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NATIONAL TRANSPORTATION SAFETY BOARD  
AUTHORIZATION FOR APPROPRIATIONS

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HEARING

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BEFORE THE

COMMITTEE ON COMMERCE

UNITED STATES SENATE

NINETY-FOURTH CONGRESS

SECOND SESSION

ON

S. 2661

TO AMEND THE INDEPENDENT SAFETY BOARD ACT OF  
1974 TO AUTHORIZE ADDITIONAL APPROPRIATIONS, AND  
FOR OTHER PURPOSES

MAY 6, 1976

Serial No. 94-89

Printed for the use of the Committee on Commerce



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# NATIONAL TRANSPORTATION SAFETY BOARD AUTHORIZATION FOR APPROPRIATIONS

THURSDAY, MAY 6, 1976

U.S. SENATE,  
COMMITTEE ON COMMERCE,  
Washington, D.C

The committee met at 10:17 a.m., in room S-2307, the Capitol Building, Hon. Howard W. Cannon presiding.

## OPENING STATEMENT BY SENATOR CANNON

Senator CANNON. The committee will come to order, please. Today's hearing is to consider the authorization for the appropriations for the National Transportation Safety Board (NTSB) for the fiscal years 1977 and 1978.

Pursuant to the Independent Safety Board Act of 1974, the Board, in its activities, is subject to congressional authorization for its operating appropriations.

On November 12, 1975, the Chairman and ranking members of the committee introduced on behalf of the NTSB S. 2661, which contains an appropriation authorization for the Board.

Since that time, a new Chairman of the Board has been sworn in and a complete budgetary revision has occurred. This morning we are hopeful that the Board's new Chairman, Mr. Webster B. Todd, Jr., will explain the Board's current budget and how it differs from that prepared by his predecessor.

We also expect to hear how the present budget differs, if at all, from the view of the Office of Management and Budget (OMB).

[The bill and agency comments follow:]

[S. 2661, 94th Cong., 1st sess.]

A BILL To amend the Independent Safety Board Act of 1974 to authorize additional appropriations, and for other purposes

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Independent Safety Board Act Amendments of 1975".*

SEC. 2. Section 306(b) of the Independent Safety Board Act of 1974 (49 U.S.C. 1905) is amended by redesignating said section as subsection 306(b)(1) and adding a new subsection 306(b)(2) to read as follows:

"(2) Notwithstanding section 552 of title V, United States Code, relating to freedom of information, the Board shall prohibit the disclosure of all information obtained from an aircraft accident or incident investigation conducted by a foreign state, in accordance with the Chicago Convention (16 Stat. 1180), and annex 13 issued thereunder, and in the possession of the Board, personnel thereof designated as a United States accredited representative, and advisers to such accredited representatives: *Provided*, That public disclosure may be made of such information when the state which conducted the investigation has notified

Staff members assigned to this hearing: Robert E. Ginther and W. Douglas Buttrey.

the Board in writing that it has no objection to such disclosure. All such information shall be immune to legal process prior to public disclosure by the Board."

SEC. 3. Section 309 of the Independent Safety Board Act of 1974 (49 U.S.C. 1907) is amended by adding at the end thereof the following new sentence: "There are authorized to be appropriated for the purpose of this Act not to exceed \$17,300,000 for the fiscal year ending September 30, 1977, and \$18,500,000 for the fiscal year ending September 30, 1978, such sums to remain available until expended."

DEPARTMENT OF STATE,  
Washington, D.C., April 13, 1976.

HON. WARREN G. MAGNUSON,  
Chairman, Committee on Commerce,  
U.S. Senate

DEAR MR. CHAIRMAN: Thank you for your letter of November 25, 1975, requesting the views of the Department of State regarding S. 2661 (the "Independent Safety Board Act Amendments of 1975").

The Department of State earlier had examined this Bill at the request of the Office of Management and Budget, and feels that the portion of the Bill which will have international impact (Section 2) is desirable.

We are advised by the Office of Management and Budget that there is no objection to the presentation of this report from the standpoint of the Administration's program.

I regret the delay in this response, and hope the information given here will prove useful to you and the members of your Committee.

Sincerely,

ROBERT J. McCLOSKEY,  
Assistant Secretary  
for Congressional Relations.

Senator CANNON. Mr. Todd, we are pleased to have you here this morning, sir, and if you will introduce for the record those that are at the table with you, then we'll proceed and hear your statement.

**STATEMENT OF WEBSTER B. TODD, JR., CHAIRMAN, NATIONAL TRANSPORTATION SAFETY BOARD; ACCOMPANIED BY HARRY J. ZINK, GENERAL MANAGER; FRITZ L. PULS, GENERAL COUNSEL; MARTYN V. CLARKE, ACTING DIRECTOR, BUREAU OF AVIATION SAFETY; HENRY H. WAKELAND, DIRECTOR, BUREAU OF SURFACE TRANSPORTATION SAFETY; AND B. MICHAEL LEVINS, COMPTROLLER**

Mr. TODD. Thank you very much, Senator.

Beginning on my right is Mr. Clarke, currently the Acting Director, Bureau of Aviation Safety; Mr. Wakeland, Director of the Bureau of Surface Transportation Safety; Mr. Zink, the Managing Director; Mr. Levins, our Comptroller; and Mr. Puls, our General Counsel.

As an introduction, I would like to comment on the impact of the independence of the Board and the significance of the action that the Congress took, largely under the leadership of this committee. Independence has, in addition to considerably expanding our scope of activities, made it a great deal easier for us to conduct our business and has given the transportation safety problems the visibility, interest, and clout that is necessary to bring about solutions. I would like to point to some of the accomplishments that the Board has achieved of late.

In the aviation field, two or three of the most important of the Board's accomplishments which grew out of the TWA 514 accident are the FAA's change in procedures and rewriting of the controller's manual, and the issuance of a glossary of terms to prevent communication problems between pilots and controllers.

With respect to railroads, the issuance of emergency order No. 5 which requires the specific locomotive braking of tank cars rather than putting them through a normal hump operation is a significant accomplishment. It's one of those things that's hard to evaluate. If we don't have any more accidents, we can say it's a good idea; but I think the investigation of a number of rail catastrophes that led to that order indicates its validity.

In the pipeline field, significant progress has been made on the implementation of a single call system for notification not only in construction, but also for any accident occurrence.

The bill before us, S. 2661, contains one major amendment to our current authorization, in addition to the financial amounts. This specifically deals with section 306(b) of the act, which would grant the NTSB statutory authority to temporarily withhold information that we get in the process of participating in foreign accident investigations; whether they be accidents of a U.S. carrier, in which we are sending accredited representatives as state of manufacture, or where in accordance with our ICAO agreements we have the function of analyzing the flight data recorder readouts and the cockpit voice recorder readouts. We have run into considerable problems in this area now because of the Freedom of Information Act.

We have lost a court action which has caused us to disclose some information, in violation of the ICAO agreements, and I have received a very strong letter from the French Government because of our inability to withhold their investigation information. Discussions with other members of the European community indicate that they may well take the same position. That position is that unless we can guarantee them privacy until the report is completed we will be denied access to information necessary to make safety recommendations.

Senator PEARSON. What was the time frame on the court action?

Mr. PULS. The decision by the District Court of Southern California was issued a year ago last month, and the material disclosed was on a DC-10 accident in Paris.

Senator PEARSON. That accident occurred when?

Mr. PULS. Two years ago in March. The court action was almost a year after the accident, and it took the French 2 years to get the report out.

