

QUESTIONS FOR THE RECORD

GROUND TRANSPORTATION SUBCOMMITTEE TRANSPORTATION AND INFRASTRUCTURE COMMITTEE U.S. HOUSE OF REPRESENTATIVES

IMPLEMENTATION OF THE TRANSPORTATION EQUITY ACT FOR THE 21ST CENTURY

MARCH 8, 2000

QUESTIONS FOR FHWA

QUESTION 1. Some State DOT=s have complained that the slow progress that has been made in implementing TEA 21=s environmental streamlining provision is due less to the size of the task than to the attitude of the Federal players involved. Why should the Department of Transportation=s statutory duties to ensure the safety and mobility of all Americans take a back seat to the regulatory agencies= environmental responsibilities?

ANSWER: The Department of Transportation=s (DOT) statutory responsibilities to ensure the safety and mobility of all Americans do not have to take a back seat to the regulatory agencies= environmental responsibilities. Most safety projects can be processed expeditiously using categorical exclusions (CEs) and environmental assessments (EAs). Delivery of a sound and safe transportation system involves carefully balancing many competing interests and priorities. In implementing environmental streamlining, project sponsors must adequately address many important environmental statutes. Congress did not remove these environmental safeguards and did not give the FHWA any new statutory authority to override environmental review agencies.

Just as Federal agencies must achieve a balance between various competing interests that results in good transportation and good environmental outcomes, local governments and States must identify transportation project priorities among competing interests and constituencies. Whereas one group of citizens may view a transportation improvement as necessary from a safety and mobility perspective, their neighbors may be opposed to the same transportation improvement because of health and safety risks from higher rates of speed and increased traffic. Clearly, when there is agreement among the State, local decision makers, and the citizens that certain projects are necessary, then these projects should be implemented without undue delays, provided they continue to meet all other applicable Federal requirements.

QUESTION 2: In its official definition of environmental streamlining, DOT=s web site notes that because the word Aenvironmental@ precedes the word Astreamlining@ in TEA 21, Astreamlining will occur only if transportation agencies have first demonstrated that they truly honor environmental laws and values.@ Is it your intention to impose additional environmental hurdles on States before DOT will implement the law requiring it to streamline the project review and approval process?

ANSWER: DOT does not intend to, nor can it, impose additional environmental hurdles on States before implementing the law to streamline the project review and approval process.

DOT intends to implement the statutory requirements in accordance with Congressional intent that projects be expedited through efficient use of timely and concurrent reviews. DOT's definition of streamlining is consistent with Congressional intent that streamlining be carried out within current environmental requirements. The reality is, if efficiencies such as delegations of authority to States are to be built into the project development process, project sponsors must have credibility with the environmental community by fulfilling their existing project agreement environmental commitments. Congress has not removed, nor has it overridden, for the sake of expediting projects, the environmental agencies' duty to ensure full compliance with environmental laws. DOT is suggesting, as has the American Association of State Highway and Transportation Officials (AASHTO), that States define the type of activities they are willing to undertake to address environmental compliance.

QUESTION 3. Some States have complained that a key streamlining concept of establishing timelines for reviews is lacking. What specific actions is DOT taking to secure commitments from Federal agencies to meet specific timelines for completing their reviews, and commitments to conduct these reviews concurrently, rather than consecutively?

ANSWER: DOT is working with the other Federal agencies to ensure that in all field offices timelines and concurrent reviews will be established by those who are directly involved in reviews and decisions at the project or program level. By setting timelines at the local level, a field office can better assure that commitments will be effectively negotiated and honored.

Additional steps are being taken at the national level to define programmatic agreement models that cover specific types of reviews (historic, wetlands, endangered species) so that these are done in conjunction with other similar NEPA process requirements. We are initiating an interagency review mechanism for early identification of potential delays and tracking until the issues are resolved. We anticipate that this type of concerted monitoring effort will avoid or minimize disruptions to project schedules.

Finally, the projects requiring the highest level of environmental analysis are often complex, controversial or subject to other outside influences such as shifts in funding or local priorities. To help project sponsors and resource agencies negotiate their way through the NEPA process and project agreements, we are developing a national system for managing conflict and for alternative dispute resolution among Federal agencies. A national policy, a network of pre-qualified neutral facilitators, and an assessment of conflict management training needs should be completed by the end of the year.

QUESTION 4. DOT and the regulatory agencies are developing new NEPA rules that purport to be consistent with the streamlining provisions of TEA 21. What steps has DOT taken to ensure that the new rules don't actually create additional delays or burdens for the States?

ANSWER: We have developed the streamlining provisions of the NEPA regulations to emphasize consulting early with other agencies that may have jurisdiction over a federally assisted transportation activity. Identifying and resolving concerns as early as possible will help the environmental reviews

proceed more quickly. The proposed NEPA regulations allow States and project sponsors to incorporate analysis and information collected through the planning process, or engage resource agencies in the planning process, in ways that work best for them. This will give States maximum flexibility to identify and address environmental concerns early on.

We also believe that the regulations will provide a policy and regulatory framework that can be used by the courts and by other agencies to allow decisions made in the planning process to be utilized in the NEPA process. This will provide earlier information on the range of alternatives as they are considered, documented, and evolve through the planning process, thus giving consideration to the legitimacy of the information, analysis, and decisions evaluated in the studies conducted outside of the NEPA process. These proposed regulations are in the review and comment stage, so States and project sponsors should submit comments.

QUESTION 5. Some groups have called for an independent measurement system to objectively evaluate Federal agencies= progress in implementing environmental streamlining. Would you support a continuous, independent review of current practices and future progress in improving those practices?

ANSWER: We support a continuous, independent review of current practices and future progress in improving those practices. We are working with the American Consulting Engineers Council (ACEC), AASHTO, and other stakeholders in developing our program evaluation research, in assessing and promoting best practices, and by encouraging the use of peer reviews and benchmarking. Their perspectives help us to address streamlining successes and challenges in a balanced way.

QUESTION 6. DOT has sought to downplay problems with the project approval process by stating that 97% of transportation projects complete the environmental review process in two years or less. This statistic seems misleading because it includes very minor projects that are classified for a categorical exclusion from the environmental documentation process. DOT and other agencies seem to have failed to recognize that problems exist with the pace for approving major projects. In fact, for projects receiving a record of decision in 1998 and requiring EIS documentation, only 16% were completed in less than three years while 32% of projects were completed in seven or more years. Please identify all active projects that have not received a signed record of decision after five or more years of Federal review. Please identify for each of these projects: Its location and scope, environmental classification, how long it has been since Federal review of the environmental documentation process began, and the specific steps DOT is taking with the regulatory agencies and States to streamline the approval of these particular projects.

ANSWER: First, we want to clarify that DOT has not sought to downplay the significance of the length of time it takes any project to go through the approval process. We wanted to point out that the bulk of the Federal-aid program involves many minor projects and that a two-year review time for minor projects is not good enough. We are working with States, other agencies, and environmental groups to determine what actions might be taken to cut that time in half. Many State Departments of Transportation Secretaries have said that they are just as concerned about moving these projects as they are about improving the implementation timeframes for the larger, more complex projects, requiring

EISs. Many believe, as do we, that the more efficient we become in moving these routine, non-controversial, projects, the better job we can do in addressing the complex issues surrounding the projects requiring EISs.

In order to answer the second part of the question dealing with projects that have not yet received a record of decision after five years or more of Federal review, we must work with the States and project sponsors to establish the project history for these projects. We will submit our findings at a later date under separate cover.

Please be aware that in moving projects through the NEPA process, project activities can encounter many delays that may not be related to Federal agency reviews or permits, such as State permit requirements, State environmental laws, or local changes to funding or project priorities.

QUESTION 7. What improvement in the amount of time it takes to complete the environmental review process and subsequent permitting process has taken place since the enactment of TEA 21? Do you have any specific examples of projects where, due to the enactment of TEA 21, time savings have occurred as a result of the coordination and concurrent reviews rather than sequential reviews?

ANSWER: Since the implementation of the Transportation Equity Act for the 21st Century (TEA-21) about 15 States have sought to update or enter into agreements that delegate authority to the States for historic reviews, and for agreements covering the NEPA/ 404 process, region-wide species mitigation, expedited endangered species biological assessments, etc. These agreements can produce a 3-months to 2 years timesaving per project. In Ohio, for example, they have saved more than 2,000 project hours over the last year by adding a level IV Categorical Exclusion category for projects that do not require environmental impact statements.

The timesavings vary from project to project depending on the environmental resources impacted by that project. The savings also vary by the extent to which, and how, certain reviews are conducted by the States themselves. For many States, their ability to take on additional activities or to provide funding to other State agencies may be quite limited. While many reviews do occur concurrently, some environmental agencies cannot make decisions or issue permits until a certain level of project detail (location, design, alignment) has been developed. Often this information emerges near the end of the NEPA process.

QUESTION 8. EIS projects, after going through their environmental review and receiving their Record of Decision, have traditionally gone through subsequent permitting processes (for example, additional biological assessments). What permits are now incorporated into the streamlined process and how much time is expected to be saved? What permits are not incorporated into the streamlined process and how much time is generally needed to receive additional permits after a signed record of decision?

ANSWER: Once the record of decision on an EIS is signed, that decision must be available for public review and comment. During that period anyone can raise concerns, file a notice of intent to sue, and discover new information about the impacts of the project. At times, this calls for supplemental assessments for certain resources or additional mitigation. Ideally, many of the untreated concerns or

new issues would be identified and resolved after the draft EIS was made public but before the record of decision was made.

Permitting can begin early during the NEPA process and extend through the final design phase. Permitting processes are defined by State as well as Federal requirements and can be difficult to address. States are not required to track this information through any type of national reporting procedures and, as a result, many different methods of record maintenance are in use. FHWA has been directed to reduce data collection requirements over the past few years and has sought to minimize the level of detail collected from States in the Federal management information system (FMIS) and in our highway performance monitoring system. Project permit baseline information is tracked by the States and can vary significantly from State to State. We are hopeful that, through our streamlining performance evaluation study, we can begin to define what data is available and can be collected and catalogued. Environmental streamlining stresses working to complete the environmental analysis for as many permits and other agency actions as possible as part of the NEPA review, to avoid sequential reviews of transportation proposals.

QUESTION 9. After an EIS is signed, what other activities are typically required by the federal government prior to start of construction? How long does this take?

ANSWER: After an EIS is signed, it must be made available to the public for at least 30 days before a decision can be made. After the comments have been addressed and resolved, a record of decision can be signed. Generally this will be completed in a few months. Additional time can transpire between a final EIS (FEIS) and a record of decision depending on the nature of the issues and comments, whether supplemental assessments are required, and whether citizens or interest groups challenge the decision through litigation. If the preferred alternative in the FEIS is not included in a conforming plan and program, or if it represents a significant change to the design concept and scope of the project from that which was included in the conformity analysis for such plan and program, the project must be included in a new plan and TIP and conformity established before the FEIS can be approved.

Additional activities prior to construction can also include right of way acquisition activities (3 months-2 years) and design approvals for certain categories of projects. In nonattainment and maintenance areas for air quality purposes, the federal government must affirm conformity at each of these approval steps.

