the department, including expiration of the

surface transportation programs, FAA Reauthorization, and the department's management of safety issues. *September 2013–January 2015.*

*Director, Policy and Crisis Communications, Facebook.* Managed message strategy and communications surrounding issues such as litigation, regulation, safety, security, privacy and data use, and other federal, state and local legislative issues. Managed Facebook's Washington based outreach and communications, as well as the company's political and crisis communications, and political and governmental partnerships. Managed official and personal communications for Facebook COO Sheryl Sandberg, managed political and immigration reform-focused communications for Facebook founder Mark Zuckerberg. Led Facebook's social good program. Launched and led Facebook's organ donation campaign, and Facebook's integration of non-profit organizations onto the Facebook Gifts platform. *August 2011–September 2013.*

*Director, Global Communications and Business Strategy, Bloomberg LP.* Managed Bloomberg's Washington-based communications, co-managed Bloomberg's New York- and London-based communications. Focused on expanding Bloomberg's communications, business and media presence globally. Led communications and marketing launch of Bloomberg Government. Launched many of Bloomberg's most well-known media events, such as weekly on-the-record Bloomberg Breakfasts. *July 2010–August 2011.*

*Special Assistant to the President and Senior Advisor to the Chief of Staff, The White House.* Served as senior advisor to WH Chief of Staff Rahm Emanuel. Responsible for serving as Emanuel's communications lead and liaison to several operations within the White House, including the communications and domestic policy departments, the economic team, the national security apparatus, and the legislative affairs department. Responsible for managing day-to-day crisis and issue oversight for the Chief of Staff (specifically: the banking and economic crisis, HINI pandemic, national service issues, WV mining disaster); member of the senior White House staff. *January 2009–July 2010.*

*Communications Director, House Democratic Caucus, Chairman Rahm Emanuel.* Responsible for crafting and disseminating day-to-day and long-term messaging for the entire House Democratic Caucus, and specifically for freshmen and sophomore House classes, and for Chairman Emanuel; specific responsibilities for communications planning and executing on behalf of new members; organized leadership press offices around daily and long-term messaging. Caucus communications office was also responsible for daily caucus talking points, weekly press secretary meetings, small and large Democratic press events. *December 2006–November 2008.*

*National Press Secretary, Democratic Congressional Campaign Committee, Chairman Rahm Emanuel.* Served as national press secretary and spokeswoman for DCCC and Chairman Emanuel during 05–06 election cycle, during which Democrats won back the majority in the House of Representatives. Offered strategic message guidance and advice to Democratic challengers and incumbents; assisted campaigns in developing and executing media plans; member of senior DCCC staff; traveled with Chairman for media and fundraising travel. *January 2005–December 2006.*

*National/Leadership Press Secretary, Office of the Senate Minority Leader, Senator Tom Daschle.* Served as Minority Leader Daschle's leadership spokesperson for national and congressional reporters and national issues; member of the senator's senior staff; staffed Senator Daschle for interviews and media events; assisted South Dakota communications operation with re-election messaging and press. *October 2003–December 2004.*

*Deputy Staff Director, Senate Democratic Communications Committee, Office of the Minority Leader, Senator Tom Daschle.* Helped lead and manage the Senate leadership committee responsible for assisting Senate Democrats with day-to-day and long-term messaging, planning and executing media events, and booking and staffing television, radio, and print interviews. *January 2002–October 2003.*

*Communications Director, South Dakota Democratic Party and Coordinated Campaign.* Communications director during U.S. Senator Tim Johnson's re-election campaign in 2002; responsible for coordinating the state party's messaging efforts in support of Senator Johnson and other top state Democrats. *February 2002–November 2002.*

#### **Other Employment Prior to 2002:**

- *Press Secretary, Environmental Working Group.* Washington, DC. *May 2001–February 2002.*

- *West Virginia Press Secretary and Communications Director, Gore-Lieberman Presidential Campaign.* Charleston, WV. August 2000–November 2000.

#### **Education**

*B.A. in Politics, Washington and Lee University, Lexington, VA. Minors/Concentrations: Studio Art/Painting. September 1995–June 1999.*

*M.A. in Strategic Security Studies, National Defense University, Fort Lesley McNair, Washington, DC. (Exited program in January 1999 upon start of White House employment.)*

The CHAIRMAN. Thank you, Ms. Feinberg.

I will start with some questions, and we will go around with five-minute rounds here, just to alert members of the Committee.

As I mentioned, the Committee has conducted extensive outreach with freight and commuter railroads to understand the effects of failing to extend the deadline to implement PTC, and it is clear that there will be widespread rail service reduction if Congress fails to act.

For example, Metra in Chicago, with over 70 million riders annually, has stated there is a strong possibility that it will cease service altogether, a concern that is echoed by Long Island Rail Road, and Metro-North in New York and Connecticut.

And so I want to just get a couple of numbers on the record. Based on your outreach to railroads, approximately how many have informed the FRA that they may suspend or reduce service?

Ms. FEINBERG. Senator, I think that you have the most recent numbers because they have been responding to your most recent letter. But, to put it this way, I have not had a recent conversation with a railroad that has informed me that they do intend to operate on January 1st. So I believe you have the most recent numbers, but we are well into the 20s at this point.

The CHAIRMAN. OK.

DOT evaluated the extent to which there will be an increase in congestion or potentially lives lost and commuters taking alternative modes of transportation?

Ms. FEINBERG. We have not done a specific study that would look at the effects on January 1st or on January 2nd, but I have said that I do have significant concerns about the consequences of railroads choosing not to operate on January 1st. I think it would lead to significant congestion, and that does also lead to safety impacts.

The CHAIRMAN. Has FRA had any discussions with FTA to determine whether transit buses have the capacity to carry displaced riders who might otherwise be on commuter railroads?

Ms. FEINBERG. Well, the FRA and FTA are in constant communication about a variety of PTC issues. I don't think we have had this specific bus conversation, though I don't think there is an expectation that buses would be able to take that load.

The CHAIRMAN. How about the smaller railroads, Class IIs and Class IIIs? Some of those are frequently overlooked that the mandate also applies to them, and they happen to use, in many cases, Class I railroad track.

Roughly how many of these small railroads would be required to equip their locomotives as a result of the PTC requirements? And are you hearing of any difficulties these railroads may be experiencing?

Ms. FEINBERG. Certainly, we have heard generally from the Short Line Association and from individual short lines and from other individual entities. I mean, we can get you specific numbers if you need it, but it is significant. But most are watching the Congress and keeping an eye on what is likely to come out of here.

The CHAIRMAN. Our colleague on the Committee, who I am sure you will hear from in a moment, Senator Blumenthal, has noted that entities like the Connecticut DOT should not be subject to penalties for making a good faith effort to implement PTC, even though Connecticut will not implement until at least 2018. He has also noted that it is possible that Metro-North could be spared fines if they showed a good faith effort.

If Connecticut DOT and Metro-North are considered to be making a good-faith effort, are there others that are, as well?

Ms. FEINBERG. Well, there are many railroads that are making a good-faith effort and we believe have been working diligently toward PTC implementation. But the law and the statute, the deadline is very black and white and, in our read, does not give flexibility to railroads that are working diligently versus ones that are not.

The CHAIRMAN. If a line is not currently handling toxic-by-inhalation materials or passenger traffic, does the PTC requirement apply?

Ms. FEINBERG. It depends on where in the country we are talking about, but it is aimed at lines that are handling hazardous materials and passenger service.

The CHAIRMAN. And would the FRA consider continued movement of non-TIH and non-passenger traffic over such lines after December 31, 2015 to be in violation of the 2008 statute?

Ms. FEINBERG. Yes.

The CHAIRMAN. Does the FRA intend to impose fines or penalties related to non-TIH and non-passenger operation on such lines after December 31, 2015?

Ms. FEINBERG. We will enforce the law as of the deadline on December 31. So on January 1, we will enforce the deadline in the law.

The CHAIRMAN. How does the FRA define the common carrier obligations that rail carriers have under existing law?

Well, let me ask it this way. Do you believe the common carrier requirement is in conflict with the current PTC deadline?

Ms. FEINBERG. Well, I would defer to the STB on that. And I have read their recent letter, which I think that you have seen as well, in which they defer to us on safety.

The CHAIRMAN. Right.

Ms. FEINBERG. But it is a partnership between the two organizations.

The CHAIRMAN. OK.

My time has expired. I will hand it off to the Senator from Florida, Senator Nelson, for questions.

Senator NELSON. Well, you have heard of the old saying, we are between the devil and the deep blue sea. So if we don't extend Positive Train Control—which most everyone at this dais wants to get Positive Train Control installed as fast as possible. But, under the law, you have to impose fines. But the railroads say they can't com-

ply, and, therefore, they will not carry certain traffic. So what do we do if PTC is not extended?

Ms. FEINBERG. Well, sir, we have said that we feel that it is our obligation to enforce the PTC deadline. And so, on January 1, if railroads that have not implemented PTC choose to operate, we will take enforcement actions.

Senator NELSON. You formed a task force on this, and it is getting information to be used to monitor the progress and guide enforcement efforts. Tell us about that.

Ms. FEINBERG. Yes, sir. We have had a number of FRA staff members working on PTC for years, but more recently I have formed within the FRA a task force that is working on PTC across the board. They are in close touch with railroads, they are offering technical assistance, they are monitoring testing. But one of the things they are also doing is collecting data about PTC implementation, how that implementation is going, from railroads so that we are tracking that progress regularly.

Senator NELSON. If the Congress extends the deadline for PTC, what would your recommendation be? How long of an extension?

Ms. FEINBERG. Sir, I don't think it is appropriate for me to recommend a certain amount of time. I would be deferential to the Congress on what they believe the right action would be to take in terms of the deadline.

But we would, as we have in the past, offer as much technical assistance and our expertise as we possibly can and try to be helpful to the Congress as they contemplate moving the deadline.

Senator NELSON. One of the things that we did in the highway bill was we got the number up to \$200 million to help the commuter railroads install the Positive Train Control. Now, it would be nice to have PTC installed sooner. I want to thank the Chairman for this.

So how would you go about the use of this funding?

Ms. FEINBERG. Well, we would want to coordinate with this committee and take guidance from you. But, as I view it, the \$199 million would be used as an offset for CRP—I am sorry, for the credit risk premium for commuter railroads that are applying for PTC loans. Or it could be used as a grant program for those same commuter railroads.

Senator NELSON. Grade-crossing safety, it is a problem all over the country. Can you talk about your efforts to partner with local law enforcement and technology companies on this grade-crossing issue?

Ms. FEINBERG. Yes, Senator. Thank you for the question.

Following the Metro-North grade crossing incident, the FRA launched a grade crossing campaign which would seek to try to bring some new thinking to this old problem. And one of the first things we did was partner with law enforcement to ask for increased enforcement at grade crossings, so ticketing, in an effort to prevent people from beating the train, if you will.

We have also reached out to tech companies to ask them to take our grade crossing data, which is the location of more than 250,000 grade crossings across the country, integrate that data into their maps so that when passengers or drivers are actually within a

mapping application they would be alerted that they are approaching a grade crossing.

Senator NELSON. So, back to the pregnant question before us, do you have a recommendation on what we do on an extension on PTC?

Ms. FEINBERG. I don't have a specific recommendation for a length of time. I am grateful to this committee and to the leadership of this committee for being so focused on this problem. I am worried about the consequences that come on January 1, and I am grateful for your attention to it.

I do not have a specific amount of time that I would recommend, but, as I said, we would continue to work with this committee to offer technical assistance, our expertise and any assistance that we can to be helpful as you work on this.

Senator NELSON. Thank you.

The CHAIRMAN. Thank you, Senator Nelson.

Up next, you get the Missouri double team, Senator Blunt, followed by Senator McCaskill.

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

Senator BLUNT. There you go. Well, the Missouri double team is sometimes pretty tough.

We are glad you are here. Thanks for the work you have already done on this.

I appreciate the discussion this morning has not been about who is at fault or whether the Government is at fault, but we are not going to make this deadline. I think you mentioned, Ms. Feinberg, that over 20 railroads have told you they would not operate on January the 1st.

Some of those railroads, also, obviously, commuter traffic runs over those rails, as well. I think Burlington Northern has said that their contract with the commuter traffic requires them to have their rail system in compliance with Federal law.

Is it your view that commuter traffic could not use those rails, as well? Do you have a view of that? That is what Burlington Northern thinks. Is that what you think?

Ms. FEINBERG. No, no, that is—I mean, that is correct. The Class Is are right to be also thinking about the commuter service that functions on their track. And, to be clear, the commuters are thinking about that, as well.

Senator BLUNT. And do you think it is reasonable, these 20 railroads that have told you they might not be able to function, or won't function, do you think it is reasonable that they believe that they cannot function if they are not in compliance with the PTC standard?

Ms. FEINBERG. Well, to be clear, they have actually communicated that to Senator Thune, to Chairman Thune—

Senator BLUNT. Right.

Ms. FEINBERG.—but they have also copied us on those communications, as well.

I think it is reasonable for railroads to take a close look at how and if to operate on a date when they will be operating in violation of the law. I think that is an appropriate thing to look at, and,



frankly, that is something that we would expect them to look at regularly.

Senator BLUNT. So you think it is reasonable for them to assert that they cannot or should not operate in knowing violation of the PTC deadline.

Ms. FEINBERG. Each railroad is going to have to make that decision individually, but I absolutely think it is reasonable to be contemplating whether or not it is appropriate to operate that day—beginning that day.

Senator BLUNT. And, of course, one of the reasons for this is the toxic-by-inhalation freight concerns. But, of course, if that freight, along with lots of other freight, isn't part of the commerce system, there are major problems in commerce for water treatment, for plastic, for whatever else those chemicals go into.

Is anybody doing a study of the economic impact of what happens if railroads aren't operating on January 1?

Ms. FEINBERG. We have not done a study into the economic impact. I can't speak for the STB. We have not done that specifically. And our obligation is to think about this in terms of safety versus economic impact. But I am certainly concerned about the consequences in terms of congestion and the safety impacts of increased congestion, as well.

Senator BLUNT. And—

Ms. FEINBERG. And those products would likely move by truck. They don't move by rail.

Senator BLUNT. And so that creates safety concerns in another—

Ms. FEINBERG. Correct.

Senator BLUNT.—not only the traffic, the advanced traffic, but then you just move that same problem to another place—

Ms. FEINBERG. That is right.

Senator BLUNT.—that same concern to another place.

In terms of the passenger rail, do you know of any discussion they are having about whether they think they should be able to operate on lines that don't meet the standard?

Ms. FEINBERG. It is an active conversation that is happening across the industry. So it is not just the freights; commuters are absolutely having this conversation. We are in close touch with them, just like we are with the freights. They are very anxious and keeping a close eye on this body to see what happens next.

Senator BLUNT. And you have been thoughtful in not giving any indication of exactly how long an extension would be, but is it your view that there needs to be some sort of extension beyond January 1?

Ms. FEINBERG. I mean, to echo the Ranking Member, I think he said between the devil and the deep blue sea. I would say we are between a rock and a hard place. The deadline is not going to be met. That is disappointing to me, and I think it has safety consequences that I am concerned about. The railroads not operating also has consequences.