Mr. TODD. That report is out now. It was issued last week.

Mr. PULS. Right.

Senator PEARSON. I think I understand the problem.

Mr. TODD. The problem is one that we brought up in our oversight hearings in the House last month and objections were made concerning this provision of S. 2661. I think they were primarily procedural objections. One member of the House committee felt that we were attempting to end-run the Freedom of Information Act. I would hasten to say that is not our intent at all, and we believe that our current authorization legislation is a procedurally correct placement of this particular amendment. Of course, if we have to proceed

separately, we will do that because we believe this is a very serious problem.

I advised this committee in my letter of March 30, 1976, in which I addressed the changes that I have made in the previously submitted budget, that I believe the NTSB can adequately discharge its mandate under Public Law 93-633 with 386 authorized positions and \$14.5 million for fiscal year 1977, and the same number of positions and \$15.7 million for fiscal year 1978. This represents a reduction of 143 positions and \$2.8 million from the request that is identified in S. 2661.

Since this modified request represents a significant reduction from our previously submitted authorization, I believe it's important that you understand why and how we revised our program.

While the Independent Safety Board Act significantly expands the mandate under which the Board operates, the Board's primary function remains the investigation of selected accidents, the determination of probable cause, and the formulation of recommendations to preclude similar future occurrences. Of equal importance, however, under the new act is the fact that the Board must review the operations and performance of other agencies involved in transportation regulation in regard to their safety impact.

We must, therefore, maintain a standard of professionalism in accident investigation which is above reproach as well as build an analytical capability which allows us to move significantly beyond historical analysis and towards the forefront of accident prevention through expanded safety consciousness.

The Board must strive to foster a climate wherein those responsible for transportation operations may communicate their concerns and discuss their problems and seek solutions in a cooperative way.

I think that safety in transportation can be enhanced and approached by strong leadership not only at the Board and here in the Congress, but also in other agencies of the executive branch, and by those people and entities in the private sector that are responsible for the actual day to day operation of the system.

We have, therefore, looked at what the Board's mandate is from three points of view:

One, the definitive legislation which governs our activities;

Two, the level of effort devoted by other Federal, State, local, and private agencies; and

Three, the safety issues that require action to which the NTSB can make a meaningful contribution.

The next step, having outlined the functional areas that we felt we needed to address under those parameters, was to look at our current staffing pattern, our current functional assignment of our personnel, and to take those existing professional staff slots that we had, put them in the most logical functional organization that we could, and then staff that structure with a minimum number of new positions. And essentially what we have done is to take those areas of Board endeavor that are truly intermodal or have cross-modal impact and put them together. Take, for instance, metallurgy. A metallurgist can deal in any mode. Human factors may be cross-modal. On the other hand, an air traffic specialist must stay in the primary area of endeavor.

What we have done is divide those specific professional and discrete areas and assigned them to the modes and the rest are in effect in a

supporting position. We then added additional people as we felt necessary.

This leads us to 171 positions in the aviation activity, which is an increase of 10 over the fiscal 1976 program level, and will allow us to maintain our current level of effort in aviation accident investigation. This includes the investigation of all catastrophic and fatal air carrier accidents, and the selection of other categories of aviation accidents based on the safety issues involved, while continuing to request the FAA to investigate the remaining accidents. In addition, we will, one, substantially increase our participation in efforts in foreign accident investigation as a result of a new agreement among the member nations of ICAO, and, two, address the evaluation responsibilities of FAA rulemaking activities and FAA effectiveness in preventing transportation accidents.

In the surface activity, the Board will require 111 positions as follows: in cross-modal, 20 positions; highway, 20; marine, 15; railroad, 43; pipeline, 8; and hazardous materials, 5. This request represents an increase of eight filled positions over the fiscal year 1976 program level to, one, increase the cross-modal efforts in recommendations followup, accident prevention and crash injury; and, two, to accomplish our marine program encompassing the determination of probable cause on all major marine casualties investigated by the Coast Guard, the investigation of those major marine casualties where there is a clear need for an independent investigation, and the evaluation and assessment of the Coast Guard's accident investigation procedures and effectiveness.

In the appeals activity, the NTSB will need 15 positions. This is an increase of three filled positions over fiscal year 1976, and will allow the Safety Board to reduce the backlog and dispose of all cases within 120 days after filing.

In the policy and support activity, the Safety Board will require 89 positions. This is an increase of 10 filled positions over fiscal year 1976 to allow the Safety Board to expand the current aviation oriented training program to provide comprehensive formal schooling, field intermodal training and seminars for all transportation modes for not only Safety Board personnel, but other Government and industry personnel as well; two, develop required equal employment opportunity programs; and, three, provide adequate guidance and administrative support to the four primary Safety Board activities.

Senator PEARSON. These slots are fine, but are good people applying to you for these positions? What type of people are you able to recruit? Are they from the universities or research organizations?

Mr. TODD. I think a graphic demonstration of the power and the draw of the Board is our recent experience in hiring our railroad staff. We had 23 positions to fill and something around 2,000 applicants for those 23 positions. They had operating backgrounds, scientific backgrounds, and some came from the Government, such as the Federal Railroad Administration. It allowed us to select a very highly qualified and discrete group of people.

Henry, do you know what the average operating experience of your new railroad people would be?

Mr. WAKELAND. I don't know what the average operating experience is, but the observation that people have made, in looking at

this group of new hires, is that we can run a railroad with the people that we have.

Senator PEARSON. But the answer is that you think you're really getting some very good people here——

Mr. TODD. No question about that.

Senator PEARSON.—in a number of slots——

Mr. TODD. No question.

Senator PEARSON.—enough to make happy those of us who are concerned with keeping the agencies under control and making sure that you have enough people, that you have good people, that you pay them enough, and that you get the job done?

I would think that your argument for public confidence, with which everyone concurs would apply to the type of people that you hire.

Mr. TODD. Indeed.

Senator PEARSON. Proceed.

Mr. TODD. I have just one final word on that point.

As Henry has noted, these new railroad professionals are now out in the field, have been there about 5 weeks now, and their acceptance and their ability to move right in and do the job is just terrific.

Senator PEARSON. All right.

Mr. TODD. One other point that I would like to make is that the Committee on Public Works and Transportation, in the House, has already held hearings on the Safety Board's authorization. The recommended level resulting from this hearing, which is now pending before the full House, provides authorization amounts of \$3.8 million for the transitional quarter, \$15.2 million for fiscal year 1977, and \$16.4 million for fiscal year 1978. The transition quarter authorization amount is an additional request not reflected in S. 2661; however, the \$3.8 million provided in the House bill is needed if the Safety Board is to continue the approved fiscal year 1976 program in the transition quarter. The authorization amounts provided for fiscal years 1977 and 1978 reflect an increase of \$700,000 and 22 positions over the revised program requested in the House hearings. The approved funds and positions for the highway program will allow the Safety Board to double its planned highway accident investigation effort and increase its liaison program with State and local authorities. Such a program will be aimed at improving State and local highway accident investigation techniques and procedures and thus the viability of their data for our use in special studies and trend analysis.

It is my opinion that the NTSB will be able to adequately conduct its business with the 408 positions and the \$15.2 million for fiscal year 1977 and the \$16.4 million for 1978 as provided by the House committee. However, if we are to adequately accomplish our proposed program in fiscal year 1977 and 1978 it is important that we have specific direction by the Congress to hire all the positions authorized.