QUESTION 10. The FHWA Action Plan for carrying out the environmental streamlining provisions in TEA 21 introduces the concept of Aenvironmental enhancement® to the streamlining issue. AEnhancement® is subject to interpretation by the various Federal agencies involved in the environmental review process. Some State transportation agencies see this concept as one that will actually increase the review time rather than lessen it as each federal agency Anegotiates® for what it considers adequate environmental enhancement to be. How will you ensure that the concept of Aenvironmental enhancement® will not increase the review time? How do you measure what constitutes Aenvironmental enhancement?®

ANSWER: The FHWA action plan does not make enhanced environmental protection a condition of streamlining. We suggest it can be an outcome of streamlining when States choose to go beyond minimal compliance. For a number of States, these measures, which may involve flexible mitigation strategies that result in avoidance or compensation, may simply reflect a good way to conduct business.

In other States, such as New York, the Governor decided it is the right thing, a good government thing, to do. A number of States are willing to invest more in enhanced environmental outcomes in exchange for a credit for off-site mitigation for certain corridors or on certain projects or programs. We have maintained that efficient reviews may result in enhanced outcomes, but that these enhanced outcomes should not be achieved at the expense of project delays.

Measuring enhanced environmental outcomes is a very subjective process. We would point to AASHTO's Environmental Best Practices and other pilot efforts as examples of enhanced outcomes. We believe the dialogue begun at our May 11th Executive Session among transportation and environmental groups and resource agencies will help us to come closer to a collective vision and shared expectations about what is meant by enhanced environmental outcomes.

QUESTION 11. In a memo dated August 23, 1999, to FHWA Division Engineers, the Chief Counsel and Program Manager for Planning and Environment indicated the following:

The NEPA document must address all reasonable alternatives, even those rejected in the planning process. The planning process is not NEPA compliance. In fact, TEA-21 strengthened the existing law, which inoculates planning decisions by state and local governments from judicial review. We recognize that this could result in similar reviews during both the planning and NEPA processes. To some extent, this cannot be avoided because NEPA focuses on federal actions, and the Federal government simply does not have an approval over the plans produced by a local government. If the Federal government is not a participant in substantive transportation planning decisions, it cannot be bound by those decisions nor rely upon them when considering the appropriate array of alternatives under NEPA. The NEPA document may cite to and incorporate by reference studies done elsewhere, but must be a self-contained review of environmental impacts, alternatives, mode choice, and the like.

Won't this guidance have the effect of protracting and complicating the planning and environmental review process by requiring duplicative reviews and analyses, rather than streamlining and shortening the process? If not, why not?

ANSWER: The purpose of this memorandum was to explain to our field offices the recent court decisions and the basis of the court's interpretation i.e., the current NEPA regulations. It was not new guidance or a new interpretation of existing requirements.

In developing the new regulations, we have taken the opportunity to clarify this point in a way that will provide for a much more logical linkage between planning and the NEPA processes. We believe that our regulations will provide a policy and regulatory framework that can be used by the courts and by other agencies to allow decisions made in the planning process to be utilized in the NEPA process. This will, effectively, provide earlier information on the range of alternatives as they are considered, documented, and evolve through the planning process, thus giving consideration to the legitimacy of the information, analysis, and decisions evaluated in studies conducted outside of the NEPA process.

As the August 23rd guidance indicates, TEA-21 confirms that planning decisions are not subject to NEPA. What we are proposing in the NEPA rule would allow States the option of giving those decisions legal standing in the NEPA process provided sufficient environmental analysis has been done.

QUESTION 12. What is your estimate of the additional time that will now be required to address environmental justice issues?

ANSWER: If environmental justice considerations are fully integrated into transportation decision making early in the process, along with other factors that shape transportation solutions, no additional time should be necessary to address them.

Identifying and addressing environmental justice issues should begin in the planning process and continue through project development, right of way acquisition, and construction. Including minority and low-income populations in effective public involvement during transportation decision making can alert State and local agencies early on to environmental justice concerns, and thus reduce the likelihood that unexpected controversies will arise.

QUESTION 13. Your written statement makes repeated references to Livable Communities, which was not a program authorized in TEA 21. What are your Livable Communities initiatives and how do you reconcile these Federal initiatives with one of TEA 21's central aims of empowering States and localities to make their own transportation choices?

ANSWER: The references to "livable communities" do not refer to new or stand alone initiatives within FHWA. This term encompasses FHWA's efforts to coordinate the implementation of several TEA-21 programs, such as Transportation Enhancements (TE) and Transportation and Community and System Preservation Pilot Program (TCSP), that have components that specifically address the impacts of transportation on communities and that promote more livable communities by easing traffic congestion, improving safety, preserving green spaces, and promoting smart growth. FHWA's implementation of TEA-21 initiatives is consistent with TEA-21's objectives to empower States and localities to make their own transportation choices. The Federal role is to supply information, tools and resources to empower States and localities to make their own transportation decisions.

QUESTION 14. DOT is seeking to double the funding for the borders & corridors program for FY 2001, but has not yet awarded the grants for the program for the current fiscal year. When will you award this year's grants for this program?

ANSWER: On June 9, 2000, Secretary Rodney E. Slater announced that \$121.8 million in grants would be provided to 29 States for 65 projects as part of the National Corridor Planning and Development and the Coordinated Border Infrastructure programs for fiscal 2000.

FHWA received approximately 150 funding requests for projects totaling about \$2 billion. All applications were found to be at least partly eligible for funding, making the selection process extremely difficult. FHWA is now in the process of allocating funds to the grant recipients.

QUESTION 15. The Department has requested substantial increases in funding for highway research. Why are these increases needed and how will they be spent?

ANSWER: The President's budget for fiscal year (FY) 2001 requested the full level of contract authority authorized for highway research and technology programs in TEA-21 and requested an additional \$221.5 million for research and technology Programs of FHWA. The additional funding

would allow the Department to pursue more comprehensive research programs, advance deployment of new technology, and expand research and technology partnership initiatives. Development and implementation of new technology can assist the Department in achieving its goals of improving safety, mobility, economic competitiveness, environmental protection, and security, while meeting increased demands on the transportation system.

The following chart details where the requested increases in funding will be spent.

Surface Transportation Program	40,000,000
Technology Deployment Program	6,000,000
Training and Education	4,000,000
Intelligent Transportation Systems	120,000,000
Fatigue and Human Factors	3,000,000
Information Sharing Data Std.	5,500,000
Technology Sharing and Transfer	1,000,000
Global Positioning System	18,700,000
Aging America	3,300,000
Advanced Vehicle	20,000,000
TOTAL	221,500,000

Within the proposed increased funding for FY 2001 for research and technology, we would like to explain in more detail the proposed increase of \$50 million in contract authority for the following FHWA core R&T programs:

- Surface Transportation Research (\$40 million)
- Technology Deployment Program (\$6 million)
- Training and Education (\$4 million)

The increase is necessary to perform highway R&T activities, in partnership with State DOTs and other stakeholders, which meet critical national needs. Specifically, FHWA proposes to support its Strategic Goals and to distribute the funds as follows:

Surface Transportation Research (\$40 million)

<u>Mobility</u>	\$16,000,000
Pavements	\$8,000,000
Structures	\$5,000,000
Asset Management	\$1,500,000
Policy Analysis & System Monitoring	\$1,500,000

Safety \$5,000,000

Run-off-road crashes	\$1,500,000
Pedestrians and bicyclist safety	\$1,500,000
Engineering-Traffic Operations and Design	\$1,000,000

Safety management \$1,000,000

Productivity \$10,000,000

Freight and traffic management technologies \$10,000,000

Human and Natural Environment \$9,000,000

Planning & Environment \$9,000,000

Technology Deployment Program (\$6 million)

Mobility \$2,400,000

Pavements \$1,200,000

Structures \$750,000

Asset Management \$225,000

Policy Analysis & System Monitoring \$225,000

Safety \$750,000

Run-off-road crashes \$225,000

Pedestrians and bicyclist safety \$225,000

Engineering-Traffic Operations and Design \$150,000

Safety management \$150,000

Productivity \$1,500,000

Freight and traffic management technologies \$1,500,000

Human and Natural Environment \$1,350,000

Planning & Environment \$1,350,000

Training and Education (\$4 million)

Local Technology Assistance Program (LTAP) \$2,250,000

National Highway Institute (NHI) \$1,750,000

Recognizing the value of FHWA's program to the States and the serious shortfall in funds available for highway R&T, AASHTO took a significant step in passing the resolution "Supplemental Program to Meet Critical National Highway Research Needs" (PR-16-99) supporting a \$37 million increase for FHWA R&T each year for the remaining years of TEA-21. This action was a major factor in FHWA's decision to request the additional \$50 million for "core programs" which is closely aligned with the resolution. The FHWA proposal differs from AASHTO's in that it also includes asset management, policy, technology deployment and training & education.

QUESTION 16. The Department has also sought substantial increases in Intelligent Transportation Systems (ITS) funding for fiscal year 2001. What is the Department's timeline for shifting ITS from a generally publicly funded initiative to a mainly private and user-funded service?

ANSWER: TEA-21 has shifted the focus of the Federal ITS program from primarily research and operational tests to a balanced program of research and deployment support. The foundation -- technical knowledge, architecture and standards, benefits -- created during the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) is now being used to support and accelerate ITS deployment at the State and local level. While we have made great strides in moving ITS from a research concept to a fundamental part of the delivery of transportation, there is much work to be done before ITS is fully deployed on a nationwide basis.

Through the Federal ITS program we continue to advance the application of information and communication technologies through a strong R&D program, maintain and enhance the National ITS Architecture and standards, and support ITS deployment through training, technical assistance and guidance. The additional funding requested for fiscal year 2001 would allow us to expand the focus of ITS deployment beyond the major metropolitan areas, supporting statewide and national deployment.

The Department does not envision a timeline where the ITS becomes primarily a private and user funded service. The ITS program is built around a strong private sector role and significant private sector investment, particularly in the Intelligent Vehicle Initiative. Private sector funding for ITS has been increasing and is expected to continue to increase.

QUESTION 17. DOT is scheduled to begin construction on the replacement to the Woodrow Wilson Bridge this fall. What has to be accomplished before DOT can actually begin this work? Are you on schedule?

ANSWER: The following major activities remain to be completed before construction can begin on the replacement for the Woodrow Wilson Bridge.

1. Complete Environmental Review Process

A Final Supplemental Environmental Impact Statement (FSEIS) addressing changes in project impact resulting from design refinements and new information was made available for public review on April 28, 2000. The official comment period closed on May 30, 2000. Comments received during the comment period will need to be analyzed and a Record of Decision (ROD) must be prepared. We anticipate issuing the ROD on or about June 16, 2000.

2. Secure Section 404 Permit from US Army Corps of Engineers

Based on the FSEIS prepared in cooperation with FHWA, the Army Corps of Engineers (ACOE) must issue its own ROD on the project. The ACOE must draft a Section 404 Permit and compile a listing of all required permit conditions. State water quality permits must be approved and submitted to the ACOE prior to approval of Section 404 Permit. It is anticipated that these permits will be in hand before the 404 Permit is prepared for final approval. The ACOE is scheduled to issue the Section 404 Permit on July 28, 2000.