And we would want to work very closely with this committee to try to assist in any way we can, in offering technical assistance and expertise, as you look at the deadline.

Senator BLUNT. Thank you, Chairman.

The CHAIRMAN. Senator McCaskill.

**STATEMENT OF HON. CLAIRE McCASKILL,  
U.S. SENATOR FROM MISSOURI**

Senator McCASKILL. You are here for us to ask questions for you to be the boss. So I am going to ask you some tough boss questions. GAO has a follow-up that just was issued yesterday on the PTC implementation, and I am going to read a paragraph.

“Providing FRA with the authority to grant extensions on a case-by-case basis would provide some needed flexibility and could also assist FRA in managing its limited staff resources and help railroads mitigate risks and ensure PTC is implemented in a safe and reliable manner.”

Do you agree with that?

Ms. FEINBERG. We are willing—

Senator McCASKILL. That is not my question. I want to know whether you agree with that statement. “Providing FRA with the authority to grant extensions on a case-by-case basis would provide some needed flexibility and could also assist FRA in managing its limited staff resources.”

Ms. FEINBERG. It would certainly give us flexibility. I am less worried about the staff resources because we have plans in place to staff up quickly with contractors, and we have had those plans in place for quite some time.

I am anxious about the prospect of entering into negotiations with 40 different railroads on a case-by-case basis, which would result in a choose-your-own deadline, back and forth.

Senator McCASKILL. OK. So you are not comfortable with a case-by-case-basis approach.

Ms. FEINBERG. I think—

Senator McCASKILL. You would rather have a set deadline.

Ms. FEINBERG. Well, I just think that we have to be aware of the consequences of entering into negotiations with 40 different entities.

Senator McCASKILL. Yes, and so, well, that is what I am trying to figure out, Ms. Feinberg, is, you know, which is the best of bad choices? And you are going to have to make that decision, potentially.

Ms. FEINBERG. Ultimately, I—unfortunately, FRA does not have the authority to make that decision.

Senator McCASKILL. OK. Well, you do have the authority on this subject. We know that the railroads will not be PTC-compliant by the end of the year, correct?

Ms. FEINBERG. Correct.

Senator McCASKILL. No controversy there, no question.

Ms. FEINBERG. Most of them will not. A few will make it. Correct.

Senator McCASKILL. OK. A few will be, but most will not. We have heard that they are not going to operate. But, really, what they want to know is what you are going to do. So if you know they are not going to be compliant at the end of the year, can you tell this committee what you are going to do on January 1?

You gave us a memo that gave you all the enforcement options.

Ms. FEINBERG. Right.

Senator MCCASKILL. Why is it that you will not say—these railroads are trying to decide what to do if Congress, for some inexplicable reason, will not face the reality that an extension is necessary. They have to make a tough decision, and so do you. The sooner you make your decision, the more informed their decision will be.

When will you make the decision on what you are going to do when they are not compliant if Congress fails to act?

Ms. FEINBERG. I actually feel like we have been pretty clear on what we will do on January 1 if they are not compliant. We—

Senator MCCASKILL. And what is that?

Ms. FEINBERG. We will enforce—if the December 31 deadline remains in place and railroads choose to operate in violation of the law, we will take enforcement actions on January 1, or on the day that they operate. We will issue fines, and we will likely impose additional requirements on those railroads that will raise the bar on safety if they choose to operate without PTC implemented.

Senator MCCASKILL. Have you discussed what the fines will be? Because you know this is going to happen.

I mean, what I am trying to figure out is, we are going to have a huge mess if nobody operates on January 1. I mean, I don't know any other more artful way to put it other than "a huge mess." It is going to be dangerous. It is going to be very damaging to our economy. It is going to cost jobs. It is going to be exhibit A of why Congress is so unpopular, because we can't manage to do something as simple as recognize the obvious here.

So we know what the situation is going to be. Why can't you be more specific so the railroads can make an analysis about the cost-benefit of the penalties they might incur versus operating?

Ms. FEINBERG. So let me try to explain it this way. The railroads continue to make progress every day. So we are currently about 3 and a half months out from the deadline. Some railroads make progress every day. They are equipping new locomotives, they are testing PTC, they are getting additional equipment, they are obtaining spectrum. And so, to give a railroad a specific amount that we will fine them today may well have nothing to do with where they are 3 and a half months from now.

What we have said is we believe the fines will be significant. Each violation has a maximum fine of \$25,000 per day, but if you are choosing to operate past the date of January 1st without having implemented PTC, my guess is those would be multiple violations, dependent on locomotives and segments that you are operating on.

So what we have said is we believe those fines will be very significant and that we will, on top of that, impose additional requirements on the railroad, whether that is additional crew members, requiring those additional crew members to communicate, potential speed restrictions.

So we have been as clear as we can be. I believe the railroads do deserve transparency and clarity on what will happen on January 1st, but we have tried to be pretty clear about that.

Senator MCCASKILL. I think you think that if you tell them what it is going to be that somehow that will slow them down, and I

don't think that is true. I think you do need to be more specific than "significant fines."

I think also what I would really appreciate is analysis of which is going to be more dangerous, them not operating on January 1 or continuing to operate without fully implementing PTC. Because I think there is a real question, which is going to be more dangerous, and it sure would be a shame if that analysis hadn't been made transparent before that date.

Ms. FEINBERG. We—

Senator MCCASKILL. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator McCaskill, Senator Blunt.

And let me just point out, too, I think the administration did put out an extension proposal in their GROW AMERICA Act.

And the other point I want to make—this is an important one. Everybody is focused on January 1 here, which is of course the deadline, but the effects of this start being felt sooner than that, particularly with the freight railroads. I mean, we are talking about probably a November timeframe. So the sense of urgency attached to doing something on this is very apparent, and I think we have to recognize that we don't have a lot of time to work with.

And the senator from Missouri is exactly right. I mean, if you look at what could happen, the potential effect, this is a huge disaster in the making, which as I said before is totally avoidable.

Senator Fischer is up next.

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

Senator FISCHER. Thank you, Mr. Chairman.

I would like to follow up on the fines that you were talking about and the penalties. You mentioned that they are going to be significant. And before that, you said that the railroads are making progress every day. But we all know that they are not going to get there. I mean, they have been very open about that. They have given us quite a bit of information on the problems that we are going to be seeing all across this country. And as Senator McCaskill said, the tremendous negative impact we are going to see on our country's economy and the safety of our citizens by a shutdown, basically, from our railroads.

When we are looking at these significant fines, what system have you established that will determine what the fines are? Does that offer any clarity to the railroads or to us on this committee? Do you have a system in place?

Ms. FEINBERG. We do have a system in place. We have a long-standing system for enforcement against railroads which has been in place for many years.

But then, more specifically, following the 2008 legislation, we finalized a rulemaking in 2010 that included all of the ways that we would enforce against PTC. So we can certainly get it to you. It is several pages, and it basically details the various enforcement actions that we would take.

Senator FISCHER. What are a couple of the specific actions that would happen?

Ms. FEINBERG. So there are many. They involve failure to equip a locomotive, failure—

Senator FISCHER. But what is the penalty?

Ms. FEINBERG. They start at—I think for that one it is \$15,000, but it depends on if it is a willful violation. So, much like any other enforcement agency, there are basic violations and then there are willful violations. There—

Senator FISCHER. Oh, OK. Well, that then leads me to the idea that there are companies that are working in a good faith effort and they have invested really billions of dollars in trying to meet these deadlines that they are not able to meet. Are you going to be looking at those companies differently? I think earlier you said you wouldn't.

Ms. FEINBERG. I think that may have been a reference between freights and commuters. But I believe, if I understand your question, we certainly do not want to disincentivize progress, and we do not want to punish railroads that are making progress and working hard each day to reach the deadline and to make progress on PTC implementation. It is also important for the enforcement mechanisms to be fair.

Senator FISCHER. Would you be looking—a follow-up with Senator McCaskill's question again then. Would you be looking—with that comment, I would think you would look at treating companies differently and making accommodations for them individually and not as a group.

Ms. FEINBERG. So let me give an example. Some railroads have been unable to obtain the spectrum that they needed in order to implement PTC. My point is that, as we look at enforcement actions, we want to prioritize both the ones that have the largest impact on safety but also the ones that railroads actually had control over versus something that was out of their control.

Senator FISCHER. OK.

I would like to switch gears here and talk about the ECP braking requirements. And that would also cost billions of dollars. But two Class I railroads, Union Pacific and Norfolk Southern, they have tried those systems; they have abandoned them. They didn't feel that there was a substantial benefit to safety.

When you look at the crude by rail and the rulemaking there, it is my understanding that the FRA did not conduct a real-world study. Is that right?

Ms. FEINBERG. Well, we used modeling for the ECP braking for the cost-benefit analysis—for the impact of the ECP brakes, as we do in most rulemakings. I mean, you are correct that those braking systems are in place on some railroads, that they are actually being used each day, but to actually take one train equipped with ECP and one train not equipped and then involve them in an incident, even in a testing, is not something that we did.

Senator FISCHER. So no hard science was really used at all in determining those regulations?

Ms. FEINBERG. Well, I do think there was hard science involved, and there was math involved, as well, but we did not actually go out and involve trains in a real world incident.

Senator FISCHER. I understand that math is used in modeling, but wouldn't you think that hard science would be more helpful, especially when you had two Class I railroads that did have information on it?

Ms. FEINBERG. Well, we would be more than happy to do testing like that. We have said to this committee that, while funding is important for testing like that, we are always anxious to collect more data, particularly on things like braking systems.

You know, I understand that the railroads are concerned about the cost of implementing this braking system. I would also note that prior to the rule being finalized, some of them were actually advertising that they were using it.

So I am aware that they are unhappy with the cost, and we always want to collect more data about braking systems, but I also am—you know, we are very focused on whether the braking system works, as opposed to logistics and cost.

Senator FISCHER. I would say that all of us up here, and including the railroads who are intimately involved in this, are concerned a lot more than just about the cost. We are concerned if it works. We are concerned about the safety. We want to make sure that investments have a return that will keep our population, our citizens safe. So to imply that this is all based on cost I think is a comment that did not need to be made.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Fischer.

And we have up next, if he is ready, Senator Manchin. You want to—oh, OK. We will go to Senator Peters next.

**STATEMENT OF HON. GARY PETERS,  
U.S. SENATOR FROM MICHIGAN**

Senator PETERS. Thank you, Mr. Chairman.

Ms. Feinberg, thank you for being willing to take on this job. Obviously, it is a very big job, and I know you are putting a great deal of good faith effort in, working hard. And appreciate your efforts, and appreciate the opportunity to meet earlier to talk about some issues.

And before I get into the Positive Train Control, and I have some questions related to that, I would like to first mention a personal incident that I had with a good friend in an accident that you mentioned and some of the follow-up related to that accident.

You mentioned in your opening testimony the Amtrak accident outside of Philadelphia, 188. And I had some personal contact with that, in the fact that I had some very good friends of mine who lost their daughter in that very tragic accident. And their first contact with Amtrak was a very impersonal, cold call from a claims adjuster of some sort who said that they would be willing to pay reasonable funeral costs, to let them know that that was Amtrak's response, which did not sit well with the family, as you can imagine, through a very traumatic time.

Now, Amtrak is under statutory requirements to have a family assistance plan. And I have inserted an amendment in the Railroad Reform, Enhancement, and Efficiency Act, which is part of the comprehensive transportation bill which hopefully will pass. I know my colleagues seem to be concerned that that is going to pass, that we are going to be dealing with some issues with Positive Train Control and others. But in that amendment that is part of that, I require your agency, NHTSA, and others, NTSB, to take a hard

look at the adequacy of Amtrak's family assistance plans and determine whether or not they were followed.

But I would like to hear from you if anyone else at FRA, as the rail safety regulators, have looked into Amtrak's response to both the victims of the derailment and their families to determine whether or not they have complied with some of their statutory requirements and, kind of, your assessment of it.

Ms. FEINBERG. And that will certainly all be a part of the investigation into the incident. As I know that you know, Senator, the NTSB is the lead investigative agency on that accident, but the FRA also plays a role in that, as well. The NTSB has specific guidelines about family assistance planning, and I know that they will take a very close look at that. And we will, as well.

Senator PETERS. And you will, as well. You have not had an opportunity to do that?

Ms. FEINBERG. In my role as a Member of the Amtrak Board, we have had some conversations about the accident and the response. I have reiterated the importance that I put on making sure that families are communicated to quickly and appropriately. But it will ultimately be a part of the investigation the NTSB leads, and I can't get ahead of them.

Senator PETERS. Well, especially as a member of the Amtrak board, I hope you take a strong interest in this and understand the seriousness of it. And I will look forward to working with you in the months and years ahead, as we take a look at that and hopefully make improvements to it in the future—

Ms. FEINBERG. Absolutely.

Senator PETERS.—so that things like that do not happen again.

Ms. FEINBERG. Absolutely.

Senator PETERS. And now to the Positive Train Control, Senator McCaskill mentioned the GAO report that came out yesterday. And if we are able to pass the comprehensive highway transportation bill, or if we do a separate bill that allows us to move forward and push back some of the time requirements for PTC, you will have to oversee some of the implementation of their work and their plans in the future.

But in the GAO report, they noted that there were deficiencies in the reports that talked about how they were going to meet some of those deadlines, some of their milestones, how they were going to reach those milestones. In fact, it says, "They lacked any meaningful detail and could not give the FRA a clear understanding over railroads' PTC implementation progress."

So if the reports that they are providing you are deficient, what do you plan to do to make these reports more substantive and ones that you can actually work on? Do you agree with the GAO's assessment? And how do you plan to fix it?

Ms. FEINBERG. Well, we have agreed with the GAO's recommendations and agree that they are important recommendations to implement. Most of them were being integrated into FRA's approach to PTC implementation prior to the GAO report, but we take their recommendations seriously and will take action on them.

The GAO report registered some concerns about the amount of data that we were collecting from the railroads and the kind of data that we were collecting from the railroads. I believe that over

the last several months we have ramped up our efforts on that front, which are not necessarily reflected in the GAO report, but they give us a much better sense of how railroads are doing and the progress that they are making.

On their safety plans which they owe to us, on their plans for implementing PTC, we have tried to give significant guidance to the railroads on what we are looking for and how we can go back and forth with them to make sure that their plans for implementation are as safe and efficient as possible.

Senator PETERS. Great. Thank you.

Ms. FEINBERG. Thank you.

The CHAIRMAN. Senator Manchin?

Thank you, Senator Peters.

Senator MANCHIN. Thank you, Mr. Chairman. Appreciate it very much.

And I hope they have been kind to you since I have been gone.

Anyway, Ms. Feinberg, everything that I have read about the Amtrak train, the 188 derailment earlier this year, it sounds to me that the engineer lost situational awareness. As a pilot, you know, you have to be aware of where you are at all times and be able to report that, and they are following you.

