

**Calendar No. 506**

115TH CONGRESS }  
2d Session }

SENATE

{ REPORT  
115-293 }

NATIONAL TRANSPORTATION SAFETY  
BOARD REAUTHORIZATION ACT

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R E P O R T

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND  
TRANSPORTATION

ON

S. 2202



JULY 10, 2018.—Ordered to be printed

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SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED FIFTEENTH CONGRESS

SECOND SESSION

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### NATIONAL TRANSPORTATION SAFETY BOARD REAUTHORIZATION ACT

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

### R E P O R T

[To accompany S. 2202]

[Including cost estimate of the Congressional Budget Office]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (S. 2202) to amend title 49, United States Code, to authorize appropriations for the National Transportation Safety Board, 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 purpose of S. 2202 is to do the following: authorize the National Transportation Safety Board (NTSB) at sufficient funding levels; increase the transparency of the NTSB's safety recommendations and Most Wanted List; enhance certain NTSB investigation authorities; and improve the NTSB's operations.

#### BACKGROUND AND NEEDS

The NTSB is an independent Federal agency that investigates and determines the probable cause of all civil aviation accidents and certain significant rail, highway, marine, and pipeline accidents. The NTSB often issues safety recommendations to accompany its investigation reports. The NTSB has five Members, each nominated by the President and confirmed by the Senate to 5-year terms, and Members may serve on the NTSB until reconfirmed or

replaced.<sup>1</sup> The NTSB has a Chairman and a Vice Chairman, each with a 2-year term of office.<sup>2</sup> The NTSB has about 420 full-time employees.<sup>3</sup> Congress last reauthorized the NTSB for 2 years, from fiscal year (FY) 2006 through FY 2008.<sup>4</sup>

In addition to conducting accident investigations and issuing safety recommendations, the NTSB voluntarily publishes its “Most Wanted List,” which highlights safety improvements sought by the NTSB. In recent years, the Most Wanted List has been published biennially and has been composed of groups of safety recommendations categorized by issue area.<sup>5</sup> The NTSB most recently released its 2017–2018 Most Wanted List, which seeks, among other things, to end alcohol and other drug impairment in transportation, expand recorder use to enhance safety, and improve rail transit safety oversight.<sup>6</sup>

The NTSB’s investigations and safety recommendations offer continued improvement of transportation safety for the public. The NTSB is not a regulatory agency. So while the NTSB’s safety recommendations, regardless of their inclusion on the Most Wanted List, are not binding, it typically aims to address safety issues by influencing Congress, other governmental agencies, private entities, and the public. The NTSB is currently not required to disclose its methodology detailing the process and information underlying the selection of each recommendation. In some cases, there may be questions about whether the NTSB considered external information, such as studies and reports detailing safety benefits and other effects, in making recommendations. Further, there may not be information provided on any alternatives that the NTSB considered prior to selecting its final recommendations or any examples where the recommended action has been implemented.

Additionally, under current law, the NTSB may not release recordings, or transcripts of certain oral communications, from voice or video recorders present during an accident, unless such information is released in written form and as part of a public hearing or docket. In some cases, the NTSB may not be able to provide key visual information relevant to the accident findings or safety recommendations. Further, with the increasingly voluminous data involved in investigations, the NTSB faces intensified questions regarding the sharing of confidential information, such as whether other agencies that receive information from the NTSB may disclose that information. Moreover, NTSB Members currently may only meet publicly, limiting their ability to collaborate. Given such issues, the Committee has identified a need to enhance certain NTSB investigation and operational authorities in order to further enable the NTSB to address pressing safety challenges, as appropriate.

Finally, current law requires the NTSB to provide assistance to the families of victims involved in aircraft accidents resulting in a major loss of life. The Committee has identified a need to expand

<sup>1</sup> 49 U.S.C. §1111(b) and (c).

<sup>2</sup> 49 U.S.C. §1111(d).

<sup>3</sup> The National Transportation Safety Board (NTSB), “Fiscal Year 2017 Budget Request,” 2016.

<sup>4</sup> P.L. 109–443, 120 Stat. 3297.

