

**NOMINATION OF HON. T.F. SCOTT DARLING III,
TO BE ADMINISTRATOR, FEDERAL MOTOR
CARRIER SAFETY ADMINISTRATION,
U.S. DEPARTMENT OF TRANSPORTATION**

HEARING

BEFORE THE

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

ONE HUNDRED FOURTEENTH CONGRESS

SECOND SESSION

JANUARY 20, 2016

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ONE HUNDRED FOURTEENTH CONGRESS

SECOND SESSION

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WEDNESDAY, JANUARY 20, 2016

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

The Committee met, pursuant to notice, at 10:31 a.m. in room SR-253, Russell Senate Office Building, Hon. Deb Fischer, presiding.

Present: Senators Fischer [presiding], Thune, Blunt, Gardner, Daines, Booker, Nelson, Klobuchar, Blumenthal, and Markey.

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

Senator FISCHER. Good morning. I want to welcome everyone to today's Senate Commerce, Science, and Transportation Committee hearing. It is an honor to chair this committee's first hearing of the new year. I would like to thank Chairman Thune and the members of the Commerce Committee for this opportunity.

The purpose of today's hearing is to consider the nomination of Mr. T.F. Scott Darling III, to serve as Administrator of the Federal Motor Carrier Safety Administration. After serving as the FMCSA's Chief Counsel for 3 years, Mr. Darling was nominated for this position by President Obama on August 5, 2015.

Mr. Darling is from Boston, where he earned his law degree from Suffolk University and worked at the Massachusetts Bay Transportation Authority.

Congress established the FMCSA in 2000. As I have stated previously, the FMCSA is an important agency within the Department of Transportation tasked with a critical mission of ensuring the safety of commercial vehicles on our Nation's highways. Unfortunately, some of FMCSA's actions over the past several years have challenged our shared goal of enhancing highway safety.

In 2014, the GAO investigated the methodology behind FMCSA's Compliance, Safety, and Accountability program. The GAO found that inaccurate CSA scores, which are publicly available online, have cost companies contracts and raised insurance rates. All of this has occurred without a clear correlation to increasing highway safety.

For example, as I previously mentioned before this committee, a bridge in Ohio collapsed onto a commercial truck in 2014. Under the CSA program, this event negatively affected the carrier's safety score. Yet it is clear that this incident was not the fault of the commercial driver.

When confronted with these findings, the FMCSA completely disregarded the GAO's recommendations. To address the flaws in CSA implementation, major stakeholders, including law enforcement agencies, requested that the FMCSA remove CSA scores from public view.

As Chairman of the Surface Transportation Subcommittee, I was pleased to play a strong role in drafting, negotiating, and supporting the final highway bill that the Senate passed in December, known as the FAST Act. I worked closely with this committee to include key reforms to the FMCSA's regulatory process in the FAST Act. These reforms ensure the agency will conduct a more robust cost-benefit analysis, review outdated guidance, and encourage more transparency and public participation in the rulemaking process. I am eager to see these reforms implemented to increase confidence in the FMCSA's rulemaking process moving forward.

In addition, the FAST Act includes a pilot program that I advocated for. This program offers our Nation's veterans the opportunity to begin a career as a professional commercial driver at an early age. I firmly believe this common sense program can help begin addressing our Nation's severe driver shortage.

At the same time, the pilot program will also provide more career opportunities for veterans who already hold a commercial driver's license as a result of their time in the military.

The highway bill also included provisions to address flaws in the CSA program. It does so by requiring the FMCSA to remove inaccurate safety scores for commercial carriers, address and certify that the program's methodology is sound, and provide carriers with options to appeal crash-related data. The CSA program reforms will help address at-fault crashes that are inaccurately assigned to carriers.

I want to commend the FMCSA for immediately taking the flawed CSA scores down from public view as soon as the President signed the FAST Act into law. Thank you.

Just this past week, the FMCSA issued a Notice of Proposed Rulemaking for its safety fitness determination rule, or the FSD rule, which will change the way carriers are rated for operating. Previously, the FMCSA divided carriers into three tiers, satisfactory, conditional, and unsatisfactory. Under the FSD rule, the FMCSA will now designate carriers as either fit or unfit to operate by utilizing inspections, crash reporting data, and investigation results. This will help increase inspections and the enforcement of safety regulations.

Some, however, have expressed concerns regarding the FMCSA's use of potentially flawed CSA data as part of the carrier safety fitness determination methodology. Certain stakeholders have argued inaccurate data could lead to rating unfit carriers as qualified to operate, or vice versa.

I look forward to hearing about how the FMCSA will address these concerns today with that FSD proposed rule.

Again, thank you, Mr. Darling, for being here today.
 And I would now like to invite Senator Booker, who is serving
 as today's Ranking Member, to offer his opening remarks.

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

Senator BOOKER. Thank you, Chairman Fischer.

As I say behind Senator Fischer's back often, she is a great Senator who stands her ground, but that does not mean that she does not work hard to find common ground. I am grateful that she is holding this important hearing and that she has found great ways for us to move things forward through this committee.

Mr. Darling, I want to congratulate you on your nomination. I just know that this is not easy. You have chosen a life of public service. You put yourself forward before your peers and before the U.S. Senate and have committed yourself to what is very hard work.

I have a focus, if not an area of serious concern, and that is trucking. Trucking I know is critical to the movement of goods and services across the country, and it is vital to our economy. Trucking supports really good jobs in my state and those of my colleagues, but we must strive to ensure that goods are moved as safely as absolutely possible.

For most truck driving companies and most truck drivers, safety is their highest priority. We have many, many good, reputable companies that focus on that and have made innovations in public safety.

That being said, truck and bus safety continues to be a very serious problem. The northeast quarter and my state of New Jersey, in particular, is home to one of the most heavily traveled stretches of highway in the country. We are the most densely populated state in America and have some of the most congested roads.

Truck safety on our roads came to national spotlight in 2014 when a high-profile collision occurred on the turnpike killing one person and severely injuring others. The truck was traveling 20 mph over the speed limit and the driver was very close to hitting his daily hours of service limit.

According to the National Transportation Safety Board, truck driver fatigue was the probable cause of the accident as the driver had been up all night driving from his Georgia residence to his Delaware workplace, a trip of about 12 hours.

This is just one example, frankly, of thousands of examples of crashes that happen every year. Annually, nearly 4,000 people are killed in truck crashes in the United States of America. Over 100,000 are injured, some of them incredibly seriously.

From 2009 to 2012, truck crashes actually increased in the United States of America by 40 percent, and truck crash fatalities increased by 16 percent. This is carnage on our highways. This is absolutely unacceptable.

This cannot simply be the cost of doing business. There are reasonable steps we can take, I believe, to immediately reverse this trend.

For example, there is no place on our roads for tired truck drivers. That is why hours of service rules to address fatigue are actu-

ally very important. After years of study and data collection, the DOT issued a rule that balanced vital safety objectives with the needs of the trucking industry. However, no sooner had the rule been implemented than an appropriations rider was added to the 2015 appropriations bill that stopped the enforcement of some of the most important safety requirements until the department completes a study.

Another rider in the 2016 Omnibus bill further limited the Department of Transportation from implementing its hours of service rule.

I, obviously, fought hard to stop those provisions and believe it is critical that the department complete its study—I will say that again—completes its study quickly so that the rule can be fully enforced.

Another important issue is making sure that there is sufficient insurance coverage for trucks so victims and local taxpayers are not left to foot the bill when these accidents occur. I have met with families who suffered as a result of there not being enough insurance when it comes to covering all of the costs and burdens that a family has to bear from an accident that was no fault of their own.

When a catastrophic crash occurs, the cost of the crash can far exceed minimum levels of insurance.

In a 2014 report to Congress, FMCSA stated that the levels needed to be reevaluated. We must do that.

I want to thank, again, Chairman Fischer for calling this hearing. And I look forward to hearing from you, Mr. Darling, about how we can address these issues. Thank you.

Senator FISCHER. Thank you, Senator Booker.

I would now like to recognize Senator Markey to introduce our nominee today. Thank you.

**STATEMENT OF HON. ED MARKEY,
U.S. SENATOR FROM MASSACHUSETTS**

Senator MARKEY. Thank you, Madam Chair. Thank you for having this hearing. We appreciate what Senator Booker and you are doing here in filling this very important position in our government and for giving me the opportunity to introduce our witnesses from Boston, Massachusetts.

He is a proud Massachusetts native. He very much knows that the Patriots are going to beat Denver on Sunday.

[Laughter.]

Senator MARKEY. And that is because he grew up in Chelsea and Dorchester, went to West Wood High School, got his bachelor's from Clark, got his law degree from Suffolk, got his master's in public administration from Tufts. He is Boston and Massachusetts to the core.

But he selected planning as his life's work, and he has been doing that all the way back to these battles that we had in Massachusetts in the early 1970s where there were plans for highways to go through just about every single neighborhood that we have in Boston and the adjoining suburbs. Mr. Darling was part of the effort to make sure we rethought what we were doing to our city. What we have today in Boston is this beautiful place, and we

changed course. Mr. Darling was a big part of that, ensuring that we have a cleaner environment, ensuring that we have better public transportation planning for Greater Boston.

Then he came down to Washington to work at the Federal Motor Carrier Safety Administration, first as its Chief Counsel and then as its Acting Administrator.

So Administrator Darling is Boston, but he is also transportation. If you Google that word, his picture comes up. He has dedicated his life, more than 40 years, to working on these issues. And it is my pleasure to introduce to the Committee with my highest recommendation Mr. Darling and hope that he is confirmed with a unanimous vote out of this committee.

Welcome, Mr. Darling.

Senator FISCHER. Thank you, Senator Markey.

With that, I would ask the Ranking Member of the Committee if he has comments before we start your testimony.

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

Senator NELSON. Thank you, Madam Chairman.

Just to echo Senator Booker's comments and to say that we want you to get on and get completed with this study, so that the excessive number of hours in an industry that is vital to our economy will help improve the safety.

Thank you.

Senator FISCHER. Thank you, Senator Nelson.

Welcome, Mr. Darling. With that, we will start your testimony before this committee.

**STATEMENT OF HON. T.F. SCOTT DARLING III, ACTING
ADMINISTRATOR, FEDERAL MOTOR CARRIER SAFETY
ADMINISTRATION, U.S. DEPARTMENT OF TRANSPORTATION**

Mr. DARLING. Thank you, Chairman Fischer. Good morning, Chairman Fischer and Ranking Member Booker, and members of the Committee. I also thank Senator Markey for introducing me.