I went over and was able to go over to look at some of the newest Amtrak locomotives over at Amtrak. I did the Acela, and I did the Northeast Regional, just to get a better understanding of what was happening in the cockpit. I am going to call the engine a cockpit, OK? I was amazed to find out that we are still using technology that is 50, 80, 100 years old. In our cars, we have more information in our front seat of our driver's car than we do in an engine.

I just kept asking the question over and over, can't we at least—because they were telling me how costly it was and on and on and how much time it would take. I said, just to have situational awareness would be something, knowing where you are at. And that is pretty easy, pretty simple technology.

Did you find that to be—I mean, I don't know where the pushback—I don't think anybody, I don't care on what side of the fence people may be, whether it is the railroad companies themselves and whether it is people, passengers, we all want it to be safe. Everybody does. But if we are not moving toward a new technology, and our whole country depends on it, why would we not be using some of the easiest, latest, greatest advanced technologies for train traffic?

Ms. FEINBERG. Well, we could not be more supportive of making sure that railroads are integrating technology that will improve safety and save lives. I mean, that starts with PTC, obviously, but you can take that all the way to our encouragement of tech companies to integrate our grade crossing data into tech features so that we are communicating both with, you know, engineers but also with drivers who are just approaching a grade crossing. So incredible—

Senator MANCHIN. Are they looking at different technology? I mean, I don't know, I was asking the questions from the—and they were very kind over there to show me everything and go through the whole scenario, but I did not get the feeling they are moving



in that direction. We call it a glass panel, a glass cockpit, if you will.

What I saw was basically pretty antiquated—a light system and sound system, certain areas, and this and that. And it just didn't make any sense. I mean, I was flabbergasted by it.

Ms. FEINBERG. Well, there is also a beauty to the simplicity of a locomotive, or of a cab. But I think probably the most important technology that railroads can integrate at this moment is PTC, which is incredibly complicated, well worth the complication, I think, but—

Senator MANCHIN. You are working through the deadlines, you are working with the industry and making sure that we are doing everything we can to expedite this along? But you understand the time constraints there, basically, and the intricacies of this.

Ms. FEINBERG. Yes, sir. And we have tried to do as much as we can to be helpful as railroads are attempting to implement this technology. So we have offered technical assistance. We have built a testbed facility at Pueblo, Colorado, for testing purposes. We have hired additional staff. We have tried to proactively help on safety plans.

And we will continue to do all of that because it is obviously in our interest to get PTC implemented as safely and efficiently as possible.

Senator MANCHIN. The other thing, being a former Governor, I was acutely aware of, you know, making sure that anything and everything that happens in the state of West Virginia and every other Governor in their state does so with the utmost concern about the safety of the citizens.

The thing that I used to get complaints, years ago when I was Governor, is that basically our first responders didn't know what was traveling through their state, or they didn't know until after the fact. And God forbid an accident would happen. And I sit on Mount Carbon. You know pretty well that area. If it had happened just a mile or two down the track, it would have wiped out Montgomery, the whole town. Hard to tell how many people would have lost their lives, what we saw happen just outside the town. And those are the things I am concerned about.

Have you all been able to better coordinate with the first responders and with the state coordinators of first responders?

Ms. FEINBERG. We have. I mean, I have said to the railroads that I think notifications of first responders should be a priority. We have an emergency order that went into place in May 2014; that remains in place.

We have reiterated its importance with the railroads. I recently wrote them a letter reminding them that the expectation is that they are to be sharing that information with first responders so that those individuals have as much information as possible.

Senator MANCHIN. Are you getting any pushback on that whatsoever? Are the states saying we still don't have the info we need in time enough to make sure that they have the proper equipment and people available in case, God forbid, something would happen?

Ms. FEINBERG. It depends on the state. Some states have said they want more, and we are asking the railroads to please work with them to give—

Senator MANCHIN. Good.

Ms. FEINBERG.—them all of the information they could possibly need. Some are satisfied. And then whether that information is made public frequently depends on the state's—

Senator MANCHIN. And, finally, I think, have you put a working group together, working with the railroad executives and engineers and the people on the front line and all the people that are on the rails, trying to get input from them to try to better this or do the things that basically are acceptable and can be done?

Ms. FEINBERG. Yes, sir. We have a task force within FRA that is seeking to do that.

Senator MANCHIN. OK.

Thank you. My time has expired.

Ms. FEINBERG. Thank you.

The CHAIRMAN. Thank you, Senator Manchin.

I have Senator Wicker, followed by Senator Klobuchar and Senator Blumenthal. I am told we have a vote at 11. If we can get everybody in before we have to bust over there, that would probably be a good thing. And I am sure Ms. Feinberg would appreciate that, too.

Senator Wicker?

**STATEMENT OF HON. ROGER F. WICKER,  
U.S. SENATOR FROM MISSISSIPPI**

Senator WICKER. Thank you, Ms. Feinberg.

I think we have been kind today, but I do think the Committee, on both sides of the aisle, the members are a little confused and frustrated by the lack of a specific proposal concerning the extension.

Now, the Chairman came in and clarified that apparently the FRA still stands by the GROW AMERICA recommendation concerning extensions on a case-by-case basis. Is that your position?

Ms. FEINBERG. What we asked for in the GROW AMERICA Act was not a blanket extension but flexibility to work with railroads so that we could prioritize where PTC would be turned on. So the statute is very black and white and offers literally really no wiggle room. And so what we asked for in the GROW AMERICA Act was flexibility to work with railroads post-January 1 to turn on portions of PTC before waiting for an entire system.

Senator WICKER. Well, you know, if I were a railroad and struggling to meet this deadline, I would find that so uncertain that I don't know if I could develop a business plan. It seems to me that what that would do is leave it up entirely to the discretion of the FRA, and the people trying to get this thing done in good faith would be so frustrated that they didn't where they stood.

You know, it seems to me, Ms. Feinberg, that we are going to have to extend this for a period of time, just to give people out there in the country the ability to know where they stand.

And so, to me, it would be helpful—I think we can all acknowledge that a GROW AMERICA Act is not going to be passed by the House and Senate, passed out of Committees, signed by the President of the United States before the end of this year. And so I would appreciate you coming back to us and the Administration coming back to us about what vehicle we might have.

Do we need to put it on the CR? If we do, we need to move it pretty quick. And I understand the CR, the folks designing that are intending for it to be very clean and not have a lot of new provisions. Can we wait until the omnibus at the end of the year? Because it looks like that is where we are headed. Is the reauthorization of the transportation bill an appropriate way?

But I would appreciate a specific recommendation as to the length of time that might be appropriate. Is it 6 months? Is it a year? Is it 2 years?

You deal with this every day; we are trying to deal with 100 things. So I really would ask you to get back to us and provide some leadership there in terms of letting us know how industry can get this done.

And I realize we have spent a lot of time on this topic, so let me switch. Let me be provincial then and ask you about Gulf Coast service.

You know, the House and Senate, we haven't quite gotten a bill to the President's desk yet, but I think—would you acknowledge that we have made it clear in legislation that is Federal intent to have a working group formed to restore the Gulf Coast passenger service that we lost after Hurricane Katrina? Would you agree that that Congressional intent is becoming clear based on the legislation so far?

Ms. FEINBERG. Yes, sir.

Senator WICKER. And are you aware that a working group is proposed to develop and answer the question of how we implement this?

Ms. FEINBERG. Yes, sir.

Senator WICKER. And will you acknowledge that FRA doesn't have to wait until the legislation is actually enacted to form such a working group?

Ms. FEINBERG. Yes, sir. And I have met with your staff on this. I am supportive of Gulf shore service being restored. We have had a good conversation about it, and I will actually be down there next month.

I have met with the Southern Rail Commission; they are lovely and excellent at—

Senator WICKER. Where is "down there"?

Ms. FEINBERG. I am sorry. I will be in Louisiana and Mississippi.

Senator WICKER. Oh, good. Well, wonderful. You know, Governor Bryant, Senator Cochran, and I would like to host you on a ride along that proposed route with the other members of the delegation, with Amtrak President Boardman and CSX CEO Ward and others to assess the line's condition. So are you willing to join us—

Ms. FEINBERG. Absolutely.

Senator WICKER.—on that ride if we can work out a convenient date?

Ms. FEINBERG. Absolutely. Look forward to it.

Senator WICKER. Wonderful. Thank you. And I look forward to working with you on that and wish you the best. Thank you for your service.

Ms. FEINBERG. Thank you.

Senator WICKER [presiding]. And Senator Klobuchar, I believe, is next.

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

Senator KLOBUCHAR. Right. Thank you very much, Senator Wick-  
er.

And thank you, Ms. Feinberg. Congratulations. Any friend of Senator Manchin is a friend of ours.

First, I want to just talk to you about the blocked-crossing issues. As I travel across Minnesota, I hear from people all over the state who have spent an excessive amount of time, sometimes hours, stuck waiting at a blocked rail crossing. Blocked rail crossings not only inconvenience drivers but they delay emergency vehicles.

In July, I was in Ranier, Minnesota, which is on the Canadian border. It is a major crossing but a very small town. Their rail-crossing blocking is 6 to 8 hours a day in the town.

So in the DRIVE Act, we actually put a provision in there to direct the secretary of transportation to develop highway-rail-crossing action plans, including tools and data, safety risks, other things. And that is the amendment that is in there.

Acting Administrator Feinberg, as this process moves forward, what steps can the FRA take to minimize blocked rail crossings? And do you think you have the best practices in place?

Ms. FEINBERG. Thank you for the question.

We are also very concerned about blocked crossings. We do not actually have regulations in place that govern how long a train can block a crossing, but we frequently hear from communities in Minnesota and elsewhere where you have folks who are waiting for some time while a train is blocking a crossing. And it can sometimes lead to safety concerns, as well, when you have first responders who are stuck on one side of a crossing and can't get to the other side of a crossing.

So we frequently work with railroads individually to address specific problems. We have also suggested that we do a study so that we can understand the impact of blocked crossings. But we are also worried about this and attempting to resolve it ourselves.

Senator KLOBUCHAR. And some of this would be dictated by this bill once—I know we are going to pass it eventually here this year.

Also, I hear from communities that they don't have the capacity to prepare for or respond to a derailment or a hazardous material spill. Firefighters and first responders in some cases simply don't have the resources to purchase the equipment.

What is the FRA doing to ensure local units of government have these resources to be able to properly prepare? And do you need any additional authority for that?

Ms. FEINBERG. I don't know that we need additional authority. We have worked closely with our sister agency, Pipelines and Hazardous Materials, on programs that will assist with training first responders, making sure that they have the information that they need, the resources they need. There are trainings that frequently happen at our training and testing facility in Pueblo, Colorado, which is an excellent facility for training.

So we will continue to look for resources where we can assist first responders with that and appreciate your focus on it, as well.

Senator KLOBUCHAR. And then one last question. I am going to end short here and give you the rest in writing so my colleagues can ask questions before the vote.

Would you support leaders from local government and first responders serving on the Railroad Safety Advisory Committee? That isn't happening now, and we think that would be helpful.

Ms. FEINBERG. Certainly. I will say that they can certainly present to the RSAC at any point. They can come and reach out to us, and we can make sure that they have a role in RSAC meetings and process. And we are happy to do that and follow up and make sure that they feel like they are welcome and listened to at RSAC meetings.

Senator KLOBUCHAR. OK. We would like them on the board, and so we can discuss that later.

And I will put the rest of my questions in writing and turn it over to Senator Blumenthal.

Thank you.

Ms. FEINBERG. Thank you.

Senator WICKER. Well, actually, Senator Daines is next.

Senator KLOBUCHAR. Oh, OK. There you are.

**STATEMENT OF HON. STEVE DAINES,  
U.S. SENATOR FROM MONTANA**

Senator DAINES. Thank you. Appreciate that.

Ms. Feinberg, congratulations on your nomination. It is nice to see you here again.

As you know, Montana is home to nearly 3,200 miles of railroad track that moves our ag commodities, our record amounts of crude oil, coal, and other manufactured products across our rail system every day. In fact, we export the majority of our energy and ag production. Eighty percent of our wheat harvest goes to Asia, and most of that leaves the state via rail.

Last summer, there were challenges to rail capacity and delays in shipping some of our goods. Our phones were ringing a lot; a lot of concerns about this. This year, I know that Burlington Northern Santa Fe has made significant investments in Montana to increase capacity, enhance safety, and we expect smooth and efficient shipments of this year's harvest as well as other commodities.

Additionally, we have the famous Amtrak Empire Builder that runs along Montana's Hi-Line, providing much-needed transportation and connectivity for our rural communities. In fact, last year, nearly 120,000 people boarded and alighted Amtrak trains in Montana.

I recall as a kid hearing stories about how my great-grandparents would take passenger rail from Shelby, the Empire Builder. That is how my family got back and forth when they first, in fact, came out to Montana a century ago.

Needless to say, it is imperative to Montana that we continue to move these passengers and commodities in a safe and efficient manner. So my question is going to be probably the same horse we have been beating here during this hearing, which is regarding PTC.

We all saw in the report released yesterday that the GAO has recommended again that Congress extend the December 31, 2015, PTC deadline.

The largest railroad in my home state, in Montana, is BNSF. They have been working diligently. They have invested \$1.5 billion, and, in fact, another \$500 million investment is planned, to implement PTC across the nation, including on the nearly 2,000 miles of track in Montana.

As we all know, this deadline is approaching. The Senate highway bill contains an extension on a case-by-case basis. And I think we must continue to move passengers and commodities in a safe and efficient manner. Without these rail connections, we are in big trouble in Montana.

So my question: as Administrator, what would you do in the immediate future to ensure our railroads do not come to a grinding halt on January 1, 2016, beyond the threat of fines?

Ms. FEINBERG. Well, Senator, it is good to see you again. I cannot give the railroads individual legal advice. I don't think that is an appropriate role for the FRA Administrator. We have said as clearly as we can possibly say that we will enforce the deadline.

I know that many railroads are considering not operating starting on January 1 because they will not be in compliance with the PTC law, but—

Senator DAINES. Would you have your cell phone and we could forward the calls from Montana to you so you could take them?

Ms. FEINBERG. Oh, sir, I am getting the calls. Yes, yes.

[Laughter.]

Senator DAINES. Great. Yes. All right.

Ms. FEINBERG. But I am happy to take yours, as well, yes.

Senator DAINES. I am talking about from the people of Montana. Because the phones will be ringing; this will be a crisis.

I am sorry, I interrupted you. Go ahead.

Ms. FEINBERG. I am also worried about the crisis that could ensue on January 1, as well. We have tried to be as clear as we can possibly be. We will continue to try to assist this committee and the Congress in any way that we can as you contemplate the possible extension of the deadline, and we will work with you in any way that we possibly can.

Senator DAINES. Yes. So we are down to about 100 days—

Ms. FEINBERG. Yes.

Senator DAINES.—plus or minus. There is something called Thanksgiving in the way. There is the Christmas holidays. So the time is of the essence. And given everything else going on in this town that tends to be crisis-driven, it would sure be nice to avoid yet another crisis-driven event.

Ms. FEINBERG. Sir, I completely agree. I do not have the authority to extend the deadline. And the Secretary of Transportation does not. And we will work with this committee in any way that we can but are not able to do it ourselves.

