

Calendar No. 273

111TH CONGRESS }
2d Session }

SENATE

{ REPORT
{ 111-127

NATIONAL TRANSPORTATION SAFETY
BOARD REAUTHORIZATION ACT OF 2009

R E P O R T

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND
TRANSPORTATION

ON

S. 2768



FEBRUARY 23, 2010.—Ordered to be printed

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SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED ELEVENTH CONGRESS

SECOND SESSION

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NATIONAL TRANSPORTATION SAFETY BOARD REAUTHORIZATION ACT OF 2009

FEBRUARY 23, 2010.—Ordered to be printed

Mr. ROCKEFELLER, from the Committee on Commerce, Science, and
Transportation, submitted the following

REPORT

[To accompany S. 2768]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (S. 2768) to amend title 49, United States Code, to authorize appropriations for the National Transportation Safety Board (NTSB or Board) for fiscal years 2010 through 2014, and for other purposes, having considered the same, reports favorably thereon with an amendment (in the nature of a substitute) and recommends that the bill (as amended) do pass.

PURPOSE OF THE BILL

The National Transportation Safety Board Reauthorization Act of 2009, S. 2768, as reported, would: (a) reauthorize the NTSB through fiscal year (FY) 2014; (b) make several changes clarifying the Board's existing authorities; (c) provide the NTSB with the authority to investigate commercial space launch accidents; and (d) augment assistance plans to family members of victims of aviation accidents.

BACKGROUND AND NEEDS

The NTSB is an independent Federal agency responsible for investigating and establishing the facts, circumstances, and probable cause of significant transportation accidents and for developing recommendations that will prevent future accidents or reduce injuries, loss of life, or damage to property. The NTSB also conducts safety studies and prepares safety reports as part of its overall transportation safety mission.

The NTSB annually investigates about 1,600 aviation accidents and incidents, along with approximately 100 railroad, highway, maritime, and pipeline accidents. The NTSB consists of five Board Members, who are nominated by the President and confirmed by the Senate. No more than three members may be from the same political party, and at least three members must be appointed on the basis of technical qualifications, professional standing, and demonstrated knowledge in accident reconstruction, safety engineering, human factors, transportation safety, or transportation regulation. All Board Members serve a five-year term. The President designates and the Senate confirms one of the members to serve as Chairman for a two-year term, and the President also designates one board member to serve as Vice-Chairman for a two-year term.

Approximately 400 full-time staff support the Board's investigations. However, the NTSB often relies on the resources of other organizations in conducting its investigations. The NTSB has broad discretionary authority to designate other government agencies, corporations, foreign authorities, or other pertinent organizations as parties to the Board's investigations.

Since its inception in 1967, the NTSB has issued approximately 12,900 safety recommendations. In 2008, the NTSB issued 129 recommendations, including 86 aviation, 21 highway, 14 railroad, and 8 marine recommendations. The NTSB has no legislative authority to implement its recommendations, and therefore is dependent on Federal, State, and local authorities and industry to consider and adopt the Board's recommendations based on its reports. The NTSB has officially closed 67 of its 2008 recommendations as accepted, and the average acceptance rate for all of the Board's safety recommendations since its inception is just over 82 percent through September 2009.

The NTSB estimates that the Department of Transportation's (DOT) modal agencies take an average of 5 years to successfully implement the Board's recommendations, while State agencies take over 10 years. To help promote the adoption of its recommendations the NTSB issues a "Most Wanted List" each year that identifies high priority safety recommendations the Board has issued, but that have yet to be implemented by the appropriate regulatory authority or industry organizations.

During Congressional hearings, the NTSB testified that one of the primary challenges facing the agency is the retirement of a substantial portion of its workforce and the associated task of recruiting and training new employees. The NTSB experienced an 11.5 percent reduction in employee staffing levels from 2003 to 2007, from 427 employees to 378. The NTSB has expressed concerns over its ability to recruit and train new employees in the technical and specialized skills required. Congressional efforts in fiscal years 2008 and 2009 provided appropriations to support hiring additional engineers, investigators, technicians, and specialists in the areas of highways, pipelines, rail, research, and engineering that boosted the full-time equivalent employee level to 394 employees. The authorized appropriations levels in S. 2768 are intended to provide funding for a minimum of 427 employees by 2014, to permit the agency to hire personnel in critical areas to best contribute to the Board's investigative and safety study responsibil-

ities, and to preserve the necessary continuity in essential technical and specialty areas of national significance within the agency.

SUMMARY OF PROVISIONS

The National Transportation Safety Board Reauthorization Act of 2009 would reauthorize the agency from FY 2010 through FY 2014. Authorized appropriations for each year are \$100,000,000 for FY 2010; \$105,000,000 for FY 2011; \$112,000,000 for FY 2012; \$118,000,000 for FY 2013; and \$124,000,000 for FY 2014.

Key provisions of the bill would:

- Ensure that the jurisdiction of the NTSB extends to investigations of incidents that raise significant safety issues, but do not necessarily result in the loss of life or property damage.
- Clarify that the NTSB has subpoena authority to gather evidence for investigations.
- Protect information obtained in or related to an ongoing investigation from public disclosure under the Freedom of Information Act (FOIA) by the NTSB or any agency receiving information from the Board. The Board would retain the authority to make such records available to the public if it is necessary to promote transportation safety.
- Provide the NTSB with explicit authority to investigate accidents involving commercial space launch vehicles.
- Grant the NTSB explicit authority to access information from any recording devices and recordings on aircraft, vehicle, vessel, or rolling stock involved in accidents, and to obtain the required information from the manufacturer to enable the Board to read and interpret such information.
- Require that airlines augment their family assistance plans to notify, within 60 days, family members of passengers involved in fatal aviation accidents of plans to destroy unclaimed and unassociated personal effects.

Several changes are also incorporated into the legislation, including provisions that would permit the NTSB to conduct investigative and safety training courses, collect revenues from non-agency personnel that participate in such training courses, revise the criteria for investigation of railroad accidents, and investigate relevant international accidents or incidents when requested by foreign authorities. The NTSB would also be required to issue a report on its policies on releasing accident investigation information.

LEGISLATIVE HISTORY

Senator Dorgan, along with Senators Rockefeller and Lautenberg, introduced S. 2768 on November 10, 2009. The Committee held a hearing on October 29, 2009, to consider the reauthorization of the NTSB. The Honorable Deborah A.P. Hersman, Chairman of the NTSB, and Dr. Gerald Dillingham, Director of Physical Infrastructure at the Government Accountability Office (GAO), testified. This hearing was preceded by a series of hearings on transportation safety held by the Committee. On June 10, 2009, a hearing was held entitled "Aviation Safety: The Federal Aviation Administration's Role in the Oversight of Commercial Air Carriers" at which representatives from the NTSB, the Federal Aviation Administration (FAA), the U.S. Department of Transportation Inspec-

tor General (DOT IG) and the Flight Safety Foundation testified. On June 17, 2009, a hearing was held entitled “Aviation Safety: The Role and Responsibility of Commercial Air Carriers and Employees” at which representatives from the Air Transport Association (ATA), the Regional Airline Association (RAA), the Airline Pilots Association (ALPA), and families of the victims of Continental Express Flight 3407 testified. On August 6, 2009, a hearing was held entitled “Aviation Safety: The Relationship Between Network Airlines and Regional Airlines” at which representatives from major and regional commercial air carriers testified. On September 15, 2009, a hearing was held entitled “Aviation Safety: The Hudson River Midair Collision and the Safety of Air Operations in Congested Airspace” at which representatives from the NTSB, FAA, the National Air Transportation Association (NATA), and the National Air Traffic Controllers Association (NATCA) testified. On October 28, 2009, a hearing was held entitled “Combating Distracted Driving: Managing Behavioral and Technological Risks” at which the Honorable Ray LaHood, DOT Secretary, and Julius Genachowski, Chairman of the Federal Communications Commission (FCC) testified.

On November 19, 2009, the Committee met in Executive Session during which S. 2768 was considered. The committee adopted one amendment that was offered during the Executive Session, which would require the NTSB to issue a report on how the Board disseminates information on transportation accidents. The bill, as amended, was ordered reported by voice vote.

ESTIMATED COSTS

In accordance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate and section 403 of the Congressional Budget Act of 1974, the Committee provides the following cost estimate, prepared by the Congressional Budget Office:

December 3, 2009.

Hon. JOHN D. ROCKEFELLER IV,
*Chairman, Committee on Commerce, Science, and Transportation,
U.S. Senate, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 2768, the National Transportation Safety Board Reauthorization Act of 2009.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Sarah Puro.