Senator, let me conclude by saying that this last statement represents a significant problem for the Board, in that section 304(b)(7) of our current legislation requires us not only to simultaneously submit our budget request to the OMB and to the Congress, but it also contains language that we interpret to mean that we should pursue those authorizations and appropriations requests on the Hill

on our own without interference by anyone else in the executive branch.

Last year, we had an operating problem, a very real problem, in that the Congress gave us 85 new positions, of which we had authorization by OMB to fill only 41. Since the program for the past year was based on those 85 positions, we wound up fighting with OMB to obtain approval to fill all 85 positions.

I have just received a letter from the Director of OMB which is critical of what the NTSB has done, in not only submitting our budgets simultaneously, but also in coming here and testifying before properly constituted committees in what we believe is compliance with our own legislation. I think that any help that we could get from the Congress in our ability to pursue whatever is appropriated and authorized would be most welcome.

With that, sir, I would be delighted to answer any questions you may have.

Senator PEARSON. Well, I can appreciate that you're caught in the middle and that there is a very legitimate position by both groups. We want to make sure that once we assign to you responsibilities in this particular field which we feel is so vital, that you then have the tools to do the job. And that at the same time, OMB very properly fulfills the function of fiscal scrutiny. Somebody necessarily must determine what the total expenditures are going to be and make some judgment as to who gets what.

So I'm not going to be too critical of OMB.

Mr. Chairman, we went ahead and Mr. Todd has just finished his statement, and he concluded by mentioning something that's not new or unique. He's caught between this subcommittee and the OMB. We authorize positions or we provide for them, and then OMB has an authorization that's less, and they don't know who to obey.

Let us look at that again. I think maybe the first thing is to once again talk to OMB about these things and see if on the broad principles between Congress and OMB, we can reach some accommodation, and just generally review this.

We have just finished and we are prepared for your questions.

Senator CANNON. Why don't you go ahead? I didn't hear the testimony. I'll review the transcript.

Senator PEARSON. All right.

These questions have been prepared by the staff, Mr. Todd, and your statement will be incorporated in the record in full.

[The statement follows:]

STATEMENT OF WEBSTER B. TODD, JR., CHAIRMAN, NATIONAL TRANSPORTATION SAFETY BOARD

Good morning, Mr. Chairman, and Members of the Committee. It is indeed a pleasure to meet with you today.

First I'd like to introduce the staff members who are here with me today.

Before I discuss the Safety Board's program plans and resource requirements I would like to relate to you what I consider to be some significant accomplishments over the past year. The most noteworthy accomplishment in the Safety Board's brief history was the passage of the Independent Safety Board Act of 1974, wherein one agency—the National Transportation Safety Board—was provided comprehensive transportation safety responsibilities in each mode. This major step forward in transportation safety occurred primarily as a result of the efforts of this committee, and the proposals we will be discussing here today are solely to carry out the intent of this legislation.

In addition, the results of our program efforts in the aviation area include:

1. The development of 14 recommendations as a result of our investigation of the TWA 514 accident at Dulles International Airport. In response to these recommendations, the Federal Aviation Administration has required that radar-identified aircraft be alerted when they descend below specified altitudes during an approach; published a new, revised air traffic control manual; drafted a glossary of air traffic control terms for common use by both pilots and controllers; and taken other actions to clarify the air traffic control procedures to eliminate misunderstandings on the part of either controllers or pilots.

2. The implementation of a regulation within the coming year that aircraft be equipped with ground proximity warning equipment. This effort resulted from Safety Board recommendations on five separate occasions since 1969.

3. The initiation of an FAA mounted educational campaign to improve airport security abroad and expand research and development in explosives detection in response to four Safety Board recommendations resulting from the investigation of the TWA accident in the Ionian Sea.

4. The undertaking of a major effort in communicating with the aviation industry by sponsoring a government/industry seminar in the way we conduct investigations and hearings.

Significant progress has also been made in the surface modes with the result that:

1. The Federal Railroad Administration issued an emergency order to prohibit railroads from allowing large railroad cars carrying hazardous materials to roll free during switching operations by making it mandatory that they be coupled to a locomotive that will brake them.

2. The pipeline industry is accelerating its efforts to install a one-call system nationwide to protect pipelines against construction damage.

3. The Federal Highway Administration and local governments are making safety changes at highway construction sites as a result of a Safety Board review of a Capitol Beltway automobile accident.

In addition, recognizing that no other mandate of the statute is more vital to the Safety Board's role of accident prevention than safety recommendations, we implemented a broad safety recommendation follow-up program to assure that we do everything we can do to obtain the implementation of our recommendations.

This program assures that safety recommendations are:

1. Adopted by the Board on a case-by-case basis with each recommendation bearing an indicator which defines the degree of urgency in the follow-up action;

2. Issued publicly, at any time after occurrence of an accident when a safety problem is seen and a course of corrective action perceived, to everyone in a position to take necessary action;

3. Answered by the recipient in 90 days or less;

4. Monitored continuously with the assistance of a Safety Recommendations Officer and Safety Recommendation Managers in both the bureaus;

5. Categorized officially by the Board as being closed or open;

6. Reviewed at least quarterly by staff officials of both the Safety Board and the principal recipient agencies; and

7. Vigorously followed-up by the Board when a particularly significant safety need has not been acknowledged or effectively treated.

With respect to the Safety Board's future plans we have submitted a draft bill, entitled, "The Independent Safety Board Act Amendments of 1975", S. 2661, now before you.

This Bill would make one amendment to the Independent Safety Board Act, which is Title III of the Transportation Safety Act of 1974, P.L. 93-633, and would provide an authorization for FY 1977 and 1978 for programs of the National Transportation Safety Board.

Specifically, section 306(b) of the Act would be amended by the Bill to provide the Safety Board with statutory authority to temporarily withhold from public disclosure, notwithstanding section 442 of Title V of the United States Code relative to freedom of information, and render immune from legal process information obtained by the Board from an aircraft accident investigation conducted by a foreign state, until that state notifies the Board that it has no objection to such disclosure. It has been the practice of the Safety Board, and the Civil Aeronautics Board before it to limit public disclosure of the aforementioned accident information, and provision thereof has been contained in the regulations of the Safety Board. However, the provisions of the Freedom of Information Act, court

decisions thereunder, and a recent court decision made during discovery proceedings in aviation litigation have made it clear that our regulation cannot be sustained.

If the Safety Board cannot temporarily maintain the confidentiality of accident information obtained in the course of participation in foreign accident investigations, the Safety Board will be seriously hindered in its ability to initiate and support efforts to prevent future accidents.

The information obtained from foreign states for which we are seeking temporary privilege are those documents furnished directly to our accredited representatives by the foreign states, such as CVR and ATC transcripts, witness statements, and minutes of meetings. It is not intended to include documents furnished foreign states by our representatives or their advisors.

Because of the preliminary nature of many of the documents initially furnished us during the investigation, foreign states are opposed to their public release. When you consider the fact that many of these states simultaneously conduct technical investigations and judicial investigations which involve potential criminal action, the unauthorized release of such documents poses a serious problem. To emphasize this point, we have recently received a communication from the French Government through its Washington Embassy indicating their concern at our apparent inability to restrict release of such documents. From our conversations with their representative, we understand that this is a concern shared by other European community states.

I should also point out that in our oversight hearings in the House of Representatives, objections were made concerning this provision and, therefore, this section in the House bill was removed to expedite action on the funding authorization provision. Concern was also expressed that by including this provision in our authorization bill we were attempting to "end run" the committee responsible for public information policy. This was not our intent. We believe it appropriate to include this provision in this pending bill. It amends our statute and there is a need for expedited passage.