Senator DAINES. In your testimony, you mentioned there is a \$1 billion loan from FRA to New York's transit authority to help implement safety measures.

Often, the focus of passenger rail is on the Northeast Corridor, and I understand the reason why, because of the dense popu-

lations. But it sometimes perpetuates this urban-rural divide that we see across our country.

As Administrator, what efforts would FRA take to ensure that passenger rail service is not diminished in rural America, places like Montana? What loans are being made available to passenger rail in these rural areas?

Ms. FEINBERG. Well, the RRIF program is certainly available and frequently, sort of, gets the most interest from short lines, which tend to be functioning in these rural areas.

As a West Virginian, as someone from rural America, I can tell you that I am a strong supporter of the importance of passenger service between rural areas. We are working closely with Amtrak all the time.

Look, the Northeast Corridor is important. It is 50 million people, it is \$100 million a day in economic impact, so it gets a lot of attention. But it in no way takes all of our attention, and we are laser-focused on the state routes as well.

Senator DAINES. OK. Thanks, Ms. Feinberg.

Ms. FEINBERG. Thank you.

The CHAIRMAN [presiding]. Thank you, Senator Daines.

And we are still waiting for passenger rail to come to South Dakota. So you have it in Montana. Wyoming and South Dakota I think are the only 2 of the 48 lower that don't have it.

Senator Blumenthal is up, then Senator Cantwell. And a vote has just been called, so we have—

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

Senator BLUMENTHAL. I will be quick, Mr. Chairman. My main reason for speaking is to say how fervently I support passenger rail in South Dakota.

[Laughter.]

Ms. FEINBERG. I agree.

Senator BLUMENTHAL. First of all, Ms. Feinberg, I want to thank you for the breath of fresh air that you have already brought to the FRA. Your diligence and determination have made a significant difference already in the enforcement and the vigilance and vigor of oversight by an agency that has been asleep at the switch for much too long. There are still 64 recommendations, I believe, from the NTSB that have not been closed by your agency, but you have made a lot of progress over a short period of time.

And I hope that you will continue to focus not only on Positive Train Control but on very significant other rail safety issues: close-call reporting, redundant signal protection, commuter rail inspection practices, cameras, speed restrictions, fatigue, and so many other issues. I think your agency, obviously, can focus on more than one issue at once, and these other challenges are as important as Positive Train Control and a lot less expensive.

Ms. FEINBERG. That is right.

Senator BLUMENTHAL. So I hope that you will continue this effort, because rail safety in the United States is sorely lacking. And there will continue to be catastrophes, often with fatal results and tremendous costs, if the nation fails to do better. And you are at

the tip of the spear so far as rail safety is concerned, so I hope you will continue your efforts in that regard.

There is a vast difference in different kinds of extensions of PTC. I strongly support the railroad-by-railroad, year-by-year, vigilant oversight approach, which I believe was embodied in the GROW AMERICA Act, as opposed to the unlimited, indeterminate, open-ended approach which is currently embodied in the DRIVE Act. And I will oppose that kind of extension if it is incorporated in any sort of continuing resolution or a short-term fix. I believe that approach is simply an invitation to disaster.

And I know that you have walked a fine line in your testimony today in a very understandable effort to be accommodating to the different views that are on this committee, but I would like a commitment from you that you will vigorously enforce whatever PTC extension is adopted, if one is adopted, by this committee and Congress.

Ms. FEINBERG. Absolutely. We intend to vigorously enforce the deadline that is in front of us now, and should it be moved, we will vigorously enforce that one.

Senator BLUMENTHAL. And I take it you would favor the more limited and year-by-year, case-by-case approach embodied in the GROW AMERICA Act. That has been the Administration's policy, has it not?

Ms. FEINBERG. Well, the GROW AMERICA Act—our purpose in the GROW AMERICA Act was to ask for flexibility for railroads that had made progress and where we were trying to prioritize PTC implementation in certain places. Certainly we are supportive of getting PTC implemented as safely and as efficiently as humanly possible.

Senator BLUMENTHAL. I want to focus in the short time I have remaining on the need for greater oversight on the Hartford Line.

I want to thank you and Secretary Foxx for hosting a meeting, including myself and the Connecticut delegation and our Governor. I would like you to commit, as you did in the meeting, that you will ensure that Amtrak manages this project more ably and efficiently.

Ms. FEINBERG. You have my commitment that we will remain very vigilant over that project. It is one of the most important projects in the country. And as we said in the meeting, we are lucky to have good partners in Connecticut that are actually prioritizing this kind of work. And so we will remain very focused on it.

Senator BLUMENTHAL. And there really is an opportunity and obligation for more collaboration and cooperation here. The contention and disagreements that have occurred really are regrettable and ultimately will contribute to delay and cost overruns of this line; would you agree?

Ms. FEINBERG. Yes, sir.

Senator BLUMENTHAL. Thank you very much.

Mr. Chairman, thanks for the opportunity.

The CHAIRMAN. Thank you, Senator Blumenthal.

Senator Cantwell?



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

Senator CANTWELL. Thank you, Mr. Chairman.

Ms. Feinberg, we have had a chance to talk many times about railroad issues and particularly as the Northwest experiences more and more train traffic.

Do you believe that oil volatility is an issue that needs to be addressed and that the DOT, working with DOE, should resolve this issue by doing the amount of testing required to say what vapor pressure really should be on trains?

Ms. FEINBERG. I certainly think that it will be helpful to determine what role volatility plays.

As you know, the Department of Energy has partnered with our sister agency, PHMSA, and with us to do a study of the Bakken crude, which is what I think you are referring to, to determine the volatility and what impact that volatility has, so does it matter and how much, which will guide a lot of our thinking and be helpful.

Senator CANTWELL. I know that it is astounding to me that neither FRA or PHMSA thinks that they have the ability to regulate this vapor pressure, which we do in other areas, that somebody is waiting for a catastrophic accident to then say we should regulate this.

But are you concerned that these vapor pressure readings are as much as 18.5 pounds per square inch when, in reality, a lot of people have concerns above 10?

So we are not only seeing North Dakota saying, well, let's set a standard at 13.7, which I have a concern about, but that we are finding that they are not even meeting that, that there is no regulation and oversight whether the train traffic is actually meeting that standard. In fact, some people are finding much higher vapor pressures, which I think volatility comes into play.

Ms. FEINBERG. It is hard for me to comment on what PHMSA's authority is. Our authority is clearly the vehicle that that product is traveling in when it is on rail, so assisting PHMSA with the tank car but also the way the train is operated.

But I have been a loud proponent of asking the energy industry to play a role in assisting us with the safety of transporting crude oil across the country. I think it is important for the rail industry to be accountable, but I have been very vocal about my interest in having the energy industry have some skin in the game as well.

Senator CANTWELL. The energy industry, meaning?

Ms. FEINBERG. Meaning the shippers.

Senator CANTWELL. Do you think the Federal Government needs to resolve this issue and weigh in, whatever agency it is, whoever has the authority?

I mean, I don't think the general public cares, like, what we are all doing back here as it relates to this agency and this doctrine and this regulation and, oh, it is falling through a loophole. People want to know whether volatility is going to be addressed or not. And you think the administration should address volatility?

Ms. FEINBERG. I think if the studies that are being done by the Department of Energy suggest that we need to address volatility before it is placed into transport, we should do that. We should absolutely do that.

Senator CANTWELL. Thank you.

Thank you very much.

The CHAIRMAN. Thank you, Senator Cantwell.

I just want to point out for the record that the GROW AMERICA Act had an open-ended extension. There wasn't any deadline in the GROW AMERICA Act. The DRIVE Act, which passed the Senate here a few weeks ago, has a 3-year deadline, through 2018, for installation, and then of course certification is dependent upon working with the DOT.

And, in addition, the DRIVE Act also included a number of other safety-related measures, including requiring inward-facing cameras on all passenger railroads, requiring speed-limit action plans to address automatic train control modifications, crew communication, other speed enforcement issues, improving the safety of the rail transport of hazardous materials with real-time information for first responders and comprehensive oil spill response plans, a requirement for grade-crossing action plans to facilitate and improve state grade-crossing safety efforts. And it included a number of other safety issues, such as signage alerters and track inspections.

So the DRIVE Act does have a number of safety provisions in there in addition to the PTC extension.

So, Ms. Feinberg, thank you for appearing today.

And we will keep the hearing record open for 2 weeks, during which time senators are asked to submit any questions for the record. Upon receipt, you would be requested to submit the written answers to the Committee as quickly as possible.

And, as you can tell, today, obviously, a lot of focus on PTC. We have a big problem. You are coming in at a very important and critical time to try and help solve what most of us, I think, recognize is going to be a major, major crisis if we don't get some fairly quick action here.

And your role is going to be important and the Administration's role is going to be important in trying to build the necessary bipartisan coalition that it will take to pass legislation that gets us to where we need to go.

So thank you for your time today and for your willingness to serve.

And we will, with that, adjourn the hearing.

Ms. FEINBERG. Thank you.

[Whereupon, at 11:20 a.m., the hearing was adjourned.]

## A P P E N D I X

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. JOHN THUNE TO  
SARAH E. FEINBERG

*Question 1.* Your résumé reflects substantial communications and press relations experience, including at the White House and at Facebook, but it doesn't appear to include specific expertise regarding railroad safety before your current assignment. What do you believe you bring to the job, and how will you address concerns about a possible lack of subject-matter expertise should you be confirmed?

Answer. As I outlined in my hearing testimony, it is an honor to have been nominated by President Obama to serve as the Administrator for the Federal Railroad Administration (FRA) and to have earned the confidence of Secretary Foxx. It is a great responsibility that I take very seriously.

FRA career staff has deep technical expertise and is phenomenally committed to their work. As Acting Administrator, I bring a broad perspective and leadership skills to channel that expertise in new ways to mitigate safety risks. In the time I have been directing FRA, I have fostered an atmosphere where, as an agency, we can adapt to new conditions and new realities in the rail industry, while being open to criticism. The result of that has been to find new solutions to old challenges like improving grade crossing safety, the handling of NTSB recommendations, and the improving of our financing program—the Railroad Rehabilitation & Improvement Financing (RRIF) program.

My time as Acting Administrator and as Chief of Staff at the U.S. Department of Transportation has prepared me to serve in the position of Administrator of FRA. In my current capacity as Acting Administrator, I have led the agency's response to multiple, significant rail incidents this year, including the West Virginia crude derailment, the Valhalla/Metro-North grade crossing incident, and the Amtrak #188 derailment. I have led the agency in becoming a more transparent and accountable organization. I have set clear safety and accountability priorities and goals for the agency, and I have led the FRA in creating a much closer working relationship with the U.S. Congress and the National Transportation Safety Board (NTSB). As USDOT Chief of Staff, I led operational and legislative initiatives across all modes of transportation and served as the direct manager of most USDOT leadership.

My commitment is to continue to push FRA each day to be vigilant in the pursuit of safety, by utilizing innovation and new ideas to build on the positive work that was already taking place prior to my arrival at FRA.

*Question 2.* Now that you have been Acting Administrator at the Federal Railroad Administration (FRA) for the past nine months, what do you see as some of the major management challenges at the agency?

Answer. As with any change in leadership, new eyes can bring about fresh thinking in many areas of a vital safety operation like FRA. I am reevaluating the organizational structure of our agency to ensure the FRA is the most efficient and effective government agency possible. That requires maintaining the strength of our workforce, especially in our critical safety disciplines. An aging workforce and hiring competition with the industry we regulate are the major challenges we face in hiring and retaining a full staff at the administration.

In today's world, it is a challenge for any organization to keep pace with rapidly changing innovation and technological advancements. I am committed to providing the staff at FRA with modern, high-tech tools we require in our pursuit to raise the bar of safety throughout America's rail network.

In addition to these challenges, I have also included this list of challenges to the committee previously:

- Implementing Positive Train Control;
- Constantly improving safety; and
- Ensuring the Railroad Rehabilitation and Improvement Financing (RRIF) program can be utilized by appropriate entities.

*Question 3.* Do you use an official government e-mail account for all official business?

Answer. Yes.

*Question 4.* Do you use an alternate, alias, or other official account (apart from your primary official account) for any official business?

Answer. No.

a. If so, is the Department's Chief Freedom of Information Act (FOIA) Officer aware of this practice?

Answer. Not applicable.

b. Have you ever used a non-official e-mail account for official business during your various positions in the Administration? If yes, please explain your purpose and justification for this practice.

Answer. No, it has not been my general practice to use a non-official e-mail account for any official business during my various positions in the Administration. To the best of my knowledge and recollection, when I have been contacted by someone to my personal address, I have directed communications back to my business e-mail account.

c. Have you ever used a personal, non-official device to send and/or receive text messages for official business? If yes, please explain your purpose and justification for this practice.

Answer. See answer above.

d. Have you ever used any internal instant messaging system for official business? If so, are these messages properly archived?

Answer. No. I have not used an internal instant messaging system for official business.

e. Have you ever used any external instant messaging system, such as Google Chat, for official business? If yes, please explain your purpose and justification for this practice.

Answer. No.

*Question 5.* Are you aware of any other Department or Administration officials who use or have used non-official e-mail accounts and/or personal, non-official devices for official business?

Answer. I am not aware of Department or Administration officials who use or have used non-official e-mail accounts for official business, but DOT employees are permitted to access their DOT e-mail accounts from personal devices through remote access solutions, including Outlook Web Access and Virtual Desktop Infrastructure. Activity is monitored/captured by the DOT system and is in line with all cybersecurity guidelines.

*Question 6.* Are you aware of any unlawful or accidental removal, alteration, or destruction of electronic Federal records in the Department's custody or control, including e-mails? If so, has the Department reported these incidents to the National Archives and Records Administration (NARA)? Please provide details of any such incidents, including the dates, number and type of records, and custodians involved, as well as any reports, including dates, made to NARA.

Answer. No. I am not aware of any unlawful or accidental removal, alteration, or destruction of electronic Federal records, including e-mails, in the Department's custody or control.

*Question 7.* Are you aware of any Department employee's use of a private or independent e-mail server to conduct official business?

Answer. No.

a. If yes, who approved its use?

Answer. Not applicable.

b. What was the rationale or justification for its use?

Answer. Not applicable.

*Question 8.* During your hearing, you noted that many railroads are currently making a good faith effort to implement Positive Train Control (PTC).

a. In making this assessment, how did you determine what constitutes a good faith effort?

Answer. I based that statement on statements and meetings conducted with various railroads in recent months, as well as PTC safety plans submitted in 2015, as well as recent data railroads submitted to FRA that showed their PTC implementation progress to date at a high level. However, FRA's assessment of a railroad's PTC implementation progress and the evaluation of its corresponding level of effort are ongoing.

FRA is conducting detailed reviews of each railroad required to implement PTC. These reviews supplement the high-level monthly progress reports that identify potential areas of non-compliance for all major aspects of PTC implementation. The goal of the detailed reviews is to determine whether a railroad's reported progress (or lack of it) is the product of its own inaction, or due to elements largely outside of the railroad's control (*e.g.*, an insufficient supply chain or, for a tenant railroad, lack of its host railroad's or railroads' progress). To avoid subjectivity, FRA focuses on factual information that can be used to clearly demonstrate continued efforts on the part of a railroad to comply with the regulation.

b. Based on your recent data collection and other factors that you consider, how many railroads, if any, are not making a good faith effort to implement PTC?

