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HOUSE OF REPRESENTATIVES

REPORT
106–335

NATIONAL TRANSPORTATION SAFETY BOARD AMENDMENTS ACT OF 1999

SEPTEMBER 27, 1999.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. SHUSTER, from the Committee on Transportation and Infrastructure, submitted the following

R E P O R T

[To accompany H.R. 2910]

[Including cost estimate of the Congressional Budget Office]

The Committee on Transportation and Infrastructure, to whom was referred the bill (H.R. 2910) to amend title 49, United States Code, to authorize appropriations for the National Transportation Safety Board for fiscal years 2000, 2001, and 2002, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE; REFERENCES.

(a) SHORT TITLE.—This Act may be cited as the "National Transportation Safety Board Amendments Act of 1999".

(b) REFERENCES.—Except as otherwise specifically provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision of law, the reference shall be considered to be made to a section or other provision of title 49, United States Code.

SEC. 2. DEFINITIONS.

Section 1101 is amended to read as follows:

"§ 1101. Definitions

"Section 2101(17a) of title 46 and section 40102(a) of this title apply to this chapter. In this chapter, the term 'accident' includes damage to or destruction of vehicles in surface or air transportation or pipelines, regardless of whether the initiating event is accidental or otherwise.".

SEC. 3. AUTHORITY TO ENTER INTO AGREEMENTS.

(a) IN GENERAL.—Section 1113(b)(1)(I) is amended to read as follows:

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

(b) DEPOSIT OF AMOUNTS.—Section 1113(b)(2) is amended—

(1) by inserting "and section 1114(a)" before "to be credited"; and

(2) by inserting "as offsetting collections" before the period at the end.

SEC. 4. OVERTIME PAY.

Section 1113 is amended by adding at the end the following:

"(g) OVERTIME PAY.—

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

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

"(3) LIMITATION ON TOTAL AMOUNT OF OVERTIME PAY.—The Board may not make overtime payments under paragraph (1), for work performed in a calendar year, in a total amount that exceeds $570,000.

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

"(5) ANNUAL REPORT.—Not later than January 31, 2001, and annually thereafter, the Board shall transmit to Congress a report identifying the total amount of overtime payments made under this subsection in the preceding fiscal year and the number of employees whose overtime pay under this subsection was limited in such fiscal year as a result of the 15 percent limit established by paragraph (2).".

SEC. 5. RECORDERS.

(a) COCKPIT VIDEO RECORDINGS.—Section 1114(c) is amended—

(1) in the subsection heading by striking "VOICE";

(2) in paragraphs (1) and (2) by striking "cockpit voice recorder" and inserting "cockpit voice or video recorder"; and

(3) in the second sentence of paragraph (1) by inserting "or any written depiction of visual information" after "transcript".

(b) SURFACE VEHICLE RECORDINGS AND TRANSCRIPTS.—

(1) IN GENERAL.—Section 1114 is amended—

(A) by redesignating subsections (d) and (e) as subsections (e) and (f), respectively; and

(B) by inserting after subsection (c) the following:

"(d) SURFACE VEHICLE RECORDINGS AND TRANSCRIPTS.—

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

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

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

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

(2) CONFORMING AMENDMENT.—The first sentence of section 1114(a) is amended by striking "and (e)" and inserting "(d), and (f)".

(c) DISCOVERY AND USE OF COCKPIT AND SURFACE VEHICLE RECORDINGS AND TRANSCRIPTS.—

(1) IN GENERAL.—Section 1154 is amended—

(A) in the section heading by striking "**cockpit voice and other material**" and inserting "**cockpit and surface vehicle recordings and transcripts**";

(B) in subsection (a)—

(i) by striking "cockpit voice recorder" each place it appears and inserting "cockpit or surface vehicle recorder";

(ii) by striking "section 1114(c)" each place it appears and inserting "section 1114(c) or 1114(d)"; and

(iii) by adding at the end the following:

"(6) In this subsection—

"(A) the term 'recorder' means a voice or video recorder; and

"(B) the term 'transcript' includes any written depiction of visual information obtained from a video recorder.".

(2) CONFORMING AMENDMENT.—The table of sections for chapter 11 is amended by striking the item relating to section 1154 and inserting the following:

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

(d) REQUIREMENTS FOR INSTALLATION AND USE OF RECORDING DEVICES.—Section 329 is amended by adding at the end the following:

"(e) REQUIREMENTS FOR INSTALLATION AND USE OF RECORDING DEVICES.—A requirement for the installation and use of an automatic voice, video, or data recording device on an aircraft, vessel, or surface vehicle shall not be construed to be the collection of information for the purpose of any Federal law or regulation, if the requirement—

"(1) meets a safety need for the automatic recording of realtime voice or data experience that is restricted to a fixed period of the most recent operation of the aircraft, vessel, or surface vehicle;

"(2) does not place a periodic reporting burden on any person; and

"(3) does not necessitate the collection and preservation of data separate from the device.".