In addition, section 309 of the Act provides appropriation authority of \$12,000,000 for FY 1975 and FY 1976. The Board's responsibilities under this Act, however, are continuing, in addition to having been expanded, and this Bill would provide an appropriation authorization of \$17,300,000 for FY 1977 and \$18,500,000 for FY 1978.

This bill now before you was submitted to you by my predecessor. I fully concur with the proposed amendment to provide the Safety Board with the authority to withhold from public disclosure information obtained by the Board in connection with our participation in foreign accident investigations until release is authorized by the foreign state. However, I do not concur with the requested FY 1977 and FY 1978 authorization amounts.

As I advised you in my letter of March 30, 1976, I believe the Safety Board can adequately discharge its mandate under P.L. 93-633 with 386 authorized positions and \$14,500,000 for FY 1977, and 386 authorized positions and \$15,700,000 for FY 1978. This represents a reduction of 143 positions and \$2.8 million below our authorization request for both FY 1977 and FY 1978, as identified in S. 2661.

You will note that this position request is, in an overall sense, exactly what the Congress provided the Board in FY 1976. In detail, however, it represents an extensive reallocation of current resources along functional lines with judicious use of new positions to achieve the optimal organization to comply with our new legislative mandate.

Since this modified request represents a significant reduction from our previously submitted authorization, I believe it essential that you understand why we revised our program, and how we have arrived at these levels.

While the Independent Safety Board Act of 1974, P.L. 93-633, significantly expands the mandate under which the National Transportation Safety Board must act, the Board's primary function remains the investigation of selected accidents, the determination of probable cause, and the formulation of recommendations to preclude similar future occurrences. Of equal importance, the Board must review the operations and performance of other agencies involved in transportation regulation in regard to their safety impact.

The Board, therefore, must maintain a standard of professionalism in accident investigation which is above reproach as well as build an analytical capability which allows it to move significantly beyond historical analysis towards the forefront of accident prevention through expanded safety consciousness.

Therefore, the Board, through all its actions, must strive to foster a climate wherein those responsible for transportation operations may communicate their concerns and discuss their problems without the need for rhetoric or the fear of recrimination.

This climate can be created only through a realistic assessment of current safety conditions in both the government and private sectors. In our minds, this means an active, involved, and informed Board and staff who seek the highest degree of currency and awareness of safety matters.

Safety in transportation is achieved by a combination of strong leadership and correct decisions at top management levels and the conscious effort of all involved parties to ensure that no preventable series of actions culminates in a catastrophic occurrence. The Board, as a catalyst for safety, is dedicated to influencing those who make the decisions and those who carry them out.

The Board cannot be omniscient in its activities nor should it shoulder responsibilities more properly placed within the province of other members of the transportation community. The Board, can however, raise the level of safety consciousness in all modes to the point where no unnecessary loss of life or unwarranted dissipation of physical properties occurs. It is towards these objectives that the Board is dedicated.

This policy directive formed the basis for a functional definition of effort by mode, which was developed on the following three premises:

1. Definitive NTSB legislative authorization;
2. The level of effort devoted by other federal, state, local, and private agencies; and
3. Safety issues requiring action to which the NTSB can make a meaningful contribution.

The functional definition of effort in accordance with these premises is composed of four interrelated activities: Accident Investigation, Evaluation, Training, and Appeals.

The first activity is the investigation of transportation accidents, in all modes, which will be conducted by the NTSB in accordance with the provisions of P.L. 93-633 under the following criteria.

1. Catastrophic accidents will be investigated by the NTSB.
2. Other accidents as required by the Act and identified through an NTSB selectivity control, will be investigated to analyze safety problems and issues predetermined by the Board.

3. The remaining accidents which the Safety Board investigates or causes to be investigated will be accomplished through review of other government agencies' accident investigation reports, which they are developing for their own purposes.

The second activity, the evaluation function, will be a coequal responsibility of the NTSB along with the accident investigation function, and in fulfilling this responsibility the Safety Board will:

1. Evaluate the adequacy of safeguards and procedures concerning the transportation of hazardous materials and assess the performance of other government agencies charged with assuring the safe transportation of hazardous materials;
2. Develop special studies and special investigations on safety issues in transportation resulting from our accident investigations, trends noted from our data as well as data from other agencies, and proposals by other agencies and the industry;
3. Evaluate and assess the effectiveness of the transportation safety efforts of other government agencies in preventing transportation accidents through specific studies and other analyses;
4. Publish and distribute to all interested safety officials, the press, and Congress, the findings of the Board, including recommendations to prevent the recurrence of transportation accidents and the avoidance of injury, and provide detailed followup activities to insure implementation;
5. Develop a coordinated data base using materials from NTSB investigations, investigations by others, and technical and research materials in transportation safety from all sources;

6. Improve the Safety Board's awareness of safety priorities, problems, and issues by developing close liaison with international, federal, state and local transportation agencies and the transportation industry.

The third activity, the training function, involves the collection of accident investigation information from industry; federal, state, and local governments; educational institutions; and other such sources for dissemination through formal

schooling, field training, and seminars to all parties, and in fulfilling this responsibility the Safety Board will:

1. Develop a curriculum and teach established accident investigation techniques to NTSB personnel and personnel of other governmental agencies and industry;

2. Provide such NTSB curriculum assistance and monitoring to other governmental agencies and industry schools offering accident investigation courses;

3. Establish and operate field training courses for NTSB personnel in cross-modal disciplines and conduct on-the-job training for cross-modal experience; and

4. Conduct seminars in the field on the subjects of accident investigation techniques and problems for personnel of other governmental agencies and industry.

The final activity is the appeals function. There are two levels of appeal within the Safety Board.

1. The initial appeal procedure involves the review by NTSB administrative law judges, of the suspension, amendment, modification, revocation, or denial of any certificate or license issued by the FAA administrator.

2. The second level of appeal by the full Board involves the review of the initial decisions of the NTSB administrative law judges and the decisions of the Commandant of the Coast Guard suspending, revoking, or denying a license, certificate, document, or register.

The next step in the reevaluation of our program was the identification and reallocation of our current resources to meet these functional objectives in order to determine what, if any, additional resources would be absolutely necessary. Our determination of the allocation of positions by activity that are required to implement our program responsibilities in FY 1977 and FY 1978 is as follows:

In the aviation activity the Safety Board will need 171 positions, which is an increase of 10 filled positions over the FY 1976 program level. This request will allow the Safety Board to maintain its current level of effort in aviation accident investigation, which will include the investigation of all catastrophic and fatal air carrier accidents, and the selection of other categories of aviation accidents based on the safety issues involved, while requesting FAA to investigate the remaining accidents. In addition the Safety Board will substantially increase its (1) participatory efforts in foreign accident investigation as a result of a new agreement among the member nations of the International Civil Aviation Organization, and (2) evaluation responsibilities of FAA rulemaking activities and FAA effectiveness in preventing transportation accidents.

In the surface activity the Safety Board will require 111 positions, as follows: crossmodal, 20 positions; highway, 20 positions; marine, 15 positions; railroad, 43 positions; pipeline, 8 positions; and hazardous materials, 5 positions. This request represents an increase of 8 filled positions over the FY 1976 program level to (1) increase the crossmodal efforts in recommendation followup, accident prevention and crash injury; and (2) accomplish our marine program encompassing: the determination of probable cause on all major marine casualties investigated by the Coast Guard, the investigation of those major marine casualties where there is a clear need for an independent investigation, and the evaluation and assessment of the Coast Guard's accident investigation procedures and safety effectiveness.