Answer. FRA cannot make that determination until it completes the detailed investigations of the railroads that are already underway. The high-level monthly progress reports help to identify which railroads have shown the least progress, but we will not determine the level of effort railroads have made from high-level reports alone. In all areas where railroads cannot demonstrate compliance (*e.g.*, locomotives, infrastructure, training, etc.), FRA will examine the reason and purported justification from each railroad.

Currently there are some railroads that have made little to no quantifiable progress toward demonstrating a fully functioning system, or part of such a system. Whether this is due to issues outside of the railroad's control (*e.g.*, supply chain issues), or a failure to adhere its proposed implementation schedule, is not known, and should not be presumed, at this time.

*Question 9.* President Obama's Executive Order 13563 requires agencies to take into account the benefits and costs and to propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs. It requires agencies to select, among alternatives, those regulatory approaches that maximize net benefits.

a. When evaluating the net benefits of a proposed regulation, does FRA consider benefits other than safety benefits?

Answer. To evaluate regulatory impact, FRA follows current Federal guidance on regulatory review in Executive Orders 12866 and 13563, and Management and Budget (OMB) Circular A-4. As part of the regulatory review, FRA analyzes all available data and information to determine the likely consequences of the regulatory proposal. Information is presented in a regulatory impact analysis (RIA) that is reviewed and approved by the OMB and available for public comment.

b. During your time as Acting Administrator, has FRA selected any regulatory approaches, from among available alternatives, that do *not* maximize safety benefits but nevertheless maximize net benefits?

Answer. Safety is FRA's top priority. Since I was appointed Acting Administrator on January 12, 2015, FRA has published one Final Rule, and worked with the Pipeline and Hazardous Materials Safety Administration (PHMSA) on one additional Final Rule. FRA's Final Rule on Securement of Unattended Equipment was published on August 6, 2015. In the Securement Final Rule, FRA did consider a regulatory alternative to the Final Rule, but FRA chose not to adopt it because FRA determined that the Final Rule requirements were as effective at enhancing safety as the alternative considered, but at much lower cost. Thus, FRA rejected the more restrictive alternative. FRA further believed that given the tradeoff between the certainty of relatively low costs and the benefits of low-probability yet high-consequence incidents, the Final Rule was a reasonable approach.

The RIA on the Enhanced Tank Car Standards and Operational Controls for High-Hazard Flammable Trains Final Rule (High-Hazard Flammable Train Final Rule) presents alternative approaches to the requirements included in the Final Rule. Again, after extensive analysis, regulatory review, and public comment, PHMSA and FRA determined the chosen approach would yield greater safety benefits in the most cost-effective manner. Furthermore, PHMSA and FRA followed a systematic approach to safety and believe that each component of the High-Hazard Flammable Train Final Rule was, and is, instrumental to ensuring the greatest safe rail transportation of high-hazard flammable liquids.

c. Within the recent high-hazard flammable train rule, did FRA and the Pipeline and Hazardous Materials Safety Administration (PHMSA) select the regulatory approach with the greatest safety benefits? If not, why not?

Answer. FRA and PHMSA believed that the best way to increase the safety of hazardous materials transported by rail was to implement a rule that addressed both the tank car standards and the operational controls for trains transporting significant amounts of Class 3 flammable liquids. This included requiring electronically controlled pneumatic (ECP) brakes on certain unit trains of Class 3 flammable liq-

uids, as well as enhanced tank car standards. The RIA presents extensive information validating the approach taken by FRA and PHMSA.

d. If confirmed, would you propose or adopt a regulation only upon a reasoned determination that its net benefits justify its costs?

Answer. Under my direction, FRA would adopt or propose a regulation only after a careful review and determination of need that follows Federal guidelines for regulatory review. Federal guidance is very clear about the conditions to determine the need to propose or adopt new regulations. Additionally, regulatory proposals must be accompanied by analyses that look into their potential economic impact, paperwork burden, and small business impact, among others. Information contained in these documents will allow me to carry out reasonable and justified regulatory efforts. Note that some statutory mandates from Congress direct FRA to issue regulations that might not meet the same standards as agency initiated regulations.

*Question 10.* During your time as Acting Administrator, FRA issued an Emergency Order establishing a maximum operating speed of 40 mph in high-threat urban areas at the same time it had a pending final rule—issued about two weeks later—covering the same issue.

a. What event or situation caused the need for an Emergency Order about two weeks before the issuance of the final rule?

Answer. Numerous railroad accidents in the first three months of 2015 involving trains transporting large quantities of flammable liquids [discussed in FRA Emergency Order No. 30 (EO)] led FRA to the conclusion that immediate action was necessary to mitigate the effects of any future potential accidents. As explained in the EO, until DOT issued its final rule governing “high-hazard flammable trains” (80 Fed. Reg. 26643 (May 8, 2015)), FRA believed that public safety dictated that immediate speed restrictions be placed on trains transporting large quantities of flammable liquids in highly populated areas to mitigate the effects of any future derailments that might occur and could cause a significant hazard of death, personal injury, or harm to the environment and property.

b. To what extent could the Emergency Order have been issued earlier based on that event or situation?

Answer. While previous incidents had occurred involving trains transporting large quantities of petroleum crude oil and ethanol in the United States (which were, in part, the impetus for DOT’s final rule addressing “high-hazard flammable trains”), the increased frequency and continued pattern of incidents in early 2015 led FRA to the conclusion that additional immediate action in the form of the EO was necessary to ensure public safety in highly populated areas where any such derailment could result in catastrophic consequences.

c. Could FRA have issued a separate final rule on maximum operating speed rather than acting through an Emergency Order?

Answer. Given the short time period between issuance of the EO and the subsequent final rule (two weeks), it was not possible via the required regulatory processes to issue a separate final rule. FRA believed that immediate emergency action, under the agency’s express statutory authority (49 U.S.C. 20104), was necessary to ensure public safety following several accidents in short succession. The EO had the practical effect of imposing speed restrictions within “High Threat Urban Areas” for trains transporting large quantities of flammable liquids approximately 10 weeks earlier than did the final rule.

*Question 11.* During your hearing, you mentioned that FRA has greater than 70 outstanding National Transportation Safety Board (NTSB) recommendations.

a. In addition to recommendations regarding Positive Train Control (PTC), which NTSB recommendations do you find the most urgent or important?

Answer.

- *Obstructive sleep apnea and medical fitness for duty*—The Office of the Secretary of Transportation is exploring the development of a rulemaking on obstructive sleep apnea. FRA would participate in any prospective action considered.
  - Sleep apnea: recommendation R-12-16; report RAR-12-02
  - Medical fitness: recommendations R-13-18 through R-13-21; report RAR-13-02
- *Fatigue (identification, management, and mitigation)*—FRA is currently working on a rulemaking related to fatigue risk management programs.
  - Recommendations R-12-17, R-12-18, and R-12-19; report RAR-12-02

- *Inward-facing cameras*—FRA is drafting a proposed rule related to the installation and use of recording devices in locomotive cabs. This important technology can be used for accident investigations and to conduct train crew operational tests.
    - Recommendations R-10-01 and R-10-02; report RAR-10-01
  - *Window retention*—FRA is examining window retention performance in the May 12, 2015, Amtrak derailment in Philadelphia, and the December 1, 2013, Metro-North Commuter Railroad Company derailment in the Bronx. FRA will determine why exterior windows unintentionally opened and whether measures can be taken to keep the windows more securely in place during ordinary operations, while not inhibiting their removal in an emergency and jeopardizing passenger safety.
    - Recommendation R-14-74; report RAB-14-12
- b. Which recommendations do you find FRA should not implement at this time, and why?
- Answer.
- *Uniform signal aspects*—FRA has regulations in place and PTC will eliminate discrepancy or misunderstanding of the operating limitations of the signal displayed and its intended information.
    - Recommendations R-09-01 and R-09-02; report RAR-09-01
  - *Require PTC to detect the rear of trains*—Detailed cost-effectiveness studies of requiring PTC to detect the rear of trains will add to the negative benefit-cost ratio that railroads widely state as a chief deterrent to implementing PTC.
    - Recommendation R-12-20; report RAR-12-02
  - *Require that emergency exits on new and remanufactured locomotive cabs provide for rapid egress and entry*—Not enough data to support this recommendation. Also, FRA rulemakings directed at securing the cab against intruder entry would be compromised.
    - Recommendation R-09-03; report RAR-09-01

c. Given differences in the two agencies' missions and the additional factors that FRA must consider, how would you determine which recommendations of the NTSB do not become regulatory priorities of the FRA?

Answer. FRA carefully evaluates every NTSB recommendation. FRA conducts research regarding the recommendation using its large repository of historical safety information. It then compares the recommendation against existing and developing regulations, examines the feasibility of implementing the recommendations (*e.g.*, determines if a technology exists or could be quickly developed to support the recommendation), and weighs the potential economic and safety impact if implemented. FRA then uses this body of research to inform its decision on whether, or how, to implement a NTSB recommendation.

d. Should FRA have oversight of safety at WMATA in a manner consistent with the recent NTSB recommendation? If not, why not?

Answer. In response to Urgent Safety Recommendation R-15-31 and 32 issued by the National Transportation Safety Board (NTSB) on September 30, 2015, USDOT has stated that they take every recommendation of the NTSB seriously, including how quickly they or we can implement an urgent recommendation. In this case, DOT agrees on the urgent problem identified by NTSB, but believes there is a faster, more effective way to address it.

DOT agrees that the Tri-State Oversight Committee (TOC), which is currently responsible for safety oversight of Metrorail, is ineffective. DOT disagrees, however, that the best, most urgent and most effective solution is to transfer safety oversight of WMATA's rail transit system to the Federal Railroad Administration.

Clearly, more needs to be done to ensure that there is sufficient safety oversight of WMATA until a MAP-21-compliant State Safety Oversight Agency (SSOA) regime is in place. The TOC has submitted a plan to achieve compliance, but it is not achievable in the short term. The approach DOT has outlined will allow for a ramping up of oversight of WMATA to a level consistent with what would be in place once a fully MAP-21-compliant SSOA is established. Therefore, it is essential that the District of Columbia, Maryland, and Virginia proceed with all due haste to establish a fully compliant SSOA. DOT will engage with the State and Federal officials from the region to expedite the required steps to replace the TOC with a fully functioning, sufficiently resourced SSO organization. Until a fully capable SSO

is in place, the FTA will lead all oversight, inspection, and enforcement activities over WMATA.

*Question 12.* During your hearing, you mentioned FRA plans to issue two new Railroad Rehabilitation and Improvement Financing (RRIF) loans in the near future.

a. How many RRIF loan applications are currently pending at FRA (*i.e.*, applications submitted but not approved/announced or disapproved)?

Answer. 6.

b. What is the potential loan volume of those applications, if approved?

Answer. The total for the 6 above is \$4.9 billion.

c. What is the distribution of those loan applications among intercity passenger, commuter, Class II freight, and Class III freight railroads?

Answer. 1 port, 3 Class IIIs, 2 intercity passenger.

*Question 13.* Do you view a host railroad that is subject to the PTC requirements and that does not achieve full interoperability with all of its covered tenant railroads by the deadline as having implemented PTC in accordance with its implementation plan?

Answer. Under both the statute and the implementing regulations, full implementation of PTC systems requires interoperability with tenant railroads. Whether host railroad, tenant railroad(s), or both are responsible for the failure to fully implement the interoperable PTC system will be determined on a case-by-case basis.

*Question 14.* The FRA currently serves dual roles as the primary funding agency to Amtrak while also sitting on its Board of Directors. Section 209 in the PRIIA Act of 2008 increased the financial responsibility of States for train routes fewer than 750 miles and operated by Amtrak. Given FRA's role in funding Amtrak and sitting on its Board, what do you see as the role of FRA in Section 209 matters between Amtrak and the States?

Answer. Section 209 of the Passenger Rail Investment and Improvement Act (PRIIA) of 2008 required the Amtrak Board of Directors—in consultation with DOT and States—to develop a standardized methodology for allocating operating and capital costs for the 29 State-Supported routes among States and Amtrak. However, unlike with the NEC Commission, Congress did not authorize the creation of a body or forum for the Section 209 stakeholders to help facilitate complex, multi-party negotiations and implement the PRIIA requirements.

This summer, the PRIIA 209 States, Amtrak, and FRA formed the “State-Amtrak Intercity Passenger Rail Committee.” This new committee is intended to improve coordination, governance, policy development, and decision-making regarding the implementation of PRIIA 209. In many ways, this committee mirrors the intent of the “State-Supported Route Committee” included in the Senate’s DRIVE Act (H.R. 22, Sec. 35203) and the House’s Passenger Rail Reform and Investment Act (H.R. 749, Sec. 203), both of which include the FRA as a member of their respective committees.

FRA has followed the direction of Congress in taking a consultation role in the implementation of PRIIA 209, and concurs that the agency should continue to provide assistance and oversight to ensure the continued success of the State-Amtrak partnership to support these critical services. Twenty-one public agencies currently provide financial support for the 29 State-Supported routes, with each agency having its own independent service priorities and operating under unique political environments. Amtrak must negotiate separate contracts with each of these entities. FRA’s technical assistance and oversight is necessary to ensure the “equal treatment in the provision of like services” requirement from PRIIA 209 is met. Further, the costs of operating State-Supported routes are not fully allocated to the States; a portion of these costs are funded from the annual Amtrak Operating Grant appropriated by Congress. Therefore, FRA also has a role in overseeing the funds it provides for State-Supported services and ensuring those funds are used efficiently and for their intended purpose.

Separate, apart, and independent of FRA’s financial oversight, FRA must also fulfill its role as the safety regulator over passenger rail services, which is expanded upon in the next question.

State-Supported routes serve an important role in our national transportation network, carrying nearly 15 million passengers in Fiscal Year 2014. Both the States and Amtrak recognize the value of these routes, as no services have been eliminated or reduced since the first year of PRIIA 209 implementation in Fiscal Year 2014 despite the States assuming approximately \$100 million in new costs. The FRA, States, and Amtrak are strong partners working together to deliver safe, reliable, and efficient passenger rail service to the millions of Americans that ride Amtrak and State-Supported services each year.



*Question 15.* As the FRA Administrator, how would you envision the role of states when it comes to rail safety for intercity passenger trains that are operated by Amtrak or another rail passenger carrier?

Answer. The safety of the traveling public and railroad employees is our number one priority. We support market-based options and competition. Whatever entity ultimately sponsors or operates commuter, intercity, or other passenger service (be it a State, local agency, joint powers authority, or private entity), that entity is ultimately responsible to ensure the safety of that service. FRA is committed to continuing to work with States or other entities to discuss roles and responsibilities to ensure that service it sponsors is operated safely and in compliance with Federal regulations.