3. Finalize Agreement on Dredge Disposal

An agreement with a landowner along the James River in southern Virginia is currently being negotiated for disposal of dredge from the Potomac River to provide access to the construction site of the new Woodrow Wilson Bridge. Coordination with Virginia State permitting agencies is

ongoing. It is anticipated that this agreement will be finalized within the next few weeks and that required State permits will be issued in advance of the taking of bids on the dredge contract.

4. Prepare Final Contract Documents

Contract documents for dredging of access channels in the Potomac River to facilitate construction of the bridge were finalized by the design consultant and the contract package was submitted on June 12, 2000 by the Maryland State Highway Administration to the Federal Highway Administration for approval. The current schedule calls for this contract to be advertised on June 20, 2000, for receipt of bids on July 28, 2000. The preparation of this contract package is on schedule, however approval of funding and authorization to advertise for receipt of bids cannot be given until a Finance Plan is approved.

Contract documents for construction of the bridge foundations are also being developed by the bridge design contract. The Maryland State Highway Administration plans to submit the contract package to the Federal Highway Administration for approval on or about August 1, 2000. The current schedule calls for this contract to be advertised on August 15, 2000, for receipt of bids on September 22, 2000. The preparation of this contract package is on schedule, however approval of funding and authorization to advertise for receipt of bids cannot be given until a Finance Plan is approved.

5. Submit Finance Plan for Approval by US DOT

A Finance Plan is being prepared based on the recently updated cost estimate in accordance with draft guidance prepared by FHWA. This plan will include information on overall project costs, how these costs will be incurred over the anticipated construction period, a summary of the anticipated revenues, how they will be used to match anticipated expenses, a discussion of anticipated cost trends, and techniques we anticipate using to control costs.

With regard to funding for the project, currently only the \$900 million in special funding provided for the project in TEA-21 has been identified. The Secretaries of Transportation in Virginia and Maryland have stated that their respective States would provide up to \$400 million in State-controlled resources as a match for \$600 million in additional special funding currently being considered in Congress. At this point the States have indicated that Congressional approval of an additional \$600 million in funding for the project is needed before they will submit the plan for Federal approval.

6. Submit Ownership Agreement to US DOT for Approval

The Maryland State Highway Administration, the Virginia Department of Transportation, and the District of Columbia's Department of Public Works have developed draft agreements detailing the shared responsibilities for annual maintenance and operation of the bridge. The agreement also provides mechanisms for reaching agreement on the need for and cost sharing associated with routine repair and long term rehabilitation and reconstruction of the bridge. These agreements are currently under review and should be ready for signature by the appropriate State officials and the Federal Highway Administration at the same time the Finance Plan is finalized.

We believe that, at the project level, we are on schedule to begin construction of the new Woodrow Wilson Bridge later this year. FHWA and the States have been working hard to complete the environmental review process, secure the necessary permits and complete the design and contract development tasks necessary to meet this goal. The lack of full funding for the project and the threat of legal challenges by project opponents remain areas of concern.

QUESTION 18. As a result of recent court cases, any area found to be in noncompliance with Federal air quality mandates is immediately in Nonattainment^o and must halt most new highway projects. This summer, EPA will impose even more stringent air quality rules. How will the highway program be impacted under these tougher standards? How many areas across the nation risk being designated as Nonattainment^o under these tougher standards?

ANSWER: In July 1997, EPA promulgated new air quality standards, including a new 8-hour ozone standard. Recent court decisions remanded the standards and called into question whether EPA has the authority to enforce standards that are different than those specified in the Act. The court decisions, however, indicate that EPA has the authority to designate new nonattainment areas. In fact, Section 6103 of TEA-21 requires EPA to make the new ozone nonattainment area designations by July 2000.

When an area is formally designated by EPA as nonattainment and that designation becomes effective, the transportation plan and program must be immediately determined to conform to the State air quality implementation plan or no new highway and transit non-exempt projects will be allowed to begin. Projects that have already been funded for construction would not be affected. Safety and maintenance projects, and certain types of projects that do not impact emissions, are exempt from conformity requirements and can proceed at any time.

Areas that successfully demonstrate conformity prior to the effective date of their nonattainment designations will have no interruption of transportation programs and projects.-

EPA is currently working with Governors to determine what areas will be designated nonattainment for the eight-hour ozone standard. In the next few weeks EPA should have a clearer idea about how many areas are likely to be designated nonattainment for the eight-hour standard.

On March 28, 2000, EPA issued guidance related to the 8-hour ozone nonattainment designations. According to the schedule outlined in EPA's guidance, the earliest that nonattainment designations could become effective is early 2001. EPA has committed that in deciding when to finalize designations and make them effective, it will take into account the time needed to prepare for any applicable requirements, as well as the timing of any litigation and administrative proceedings. This will provide additional time for areas to complete the conformity analysis.

FHWA is actively encouraging State and local authorities to conduct analyses of their transportation plans and programs to demonstrate conformity prior to the effective date of the new nonattainment designations to minimize the risk of disrupting the transportation program. The DOT will work with EPA to issue guidance to clarify specific conformity requirements for the 8-hour ozone nonattainment areas.

In addition, EPA proposed to re-establish the previous one-hour ozone standard, which will affect areas that violate, or once violated, that standard and have never been formally designated as attainment (maintenance) areas. EPA's October 25, 1999, proposed rulemaking would re-establish the one-hour standard in the almost 3000 counties where it has been revoked. This means that the approximately 46 metropolitan and rural areas previously designated as nonattainment will again have to demonstrate conformity when this proposal is made final and effective.

ANSWER: In July 1997, EPA promulgated new air quality standards, including a new 8-hour ozone standard. Recent court decisions remanded the standards and called into question whether EPA has the authority to enforce standards that are different than those specified in the Act. The court decisions, however, indicate that EPA has the authority to designate new nonattainment areas. In fact, Section 6103 of TEA-21 requires EPA to make the new ozone nonattainment area designations by July 2000.

When an area is formally designated by EPA as nonattainment, the transportation plan and program must be immediately determined to conform to the State air quality implementation plan or no new highway and transit non-exempt projects will be allowed to begin. Areas that successfully demonstrate conformity prior to the effective date of their nonattainment designations will have no interruption of transportation programs and projects. [According to EPA's most recent data, about 58 areas may be designated nonattainment for the eight-hour ozone standard. This estimate could change as EPA will have 1999 data available before making the final designations.] EPA is currently working with Governors to determine what areas will be designated nonattainment for the eight-hour ozone standard. In the next few weeks, EPA should have a clearer idea about how many areas are likely to be designated nonattainment for the eight-hour standard. Of course, many of the areas that may be eight-hour nonattainment areas are already one-hour nonattainment or maintenance areas and therefore already subject to conformity requirements.

On March 28, 2000, EPA issued guidance related to the 8-hour ozone nonattainment designations. According to the schedule outlined in EPA's guidance, the earliest that nonattainment designations could become effective is early 2001. EPA has committed that in deciding when to finalize designations and make them effective, it will take into account the time needed to prepare for any applicable requirements, as well as the timing of any litigation and administrative proceedings. This will provide additional time for areas to complete the conformity analysis.

FHWA is actively encouraging State and local authorities to conduct analyses of their transportation plans and programs to demonstrate conformity prior to the effective date of the new nonattainment designations to minimize the risk of disrupting the transportation program. DOT will work with EPA to issue guidance to clarify specific conformity requirements for the 8-hour ozone nonattainment areas.

In addition, EPA proposed to reestablish the previous one-hour ozone standard, which will affect areas that violate, or once violated, that standard and have never been formally designated as attainment (maintenance) areas. EPA's October 25, 1999 proposed rulemaking would re-establish the one-hour standard in the almost 3,000 counties where it has been revoked. This means that the approximately 46 metropolitan and rural areas previously designated as nonattainment will again have to demonstrate conformity when this proposal is made final and effective.

QUESTION 19. DOT's new DBE rule requires prime contractors working on federal-aid highway projects to pay retainage to their subcontractors before they receive retainage from the states. How many of these prime contractors are small businesses? How do you expect DOT's new rule to affect those businesses? How did you decide that it would be appropriate to permit the states to hold retainage on their prime contracts but inappropriate to permit prime contractors to hold retainage on their subcontractors?

ANSWER: Long delays in the return of retainage have proven to be a significant barrier to the viability and competitiveness of DBEs and subcontractors. The provision of the DBE regulations that requires

prompt return of retainage was designed to eliminate this barrier in highway construction and other transportation-related fields. Prior to the new regulations, prime contractors commonly withheld retainage from subcontractors until all of the work on the prime contract was completed. The amount withheld could be higher or lower than any amount held by the States, and the delay in fully compensating a subcontractor could be as much as several years. By requiring the prompt return of retainage, the new provision in the regulation will enhance cash flow and reduce financing costs for these small businesses that have less readily available funds upon which to operate. Adding this provision to the new DBE regulations as a race-neutral means to encourage participation by DBEs and other small businesses is an appropriate way to deal with such barriers. The new provision also requires that payment for work on subcontracts be made promptly to all subcontractors (regardless of whether they are DBEs) upon satisfactory performance of the work under the subcontract.

The issue of whether or not prime contractors should be subject to the withholding of retainage from the States was never an issue in the rulemaking. We view this as a contractual issue between the States and the prime contractor. The rule simply addresses the adverse effect on subcontractors of lengthy delays in the return of retainage. In general, prime contractors are typically larger and more financially stable than subcontractors are, and better able to bear the loss of retainage for long periods of time. We do not have any evidence to date that suggests that this will have any significant negative impact on prime contractors. The Department has not received any suggestions from prime contractors as to alternative means to alleviate the burden on subcontractors of delays in the return of retainage.

However, there are ways that DOT recipients can ease any potential burdens of this provision on prime contractors, such as returning retainage to prime contractors on a pro-rated basis or eliminating the withholding of retainage from prime contractors. The Department has issued guidance in the form of a [Question and Answer](http://osdbuweb.dot.gov/business/dbe/dbeqna.html) posted on the DOT Web Site (<http://osdbuweb.dot.gov/business/dbe/dbeqna.html>) that identifies several suggestions for actions that recipients can take that would alleviate concerns of prime contractors regarding the new retainage provision. Some States appear to have already taken such measures: for example, at least nine States have decided to eliminate their previous practice of withholding retainage from prime contractors as a result of the new regulation.

The Department does not have any data on the number of prime contractors that are small businesses. However, all DBEs and many subcontractors are small businesses, and, in the highway construction industry, there is a greater share of firms that perform as subcontractors than those capable of performing as prime contractors. While some prime contractors in these fields may also be small businesses, prime contractors are usually better able to bear the cost of delays in payment of retainage by the State. Therefore, the Department believes that this provision will have a net benefit for small businesses.

QUESTION 20. A number of areas across the nation designated as non-attainment areas by the EPA may soon trigger immediate lapses in transportation conformity, which would effectively stop many highway projects not yet under construction. For example, as many as 15 counties in South Carolina would be immediately affected. How will the highway program be impacted when EPA designates non-attainment areas under the new, more stringent 8-hour ozone standard as required by the Clean Air Act?