It is an honor to be here as the nominee for the Administrator of the Federal Motor Carrier Safety Administration. I would like to thank President Obama for nominating me and Secretary Foxx for supporting me. I thank the Committee for its leadership on transportation issues facing FMCSA and the Nation.

Additionally, I thank my wife for her love and support.

I was born in Chelsea, Massachusetts, and raised in Boston by my parents, Tommy and Sandy Darling. I miss them every day. I am certain that they would be beside themselves with joy to be here today.

I have devoted my career to public service and transportation. Since beginning at FMCSA as Chief Counsel, I have been inspired by the 1,100 people at the agency and their devotion to our safety mission to save lives by preventing accidents involving large trucks and buses. It is not easy work.

FMCSA oversees 4 million active commercial driver's license holders, 12,000 bus companies, and 500,000 trucking companies. Since FMCSA was established 15 years ago, the numbers of lives lost in commercial motor vehicle-related crashes has decreased 26

percent. That is progress, but still more than 4,000 people die each year in large truck and bus crashes. This is far too many, and we are always looking to drive that number to zero.

We also know that safe trucking moves our economy, and safe bus operations move our people. We strive to work smarter and more efficiently without losing sight of our principles.

FMCSA works to ensure that carriers and drivers entering the industry meet stringent safety requirements. We then require them to maintain high safety standards in their daily operations. We focus our resources on identifying high-risk carriers and drivers, and help them to improve or remove them from the road. We cannot do this alone.

I have seen firsthand the impact of partnerships. Our grants program, for example, funds almost 14,000 state inspectors. They conduct about 3.5 million roadside inspections each year.

We perform at our best when we are working with our stakeholders. They are truly our force-multiplier.

If confirmed, I will lead an effort this year to broaden and strengthen our partnerships that build on our achievements.

Last year, we conducted a negotiated rulemaking with our stakeholders on entry-level driver training. Together, we reached consensus on standards to make sure entry-level commercial drivers get the training they need before getting behind the wheel of a truck or bus.

Last month, we published the final rule on electronic logging devices. It promises to save \$1 billion per year in paperwork costs and improve hours of service compliance.

Also last year, we launched our Unified Registration System that featured an online smart form. URS will also be an effective tool to detect unsafe carriers from the vast majority of those who operate safely.

This week, we announced a proposed safety fitness determination rule that will more quickly identify high-risk carriers.

If confirmed, I look forward to leading FMCSA's work on its busy agenda to advanced highway safety.

We are working quickly to implement the FAST Act. Within minutes of its passage, we made the changes to the CSA public website. We also adjusted our grant allocation formula and reestablished full funding to two states. We are now working to develop new programs and procedures, create working groups, and conduct research.

For example, we are streamlining our grants program to give states increased flexibility, engaging our stakeholders on an incentive program for carriers to adopt cutting-edge safety technologies and practices, and working with the National Academies of Science to study our Compliance Safety Accountability program.

We are also embarking on opportunities for our veterans to embark on new careers in transportation. This is special to me because both of my parents served in the military. Our waiver program for veterans to obtain commercial driver's licenses is now FMCSA's way of thanking those who served, and in a small way, for me to pay tribute for what military service did for my family.

Ten thousand veterans already utilize our waiver program, and that number continues to grow.

Thank you to this committee for giving me this opportunity to be here. I look forward to answering any questions.

[The prepared statement and biographical information of Mr. Darling follow:]

PREPARED STATEMENT OF HON. T.F. SCOTT DARLING III, ACTING ADMINISTRATOR,
FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION

Chairman Thune, Ranking Member Nelson, and Members of the Committee, it is an honor to appear before you as the nominee for Administrator of the Federal Motor Carrier Safety Administration (FMCSA). I would like to thank President Obama for selecting me and Secretary Foxx for supporting me.

I'd also like to thank the Committee for its leadership on transportation issues facing FMCSA and the Nation.

I would also like to thank my wife, Alyson. Without her support, I would not be sitting here today. My wife comes from a long line of hardy Nebraskans and proud Cornhuskers. Her father was a graduate of the University of Nebraska, Lincoln and its law school.

I was born in Chelsea, Massachusetts and raised in Boston. I have devoted my career to public service, and transportation is my passion. Since beginning at FMCSA in 2012 as Chief Counsel and now as Acting Administrator, I have seen over and over again the impact that our 1,100 person Agency has on the safety of the traveling public.

I am humbled by their devotion to our safety mission, and the incredible efforts of everyone in the Agency to advance highway safety.

It is not easy work.

FMCSA oversees over 4 million active commercial drivers' license holders, more than 12,000 bus companies and 500,000 motor carriers, including trucking companies, household goods movers, and hazardous materials carriers.

Since FMCSA was established 15 years ago, the number of lives lost in commercial motor vehicle-related crashes has decreased 26 percent. These numbers represent progress, but the sad fact remains that more than 4,000 people die each year in crashes with large truck and buses.

This is too many, and we at FMCSA are always looking for new and innovative ways to drive this number toward zero.

We also know that safe trucking moves our economy and safe bus operations move our people. As the economy grows, so too does the number of carriers, drivers, and vehicle miles traveled.

As our just-in-time economy continues to pick up speed, we strive to work smarter and more efficiently without ever losing sight of our core principles.

FMCSA ensures those entering the industry meet stringent safety requirements. We require carriers to maintain high safety standards in their daily operations. We focus our enforcement and investigative resources on identifying high-risk carriers and either help them improve their performance or remove them from the road.

We also know we cannot do it alone.

I've seen firsthand the immediate impact of working closely with partners. Our grant programs, for example, fund almost 14,000 Federal and State inspectors to conduct about 3.5 million roadside inspections every year to ensure commercial motor vehicle (CMV) drivers and their vehicles are in compliance with safety regulations.

We do our best when we are working together with our stakeholders in law enforcement, state and local governments, the safety advocacy community, labor, and industry. They are truly our force multipliers.

If confirmed, I will lead FMCSA in broadening and strengthening our partnerships with stakeholders to build on our 2015 achievements.

Last year we worked with a diverse set of stakeholders to make sure that entry-level commercial drivers will have the skills they need before getting behind the wheel of an 80 thousand pound truck. It paid off: the negotiated rulemaking committee we assembled reached a consensus on both commercial driver's license (CDL) training standards and minimum qualifications for training schools.

Last month, we published the Final Rule on Electronic Logging Devices, which promises two major benefits. First, replacing paper logbooks will dramatically reduce paperwork, saving an estimated \$1 billion per year. More importantly, the use of electronic logbooks will improve compliance with hours of service rules and prevent an estimated 562 injuries and 26 deaths per year.

Also last month, we launched our Unified Registration System to make it easier for first time motor carriers and other applicants to register with us. We have con-

solidated “legacy” registration forms into a simpler, online “smart form.” When fully implemented, the system also will help us more readily detect unsafe carriers seeking to evade enforcement.

If confirmed, I look forward to leading FMCSA as its Administrator as we continue our work on a busy agenda this year.

We recently announced proposed Safety Fitness Determination rule that will help us more quickly identify the high-risk carriers from the vast majority that operate safely.

We got to work immediately on implementing the Fixing America’s Surface Transportation (FAST) Act. Within minutes of its passage on December 4, we made changes to the public website of our Compliance, Safety, Accountability program, or CSA. We also adjusted our grant allocation formula and moved quickly to re-establish full funding to two states.

We are now working to put in place dozens of FAST Act provisions to establish new programs and procedures, create working groups, and conduct research.

For example, we will streamline our grant programs to give States increased flexibility to tailor funding to conditions on the ground. We are taking comments from stakeholders and the public on an incentive program to encourage carriers to adopt cutting edge safety technology and practices. And the National Academy of Sciences study on the effectiveness of our CSA program is scheduled to begin next month.

We are also doing our part to help our veterans. The FAST Act tasks us with a series of steps to help veterans transition to careers in transportation. The Act’s provisions nicely complement our Military Skills Test Waiver Program that makes it easier for those who drove heavy military vehicles in the service of our armed forces to obtain civilian CDLs. The waiver program has already helped more than 10,000 veterans, and that number continues to grow.

Thank you for giving me the opportunity to testify today.
I look forward to answering your questions.

A. BIOGRAPHICAL INFORMATION

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

Thomas Frederick Scott Darling III
Other: T.F. Scott Darling III
Nickname: Scott

2. Position to which nominated: Administrator, Federal Motor Carrier Safety Administration (FMCSA), U.S. Department of Transportation (USDOT).

3. Date of Nomination: August 5, 2015.

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

Residence: Information not released to the public.
Office: 1200 New Jersey Avenue, SE West Building, 6th Floor, Washington, DC 20590.

5. Date and Place of Birth: October 7, 1962; Chelsea, Massachusetts.

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

Spouse: Alyson T. Cooke, retired.

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

Master of Public Policy, Tufts University (2008–2010)
Juris Doctorate, Suffolk University Law School (1989–1991)
Bachelor of Arts, Clark University (1980–1984)

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

Management/Related positions italicized below:

Federal Motor Carrier Safety Administration, Washington, DC
Chief Counsel (09/2012 to present).
Acting Administrator (08/2014–03/2015).

Massachusetts Bay Transportation Authority (MBTA), Boston, MA.
Deputy Chief of Staff/Assistant General Counsel (12/2008–09/2012).

Environmental and Land Use Counsel/Privacy Administrator (05/2005–12/2008).

Conservation Law Foundation/CLF Ventures (6/1999–5/2005), Boston, MA.

Director of Greater Boston Institute (06/2003–05/2005).

Staff Attorney/Community Organizer (06/1999–09/2001 full time and 9/2001–6/2003 part-time).

Freedom House, Roxbury, MA.

Executive Director (09/2001–06/2003 part-time)

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

10. List any advisory, consultative, honorary, or other part-time service or positions with Federal, State, or local governments, other than those listed above, within the last ten years.

I was appointed by the Mayor of Somerville, Massachusetts, to the Zoning Board of Appeals for the City of Somerville and served from 2005 to 2012.

I was appointed by the Mayor of Boston, Massachusetts, to the Board of Examiners for the City of Boston and served from 1994 to 2012.

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

Treasurer, Board of Trustees, Smith Academy for Leadership Public Charter School (2002–2011).

Co-Founder, Benjamin Banneker Public Charter School (1994–2011).

Chairperson and Treasurer, Benjamin Banneker Public Charter School (2003–2009).