<sup>5</sup> NTSB, “NTSB Most Wanted Transportation Safety Improvements,” 2015, Washington, DC.

<sup>6</sup> NTSB, “NTSB Most Wanted Transportation Safety Improvements,” 2017–2018, Washington, DC.

this and other related protections to provide greater assistance to victims' families.

#### SUMMARY OF PROVISIONS

If enacted, S. 2202 would do the following:

- Authorize appropriations for the NTSB from FY 2019 through FY 2023.
- Increase transparency by requiring the NTSB to disclose methodology detailing the process and information underlying the selection of safety recommendations. The bill also would require the NTSB to publish a report on the process it uses to prioritize and select safety recommendations included in the Most Wanted List.
- Enhance certain NTSB investigation authorities by including still images among the items the NTSB may disclose under certain circumstances in the course of an investigation, adding to existing law regarding the disclosure of transcripts and written depictions of visual information. To encourage greater cooperation during NTSB investigations without compromising safety, the bill would broaden the definition of confidential information the NTSB must protect from disclosure and prevent Federal agencies from disclosing confidential information they receive from the NTSB.
- Improve the NTSB's operations by providing the NTSB with the ability to hold certain nonpublic meetings with safeguards requiring the public disclosure of the matters discussed. The bill also would include a provision that enhances the services provided by the NTSB to families of passengers involved in aircraft accidents. This provision also was included in S. 1405, the Federal Aviation Administration Reauthorization Act of 2017, which was approved by the Committee on June 29, 2017. Finally, to improve continuity of NTSB leadership, the bill would lengthen the terms of the NTSB Chairman and Vice Chairman to 3 years each (from 2 years under existing law).

#### LEGISLATIVE HISTORY

On June 8, 2017, the Committee held a hearing on the nomination of Robert Sumwalt to be a Member of the NTSB. On June 29, 2017, the Committee unanimously approved the nomination of Mr. Sumwalt to be a Member, and, on August 2, 2017, the Committee unanimously approved Mr. Sumwalt for the position of Chairman of the NTSB. On August 3, 2017, the Senate confirmed Mr. Sumwalt to the position of Chairman.

On October 31, 2017, the Committee held a hearing on the nomination of Bruce Landsberg to be a Member of the NTSB. On November 8, 2017, the Committee approved, by voice vote, Mr. Landsberg to be a Member, with six Committee members (Senators Cantwell, Blumenthal, Schatz, Booker, Duckworth, and Hassan) requesting to be recorded as "no" votes on his nomination.

On May 16, 2018, the Committee held a hearing on the nomination of Jennifer Homendy to be a Member of the NTSB. On May 22, 2018, the Committee approved, by voice vote, Ms. Homendy to be a Member.

As of July 9, 2018, the nominations of Mr. Landsberg and Ms. Homendy were still pending on the Senate floor. At the nomination hearings, issues facing the NTSB were discussed.

S. 2202 was introduced on December 6, 2017, by Mr. Thune (for himself and Senators Blunt, Booker, Fischer, and Nelson) and was referred to the Committee on Commerce, Science, and Transportation of the Senate. Senator Cantwell also cosponsored this bill. On December 13, 2017, the Committee met in open Executive Session and, by voice vote, ordered S. 2202 reported favorably with an amendment (in the nature of a substitute).

#### 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:

#### *S. 2202—National Transportation Safety Board Reauthorization Act*

S. 2202 would authorize appropriations totaling \$452 million over the 2019–2022 period (and \$115 million in 2023) for the National Transportation Safety Board (NTSB). (By comparison, the Congress provided \$106 million for the NTSB in 2017.) That agency is responsible for investigating significant accidents that occur in civil aviation and other modes of surface, rail, and waterborne transportation and for recommending safety measures for preventing future accidents.

As shown in the following table, and based on historical spending patterns, CBO estimates that implementing the bill would cost \$427 million over the 2019–2022 period and an additional \$138 million after 2022, assuming appropriation of the authorized amounts.