In the appeals activity the Safety Board will need 15 positions, which is an increase of 3 filled positions over the FY 1976 program level. This will allow the Safety Board to reduce the backlog and dispose of all cases within 120 days after filing.

In the policy and support activity the Safety Board will require 89 positions, which is an increase of 10 filled positions over the FY 1976 program level, to allow the Safety Board to (1) expand the current aviation oriented training program to provide comprehensive formal schooling, field intermodal training and seminars in all transportation modes for Safety Board and other government and industry personnel; (2) develop required Equal Employment Opportunity programs; and (3) provide adequate guidance and administrative support to the four primary Safety Board activities.

The Committee on Public Works and Transportation, in the House of Representatives, has already held hearings on the Safety Board's authorization request now before you. The recommended level resulting from this hearing, which is now pending before the full House, provides authorization amounts of \$3,800,000 for the transition quarter, \$15,200,000 for FY 1977 and \$16,400,000 for FY 1978. The transition quarter authorization amount is an additional request not reflected in S. 2661; however, the \$3,800,000 provided in the House Bill is needed if

the Safety Board is to continue the approved FY 1976 program in the Transition Quarter. The authorization amounts provided for FY 1977 and FY 1978 reflect an increase of \$700,000 and 22 positions over the revised program requested in the House hearings. The approved funds and positions for the highway program will allow the Safety Board to double its planned highway accident investigation effort and increase its liaison program with state and local authorities. Such a program will be aimed at improving state and local highway accident investigation techniques and procedures and thus the viability of their data for our use in special studies and trend analysis.

It is my opinion that the Safety Board will be able to adequately conduct its business with 408 positions and \$15,200,000 for FY 1977 and \$16,400,000 for FY 1978 as provided by the House Committee. However, if we are to adequately accomplish our proposed program in FY 1977 and FY 1978 it is important that we have specific direction by the Congress to hire all the positions authorized.

I should also point out that this structure and costing of NTSB operations is based on our remaining at our current location and, through the cooperation of DOT, consolidating our entire staff at 800 Independence Avenue rather than moving to a different location. This represents a saving of approximately \$700,000 and, more importantly, no loss of productivity normally associated with the disruption of a move. We welcome and, indeed, need the strong support of the Congress in this decision to ensure that we are provided the maximum assistance in obtaining the space required to bring our entire staff together.

Mr. Chairman, let me conclude by thanking you, the members of your Committee and your staff for the patient cooperation and advice which has allowed us to come forward with this amended request. This program will move the Safety Board beyond a reactive posture of analyzing historical events toward a more active role in accident prevention and a more forceful approach toward solving transportation safety problems. It represents the best possible product of our system whereby those responsible for the management of public monies can truly say they have met and discharged their responsibilities under the Constitution and the law to act wisely, yet frugally. I will be glad to discuss our programs in detail and answer any questions you may have.

Senator PEARSON. In your capacity as Chairman of the NTSB, have you been urged by the executive branch to reduce the Safety Board's budget requests prepared by your predecessor, and submit a revised version in line with OMB's recommendations?

Mr. TODD. Senator, not only have I not been asked to do that, but as I mentioned just a minute ago I received a letter yesterday from Mr. Lynn criticizing me for not talking to others in the administration about the plans, programs, and funding of the NTSB.

If the committee would like to review that letter it might be appropriate. It states very clearly that what we have done thus far is not only not in response to the direction of anyone as to what our level of effort and resources should be, but it's quite a strong chastisement of our proceeding in accordance with our own beliefs.

Senator PEARSON. Well, how does the \$2 million reduction relate to that particular communication when you refer to the reduction in your budget? Does it refer to other conversations and communications with OMB?

Mr. TODD. No. Mr. Lynn recognizes that we have reduced the request of our predecessor and he feels that that is a positive step in accordance with the President's desires, and correctly so, but he points out that not only was the budget request submitted initially in accord with S. 2661 above what the administration felt we should have, but the amended request that I have come forward with is also above what the OMB has felt was adequate for us to discharge our function.

My reduction from the budget that was submitted by Governor Reed was based strictly on the functional reorganization of the Board.

We looked at the statute and what we felt we needed not only to discharge that legislative mandate, but what we felt we could get, not here in the form of positions and authorizations, but in the form of a properly trained professional staff built up to meet the expanded responsibilities contained in the Independent Act.

Senator PEARSON. Do you feel you're independent of OMB's restrictions on slots and how are you going to respond to that letter?

Mr. TODD. Well, I have responded to the letter. I attempted to contact the Director by telephone and was unsuccessful due to his schedule and mine. I have responded to the letter saying in effect that I respect the OMB and the Budget and Accounting Act of 1921 and I hope they'll respect section 304(b)(7) of Public Law 93-633, which is very specific as to how we should pursue our budget and fiscal requests here on the Hill. And I'm not sure what kind of reaction I will get. My general counsel tells me that if I'm wrong, I'm subject to 10 years in jail. So I hope I'm not too far off the mark in reading our own legislation.

Senator PEARSON. That seems an unreasonable price for you to pay to resolve that.

Last year, the Board had decided to cancel the delegated authority of the FAA to investigate aviation accidents and to conduct all aviation investigations itself.

Why has that policy now been changed so as to leave with the FAA such delegated authority?

Mr. TODD. The change in direction from the unilateral withdrawal of the request to the FAA on accident investigations came about as a result of my discussions with our staff, my discussions with Dr. McLucas, and, frankly, my past background as a base operator for 7 years which provided knowledge of the type of general aviation accidents that occur. I think what the NTSB ought to be interested in is not the parochial attitude that we have to investigate everything that happens, but that we have access to all the information generated from the various sources. We will therefore be in a position to analyze and select trends and to go in where you have a problem developing rather than just showing up at the scene of every accident.

One of the real problems in addressing a withdrawal of this request to the FAA is determining just exactly how many people we're talking about. I've heard numbers from not only my staff, but from Dr. McLucas, that range from a low of 20 to a high of over 100. In light of those two questions I felt that perhaps what is best is a continual review of the Public Notice 1 reports of the FAA and a change in current procedures to allow us, on a selective basis, to respond to notification by the FAA of a particular accident.

For example, one trend that I think is of concern to us, and would be the type of accident we would select, is the transition problem associated with upgrading a pilot into another type of equipment without adequate training. I think we've seen a number of instances over the last year and a half of that type of accident and we should become directly involved in every one of those.

An accident that is not substantial or fatal, such as an accident involving a ground loop or a student malfunction that is not traceable to a failure in the training system itself is the type I think we might just let the FAA handle.

What we're really doing is on a continual basis, not only between myself and Dr. McLucas, but between Marty and his counterparts in the FAA, is getting a much greater idea of what our significant accidents and trends are, so that when we have recommendations, they're going to have an impact that we will see in the statistical record of the aviation community.

Senator PEARSON. We have made so many references to correspondence back and forth, I am going to ask you to submit a copy for the record.

[The letters follow:]

EXECUTIVE OFFICE OF THE PRESIDENT,  
OFFICE OF MANAGEMENT AND BUDGET,  
Washington, D.C., May 1, 1976.

HON. WEBSTER B. TODD, JR.  
*Chairman National Transportation Safety Board,*  
*Washington, D.C.*

DEAR MR. CHAIRMAN: It has been brought to my attention that in your opening statement before the House Subcommittee on Appropriations of February 18, 1976, you did not support the President's budget levels but the higher levels initially submitted by the Board to this office. I understand, however, that at that session you indicated that the Board would reevaluate those resource levels and submit by April 1, 1976, revised estimates concerning your 1977 requirements.