Sincerely,

DOUGLAS W. ELMENDORF.

Enclosure.

S. 2768—National Transportation Safety Board Reauthorization Act of 2009

Summary: S. 2768 would authorize the appropriation of \$559 million for the National Transportation Safety Board (NTSB) over the 2010–2014 period. Assuming appropriation of the specified amounts, CBO estimates that implementing S. 2768 would cost \$536 million over the 2010–2014 period and \$23 million after 2014. Enacting the bill would not affect direct spending or revenues.

The bill contains no intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments.

S. 2768 would impose a private-sector mandate, as defined in UMRA, on air carriers, but CBO estimates that the cost of complying with the mandate would be minimal and fall below the annual threshold established in UMRA for private-sector mandates (\$139 million in 2009, adjusted annually for inflation).

Estimated cost to the Federal Government: The estimated budgetary impact of S. 2768 is shown in the following table. The costs of this legislation fall within budget function 400 (transportation).

	By fiscal year, in millions of dollars—					
	2010	2011	2012	2013	2014	2010–2014
CHANGES IN SPENDING SUBJECT TO APPROPRIATION						
Authorization Level	100	105	112	118	124	559
Estimated Outlays	88	103	109	115	121	536

Basis of estimate: For this estimate, CBO assumes that S. 2768 will be enacted early in calendar year 2010 and that the authorized amounts will be appropriated each year. Outlay estimates are based on historical spending patterns of the NTSB.

The bill would authorize the appropriation of \$559 million for the NTSB over the 2010–2014 period for the salaries and expenses of the NTSB personnel and for the general administrative operations of the board. Under the bill and under current law, certain fees collected by the NTSB would be classified as offsetting collections credited to appropriations. Based on information from the NTSB, CBO estimates that those offsetting collections would total about \$2 million each year. The bill also would revise some policies and procedures at the NTSB. Assuming appropriation of the specified amounts, CBO estimates that implementing S. 2768 would cost \$536 million over the 2010–2014 period.

Estimated impact on state, local, and tribal governments: S. 2768 contains no intergovernmental mandates as defined in UMRA and would impose no costs on state, local, or tribal governments.

Estimated impact on the private sector: S. 2768 would impose a private-sector mandate, as defined in UMRA, on air carriers. After an accident resulting in major loss of life, an air carrier would have to make a reasonable attempt to notify the family of each passenger within 60 days of any planned destruction of unclaimed possessions. According to the NTSB, most air carriers already comply with the mandate, and the cost for the remaining air carriers to comply would not be significant. Consequently, CBO estimates that the aggregate cost of complying with the mandate would fall well below the annual threshold for private-sector mandates (\$139 million in 2009, adjusted annually for inflation).

Estimate prepared by: Federal costs: Sarah Puro; Impact on state, local, and tribal governments: Ryan Miller; Impact on the private sector: Samuel Wice.

Estimate approved by: Theresa Gullo, Deputy Assistant Director for Budget Analysis.

REGULATORY IMPACT STATEMENT

In accordance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee provides the following evaluation of the regulatory impact of the legislation, as reported:

NUMBER OF PERSONS COVERED

The reported bill would reauthorize existing NTSB activities; the number of persons covered should thus be consistent with the current levels of individuals impacted under existing NTSB activities.

ECONOMIC IMPACT

S. 2768 is expected to have a positive impact on the U.S. economy. The transportation system is a key component of the nation's economy. Provisions in this legislation aim to ensure the transportation system continues to operate as safely as possible.

PRIVACY

The reported bill is not expected to have any adverse impact on the privacy rights of individuals.

PAPERWORK

It is not anticipated that there will be a major increase in paperwork burdens resulting from the enactment of S. 2768.

CONGRESSIONALLY DIRECTED SPENDING

In compliance with paragraph 4(b) of rule XLIV of the Standing Rules of the Senate, the Committee provides that no provisions contained in the bill, as reported, meet the definition of congressionally directed spending items under the rule.

SECTION-BY-SECTION ANALYSIS

Sec. 1. Short title

This section provides that the legislation may be cited as the National Transportation Safety Board Reauthorization Act of 2009.

Sec. 2. Authorizations of appropriations

This section would authorize funds to be appropriated at the following amounts for the NTSB:

- \$100,000,000 for fiscal year 2010;
- \$105,000,000 for fiscal year 2011;
- \$112,000,000 for fiscal year 2012;
- \$118,000,000 for fiscal year 2013; and
- \$124,000,000 for fiscal year 2014.

The section would also provide authorization for the Board to impose and collect fees and provide refunds, reimbursements, and advances, as it determines to be appropriate, for activities, services, and facilities provided by or through the Board. For example, it would permit the Board to collect tuition for classes it teaches at its training facility. The Board would be required to keep records of these financial activities. Such revenues would be classified as offsetting collections.

Sec. 3. Technical corrections

This section would authorize the NTSB to investigate transportation incidents the Board believes should be investigated for safety purposes, but that do not necessarily result in accidents involving injury, fatalities, or property damage. Examples include near misses between aircraft and cases where unmanned aerial systems (UASs) temporarily lose connectivity with their controllers.

The section would clarify that the Vice Chairman is authorized to act as the Chairman when the Chairman is not available in person, by telephone, by another means of electronic communication, or is unable to serve. It would also clarify that the Board has subpoena authority for accident investigations.

This section would protect a broader array of proprietary materials from disclosure through the FOIA, consistent with FOIA principles. It would also require businesses or persons that submit to the Board trade secrets, commercial or financial information, or information that could be classified as controlled under the International Trade in Arms Regulations to appropriately mark such information to indicate the restricted nature of the information in order to facilitate proper handling of such materials by the Board.

This section would also protect records it has pertaining to foreign investigations from being released prior to conclusion of the investigation.

The section would prevent the Board, or any agency receiving information from the Board, from having to publicly disclose records related to an ongoing Board investigation, and would exempt such records from disclosure under section 552(b)(3) of title 5 of the FOIA. The Board, however, would be able to make public specific records that are relevant to an ongoing investigation if, in the NTSB's judgment, disclosure is necessary to promote transportation safety. Such instances may include releasing information during a public hearing held by the Board on an accident or incident, or if the Board determines that substantial portions of the underlying factual reports on the accident or incident and supporting evidence will be placed in the public docket. Further, disclosure would be permitted if the Board determines during an ongoing investigation or study that circumstances warrant disclosure of specific factual material and that such material need be placed in the public docket to facilitate communication with other agencies, stakeholders, or Congress.

This section contains a provision clarifying that the Board would not be prevented from referring at any time to evidence from an ongoing investigation in making safety recommendations. It would also clarify that the term "ongoing investigation" is defined as the time period beginning when the Board is notified of an accident or incident and ending when the Board issues a final report or brief, or determines to close an investigation without issuing a report or brief.

This section would permit the Board to prescribe requirements for persons reporting accidents and aviation incidents that may be investigated by the NTSB, and contains a minor technical change to ensure parties to a judicial proceeding may not use discovery to obtain a cockpit or surface vehicle recording or transcript.

Sec. 4. Authority of the Board

This section would retain the requirement that the GAO conduct evaluations of the NTSB and its activities at the direction of Congress, but would eliminate the mandate to issue annually such reports.

This section would clarify and broaden the scope of investigative and safety training courses the Board may conduct and the people who may attend these classes. The provision would also clarify the NTSB's authority to collect revenues from non-agency personnel who participate in these training courses.

The section would make a number of modifications to the jurisdiction of the NTSB's investigative authority. Consistent with other provisions of this bill, this section would clarify that the NTSB has the authority to investigate incidents in addition to accidents. The section would also revise the criteria for investigation of railroad accidents, permit the NTSB to investigate relevant international accidents or incidents, and permit the NTSB to investigate accidents or incidents involving unmanned aerial systems.

The section would provide the NTSB with explicit authority to investigate accidents involving commercial space launch vehicles.

This section would clarify that DOT, FAA, and Coast Guard personnel, when delegated authority by the NTSB, have the same authority to investigate accidents and incidents as Board members.

This section would also provide the NTSB with explicit authority to download or seize any recording device and recordings and obtain the required information, including proprietary information, from the manufacturer to enable the Board to read and interpret any information from the device on board the aircraft, vehicle, vessel, or rolling stock involved in the accident being investigated by the NTSB.