Chair, Executive Committee, WGBH Community Advisory Board (2007–2008).
Member, Board of Directors, W. M. Trotter Institute/University of Massachusetts-Boston (2006–2008).

Member, Board of Directors, Charles River Watershed Association (2005–2011).

Member, Board of Directors, St. James Educational Center (2004–2007).

Member, Board of Directors, Freedom House, Inc. (2002–2005).

Chair, Quincy-Geneva Housing Corporation/New Visions Community Development Corporation (2002–2004).

Member, Board of Trustees, Greeley Foundation (2001–2004)

Vice-Chair, Quincy-Geneva Housing Corporation/New Visions Community Development Corporation (2001–2002).

Member, Board of Directors, Grove Hall Main Street Program (2001–2002).

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

Member, The Potomac Coalition, Washington, D.C. (2000–2012).

Member, American Institute of Certified Planners (2005–2009).

Member, Massachusetts Bar (1991 to present).

Member, District of Columbia Bar (1993 to present).

Member, United States Supreme Court Bar (2013 to present).

13. Have you ever been a candidate for and/or held a public office (elected, non-elected, or appointed)? If so, indicate whether any campaign has any outstanding debt, the amount, and whether you are personally liable for that debt.

In November 2008 and 2010, I was elected to the Ward 6 Democratic Committee in Somerville, Massachusetts. I neither have any outstanding campaign debt, nor have I been personally liable for any campaign debt.

I was appointed by the Mayor of Somerville, Massachusetts, to the Zoning Board of Appeals for the City of Somerville and served from 2005 to 2012.

I was appointed by the Mayor of Boston, Massachusetts, to the Board of Examiners for the City of Boston and served from 1994 to 2012.

14. Itemize all political contributions to any individual, campaign organization, political party, political action committee, or similar entity of \$500 or more for the

past ten years. Also list all offices you have held with, and services rendered to, a state or national political party or election committee during the same period.

Offices Held: In November 2008 and 2010, I was elected to the Ward 6 Democratic Committee in Somerville, Massachusetts.

15. List all scholarships, fellowships, honorary degrees, honorary society memberships, military medals, and any other special recognition for outstanding service or achievements.

Recipient, Commonwealth of Massachusetts' Citation for Outstanding Performance (2008).

Recipient, American Jurisprudence Award, Suffolk University Law School (1991).

Recipient, Paul A. Gargano Scholarship, Suffolk University Law School (1990–1991).

Recipient, Community Fellows Grant, Tufts University (2008–2010).

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

Publications

"We've Got an App for That! Putting a Powerful Tool in Hands of Truck and Bus Inspectors"; U.S. DOT Fast Lane Blog; March 17, 2015.

"Truck Driving and Inspectors Championships Shine Spotlight on Safety Skills"; U.S. DOT Fast Lane Blog; August 28, 2015.

Speeches

Morning Session Address—Regulatory Update. 2015 Commercial Vehicle Safety Alliance (CVSA) Annual Conference & Exhibition in Boise, Idaho; September 14, 2015.

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

March 25, 2015: I testified orally and in writing before the United House of Representatives Committee on Appropriations Subcommittee on Transportation, Housing and Urban Development, and Related Agencies for the *"Budget Hearing—Federal Railroad Administration, Pipeline and Hazardous Materials Safety Administration and Federal Motor Carrier Safety Administration."*

March 4, 2015: I testified orally and in writing before the United States Senate Commerce Subcommittee on Surface Transportation and Merchant Marine Infrastructure, Safety, and Security hearing on *"Surface Transportation Reauthorization—Oversight and Reform of the Federal Motor Carrier Safety Administration."*

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

I have spent most of my career in public service. I have been a State and Federal government official, a staff attorney, an advocate, and the executive director of a community service/civil rights organization. These experiences have all involved complex and multifaceted issues, diverse stakeholders, and extensive public engagement. Currently, I am the Chief Counsel of the Federal Motor Carrier Safety Administration (FMCSA). I served as Acting Administrator of FMCSA from August 2014 until March 2015. Since September 2012, I have held leadership positions within FMCSA, including Chief Counsel and Acting Associate Administrator for Administration.

Prior to my almost three years at FMCSA, I was the Deputy Chief of Staff/Assistant General Counsel of the Massachusetts Bay Transportation Authority (MBTA). I assisted the General Manager in the safe and efficient operations of the fourth largest rapid transit system in the country. Primary responsibilities included overseeing MBTA transit safety, operations, engineering and maintenance, and design and construction departments. The MBTA has extensive land holdings at and around transit stations, and I was responsible for oversight of the real estate, environmental affairs, and planning departments. Concurrently, as Assistant General Counsel, I provided legal advice to the General Manager, General Counsel, and

MBTA operating departments on legal (contracts/environmental/labor relations) matters. I coordinated compliance with Federal grants and managed several American Recovery and Reinvestment Act (ARRA) projects.

As the MBTA Environmental and Land Use Counsel/Privacy Administrator, I developed and implemented the Authority's environmental management system, initiated and managed litigation, and represented the MBTA on litigation matters with the U.S. Department of Justice and Massachusetts Attorney General's Office. Successful actions included \$6 million in environmental cost recoveries from railroad companies and litigation against a group that hacked into the "Charlie Ticket" portion of the MBTA's automated fare collection system.

As the Conservation Law Foundation/CLF Ventures' Director of the Greater Boston Institute, I formulated and shaped community planning and outreach strategies with multiple stakeholders on transportation, housing, and public space issues. I managed several projects, including the Community Preservation Act Campaign for Housing and Historic Preservation, the Campaign against an MBTA Fare Hike, and served as the initial chairman of the Transit Rider Oversight Committee. I united diverse communities and interests strengthening our advocacy with local, State, and Federal agencies, boards, and departments.

My past community involvements include being the part-time Executive Director of Freedom House (one of Boston's oldest human services/civil rights organizations) and a co-founder of the Benjamin Banneker Charter Public School in Cambridge, Massachusetts, and the Smith Leadership Charter Public School (renamed—Helen Y. Davis Leadership Academy Charter Public School.)

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

The overarching responsibility for anyone entrusted to lead FMCSA is improving motor carrier safety. I have been managing FMCSA for a year, including as the Acting Administrator from August 2014 until March 2015, and I am the agency's chief lawyer.

We at FMCSA must ensure that those entering the motor carrier industry (*i.e.*, carriers and drivers) are fit to provide a sufficient level of safety and are not a danger to the travelling public or themselves. This takes many forms, from effective management of the leadership of FMCSA Program offices in DOT headquarters, to ensuring all personnel have the tools and support to perform their jobs. Everyone must understand and uniformly apply the Agency's policies and guidance emanating from Washington.

In my experience running large and complex organizations, whether FMCSA or the MBTA, you ensure everything being done within the agency furthers the safety mission; this includes fiscal responsibility with taxpayers' money. We need to efficiently and effectively manage our budget. We must tirelessly pursue our safety mission, by using data that allows the agency to take appropriate action against high-risk carriers and conducting studies and initiatives to support rulemaking efforts. If confirmed as Administrator, I will ensure congressional mandates are fulfilled in a transparent way that allow Congress, the motor carrier industry, safety advocates, law enforcement personnel, and the general public to know what we are doing.

If confirmed, I will continue outreach efforts that allow industry, advocacy groups, and the public to contribute meaningfully to our safety mission and enforcement efforts. I will do my utmost to ensure that FMCSA proposes and implements rule-making and other initiatives that are comprehensive, based on provable data, and are cost effective and minimally intrusive. I will continue to work collaboratively with the highly competent and motivated FMCSA career executives to find savings and efficiency within the agency. We will continue to offer regular and casual users of motor carriers the best information and guidance possible.

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

The size and complexity of the motor carrier industry means FMCSA focuses on core initiatives while concurrently working with industry, safety advocates, and our state partners. All of our work based on data collection, sound research principles, and practical application will contribute to greater overall motor carrier safety.

I see the first of FMCSA's "top three" initiatives as increasing truck and bus safety, period. As the economy improves, more goods are being produced and people are again planning or taking trips. More goods are moved by truck than any other mode. Travel by bus is also up as a cost effective option, whether intercity travel on an array of carriers or rentals by organizations, schools, and religious and affinity groups. The downside is an increase in crashes and fatalities. While lower than 15 years ago, that increase is still unacceptable.

We are leveraging technology to bring crashes and fatalities down. The Electronic Logging Device (ELD) final rule will require ELD use for more accurate, real-time, driver information. This rule is generally supported by industry and will allow a driver, a company, and law enforcement to see standardized data based on actual vehicle activity and duty status. We are working with our state safety partners, for example, through the Motor Carrier Safety Assistance Program (MSCAP). MSCAP provides States with financial assistance to support safety programs and encourage adoption and uniform enforcement of commercial motor vehicle (CMV) safety rules. The New Entrant Safety Assurance Program requires that before a Canadian or American company begins CMV operations they register with FMCSA, meet a number of pre-operational requirements, and are subject to a safety audit within 12 months and a monitoring of its operations for 18 months. Mexican CMVs are also subject to rigorous inspection including safety audits and border inspections.

The second key initiative is improving FMCSA's Compliance, Safety, and Accountability (CSA) program. CSA is the cornerstone of FMCSA's oversight program to improve truck and bus safety, and helps target limited resources towards identifying and stopping the highest risk carriers operating on our Nation's roads.

For example, to determine if a motor carrier is fit to operate its commercial motor vehicles, FMCSA currently conducts a safety fitness determination (SFD) visit at the company's principal place of business. Then, via notice-and-comment rule-making, the Agency will propose updating its SFD methodology to change the Federal Motor Carrier Safety Regulations (FMCSRs) by adding decision criteria based on a carrier's on-road performance in relation to the five Behavioral Analysis and Safety Improvement Categories (BASICS), using either an investigation or a combination of on-road safety data and investigation information. Given the size of our Federal workforce and the limited resources of our State enforcement partners, it is imperative that we maximize the effectiveness of our enforcement program through an improved SFD process.

The third key initiative is to improve the accuracy and collection of data critical to informing rulemakings, programs, and enforcement actions. Agency actions must connect to what's happening in the motor carrier industry and on roads and highways. Our actions must be based on data and accepted analytical practices. Robust data collection enables greater attention to high risk carriers and helps to reduce large truck and bus crashes, injuries, and fatalities. Collected data on motor carriers is not only of interest to FMCSA—agency websites received 70 million hits last year—but also truck and bus operators and the general public. The general public wants to know if a bus is safe or if a moving company has been fined or suspended as demonstrated by the positive response to our "Look Before You Book" and "Protect Your Move" campaigns. As an agency we see data and its uses quantitatively and qualitatively.