ANSWER: No area is facing a conformity lapse as a result of designations for the new ozone standard. On March 28, 2000, EPA issued guidance related to the eight-hour ozone nonattainment designations. According to the schedule outlined in EPA's guidance, nonattainment designations will not be effective before early 2001, and EPA also committed that, in setting the effective date for the designations, it will take into account the time needed by areas to comply with any applicable requirements, including conformity. This will provide additional time for areas to complete the conformity analysis. As noted in the answer to question 18, FHWA is working to bring areas into compliance with the Clean Air Act conformity requirement. If local air quality and transportation officials do the coordinated planning required under the Clean Air Act, the areas will not face conformity lapses and highway projects can proceed. Should areas not be in conformity when their nonattainment designation is effective, their transportation construction programs would be limited to certain safety, maintenance, and air quality neutral projects, and projects that had already been funded for construction, until such time as their transportation plans and programs could be demonstrated to be in conformity.

Rural areas would be affected to the extent that new capacity-adding projects were due to be funded during the period before conformity is demonstrated. Safety and routine maintenance work would not be affected.

Areas that are designated nonattainment become eligible to receive funding under the Congestion Mitigation and Air Quality Improvement (CMAQ) program for projects that will reduce air pollution emissions from motor vehicle traffic in the designated area. These areas would not be in the CMAQ funding apportionment formula during their first year of eligibility, but would be able to compete against other areas for these funds. It may be necessary to redistribute the apportionments after EPA reinstates the one-hour ozone standard and makes its eight-hour ozone standard nonattainment designations.

QUESTION 21. Under TEA-21, the Revenue Aligned Budget Authority (RABA) adjusts funding levels for the Federal-aid highway and motor carrier programs to reflect increased receipts to the Highway Account of the Highway Trust Fund. However, all state-designated recipients do not receive a proportionate share of the RABA funds. What is the financial impact of the loss of RABA funding for the U.S. Territories? Should these entities also share in the RABA increases that are made available to the states?

ANSWER: Beginning in fiscal year 2000, authorizations for Federal-aid highway and highway safety construction programs funded from the highway account of the Highway Trust Fund (HTF) will be adjusted (increased or decreased) based upon changes in estimates of revenue to the highway account of the HTF, according to section 1105 of TEA-21. The funding for each allocated program, including funding for territorial highways, would be either increased or decreased depending on the change in these revenue estimates.

QUESTION 22. The President's FY2001 Budget proposes to allocate a portion of the RABA adjustment, \$741 million, to support various transportation programs such as the Expanded Intercity Rail Passenger Service program. Has the Administration developed a long-term strategy for financing a sound national system of intercity rail passenger service without relying on the use of Highway Trust Fund revenues?

ANSWER: The Amtrak Reform and Accountability Act of 1997 includes authorization for appropriations from the general fund for the benefit of Amtrak through FY 2002. The Act also establishes goals for Amtrak's improved financial performance and provides statutory changes intended to assist Amtrak in reaching those goals. Amtrak has made progress since 1990.

QUESTION 23. The President's FY2001 budget proposes an obligation limitation for the federal-aid highway program of \$29.319 billion, \$1.8 billion above last year. Have certain categorical programs such as CMAQ and enhancements programs incurred disproportionately high unobligated balances under the current limit? If so, please provide examples.

ANSWER: The core Federal-aid highway programs have not incurred high unobligated balances. For TE projects, from ISTEA (1992) through the first two years of TEA-21 (through September 30, 1999), more than 10,758 projects have been programmed for funding awards. The programmed projects represent approximately 95% of the \$3.83 billion available in TE funds. The rate of actual obligation of the programmed projects over the eight-year time frame of TE is approximately 65.5% of available funds, and for CMAQ it is 76.1%. By comparison, similar figures for the Bridge, STP and NHS programs are 85.1%, 91.9%, and 95.5%, respectively. Overall, obligation rates have been adequate for CMAQ (though lower than the other programs) and less than our 75% goal for TE. However, there appears to be no danger of lapsing funds in these two programs.

QUESTION 24. To what extent has the earmarking of projects for the discretionary programs affected the ability of FHWA to award discretionary grants to eligible recipients?

ANSWER: In general, the significant earmarking of projects under several of the discretionary programs has restricted FHWA's ability to advance the programs in a comprehensive and planned manner. Many earmarked projects are not top priorities of the State DOTs, and the earmarking forces the States to adjust their priorities. Under several programs, such as Ferry Boats and Public Lands Highways, there were many earmarked projects for which the States did not even submit applications. After the earmarking, the States must then submit an application before any funding can be allocated. This forces the State to revise their project development activities and resources to develop and advance projects that were not scheduled, in order to utilize the earmarked funding. This undermines the statewide transportation planning process through which State funding priorities are established.

FHWA has established specific selection criteria for each of these programs that are based on statutory requirements or Congressional intent for the particular programs. These criteria have been widely published so that applicants understand how candidate projects will be evaluated. States submit candidates assuming that they will be fairly evaluated along with all other candidate projects against these criteria. When programs are heavily earmarked, such as for the Transportation and Community and Systems Preservation and Borders/Corridors programs, it becomes difficult to fund projects that more clearly demonstrate the intended benefits of the programs. With such earmarking, more highly qualified projects can not be funded or can only be partially funded. As an example, the bridge discretionary program utilizes a discretionary bridge candidate rating factor, which was required by Congress in the Surface Transportation Assistance Act of 1982. This rating factor considers items such as bridge condition, project cost, traffic volume, and available funding to determine the most critical needs. The earmarking of projects bypasses this rating factor and results in funding projects that are not the most critical.

For FY 2000, nine discretionary bridge projects were earmarked in the House Conference Report. Of these, only two were determined to meet the statutory, regulatory, and administrative requirements of the program. One of the projects, the Williamston-Marietta Bridge in West Virginia

was qualified and selected for funding. However, this project was not among the more well qualified candidates that were determined through the required ranking process. The other selected earmarked project had a low ranking factor and through the required ranking process would have been considered to be a well-qualified candidate.

The demand for funding under each of these discretionary programs far exceeds the available funding. The earmarking further limits this available funding. When FHWA solicits candidate projects under these programs, the States are made aware of the available funding and submit the applications accordingly. When there is significant earmarking, the actual available funding is far less than that for which the States thought they were competing. This raises false expectations and results in many unfunded projects, and many disappointed applicants.

QUESTIONS FOR FMCSA

QUESTION 1. DOT's FY 2001 budget seeks an additional 118 employees for the new Federal Motor Carrier Safety Administration's 17 percent increase in staff. When will DOT be submitting the detailed justification for this personnel increase, which was required by the recently enacted Motor Carrier Safety bill to be submitted with the President's budget over a month ago?

ANSWER: The justification for Additional Federal Motor Carrier Administration Personnel was transmitted to the Committee on May 25, 2000. In addition, detailed information on FMCSA's request for additional personnel was submitted to Congress in the Department of Transportation's FY 2001 budget request.

QUESTION 2. Last May, the Secretary established the goal of reducing motor carrier fatalities by 50 percent in 10 years. What specific efforts has the Department taken in the first year of this 10-year effort, and when will you submit to Congress the status report on your progress in meeting your goal?

ANSWER: On May 25, 1999, the Secretary of Transportation announced an aggressive goal of reducing fatalities resulting from large truck crashes by 50 percent within ten years. With that announcement, we initiated a series of actions to improve the safety oversight of commercial motor vehicles. We set targets to double the number of compliance reviews performed by safety specialists, to increase penalties for safety violations as provided in TEA-21, and to eliminate the backlog of enforcement cases. We established a repeat violator's policy and a limitation on negotiated settlements, except in unusual circumstances. Important rulemakings to improve operating and vehicle standards have been pursued.

Our progress has been excellent. Compliance reviews for the first two quarters of FY 2000, alone, exceed the total number of reviews conducted in FY 1998. The average claim for an enforcement case settled has risen steadily to \$5,241 in the second quarter of FY 2000, from \$3,750 in FY 1998. The enforcement case backlog has been nearly eliminated and many rulemakings have been issued, including proposed changes to hours-of-service.

Above all, the preliminary estimates from the Fatality Analysis Reporting System (FARS) indicate that fatalities in crashes involving large trucks declined by 3 percent last year, down to 5,203 in 1999 from 5,374 in 1998. This is the second consecutive year in which the number of fatalities in large truck crashes has declined. The FARS, maintained by the National Highway Traffic Safety Administration (NHTSA), is a census of fatal crashes involving any motor vehicle traveling on a public highway. The system is recognized as the most reliable source of national crash data. The FARS collects fatal crash data for trucks with a gross vehicle weight rating (GVWR) of more than 10,000 pounds. The number of fatalities in large truck crashes for 1999 is only a preliminary estimate and is subject to change. The estimate is based on the first nine months of data from the system, with a statistical adjustment to account for the last three months of the year. Complete data for the 1999

FARS will be available in late summer 2000. The preliminary estimate may be revised when the final figures become available.

We believe the work of the FMCSA so far has contributed significantly to the reduction in fatalities involving large trucks. We can and will do much more to meet the 50 percent goal. Our highest priority will be to implement the provisions of the Motor Carrier Safety Improvement Act of 1999 and the remaining provisions in the Transportation Equity Act for the 21st Century. We will continue to strengthen our enforcement program, explore the safety benefits of new technology, improve our data on the causes of truck crashes, complete important rulemakings, and improve industry and public awareness of commercial motor vehicle safety issues. We will expand initiatives to develop and promote new safety technologies, the efforts of which may eventually yield the greatest overall leap forward in safety.

A report on our progress has been prepared and will be transmitted to Congress shortly.

QUESTION 3. The President's FY 2001 budget does not reflect the increase in funding for the Motor Carrier Safety Assistance Program (MCSAP) that is attributable to the Revenue Aligned Budget Authority (RABA) provision in TEA-21, even though the Motor Carrier Safety Act provides that MCSAP does receive such funding. Why is this important truck safety program not receiving RABA funds?

ANSWER: At least \$16,000,000 in RABA funds will be made available for the Motor Carrier Safety Grant Program. All MCSAP and Information Systems priorities will be evaluated to determine which components of these programs will receive increased grant funding, including: CDL improvements, Border and High Priority Initiatives, PRISM and the Crash Causation Initiative. Funding the CDL improvement initiatives has the highest priority for this additional funding.

QUESTION 4. What action have you taken to address the recent rise in diesel fuel prices in the U.S., which has particularly affected truckers?

ANSWER: The Federal Motor Carrier Safety Administration focuses on the prevention of fatalities and injuries resulting from truck and bus crashes. Other Federal agencies, such as the Department of Energy and the Federal Highway Administration, have more central roles in fuel pricing and taxation matters. The Administration's fiscal year 2001 budget contains several tax proposals designed to promote energy efficiency and thereby reduce the impact of high energy prices and decrease our dependence on imported oil. In addition, the Administration has recently proposed new tax incentives to encourage increased domestic oil and gas production over the long term.

QUESTION 5. Section 4026 of TEA 21 required DOT to assess the extent to which shippers, brokers, and others encourage carriers to violate Federal safety regulations and report back to Congress on whether we should provide authority to bring civil actions against such parties. What progress has DOT made in completing this assessment?

ANSWER: The study was completed in December 1999 and a report on the Assessment of Non-Carrier Encouraged Violations of Motor Carrier Safety Regulations is currently under review at FMCSA.

The purpose of the study was to examine the extent to which commercial shippers and others involved in interstate commerce impose time demands for the delivery of goods that may result in commercial motor vehicle operators' violations of Federal Motor Carrier Safety Regulations, including commercial driver hours of service (HOS).