Sec. 5. Aviation penalties and family assistance

This section would require that airlines augment their family assistance plans by adding a process to notify family members of the victims of fatal aviation accidents of plans to destroy any unclaimed possessions of those individuals. The notice must be attempted within 60 days of the destruction of unclaimed and unassociated personal effects and applies to domestic and international accidents.

Sec. 6. Accident-related information release policy report

This section would require the NTSB to issue a report to the Senate Committee on Commerce, Science, and Transportation and the House Committee on Transportation and Infrastructure describing the policies, procedures, and guidelines used by the Board to expedite the release of factual accident-related information.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new material is printed in italic, existing law in which no change is proposed is shown in roman):

TITLE 49. TRANSPORTATION

SUBTITLE II. OTHER GOVERNMENT AGENCIES

CHAPTER 11. NATIONAL TRANSPORTATION SAFETY BOARD

SUBCHAPTER I. GENERAL

§ 1101. Definitions

Section 2101(17a) of title 46 and section 40102(a) of this title apply to this chapter. In this chapter, the term “accident” includes damage to or destruction of vehicles in surface or air transportation or pipelines, regardless of whether the initiating event is accidental or **[otherwise.]** *otherwise, and may include incidents not involving destruction or damage, but significantly affecting transportation safety, as the Board may prescribe or Congress may direct.*

* * * * *

SUBCHAPTER II. ORGANIZATION AND ADMINISTRATIVE

§ 1111. General organization

(a) ORGANIZATION.—The National Transportation Safety Board is an independent establishment of the United States Government.

(b) APPOINTMENT OF MEMBERS.—The Board is composed of 5 members appointed by the President, by and with the advice and consent of the Senate. Not more than 3 members may be appointed from the same political party. At least 3 members shall be appointed on the basis of technical qualification, professional standing, and demonstrated knowledge in accident reconstruction, safety engineering, human factors, transportation safety, or transportation regulation.

(c) TERMS OF OFFICE AND REMOVAL.—The term of office of each member is 5 years. An individual appointed to fill a vacancy occurring before the expiration of the term for which the predecessor of that individual was appointed, is appointed for the remainder of that term. When the term of office of a member ends, the member may continue to serve until a successor is appointed and qualified. The President may remove a member for inefficiency, neglect of duty, or malfeasance in office.

(d) CHAIRMAN AND VICE CHAIRMAN.—The President shall designate, by and with the advice and consent of the Senate, a Chairman of the Board. The President also shall designate a Vice Chairman of the Board. The terms of office of both the Chairman and Vice Chairman are 2 years. When the Chairman is **[absent]** *unavailable* or unable to serve or when the position of Chairman is vacant, the Vice Chairman acts as Chairman.

(e) DUTIES AND POWERS OF CHAIRMAN.—The Chairman is the chief executive and administrative officer of the Board. Subject to the general policies and decisions of the Board, the Chairman shall—

- (1) appoint and supervise officers and employees, other than regular and full-time employees in the immediate offices of another member, necessary to carry out this chapter;
- (2) fix the pay of officers and employees necessary to carry out this chapter;

- (3) distribute business among the officers, employees, and administrative units of the Board; and
- (4) supervise the expenditures of the Board.

(f) QUORUM.—Three members of the Board are a quorum in carrying out duties and powers of the Board.

(g) OFFICES, BUREAUS, AND DIVISIONS.—The Board shall establish offices necessary to carry out this chapter, including an office to investigate and report on the safe transportation of hazardous material. The Board shall establish distinct and appropriately staffed bureaus, divisions, or offices to investigate and report on accidents involving each of the following modes of transportation:

- (1) aviation.
- (2) highway and motor vehicle.
- (3) rail and tracked vehicle.
- (4) pipeline.
- (5) marine.

(h) CHIEF FINANCIAL OFFICER.—The Chairman shall designate an officer or employee of the Board as the Chief Financial Officer. The Chief Financial Officer shall—

- (1) report directly to the Chairman on financial management and budget execution;
- (2) direct, manage, and provide policy guidance and oversight on financial management and property and inventory control; and
- (3) review the fees, rents, and other charges imposed by the Board for services and things of value it provides, and suggest appropriate revisions to those charges to reflect costs incurred by the Board in providing those services and things of value.

(i) BOARD MEMBER STAFF.—Each member of the Board shall select and supervise regular and full-time employees in his or her immediate office as long as any such employee has been approved for employment by the designated agency ethics official under the same guidelines that apply to all employees of the Board. Except for the Chairman, the appointment authority provided by this subsection is limited to the number of full-time equivalent positions, in addition to 1 senior professional staff at a level not to exceed the GS 15 level and 1 administrative staff, allocated to each member through the Board's annual budget and allocation process.

(j) SEAL.—The Board shall have a seal that shall be judicially recognized.

* * * * *

§ 1113. Administrative

(a) GENERAL AUTHORITY.—

(1) The National Transportation Safety Board, and when authorized by it, a member of the Board, an administrative law judge employed by or assigned to the Board, or an officer or employee designated by the Chairman of the Board, may conduct hearings or *depositions* to carry out this chapter, administer oaths, and require, by subpoena or otherwise, necessary witnesses and evidence.

(2) *In the interest of transportation safety, the Board shall have the authority by subpoena to summon witnesses and obtain any and all evidence relevant to an accident investigation conducted under this chapter.* A witness or evidence in a hear-

ing under paragraph (1) of this subsection may be summoned or required to be produced from any place in the United States to the designated place of the hearing. A witness summoned under this subsection is entitled to the same fee and mileage the witness would have been paid in a court of the United States.

(3) A subpoena shall be issued under the signature of the Chairman or the Chairman's delegate but may be served by any person designated by the Chairman.

(4) If a person disobeys a subpoena, order, or inspection notice of the Board, the Board may bring a civil action in a district court of the United States to enforce the subpoena, order, or notice. An action under this paragraph may be brought in the judicial district in which the person against whom the action is brought resides, is found, or does business. The court may punish a failure to obey an order of the court to comply with the subpoena, order, or notice as a contempt of court.

(b) ADDITIONAL POWERS.—

(1) The Board may—

(A) procure the temporary or intermittent services of experts or consultants under section 3109 of title 5;

(B) make agreements and other transactions necessary to carry out this chapter without regard to section 3709 of the Revised Statutes (41 U.S.C. 5);

(C) use, when appropriate, available services, equipment, personnel, and facilities of a department, agency, or instrumentality of the United States Government on a reimbursable or other basis;

(D) confer with employees and use services, records, and facilities of State and local governmental authorities;

(E) appoint advisory committees composed of qualified private citizens and officials of the Government and State and local governments as appropriate;

(F) accept voluntary and uncompensated services notwithstanding another law;

(G) accept gifts of money and other property;

(H) make contracts with nonprofit entities to carry out studies related to duties and powers of the Board; and

(I) negotiate and enter into agreements with individuals and private entities and departments, agencies, and instrumentalities of the Government, State and local governments, and governments of foreign countries for the provision of facilities, accident-related and technical services or training in accident investigation theory and techniques, and require that such entities provide appropriate consideration for the reasonable costs of any facilities, goods, services, or training provided by the Board.

(2) The Board shall deposit in the Treasury amounts received under paragraph (1)(I) of this subsection to be credited as offsetting collections to the appropriation of the Board. The Board shall maintain an annual record of collections received under paragraph (1)(I) of this subsection.

(c) SUBMISSION OF CERTAIN COPIES TO CONGRESS.—When the Board submits to the President or the Director of the Office of Management and Budget a budget estimate, budget request, sup-

plemental budget estimate, other budget information, a legislative recommendation, prepared testimony for congressional hearings, or comments on legislation, the Board must submit a copy to Congress at the same time. An officer, department, agency, or instrumentality of the Government may not require the Board to submit the estimate, request, information, recommendation, testimony, or comments to another officer, department, agency, or instrumentality of the Government for approval, comment, or review before being submitted to Congress. The Board shall develop and approve a process for the Board's review and comment or approval of documents submitted to the President, Director of the Office of Management and Budget, or Congress under this subsection.

(d) LIAISON COMMITTEES.—The Chairman may determine the number of committees that are appropriate to maintain effective liaison with other departments, agencies, and instrumentalities of the Government, State and local governmental authorities, and independent standard-setting authorities that carry out programs and activities related to transportation safety. The Board may designate representatives to serve on or assist those committees.