B. POTENTIAL CONFLICTS OF INTEREST

1. Describe all financial arrangements, deferred compensation agreements, and other continuing dealings with business associates, clients, or customers. Please include information related to retirement accounts. None.

2. Do you have any commitments or agreements, formal or informal, to maintain employment, affiliation, or practice with any business, association or other organization during your appointment? If so, please explain. None.

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

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

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

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

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

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

During my time at the Department of Transportation, I have testified before Congress on Federal budget and public policy matters concerning the debate over surface reauthorization and the need for a long-term transportation bill, such as the GROW AMERICA Act.

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

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

C. LEGAL MATTERS

1. Have you ever been disciplined or cited for a breach of ethics, professional misconduct, or retaliation by, or been the subject of a complaint to, any court, administrative agency, the Office of Special Counsel, professional association, disciplinary committee, or other professional group? If yes:

- a. Provide the name of agency, association, committee, or group;
- b. Provide the date the citation, disciplinary action, complaint, or personnel action was issued or initiated;
- c. Describe the citation, disciplinary action, complaint, or personnel action;
- d. Provide the results of the citation, disciplinary action, complaint, or personnel action.

No.

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

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

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

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

6. Please advise the Committee of any additional information, favorable or unfavorable, which you feel should be disclosed in connection with your nomination. None.

D. RELATIONSHIP WITH COMMITTEE

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

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

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

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

RESUMÉ OF THOMAS F. SCOTT DARLING III

Professional Experience

U.S. Department of Transportation—Federal Motor Carrier Safety Administration, Washington, D.C.

—Chief Counsel, 2012–Present

Oversee legal services and provide legal policy and direction to all FMCSA Headquarters and field offices concerning all aspects of the programs, functions, or activities for which FMCSA is responsible, including, but not limited to:

- In consultation with the Deputy Chief Counsel, advise the Administrator on legal and public policy matters;
- Through the General Law Division (MC-CCG), oversee legal matters including Agency acquisitions activities; Agency personnel and employment, civil rights, and ethics issues;
- Through the Enforcement and Litigation Division (MC-CCE), provide interpretation, administration, and enforcement of the motor carrier safety and hazardous materials regulations, including the prosecution and adjudication of violators;
- Through the Regulatory Division (MC-CCR), provide guidance on the legal sufficiency of existing and proposed Federal Motor Carrier Safety Regulations;
- Serve as legal advisor to the Chief Safety Officer/Assistant Administrator on adjudicatory matters; and
- Served an 8-month detail as Associate Administrator for Administration that included overseeing the following offices: Office of Acquisitions, Office of Human Resources, Office of Emergency Preparedness and Security, Office of Management Services, and the National Training Center.

—*Acting Administrator, 2014–2015*

Represented the Department and advised the Secretary on all matters relating to the safe operation of commercial motor vehicles and commercial passenger vehicles, the movement of hazardous materials, and the coordination of the movement and safety of commercial motor and passenger vehicles with other modes of transportation.

- Determined and established FMCSA program policies, objectives, and priorities, and evaluated accomplishment of FMCSA missions;
- Exercised overall direction, control and evaluation of Headquarters and field organizations, program activities and performance; and
- Directed the development of and approved broad legislative, budgetary, fiscal, and program proposals and plans.

Massachusetts Bay Transportation Authority (MBTA), Boston, MA

—*Deputy Chief of Staff/Assistant General Counsel, 2008–2012*

Assisted the General Manager with the implementation and management of Capital and Operating programs, policies, and initiatives. Served in this capacity for four different General Managers.

- Oversaw activities associated with the Safety, Operations, Material (Procurement), Engineering & Maintenance, and Development (Real Estate, Environmental, Planning, and Environmental), and Design and Construction Departments.
- Reviewed and evaluated legal and labor relations issues and matters on behalf of the General Manager
- Coordinated American Recovery and Reinvestment Act (ARRA) Projects

—*Environmental and Land Use Counsel/Privacy Administrator, 2005–2008*

Provided legal advice to the General Manager and the General Counsel and various MBTA operating departments on environmental and privacy issues.

- Developed and implemented the Authority's Environmental Management System
- Initiated and managed litigation of environmental cost recovery matters against major railroad companies that netted \$6 million for the Authority
- Represented the Authority in various litigation matters with the Massachusetts Attorney General's Office and the U.S. Department of Justice
- Initiated and managed litigation against a group that hacked into the CharlieCard, the Authority's automated fare collection system
- Received Commonwealth of Massachusetts' Citation for Outstanding Performance in 2008

Conservation Law Foundation/CLF Ventures, Boston, MA

—*Director of Greater Boston Institute, 2003–2005*

Provided strategic planning and initiative thinking to help formulate and shape CLF's community planning and outreach agenda on transportation, housing, and public spaces.

- Managed the Community Preservation Act Campaign for Housing, Open Space, and Historic Preservation
- Oversaw the Campaign Against an MBTA Fare Hike and served as the initial Chairman of the [Public Transit] Rider Oversight Committee
- Participated in various national and regional conferences and convenes on Smart Growth
- Represented the various community group, professional associations, and not-for-profit organizations against local, State, and Federal agencies, boards, and departments

Qualifications

- Admitted to practice law in the following courts:
 - Massachusetts
 - District of Columbia
 - United States Supreme Court
 - Federal District Court of Massachusetts
 - U.S. Court of Appeals for the First Circuit
- Notary Public (Massachusetts)
- Registered Real Estate Broker (Massachusetts) (expired)
- American Institute of Certified Planners (expired)

Education

- *Juris Doctor*, Suffolk University Law School, Boston, MA
 - American Jurisprudence Award Recipient; Paul A. Gargano Scholarship
- *Master of Public Policy*, Tufts University, Medford, MA
 - Community Fellowship Grant
- *Bachelor of Arts*, Clark University, Worcester, MA
 - Major—Government
 - Minor—Geography/Theatre Arts
- *Certificates*:
 - *International Comparative Law*, USD Graduate Program, Trinity College, Dublin, Ireland
 - *LeadBoston Program*, National Conference for Communities and Justice
 - *Emerging Leaders Program*, UMass/Boston, Center for Collaborative Leadership
 - *Future Leaders Program*, Greater Boston Chamber of Commerce

Senator FISCHER. Thank you, Mr. Darling. I will begin the first round of questioning.

As you know, sir, we worked very hard here in the Senate and in Congress to pass a bipartisan highway bill, the FAST Act. In that bill, there are a number of regulatory reforms. Could you update the Committee on the status of the FMCSA's implementation of some of those reforms?

Mr. DARLING. As I mentioned in my opening statement, within hours of the FAST Act being enacted, we took down the CSA scores, the alerts, and the percentiles. We did that right away. We are now currently working with the National Academies of Science to make sure that they can conduct a thorough study of our CSA program.

In addition to that, we are working to put workgroups together, one on the military pilot program for under 21-year-old drivers. In addition to that, we are looking at all of our rulemakings to make sure that we are getting the highest benefit from rulemakings and

doing those first. We are also setting up a Web page to address petitions that we get for rulemakings and making sure that we can very quickly respond to those petitions in the most efficient manner. I can keep talking.

Senator FISCHER. I guess we put a lot of reforms in there for you to work on, so I am happy to see that we are already seeing some progress. I would ask you about a couple of them.

On the new procedures for the guidance documents, such as the review and reissuance of past guidance documents every 5 years, have you gotten started on that at all? Have you begun the process?

Mr. DARLING. Yes, we have. We are now working on a plan to figure out how to implement that. As soon as we do that, we will start to put the documents up on the website, and then we will continue to review them as established by the FAST Act.

Senator FISCHER. Are you also working on providing a summary of the petitions that are submitted to the agency, to be able to get those published?

Mr. DARLING. Yes. That will also be part of the Web site when it goes up.

Senator FISCHER. I would ask you a question, though, it seems like you have been moving forward rather vigorously the past several weeks to issue some rulemakings on the ELDs and the SFD proposed rule. Why are you moving forward on that rulemaking when we have already given you so much to do with the passage of that bipartisan FAST Act? We really worked together on that and worked very hard to find consensus so that we could see some changes made.

Mr. DARLING. Those two rules that you mentioned have been in the works for 10 years. They were in the works and production prior to me even showing up at FMCSA. As we went through, we were at a stage where we got approval from the Office of Management and Budget to move forward. The ELD rule was a mandate, and we wanted to make sure we completed that mandate.

Senator FISCHER. As you continue to move forward on the rulemaking and we look at the SFD rule that is coming out, it is my understanding that it is going to include CSA-related data. Is that correct?

Mr. DARLING. The SFD rule does not include the two CSA data points that the FAST Act does not allow us to use, prohibits us from using, which are the alerts and the relative percentages. The SFD is predicated on a fixed measure formula that carriers will have to meet. It uses that information against the carriers' information itself, not against other carriers. So the carrier is actually measured against its own performance.

Senator FISCHER. So the stakeholders should not really be concerned, then, that data that has been deemed flawed by the GAO is going to be used in any way in this new rulemaking? Are you totally discounting that as a possibility, so we do not have issues with that flawed data in the future?

Mr. DARLING. The data that is being used is data that is being collected against the carrier itself.

Senator FISCHER. Is it through the CSA process, though, that was deemed flawed by the GAO? Is it still going to be collected that way, and used against the stakeholders?

Mr. DARLING. The Safety Fitness Determination rule will use 11 inspections before a carrier is rated. The GAO said 20, but they said this is just an illustration. We do not know what the number is. But we are going to use 11, which will provide carriers with enough information to make a Safety Fitness Determination assessment for a carrier.

Senator FISCHER. Will one of those 11 be that flawed data from the CSA?

Mr. DARLING. No.

Senator FISCHER. Good to hear.

Mr. DARLING. No.

Senator FISCHER. Thank you.

I would recognize Senator Booker.

Senator BOOKER. Thank you very much, Chairman.

I want to apologize, Mr. Darling, at the outset. I have a Homeland Security Committee meeting that I need to go to after this. But I am very excited about your nomination. At least I was until I heard that you were a Patriots fan.

[Laughter.]

Senator BOOKER. So I am going to try to overlook that stain on your record.

Mr. DARLING. Did I say that or did Senator Markey say that?