I have received your letter conveying the revised 1977 budget estimates, which are substantially lower than those initially submitted to the House Subcommittee, and compliment you on the functional restructuring of the Board's operations that allowed you to achieve this reduction. We believe this reorganization to be a major advance toward the objective of achieving the most effective and optimal utilization of the Board's resources. However, the methods used to achieve these ends are contrary to policy contained in Office of Management and Budget Circular A-10.

Circular A-10 deals with the responsibilities of heads of executive departments and establishments with respect to the budget. The Budget and Accounting Act, which laid the basis for this circular, defines departments and establishments as "any executive department, independent commission, board, bureau, office and agency, or other establishment of the government, including any independent regulatory commission or board. . . ."

The National Transportation Board was established by Congress as "an independent agency of the United States" and as such is bound by the restraints and requirements of Circular A-10 applicable to all entities of the Executive Branch. It specifically states:

Officials and employees will be guided by the following policies pertaining to budgetary matters when testifying before any Congressional committee or communicating with Members of Congress: (a) Frank and complete answers will be given to all questions of fact. (b) Personal opinions will not be volunteered which reflect positions inconsistent with the program and appropriation requests the President has transmitted to the Congress. (c) In expressing personal opinions relating to such program and appropriation requests in response to specific requests . . . witnesses will refer to the extent, . . . to which these opinions differ from the President's recommendations, and should make clear that the expression of the opinions is not a request for additional funds . . .

I think you will agree that these policies were not adhered to by you and your staff at the Board's session before the House Subcommittee on Appropriations or in the subsequent letter transmitting your revised estimates for 1977. You did not support the President's budget, but the Board's own budget estimates which in both instances call for higher resource levels. Although the President encourages all officials of the Executive Branch to be fully responsive to Congressional inquiries, it is still expected that heads of executive agencies maintain a consistent Administration policy in testimony and in other statements furnished to Congress.

Your cooperation in this regard is very important. Of course, if you have any questions, we would be pleased to work with you toward resolving them.

Sincerely yours,

JAMES T. LYNN, *Director.*

NATIONAL TRANSPORTATION SAFETY BOARD,  
Washington, D.C., May 6, 1976.

Hon. JAMES T. LYNN,  
Director, Office of Management and Budget  
Washington, D.C.

DEAR MR. LYNN: This is in reply to your letter of May 1, 1976, indicating that I have failed to comply with the guidelines contained in OMB Circular A-10 regarding our current budget submission before the Congress for Fiscal Years 1977 and 1978.

I sympathize with the President's desires to hold down Federal spending and I am aware of your problems at OMB in implementing these wishes. It was for that reason that, in reevaluating the budget requests of the National Transportation Safety Board, I reduced them significantly and committed myself to no increases for two fiscal years.

I am also conversant with the provisions of the Budget and Accounting Act of 1921 and the manner in which you and your predecessors have interpreted this authority. I respect OMB's right to challenge any "independent agency of the United States" as to its dealings with the Congress on fiscal matters.

I can only ask equal respect of the Safety Board and myself in the interpretation of our enabling legislation. As you know, the Independent Safety Board Act of 1974 contains a unique statutory provision with respect to transmittal of budget matters to the Congress. Section 304(b)(7) of the Act provides as follows:

"Whenever the Board submits or transmits any budget estimate, budget request, supplemental budget estimate, or other budget information, legislative recommendations, prepared testimony for congressional hearings, or comment on legislation to the President or to the Office of Management and Budget, it shall concurrently transmit a copy thereof to the Congress. No officer or agency of the United States shall have any authority to require the Board to submit its budget requests or estimates, legislative recommendations, prepared testimony for congressional hearings, or comments on legislation to any officer or agency of the United States for approval, comments, or review, prior to the submission of such recommendations, testimony, or comments to the Congress."

We interpret this language as requiring the Safety Board to do exactly what it has done, i.e., submit our requests and defend them on our own before the Congress in the most responsible and responsive manner possible.

It is interesting that this section of our Act is silent on what the Safety Board is to do after congressional action on our requests has been taken if OMB refuses to allow us to fill all of the positions Congress has authorized. We are seeking further clarification of this matter by the Congress. Otherwise, our ability to discharge statutory functions will be severely impaired by this conflict.

I will continue to address my duties as Chairman in the most responsible way possible. You may be assured that my actions stem from my desire to act in compliance with all controlling statutes. Should the Congress disagree with our interpretation of Public Law 93-633, or should same be amended to place OMB between us and the Congress, we will, of course, comply with that directive.

Sincerely yours,

WEBSTER B. TODD, Jr., *Chairman.*

Senator PEARSON. Our past experience indicates that we might ask you in a very general way whether all of the members of the Board concur with the views that you are expressing here today?

Mr. TODD. Yes, sir.

Senator PEARSON. In your prepared text—and I'm talking about your statement we have incorporated in the record—you state:

I believe the Safety Board can adequately discharge its mandate under Public Law 93-633 with 386 authorized positions and \$14 million for fiscal year 1977, and 386 authorized positions and \$15 million for fiscal year 1978. This represents a reduction of 143 positions and \$2.8 million from our authorized request for both years 1977 and 1978.

Do the other four members of the Board concur in this view?

Mr. TODD. I would have to answer in the affirmative. This was discussed with them; they are well aware of it; they have had a chance to review it.

Senator PEARSON. This is the consensus of the Board?

Mr. TODD. Yes, sir.

Senator PEARSON. Would you please outline what special studies the Board plans to undertake during the next 6 fiscal years?

Mr. TODD. I'd prefer to submit that to the committee at a later time, if I may, Senator, because we're in the process of reviewing our entire special study procedures and how we select and why we select, and I'm not sure that right now we are in a position to say what we're going to do in the way of special studies.

Senator PEARSON. Fine. If you will submit that to the committee later on, we would be interested in the criteria you work out.

Mr. TODD. Yes, sir.

Senator PEARSON. We would be interested in how you make this determination.

Mr. TODD. Fine.

Senator PEARSON. You indicate in your prepared text that you would allow the Safety Board to double its planned highway accident investigation effort.

What criteria will be used to determine which highway accidents will be investigated?

Mr. TODD. In the highway area, there is of necessity a great degree of flexibility, because of the uncontrolled environment that you are dealing with. First of all, we will investigate catastrophic accidents, such as multiple car accidents on our interstate highways involving 30, 40, or 50 cars. I think the highway accident that involves a large number of fatalities or a highway accident that has the characteristics to lead to a reduction in not only accident potential, but in the severity of an accident, should it occur, would be other types of accidents we would investigate.

We have looked at numerous ways of addressing the highway area. It's difficult to do, because it is so uncontrolled. This is a big country and there are a lot of drivers, a lot of cars, and a lot of different types of accidents that really don't add much in a preventative sense.

Senator PEARSON. Well, for instance, the National Highway Traffic Safety Administration has proposed rulemaking on restraint systems. Do you plan to comment on that or evaluate that in any way?

Mr. TODD. Henry?

Mr. WAKELAND. We could do it. We do not have a plan to comment on that at this moment.

Senator PEARSON. Very well.

Does the Board participate regularly in the rulemaking proceedings of the transportation safety agencies such as the NHTSA, FAA, USCG, and the Materials Transportation Bureau?

Mr. TODD. That concerns hazardous materials.

Senator PEARSON. Yes.—or the FRA?