A literature review was conducted, focus groups held, and a survey questionnaire developed to gather data regarding non-carrier influences on driver fatigue and HOS non-compliance, including the imposition of unrealistic delivery schedules and workplace practices (e.g., at loading docks and terminals) that contribute to driver fatigue and HOS violations. The report includes recommendations and options for further action. These options include legislative, regulatory, and non-regulatory actions, such as shipper education and encouragement of industry best practices. The agency is weighing the potential benefits, practicality, and resources required for the various options proposed.

QUESTION 6. The DOT Inspector General recently called for a greater federal inspection presence at the U.S.-Mexico border, stating that the Department's plans would only meet half of the number of inspections recommended in the IG's 1998 audit report. The IG maintains that a 126-inspector force is needed to provide at least 2 inspectors at every border crossing during all hours of operation and to provide additional inspectors at crossings experiencing higher volumes of commercial traffic. Since 39 percent of Mexican trucks inspected at the border in 1999 failed to meet U.S. safety standards, why is the Department not providing the manpower needed to properly staff the border crossings?

ANSWER: We are working with the enforcement agencies of the border states to establish a permanent and consistent enforcement presence along the border that will subject all vehicles and drivers crossing the border, Mexican and U.S., to roadside inspections. The intent in increasing the federal enforcement presence along the southern border is to augment rather than replace state enforcement efforts. Therefore, we are deploying Federal inspectors in locations where the states do not have enough resources at this time to provide coverage. We have requested additional funds for FY 2001 to increase the Federal inspection border presence to 60 inspectors, and the states are being encouraged also to hire additional inspectors using the special border enforcement grants made available under the Motor Carrier Safety Assistance Program.

To better assess the number of inspectors needed, we are working with the International Association of Chiefs of Police (IACP) and the border states to develop and implement staffing standards consistent with Section 218 of the Motor Carrier Safety Improvement Act of 1999. In arriving at a recommended enforcement presence, the legislation requires that, at a minimum, we consider the volume of traffic, hours of operation of the border facilities, types of commercial motor vehicles and cargo in the border areas, and the responsibilities of Federal and state inspectors. As part of this effort, discussions have been initiated with the United States Customs Service to obtain crossing data to determine the number of vehicles that enter the U.S. Although there are nearly 4 million crossings per year, many of the vehicles make 2-3 crossings per day. The information will enable us and the States to more effectively deploy inspectors at each port of entry.

Although much more needs to be done, the current 39 percent out-of-service rate for Mexican vehicles represents a substantial improvement from the 54 percent out-of-service rate experienced in 1995. In a large measure, this is attributable to the increased enforcement efforts of the southern border states and their commitment to improving commercial vehicle safety. States are effectively using Federal

funds to leverage additional revenues to address the need for permanent facilities along the border. California has state-of-the-art facilities at its two major commercial ports of entry. Arizona has purchased land to construct a facility at Nogales. New Mexico plans to build a facility at Santa Teresa. Texas intends to build facilities at eight key locations.

QUESTION 7. The IG has also cited the need for improvements in the commercial drivers license program. Problems include the lack of centralized data bases to record convictions and disqualifications of drivers, failure of states to use out-of-state convictions transmitted through the commercial drivers license information system (CDLIS) to disqualify drivers, failure of states to electronically transmit convictions to other licensing states, failure to pass state laws disqualifying drivers who violate out-of-service orders, and states continuing the practice of issuing probationary licenses to disqualified commercial drivers. What is your response to this latest round of concerns raised by the IG?

ANSWER: The FMCSA is initiating a notice of proposed rulemaking (NPRM) to implement provisions of the Motor Carrier Safety Improvement Act of 1999 (MCSIA), addressing these concerns. In the NPRM, which is expected to be out later this year, we would propose to require that states transmit electronically to the licensing state, conviction and/or disqualification information on drivers holding a CDL as well as those who commit traffic offenses while operating a commercial motor vehicle. Further, we would require that such information be retained on the driver's record. The NPRM would also propose to require that this information be sent to the licensing state within 10 days of the conviction or disqualification. The NPRM would propose to prohibit issuance of probationary licenses for commercial vehicle operation when an otherwise disqualifying offense is committed in other than a commercial vehicle.

The MCSIA gives FMCSA authority to withhold Motor Carrier Safety Assistance Program funding from states that have laws that are inconsistent with Federal requirements, including driver disqualification laws, or any other of the Federal CDL requirements established by the Commercial Motor Vehicle Safety Act of 1986. The FMCSA may also award emergency CDL grants to help states comply with the requirements. States that have not yet enacted laws disqualifying drivers who violate out-of-service orders are working hard to do so.

The FMCSA will soon begin an in-depth study of the issues related to state record transmission and sanctioning practices for CDL drivers license information. From this study, we will identify alternatives for correcting state practices, which are inconsistent with the Federal compliance requirements.

Finally, it should be noted that the driver record data is maintained by states. Driver convictions and disqualifications are not transmitted through CDLIS. Instead, the CDLIS is used as an identification system to point to the license issuing state because that state houses the driver's records.

QUESTION 8. Why hasn't FMCSA been able to fill major staff positions in a timely manner? Please detail the status of senior staff vacancies and provide information on when these positions are expected to be filled.

ANSWER: Section 101 (e) of the Motor Carrier Safety Improvement Act of 1999 prohibits FMCSA from increasing the number of personnel positions above the number that were transferred from FHWA.

Within this constraint, FMCSA has focused on appointments of existing senior staff to all Office Director and Division Chief positions. FMCSA's Acting Deputy Administrator and the Acting Chief Safety Officer, in the interim, direct the Administration's eight Office Directors.

FMCSA is working toward hiring as many of the 118 new positions requested in the President's FY 2001 budget as early in FY 2001 as possible. In fact, two Associate Administrator and two Office Director positions were recently advertised in anticipation of having them report for duty as close to October 1, 2000, as possible.

We are placing a priority on becoming fully staffed early in FY 2001.

QUESTION 9. Is the FMCSA conducting more compliance reviews, initiating more enforcement cases, and assessing higher enforcement penalties?

ANSWER: The FMCSA is conducting more compliance reviews, initiating more enforcement cases, and assessing higher enforcement penalties. From May 1, 1999, to March 30, 2000, the FMCSA conducted 8,803 compliance reviews. This represents a 108 percent increase over the 4,334 compliance reviews conducted during the same period the previous year. During this same time frame, we initiated 3,058 enforcement cases. This constitutes a 35 percent increase over the 2,270 enforcement cases initiated during the same period the previous year. Also, we have imposed 109 percent higher penalties, increasing the total amount claimed from \$7,661,792 to \$16,056,082.

QUESTION 10. Please summarize the data you are collecting from the states that show their progress in increasing roadside inspections. Please describe FMCSA's role in encouraging increased state roadside inspections.

ANSWER:

TOTAL INSPECTIONS BY LEVEL*						
	LEVEL 1	LEVEL 2	LEVEL 3	LEVEL 4	LEVEL 5	TOTAL INSP
1999	883,307	723,910	586,753	15,578	27,213	2,236,761
1998	901,289	664,145	543,867	9,135	26,584	2,145,020
1997	930,954	664,343	514,056	10,956	28,183	2,148,492
1996	958,174	616,045	453,631	18,626	27,190	2,073,666
1995	908,219	561,725	337,268	5,567	27,487	1,840,266
1994	1,018,583	577,480	302,195	7,051	68,926	1,974,235
1993	1,062,973	587,348	221,844	8,413	66,255	1,946,833
1992	999,556	475,490	152,331	10,870	17,421	1,655,668
1991	1,013,017	440,552	99,561	11,727	9,331	1,574,188
1990	1,187,655	296,123	73,552	10,555	33,345	1,601,230
1989	1,080,774	138,368	54,398	5,071	23,842	1,302,453

*MCSAP Quarterly Report Data

FMCSA stresses the importance of maintaining the current all-time high level of driver/vehicle inspections through such avenues as the Commercial Vehicle Safety Alliance (CVSA) and the annual MCSAP planning memo. FMCSA also emphasizes the need for an increase in motor carrier Compliance Reviews and CDL program activities. Through effective performance-based safety planning, the FMCSA believes that an appropriate mix of inspection activities, compliance reviews, traffic enforcement, data collection, and public education will lead to a reduction in accidents.

QUESTIONS FOR FTA

QUESTION 1. The Administration proposes in the FY 2001 President=s Budget to sign 15 new Full Funding Grant Agreements by the end of FY 2001 with a total capital cost of \$7.1 billion, which will exhaust the entire commitment authority under TEA 21 for New Starts projects. This means there would be no FFGAs signed during the last two years of the TEA 21 authorization. Why does FTA plan to sign so many new FFGAs in such a short timeframe? What will happen to the New Starts program during 2002 and 2003 when no new FFGAs can be signed?

ANSWER: A Full Funding Grant Agreement (FFGA) is issued when a proposed New Starts project has met all statutory requirements and is ready for a Federal funding commitment. The 15 "new" FFGAs simply represent those projects that are expected to be ready for an FFGA before the end of FY 2001; one of these, the Hudson-Bergen MOS-2 project in New Jersey, will not require New Starts funding in 2001. All have been rated as "recommended" or "highly recommended" under the new starts project evaluation criteria, and there are no outstanding issues that may impede the completion of final design or the beginning of construction. Therefore, there is no reason to delay the FFGA process.

FTA will of course continue to monitor the status and final development of these projects, and will only issue an FFGA if a project continues to meet these requirements. FTA will also continue to evaluate and rate projects for the purpose of approving project advancement into the preliminary engineering (PE) and final design (FD) stages of development, as required by TEA-21. While FTA does not anticipate entering into any new FFGAs in the next few years beyond those proposed in the FY 2001 budget, FTA intends to continue to provide technical assistance and support to all project sponsors pursuing New Starts funding so that candidate projects will be at a sufficient level of development to ensure consideration for an FFGA when additional funding becomes available.

QUESTION 2. In FY 2000, of the 39 New Starts projects ranked by FTA, 8 received Ahighly recommended@ ratings, 11 received Arecommended@ ratings, and 20 received Anot recommended@ ratings. For FY 2001, FTA has rated 9 projects Ahighly recommended,@ 23 projects Arecommended,@ and 9 projects Anot recommended.@ Why is there such a dramatic increase in the number of Arecommended@ or Ahighly recommended@ projects in one year? Is this a case of grade inflation?

ANSWER: The improvement in ratings is not a case of grade inflation. Rather, FTA believes that as its evaluation process is becoming better understood, more candidate New Starts project sponsors are heeding FTA guidance and working very hard to ensure that they are developing projects which best meet local needs *and* which perform well against the statutorily defined New Starts criteria.

QUESTION 3. If the fourteen new starts projects currently under construction and the fifteen newly proposed FFGAs were funded as planned, they would exceed the TEA 21 commitment authority for Section 5309 new starts funds. How will FTA adjust the capital cost plans for the proposed FFGAs to stay within the commitment authority? If FTA reduces Section 5309 new

starts funding for the proposed FFGAs, and the sponsors are forced to provide increased levels of State, local and/or other federal funds, how would such changes in capital funding plans affect the financial and overall ratings of these projects?