Senator BOOKER. That is true. You were accused. There has not been due process before I try and convict you for that sin.

But just very quickly, you heard from my opening remarks my concern about hours of service. Your agency spent a decade working on an hours of service rule, literally soliciting hundreds if not thousands of input from the whole spectrum of people involved in trucking as well as researchers, analysts, scientists, et cetera. It is critical to the safety on our highways.

However, the appropriations bill included a rider that allows truck drivers to work now more than 80 hours.

So just in that line, does this raise alarms for you? How important is it that we get back to more reasonable work limits as contemplated in your rule?

Mr. DARLING. It does concern me. One of the things that the hours of service was put in place to do is to look at providing truck drivers with adequate opportunity to have rest. As I said in my opening, safe trucking moves our economy and safe bus operations move our people, but I really say loved ones, because it is our loved ones who are on buses every day.

So we are looking for opportunities to make sure that truckers and bus drivers are safe when they are on the road, because it is not just them getting home to their families. It is also my family getting home to be with me and Alyson.

Senator BOOKER. OK. Then in order to reinstate the rule, the department has to send us a study that was mandated in the appropriations bill. It is critical that we get that study as soon as possible. So my question simply is, when can we expect that study?

Mr. DARLING. That study is currently under review by the Office of the Secretary. We provided a draft study. I am very proud of

that study, because on the day that the 2015 Appropriations Act was enacted, I called all the stakeholders and said that I need their help to do the study. They participated and they helped us create one of the best studies, I believe, on hours of service, especially one of the largest naturalistic studies on hours of service.

That study is currently under review by the Office of the Secretary. As soon as that review is completed, the study will have to go to the department's Office of Inspector General, and then the Inspector General has up to 60 days to provide a review. And then after that, there is a determination of how to send the report to Congress.

Senator BOOKER. Because I literally believe that lives are at stake, do I have your commitment to take all possible actions to expedite this study?

Mr. DARLING. Yes, you have my commitment to do what I have within my power to work with the Office of the Secretary to move the study.

Senator BOOKER. OK. I look forward to talking with you about the study soon and perhaps calling you after the game on Sunday. [Laughter.]

Mr. DARLING. Call me during the game, if we are winning.

Senator FISCHER. Thank you, Senator Booker.

Senator BOOKER. Thank you.

Senator FISCHER. Senator Nelson?

Senator NELSON. Just a similar commitment from you, as we discussed, to get that study out of the Secretary of Transportation's Office and get it to the Inspector General and to get it completed so that we can get to the much more rational rule on the number of hours for truckers to use.

Mr. DARLING. I will work with the Secretary's Office to move the study.

Senator NELSON. Thank you, Madam Chairman.

Senator FISCHER. Thank you, Senator Nelson.

We have been joined by the Chair of the Committee, so I recognize the Chairman Thune.

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

The CHAIRMAN. Thank you, Madam Chair.

Mr. Darling, welcome again to this committee, and thank you for your willingness to serve at the DOT.

I just want to ask a couple quick questions. One has to do with an issue that has been brought to my attention in my home State.

But I am pleased to see that FMCSA has begun a phased-in launch of the Unified Registration System, URS, which, once fully implemented, will make it easier for carriers, freight forwarders, and brokers to register online with one form with the FMCSA. However, it is critical that the launch of URS be done correctly to ensure that these benefits are actually realized.

I have received some concerns, as I mentioned, with the length of time the application process is taking, somewhere between 1 and 3 hours, when the old process took less than 15 minutes. It is my understanding that some of the delay is due to the fact that this

is a new system, that the URS website has been slow, and that the layout of the website is confusing.

The question is, what steps are the FMCSA taking to improve the situation?

Mr. DARLING. We are taking all the steps to have continuous improvement on URS. I was the one who directed the staff to do a phased-in approach. As you said earlier, it is important that this launch of the Unified Registration System happens in a systematic way to make sure that it is successful. I believe that it has been successful.

We had webinars. Our call center has been helping constituents get through the URS system.

One of the things you have to remember about the URS is that it takes 16 forms and reduces it to one simple form—it allows more accurate information for those who register to get operating authority.

The CHAIRMAN. I have also heard that when help is needed on questions that the FMCSA helpline is extremely busy, leaving individuals on hold or seeking assistance for many hours. Has the FMCSA noticed this trend? And if so, what steps are you taking to fix it?

Mr. DARLING. Yes, we have noticed that trend. One of the things that I have done, having come from the transit world, is we have a dashboard up now, which shows the wait periods for each month. I have asked my staff to make sure that we stay within reasonable time periods.

In addition to that, we will have a report card that will come out that will identify all of the corrective actions that we are making, to make sure that our call center is being responsive to our constituents.

The CHAIRMAN. I know that this has been touched on already, and I know it is an issue that Senator Fischer and others on the Committee have a pretty keen interest in, but following the enactment of the FAST Act, your agency did remove the scores that compare motor carriers using flawed methodology, which is something that, of course, was described in independent reports from the GAO and DOT IG. So thank you for following the intent of Congress in that regard and acting expeditiously on that particular issue.

The question is, what are your planned next steps for fixing the scores? Can you give sort of a timeline or schedule of how you intend to continue to remedy this situation?

Mr. DARLING. So the next step in this is to have the National Academies of Science conduct a study of the CSA program. We are in discussions with the National Academies now. We have talked to them about the scope. We are now in the process of procuring their services.

As soon as they finish that, we will then get the study up and running. We have 18 months to do that. We will then provide that study to the OIG, and then we will also work with the Secretary's Office to provide recommendations to address the findings in the report and also address some of the other reports that are out there, especially the GAO report that was in 2014.

The CHAIRMAN. I think everybody would appreciate your continued attention to this. It is an issue that has created a lot of angst.

Mr. DARLING. Yes. You have my full attention.
 The CHAIRMAN. Thank you.
 Madam Chair, thank you.
 Senator FISCHER. Thank you, Senator Thune.
 Senator Blunt?

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

Senator BLUNT. Thank you, Chairman.

Mr. Darling, nice to see you here. I have about three things here I want to cover pretty quickly.

One is on random drug testing rates. Under the previous Chairman, there seemed to be a real reluctance to release and respond to the numbers. As you know, motor carriers are required to randomly test 50 percent of their drivers for drugs each year. But if their violation rate falls below 1 percent for 2 consecutive years, then that number can be moved to 25 percent.

The data in 2011 and 2012 was pretty slow in coming out. While it turned out to be below 1 percent, FMCSA did not reduce the requirement in 2015. You have announced that you will reduce that requirement in 2016.

My question is, why was it handled differently, in your view, for 2015 than it was for 2016, even though the data was pretty clear both times?

Mr. DARLING. The data in 2014 that we used to do the random drug testing rate in 2015 was below 1 percent. When I talked to the industry I said I did not know if that was an anomaly or not, let us wait 1 more year, and if the rate continues to be below 1 percent, we will lower the rate to 25 percent, which I did. So they got my word and they got my action.

Senator BLUNT. And you would expect that to continue to be the way that you would look at those numbers, and you will continue to evaluate the numbers as they are available to you?

Mr. DARLING. If the rate goes back above 1 percent, as in the *Federal Register* notice, the random drug testing rate will go back to 50 percent.

Senator BLUNT. But if it does not go back above 1 percent?

Mr. DARLING. It stays at 25 percent.

Senator BLUNT. Continuing on the topic of drug testing, MAP-21 required FMCSA to create a clearinghouse for drug and alcohol test results and for reported violations. This was to ensure that violators would not evade detection by just going from one job to another.

It is my understanding that the clearinghouse has been created but does not report violations from past employers or admissions misuse by employees. If the employee does not disclose the identity of their previous employer, then the new employer would not have anybody to contact.

Why would this clearinghouse not include past violations that are specific to that driver?

Mr. DARLING. Just to be clear, Senator Blunt, the clearinghouse is still in the final rule development. We are looking at all options to make sure that we have all the fullest information in the clearinghouse. We will continue to search to get information to make

sure that we have a complete record of each driver, drug and alcohol record of each driver.

Senator BLUNT. So would it be your intention then to include both the report of violations as well as drug tests at the clearinghouse?

Mr. DARLING. Yes.

Senator BLUNT. All right.

And my last question, FMCSA was asked to do a causation study for large truck accidents. It was petitioned to do that in 2006 to begin rulemaking that would mandate heavier trucks to have top speeds electronically limited to no more than 65 mph. That petition was granted in 2011. FMCSA stated the rule would have minimal costs and would decrease fatalities, yet it has delayed the publication of the rule 21 times.

What do you anticipate doing with that rule?

Mr. DARLING. That is a joint rule with FMCSA and NHTSA. NHTSA is on the lead on that. We are currently looking at finalizing the notice of proposed rulemaking and processing that now. I am hoping to have that out as soon as possible.

Senator BLUNT. From your side of that, you are ready to do your part in finalizing the rule?

Mr. DARLING. We are working closely with NHTSA to work on getting the rule finalized.

Senator BLUNT. I guess what I am asking is, should I be talking to NHTSA or are we going to see this rule in the very near future?

Mr. DARLING. In the near future. That is my understanding.

Senator BLUNT. We will talk about this again, if we do not see this rule pretty soon.

Mr. DARLING. Thank you.

Senator BLUNT. OK. Thank you, Mr. Darling.

Senator FISCHER. Thank you, Senator Blunt.

Senator Daines?

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

Senator DAINES. Thank you, Madam Chair.

Senator Gardner had to leave for a Foreign Relations hearing, but to defend the Broncos' honor here on behalf of Cory, I, too, join Senator Booker in this growing bipartisan opposition to the Patriots, and I am certain that the Broncos will warmly welcome the Patriots to Denver this weekend.

[Laughter.]

Senator DAINES. Mr. Darling, in your testimony, you highlight that the electronic log rule published last month will increase compliance with hours of service regulations. However, I have been hearing from some Montana truck drivers, and we have a lot of pavement and concrete between the state lines in our state, that this rigid rule will create some unintended consequences.

In fact, I received this e-mail from a Montana truck driver just recently. He said these electronic log books are dangerous for public roads. Drivers will be forced to stop in unsafe places, and will be racing the clock all day. He says I am already seeing this. They are driving too fast in truck stops, construction zones, and bad road

conditions. They are trying to make up time before their inflexible time clock runs out.

As Administrator, my question is, how will you ensure that the regulations remain flexible enough so that truckers can make real-time decisions based on current road conditions and get home to their families without having to race the clock?