(e) INQUIRIES.—The Board, or an officer or employee of the Board designated by the Chairman, may conduct an inquiry to obtain information related to transportation safety after publishing notice of the inquiry in the Federal Register. The Board or designated officer or employee may require by order a department, agency, or instrumentality of the Government, a State or local governmental authority, or a person transporting individuals or property in commerce to submit to the Board a written report and answers to requests and questions related to a duty or power of the Board. The Board may prescribe the time within which the report and answers must be given to the Board or to the designated officer or employee. Copies of the report and answers shall be made available for public inspection.

(f) REGULATIONS.—The Board may prescribe regulations to carry out this chapter.

(g) OVERTIME PAY.—

(1) IN GENERAL.—Subject to the requirements of this section and notwithstanding paragraphs (1) and (2) of section 5542(a) of title 5, for an employee of the Board whose basic pay is at a rate which equals or exceeds the minimum rate of basic pay for GS-10 of the General Schedule, the Board may establish an overtime hourly rate of pay for the employee with respect to work performed at the scene of an accident (including travel to or from the scene) and other work that is critical to an accident investigation in an amount equal to one and one-half times the hourly rate of basic pay of the employee. All of such amount shall be considered to be premium pay.

(2) LIMITATION ON OVERTIME PAY TO AN EMPLOYEE.—An employee of the Board may not receive overtime pay under paragraph (1), for work performed in a calendar year, in an amount that exceeds 15 percent of the annual rate of basic pay of the employee for such calendar year.

(3) LIMITATION ON TOTAL AMOUNT OF OVERTIME PAY.—The Board may not make overtime payments under paragraph (1) for work performed in any fiscal year in a total amount that

exceeds 1.5 percent of the amount appropriated to carry out this chapter for that fiscal year.

(4) BASIC PAY DEFINED.—In this subsection, the term “basic pay” includes any applicable locality-based comparability payment under section 5304 of title 5 (or similar provision of law) and any special rate of pay under section 5305 of title 5 (or similar provision of law).

(5) ANNUAL REPORT.—Not later than January 31, 2002, and annually thereafter, the Board shall transmit to the Senate Committee on Commerce, Science, and Transportation and the House Transportation and Infrastructure Committee a report identifying the total amount of overtime payments made under this subsection in the preceding fiscal year, and the number of employees whose overtime pay under this subsection was limited in that fiscal year as a result of the 15 percent limit established by paragraph (2).

(h) INVESTIGATIVE OFFICERS.—The Board shall maintain at least 1 full-time employee in each State located more than 1,000 miles from the nearest Board regional office to provide initial investigative response to accidents the Board is empowered to investigate under this chapter that occur in that State.

§ 1114. Disclosure, availability, and use of information

(a) GENERAL.—

(1) Except as provided in subsections (b), (c), (d), and (f) of this section, a copy of a record, information, or investigation submitted or received by the National Transportation Safety Board, or a member or employee of the Board, shall be made available to the public on identifiable request and at reasonable cost. This subsection does not require the release of information described by section 552(b) of title 5 or protected from disclosure by another law of the United States.

(2) The Board shall deposit in the Treasury amounts received under paragraph (1) to be credited to the appropriation of the Board as offsetting collections.

[(b) TRADE SECRETS.—] (b) *TRADE SECRETS; COMMERCIAL OR FINANCIAL INFORMATION.*—(1) The Board may disclose information *submitted to the Board in the course of a Board investigation or study and related to a trade secret referred to in section 1905 of [title 18] title 18, or commercial or financial information, only—*

(A) to another department, agency, or instrumentality of the United States Government when requested for official use;

(B) to a committee of Congress having jurisdiction over the subject matter to which the information is related, when requested by that committee;

(C) in a judicial proceeding under a court order that preserves the confidentiality of the information without impairing the proceeding; and

(D) to the public to protect health and [safety] *safety, including through the issuance of reports of accident investigation or safety studies and safety recommendations, after giving notice to any interested person to whom the information is related and an opportunity for that person to comment in writing, or orally in closed session, on the proposed disclosure, if*

the delay resulting from notice and opportunity for comment would not be detrimental to health and safety.

(2) Information disclosed under *subparagraphs (A) through (C)* of paragraph (1) of this subsection may be disclosed only in a way designed to preserve its confidentiality.

(3) Protection of voluntary submission of information. Notwithstanding any other provision of law, neither the Board, nor any agency receiving information from the Board, shall disclose voluntarily provided safety-related information if that information is not related to the exercise of the Board's accident or incident investigation authority under this chapter and if the Board finds that the disclosure of the information would inhibit the voluntary provision of that type of information.

(4) *Each person submitting to the Board trade secrets, commercial or financial information, or information that could be classified as controlled under the International Traffic in Arms Regulations shall appropriately annotate the information to indicate the restricted nature of the information in order to facilitate proper handling of such materials by the Board*

(c) COCKPIT RECORDINGS AND TRANSCRIPTS.—

(1) The Board may not disclose publicly any part of a cockpit voice or video recorder recording or transcript of oral communications by and between flight crew members and ground stations related to an accident or incident investigated by the Board. However, the Board shall make public any part of a transcript or any written depiction of visual information the Board decides is relevant to the accident or incident—

(A) if the Board holds a public hearing on the accident or incident, at the time of the hearing; or

(B) if the Board does not hold a public hearing, at the time a majority of the other factual reports on the accident or incident are placed in the public docket.

(2) This subsection does not prevent the Board from referring at any time to cockpit voice or video recorder information in making safety recommendations.

(d) SURFACE VEHICLE RECORDINGS AND TRANSCRIPTS.—

(1) CONFIDENTIALITY OF RECORDINGS.—The Board may not disclose publicly any part of a surface vehicle voice or video recorder recording or transcript of oral communications by or among drivers, train employees, or other operating employees responsible for the movement and direction of the vehicle or vessel, or between such operating employees and company communication centers, related to an accident investigated by the Board. However, the Board shall make public any part of a transcript or any written depiction of visual information that the Board decides is relevant to the accident—

(A) if the Board holds a public hearing on the accident, at the time of the hearing; or

(B) if the Board does not hold a public hearing, at the time a majority of the other factual reports on the accident are placed in the public docket.

(2) REFERENCES TO INFORMATION IN MAKING SAFETY RECOMMENDATIONS.—This subsection does not prevent the Board from referring at any time to voice or video recorder information in making safety recommendations.

(e) DRUG TESTS.—

(1) Notwithstanding section 503(e) of the Supplemental Appropriations Act, 1987 (Public Law 100-71, 101 Stat. 471), the Secretary of Transportation shall provide the following information to the Board when requested in writing by the Board:

(A) any report of a confirmed positive toxicological test, verified as positive by a medical review officer, conducted on an officer or employee of the Department of Transportation under post-accident, unsafe practice, or reasonable suspicion toxicological testing requirements of the Department, when the officer or employee is reasonably associated with the circumstances of an accident or incident under the investigative jurisdiction of the Board.

(B) any laboratory record documenting that the test is confirmed positive.

(2) Except as provided by paragraph (3) of this subsection, the Board shall maintain the confidentiality of, and exempt from disclosure under section 552(b)(3) of title 5—

(A) a laboratory record provided the Board under paragraph (1) of this subsection that reveals medical use of a drug allowed under applicable regulations; and

(B) medical information provided by the tested officer or employee related to the test or a review of the test.

(3) The Board may use a laboratory record made available under paragraph (1) of this subsection to develop an evidentiary record in an investigation of an accident or incident if—

(A) the fitness of the tested officer or employee is at issue in the investigation; and

(B) the use of that record is necessary to develop the evidentiary record.

(f) FOREIGN INVESTIGATIONS.—

(1) IN GENERAL.—Notwithstanding any other provision of law, neither the Board, nor any agency receiving information from the Board, ~~shall~~ *may* disclose records or information relating to its participation in foreign aircraft accident investigations; except that—

(A) the Board shall release records pertaining to such an investigation when the country conducting the investigation issues its final report or 2 years following the date of the accident, whichever occurs first; and

(B) the Board may disclose records and information when authorized to do so by the country conducting the investigation.

(2) SAFETY RECOMMENDATIONS.—Nothing in this subsection shall restrict the Board at any time from referring to foreign accident investigation ~~information~~ *information, or other relevant information authorized for disclosure under this chapter, in making safety recommendations.*

(g) ONGOING BOARD INVESTIGATIONS.—*(1) Notwithstanding any other provision of law, neither the Board, nor any agency receiving information from the Board, may publicly disclose records related to an ongoing Board investigation, and such records shall be exempt from disclosure under section 552(b)(3) of title 5. Notwithstanding the preceding sentence, the Board may make public specific records*

relevant to the investigation, release of which in the Board's judgment is necessary to promote transportation safety—

(A) if the Board holds a public hearing on the accident or incident, at the time of the hearing;

(B) if the Board does not hold a public hearing, at the time the Board determines that substantial portions of the underlying factual reports on the accident or incident, and supporting evidence, will be placed in the public docket; or

(C) if the Board determines during an ongoing investigation or study that circumstances warrant disclosure of specific factual material and that such material need be placed in the public docket to facilitate dialogue with other agencies or instrumentalities, regulatory bodies, industry or industry groups, or Congress.