Mr. TODD. We do to the degree that we have staff available. Some of the positions we have requested are for additional staff to allow us greater participation in rulemaking procedures. We are notified, of course, of all of the proposed rulemakings.

Senator PEARSON. But you're doing it on the basis that you have the manpower to do it now?

Mr. TODD. We look at them and if it's a priority item, we'll get right on it, yes, sir.

Senator PEARSON. How would you evaluate the response of the various departments of transportation safety agencies to the safety recommendations contained in your reports? Are your recommendations, for instance, generally accepted?

Mr. TODD. I think overall the response is pretty good. However, I would have to say that it's a matter of personal opinion that the timeliness of some of the responses are what I would consider inadequate. You and I were talking the other day, Henry, and we agreed that the reaction to Emergency Order No. 5 was not adequate.

Senator PEARSON. Tell us about that. Give us an example of what that was.

Mr. WAKELAND. If I could be forgiven a few possible errors of recollection.

Senator PEARSON. Surely.

Mr. WAKELAND. An accident occurred in East St. Louis about 1972 which involved a puncture of a tankcar by a coupler of another car, releasing a large amount of propane gas, and there was an explosion afterward. This occurred in the humping operation, in a yard, in which the cars were allowed to roll free and couple to each other while they are coasting on their own inertia. They're uncontrolled as to speed. As a result of the accident, we recommended early in 1973 that hazardous materials that explode should be treated as explosives. That is, the propane gas should be treated as an explosive for purposes of the rules and switching operations in the yard.

FRA declined to adopt that particular recommendation saying it wasn't satisfied in a general way.

Then a second accident happened at Decatur, Ill., about the middle of 1974 involving the same phenomenon. Shortly after the Decatur accident, FRA issued a Notice of Proposed Rulemaking that would have required such cars be coupled to a locomotive during switching so that they would be at all times under control of the brakes of the locomotive.

That, of course, did not prevent the second accident. It was too late.

Before that notice was commented on another accident occurred at Houston involving the same situation. After that accident the Board recommended an emergency order, which FRA acted on.

So there was a delay in getting action on the problem, which permitted two more accidents to occur. And these were not small accidents. The number of fatalities was around six to eight total in these three accidents, and there were upwards of 100 injuries.

Senator PEARSON. Do you have a lot of such experiences? Are you telling us about the most dramatic or—

Mr. WAKELAND. This is a particular one which strikes us as illustrating that there is a problem. The damage in the last two accidents was of the order of \$25 million.

Mr. TODD. I raise this particular emergency order because I think certain recommendation response could be more timely.

I have made an effort to meet personally with all of the modal administrators. We have excellent communications. I think we have the ability to use the pressure of the public forum to generate action where it's properly called for, and one of our objectives is to increase not only the degree, but the rate of responsiveness.

Mr. WAKELAND. Something else should be clarified. The delay was not just a matter of laziness. There was a difference in the assessment of the problem by FRA compared to the way that we assessed it.

So I don't want to leave the impression that it's a delay due to administrative problems or anything like that. It's a difference of opinion.

Senator PEARSON. In your prepared text, once again, you state, "The Board can raise the level of safety consciousness in all modes to the point where no unnecessary loss of life or unwarranted dissipation of physical properties occurs."

Do you sincerely believe that we can really reach that sort of a point? When do you anticipate a time when we will no longer have a need for the sort of assignments that you're given?

Mr. TODD. I would expand on that statement by saying that that's an objective, and to put a time limitation on it is very difficult.

Senator PEARSON. I think we would be satisfied if we just knew you were making constant progress.

Mr. TODD. What I view as an objective for the Board is to be an extremely active agency in the sense that I don't think we should sit around and be ambulance chasers.

For instance, the work of Mr. Clarke and his people in the Carleton, Mich., near miss and the Spokane, Wash., near miss is an example. There was no accident. It would not meet any particular investigation criteria and yet it's indicative of the trend of the problems that exist and we can get out there, get involved, get the awareness of the communities that these problems do exist, and get them addressed by all the participants. Then maybe we can prevent catastrophes from occurring. I think we are making progress.

I have met with a number of the modal administrators. Every time I travel, I am up on the flight deck; every time I'm on a railroad train, I'm up with the engineers or talking to the operating people. I visit towers and centers and radar approach control rooms, and try to get a feel for the problems. Then I'll sit down with Dr. McLucas or Captain O'Connell or Mr. Leyden and try and review what I perceive and work out a method of prevention of the problems I see.

What I'm talking about is the increasing preventive degree of activity, and I think it will be effective.

Senator PEARSON. We have heard in a number of hearings on numerous occasions of the particular hazards and problems concerned with the transportation of LNG. Tell us what initiatives you are undertaking in that particular field.

Mr. WAKELAND. We haven't entered that field yet. The LNG field is under heavy technical study. A number of studies that have been done by the USCG in this particular area.

Senator PEARSON. I recall some hearings that revealed frightening testimony as to what could happen to some of these tankers as they come into crowded ports.

Mr. WAKELAND. Our problem, quite frankly, Senator, is that we have only three professionals in the marine field. We have a substantial number of accidents to be reported on, and we have not performed any special studies of this nature in quite some time, perhaps 2 years, because of the heavy workload on accidents to be processed for analysis and determination of the probable cause. However, we are proposing

to increase the staffing in the marine field to 15 people in fiscal year 1977 to allow us to get more involved in those very problems.

Senator PEARSON. Well, as I recall, you intend to assign five staff positions in the area of hazardous materials transportation. That will increase to eight the number of people that are going to be involved?

Mr. WAKELAND. The 5 people in the hazardous materials function will be in addition to the 15 people in the marine function.

Senator PEARSON. Does anyone else have anything to say for the record here today?

This finishes, Mr. Chairman, our questions from the staff.

Senator CANNON. Thank you.

Let's go a little further on this. You say you haven't gone into this area because you are short on personnel. You are supposed to assign five more people. I understood Mr. Wakeland to indicate that perhaps you needed 15.

Now if this is the case, are you shortchanging in this area?

Mr. TODD. No; the five are specific to hazardous materials. The 15 are in addition to the 5 in the hazardous materials area.

Senator CANNON. All right. Now are these within your requested budget or are they over and above?

Mr. TODD. Yes, they are within.

Senator CANNON. And does this give you an adequate number of personnel in that area?

Mr. TODD. I think so, yes, sir.

Senator CANNON. I skimmed through your statement here on the reduction of personnel. I'm wondering where this loss of or reduction of 143 spaces comes from?

Mr. TODD. We can submit for the record exactly where the reductions occur. They largely occur in the aviation function in the reexamination of our relationship with the FAA on who investigates which accidents. That was I think 68 positions.

Mr. ZINK. Yes, 68.

Senator CANNON. In other words, because you're leaving the FAA the responsibility in some of these areas you describe?

Mr. TODD. Right. That's the largest number of them.

Mr. ZINK. Yes.

Mr. TODD. The other reductions in the aviation function are: laboratory positions, 2; technical support to the field, 11; computer programming, 1; and change in unfilled positions, 21—Mike and Harry, do you want to tell me what the change in unfilled is?

Mr. LEVINS. The Congress has previously authorized a certain number of positions but we have been prevented from filling them due to our OMB ceiling.

Senator CANNON. How many were in that category, the unfilled?

Mr. TODD. Twenty-one in the aviation function.

Mr. LEVINS. A total right now of 31 for the whole Board.

Senator CANNON. So that of the 143, 31 positions were not filled but the rest were filled and they are just eliminating those positions?