Mr. DARLING. Senator Daines, I believe that the electronic logging device rule is a safety rule. It will provide accurate hours of service data to allow truckers to make sure that they have opportunities for adequate rest in downtime. We are working closely with our State partners to make sure how we go about enforcing those rules. And truckers should not be using their ELDs while driving. ELDs are designed to be almost automatic and run on engine time.

Senator DAINES. What I would hope for is that, again, it is helpful to have that back-and-forth conversation around what could be unintended consequences occurring there in trying to achieve the outcome, which, of course, is safer highways.

Mr. DARLING. I agree with you. One of the things that we have in place is an implementation plan. The implementation plan includes discussions with all stakeholders. So we will continue to do that.

It is a 4-year implementation program. We will be engaging the stakeholders all the way through the process, as we have done through development of it.

As I said in my opening statement, this will be the year of partners, because we cannot do this alone. And safe trucking, again, moves our economy, and safe bus operations move our loved ones.

Senator DAINES. Thank you.

One of the provisions that I helped champion in the highway bill was to review the FMCSA's Wireless Roadside Inspection, the WRI project. I am concerned that WRI will likely lead to a duplication of some of the existing State efforts, which would be wasting Federal resources and perhaps creating something where it does not fit proportionally to all states. We have had success in Montana since 1998, along with more than 40 other states.

How will you plan to work with States to ensure that these new programs or these regulations are not duplicative or obstructing some of the State initiatives?

Mr. DARLING. Our work on WRI is looking at compatibility, making sure that it is consistent all the way across the country. As we look beyond compliance, one of the things that WRI will allow us to do is to make sure that carriers are getting credit for this wireless inspection system.

We want to continue to work with the partners to make sure that what they have in place continues to work. So it is about working together with our stakeholders to make sure that we are being consistent all the way across the country.

Senator DAINES. Thank you, Mr. Darling.

Senator FISCHER. Thank you, Senator Daines.

Senator Klobuchar?

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

Senator KLOBUCHAR. Thank you very much, Chairman Fischer.

Thank you very much, Mr. Darling.

Previous to the CSA system, freight brokers were generally not held liable for accidents and damages motor carriers incurred, as long as the motor carrier was authorized by FMCSA to operate. Following the implementation of the CSA system and the confusion it has caused between safety ratings and basic data, freight brokers are being found liable for negligent hiring.

In some cases, plaintiffs are alleging that freight brokers should not only consider a carrier's overall safety record and rating but also the detailed safety record of each carrier before use.

Are you aware of this issue?

Mr. DARLING. Senator Klobuchar, I believe that the safety fitness rule Notice of Proposed Rulemaking will help freight forwarders and brokers and shippers to understand carriers that are either able to operate or unfit to operate, and it will be clearly beneficial to them, this rule will.

My staff will also coordinate with your staff and the Committee staff to make sure that you understand how the Safety Fitness Determination rule will be helpful.

Senator KLOBUCHAR. Do you know how long that is going to take? There has just been a lot of confusion over a period of time.

Mr. DARLING. It is on view today in the *Federal Register* and will be published tomorrow. There is going to be a 90-day comment period, and we will work with the stakeholders in the comment period. As soon as we figure out how many comments we get, we will then start to work toward the final rule.

Senator KLOBUCHAR. OK, we will be working with you on that in the future. I just hope we can clarify it as soon as possible.

Next is on the broker bond insurance increase. Way back when Olympia Snowe was here on this committee, in the previous transportation authorization bill—that would be MAP-21—we worked to include legislation to increase the broker bond insurance requirements for any entity seeking to obtain broker or freight forwarder authority. Our legislation increased the broker bond requirements to \$75,000 from the original \$10,000 level and established significant penalties for violations of broker regulations, including unlimited liability for freight charges for conducting brokerage activities without a license or without a bond.

Is it your view that increasing the broker bond insurance levels has helped to weed out bad actors in the industry?

Mr. DARLING. I hope it has, but I do not believe just cost alone is going to weed out bad actors. I think some of this is compliance. My staff will be more than willing to sit down with your staff to talk through some of the compliance pieces that we are putting in place to deal with these issues.

Senator KLOBUCHAR. OK. Very good.

Last, CSA data reliability. The 2014 GAO report on CSA data reliability indicated that a data-driven, risk-based approach holds promise and can help FMCSA effectively identify carriers exhibiting compliance or safety issues, such as violations or involvement in crashes. However, assessing risk for a diverse population of motor carriers, many of which are small and inspected infrequently, presents several significant challenges.

Mr. Darling, does FMCSA have the capacity and resources to address the challenge of assessing the risk of motor carrier drivers across the country?

Mr. DARLING. I want to start with, we have 1,100 employees at FMCSA. We have a universe of 500,000 carriers. The numbers are not great. We could always use more resources, and we will always continue to request more resources.

On the question of the CSA, the first thing that we are doing is having the CSA program evaluated by the National Academies of Science. As soon as that is done, that will also allow us to look at our resources and look at the methodology before we can provide a recommendation to this committee and to Congress.

So we are in the process right now of procuring the services of the National Academies to help us do a study on our CSA program.

Senator KLOBUCHAR. Thank you very much.

Thank you very much, Madam Chairman.

Senator FISCHER. Thank you, Senator Klobuchar.

That concludes our questioning for Mr. Darling.

I would note that this hearing record will remain open for 2 weeks. During this time, Senators are asked to submit any questions for the record. Upon receipt, the witness is requested to submit your written answers to the Committee as soon as possible.

I would thank you for appearing today.

Mr. DARLING. Thank you.

Senator FISCHER. With that, the hearing is adjourned.

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

A P P E N D I X

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. JOHN THUNE TO HON. T.F. SCOTT DARLING III

Question 1. Section 5223 of the recently enacted FAST Act places a clear restriction on the use of CSA analysis in making safety fitness determinations (SFD) before the flawed analysis has been corrected using the procedure described in the law. The recent notice of proposed rulemaking for the new SFD process notes that the violations, and violation weight measures will be used in evaluating a motor carrier's safety record. Please provide a detailed explanation of your thoughts on this potential conflict with the law.

Answer. Section 5223 of the FAST Act prohibits FMCSA from using any information regarding alerts and the relative percentiles for each Behavior Analysis and Safety Improvement Category (BASIC). The Safety Fitness Determination notice of proposed rulemaking (NPRM) does not use alerts or percentiles. In response to concerns about the Safety Measurement System (SMS), FMCSA purposefully constructed the NPRM to use absolute measures of the motor carrier and fixed failure measures. Therefore, motor carriers are compared to the failure standard, not each other, in determining if they should be proposed unfit.

Question 2. The proposed Safety Fitness Determination rule also acknowledges a flaw in the CSA program due to disparate enforcement of various moving and non-moving events which result in CSA violations. What is the FMCSA doing to promote a more uniform enforcement of these events to fix the flaw? Also, what measures have the FMCSA considered to account for the disparate enforcement so that geographical and jurisdictional enforcement issues do not continue to skew carrier's percentiles?

Answer. As indicated in the Safety Fitness Determination (SFD) notice of proposed rulemaking, while enforcement differences exist among the States, the high failure standards proposed in this rule would be met or exceeded only after a sustained pattern of noncompliance. If a carrier is proposed unfit as a result of on-road safety data, it is not the result of these disparities but of recurring non-compliance. In most cases, the motor carrier would have been subject to previous interventions, such as warning letters, focused reviews, and/or civil penalty enforcement actions. If the safety deficiencies were not corrected, however, the carrier could ultimately meet or exceed the safety failure standards that result in a proposed unfit SFD. Additionally, it should be noted that violations are cited only when there is non-compliance with existing regulations. Motor carriers that are not in violation of the regulations do not have to be concerned with potential enforcement variances.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. DEB FISCHER TO HON. T.F. SCOTT DARLING III

Question 1. Regarding the CSA program, as I've mentioned before, I support utilizing a risk-based approach to developing safety standards. However, in order to avoid unintended consequences, we need to ensure that this program is utilizing accurate data and methodology. Would you please detail for the committee the FMCSA's step-by-step plans and a timeframe, if possible, to accomplishing the FAST Act requirements for the CSA program? When does FMCSA expect to have the program certified and back in order?

Answer. As prescribed in Section 5221, titled "Correlation Study," FMCSA expects to award a contract to the National Research Council (NRC) of the National Academies of Sciences (NAS) on February 8, 2016. FMCSA has met with NAS several times in advance of the award to discuss the FAST Act requirements and provided NAS with background documents in advance so that the NRC may begin its work immediately upon award. The timeline for the NAS' work is in keeping with Section 5221(c)'s 18-month requirement for a report to Congress.

Additionally, Section 5222 requires FMCSA to establish a “Beyond Compliance” program as a condition of restoring the Safety Measurement System. Such a program was already under consideration before enactment of the FAST Act; the Agency published a Federal Register Notice seeking comment on April 23, 2015. In addition, the Agency has since conducted public listening sessions on this topic on January 12 and 31. A second Federal Register notice is currently being prepared to seek further comments on a proposed program.

Question 2. Right now, there are no requirements that a shipper or broker check a motor carrier’s qualifications when they hire a truck. In your opinion, would it improve trucking safety to establish a requirement that shippers and brokers check that a motor carrier is authorized to be safe by FMCSA before they hire a truck?

Answer. FMCSA and I continue to advise shippers and brokers to use all available data in selecting a motor carrier. Shippers and brokers should confirm, at a minimum, that motor carriers have the proper registration and authority to operate, have the necessary evidence of financial responsibility on file with FMCSA, and do not have an unsatisfactory safety rating or unfit safety determination.

Imposing a new statutory or regulatory requirement on shippers and brokers to perform these checks before selecting a motor carrier, however, might or might not improve trucking safety. FMCSA does not have data or information that would enable us to determine that answer at this time.

To the extent such legislation placed new burdens on FMCSA to identify and take enforcement action against shippers or brokers for failing to perform these checks, however, I would be very concerned about diversion of scarce agency resources away from our core safety mission of ensuring that the carriers and commercial motor vehicle drivers themselves are operating safely.

Question 3. The proposed notice of the Safety Fitness Determination (SFD) rulemaking clearly states that the FMCSA is using the same methodology utilized for the CSA program, is using the same BASICS, and the same peer groups. Further, the “fixed standard” by which carriers will be rated Fit or Unfit is a percentile (96 or 99) of the current percentiles in the respective Basics and peer groups. Recognizing serious flaws in the underlying CSA data and methodology, the FAST act required a National Academy of Sciences review and the development of a corrective action plan. Can you please explain how your SFD proposal and the setting of failure threshold percentiles comports with the FAST Act with relation to the use of data analysis, and the concerns of the GAO, the DOT Inspector General, and law enforcement with the flawed CSA comparative analysis?