	By fiscal year, in millions of dollars—					
	2018	2019	2020	2021	2022	2018– 2022
INCREASES IN SPENDING SUBJECT TO APPROPRIATION						
Authorization Level .....	0	111	112	113	114	452
Estimated Outlays .....	0	94	106	113	114	427

Numbers may not add up to totals because of rounding; the bill also would authorize appropriations of \$115 million in 2023 for the National Transportation Safety Board.

Enacting the bill would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

CBO estimates that enacting S. 2202 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2028.

S. 2022 contains no intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA).

The bill would impose a private-sector mandate by requiring air carriers to provide notification and support services to the families of people killed in air accidents. Current law requires air carriers to provide services when there is a major loss of life. According to the NTSB, most air carriers already provide such services in the event of non-major accidents. Therefore, CBO estimates that the incremental cost of the mandate would be minimal and would fall

well below the threshold for private-sector mandates established in UMRA (\$156 million in 2017, adjusted annually for inflation).

The CBO staff contacts for this estimate are Megan Carroll (for federal costs) and Jon Sperl (for mandates). The estimate was approved by H. Samuel Papenfuss, 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

S. 2202, as reported, would not create any new programs or impose any new regulatory requirements and therefore would not subject any individuals or businesses to new regulations.

##### ECONOMIC IMPACT

S. 2202, as reported, is not expected to have a negative impact on the Nation's economy.

##### PRIVACY

S. 2202, as reported, is not expected to have an adverse impact on the personal privacy of individuals. The bill would allow the NTSB to release certain still images obtained from video recordings, but the bill would require the NTSB to take action as appropriate to protect from public disclosure any information that readily identifies an individual, including a decedent, in such still images.

##### PAPERWORK

S. 2202, as reported, would only incrementally affect paperwork requirements for the NTSB. Section 7, as described further below, would require the NTSB to submit a report to Congress explaining its methodology used to prioritize and select recommendations included on the Most Wanted List. Additionally, section 8 would require the NTSB to include in investigative reports in which the NTSB issues a recommendation a methodology section detailing the process and information underlying the selection of each recommendation. The section would also expand reports that the NTSB is already producing.

##### 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

*Section 1. Short title; table of contents; references.*

This section would provide that the bill may be cited as the “National Transportation Safety Board Reauthorization Act.” This section also would provide a table of contents for the bill.

*Section 2. Definitions.*

This section would define the terms “Board,” “Chairman,” and “Most Wanted List.”

*Section 3. Authorization of appropriations.*

This section would authorize appropriations for the NTSB for FYs 2019 through 2023. The NTSB was funded for FY 2017 at \$106 million and the Transportation, Housing, & Urban Development Subcommittee of the Appropriations Committee of the Senate approved \$110.4 million for FY 2018.<sup>7</sup> This bill would authorize \$111.4 million in FY 2019, with \$1 million increases in authorized funding for each FY until FY 2023. The levels authorize sufficient funding to carry out successfully the requirements of this bill.

*Section 4. Still images.*

This section would add authority for the NTSB to include any still image obtained from a video recorder as information that may be disclosed by the NTSB through a public hearing or docket if it determines that such information is relevant to the accident, except that the NTSB must take action as appropriate to protect from public disclosure any information that readily identifies an individual, including a decedent, and that any disclosure must comply with generally applicable restrictions on sharing confidential information.

The term “readily identifies” is included to ensure that the NTSB would conceal the identity of any individual shown in a still image that it discloses by, for example, blurring the individual’s facial or other identifiable features. Like the NTSB’s current authority for transcripts and written depictions of visual information, the bill would allow the NTSB to release still images from both cockpit and surface vehicle recordings. This section of the bill also would make other conforming and technical changes for consistency in discovery proceedings.

*Section 5. Information sharing.*

This section would expand the protection of confidential information beyond trade secrets to include all of the confidential information in section 1905 of title 18, United States Code, thereby providing protection for, among other things, processes, operations, style of work, and confidential statistical data. This section also would further limit the sharing of confidential information, including by prohibiting other departments, agencies, or instrumentalities of the United States Government from publicly disclosing confidential information provided to them by the NTSB. The intent is that these provisions would encourage the sharing of information with the NTSB by expanding the protection of that information.