(2) This subsection does not prevent the Board from referring at any time to evidence from an ongoing investigation in making safety recommendations.

(3) In this subsection, the term "ongoing investigation" means that period beginning at the time the Board is notified of an accident or incident and ending when the Board issues a final report or brief, or determines to close an investigation without issuing a report or brief.

§ 1115. Training

(a) DEFINITION.—In this section, "Institute" means the Transportation Safety Institute of the Department of Transportation and any successor organization of the Institute.

(b) USE OF INSTITUTE SERVICES.—The National Transportation Safety Board may use, on a reimbursable basis, the services of the Institute. The Secretary of Transportation shall make the Institute available to—

(1) the Board for safety training of employees of the Board in carrying out their duties and powers; and

(2) other safety personnel of the United States Government, State and local governments, governments of foreign countries, interstate authorities, and private organizations the Board designates in consultation with the Secretary.

(c) FEES.—

(1) Training at the Institute for safety personnel (except employees of the Government) shall be provided at a reasonable fee established periodically by the Board in consultation with the Secretary. The fee shall be paid directly to the Secretary, and the Secretary shall deposit the fee in the Treasury. The amount of the fee—

(A) shall be credited to the appropriate appropriation (subject to the requirements of any annual appropriation); and

(B) is an offset against any annual reimbursement agreement between the Board and the Secretary to cover all reasonable costs of providing training under this subsection that the Secretary incurs in operating the Institute.

(2) The Board shall maintain an annual record of offsets under paragraph (1)(B) of this subsection.

(d) TRAINING OF BOARD EMPLOYEES AND OTHERS.—The Board may conduct training of its employees in those subjects necessary for the proper performance of accident ~~investigation.~~ *investigation, including investigation theory and techniques and transportation safety, to advance Board safety recommendations.* The Board may also authorize attendance at courses given under this subsection by other government personnel, personnel of foreign governments, and personnel from industry or otherwise who have a requirement for accident investigation ~~training.~~ *training or who influence transportation safety through support or adoption of Board safety recommendations.* The Board may require non-Board personnel to reimburse some or all of the training costs, and amounts so reimbursed shall be credited to the appropriation of the Board as offsetting ~~collections.~~ *collections under the provisions of section 1118 of this chapter.*

§ 1116. Reports and studies

(a) PERIODIC REPORTS.—The National Transportation Safety Board shall report periodically to Congress, departments, agencies, and instrumentalities of the United States Government and State and local governmental authorities concerned with transportation safety, and other interested persons. The report shall—

(1) advocate meaningful responses to reduce the likelihood of transportation accidents similar to those investigated by the Board; and

(2) propose corrective action to make the transportation of individuals as safe and free from risk of injury as possible, including action to minimize personal injuries that occur in transportation accidents.

(b) STUDIES, INVESTIGATIONS, AND OTHER REPORTS.—The Board also shall—

(1) ~~carry out~~ *conduct* special studies and investigations about transportation safety, including avoiding personal injury;

(2) examine techniques and methods of accident investigation and periodically publish recommended procedures for accident investigations;

~~(3) prescribe requirements for persons reporting accidents and aviation incidents that—~~

~~[(A) may be investigated by the Board under this chapter; or~~

~~[(B) involve public aircraft (except aircraft of the armed forces and the intelligence agencies);]~~

~~(3) prescribe requirements for persons reporting accidents and incidents that may be investigated by the Board under this chapter;~~

(4) evaluate, examine the effectiveness of, and publish the findings of the Board about the transportation safety consciousness of other departments, agencies, and instrumentalities of the Government and their effectiveness in preventing accidents; and

(5) evaluate the adequacy of safeguards and procedures for the transportation of hazardous material and the performance of other departments, agencies, and instrumentalities of the Government responsible for the safe transportation of that material.

§ 1118. Authorization of appropriations

[(a) IN GENERAL.—There are authorized to be appropriated for the purposes of this chapter \$57,000,000 for fiscal year 2000, \$65,000,000 for fiscal year 2001, \$72,000,000 for fiscal year 2002, \$73,325,000 for fiscal year 2003, \$78,757,000 for fiscal year 2004, \$83,011,000 for fiscal year 2005, \$87,539,000 for fiscal year 2006, \$81,594,000 for fiscal year 2007, and \$92,625,000 for fiscal year 2008. Such sums shall remain available until expended.]

(a) *IN GENERAL.—There are authorized to be appropriated for the purposes of this chapter \$100,000,000 for fiscal year 2010, \$105,000,000 for fiscal year 2011, \$112,000,000 for fiscal year 2012, \$118,000,000 for fiscal year 2013, and \$124,000,000 for fiscal year 2014. Such sums shall remain available until expended.*

(b) EMERGENCY FUND.—The Board has an emergency fund of \$2,000,000 available for necessary expenses of the Board, not otherwise provided for, for accident investigations. In addition, there are authorized to be appropriated such sums as may be necessary to increase the fund to, and maintain the fund at, a level not to exceed \$4,000,000.

[(c) FEES, REFUNDS, AND REIMBURSEMENTS.—

[(1) IN GENERAL.—The Board may impose and collect such fees, refunds, and reimbursements as it determines to be appropriate for services provided by or through the Board.

[(2) RECEIPTS CREDITED AS OFFSETTING COLLECTIONS.—Notwithstanding section 3302 of title 31, any fee, refund, or reimbursement collected under this subsection—

[(A) shall be credited as offsetting collections to the account that finances the activities and services for which the fee is imposed or with which the refund or reimbursement is associated;

[(B) shall be available for expenditure only to pay the costs of activities and services for which the fee is imposed or with which the refund or reimbursement is associated; and

[(C) shall remain available until expended.

[(3) REFUNDS.—The Board may refund any fee paid by mistake or any amount paid in excess of that required.]

(c) *FEES, REFUNDS, REIMBURSEMENTS, AND ADVANCES.—*

(1) *IN GENERAL.—The Board may impose and collect such fees, refunds, reimbursements, and advances as it determines to be appropriate for activities, services, and facilities provided by or through the Board.*

(2) *RECEIPTS CREDITED AS OFFSETTING COLLECTIONS.—Notwithstanding section 3302 of title 31, any fee, refund, reimbursement, or advance collected under this subsection—*

(A) *shall be credited as offsetting collections to the account that finances the activities, services, or facilities for which the fee, refund, reimbursement, or advance is associated;*

(B) *shall be available for expenditure only to pay the costs of activities, services, or facilities for which the fee, refund, reimbursement, or advance is associated; and*

(C) *shall remain available until expended.*

(3) *RECORD.—The Board shall maintain an annual record of collections received under paragraph (2).*

(4) *REFUNDS.*—*The Board may refund any fee or advance paid by mistake or any amount paid in excess of that required.*

* * * * *

SUBCHAPTER III. AUTHORITY

§ 1131. General authority

(a) GENERAL.—(1) The National Transportation Safety Board shall investigate or have investigated (in detail the Board prescribes) and establish the facts, circumstances, and cause or probable cause of—

(A) an aircraft accident the Board has authority to investigate under section 1132 of this title or an aircraft accident involving a public aircraft as defined by section 40102(a)(37) of this title other than an aircraft operated by the Armed Forces or by an intelligence agency of the United States;

(B) a highway accident, including a railroad grade crossing accident, the Board selects in cooperation with a State;

[(C) a railroad accident in which there is a fatality or substantial property damage, or that involves a passenger train;]

(C) a freight or passenger railroad accident in which there is a fatality (other than a fatality involving a trespasser), substantial property damage, or significant injury to the environment;

(D) a pipeline accident in which there is a fatality, substantial property damage, or significant injury to the environment;

(E) a major marine casualty (except a casualty involving only public vessels) occurring on or under the navigable waters, internal waters, or the territorial sea of the United States as described in Presidential Proclamation No. 5928 of December 27, 1988, or involving a vessel of the United States (as defined in section 2101(46) of title 46), under regulations prescribed jointly by the Board and the head of the department in which the Coast Guard is operating; [and]

(F) any other accident or incident related to the transportation of individuals or property when the Board decides—

(i) the accident or incident is catastrophic;

(ii) the accident or incident involves problems of a recurring character; or

(iii) the investigation of the accident or incident would carry out this [chapter.] chapter;

(G) an accident or incident in response to an international request and delegation under appropriate international conventions, coordinated through the Department of State and accepted by the Board; and

(H) an incident or incidents significantly affecting transportation safety, as defined by the Board, under rules and in such detail as the Board may prescribe.