Mr. TODD. No. They were requested but never filled. It wouldn't be any reduction.

Senator CANNON. None of those 143 were filled?

Mr. TODD. No.

Senator CANNON. I see. So it wouldn't represent actually a reduction in the workload that you have been carrying on in the past as a result of this?

Mr. TODD. No. As a matter of fact, the amended request that we have made is an increase over current staffing of 75 filled positions.

Senator CANNON. Now, in the surface transportation area you were talking about highway accidents, do you accumulate statistics in which you study the matter of what might have occurred were it not for the restraints such as the seat belts and the shoulder harnesses and this sort of thing?

Mr. WAKELAND. No, sir; not from our own investigations. That type of study requires statistical data from a large number of accidents, which focus on the single aspect that is of importance; namely, the function of the restraints system. If you concentrate on only one facet of the accident, it is not possible to make a determination of probable cause of the whole accident as the Board is required to do because the cause may be in another aspect of the accident.

Therefore, the work you're referring to would be called accident research rather than accident investigation.

Senator CANNON. Who does that?

Mr. WAKELAND. That is done by the NHTSA through research contractors.

Mr. TODD. I might add, that's one of the great problems in the highway area. You have the NHTSA with their research and their data base; the National Safety Council has a pretty good reporting system and data base; and there are independent agencies such as the Insurance Institute, which have a data base. Getting all this together is one of our objectives in order to tap into these various sources and see what's available. Nobody really knows, I don't think.

Mr. WAKELAND. I think they were surveyed some years ago and my personal recollection is that the various bases were to some degree incompatible because the needs for the data are different. Our problem really is that the major decisions that are being made in automotive safety in the highway field are based on statistics and that is why we seek additional numbers of people so that we can get a larger number of accidents as a base. We are not, however, a statistical data source in the highway field. We will be in the other fields.

Senator CANNON. Well, I'm glad that is not your area of effort because I have found those statistics very suspect myself.

Mr. TODD. Indeed.

Senator CANNON. And I was going to find out from you exactly how you develop them if you were responsible in that area.

Do you have anything further?

Mr. GINTHER. Mr. Chairman, I think the record should indicate that the Safety Board in the last year since it's become independent has gone to the Appropriations Committees of Congress and received funding for certain numbers of positions at a staff level. These appropriations bills have been signed by the President and yet the administration continues to impose a sort of a ceiling on the number of people that can be hired by this agency despite the fact that Congress has appropriated funds to directly hire specific people in specific areas of the Board's responsibility. I would like to ask the chairman under what

authority given the 1973 Independence Act do you believe the OMB can tell the Safety Board that it cannot hire personnel despite what Congress has done in the Appropriations Acts.

Mr. TODD. Well, if I may, I would like to yield to my general counsel before I get myself further crosswise with OMB.

Mr. PULS. I can only tell you what they tell me and they didn't tell me this in a letter. The basis for the President imposing a ceiling is his inherent powers as the chief executive officer of the Government and that's as far as they will go, but I have never seen this in writing anywhere. Maybe committees on the Hill have sought this out and received it, but I haven't.

Senator PEARSON. Inherent powers? Is that impoundment?

Mr. PULS. Senator, this is the thing we have been going through for a few months. They claim when you impose a ceiling on positions that is not impoundment because it doesn't withdraw dollars directly. The Appropriations Committees here differed with them and I don't think that's been totally resolved. It gets resolved eventually because if you don't hire people you have additional funds that can't be spent which are technically impounded? That's the question.

Mr. TODD. We were denied 44 hiring authorizations by OMB this this year which involved \$350,000. OMB suggested that we reprogram or request reprogramming of those funds to assist us in moving out of FOB 10A which is located at 800 Independence Avenue. That is another problem that exists for us. We refuse to do that. We asked for that money for positions and if we can't have those positions we're not going to spend the money for anything else unless we are ordered to do it. In the management sense as the chief executive officer of the Board, I have reviewed our location; I have reviewed its importance to us, in image and functional operation. Right now we have a split staff, about 85 percent of our staff is at 800 Independence Avenue and the balance is down at Transpoint. I think it is our consensus now that the most important thing for us is to have our whole staff under one roof. We have requested both the assistance of the GSA and the Secretary of Transportation to bring our people back from Transpoint to 800 Independence Avenue because I personally have absolutely no image problems in being colocated. As a matter of fact, I think operationally it's a great benefit to us to be within an elevator ride or a 3-minute walk to the bulk of the Government agencies that we deal with. My experience over the last several years in Washington indicates that when you have to leave a building and get in a cab to go someplace, that item of business drops down on your priority list. Therefore, I hate to lose that interface. We are having real problems with remaining at 800 Independence and it may mean that we do have to move, and I would point out that the funds that we have requested are based on remaining at 800 Independence Avenue because the move would cost us an additional \$700,000 to \$1 million. More importantly, it would cost us 3 or 4 months of almost total disruption in our ability to function by packing and unpacking and would serve, in our opinion, no useful purpose.

Senator CANNON. Where does that argument stand with OMB on spending \$350,000 now?

Mr. LEVINS. At the present time they have given in and there's no longer an issue. The House Appropriations Committee specifically turned down their reprogramming request.

Mr. GINTHER. Mr. Chairman, if I may just follow that up very briefly, I'd like to ask Chairman Todd, in light of the enormous legislative history behind the 1973 Independence Act, how can you, in a sense, accede to OMB orders that you not hire employees which have been specifically designated by the Appropriations Committee and for which money has been appropriated?

Mr. TODD. Well, I'm not sure how we can accede. I think we have asked both the committees in the House and the Senate to specifically direct us to fill all the slots that we have been authorized.

Senator PEARSON. What sort of language do you have that would direct you in correspondence with the inherent power of the Presidency?

Mr. TODD. Can I hide behind my general counsel again?

Mr. PULS. Well, we never reached that final stage of what happens if the agency ignores the ceiling and goes ahead and hires. When the reprogramming request was turned down there was an emergency appropriation for Conrail which had a little section in it that said NTSB is directed to hire all the positions they were authorized for in 1976. OMB backed off at that point. So we will fill the 85 positions.

Senator PEARSON. But you're still at issue here?

Mr. TODD. I think when we get to the resolution of Mr. Lynn's letter to me that I'm not in compliance with OMB Circular A-10, which I view and I think our counsel views as being in conflict with the section 304(b)(7) of our legislation, we are probably going to get a lot closer to answering that question.

Senator CANNON. Senator Pearson already asked you to supply those letters for the record. Would you furnish to this committee as you have further correspondence on this issue so we would be kept fully advised?

Mr. TODD. Yes, sir.

Senator CANNON. Do you have in mind any need for additional legislation to insure the independence of the Board other than in this particular area that you have been discussing the last moment or two?

Mr. TODD. No, sir. Personally, as chairman, and I think my colleagues agree, I feel that the Independence Act allows the Board full freedom to discharge its functions. I think we have discussed this and we feel that there is no barrier to us in doing our job under the current legislation, once we can resolve the inherent power of the President.

Senator PEARSON. Well, there's no problem any more as to who says who gets hired?

Mr. TODD. No, sir.

Senator PEARSON. All right.

Senator CANNON. And I take it that the situation is such that you don't have an executive secretary or whatever you want to call it that runs the operation of the Board at this time; is that a correct statement?

Mr. TODD. Well, we have a managing director.

Senator CANNON. I understand that. That was not the import of my question.

Mr. TODD. Yes, sir. That is correct.

Senator CANNON. All right, sir. Thank you, gentlemen.

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