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<sup>7</sup> P.L. 115–31, 131 Stat. 135.



The section would allow the NTSB, under certain circumstances, to release confidential information to the public only when necessary to protect health and safety. In this instance, “when necessary” would mean only if there is no other way to explain a finding, cause or probable cause, or safety recommendation related to an accident under NTSB investigation without the disclosure of confidential information.<sup>8</sup> If there is a circumstance in which the NTSB cannot reasonably fulfill its duties without disclosing confidential information, the NTSB should take such steps to mitigate the effects of its disclosure.

This section would not allow for the release of information protected from disclosure by another law of the United States and is not intended to expand, in any way, the authority of the NTSB or any other department, agency, or instrumentality of the United States Government to share or disclose confidential information.

#### *Section 6. Electronic records.*

This section would clarify that an electronic record is included in the definition of a record that the NTSB may inspect during reasonable hours.

#### *Section 7. Report on Most Wanted List methodology.*

This section would require the NTSB to submit a report to Congress explaining its methodology used to prioritize and select recommendations included on the Most Wanted List. Specifically, the NTSB would be required to include in its report a detailed description of the following: how the NTSB accounts for risk to safety in each of its recommendations; the extent to which the NTSB considers past investigative findings, safety recommendations, or other safety actions; and any processes used to engage in internal or external coordination and consultation.

In discussing how the NTSB accounts for risk to safety, the report would be required to address in detail four key areas. First, the report would be required to specifically describe any types of data or information, such as any risk assessments, case studies, academic publications, or other relevant evidence, that the NTSB considers in quantifying the amount and probability of risk to safety posed by a particular issue or action. Second, the report would be required to detail the extent to which, in prioritizing and selecting safety recommendations, the NTSB considers the reduction of risk to safety, including any potential quantification of such risk, estimated over a period of time, by implementing a particular safety recommendation. Third, the report would detail the extent to which the NTSB considers the practicality and feasibility of implementing any given safety recommendation. Practicality and feasibility considerations should include, among other things, whether a safety recommendation is technologically feasible or overly burdensome. Fourth, the report would detail the extent to which the NTSB considers any alternative approaches prior to prioritizing and selecting its final safety recommendations.

<sup>8</sup>Section 1114(b)(1)(D) of title 49, United States Code, requires the NTSB to give 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. This bill would not affect this requirement.

Finally, this section also would require the Government Accountability Office (GAO) to examine and evaluate the above-described report. The GAO's review would evaluate the extent to which the NTSB effectively utilized best practices and rigorous analysis, accounted for practicality and feasibility considerations, considered alternative risk reduction actions, and coordinated and consulted in prioritizing and selecting safety recommendation for its Most Wanted List.

This section would not require the NTSB to publish a Most Wanted List. However, it would apply to the next Most Wanted List that the NTSB chooses to publish after the date of enactment of this bill.

*Section 8. Methodology sections.*

This section would require the NTSB to include in investigative reports, in which the NTSB issues a recommendation, a methodology section detailing the process and information underlying the selection of each recommendation.

First, for each safety recommendation, this section would require the NTSB to summarize briefly information collected from the relevant accident investigation. This section also would require the NTSB to describe its use of external information, including studies, reports, and experts, other than the findings of an accident investigation, to inform or support the recommendation, including a brief summary of specific safety benefits and other effects identified by each study, report, or expert, such as all other identified effects included in risk assessments, case studies, academic publications, or other evidence relevant to each recommendation. Third, the section would require a brief summary of any alternative actions considered. Finally, the section would require the NTSB to enumerate any examples of where actions consistent with the recommendation have already been implemented.

This section is intended to ensure the transparent sharing of information used to support the NTSB's safety recommendations. This section would not require the NTSB to perform a level of analysis akin to the requirements under Office of Management and Budget Circular A-4, covering regulatory analyses by many Federal regulatory agencies. However, this section would ensure that the NTSB describes any external information (including such analyses already available), alternatives, and examples the agency considered. Providing such information in a consolidated and accessible manner is important given the aim of the NTSB's safety recommendations to influence regulatory agencies, policymakers, and private entities.