*Question 16.* During a June 2 hearing before the House of Representatives, you stated that you were closely looking at the issue of crew size and freight railroad operations. As Congress considers the issue, it would be helpful to understand the results of your evaluation thus far.

a. To what extent are one-person crews currently used in the United States for the rail transportation of hazardous materials?

Answer. The Association of American Railroads' (AAR) President and Chief Executive Officer, Mr. Edward R. Hamburger, reported in a letter dated October 16, 2013, to then FRA Administrator Mr. Joseph C. Szabo that "Class I railroads currently use two-person crews for over-the-road mainline operations." The FRA has not been informed of any exception to that statement, and believes that Class I railroads do not currently have any one-person crew main track operations that haul hazardous materials. Based on information then FRA Administrator Szabo received from the American Short Line and Regional Railroad Association's (ASLRRRA) President, Mr. Richard F. Timmons, in a letter dated October 17, 2013, ASLRRRA could not be specific about each of its members' policies on transporting hazardous materials with one-person crews.

In some cases, there are operations consisting of one-person operations with remotely controlled locomotives at a maximum speed of 15 miles per hour over short distances.

In May 2014, FRA surveyed its personnel based in regional field offices to estimate the operational picture for short lines (Class II and III). FRA identified 14 short lines that operate with one-person train crews out of an estimated 752 total short lines.

FRA also estimated that 206 short lines handle "key trains," which are defined by AAR as trains with one or more loaded toxic by inhalation (TIH) or poisonous by inhalation (PIH) tank cars or 20 or more loaded hazardous materials cars.

FRA believes that 2-person crews may have significant safety benefits under certain limited circumstances. The agency is currently assessing whether 2-person crews should be required in such circumstances.

b. In the United States, how many freight rail accidents or incidents per year involve one-person train crews?

Answer. For the Railroad Safety Advisory Committee Train Crew Size Working Group, an FRA presentation showed that from January 2002 through October 2013, there were approximately 186 accidents/incidents involving a one-person train crew operating conventional locomotives (as opposed to remotely controlled locomotives). Of those 186 accidents/incidents, 24 occurred on main track, 139 on yard track, 4 in sidings, and 19 on industry track. This data is based on information provided by the railroads reporting the accidents/incidents and is not based on first-hand FRA investigations.

(Note that reviewed these reports offer the disclaimer that some reports appear to have counted only one crewmember on the train, but the report suggests that additional crewmembers may have been present.)

c. How does the frequency and severity of freight rail accidents involving one-person train crews compare to those involving two-person train crews?

Answer. FRA does not require railroads to submit data that would provide information regarding the total operating mileage for one-person crew operations in the United States, thus FRA cannot compare the frequency of one-person train crews to those involving two-person train crews.

As far as severity of accidents is concerned, FRA considers all reportable accidents/incidents to be severe enough that they should be tracked, but FRA does not have a method in use to compare severity between these two-person and one-person crews as categories of accidents/incidents.

We do not believe that the severity of past accidents is an accurate predictor of the potential damages in future incidents.

d. More broadly, do you agree with NTSB Chairman Hart's view that, based on limited experience, two-person crews are not a safety improvement over single-person crews?

Answer. I have closely reviewed NTSB Chairman Hart's answers during the June 2 hearing on oversight of the Amtrak accident in Philadelphia, before the House Committee on Transportation and Infrastructure. Mr. Hart was answering a question from Rep. Brownley regarding whether it is Mr. Hart's opinion that a two-person crew might be an interim solution before PTC is fully implemented. I understood the question to mean whether a two-person crew on Amtrak, or other passenger railroads, is the solution, and do not believe the question applied to freight operations.

I understood Mr. Hart's answer to be that NTSB has little experience with two-person train operations in the cab of a passenger train, as most passenger operations have one engineer in the cab and other crewmembers in the body of the train. And, Mr. Hart did not see a safety improvement by adding a second train crewmember to the cab of a passenger locomotive (assuming there was room in the cab for a second person).

I agree that there is limited experience with two-person crews located in the operating cab for passenger service. However, I do think that the safety benefits of a two-person passenger train crew (one in the locomotive and one in the passenger compartment) are compelling—especially for assisting the locomotive engineer in coordinating the operation of the train (*e.g.*, location of speed restrictions, work zones, slow orders, or during en route failures), assisting the locomotive engineer in certain operational or administrative duties that would otherwise distract the locomotive engineer from safely operating the train (copying track warrants, handling sick passengers or passenger disturbances), and assistance of passengers—especially elderly or disabled—during boarding, debarking, and during emergencies.

*Question 17.* Why did FRA choose not to codify in regulation its May 7, 2014 Emergency Order when it solicited public comment on the issue and had the opportunity to finalize the Order's requirements during the high-hazard flammable train rulemaking process?

Answer. FRA worked with PHMSA to develop both the high-hazard flammable train (HHFT) Notice of Proposed Rulemaking (NPRM) and HHFT final rule (Final Rule). See and 79 FR 45015 (Aug. 1, 2014 and 80 FR 26643 (May 8, 2015)). In the NPRM, PHMSA proposed to codify and clarify the requirements of the May 7, 2014 Emergency Order. Based on comments received in response to the NPRM, as well as the agencies' analysis of the issues involved, the Final Rule did not adopt the proposed requirements. As explained in the preamble to the Final Rule, the expansion of the existing route analysis and consultation requirements of 49 C.F.R. § 172.820 to include high-hazard flammable trains was determined to be the best approach to ensure that emergency responders and others involved with emergency response planning and preparedness would have access to sufficient information regarding crude oil shipments moving through their jurisdictions. This notification requirement was based on NTSB Recommendation R-14-001. Expanding the existing route analysis and consultation requirements of § 172.820 (which already apply to the rail transportation of certain hazardous materials historically considered to be highly-hazardous) would preserve the intent of the Emergency Order (*i.e.*, enhancing information sharing with emergency responders in areas through which HHFTs move) and, in combination with the other new safety requirements in the HHFT Final Rule, obviate the need to continue notification to the SERCs as required by the Order and as proposed in the HHFT NPRM. Accordingly, the Final Rule contemplated that once the route analysis and communication requirements of § 172.820 are in full force as applied to HHFTs (*i.e.*, March 31, 2016), the Order would cease to be effective.

Subsequent to publication of the Final Rule, FRA, PHMSA and the Department as a whole, received feedback from stakeholders expressing intense concern about the Department's decision to forgo the proactive notification requirements of the Order and as proposed in the NPRM. Generally, these stakeholders expressed the view that given the unique risks posed by the frequent rail transportation of large volumes of flammable liquids, including Bakken crude oil, DOT should not eliminate the proactive information sharing provisions of the Order and rely solely on the consultation and communication requirements in existing 49 C.F.R. § 172.820. In response to these concerns and after further evaluating the issue within the Department, in a May 28, 2015 notice (Notice), the Department announced that it would extend the Order indefinitely, while it considered options for codifying the disclosure

requirement on a permanent basis.<sup>1</sup> FRA is currently working with PHMSA to address this issue through a separate rulemaking process.

*Question 18.* As part of its recent PTC data collection, does FRA plan to ask railroads their estimated date for full PTC implementation? If not, why not?

Answer. FRA will continue to look for opportunities to gather informative data from railroads on their progress implementing PTC. The current data collection is focused on information that will be directly useful for assessing compliance, and the progress towards achieving compliance. An estimated date of network completion was not considered to be of direct value for this purpose, as it would not change a railroad's state of compliance (the main driver of enforcement). FRA requested estimated dates for the submission of PTC Safety Plans (PTCSP), however, as this denotes a significant milestone that can be more accurately projected by the railroads. The submission of a PTCSP also represents a significant deliverable that will require FRA review, thus the projected date will help FRA manage its resources and prepare for expected submissions moving forward. FRA will continue to reexamine its information and data collection needs, and will adjust data we are requesting as future opportunities present themselves.

*Question 19.* During your hearing, you mentioned that FRA has taken action on more than half of the outstanding NTSB recommendations and that you have found new solutions.

a. How many new rulemakings have you initiated during your time as Acting Administrator? How many of these new rulemakings are significant under Executive Order 12866?

Answer. Most rulemaking proceedings that FRA currently has underway began under previous FRA Administrators. However, since arriving at FRA, I have directed the initiation of a rulemaking on Locomotive Recording Devices. FRA initiated the Locomotive Recording Devices rulemaking on June 23, 2015, concerning inward-and outward-facing cameras and storage of camera images on locomotive event recorders, and protections for the use of these recordings.

FRA will continue to initiate new rules to the extent necessary and appropriate in carrying out its safety responsibilities.

b. How many of the actions to address NTSB recommendations were initiated during your time as Acting Administrator? How many of these were new rulemakings?

Answer. FRA initiated most actions to address NTSB-issued recommendations that were made prior to my tenure. Under my tenure, FRA has continued work on several NTSB recommendations, and sent new or fresh responses to the NTSB on several outstanding recommendations. FRA has received five new NTSB recommendations this year. FRA's subject matter experts are analyzing them and developing action plans, accordingly.

Finally, FRA (or PHMSA) has rulemakings underway to address 18 open NTSB recommendations.

*Question 20.* Given the focus on crude oil and ethanol in the high-hazard flammable train rulemaking, for its railroad accident or incident reporting form, why does FRA not collect information on the total number of ethanol cars in the affected train, the number of ethanol cars that derail, and the number of ethanol cars that puncture?

Answer. In the context of rail equipment accidents/incidents involving the release of a hazardous material such as ethanol, the information a railroad must provide to FRA under the regulations on the agency's accident reporting forms is only part of the information FRA collects. As part of FRA's investigation of a rail accident involving a release of hazardous materials, under its authority, FRA obtains accident-investigation information on the number and contents of railcars carrying hazardous materials in the affected train, as well as the number and content of railcars carrying hazardous materials that derail and those that puncture.

FRA published a notice in the Federal Register on August 12, 2015 (Notice), announcing its intent to collect on an existing Office of Management and Budget (OMB)-approved accident reporting form certain information about accidents involving trains transporting crude oil. As FRA stated in the Notice, FRA took this action in response to a series of rail accidents involving trains transporting crude oil, and the agency utilized an existing OMB-approved form to implement the enhanced information collection requirement. As also explained in the Notice, although FRA utilized the existing form since it was the most efficient and expeditious method of immediately improving FRA's information collection activity, the agency is evaluating additional, more comprehensive, methods to improve its overall information collec-

<sup>1</sup> <http://www.phmsa.dot.gov/hazmat/phmsa-notice-regarding-emergency-response-notifications-for-shipments-of-petroleum-crude-oil-by-rail>.

tion activities on the transportation of hazardous material by rail. This includes information on the rail transportation of ethanol. Implementation of any significant changes to FRA's accident reporting forms will, however, necessitate a notice-and-comment rulemaking, a time-consuming process.

*Question 21.* FRA has used safety advisories to address certain safety issues, including ballast defects and wheel impact load detector standards. Unlike rules, however, safety advisories are issued without a benefit-cost analysis and without public comment.

a. When FRA issues a safety advisory on, for example, wheel impact load detector standards, does FRA expect that safety advisory to have the force and effect of law?

Answer. No. FRA safety advisories by their nature provide strong recommendations, but not legal requirements. FRA enforces Federal laws, regulations, and orders. However, an FRA safety advisory may also reference a separate, enforceable requirement, such as a regulation.

b. Does FRA expect railroads to have a legal obligation to comply with safety advisories?

Answer. FRA does not believe that railroads have a legal obligation to comply with safety advisories, however, safety advisories provide strong safety recommendations.

c. How does FRA determine for which issues it should issue a rule and for which it should issue a safety advisory?

Answer. FRA often uses safety advisories to quickly alert the railroad industry to specific safety risks that current laws, regulations, and orders do not currently address, but that warrant the FRA-recommended voluntary action. In this way, FRA acts to carry out the principal rail safety laws, which Congress intended "to promote safety in every area of railroad operations and reduce railroad-related accidents and incidents." 49 U.S.C. 20101.

FRA also uses safety advisories to remind the railroad industry of existing requirements and of recent accidents in which noncompliance either contributed to the accident or aggravated its severity to alert railroads to consider addressing similar safety concerns.

*Question 22.* For passenger locomotives, will qualified maintenance personnel, or others responsible for performing tests and inspections, be in violation in law if they deem locomotives to be in compliance and safe to operate even though on-board locomotive apparatuses are not fully operational? Does the use of the term "appurtenances" include on-board Positive Train Control locomotive apparatuses installed but not fully operational?

Answer. If a track segment has PTC systems equipped, the locomotives traveling over that track must be PTC-equipped and the PTC onboard apparatus should be treated like any other locomotive equipment that must be inspected.

However, if the track segment is not yet PTC-equipped and the PTC onboard apparatus is not yet capable of functioning, it would not be sensible to treat the apparatus as defective because the PTC onboard apparatus is not inherently defective. Therefore, in that scenario, FRA would not at this time consider an inspection that determined the locomotive to be in compliance and safe to operate in violation of the rail safety laws.

FRA is determining the application of the safety laws and regulations, including whether or not PTC onboard apparatuses are "appurtenances." However, FRA would not consider the onboard PTC apparatus as an "appurtenance" in violation of the rail safety laws if the track segment is not yet PTC-equipped and the PTC onboard apparatus is not yet capable of functioning.

*Question 23.* While predominantly focusing on the unit train transportation of crude oil and ethanol, the high-hazard flammable train rule has effects for tank cars hauling other commodities.

a. How many tank cars carrying other Class 3 flammable liquids (*i.e.*, flammable liquids other than crude oil and ethanol) will need to be retrofitted or replaced?

Answer. In the RIA for the High-Hazard Flammable Train Final Rule, PHMSA estimated 354 tank cars are used to transport flammable liquids other than crude oil or ethanol in high-hazard flammable train (HHFT) service.

b. Which flammable liquids other than crude oil and ethanol are most likely to be in a tank car that is part of a high-hazard flammable train, and what are the packing groups of those flammable liquids?

Answer. The DOT is unaware of any commodities other than crude oil and ethanol that are offered from a single location in quantities that would trigger the requirements for an HHFT.

There are locations in the U.S. with high concentrations of chemical and petrochemical manufacturers, however, such as the Gulf Coast. In these areas, a railroad services a shipper on a spur line. Local trains pick up the tank cars and take them to a classification yard where they are put into long haul trains for delivery to their destination or destinations. On these spur lines, a railroad could pick up a sufficient number of tank cars containing flammable liquids to constitute a HHFT. (It is worth noting that trains on these spur lines usually operate at low speed because of factors such as track grade, curvature, or number of stops.)

Given the reported volume of commodities shipped in previous years, commodities most likely to be in a HHFT include gasoline, diesel fuel, methanol, styrene monomer, and aviation fuel.