(2)(A) Subject to the requirements of this paragraph, an investigation by the Board under [paragraph (1)(A)-(D) or (F)] any of subparagraphs (A) through (F) of paragraph (1) of this subsection has priority over any investigation by another department, agency, or instrumentality of the United States Government. The Board shall provide for appropriate participation by other departments, agencies, or instrumentalities in the investigation. However, those

departments, agencies, or instrumentalities may not participate in the decision of the Board about the probable cause of the accident.

(B) If the Attorney General, in consultation with the Chairman of the Board, determines and notifies the Board that circumstances reasonably indicate that the accident may have been caused by an intentional criminal act, the Board shall relinquish investigative priority to the Federal Bureau of Investigation. The relinquishment of investigative priority by the Board shall not otherwise affect the authority of the Board to continue its investigation under this section.

(C) If a Federal law enforcement agency suspects and notifies the Board that an accident being investigated by the Board under subparagraph (A), (B), (C), or (D) of paragraph (1) may have been caused by an intentional criminal act, the Board, in consultation with the law enforcement agency, shall take necessary actions to ensure that evidence of the criminal act is preserved.

(3) This section and sections 1113, 1116(b), 1133, and 1134(a) and (c)-(e) of this title do not affect the authority of another department, agency, or instrumentality of the Government to investigate an accident *or incident* under applicable law or to obtain information directly from the parties involved in, and witnesses to, the accident *or incident*. The Board and other departments, agencies, and instrumentalities shall ensure that appropriate information developed about *or relevant to* the accident is exchanged in a timely manner.

(b) ACCIDENTS INVOLVING PUBLIC VESSELS.—(1) The Board or the head of the department in which the Coast Guard is operating shall investigate and establish the facts, circumstances, and cause or probable cause of a marine accident involving a public vessel and any other vessel. The results of the investigation shall be made available to the public.

(2) Paragraph (1) of this subsection and subsection (a)(1)(E) of this section do not affect the responsibility, under another law of the United States, of the head of the department in which the Coast Guard is operating.

(c) ACCIDENTS NOT INVOLVING GOVERNMENT MISFEASANCE OR NONFEASANCE.—(1) When asked by the Board, the Secretary of Transportation or the Secretary of the department in which the Coast Guard is operating may—

(A) investigate an accident described under subsection (a) or

(b) of this section in which misfeasance or nonfeasance by the Government has not been alleged; and

(B) report the facts and circumstances of the accident to the Board.

(2) The Board shall use the report in establishing cause or probable cause of an accident described under subsection (a) or (b) of this section.

(d) ACCIDENTS INVOLVING PUBLIC AIRCRAFT.—The Board, in furtherance of its investigative duties with respect to public aircraft accidents under subsection (a)(1)(A) of this section, shall have the same duties and powers as are specified for civil aircraft accidents under sections 1132(a), 1132(b), and 1134(a), (b), (d), and (f) of this title.

(e) ACCIDENT AND INCIDENT REPORTS.—The Board shall report on the facts and circumstances of each accident *or incident* inves-

tigated by it under subsection (a) or (b) of this section. The Board shall make each report available to the public at reasonable cost.

【§ 1132. Civil aircraft accident investigations】

§ 1132. Civil aircraft and maritime accident investigations

(a) GENERAL AUTHORITY.—

(1) The National Transportation Safety Board shall investigate *or have investigated*—

(A) each accident involving civil **【aircraft;】** *aircraft or a commercial space launch vehicle*; and

(B) with the participation of appropriate military authorities, each accident involving both military and civil aircraft.

(2) A person employed under section 1113(b)(1) of this title that is conducting an investigation or hearing about an aircraft accident has the same authority to conduct the investigation or hearing as the Board.

(b) NOTIFICATION AND REPORTING.—The Board shall prescribe regulations governing the notification and reporting of accidents involving civil aircraft.

(c) PARTICIPATION OF SECRETARY.—The Board shall provide for the participation of the Secretary of Transportation in the investigation of an aircraft accident under this chapter when participation is necessary to carry out the duties and powers of the Secretary. However, the Secretary may not participate in establishing probable cause.

(d) ACCIDENTS INVOLVING ONLY MILITARY AIRCRAFT.—If an accident involves only military aircraft and a duty of the Secretary is or may be involved, the military authorities shall provide for the participation of the Secretary. In any other accident involving only military aircraft, the military authorities shall give the Board or Secretary information the military authorities decide would contribute to the promotion of air safety.

(e) *AUTHORITY OF BOARD REPRESENTATIVE.—The Board may, with the consent of the Secretary, delegate to the Department of Transportation full authority to obtain the facts of any aviation accident or incident the Board shall investigate, and the on-scene representative of the Secretary shall have the full authority of the Board to, on display of appropriate credentials and written notice of inspection authority, enter property where an aviation accident has occurred or wreckage from the accident is located and do anything necessary to gather evidence in support of a Board investigation, in accordance with such rules as the Board may prescribe.*

(f) *MARITIME ACCIDENT INVESTIGATIONS.—The Board may, with the consent of the Secretary of the department in which the Coast Guard is operating, delegate to the Coast Guard full authority to obtain the facts of any maritime accident or incident the Board shall investigate, and the on-scene representative of the Commandant of the Coast Guard shall have the full authority of the Board to, on display of appropriate credentials and written notice of inspection authority, enter property where a maritime accident has occurred or wreckage from the accident is located and do any-*

thing necessary to gather evidence in support of a Board investigation, in accordance with such rules as the Board may prescribe.

* * * * *

§ 1134. Inspections and autopsies

(a) ENTRY AND INSPECTION.—An [officer or employee of the National Transportation Safety Board—] *officer, employee, or designee of the National Transportation Safety Board in the conduct of any accident or incident investigation or study—*

(1) on display of appropriate credentials and written notice of inspection authority, may enter property where a transportation accident has occurred or wreckage from the accident is located and do anything necessary to conduct an investigation; and

(2) during reasonable hours, may inspect any record, process, control, or facility related to an accident investigation under this chapter.

(b) INSPECTION, TESTING, PRESERVATION, AND MOVING OF AIRCRAFT AND PARTS.—

(1) In investigating an aircraft accident under this chapter, the Board may inspect and test, to the extent necessary, any civil aircraft, aircraft engine, propeller, appliance, or property on an aircraft involved in an accident in air commerce. *The Board may download or seize any recording device and recordings and may require specific information only available from the manufacturer to enable the Board to read and interpret any flight parameter or navigation storage device or media on board the accident aircraft. The provisions of section 1114(b) of this chapter shall apply to matters properly identified as trade secrets or commercial or financial information.*

(2) Any civil aircraft, aircraft engine, propeller, appliance, or property on an aircraft involved in an accident in air commerce shall be preserved, and may be moved, only as provided by regulations of the Board.

(c) AVOIDING UNNECESSARY INTERFERENCE AND PRESERVING EVIDENCE.—In carrying out subsection (a)(1) of this section, an officer or employee may examine or test any vehicle, vessel, rolling stock, track, or pipeline component. *The officer or employee may download or seize any recording device and recordings, and may require the production of specific information only available from the manufacturer to enable the Board to read and interpret any operational parameter or navigation storage device or media on board the accident vehicle, vessel, or rolling stock. The provisions of section 1114(b) of this chapter shall apply to matters properly identified as trade secrets or commercial or financial information.* The examination or test shall be conducted in a way that—

(1) does not interfere unnecessarily with transportation services provided by the owner or operator of the vehicle, vessel, rolling stock, track, or pipeline component; and

(2) to the maximum extent feasible, preserves evidence related to the accident, consistent with the needs of the investigation and with the cooperation of that owner or operator.

(d) EXCLUSIVE AUTHORITY OF BOARD.—Only the Board has the authority to decide on the way in which testing under this section will be conducted, including decisions on the person that will con-

duct the test, the type of test that will be conducted, and any individual who will witness the test. Those decisions are committed to the discretion of the Board. The Board shall make any of those decisions based on the needs of the investigation being conducted and, when applicable, subsections (a), (c), and (e) of this section.