The requirement for a methodology section would not apply if the recommendation is only for a person to disseminate information on an existing agency best practices document or on an existing regulatory requirement. Further, the NTSB should not delay the publication of the findings, cause, or probable cause of an NTSB investigation or the issuance of an urgent recommendation that the NTSB has determined must be issued to avoid immediate loss, death, or injury.

*Section 9. Multi-modal accident database management system.*

This section would require the NTSB, not later than 1 year after the date of enactment of this bill, to establish and maintain a secure multi-modal accident database system for NTSB investigators. The purpose of this database would be to improve the NTSB's quality of accident data made available to the public and the selection of future significant accidents for investigation. A similar database already exists for aviation accidents.

*Section 10. Addressing the needs of families of individuals involved in accidents.*

This section would expand requirements for the NTSB to provide services to families of passengers involved in aircraft accidents that the NTSB investigates. Currently, the requirement applies to such accidents with a major loss of life; this section would apply the existing requirements to such accidents with any loss of life. Substantively similar versions of these provisions were included in the Committee-passed version of the Federal Aviation Administration Reauthorization Act of 2017.

*Section 11. Government Accountability Office report on investigation launch decision-making processes.*

This section would require the GAO to evaluate and audit, as determined necessary by the Comptroller General or the appropriate congressional committees, the process and procedures the NTSB uses to select accidents to investigate. This section would add to other existing requirements for the GAO to evaluate and audit the NTSB to promote economy, efficiency, and effectiveness in the administration of the programs, operations, and activities of the NTSB.

*Section 12. Periodic review of safety recommendations.*

This section would require the NTSB to conduct a review, every 5 years, of its previously issued recommendations. This section would require the NTSB, prior to conducting this review, to solicit public suggestions every 5 years as to whether any of the NTSB's recommendations should be updated, closed, or reissued. The NTSB would then be required to review each suggestion and the accompanying justification for the suggestion from the public and assess whether the recommendation is outmoded, unclear, or unnecessary; is ineffective or insufficient; or should be reissued. The section would require the NTSB to make a determination as to the appropriate action following each assessment. The NTSB would be required to submit a report to Congress after each review. This process is intended to institutionalize continuous improvement of the NTSB's recommendations, including by factoring in technological advances, changed circumstances, and other information of which the NTSB may not have been aware at the time it issued a recommendation.

*Section 13. General organization.*

This section also would allow for limited instances in which a majority of NTSB Members can communicate without requiring a full public meeting. During such communications, no vote may be taken, the NTSB General Counsel must be present, and only NTSB

Members or staff may attend. In addition, the NTSB would be required to disclose meeting topics and participants within 2 business days of the meeting. This section also would require the NTSB to provide a summary with as much general information as possible on any sensitive matter withheld from the public based on current law. The Surface Transportation Board has similar authority regarding nonpublic collaborative discussions.<sup>9</sup>

This section also would lengthen the terms of the Chairman and Vice Chairman from 2 years to 3 years in order to create more continuity in NTSB leadership. This section would eliminate the requirement that the NTSB maintain an employee in every State located more than 1,000 miles from a regional office. Finally, this section would allow the NTSB to acquire unmanned aircraft systems for the purpose of aiding in NTSB investigations. This allowance is intended to reduce costs for the NTSB, which is currently leasing such a system.

*Section 14. Technical and conforming amendments.*

This section would clarify the term “public aircraft” because the current definition references the wrong paragraph of existing law. This section would make other technical corrections.

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 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.

<sup>9</sup> P.L. 114–110, 129 Stat. 2228.

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]** *3 years*. When the Chairman is absent or unable to serve or when the position of Chairman is vacant, the Vice Chairman acts as Chairman.