Answer. As indicated above, Section 5223 of the FAST Act prohibits FMCSA from using any information regarding alerts and the relative percentiles for each Behavior Analysis and Safety Improvement Category (BASIC). In response to concerns about the Safety Measurement System (SMS), FMCSA purposefully constructed the proposal to use absolute measures of the motor carrier and fixed failure measures. Therefore, motor carriers are compared to the failure standard, not each other, in determining if they should be proposed unfit.

FMCSA also interprets Section 5223, including the prohibition on making percentiles and alerts available to the general public and the requirement that percentiles and alerts not be “used for safety fitness determinations” as applying to the safety performance of individual motor carriers. The references to the 96 and 99 percentiles in the Safety Fitness Determination proposed rule are included for the purpose of helping the industry understand that the proposed failure standards would be equivalent to those percentiles in SMS. To the extent that FMCSA can be seen as “using” the percentiles, it is doing so only to establish the absolute fixed standard that will be published shortly before the final rule is published. That standard would not fluctuate from month to month and could be changed only through subsequent regulation. As articulated in the NPRM, the Agency will not use percentiles or alerts to make fitness determinations on individual carriers.

Question 4. If you recall, I have been a strong advocate of performance-based regulations that assess risk based on past performance. Performance based regulatory regimes establish goal-oriented outcomes, rather than prescribing specific actions for the regulated entity. I have a more general question about your thoughts as to the metrics and goals that should be utilized to determine the effectiveness of FMCSA rulemakings. As the FMCSA moves to more risk based models such as the SFD and CSA programs, would you agree that the purpose of safety regulations should be to reduce the frequency and severity of commercial vehicle crashes? If so, should the FMCSA measure the effectiveness of its rules by these metrics?

Answer. Yes. When developing rulemakings FMCSA always considers the costs and benefits, both the safety (*i.e.*, fatalities and injuries prevented) and economic implications of each rule. The Agency is required by statute and OMB directives to

do so. The estimates of costs and benefits are based, to the greatest extent practicable on NHTSA's Fatality Analysis Reporting System (FARS) and General Estimates System (GES), and FMCSA's Motor Carrier Management Information System (MCMIS) crash data. The Agency estimates the number of crashes attributable to certain lapses in safety management controls or unsafe practices, and the percentage of those crashes that could be prevented altogether, or reduced in severity. The Agency requests public comments on the regulatory proposals and encourages comments to review its estimates of the costs and benefits.

As to measuring regulatory effectiveness, sometime after a rule has been implemented—usually a few years—the Agency may conduct a study to determine whether the regulation has accomplished the safety goal described in the rulemaking. Those studies do look at reductions in the frequency and severity of CMV crashes and fatalities, which are at the core of FMCSA's mission. It is difficult to measure the effectiveness of a particular rule in improving safety, of course, since crashes depend on a great variety of factors, some so transitory that they cannot adequately be measured while others reflect overall traffic volume. Attributing a decline in crashes—in other words, crashes that did not occur—to any particular rule is a challenge that statistical analysis cannot always meet.

Question 5. A number of petitions were filed by the motorcoach industry for reconsideration of the final rule concerning the lease and interchange of passenger vehicles. Can you provide an update on where the FMCSA stands with regard to responding to these petitions?

Answer. FMCSA received numerous petitions for reconsideration of the final rule concerning the lease and interchange of passenger vehicles. The petitions provided more in-depth and detailed information than FMCSA received from the comments filed during the rulemaking process. We are analyzing the new information to determine if the petitions will be granted. FMCSA will respond to the petitioners when we determine our course of action.

Question 6. I understand there have been positive discussions held with the motorcoach industry, including discussion of viable solutions to address the issues raised in the petitions. Because compliance with the rule is scheduled for January 2017, just at the time when a new Administration would be taking office, can you provide any assurances that this issue will be resolved prior during your tenure in office?

Answer. Yes, we have held positive discussions with the motorcoach industry as to the best way forward on bus leasing. The Agency is actively working to complete its review of the petitions and plans to issue decisions later this year before the compliance date.

Question 7. As mentioned during the confirmation hearing, the FMCSA must study the impact the Hours-of-Service regulations on safety and has already contracted out for the study. As you know, members of Congress have expressed concern with the July 2013 revised Hours-of-Service regulations. Do you expect the outcome of this study to underscore the concerns raised by members on the Hours-of-Service Study?

Answer. I am very committed to fulfilling the study requirements of Sec. 133 of the 2015 Consolidated Appropriations Act. As you know, this law required a study comparing the relative net benefits, in terms of operational, safety, health and fatigue impacts, of the restart provisions in effect before and after July 1, 2013. We recognize that the 2015 law required FMCSA to submit the study to the DOT IG for review last year. However, I believed the public interest would be best served by ensuring the Agency collected as robust a data set as possible before submitting the study to Congress.

Following enactment of the 2015 law, the Agency sought out a wide variety of motor carriers and drivers to collect an incredible set of operating data for the study. Due to the exemplary planning and execution provided by our researchers and the cooperation of many motor carriers and drivers, I am pleased to report that the draft report is complete and is currently undergoing Departmental review.

While I am committed to releasing the results of the study as soon as possible, Sec. 133(e) of the 2015 Appropriations Act included specific reporting requirements that we must follow. Specifically, once the Departmental review is complete, the law requires FMCSA to submit the study to the DOT Office of Inspector General for a 60 day review to determine compliance with the study requirements under the 2015 law. Following the completion of the IG's review, the law requires that we submit the study to Congress.

I will continue to update you on our progress to complete this important study.

RESPONSE TO WRITTEN QUESTION SUBMITTED BY HON. STEVE DAINES TO
HON. T.F. SCOTT DARLING III

Question. Mr. Darling, thank you for testifying again before the Commerce Committee. As we have discussed, my home, Montana, is the 4th largest state. Last year, Montana's nearly 75,000 miles of public roads supported over 12 billion vehicle miles traveled. We face unique transportation challenges and an extraordinary dependence on our transportation infrastructure. Safety and efficiency are critical when commuting across our widespread state.

You previously testified before this Committee in March of last year. At that time, your term as Acting Administrator was expiring in 19 days. I asked you what the contingency plan was for the Federal Motor Carrier Safety Administration (FMCSA) after your term expired, leaving FMCSA without an Administrator. You only stated there would be adequate administrative support going forward. In total, it took the Administration 345 days to make a nomination. Congratulations on securing the nomination. You have now been the Acting Administrator or the de-facto head for over 513 days.

How will the FMCSA be managed more efficiently should you be confirmed? Specifically, what will be different over the next 11 months compared to the current status quo?

Answer. Last year, the Agency accomplished much to advance safety of commercial motor vehicles (CMVs) on our Nation's roadways. We published the Electronic Logging Device final rule, which will save lives and dramatically reduce paperwork burdens on the industry. We published a final rule prohibiting motor carriers, brokers, freight forwarders, shippers and receivers from coercing drivers to violate Federal safety regulations. The Agency also conducted a negotiated rulemaking, bringing a diverse group of stakeholders to the table to come together on new standards for the training of entry-level drivers of CMVs. In addition to these rules, the Agency has conducted public listening sessions on key safety issues, promoting stakeholder engagement and discussion.

If confirmed, I will lead FMCSA in broadening and strengthening our partnerships with stakeholders to build on our 2015 achievements. We are committed to working with Congress as we put in place dozens of FAST Act provisions. For example, we will streamline our grant programs to give States increased flexibility to tailor funding to conditions on the ground. We are taking comments from stakeholders and the public on an incentive program to encourage carriers to adopt cutting edge safety technology and practices. And the National Academy of Sciences study on the effectiveness of our CSA program is scheduled to begin in the coming days.

At my direction, FMCSA is also creating a new Program Integration Office (PIO) to improve the efficiency of Agency management long term. The PIO's draft mission statement is "to champion consistent project integration and synchronization practices, which will allow FMCSA to effectively prioritize and manage projects and resources that will help the agency fulfill its mission and strategic goals. In addition, the PIO governs high priority and high/medium risk projects in coordination with the FMCSA Leadership Team." Goals and objectives of the new office, which would be headed initially by a GS-15 career employee, include defining and managing high and medium risk priority projects, integrating and synchronizing projects across FMCSA offices, improving our project management processes and support through better employee training, experience and leadership, and making sure projects are on time, cost-effective and within scope.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON MARIA CANTWELL TO
HON. T.F. SCOTT DARLING III

Question 1. Mr. Darling, I want to discuss an incident that occurred in Seattle last September, when an amphibious duck boat vehicle used for city tours crashed into a charter bus on the Aurora Bridge. This accident was nothing short of a tragedy, claiming the lives of five people, many of them young people. I hope that the National Transportation Safety Board completes its investigation into the crash in a timely manner, so we can know what happened.

Because the vehicles involved in the crash only operate within Washington state, neither the duck boat nor the charter bus service fall under the jurisdiction of the Federal Motor Carrier Safety Administration. However, it does beg the question of what FMCSA is doing to enforce safety regulations and practices for these types of vehicles, particularly the use of seatbelts on charter buses and other motorcoach services. What is FMCSA doing to enforce current seatbelt regulations for charter buses and motor coaches? Does FMCSA plan to update passenger safety regulations after the NTSB completes its investigation of the Seattle Ride-the-Ducks crash?

Answer. Enforcement of regulations requiring bus and motorcoach drivers to wear seat belts is part of FMCSA and States procedures during vehicle inspections or traffic enforcement. While seat belts are mandatory only on new motorcoaches built after November 2016, FMCSA will have no authority to require motorcoach passengers to use them. However, FMCSA works with the passenger-carrying industry to encourage the use of seat belts when installed and through our “Learn Before You Board” bus safety tips for passengers on our website: https://www.fmcsa.dot.gov/sites/fmcsa.dot.gov/files/docs/LearnBeforeYouBoard_V1_2_508.pdf

FMCSA will evaluate the need to update our passenger safety regulations once the NTSB investigation is complete and we have the opportunity to explore the NTSB findings and recommendations.