(e) PROMPTNESS OF TESTS AND AVAILABILITY OF RESULTS.—An inspection, examination, or test under subsection (a) or (c) of this section shall be started and completed promptly, and the results shall be made available.

(f) AUTOPSIES.—

(1) The Board may order an autopsy to be performed and have other tests made when necessary to investigate an accident under this chapter. However, local law protecting religious beliefs related to autopsies shall be observed to the extent consistent with the needs of the accident investigation.

(2) With or without reimbursement, the Board may obtain a copy of an autopsy report performed by a State or local official on an individual who died because of a transportation accident investigated by the Board under this chapter.

* * * * *

§ 1138. Evaluation and audit of National Transportation Safety Board

(a) IN GENERAL.—To promote economy, efficiency, and effectiveness in the administration of the programs, operations, and activities of the National Transportation Safety Board, the Comptroller General of the United States shall evaluate and audit the programs and expenditures of the National Transportation Safety Board. Such evaluation and audit shall be [conducted at least annually, but may be] conducted as determined necessary by the Comptroller General or the appropriate congressional committees.

(b) RESPONSIBILITY OF COMPTROLLER GENERAL.—The Comptroller General shall evaluate and audit Board programs, operations, and activities, including—

- (1) information management and security, including privacy protection of personally identifiable information;
- (2) resource management;
- (3) workforce development;
- (4) procurement and contracting planning, practices and policies;
- (5) the extent to which the Board follows leading practices in selected management areas; and
- (6) the extent to which the Board addresses management challenges in completing accident investigations.

(c) APPROPRIATE CONGRESSIONAL COMMITTEES.—For purposes of this section the term “appropriate congressional committees” means the Committee on Commerce, Science and Transportation of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives.

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SUBCHAPTER IV. ENFORCEMENT AND PENALTIES

§ 1154. Discovery and use of cockpit and surface vehicle recordings and transcripts

(a) TRANSCRIPTS AND RECORDINGS.—

(1) Except as provided by this subsection, a party in a judicial proceeding may not use discovery to obtain—

(A) any part of a cockpit or surface vehicle recorder transcript that the National Transportation Safety Board has not made available to the public under section 1114(c) or 1114(d) of this title; **[and]** *or*

(B) a cockpit or surface vehicle recorder recording.

(2)(A) Except as provided in paragraph (4)(A) of this subsection, a court may allow discovery by a party of a cockpit or surface vehicle recorder transcript if, after an in camera review of the transcript, the court decides that—

(i) the part of the transcript made available to the public under section 1114(c) or 1114(d) of this title does not provide the party with sufficient information for the party to receive a fair trial; and

(ii) discovery of additional parts of the transcript is necessary to provide the party with sufficient information for the party to receive a fair trial.

(B) A court may allow discovery, or require production for an in camera review, of a cockpit or surface vehicle recorder transcript that the Board has not made available under section 1114(c) or 1114(d) of this title only if the cockpit or surface vehicle recorder recording is not available.

(3) Except as provided in paragraph (4)(A) of this subsection, a court may allow discovery by a party of a cockpit or surface vehicle recorder recording if, after an in camera review of the recording, the court decides that—

(A) the parts of the transcript made available to the public under section 1114(c) or 1114(d) of this title and to the party through discovery under paragraph (2) of this subsection do not provide the party with sufficient information for the party to receive a fair trial; and

(B) discovery of the cockpit or surface vehicle recorder recording is necessary to provide the party with sufficient information for the party to receive a fair trial.

(4)(A) When a court allows discovery in a judicial proceeding of a part of a cockpit or surface vehicle recorder transcript not made available to the public under section 1114(c) or 1114(d) of this title or a cockpit or surface vehicle recorder recording, the court shall issue a protective order—

(i) to limit the use of the part of the transcript or the recording to the judicial proceeding; and

(ii) to prohibit dissemination of the part of the transcript or the recording to any person that does not need access to the part of the transcript or the recording for the proceeding.

(B) A court may allow a part of a cockpit or surface vehicle recorder transcript not made available to the public under section 1114(c) or 1114(d) of this title or a cockpit or surface vehicle recorder recording to be admitted into

evidence in a judicial proceeding, only if the court places the part of the transcript or the recording under seal to prevent the use of the part of the transcript or the recording for purposes other than for the proceeding.

(5) This subsection does not prevent the Board from referring at any time to cockpit or surface vehicle recorder information in making safety recommendations.

(6) In this subsection:

(A) RECORDER.—The term “recorder” means a voice or video recorder.

(B) TRANSCRIPT.—The term “transcript” includes any written depiction of visual information obtained from a video recorder.

(b) REPORTS.—No part of a report of the Board, related to an accident or an investigation of an accident, may be admitted into evidence or used in a civil action for damages resulting from a matter mentioned in the report.

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SUBTITLE VII. AVIATION PROGRAMS

PART A. AIR COMMERCE AND SAFETY

SUBPART II. ECONOMIC REGULATION

CHAPTER 411. AIR CARRIER CERTIFICATES

§ 41113. Plans to address needs of families of passengers involved in aircraft accidents

(a) SUBMISSION OF PLANS.—Each air carrier holding a certificate of public convenience and necessity under section 41102 of this title shall submit to the Secretary and the Chairman of the National Transportation Safety Board a plan for addressing the needs of the families of passengers involved in any aircraft accident involving an aircraft of the air carrier and resulting in a major loss of life.

(b) CONTENTS OF PLANS.—A plan to be submitted by an air carrier under subsection (a) shall include, at a minimum, the following:

(1) A plan for publicizing a reliable, toll-free telephone number, and for providing staff, to handle calls from the families of the passengers.

(2) A process for notifying the families of the passengers, before providing any public notice of the names of the passengers, either by utilizing the services of the organization designated for the accident under section 1136(a)(2) of this title or the services of other suitably trained individuals.

(3) An assurance that the notice described in paragraph (2) will be provided to the family of a passenger as soon as the air carrier has verified that the passenger was aboard the aircraft (whether or not the names of all of the passengers have been verified) and, to the extent practicable, in person.

(4) An assurance that the air carrier will provide to the director of family support services designated for the accident under section 1136(a)(1) of this title, and to the organization designated for the accident under section 1136(a)(2) of this title, immediately upon request, a list (which is based on the

best available information at the time of the request) of the names of the passengers aboard the aircraft (whether or not such names have been verified), and will periodically update the list.

(5) An assurance that the family of each passenger will be consulted about the disposition of all remains and personal effects of the passenger within the control of the air carrier.

(6) An assurance that if requested by the family of a passenger, any possession of the passenger within the control of the air carrier (regardless of its condition) will be returned to the family unless the possession is needed for the accident investigation or any criminal investigation.

(7) An assurance that any unclaimed possession of a passenger within the control of the air carrier will be retained by the air carrier for at least 18 [months.] *months and that, prior to destruction of unclaimed possessions, a reasonable attempt will be made to notify the family of each passenger within 60 days of any planned destruction date.*

(8) An assurance that the family of each passenger will be consulted about construction by the air carrier of any monument to the passengers, including any inscription on the monument.

(9) An assurance that the treatment of the families of non-revenue passengers (and any other victim of the accident) will be the same as the treatment of the families of revenue passengers.

(10) An assurance that the air carrier will work with any organization designated under section 1136(a)(2) of this title on an ongoing basis to ensure that families of passengers receive an appropriate level of services and assistance following each accident.

(11) An assurance that the air carrier will provide reasonable compensation to any organization designated under section 1136(a)(2) of this title for services provided by the organization.

(12) An assurance that the air carrier will assist the family of a passenger in traveling to the location of the accident and provide for the physical care of the family while the family is staying at such location.

(13) An assurance that the air carrier will commit sufficient resources to carry out the plan.

(14) An assurance that, upon request of the family of a passenger, the air carrier will inform the family of whether the passenger's name appeared on a preliminary passenger manifest for the flight involved in the accident.

(15) An assurance that the air carrier will provide adequate training to the employees and agents of the carrier to meet the needs of survivors and family members following an accident.

(16) An assurance that the air carrier, in the event that the air carrier volunteers assistance to United States citizens within the United States with respect to an aircraft accident outside the United States involving major loss of life, will consult with the Board and the Department of State on the provision of the assistance.

(17)(A) An assurance that, in the case of an accident that results in significant damage to a manmade structure or other

property on the ground that is not government-owned, the air carrier will promptly provide notice, in writing, to the extent practicable, directly to the owner of the structure or other property about liability for any property damage and means for obtaining compensation.