(e) \* \* \*

(k) OPEN MEETINGS.—

(1) IN GENERAL.—*The Board shall be deemed to be an agency for purposes of section 552b of title 5.*

(2) NONPUBLIC COLLABORATIVE DISCUSSIONS.—

(A) IN GENERAL.—*Notwithstanding section 552b of title 5, a majority of the members may hold a meeting that is not open to public observation to discuss official agency business if—*

(i) *no formal or informal vote or other official agency action is taken at the meeting;*

(ii) *each individual present at the meeting is a member or an employee of the Board; and*

(iii) *the General Counsel of the Board is present at the meeting.*

(B) DISCLOSURE OF NONPUBLIC COLLABORATIVE DISCUSSIONS.—*Except as provided under subparagraph (C), not later than 2 business days after the conclusion of a meeting under subparagraph (A), the Board shall make available to the public, in a place easily accessible to the public—*

(i) *a list of the individuals present at the meeting; and*

(ii) *a summary of the matters discussed at the meeting, except for any matter the Board properly determines may be withheld from the public under section 552b(c) of title 5.*

(C) SUMMARY.—*If the Board properly determines a matter may be withheld from the public under section 552b(c) of title 5, the Board shall provide a summary with as much general information as possible on each matter withheld from the public.*

(D) PRESERVATION OF OPEN MEETINGS REQUIREMENTS FOR AGENCY ACTION.—*Nothing in this paragraph may be construed to limit the applicability of section 552b of title 5 with respect to a meeting of the members other than that described in this paragraph.*

(E) STATUTORY CONSTRUCTION.—*Nothing in this paragraph may be construed—*

(i) *to limit the applicability of section 552b of title 5 with respect to any information which is proposed to be withheld from the public under subparagraph (B)(ii); or*

(ii) *to authorize the Board to withhold from any individual any record that is accessible to that individual under section 552a of title 5.*

### § 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 to carry out this chapter, administer oaths, and require, by subpoena or otherwise, necessary witnesses and evidence.

(2) A witness or evidence in a hearing 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 6101(b) to (d) of title 41;

(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 consid-

eration for the reasonable costs of any facilities, goods, services, or training provided by the Board[.]; and

(J) *acquire, for investigation purposes under this chapter, small unmanned aircraft systems that weigh less than 55 pounds, notwithstanding any other law, including regulations and policies.*

(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) \* \* \*

[(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] CERTAIN CONFIDENTIAL INFORMATION.—

(1) *IN GENERAL.*—The Board may disclose [information related to a trade secret referred to in section 1905 of title 18] information, including trade secrets, as described in section 1905 of title 18 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] *subject to paragraph (4), to the public when the Board considers it necessary to protect health and safety* 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) PRESERVATION OF CONFIDENTIALITY.—[Information] Information disclosed under paragraph (1) of this sub-

section 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) LIMITATION.—*A disclosure under paragraph (1)(D) may only be considered necessary to protect health and safety if the Board is required under this chapter to explain a finding, a cause or probable cause, or a safety recommendation related to an accident or incident investigated by the Board and cannot reasonably fulfill its duties without such disclosure.*

(c) COCKPIT RECORDINGS AND TRANSCRIPTS.—

(1) CONFIDENTIALITY OF RECORDINGS.—[The Board] *Except as provided in paragraph (2), 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) EXCEPTION.—*Subject to subsections (b) and (g), the Board shall make public any part of a transcript, any written depiction of visual information obtained from a video recorder, or any still image obtained from a video recorder 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)](3) REFERENCES TO INFORMATION IN MAKING SAFETY RECOMMENDATIONS.—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] *Except as provided in paragraph (2), 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) *EXCEPTION.—Subject to subsections (b) and (g), the Board shall make public any part of a transcript, any written depiction of visual information obtained from a video recorder, or any still image obtained from a video recorder 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)】(3) 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 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 in making safety recommendations.