Shipping Name	Id Number	Hazard Class	Packing Group(s)
Gasoline	UN1203	Flammable Liquid	II
Diesel Fuel	UN1202	Flammable Liquid	III*
Methanol	UN1230	Flammable Liquid	II
Styrene Monomer	UN2055	Flammable Liquid	III*
Aviation Fuel	UN1863	Flammable Liquid	I; II; III*

\*Note: Under §173.150(f), a flammable liquid with a flashpoint of 38° C (100° F) or higher that does not meet the definition of any other hazard class, may be reclassified as a combustible liquid.

c. For each of the ten flammable liquids that have the greatest number of carloads transported by rail, about what percentage of the total annual miles traveled by carloads of each flammable liquid (cumulatively by UN number) occur in high-hazard flammable trains?

Answer. This information is not readily available. However, based on the 2013 Surface Transportation Board's Confidential Waybill Sample, 84 percent of the crude oil tank car loads and 47 percent of the ethanol tank car loads moved in unit trains. In the High-Hazard Flammable Train Final Rule, the DOT asserted very few tank cars (354) containing other than crude oil and ethanol would operate in HHFTs. Unfortunately, the Waybill Sample data does not contain the detail need to distinguish between the relatively limited numbers of originations of other flammable liquids. Nevertheless, DOT's assertion is supported by Railinc data provided by the Association of American Railroads (AAR) in its comments on that rule, which indicate that in the first quarter of 2015 less than 0.3 percent of origin-destination pairs of tank cars containing flammable liquid were in blocks of between 20 and 34 cars.

d. To what extent do shippers of Class 3 flammable liquids have control over the composition of the trains that haul their products? Can a shipper of a single carload of a Class 3 flammable liquid other than crude oil or ethanol request not to be hauled in a high-hazard flammable train?

Answer. Shippers of tank cars containing flammable liquids must (on the shipping papers for the tank cars) report accurately to the railroads the number and identification of the tank cars containing flammable liquids the shippers are offering into transportation. After the tank cars are accepted by the railroad, the shipper has no control over the composition of the train that hauls their cars of flammable liquids.

A shipper of a single car of flammable liquid other than crude oil or ethanol may request the car not be moved in a high-hazard flammable train. However, it is ultimately up to the railroad to assemble a train and, based on the specification and number of tank cars containing flammable liquid, operate the train in accordance with the regulations.

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RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. KELLY AYOTTE TO  
SARAH E. FEINBERG

*Question 1.* In your written testimony you explained that the Federal Railroad Administration (FRA) is prioritizing the implementation of Positive Train Control (PTC) and that the Administration is hiring new staff and has established a task force that is charged with reporting to you the progress and performance of each railroad as it relates to PTC implementation. I understand the safety benefits of PTC and I want to see PTC technology fully implemented and operational as soon as possible. What has the task force reported most recently regarding the progress of railroads with complying with the December 31, 2015, deadline for PTC implementation?

Answer. The FRA has been actively engaged with all railroads regarding their PTC implementation progress for many years. Most recently, the FRA PTC Task Force has initiated a number of steps to collect specific and detailed data regarding implementation progress of all operating railroads currently required to be equipped with interoperable PTC systems by December 31, 2015. This data is essential to accurately track the railroads' progress and is also intended to support FRA's enforcement activities.

Most recently, railroads were asked to submit reports on their implementation progress by September 15, 2015, and to do so monthly until implementation is complete. This high-level reporting will be further supported by more detailed investigations of the railroads by FRA's regional staff, to provide additional resolution and reasoning for a railroad's reported progress. As of September 15, 2015, only one railroad has reported 100 percent implementation in all critical areas (locomotives, infrastructure, and training), and five railroads have reported completion of component implementation in at least one area. Currently, there are more than 10 railroads reporting little to no quantifiable progress that could demonstrate a fully functioning system, or a part of such a system.

*Question 2.* Has the task force identified an enforcement plan for those railroads who will not meet the December 31, 2015, implementation deadline?

Answer. Yes. In 2010, following a public comment period, FRA published a final rule stipulating how the agency would go about enforcing the PTC requirement.

More recently, we have stated clearly that we intend to enforce the current deadline of December 31, 2015, as mandated by the Congress. Assuming the PTC deadline is not extended, for those railroads that choose to operate beyond the deadline and in violation of the law, we have stated that we intend to enforce that law with fines, as well as requiring railroads to take additional steps to raise the bar on safety in lieu of PTC. Just like with any enforcement action, FRA will determine which railroads are in non-compliance based on factual investigations.

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RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. DAN SULLIVAN TO  
SARAH E. FEINBERG

*Question 1.* The railroad said it envisions running two trains per week with each consisting of 60–70 portable LNG tanks riding atop 30–70 flatcars. Alaska RR met with top FRA officials last December and filed its application last February.

Interior Alaska, especially around the Fairbanks area, has some of the highest energy costs in the country. In fact, households in Fairbanks average \$8,100 per year per home for heating, hot water and electricity. This is approximately three times more than the average annual energy cost in Anchorage, and nearly four times the national average.

The State of Alaska is trying to address those needs. The Alaska Industrial Development & Export Authority (AIDEA) has a process underway to meet those needs via transporting liquefied natural gas (LNG) to Interior Alaska. The state's railroad, the Alaska Railroad, figures prominently in a majority of the proposals and the process is nearing a decision point. However, the Alaska RR needs FRA approval to transport LNG. I understand the application was filed last February. Could you give me a status report on this application?

Answer. Based on the information the Alaska Railroad Corporation (AKRR) provided FRA, FRA conducted a thorough review and analysis of AKRR's request for approval and proposed operations for the rail transport of liquefied natural gas (LNG) in container-on-flatcar (COFC) service. On October 9, 2015, FRA granted AKRR conditional approval under 49 C.F.R. § 174.63(a) to transport LNG in T75 portable tanks, effective for 2 years.

*Question 2.* The average delivery of a major infrastructure project is 14 years from start to finish.

Of that, the average time for environmental review for major transportation project had increased to a staggering 8 years in 2011—up from 3.5 years in 2000. In addition, the average Environmental Impact Statement spanned 22 pages in length when NEPA was first written, today's highway projects often saw environmental documents of more than 1,000 pages. Those numbers are unacceptable and translate into increased costs, long delays, congestion on our rails and the loss of economic opportunity.

What is the average time it take to deliver a large rail project in the US? What is average for a project that only uses non-federal funds? What is the average for a project that uses Federal funds? What is one solution that we need to be doing that we aren't already doing to cut the permitting time?

Answer. The delivery of large rail projects includes many activities, such as planning, preliminary design and environmental review, final design, and construction. With the recent expansion of FRA's rail investment programs, meaningful data on the duration of Environmental Impact Statements (EIS) is limited by the small number of recent EISs completed to date. Since 2008, FRA has completed two publicly-sponsored and funded construction project EISs that took an average of 4.4 years to complete. In the same period, FRA also completed 42 Environmental Assessments for publicly-sponsored and funded projects which took on average one year to complete.

FRA is committed to responsibly streamlining the delivery of rail projects. The Administration's GROW AMERICA Act sets forth many proposals to reduce infrastructure project delivery timelines. For example, Section 1001 of the GROW AMERICA Act could help provide environmental review agencies with adequate staff capacity to expedite rail and other transportation projects. However, ultimately the most critical factor in delivering large rail transportation infrastructure investments is predictable, dedicated funding.

FRA and DOT have taken several important steps to accelerate delivery for the environmental review stage of projects:

- In January 2013, FRA added seven Categorical Exclusions (CEs) to its list of 20 CEs. CEs provide significant time and cost savings for project sponsors because they eliminate the need for Environmental Assessments or Environmental Impact Statements.
- FRA has applied a tiered approach to environmental reviews for passenger rail corridor programs. This approach allows FRA to clear the envelope of a corridor at a high level so specific project elements can advance incrementally as funding becomes available.
- On September 22, 2015, the Office of Management and Budget (OMB) and the President's Council on Environmental Quality (CEQ) issued guidance that establishes a set of requirements for agencies to report a common set of project schedule metrics for infrastructure projects beginning in October 2015 on an enhanced Federal Infrastructure Permitting Dashboard.

*Question 3.* Should FRA always be the lead agency in the NEPA process for a rail project? As the lead agency on a project, do you believe other agencies processes should have a time restriction for action? If so, what is a reasonable time restriction? And what would you need as FRA Administrator to empower the FRA in the NEPA process and get back to building the Nation's infrastructure instead of studying it?

Answer. Yes, in general, FRA should be the lead agency under the National Environmental Policy Act (NEPA) for rail projects receiving or expecting to receive financial assistance from the FRA.

FRA aims to efficiently conduct environmental reviews. CEQ NEPA regulations already encourage lead and cooperating agencies to use available discretion to coordinate environmental reviews to most efficiently address projects that vary greatly in complexity and substance. And, as discussed above, recent OMB-CEQ metric guidance encourages agencies to work together to set achievable project schedules that align and reduce time associated with permitting and environmental review timelines, when appropriate and practicable, and that deliver the best outcomes. As such, agreement on a tailored project schedule, with the concurrence of all Federal agencies with jurisdiction over an environmental permit or review, is the most effective approach for a lead agency in establishing timelines for other agencies.

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RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. STEVE DAINES TO  
SARAH E. FEINBERG

*Question 1.* Ms. Feinberg, as we discussed at the hearing, Montana has nearly 3,200 miles of railroad track that moves agricultural commodities, record amounts of crude oil, coal and other manufactured products. Railroads are an economic bloodline for Montana, as we export the majority of these goods. Needless to say, it is imperative to Montana that we continue to move these passengers and commodities in a safe and efficient manner.

We hear in this Committee increasingly from witnesses that performance and outcome based regulations are worth pursuing given the proactive safety practices of industry and the rapid evolution of technology. Based on my experiences in the private sector, I know industry sets a high standard for safety and is most often the source of safety technology innovation. As Administrator, how would you charac-

terize performance based regulation in the realm of our Nation's railroads and is this worth pursuing? Would this help facilitate innovation?

Answer. FRA is committed to facilitating industry's technological innovations while still exercising proper safety oversight. Performance-based standards generally allow for innovations that maintain or improve safety, and minimize costs of compliance. Developing performance-based standards also presents opportunities for collaboration with industry that encourage new ideas and establish new working relationships.

An example: FRA tasked its Railroad Safety Advisory Committee (RSAC) to produce a set of technical performance criteria and procedures to evaluate passenger rail equipment built to alternative designs, to ensure that trainsets based on international platforms can be engineered to operate safely in the United States. Based on RSAC's recommendations, FRA is preparing a notice of proposed rulemaking to codify these technical performance criteria, which will allow the industry greater flexibility to use various contemporary design techniques and incorporate emerging technologies.

There are instances where it may be more appropriate to adopt design-based or a combination of design and performance-based standards when developing a rule, and FRA sometimes needs the flexibility to make that decision. Notably, small entities may not have the human or capital resources to invest in order to take advantage of cost-savings from more performance-based approaches. FRA takes this into consideration in developing regulations generally applicable to all classes of railroads.

*Question 2.* I was also glad you mentioned your work with PHMSA in your testimony and agree that FRA and PHMSA need to regularly work together with industry and stakeholders. In fact, on September 18, 2015, this Committee held a field hearing in Billings, Montana to examine state and local perspectives of PHMSA as we work to reauthorize the agency.

On July 16, 2015, train cars derailed near Culbertson, MT. My understanding is that of the 22 cars derailed, only five (5) leaked, resulting in approximately 35,000 gallons of crude oil being released. Fortunately, there were no injuries, no fires, and no waterways were contaminated. Reports indicate the train was not speeding. We were lucky, unlike some of the accidents you referenced in your testimony. My understanding is there here were three (3) types of cars on that train—the unjacketed 1232s and jacketed 1232s, and the newest DOT-117 car. What lessons did you take away from how these three cars performed? As Administrator, how will you work with PHMSA and industry experts to ensure we continue to move increasing amounts of energy commodities in a manner safe to both the public and the environment?

Answer. 22 total tank cars derailed in the Culbertson, MT incident. All derailed cars were specification DOT-111 tank cars, constructed to industry's CPC-1232 standard. Three of the derailed cars were equipped with jackets; the remainder were non-jacketed. Six of the cars were breached in the incident; all of these were non-jacketed. Of the six cars that lost product, one was punctured. Leakage from the other cars occurred from either the bottom outlet valve or top valves and fittings. The tank cars were constructed with ½" steel plate and were equipped with top fittings protection. The quantified survivability of these cars is between that of the legacy DOT-111 cars and that of the DOT-117 tank cars. The outcome of the derailment supports FRA's belief that thicker tank and top fittings protection, along with the distributed power configuration (an associated train handling and braking improvement), limited the consequences of the derailment.

If confirmed as Administrator, I will continue FRA's coordination with PHMSA and engagement with industry stakeholders and experts. FRA worked closely with PHMSA on the development of the HHFT rule and its regulatory impact analysis. This collaboration continues as the agencies address administrative appeals to the rule and prepare an NPRM for Oil Spill Response plans. FRA will continue to work with PHMSA to develop and implement interagency regulatory and enforcement strategies to address emerging issues such as the packaging and transportation of energy commodities such as crude oil and its derivatives natural gas, natural gas liquids, condensates, and ethane.

In regard to working with industry stakeholders, I believe government's regulatory and enforcement initiatives are a portion of an overall effort that includes all segments of the industry. Only through collaboration and open discourse can we identify meaningful measures to prevent and mitigate incidents involving energy products. We need industry experts to help inform our decisions and we need their leaders to take quick effective steps to mitigate risk. I will urge leaders in FRA's Office of Railroad Safety to continue to develop coalitions with industry to implement programs in which both persistent and emerging safety issues are identified



and addressed. Should regulatory efforts be required we will engage industry experts to inform FRA's response. Further, FRA's Office of Research and Development will collaborate with industry to ensure our funded projects are focused on important safety issues and/or complementing ongoing industry research.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. AMY KLOBUCHAR TO  
SARAH E. FEINBERG

*Question 1.* I share the concerns of first responders who have indicated that too much of the burden falls on them to secure critical safety information from freight rail carriers. As the implementation process for the final rail tank car safety rule moves forward, it is critical that DOT work collaboratively with rail carriers and first responders, including fire and emergency services personnel, to establish an information-sharing system that will ensure municipalities can effectively plan for and respond to freight rail related derailments. What more can the F-R-A do to improve the dissemination and transparency of information that rail carriers share with local communities?

Answer. I agree that local government agencies and first responders are crucial players when a rail accident occurs, and are entitled to as much information as possible that can assist them in their response. FRA continues to work with PHMSA and other stakeholders to improve the information-sharing between railroads and local governments to ensure that local emergency responders and emergency response planning organizations can effectively plan for and respond to freight rail-related derailments.

On May 28, 2015, PHMSA announced that it would extend the Department's May 7, 2014 Emergency Order (EO) requiring railroads operating high-hazard flammable trains to proactively share information on the movement of these trains through local jurisdictions.

On July 22, 2015, FRA sent a letter to railroads reminding them that they must continue to provide the information required by the EO indefinitely, while the Department considers options for codifying the disclosure requirement on a permanent basis.

FRA is currently working with PHMSA to address this issue on a more permanent basis through a separate rulemaking process on oil spill response plans. Information and views gathered through this regulatory initiative will inform FRA and PHMSA on other actions in this area that might be necessary.