ANSWER: We intend to remain within the TEA-21 commitment authority. As noted in the *Annual Report on New Starts*, the project funding proposals represent assumptions made by project sponsors. The total amount of Federal New Starts funding is determined at the time an FFGA is issued. In many cases, it is not possible to provide the full amount desired by local project sponsors. When necessary, FTA will use the FFGA process to work with project sponsors to arrive at a mutually beneficial agreement. By coming to agreement on the final scope, schedule, and overall funding of a project, the proportion of funding from FTA's New Starts program can often be reduced without appreciable effects on the overall rating or financing plan.

QUESTION 4: The FY 2001 President's Budget proposes to reallocate \$50 million in RABA funds to the Job Access and Reverse Commute program, in violation of the terms of TEA-21. Given that the Job Access program is scheduled to receive a 33 percent increase in funding under TEA-21 from \$75 million in FY 2000 to \$100 million in FY 2001, without the RABA reallocation, what is the justification for a transfer of RABA funds?

ANSWER: FTA continues to request the fully authorized level of \$150 million for the Job Access and Reverse Commute program, because this program is a priority of the Administration and is critical to the success of Welfare Reform.

Transportation is one of the main challenges facing people making the transition from welfare to work. A mismatch exists between the location of available entry-level and service sector jobs and the residences of most welfare recipients. Two-thirds of the new jobs are in the suburbs. However, 75 percent of welfare recipients live in rural areas or central cities. Welfare reform instituted a five-year lifetime limit on receipt of Federal assistance. The transportation infrastructure necessary to help welfare recipients move from welfare to work is now a critical, time sensitive investment before recipients unable to get to work lose eligibility for Federal assistance in 2002.

QUESTION 5. In FY 1999, FTA awarded only \$71 million of the \$75 million available in the Job Access and Reverse Commute program because there was not a sufficient number of meritorious projects to award the full amount of funding. Nonetheless, the Administration has proposed to double the funding for the program in FY 2001, in part by transferring \$50 million in RABA funds in violation of TEA 21. Please explain this proposal in light of the shortfall of deserving projects in FY 1999.

ANSWER: The Administration proposes full funding for the program for the following reasons. First, the transportation gaps for welfare recipients and low-income persons are a widespread national challenge, particularly in light of work requirements and benefits time limits imposed both nationally and by the states. These transportation needs, given the national welfare-to-work mandate, deserve to be addressed forthrightly across the country, not in a few areas. Second, last year within the initial two-month solicitation period, we received approximately \$110 million dollars in requests, far more than the \$75 million available. Given the extensive collaboration required to develop an area-wide Job Access

and Reverse Commute (JARC) plan, some entities were not able to apply within the time frame allowed. Additionally, it is not surprising that some applicants who did apply were not able to fully develop the required plan or completely meet the collaborative requirements. Given the passage of one year, we would expect that those who were not ready to apply last year will be ready this year, and those whose proposals did not meet the requirements in the last round will have moved to address their deficiencies. Third, given the extensive pre-solicitation earmarking by the Congress, additional resources are needed to meet the needs of the rest of the country. These resources should be sufficient to conduct a credible national competition. Conducting a national competition with limited resources may adversely impact the demand for the program since applicants know they are competing for scarce resources.

QUESTION 6. The FY 2001 President=s Budget shows that the Job Access program has a \$61 million unobligated balance for the start of FY 2000. This means that 81% of the \$75 million available in FY 1999 was not obligated. We have heard that part of the problem has been the grantees= inability to comply with 13(c) requirements. Is this the case, and, if so, what can be done to rectify the problem?

ANSWER: Delays in achieving final grant awards are generally attributable to three factors. One, even with traditional FTA applicants serving as the lead agency, non-traditional sub-recipients have had difficulty in addressing all the standard FTA application requirements as any first-time recipient might expect. Two, some applicants had to secure or re-secure their matching funds. For example, Temporary Assistance to Needy Families (TANF) funds needed to be committed by the end of a state fiscal year, or the applicant had to start over to get funding. Three, large state-wide applications sometimes posed problems for The Department of Labor (DOL), which sought more explicit project information given the variety of projects and sub-recipients introduced into the process.

DOT and DOL have met to address these informational process problems. DOT and DOL officials have discussed how best to avoid delays and improve the processing of JARC grant applications. The following actions have been undertaken:

- _ DOT and DOL specifically developed and issued additional guidance for JARC applicants detailing the type of information needed by DOL with respect to union and project definitions. This information was posted on the welfare-to-work portion of FTA's web site. It was additionally included as an appendix to the FY 2000 JARC Federal Register Notice, also now posted on FTA's web site.
- _ The Federal Register also urged prospective Job Access applicants to engage their local unions early-on in the project development process and to include labor representatives in the Job Access planning process along with other stakeholders.
- _ FTA is purchasing a reference book that includes information on organized labor unions in various U.S. places. This reference will be made available to applicants through the FTA regional offices. Information on this resource is posted on the FTA welfare-to-work web site.

- _ FTA sent several people from the Job Access Task Force out to regional offices to assist in resolving any outstanding issues. Additionally, this was an opportunity to gain a better understanding of some of the issues/problems selected applicants faced and are facing in developing proposals and implementing projects.
- _ FTA, working with APTA, CTAA, AASHTO and other interest groups, is developing a technical assistance network to help applicants deal with FTA standard grant requirements, including labor protective arrangements administered by DOL. The system will identify experts and peers who will work with applicants who are dealing with labor protection issues.
- _ Further, FTA is planning a series of regional technical assistance workshops for applicants and grantees. Labor protective arrangements will be addressed in these workshops and best practices for how to successfully implement these arrangements.

QUESTION 7. Your testimony states that transit properties are adopting efficient and environmentally friendly bus technologies at an increasing rate. Given that the Administration has never issued regulations to implement the Clean Fuels program contained in TEA 21, is it FTA's position that this program is not needed? What is the status of the Administration's regulations?

ANSWER: The Administration supports the implementation of the Clean Fuels Formula Grant program. We have recommended its funding in all our budgets since TEA 21 was enacted. FTA has prepared a Notice of Proposed Rulemaking (NPRM) for the Clean Fuels Formula Grant Program, which is currently under departmental review. We anticipate that the NPRM will be published later this fiscal year.

QUESTION 8. TEA 21 required FTA to conduct a study to determine whether the formula for apportioning funds to urbanized areas accurately reflects transit needs. This study was due December 31, 1999. What is the status of this study, and when can the Committee expect to receive it?

ANSWER: The study has been completed and is currently under review within the Department. It should be delivered to the committee in June 2000.

QUESTION 9. In TEA 21, funds were authorized for specific bus and bus-related projects for fiscal year 1999 and 2000. Have these specific authorizations for bus and bus-related projects served as an effective means of allocating these funds?

ANSWER: FTA does not believe that earmarking is the most effective way of allocating bus funds. In our budgets, FTA has recommended that bus funds not be allocated by the Congress. Experience suggests that earmarking results in a high level of unobligated balances as many ready-to-go projects are delayed while funding for premature earmarks remains idle.

QUESTIONS FOR NHTSA

QUESTION 1. The President's FY 2001 budget proposes to fund all of the operation and research expenses for NHTSA (\$286 million) from the Highway Trust Fund, of which \$70 million would be provided from revenue aligned budget authority (RABA). This is an increase of \$126 million over FY 2000. How would these additional funds be used? How would NHTSA change its funding proposal if the additional \$70 million is not included in the budget?

ANSWER: The \$126 million increase will cover mandatory increases for salaries and benefits and other operating expenses, as well as the costs of new initiatives and expanded programs. Increases to existing programs are provided for the New Car Assessment Program, Safety Standards, Defects Investigation, Vehicle Safety Compliance, Crashworthiness, Crash Avoidance, and the National Center for Statistics and Analysis. New initiatives in the Highway Safety programs are in the areas of Target Populations, Safe/Livable Communities, Safe Mobility for Aging America, Safe Passages for Youth, and Safe Roads for America. Furthermore, the FY 2001 budget requests additional FTE's and related salaries and benefits and operating expenses to support the expanded programs and new initiatives.

If RABA funding is denied, NHTSA will have to eliminate the proposed new initiatives and program expansions. NHTSA, however, strongly encourages the support of the full amount requested for the agency in the President's Budget.

QUESTION 2. The operations and research expenses discussed in the previous question are under the jurisdiction of the Commerce Committee and are authorized out of the General Fund. Please explain why you propose to switch the fund source of these programs from the General Fund to the Highway Trust Fund.

ANSWER: Federal motor vehicle fuel taxes are the Highway Trust Fund's major source of income. Given the essential public health protections that NHTSA's motor vehicle safety program provides, the Administration strongly believes that TEA-21 guaranteed funding provisions should apply to this program as well as to NHTSA's highway safety programs. Furthermore, in the Department's view, programs that have identifiable users should be funded by user fees. Vehicles subject to our vehicle safety programs are used by everyone who travels on the highways. The fuel taxes should accordingly be used to fund these programs. In keeping with this policy, NHTSA is proposing to authorize FY 2001 appropriations for its motor vehicle safety program **B** a program that clearly benefits highway users **B** out of the Highway Trust Fund.

QUESTION 3. It has been less than two years since TEA-21 was enacted. NHTSA's FY 2001 budget proposal includes a transfer of \$70 million in RABA funds to NHTSA in violation of TEA-21, as well as funding of \$17 million over the authorized level for the Sec. 403 Highway Safety Programs. What circumstances have changed that would call for such a dramatic increase in funding over what were NHTSA's anticipated needs when TEA-21 was enacted?

ANSWER: NHTSA's programs seek to reduce the occurrence of crashes and to mitigate the consequences of crashes. There are a variety of external factors that affect the number of crashes, fatalities and injuries on the road each year. The most significant of these external factors are: the economy; the population; exposure factors such as miles driven, licensed drivers and registered vehicles; and lifestyle factors such as levels of alcohol consumption. Research indicates that these factors will contribute to the increase of crashes, injuries and fatalities in future years, climbing above the already unacceptably high current level of 40,000 annual fatalities. The \$133 million increase over fiscal year 2000 will support on-going and new initiatives that rely on non-traditional approaches to create a climate of innovation to accelerate our progress toward safe highway travel for all Americans.

Highway Trust Fund Revenues greatly exceed what was projected just two years ago when TEA-21 was enacted. These unanticipated resources provide the opportunity to support highway safety initiatives that the Administration believes in strongly. Programs critically important to help solve highway and motor vehicle safety problems such as: reducing teen motor vehicle crash injuries and deaths; determining the cause of over-representation of certain demographic groups in crashes and injuries; identifying the causes of and countermeasures to the increases in roadway deaths due to the aging population on the roadways; reducing high risk and aggressive driving; increasing our understanding of crash prevention, advanced technologies, and older driver competencies; expanding the research on human injury consequences of crashes; broadening our study of advanced occupant restraint systems; and providing consumers with information on braking system performance, rollover propensity, and head lamp effectiveness.

QUESTION 4. The FY 2001 President's Budget includes a statutory earmark of \$1 million for Native American programs. Why are you seeking legislative language requiring minimum funding for Native American programs? Don't you have the authority to spend money in this area if it's warranted without a specific legislative requirement?