(g) *PRIVACY PROTECTIONS.*—*Before making public any still image obtained from a video recorder under subsection (c)(2) or subsection (d)(2), the Board shall take such action as appropriate to protect from public disclosure any information that readily identifies an individual, including a decedent.*

(h) *LIMITATION.*—*A department, agency, or instrumentality of the United States Government that receives information from the Board under this section may not publicly disclose any part of that information if the information is exempted or prohibited from disclosure under this chapter or any other law of the United States.*

#### **§ 1117. [Annual report] Reports**

(a) IN GENERAL.—The National Transportation Safety Board shall submit a report to Congress on July 1 of each year. The report shall include—

(1) a statistical and analytical summary of the transportation accident investigations conducted and reviewed by the Board during the prior calendar year;

(2) a survey and summary of the recommendations made by the Board to reduce the likelihood of recurrence of those accidents together with the observed response to each recommendation;

(3) a detailed appraisal of the accident investigation and accident prevention activities of other departments, agencies, and instrumentalities of the United States Government and State and local governmental authorities having responsibility for those activities under a law of the United States or a State;

(4) a description of the activities and operations of the National Transportation Safety Board Academy during the prior calendar year;

(5) a list of accidents, during the prior calendar year, that the Board was required to investigate under section 1131 but did not investigate and an explanation of why they were not investigated; and

(6) a list of ongoing investigations that have exceeded the expected time allotted for completion by Board order and an explanation for the additional time required to complete each such investigation.

*(b) RETROSPECTIVE REVIEW TO ENSURE UPDATED AND EFFECTIVE SAFETY RECOMMENDATIONS.—*

*(1) IN GENERAL.—Not later than June 1, 2019, and in response to public comments received under paragraph (2), the Chairman shall complete a comprehensive review of recommendations issued by the Board that are classified as “open” by the Board.*

*(2) PUBLIC COMMENTS.—*

*(A) IN GENERAL.—Before conducting a review under paragraph (1), and at least every 5 years thereafter, the Chairman shall publish in the Federal Register a request for public comment on recommendations to be updated, closed, or reissued.*

*(B) RECOMMENDATIONS.—A request for public comment under subparagraph (A) shall solicit—*

*(i) recommendations to be updated, closed, or reissued, including a reference to the applicable recommendation number;*

*(ii) justifications, including any supporting information, for updating, closing, or reissuing a recommendation; and*

*(iii) if applicable, specific suggestions for updating a recommendation.*

*(C) PUBLIC COMMENT PERIOD.—The Chairman shall provide 90 days for public comment under this subsection.*

*(3) CONTENTS.—A review under paragraph (1) shall include for each recommendation under paragraph (2)—*

*(A) consideration of each justification under paragraph (2)(B)(ii) and, if applicable, each suggestion under clause (iii) of that paragraph;*

*(B) an assessment of whether the recommendation—*

*(i) is outmoded, unclear, or unnecessary in light of—*

*(I) changed circumstances;*

*(II) more recently issued recommendations; or*

*(III) the availability of new technologies;*

*(ii) is ineffective or insufficient for achieving its objective; or*

*(iii) should be reissued;*

*(C) a determination, based on the assessment under subparagraph (B), whether it is appropriate to update, close, or reissue the recommendation; and*

*(D) a justification for each determination under subparagraph (C).*

*(4) REPORT.—Not later than 180 days after the date a review under paragraph (1) is complete, the Chairman shall submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives a report that includes—*

*(A) the findings of the review under paragraph (1);*

*(B) each determination under paragraph (3)(C) and justification under paragraph (3)(D); and*

*(C) if applicable, a schedule for updating, closing, or reissuing a recommendation.*

### **§ 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 \$111,400,000 for fiscal year 2019, \$112,400,000 for fiscal year 2020, \$113,400,000 for fiscal year 2021, \$114,400,000 for fiscal year 2022, and \$115,400,000 for fiscal year 2023. 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.

#### 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] *a public aircraft as defined by section 40102(a) 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;

(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 related to the transportation of individuals or property when the Board decides—

(i) the accident is catastrophic;

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

(iii) the investigation of the accident would carry out this chapter.

(2)(A) Subject to the requirements of this paragraph, an investigation by the Board under paragraph (1)(A)-(D) or (F) 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 under applicable law or to obtain information directly from the parties involved in, and witnesses to, the accident. The Board and other departments, agencies, and instrumentalities shall ensure that appropriate

information developed about the accident is exchanged in a timely manner.