*Question 2.* Positive Train Control holds great promise to reduce the number of train incidents caused by human error. Congress passed the Rail Safety Improvement Act in 2008, which included the requirement to establish PTC systems on about 60,000 miles of track. A recent Government Accountability Office report on the progress of implementing PTC confirmed that most railroads will not meet the 2015 PTC deadline. Railroad companies have indicated that they are preparing to stop handling Toxic Inhalation Hazard (TIH) and passenger traffic due to their inability to install PTC on affected lines which could cause service disruptions for non-TIH commodities, such as coal and grain, as well. Will the FRA consider continued movement of non-TIH and non-passenger traffic over such lines after December 31, 2015, to be in violation of the 2008 legislation?

Answer. The 2008 legislation required implementation of positive train control on certain track segments carrying PIH/TIH and passenger traffic. FRA interpreted the statute as establishing 2008 as the baseline year for initially determining which mainlines would require the implementation of PTC utilizing the criteria contained in the statute. Thus, unless a railroad submits an appropriate request for amendment (RFA) to their approved PTC implementation plan (PTCIP) to remove a line from the PTCIP, the railroad would remain in violation of the regulations and the statute even if the line carried only non-covered traffic. Under 49 C.F.R. 236.1005(b)(4) the RFA would need to include traffic projections for 5 years and the railroad would need to establish that after December 31, 2015, no passenger traffic will be present on the line and that there will be no PIH traffic on the line. Thus, simply eliminating the TIH and/or passenger traffic is not sufficient to remove a line from the regulatory or statutory PTC mandate, the involved railroads would also need to submit an appropriate request with FRA for removing such track segments from their existing PTCIP.

*Question 3.* Has the FRA consulted with the Surface Transportation Board to determine whether a failure to continue such operations would be consistent with the common carrier obligation to provide service upon reasonable request?

Answer. FRA maintains a close working relationship with the STB and engages with the board on all cross-cutting issues, including PTC, but the authority to deter-

mine whether failure to provide service violates common carrier obligations lies exclusively with the STB.

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RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. RICHARD BLUMENTHAL TO  
SARAH E. FEINBERG

*Question 1.* The FRA is promulgating rules for passenger railroads and freight railroads that require these railroads to have system safety and risk reduction plans. The FRA's proposed rule would keep this information out of court, making it difficult for victims to get the information they need to pursue their cases. The impetus for this effort is a study conducted by a law firm that has close ties to the railroad industry, which, not surprisingly, suggests the information be kept outside the reach of victims. Do you think it's appropriate for the FRA to rely on an outside firm with ties to industry to make a decision about something that is so important to industry?

Answer. FRA has heard the concerns expressed about the law firm's study, and I appreciate the importance of this issue. My legal and contracting staff, however, have reviewed both the study and the process used to select the law firm, Baker Botts. After doing so, we believe Baker Botts was not biased in reaching its conclusions.

The FRA complied with all applicable requirements of the Federal Acquisitions Regulations, or FAR, when selecting Baker Botts for the study. A critical part of this selection process is ensuring that Baker Botts does not have any impermissible bias or conflict of interest.

Although Baker Botts historically represented the Southern Pacific railroad in the late 1800s until sometime in the early 1900s, we are not aware of any current railroad representation indicating that Baker Botts is not a neutral party. While I understand that Baker Botts has represented one railroad in environmental regulatory and compliance matters unrelated to railroad accident litigation, we have concluded that this is not an impermissible conflict of interest or bias for purpose of the study contract.

Finally, this study was just one tool FRA used when considering the proposed information protections. As required by the Rail Safety Improvement Act of 2008, FRA also solicited input from railroad labor organizations and railroad accident victims and their families. FRA solicited this feedback publicly, and it is available on [www.regulations.gov](http://www.regulations.gov) in Docket No. FRA-2011-0025. FRA did not consider itself bound by the study's conclusion, but considered all submitted views when formulating its proposed System Safety Program (SSP) and Risk Reduction Program (RRP) rules, which were also available for public comment.

*Question 2.* Will FRA engage a neutral party to re-evaluate this issue?

Answer. FRA remains confident the law firm conducting the study did not have an impermissible bias or conflict of interest, therefore we do not have plans to conduct another study.

*Question 3.* Does it worry you that railroads will use their safety plans as repositories for all kinds of information that they want to shield from discovery, limiting victims' rights to critical information they need to fight their case? Won't this proposed rule have terrible consequences for those seeking to assert their claims in court?

Answer. FRA is, of course, committed to preserving the rights and interests of accident victims in litigation. We are also concerned, however, that a System Safety Program (SSP) or Risk Reduction Program (RRP) rule without some form of information protection could ultimately result in a lack of real and substantive improvement to railroad safety. If a railroad believes it could leave itself open to harm in litigation by comprehensively analyzing all safety hazards, risks, and mitigation measures, we have concerns the railroad will not engage in a comprehensive SSP or RRP.

After carefully balancing the interest we all have in greater railroad safety and security with the rights and interests of accident victims in litigation, FRA has concluded that it is in the public interest to propose limited protections for RRP and SSP information. My staff is working to make those protections as precise as possible, while still encouraging railroads to engage in a real analysis of safety risks and hazards. As explained in the SSP and RRP Notices of Proposed Rulemaking, the protections would apply only to information generated "solely" for use in an SSP or RRP. If a railroad used SSP or RRP information for any other purpose, the rules would not protect that use of information. My staff is working to further clarify the scope of the information protections, so we can avoid situations in which a railroad impermissibly uses an SSP or RRP to shield information from discovery.

Overall, FRA is working to ensure that railroad accident victims do not lose access to information after the issuance of an SSP or RRP rule. To be clear, any information available to railroad accident victims today will remain available. The only information FRA intends to protect is information that never would have existed without an SSP or RRP rule. FRA believes this approach will promote safety by encouraging railroads to engage in robust SSPs and RRP, while not harming the interests of accident victims in litigation.

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RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. CORY BOOKER TO  
SARAH E. FEINBERG

*Question 1.* One of the most critical issues facing New Jersey is the need to build additional rail capacity across the Hudson River. The existing tunnels are 105 years old, were badly damaged by corrosive saltwater from Superstorm Sandy, and may only last another 20 years before they need to be shut down for extensive repair. Shutting them down without first building new tunnels would have devastating economic consequences for my state and the entire Northeast region. But when you consider that the Northeast represents \$1 out of every \$5 in gross domestic product, it becomes clear that this impacts the entire nation.

You and Secretary Foxx recognize that and have shown tremendous leadership in trying to move the ball forward, whether by bringing stakeholders together or proposing the type of Federal investments that will be needed to get this done. In your view, how urgent is the situation facing these tunnels and what should we be doing at the Federal level in response?

Answer. The situation facing the tunnels is dire. Superstorm Sandy served as a stark reminder of the importance of the Hudson River tunnels (and the Northeast Corridor as a whole) to the New York metropolitan area, the Northeast region, and our broader National economy. Sandy also highlighted the need for recovery and resiliency for our vital transportation assets. Specifically, the flooding and associated damage to Amtrak's existing Hudson River tunnels resulted in the cessation of all Amtrak NEC intercity passenger rail and New Jersey Transit service into New York City for approximately five days, affecting nearly 600,000 daily riders and causing substantial economic harm.

FRA believes it is a question of when—not if—the Hudson River rail tunnels will need to be taken out of service for extensive rehabilitation and repair. These emergency repairs will likely take more than a year. The Northeast Corridor Infrastructure and Operations Advisory Commission (NEC Commission) estimates that unless additional capacity is constructed under the Hudson River by the time those repairs begin, rail service through the tunnels may need to be cut by as much as 75 percent during that rehabilitation work. As the NEC Commission states in its Five-Year Capital Plan, such a service reduction would represent a “nightmare scenario” with devastating effects on the economy and people’s way of life in the region.

Amtrak is currently working to replace track in the existing tunnels and preserve the right-of-way for a new tunnel, and Governors Chris Christie and Andrew Cuomo have recently pledged to cover half of the project’s cost. Sec. Foxx continues to work with both states to make certain the Federal Government does its part to make a new tunnel a reality. FRA stands ready to help make the project happen to ensure passengers are safely transported and to increase capacity.

*Question 1a.* How can we better utilize Sandy relief funds to repair these tunnels?

Answer. Amtrak was awarded \$235 million in Sandy relief funds appropriated under the Fiscal Year 2013 Disaster Assistance Supplemental Appropriations Bill (P.L. 113–2) for the first two phases of the Hudson Yards Encasement Project. This project, which preserves a portion of the underground right-of-way necessary for the new Hudson River rail tunnels, represents the critical first step to constructing the new tunnels to increase capacity and provide redundancy into the New York Penn Station/Moynihan Station complex.

Most of the remainder of the \$10.9 billion appropriated for Superstorm Sandy relief efforts have been allocated to other public transportation response, recovery, and resiliency projects. I remain open and interested in working with the Senate Commerce Committee and the Congress as a whole, to ensure remaining Sandy funds, as well as any additional funding, addresses ongoing needs.

*Question 2.* In December 2014, the Northeast Corridor Commission voted to adopt a new framework for regional collaboration and cost sharing among Northeast Corridor passenger rail operators. The framework must now be implemented in the form of contractual agreements between Amtrak and the various commuter rail authorities that use the Northeast Corridor. The passenger rail bill that I introduced along with Senator Wicker includes several provisions aimed at complementing this

framework. Together, they would represent a first step forward in establishing new federal-state partnership for investment in Northeast Corridor infrastructure. As one of the Federal representatives the Northeast Corridor Commission, what is your perspective on how implementation efforts are going?

Answer. The adoption of the cost allocation policy framework in December 2014 has led to significant activity over the past nine months among FRA, infrastructure owners, and service operators on the NEC. The NEC Commission and its members have achieved several important milestones during this time, including:

- Approving the first-ever comprehensive NEC Five-Year Capital Plan reflecting the input of all corridor owners and operators;
- Developing and approving the NEC One-Year Spend Plan to guide the use of approximately \$425 million in shared FY 2016 capital contributions;
- Engaging in detailed bi-lateral agreement negotiations to implement the policy; and
- Voting in September 2015 to reaffirm and adopt the policy for the FY 2016–FY 2020 period. This vote reflects the desire of the corridor to enter into a new chapter of corridor-wide collaboration and shared financial commitment.

Separately, each of these milestones is a notable step toward a new level of transparency and collaboration among NEC stakeholders. Taken together, they demonstrate the sustained commitment of all NEC Commission members to enhance the management and operation of the Nation’s most critical passenger rail network.

With the onset of the policy term in FY 2016, the FRA recognizes that some parties have not yet reached final operating and capital agreements to implement the policy. The FRA understands that some of the negotiations have been quite challenging due to the complexity of the parties’ existing contractual agreements. However, the FRA is encouraged by the efforts of the NEC owners and operators to-date and believes that the parties will continue to advance implementation in FY 2016.

*Question 2a.* What can FRA do to support implementation?

Answer. The FRA strongly supports the implementation of the NEC Commission cost allocation policy and urges the NEC infrastructure owners and service operators to continue their work developing new bi-lateral agreements to implement the policy. FRA believes that reaching agreements that reflect the cost allocation policy’s principles of transparency and clarity are critical to the continued success of the NEC in serving the traveling public.

While the FRA is not a direct party to these agreements, the agency is aware of the complicated issues faced by some parties. We also receive frequent updates on the status of negotiations from the NEC Commission staff and the respective agencies. FRA facilitates these discussions and consistently emphasizes the importance of developing these agreements in our discussions with all stakeholders on the corridor, and will continue to do so until all parties have reached an agreement.

In addition to serving as a member of the NEC Commission, FRA provides technical assistance to other members to help facilitate discussions among stakeholders or resolve disputes.

*Question 3.* The Federal Railroad Administration’s Railroad Rehabilitation and Improvement Financing program, or RRIF, is a uniquely powerful tool for investing in rail infrastructure, but it is severely underutilized. Earlier this year, I introduced legislation, most of which was included in the DRIVE Act passed by the Senate, aimed at substantially improving the ability of RRIF to issue loans for major infrastructure projects, like the Hudson River tunnels or the Portal Bridge in New Jersey. How can RRIF help accomplish some of our mutual goals?

Answer. I believe RRIF loan financing can play an important role in advancing major infrastructure projects, such as the Hudson River tunnels and Portal Bridge.

As I stated in my testimony on September 17th, “the RRIF Program is very much open for business.” FRA has made process improvements to increase stakeholder outreach, provide technical assistance to prospective borrowers, and streamline the loan application process. Already in 2015, FRA has completed the same number of loans—two—as the previous three years combined, with more expected by the end of the year. Additionally, both the Administration’s GROW AMERICA proposal and the Senate’s DRIVE Act contain provisions aimed at expanding eligibility and increasing participation in the program.

However, RRIF and financing programs in general are only one tool for addressing the growing infrastructure deficit facing our Nation. Predictable, dedicated grant funding is required to make the investments needed to meet our mobility needs and support economic growth.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. TOM UDALL TO  
SARAH E. FEINBERG

*Question 1.* Ms. Feinberg, I want to thank you for your commitment to public service and your commitment to improving rail safety. As you know, Congress has mandated that positive train control (PTC) be implemented by December 31, 2015. However, you have noted that most Class 1 and commuter railroads are unlikely to meet this deadline. This includes the New Mexico Rail Runner Express, which operates 18 trips per day between Albuquerque and Santa Fe, with approximately 5 million gross tons of freight annually. While I support safety improvements, I am concerned about the impact of service disruption Rail Runner riders could experience if Congress does not extend the PTC implementation deadline.

If confirmed as FRA Administrator, would you consider a revision to the “limited operation exception” regulation to increase the threshold from 12 regularly scheduled passenger trains to a level that would allow the New Mexico Rail Runner Express to apply for an exception to the PTC requirement given its current level of passenger service?

*Answer.* FRA is willing to look at the possibility of raising the threshold. As always, any decision would be guided by safety. However, we have not received a petition for a rulemaking requesting such a change. In addition, FRA regulations at 49 C.F.R. Part 211 provide the process for filing petitions for waivers. We have also not yet received such a request for waiver.

*Question 2.* Given the limited financial resources available to commuter rail operators for PTC implementation, what other options would you consider as FRA Administrator to ensure passenger service is maintained at current levels by operators like New Mexico Rail Runner Express?

*Answer.* In addition to considering a potential petition for waiver, in the Generating Renewal, Opportunity and Work with Accelerated Mobility, Efficiency, and Rebuilding of Infrastructure and Communities throughout America Act (GROW AMERICA), the Secretary proposes to assist publicly funded commuter rail agencies to implement PTC systems by providing \$3 billion over 6 years for commuter railroads to support implementation. Such flexibility, authority, and funding would allow FRA to be more responsive to the reality and obstacles of PTC system implementation while still holding railroads accountable. FRA also makes loans available through the Railroad Rehabilitation and Improvement Financing program to applicants interested in assistance in paying for PTC implementation. (In 2015, FRA issued a nearly \$1 billion loan to the Metropolitan Transit Authority in New York for implementation of PTC on the Long Island Rail Road and Metro-North Commuter Railroad Company.)