(B) At a minimum, the written notice shall advise an owner (i) to contact the insurer of the property as the authoritative source for information about coverage and compensation; (ii) to not rely on unofficial information offered by air carrier representatives about compensation by the air carrier for accident-site property damage; and (iii) to obtain photographic or other detailed evidence of property damage as soon as possible after the accident, consistent with restrictions on access to the accident site.

(18) An assurance that, in the case of an accident in which the National Transportation Safety Board conducts a public hearing or comparable proceeding at a location greater than 80 miles from the accident site, the air carrier will ensure that the proceeding is made available simultaneously by electronic means at a location open to the public at both the origin city and destination city of the air carrier's flight if that city is located in the United States.

(c) CERTIFICATE REQUIREMENT.—The Secretary may not approve an application for a certificate of public convenience and necessity under section 41102 of this title unless the applicant has included as part of such application a plan that meets the requirements of subsection (b).

(d) LIMITATION ON LIABILITY.—An air carrier shall not be liable for damages in any action brought in a Federal or State court arising out of the performance of the air carrier in preparing or providing a passenger list, or in providing information concerning a preliminary passenger manifest, pursuant to a plan submitted by the air carrier under subsection (b), unless such liability was caused by conduct of the air carrier which was grossly negligent or which constituted intentional misconduct.

(e) AIRCRAFT ACCIDENT AND PASSENGER DEFINED.—In this section, the terms “aircraft accident” and “passenger” have the meanings such terms have in section 1136 of this title.

(f) STATUTORY CONSTRUCTION.—Nothing in this section may be construed as limiting the actions that an air carrier may take, or the obligations that an air carrier may have, in providing assistance to the families of passengers involved in an aircraft accident.

CHAPTER 413. FOREIGN AIR TRANSPORTATION

§ 41313. Plans to address needs of families of passengers involved in foreign air carrier accidents

(a) DEFINITIONS.—In this section, the following definitions apply:

(1) AIRCRAFT ACCIDENT.—The term “aircraft accident” means any aviation disaster, regardless of its cause or suspected cause, that occurs within the United States; and

(2) PASSENGER.—The term “passenger” has the meaning given such term by section 1136.

(b) SUBMISSION OF PLANS.—A foreign air carrier providing foreign air transportation under this chapter shall transmit to the Sec-

retary of Transportation and the Chairman of the National Transportation Safety Board a plan for addressing the needs of the families of passengers involved in an aircraft accident that involves an aircraft under the control of the foreign air carrier and results in a major loss of life.

(c) CONTENTS OF PLANS.—To the extent permitted by foreign law which was in effect on the date of the enactment of this section, a plan submitted by a foreign air carrier under subsection (b) shall include the following:

(1) TELEPHONE NUMBER.—A plan for publicizing a reliable, toll-free telephone number and staff to take calls to such number from families of passengers involved in an aircraft accident that involves an aircraft under the control of the foreign air carrier and results in a significant loss of life.

(2) NOTIFICATION OF FAMILIES.—A process for notifying, in person to the extent practicable, the families of passengers involved in an aircraft accident that involves an aircraft under the control of the foreign air carrier and results in a significant loss of life before providing any public notice of the names of such passengers. Such notice shall be provided by using the services of—

(A) the organization designated for the accident under section 1136(a)(2); or

(B) other suitably trained individuals.

(3) NOTICE PROVIDED AS SOON AS POSSIBLE.—An assurance that the notice required by paragraph (2) shall be provided as soon as practicable after the foreign air carrier has verified the identity of a passenger on the foreign aircraft, whether or not the names of all of the passengers have been verified.

(4) LIST OF PASSENGERS.—An assurance that the foreign air carrier shall provide, immediately upon request, and update a list (based on the best available information at the time of the request) of the names of the passengers aboard the aircraft (whether or not such names have been verified), to—

(A) the director of family support services designated for the accident under section 1136(a)(1); and

(B) the organization designated for the accident under section 1136(a)(2).

(5) CONSULTATION REGARDING DISPOSITION OF REMAINS AND EFFECTS.—An assurance that the family of each passenger will be consulted about the disposition of any remains and personal effects of the passenger that are within the control of the foreign air carrier.

(6) RETURN OF POSSESSIONS.—An assurance that, if requested by the family of a passenger, any possession (regardless of its condition) of that passenger that is within the control of the foreign air carrier will be returned to the family unless the possession is needed for the accident investigation or a criminal investigation.

(7) UNCLAIMED POSSESSIONS RETAINED.—An assurance that any unclaimed possession of a passenger within the control of the foreign air carrier will be retained by the foreign air carrier for not less than 18 months after the date of the [accident.] *accident and that, prior to destruction of unclaimed posses-*

sions, a reasonable attempt will be made to notify the family of each passenger within 60 days of any planned destruction date.

(8) MONUMENTS.—An assurance that the family of each passenger will be consulted about construction by the foreign air carrier of any monument to the passengers built in the United States, including any inscription on the monument.

(9) EQUAL TREATMENT OF PASSENGERS.—An assurance that the treatment of the families of nonrevenue passengers will be the same as the treatment of the families of revenue passengers.

(10) SERVICE AND ASSISTANCE TO FAMILIES OF PASSENGERS.—An assurance that the foreign air carrier will work with any organization designated under section 1136(a)(2) on an ongoing basis to ensure that families of passengers receive an appropriate level of services and assistance following an accident.

(11) COMPENSATION TO SERVICE ORGANIZATIONS.—An assurance that the foreign air carrier will provide reasonable compensation to any organization designated under section 1136(a)(2) for services and assistance provided by the organization.

(12) TRAVEL AND CARE EXPENSES.—An assurance that the foreign air carrier will assist the family of any passenger in traveling to the location of the accident and provide for the physical care of the family while the family is staying at such location.

(13) RESOURCES FOR PLAN.—An assurance that the foreign air carrier will commit sufficient resources to carry out the plan.

(14) SUBSTITUTE MEASURES.—If a foreign air carrier does not wish to comply with paragraph (10), (11), or (12), a description of proposed adequate substitute measures for the requirements of each paragraph with which the foreign air carrier does not wish to comply.

(15) TRAINING OF EMPLOYEES AND AGENTS.—An assurance that the foreign air carrier will provide adequate training to the employees and agents of the carrier to meet the needs of survivors and family members following an accident.

(16) CONSULTATION ON CARRIER RESPONSE NOT COVERED BY PLAN.—An assurance that the foreign air carrier, in the event that the foreign air carrier volunteers assistance to United States citizens within the United States with respect to an aircraft accident outside the United States involving major loss of life, the foreign air carrier will consult with the Board and the Department of State on the provision of the assistance.

(17) NOTICE CONCERNING LIABILITY FOR MANMADE STRUCTURES.—

(A) IN GENERAL.—An assurance that, in the case of an accident that results in significant damage to a manmade structure or other property on the ground that is not government-owned, the foreign air carrier will promptly provide notice, in writing, to the extent practicable, directly to the owner of the structure or other property about liability for any property damage and means for obtaining compensation.

(B) MINIMUM CONTENTS.—At a minimum, the written notice shall advise an owner (i) to contact the insurer of the property as the authoritative source for information about coverage and compensation; (ii) to not rely on unofficial information offered by foreign air carrier representatives about compensation by the foreign air carrier for accident-site property damage; and (iii) to obtain photographic or other detailed evidence of property damage as soon as possible after the accident, consistent with restrictions on access to the accident site.

(18) SIMULTANEOUS ELECTRONIC TRANSMISSION OF NTSB HEARING.—An assurance that, in the case of an accident in which the National Transportation Safety Board conducts a public hearing or comparable proceeding at a location greater than 80 miles from the accident site, the foreign air carrier will ensure that the proceeding is made available simultaneously by electronic means at a location open to the public at both the origin city and destination city of the foreign air carrier's flight if that city is located in the United States.

(d) PERMIT AND EXEMPTION REQUIREMENT.—The Secretary shall not approve an application for a permit under section 41302 unless the applicant has included as part of the application or request for exemption a plan that meets the requirements of subsection (c).

(e) LIMITATION ON LIABILITY.—A foreign air carrier shall not be liable for damages in any action brought in a Federal or State court arising out of the performance of the foreign air carrier in preparing or providing a passenger list pursuant to a plan submitted by the foreign air carrier under subsection (c), unless the liability was caused by conduct of the foreign air carrier which was grossly negligent or which constituted intentional misconduct.