(b) \* \* \*

#### **§ 1134. Inspections and autopsies**

(a) ENTRY AND INSPECTION.—An officer or employee of the National Transportation Safety Board—

(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, *including an electronic 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.

(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 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 conduct 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.

**§ 1136. Assistance to families of passengers involved in aircraft accidents**

(a) IN GENERAL.—As soon as practicable after being notified of an [aircraft accident within the United States involving an air carrier or foreign air carrier and resulting in a major loss of life] *aircraft accident involving an air carrier or foreign air carrier, resulting in any loss of life, and for which the National Transportation Safety Board will serve as the lead investigative agency*, the Chairman of the National Transportation Safety Board shall—

(1) designate and publicize the name and phone number of a director of family support services who shall be an employee of the Board and shall be responsible for acting as a point of contact within the Federal Government for the families of passengers involved in the accident and a liaison between the air carrier or foreign air carrier and the families; and

(2) designate an independent nonprofit organization, with experience in disasters and posttrauma communication with families, which shall have primary responsibility for coordinating the emotional care and support of the families of passengers involved in the accident.

(b) \* \* \*

(h) 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.]

(1) AIRCRAFT ACCIDENT.—*The term “aircraft accident” means any aviation disaster, regardless of its cause or suspected cause, for which the National Transportation Safety Board is the lead investigative agency.*

(2) PASSENGER.—The term “passenger” includes—

(A) an employee of an air carrier or foreign air carrier aboard an aircraft[; and];

(B) any other person aboard the aircraft without regard to whether the person paid for the transportation, occupied a seat, or held a reservation for the flight[.]; and

(C) *any other person injured or killed in the aircraft accident, as determined appropriate by the Board.*

(i) \* \* \*

**§ 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 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 process and procedures to select an accident to investigate;*

[(5)](6) the extent to which the Board follows leading practices in selected management areas; and

[(6)](7) 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.

**§ 1140. Information for families of individuals involved in accidents**

*In the course of an investigation of an accident described in section 1131(a)(1), except an aircraft accident described in section 1136 or a rail passenger accident described in section 1139, the Board may, to the maximum extent practicable, ensure that the families of individuals involved in the accident, and other individuals the Board deems appropriate—*

- (1) are informed as to the roles, with respect to the accident and the post-accident activities, of the Board;*
- (2) are briefed, prior to any public briefing, about the accident, its causes, and any other findings from the investigation; and*
- (3) are individually informed of and allowed to attend any public hearings and meetings of the Board about the accident.*

SUBCHAPTER IV. ENFORCEMENT AND PENALTIES

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

(a) **[TRANSCRIPTS AND RECORDINGS] IN GENERAL.**—

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

*(A) any still image that the National Transportation Safety Board has not made available to the public under section 1114(c) or 1114(d) of this title;*

[(A)](B) 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

[(B)](C) 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] *recorder recording, including with regard to a video recording any still image that the National Transportation Safety Board has not made available to the public under section 1114(c) or 1114(d) of this title*, 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] *recorder recording, including with regard to a video recording any still image that the National Transportation Safety Board has not made available to the public under section 1114(c) or 1114(d) of this title*, 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 still image* or 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] *the still image, 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] *the still image, 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 still image* or 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] *the still image, the part of the transcript, or the recording* under seal to prevent the use of [the part of the transcript or the recording] *the still image*,

*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) STILL IMAGE.—*The term “still image” means any still image obtained from a video recorder.*

[(B)](C) 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.

## TITLE 49. TRANSPORTATION

### 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] *any* 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.

(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)] *(and any other victim of the accident, including any victim on the ground)* 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] *any* 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] *any* 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) \* \* \*

#### 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 Secretary 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]** any 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]** any 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]** any 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.

(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.]

(9) *EQUAL TREATMENT OF PASSENGERS.—An assurance that the treatment of the families of nonrevenue passengers (and any other victim of the accident, including any victim on the ground) 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] *any* 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] *any* 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.