ANSWER: A White House initiative proposed for FY 2001 seeks to increase substantially the funding provided for Native American programs throughout the federal government. For purposes of funding under Section 402, the Secretary of the Interior is considered to be a governor and the Native American tribes are considered political subdivisions. The Secretary receives an apportionment of funds of not less than three-quarters of one percent of the total highway safety funds authorized under the section--approximately \$1 million annually at current authorization levels. The new \$1 million initiative will supplement the Native American highway safety funds with Highway Safety programs from the Operations and Research account. Funding will be used to address the problems of impaired driving, pedestrian safety, and injury prevention. It will also encourage the use of seat belts and child safety seats. Education and outreach efforts will foster greater awareness of the dangers of driving while impaired. Bill language is included for Section 403 funds to ensure that the Native American program will receive funding as directed by the presidential initiative.

QUESTION 5. The tremendous growth in the use of wireless communication systems by motorists over the last decade has raised highway safety concerns among some groups.

However, opposing groups are concerned with new government restrictions on motorists' personal rights. What is the status of research on this issue and has the Department advocated any position?

ANSWER: Our main concern in the growth and use of wireless communication systems by motorists relates to their potential to distract drivers' attention. Since 1991, NHTSA has been researching the relationship between distractions and driving performance. Using instrumented cars, NHTSA has been studying the relative demands of different types of systems, including cell phones, navigation systems, and audio system controls. NHTSA is currently investigating the effect on driving performance of communication technologies such as telephones, computers, and tasks such as email retrieval. In addition, NHTSA is initiating three events this year that will focus on identifying additional research necessary for minimizing driver distraction when using in-vehicle technologies. These events are an Internet Forum to share research findings and public comments on the topic of the use of in-vehicle devices; a public meeting to hear about industry initiatives and comments from the public and other interested parties; and a technical workshop to develop specific research recommendations based on the information collected through the preceding events. The research recommendations are expected to help shape future research in NHTSA. The agency is building the National Advanced Driving Simulator (NADS), located at the University of Iowa, which will become operational later this year. This valuable tool will be used in conducting some of our experiments about potential distractions.

QUESTION 6. The Section 402 Highway Safety Grant Program, that was reauthorized and provided with increased funding in TEA 21, represents the foundation of the federal/state partnership in traffic safety. How does NHTSA ensure that states are spending their grant funds in the most cost-effective way possible? What type of oversight does NHTSA exert over state use of the grant funds?

ANSWER: Consistent with the performance-based management process that Congress enacted in the Government Performance and Results Act and with efforts to minimize burdens on the states under the President's regulatory reform initiative, NHTSA initiated a performance-based management process for the Section 402 program; this process became effective for all states in FY 1998, after a two-year pilot program. Each state prepares an annual Performance Plan, which describes the state's highway safety performance goals, and a Highway Safety Plan, which describes how grant funds will be used to implement programs to meet these goals. NHTSA reviews the state's highway safety program as a whole, to verify that the state has developed a goal-oriented highway safety program that has been approved by the Governor's Representative for Highway Safety, and that identifies the state's highway safety problems, establishes goals and performance measures to effect improvements in highway safety, and describes activities designed to achieve those goals. In its required Annual Report, a state must document how it has progressed in meeting its highway safety performance goals and how grant funds were used. NHTSA believes that the performance-based process, which places the states in charge of determining the best means of improving traffic safety within their borders, is an effective means of ensuring the proper identification of highway safety problems and the efficient deployment of resources to address those problems. This process increases the accountability of state and local officials since they must publicly set goals and report on progress annually. The process also provides for a joint effort by federal and state officials to develop an improvement plan if a state fails to progress toward its

goals. Currently, NHTSA regional staff are setting up initial meetings in several states to review progress and discuss strategies, program activities, and/or resource allocation needed to meet state-defined goals. States are free at any time to request assistance or advice from the agency's regional offices, which remain ready to devote available resources as needed. NHTSA's regional staff work with the states on a regular basis to provide oversight and technical assistance in implementation of the states' highway safety plan.

QUESTION 7. Section 2001 of TEA 21 changed NHTSA's mission statement to include accident prevention. What specifically has NHTSA done to redirect funds to include accident prevention, as opposed to injury reduction? Does NHTSA have specific plans or programs to reduce motorcycle accidents?

ANSWER: The overall mission of the Section 402 program has always included accident prevention. The first sentence of Section 402 reads: "Each state shall have a highway safety program approved by the Secretary, designed to reduce traffic accidents and deaths, injuries, and property damage resulting therefrom." The Section 402 program guidelines to the states on the most effective highway safety countermeasures recommend a wide range of accident prevention programs including speed control, impaired driving enforcement, traffic engineering, and driver licensing. Under the Section 402 state and community highway safety program, NHTSA provides formula grants to all states, territories, and the Indian Nations for highway safety programs. The states determine how the funds will be directed based on their highway safety problem analysis and goal setting.

The agency's motorcycle crash prevention activities focus on three areas: support to national organizations that develop and deliver rider education programs; increased motorcycle operator licensing; and reduced alcohol involvement in motorcycling. Activities addressing motorists include providing public information and education about sharing the road with motorcyclists.

NHTSA is working with partners to develop the *National Agenda for Motorcycle Safety* that will recommend efforts that will lead to reductions in motorcycle crashes. A conference held in November 1999 solicited input and feedback on the draft agenda.

Motorcyclists killed in traffic crashes continue to have higher rates of intoxication than drivers of other vehicles do. The agency is working with two states to develop, implement, and evaluate programs to reduce the incidence of impaired motorcycle riding. These programs will be community-based, elicit input from motorcyclists, and involve strong law enforcement. Additionally, NHTSA is working with law enforcement agencies nationwide to promote science-based training to detect impaired motorcyclists.

Annually, about two-thirds of fatal motorcycle crashes involve a motorcycle and another vehicle. A motorist awareness program is being developed, implemented, and evaluated for effectiveness in two sites. This program will be community-based, eliciting input from motorcyclists and targeting both motorists and motorcyclists. Also, NHTSA is partnering with the Motorcycle Safety Foundation to conduct a media campaign to educate motorists about the importance of sharing the road with motorcyclists. This effort, which began during the first week of May 2000, kicked off Motorcycle Safety Awareness Month. Campaign materials will be sent to state and local motorcycle organizations

for further distribution to reinforce the importance of sharing the road.

QUESTION 8. What specifically has NHTSA done to ensure motorcycles are included in the discussions regarding safety issues in ITS, as required by section 5203 of TEA-21? Is there any specific research being done to study the effects of various ITS technologies on motorcycles?

ANSWER: Two Intelligent Vehicle Initiative (IVI) projects under the ITS program have a bearing on motorcycle safety. One project begun in 1998 has developed sensor specifications for use in crash avoidance applications for light vehicles that will enhance the ability of drivers to detect motorcycles in mixed vehicle traffic patterns. A second project is developing crash avoidance test procedures that include motorcycles as objects to be avoided in complex test scenarios. These projects seek to reduce crashes that occur when drivers of other vehicles fail to detect motorcycles in their path.

QUESTION 9. Section 7104 of TEA 21 places lobbying restrictions on NHTSA while permitting its employees to testify before State or local legislative bodies when invited. What has been done within the agency to change your policies to comply with these restrictions? How many requests for information have come from state legislators and how many from state executive branch/agencies? How many times has a NHTSA official, including regional personnel, testified before a state legislative committee? Included in the NHTSA information packets on the .08 BAC issue were stickers and buttons that clearly show NHTSA support for state .08 BAC legislation. Can you explain how these items comply with Section 7104 and the reasoning behind including them in an education packet?

ANSWER: In January 1999, NHTSA's Office of Chief Counsel issued guidelines to all NHTSA employees regarding this new lobbying restriction. The guidelines explained that the legislative restriction prohibits Federal employees (and our representatives) from urging state or local legislators to favor or oppose specific state or local legislation pending in those jurisdictions. The guidelines indicate that the restriction does not prohibit Federal employees (and our representatives) from advocating for or against the passage of certain types of laws in general (without reference to specific pending legislation) or from providing facts, technical data or assistance (even if it relates to specific pending legislation), provided the activity does not involve advocacy for or against the legislation's passage.

With regard to testimony, the guidelines state, "Federal officials are permitted to offer written or oral testimony that advocates for or against specific pending legislation if the testimony is provided in response to an invitation from a member of the state or local legislative body or the state executive office." The guidelines also direct that invitations for testimony should be documented in writing.

The agency does not keep written records of all requests for information or technical assistance from state legislators or state executive branch agencies. However, we have records of eight separate requests for information from state legislators between June 1998 and May 2000. NHTSA officials have testified before state legislatures on 34 occasions between June 1998 and May 2000, at the request of state legislators or state executive agencies.

We developed our information kit on the .08 BAC issue as part of our response to President Clinton's March 1998 directive to work with Congress, other federal agencies, the states, and other concerned safety groups to develop a plan to promote the adoption of a .08 BAC legal limit. We had received requests from a number of safety groups for an information kit on the issue. In response to these requests, we simply assembled materials on the .08 issue that had previously been produced, prepared a table of contents for each set of materials, and designed a container to hold the materials. The materials include research reports, publications, summaries of traffic safety facts, informational brochures, and other items such as bumper stickers and buttons. None of these materials was specifically designed to urge a State or local legislator to favor or oppose the adoption of any specific legislative proposal pending before any State or local legislative body.

QUESTIONS FOR FRA

QUESTION 1. In the Administration's testimony concerning the railroad infrastructure loan program created under TEA 21, it is stated that, "We want to ensure that this program does not compete with the private credit market, and that loans are made only when private credit is not available." This provision is contrary to statutory law passed by Congress. There is no basis in the statute for FRA's "lender-of-last-resort" requirement. Our Committee's bipartisan leadership has expressed this to DOT three times in writing. Since Federal loan guarantees don't substitute federal loans for private loans, can you explain how a federal loan guarantee program "competes" with the private capital market? Can you explain why the Administration has opposed the clear bipartisan intent of the Congress? When are the final railroad infrastructure regulations coming out?

ANSWER: In completing the Final Regulation implementing the Railroad Rehabilitation and Improvement Financing (RRIF) Program, the Department of Transportation has very seriously considered the Committee's concern regarding the "lender-of-last-resort" requirement. A Federal loan guarantee can displace the finite resources of private capital markets by encouraging commercial lenders to finance small railroad projects in lieu of other meritorious projects that do not have the security of the Federal guarantee. The final RRIF rule is expected to be issued soon.

QUESTION 2. In 1993, FRA issued a report on the financing of short line railroads which concluded that banks and other financial institutions in most cases offer loans to short line railroads on short repayment terms, such as 7 to 8 years, even though the assets being financed have a productive life of 15 to 30 years. If a railroad is offered such terms, it may not be able to generate enough revenue from the rail line to pay off the loan in 7 or 8 years, but the fact that the loan is offered would make it ineligible for funding under the RRIF program, if your "lender of last resort" language is adopted. Isn't the Administration's proposal putting short line railroads in a "Catch-22" situation where they can't get acceptable private financing but are also ruled ineligible for federal financing?

ANSWER: Under the terms of the Notice of Proposed Rulemaking, determinations regarding the eligibility of a RRIF applicant would be based on the terms offered by commercial lenders. If a RRIF applicant requested long-term financing from two commercial lenders and the lenders only offered repayment terms of 7 to 8 years, the applicant could still be eligible for RRIF funding.