Question 2. Mr. Darling, you may remember that in 2013 an oversize truck struck a bridge crossing the Skagit River and caused the bridge to collapse. The bridge was a major crossing along the I-5 corridor, and the collapse caused serious and long term delays for transit and commerce. After NTSB had concluded its investigation, it recommended that the Federal Motor Carrier Association update its Pilot Car Best Practices Guidelines and develop a model oversize vehicle program.

What is the status of this model pilot car program that the NTSB recommended? Have the Pilot Car best Practices been revised at all? How is the Skagit River Bridge Crash informing the development of this program? Does the Federal Motor Carrier Safety Administration have a timeline for its implementation?

Answer. In its July 2014 report on the Skagit River Bridge collapse, the National Transportation Safety Board issued a recommendation to the Federal Highway Administration (FHWA), the Specialized Carriers & Rigging Association, and the Commercial Vehicle Safety Alliance: to “work together to revise the Pilot Car Escort Best Practices Guidelines and related training materials to ensure that they contain updated recommended practices for pilot/escort vehicle operations, and disseminate the revised documents to groups that provide pilot/escort vehicle driver training.”

In collaboration with the Specialized Carriers & Rigging Association and other stakeholders, FHWA has: developed an annotated course outline; completed a draft of the training materials and Pilot Car Escort Best Practices Guidelines; and conducted a trial training session in Texas using the updated materials. Currently, FHWA is revising these materials based on feedback from the trial session. By October 2016, FHWA anticipates disseminating the revised documents to groups that provide pilot/escort vehicle driver training. The FHWA will make these documents available to support the activities the American Association of State Highway and Transportation Officials and others may undertake to complete a separate NTSB recommendation to institute a model training and certification process.

Question 3. Mr. Darling, I want to discuss the new proposed rules for the Safety Fitness Determination that were issued last week, and how it will affect post-accident investigations. This new rating system will change the current system from the three-tier “satisfactory, conditional, and unconditional” with a two-tiered system, where a trucking company or bus company with either be deemed fit or unfit to operate. While I imagine this will help the Federal Motor Carrier Association inspect more companies and ensure that compliance is met, it is important that FMCSA does not sacrifice safety for efficiency, especially when doing these post-crash assessments like the Skagit River Bridge. How will the new rating system affect post-crash investigations? What is FMCSA doing to ensure that these new standards are being devised with safety as the top priority?

Answer. FMCSA’s SFD proposed rule does not affect post-crash investigations. In addition, the SFD proposal maintains FMCSA’s existing policy of only using preventable crashes in determining safety ratings.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON RICHARD BLUMENTHAL TO
HON. T.F. SCOTT DARLING III

Question 1. Issue: The urgent need for the return of hours of service rules

In 2013, your agency instituted critical new rules to prevent drivers from being forced to work nearly 80 hours a week, which causes dangerous fatigue, which in turn leads to poor judgment, slowed reaction times, and loss of situational awareness by truck drivers.

Those rules were the product of years of scrutiny, analysis and even litigation. Unfortunately, in several misguided legislative actions in 2014 and 2015, Congress put those rules on hold while requiring the Federal Motor Carrier Safety Administration to study the rules even further. Now, with the rules on hold, truck drivers continue to be in a dangerous, precarious position where they’ll be forced to continue working long, grueling hours, raising safety concerns.

It is imperative that those rules return ASAP.

If you are confirmed as administrator, how swiftly will you move to complete the study requirements, as Congress required? How committed are you to returning the hours of service rules so we ensure truck drivers get adequate rest and the traveling public is protected?

Answer. I am very committed to fulfilling the study requirements of Sec. 133 of the 2015 Consolidated Appropriations Act. As you know, this law required a study comparing the relative net benefits, in terms of operational, safety, health and fatigue impacts, of the restart provisions in effect before and after July 1, 2013. We recognize that the 2015 law required FMCSA to submit the study to the DOT IG for review last year. However, I believed the public interest would be best served by ensuring the Agency collected as robust a data set as possible before submitting the study to Congress.

Following enactment of the 2015 law, the Agency sought out a wide variety of motor carriers and drivers to collect an incredible set of operating data for the study. Due to the exemplary planning and execution provided by our researchers and the cooperation of many motor carriers and drivers, I am pleased to report that the draft report is complete and is currently undergoing Departmental review.

While I am committed to releasing the results of the study as soon as possible, Sec. 133(e) of the 2015 Appropriations Act included specific reporting requirements that we must follow. Specifically, once the Departmental review is complete, the law requires FMCSA to submit the study to the DOT Office of Inspector General for a 60 day review to determine compliance with the study requirements under the 2015 law. Following the completion of the IG's review, the law requires that we submit the study to Congress.

I will continue to update you on our progress to complete this important study.

Question 2. The Federal Motor Carrier Safety Administration set minimum insurance levels for trucking companies. The minimum is \$750,000 for most carriers of property. This amount was last changed in 1985—*31 years ago*—even though \$750,000 pales in comparison to the damage a massive, 80,000-pound rig can do to motorists on our highways.

The FMCSA has considered increasing this amount, concluding in 2014 that “current financial responsibility minimums are inadequate to fully cover the costs of some crashes in light of increased medical costs and revised value of statistical life estimates.”

Unfortunately, the FAST Act—which became law in December 2015 and has many positive elements—institutes a delay, requiring an exhaustive study of the industry before any responsible rulemaking about insurance can move forward.

If you are confirmed as administrator, how quickly will you work to complete this study, as Congress required, so you can then adequately increase insurance amounts? Is 31 years too long to go without raising the minimum insurance amount trucking companies must have to protect against loss and liability?

Answer. The FAST Act requires the Agency to conduct a study on the adequacy of current levels of insurance prior to initiating rulemaking. Prior to initiating any rulemaking in this area, FMCSA plans to continue to engage in widespread public outreach regarding the issue of increasing the minimum levels of insurance for motor carriers. Any study on the adequacy of current and proposed levels of insurance would be substantially strengthened if researchers were able to obtain privately-held pricing and cost information from insurance companies and motor carriers, respectively, as well as settlement information from private parties to litigation. We recognize there may be significant challenges to obtaining this data.

Question 3. Issue: The need for FMCSA action on outstanding NTSB recommendations

In January 2016, the National Transportation Safety Board released its “Most Wanted” List of safety improvements, which broadly covers topics the NTSB says need to be addressed urgently. That list includes many priorities that impact trucking:

- Instituting collision avoidance technology in highway vehicles;
- Ending distracted driving;
- Ending substance impairment;
- Expanding use of recorders;
- And reducing fatigue-related accidents.

On top of this, the NTSB has issued a host of recommendations related to these priorities. The FMCSA has 54 outstanding recommendations from the NTSB.

If you are confirmed as administrator, what is your plan to address the trucking-related priorities on the NTSB's Most Wanted List? What is your plan to close the NTSB's outstanding recommendations? When will all of this be complete?

Answer. First, I would like to assure you that, if confirmed, I will remain committed to achieving the Agency's mission to reduce truck and motorcoach injuries and fatalities on our Nation's roadways.

All of us at FMCSA appreciate the work that our colleagues do at the National Transportation Safety Board (NTSB) and stand ready to work closely with them to further our shared safety goals. Many of the priorities on NTSB's 2016 "Most Wanted" list focus on areas that we have been addressing for some time. Of the 54 open recommendations we have from the NTSB, many pertain to the issues of safety fitness determination, electronic logging devices, distracted driving, drug and alcohol clearinghouse, and medical fitness to drive CMVs in interstate commerce. We are in the process of formally requesting closure of these recommendations because of rulemakings under way or already completed. FMCSA is making progress in addressing the remaining open recommendations.

We are working diligently to bring long-open recommendations to closure. Since June 1, 2015, FMCSA has achieved closure of 17 open recommendations, and we will submit a request to the NTSB no later than September 30, 2016, to formally request closure of an additional 30 recommendations.

Question 4. Issue: The need for FMCSA action on entry-level driver training

The surface transportation bill that Congress passed in 2012—also known as MAP-21—required the FMCSA to establish rules governing entry-level driver training for commercial drivers, including behind-the-wheel training and certain hours of instruction. That rule was due over two years ago, and I understand there have been many conversations with industry, but still there's no rule. You mention the importance of this effort in your testimony.

What is the status of that rule? If you are confirmed as administrator, when will it be complete? Isn't it important we have a set of Federal standards governing drivers who are seeking a Commercial Drivers' License?

Answer. In 2015, the Agency convened a negotiated rulemaking committee to reach consensus on entry-level driver training (ELDT). This committee was composed of representatives from the driver training industry, commercial and state enforcement, insurance, labor, the motor carrier industry, safety advocacy groups, and school transportation communities, as well as FMCSA. Exceeding our expectations, this committee completed its work and submitted a unanimously approved report to the Agency within 5 months. That report served as the basis for a Notice of Proposed Rulemaking on ELDT that the Agency drafted, and which is now under review at the Office of Management and Budget. We plan to issue the NPRM in early spring and a final rule later this year.

Question 5. The need for a rulemaking on speed limiters

In 2006—ten years ago—industry stakeholders petitioned FMCSA and the National Highway Traffic Safety Administration (NHTSA) to pursue a rulemaking to mandate speed limiters on heavy trucks, *i.e.*, devices that restrict a truck to a pre-programmed maximum speed—in use throughout Europe.

Research has shown that speed limiters can significantly reduce the number of crashes involving heavy duty trucks.

In 2011, NHTSA began drafting a proposal, and in May 2013, FMCSA decided to join NHTSA in the formal rulemaking process. According to both agencies, the rulemaking would consider a new Federal Motor Vehicle Safety Standard that would require the installation of speed-limiting devices on heavy trucks.

I understand FMCSA and NHTSA believe this rule would help decrease the estimated 1,115 fatal crashes each year involving heavy trucks on roads with posted speed limits of 55 mph or above.

For years, DOT has said it is developing a rule, but we haven't seen it come out yet.

If you are confirmed as administrator, when will this rulemaking be complete?

Answer. In response to petitions for rulemaking from the American Trucking Associations (ATA) and Road Safe America to initiate rulemaking to require manufacturers to limit the speed of heavy vehicles, the National Highway Traffic Safety Administration (NHTSA) and FMCSA are proposing regulations that would require vehicles with a gross vehicle weight rating of more than 26,000 pounds to be equipped with a speed limiting device. This joint rule would require motor carriers operating such vehicles in interstate commerce to maintain functional speed limiting devices for the service life of the vehicle.

The Department submitted the draft NPRM to the Office of Management and Budget (OMB) on May 19 where it remains under review. We are committed to publishing it as soon as possible.



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