QUESTION 3. The Administration has requested no funds for the rail infrastructure loan program. The program permits loans to be made without any appropriation, because outside parties may furnish the security deposit for the loan. FRA's failure to issue regulations prevents loan applications from being processed. Why are those regulations not in-place and the \$1 billion of the \$3.5 billion reserved for small railroads not being put to the use as the law intended?

ANSWER: The RRIF final rule is expected to be issued soon and the statutory reservation for Class II and Class III railroads will be adhered to.

QUESTION 4. It is stated in the Administration=s written statement that AThe Federal Credit Reform Act of 1990 had significantly changed the requirements of federal credit programs and added to the complexity of establishing new ones.@ Since TEA 21 already incorporated the Federal Credit Reform Act requirements, it appears that your statement is completely irrelevant to FRA=s non-feasance. Please explain the apparent complications the Administration is experiencing in updating a program that has been administered for 22 years before TEA 21 was enacted.

ANSWER: The RRIF Program is significantly different from the former direct loan and loan guarantee programs due to the requirements of the Federal Credit Reform Act and the status of the railroad industry. The direct loan program has not been in effect since the expiration of its authorization on September 30, 1988. Of the \$580.2 million provided under the former program, \$454.6 million was approved for Class I railroads. A total of \$253.1 million in loan guarantees were approved. Of these, \$246.4 million were provided for Class I railroads. In contrast, most RRIF applicants likely will be shortline and regional railroads that generate considerably less revenue than the Class I railroads. As a result, careful consideration has been given to the development of a Credit Risk Assessment Framework to ensure compliance with the Federal Credit Reform Act.

QUESTION 5. The Administration has officially opposed the enactment of the rail infrastructure loan program. However the Administration had supportedC prior to enactmentC the much more complex and more expensive (\$10.6 billion) TIFIA program. FHWA has been able to start the TIFIA program from scratch, issue regulations, and make loans available, while FRA is still at the proposed-regulation stage on a much simpler and smaller program. Observers, including small railroads who desperately need capital, seem convinced that the Administration is deliberately harming the rail program. Please explain the source of past problems and corrective measures being taken to develop rail infrastructure loan program.

ANSWER: The TIFIA Program is being implemented by a Departmental Working Group, including key RRIF staff. To be eligible for TIFIA assistance, an applicant must provide a preliminary rating opinion letter from a nationally recognized bond rating agency. This rating is used to assess the creditworthiness of the applicant and the risk of the project. In contrast, most RRIF applicants will be small railroads that do not have bond ratings. As a result, careful consideration must be given to the development of a Credit Risk Assessment Framework that provides a proxy for bond ratings in lieu of small railroads having to pay for ratings. The issuance of a final RRIF rule has been further complicated by the statutory provision that allows the refunding of unused credit risk premiums and issues raised in response to the Notice of Proposed Rulemaking implementing the RRIF program.

QUESTION 6. In the written testimony, it is stated that combined FHWA and FRA efforts in grade-crossing safety have produced A significant results@B that is, steep declines in collisions and fatalities. These are measured from a 1993 baseline. The enactment of the rail safety

statutes in 1994 made it federal policy to blow whistles at all grade crossings. Given the empirical data that formed the basis of the statute, isn't it more reasonable to conclude that blowing the whistles is the real reason for the declines in injuries and fatalities?

ANSWER: No, only about 2-4% of crossings nationwide have been impacted by local train horn bans at one time or another, so even with major changes in horn blowing patterns, these significant results could not have occurred. (In fact, some railroads have defied local whistle bans in some locations and some bans have been repealed; but some additional bans have also been enacted.) The 1994 statute is not self-effectuating, but rather requires issuance of regulations. FRA issued a proposed rule in January of 2000, and the comment period ended on May 26, 2000. We believe that requiring use of the train horn or alternative measures that compensate for its absence can further improve railroad safety, but the percentage improvement as applied to national statistics will be relatively modest. In particular, the train horn rule will be important to avoid an erosion in safety at high-volume crossings as train and motor vehicle traffic continue to grow and communities become more sensitive to horn noise. We need to implement options that preserve safety while avoiding use of the train horn in communities sensitive to that noise source, and that is the purpose of the proposed rule.

Gains in safety during the 1990s were primarily driven by continued investments in engineering improvements (through the Section 130" portion of the safety set aside under the Surface Transportation Program and other programs), initiation of national public awareness efforts (DOT's "Always Expect a Train" and Operation Lifesaver's "Highways or Dieways"), continued grassroots education and awareness efforts, installation of "Alerting lights" on locomotives, closure of redundant and high-risk crossings, and improved law enforcement in some regions of the Nation. These efforts were promoted or executed by State, Federal and local governments, Operation Lifesaver, and the railroads. In addition to FHWA and FRA, other contributing DOT modal administrations included the National Highway Traffic Safety Administration, the Federal Transit Administration, and the Research and Special Programs Administration (through the Volpe National Transportation Systems Center). The Department established a one-DOT working group to develop guidance for state and local jurisdictions to assist in determining appropriate highway-rail grade crossing traffic control devices.

QUESTION 7. TEA 21 reauthorized the Swift Rail Development Act to provide funding for both technology development and for corridor planning and pre-construction activities. There are a number of proposed high-speed rail corridors that are ready to initiate corridor planning and pre-construction activities and that do not have a need for additional technology research. Every year the Administration requests funds only for technology development. Why is FRA not yet requesting funding for planning and pre-construction activities?

ANSWER: These activities are eligible expenses under the expanded intercity rail passenger program proposed by the Administration in the FY 2001 budget.

QUESTION 8. According to the Administration's written testimony, FRA has not requested authorized funding in TEA 21 for Amaglev® construction. Does this mean that the Administration opposes construction of a Amaglev® system?

ANSWER: The legislation requires the Secretary, after completion of preconstruction planning activities

for the seven selected projects, to select one of the projects to receive financial assistance for final design, engineering and construction activities. Until the preconstruction planning process has been completed, there is no way of knowing how much, or the timing of when the funds will be needed. Under these uncertain conditions, it would not be prudent for the Administration to request funding for construction at this time.

QUESTION 9. According to the Administration's written testimony, by 2003 FRA will narrow the field of Amaglev® projects to one. Yet the Administration's planning documents indicate that a winner will be selected no later than March 2001, and your staff has even indicated in briefings that a winner could be selected in September 2000. What is the actual date by which you plan to select a winner? Why has the schedule been moved up? Will this schedule provide you with adequate time to do a full review of all the proposals?

ANSWER: The legislation requires that a project be selected no later than 2003. However, the Final Rule for the program, published by the Administration in the Federal Register on January 14, 2000 calls for a much shorter schedule. Each of the seven competing projects are on schedule to submit a Project Description to FRA on June 30, 2000. The Project Descriptions will include: projected environmental effects, costs of construction, equipment, and operations and maintenance; estimates of ridership and revenues; an implementation schedule; operating plans; a management plan defining a public/private partnership that will plan, finance, construct and operate the project; and a financial plan. The schedule presented in the Final Rule contemplates that in September 2000 the Secretary of Transportation will select one or more of the most promising projects for additional studies. Under the final rule, if more than one is down-selected, the Secretary will select the single best project for possible construction funding in March 2001, subject to the appropriation of funds.

The March 31, 2001 date published in the Final Rule for the selection of a single project is actually eight months later than the date of July 31, 2000 that was originally established for the selection outlined in the Interim Final Rule that was published on October 13, 1999. Recognizing that several projects may appear to be equally promising based upon the Project Descriptions submitted on June 30, 2000, six months was added to the schedule before final selection of a single project to provide time for the additional studies and analysis needed to identify the best among the down-selected projects.

Under procedures established by FRA, critical elements relating to the cost, revenues, and management of each project are currently being reviewed by FRA as they are prepared for each project. Given this head start, we are confident that each of the project descriptions can be thoroughly reviewed by FRA over the three months allocated for the down-selection of one or more projects. The additional six months to discriminate among the down-selected projects should be more than sufficient to resolve any outstanding questions.

QUESTION 10. According to the Administration's written testimony, Atwenty seven Governors have written in support of funding rail passenger service at \$989 million for fiscal year 2001, which would include the \$468 million that the Administration has proposed to fund from RABA.® As part of these letters, have any of these Governors endorsed the proposal to take funds from their own highway allocations to fund Amtrak? The Association of State

Highway and Transportation Officials (AASHTO) has opposed the Administration's proposal to redirect \$468 million in RABA funds from the states to Amtrak. In its resolution, AASHTO strongly urges Congress to expend additional annual revenues to the Highway Trust Fund beyond guaranteed funding levels by aligning budget authority with revenue; and allocate them as provided under TEA 21.® [PR-1-99] Isn't it safe to say, that the state highway officials do not support the proposal to divert funding from their highway allocations to fund Amtrak?

ANSWER: The letter from the 27 Governors supported a funding level of \$989 million including \$468 million for investments to advance high-speed rail projects in intercity corridors nationwide but was silent on which federal account these funds should come from. The Administration has not taken a survey of the Governors to determine how many would support the use of RABA funds, however, at least one of the Governors has volunteered that he supported the concept. Since the Administration did not participate in the drafting of the AASHTO policy statement, we cannot interpret the intent of its authors. What is clear is that a majority of the states agree with the Administration that the federal government should play a more active role in funding high-speed rail projects.

QUESTION 11. Under the Bridge Act of 1906, any railroad seeking to use a bridge built under that Act is entitled to equal access to the bridge and its approaches. The Act also provides that, if the railroad owning the bridge and the railroad seeking to use it cannot agree on compensation to be paid, the Secretary of Transportation® shall determine the compensation after hearing both sides. On January 13, 2000, Ms. Molitoris signed an FRA order dismissing the petition of the Paducah & Louisville Railway to use a bridge covered by the 1906 act. The essence of this order is that Congress supposedly took away the DOT responsibilities under the Bridge Act by passing the ICC Termination Act in 1995. The key provision relied upon is the statement of exclusive jurisdiction by the Surface Transportation Board in 49 U.S.C. 10501(b). However, the exclusivity language has been essentially unchanged since the 1980 Staggers Act. Moreover, besides explicitly assigning Bridge Act responsibilities to DOT, the Bridge Act was last amended to give the Secretary that duty in 1983--after the Staggers Act became law. Since the federal statute requires the Secretary of Transportation to make a determination in this case, the Surface Transportation Board should not have made this decision. It appears that FRA does not wish to carry out its statutory duties under the Bridge Act. As part of the Administration's recently submitted STB reauthorization bill, was there any related amendments proposed to the Bridge Act?

ANSWER: In the Paducah & Louisville decision, the efforts of Congress, as endorsed by the courts, in achieving uniformity in non-safety rail regulation were set out. In sum, Congress has entrusted administrative jurisdiction over the economic regulation of the rail industry exclusively to the Surface Transportation Board. Therefore, it was held in the Paducah & Louisville case that DOT/FRA did not have jurisdiction under the Bridge Act to grant the relief requested by the petitioner. (Significantly, judicial review of that decision was not sought in the courts.) Moreover, since Congress has already spoken in this area, most recently in the ICC Termination Act, there was no need to propose amending the Bridge Act when the Administration's STB reauthorization was submitted.