SEC. 6. PRIORITY OF INVESTIGATIONS.

(a) IN GENERAL.—Section 1131(a)(2) is amended—

(1) by striking "(2) An investigation" and inserting "(2)(A) Subject to the requirements of this paragraph, an investigation"; and

(2) by adding at the end the following:

"(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 law enforcement agency suspects and notifies the Board that an accident being investigated by the Board under paragraph (1)(A)–(D) 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.".

(b) REVISION OF 1977 AGREEMENT.—Not later than 1 year after the date of enactment of this Act, the National Transportation Safety Board and the Federal Bureau of Investigation shall revise their 1977 agreement on the investigation of accidents to take into account the amendments made by this Act.

SEC. 7. PUBLIC AIRCRAFT INVESTIGATION CLARIFICATION.

Section 1131(d) is amended by striking "1134(b)(2)" and inserting "1134(a), (b), (d), and (f)".

SEC. 8. AUTHORITY OF THE INSPECTOR GENERAL.

(a) IN GENERAL.—Subchapter III of chapter 11 of subtitle II is amended by adding at the end the following:

"§ 1137. Authority of the Inspector General

"(a) IN GENERAL.—The Inspector General of the Department of Transportation, in accordance with the mission of the Inspector General to prevent and detect fraud and abuse, shall have authority to review only the financial management and busi-

ness operations of the National Transportation Safety Board, including internal accounting and administrative control systems, to determine compliance with applicable Federal laws, rules, and regulations.

"(b) DUTIES.—In carrying out this section, the Inspector General shall—

"(1) keep the Chairman of the Board and Congress fully and currently informed about problems relating to administration of the internal accounting and administrative control systems of the Board;

"(2) issue findings and recommendations for actions to address such problems; and

"(3) report periodically to Congress on any progress made in implementing actions to address such problems.

"(c) ACCESS TO INFORMATION.—In carrying out this section, the Inspector General may exercise authorities granted to the Inspector General under subsections (a) and (b) of section 6 of the Inspector General Act of 1978 (5 U.S.C. App.).

"(d) REIMBURSEMENT.—The Inspector General shall be reimbursed by the Board for the costs associated with carrying out activities under this section.".

(b) CONFORMING AMENDMENT.—The table of sections for such subchapter is amended by adding at the end the following:

"1137. Authority of the Inspector General.".

SEC. 9. AUTHORIZATION OF APPROPRIATIONS.

Section 1118(a) is amended to read as follows:

"(a) IN GENERAL.—There is authorized to be appropriated for the purposes of this chapter $57,000,000 for fiscal year 2000, $65,000,000 for fiscal year 2001, and $72,000,000 for fiscal year 2002. Such sums remain available until expended.".

SEC. 10. TERMINAL DOPPLER WEATHER RADAR.

If the Administrator of the Federal Aviation Administration determines that it would enhance aviation safety, the Administrator shall install a Terminal Doppler Weather Radar at the site of the former United States Coast Guard Air Station Brooklyn at Floyd Bennett Field in King's County, New York.

BACKGROUND

NTSB was established as an independent agency in 1974. Prior to that, NTSB had been a part of the Department of Transportation (DOT). The NTSB is charged with determining the probable causes of transportation accidents and promoting transportation safety. The Board investigates accidents, conducts safety studies, evaluates the effectiveness of other government agencies' programs for preventing transportation accidents, and coordinates all Federal assistance for families of victims of catastrophic transportation accidents. It also reviews appeals of certificate and civil penalty actions against airmen by the FAA Administrator and certificate actions against seamen by the Commandant of the Coast Guard.

Most importantly, the NTSB makes safety recommendations, based on its investigations, to Federal, State, and local government agencies and to the transportation industry urging actions that should be taken to prevent accidents.

Since 1967, the Board has investigated more than 100,000 aviation accidents and at least 10,000 other accidents in surface transportation modes. The Safety Board also investigates accidents involving the transportation of hazardous materials and is the sole U.S. accredited representative at foreign aviation accident investigations under the Convention on International Civil Aviation.

NTSB has no authority to issue regulations covering the transportation industry. Therefore, its effectiveness is dependent upon timely accident reports and safety recommendations.

NTSB STRUCTURE

NTSB is headed by five board members who are nominated by the President and confirmed by the Senate. No more than three members can be from any one party. All board members serve a five-year term. The President designates, and the Senate confirms, one of the five members to serve as Chairman for a term of two years.

NTSB'S RESPONSIBILITIES

NTSB investigates many transportation accidents including all fatal aviation accidents, and major railroad, highway, transit and maritime accidents. After investigating an accident, NTSB determines the probable cause and issues a formal report.

NTSB is statutorily required to make a probable cause determination on all aviation accidents. Although NTSB investigates all fatal aviation accidents, it often requests FAA to investigate nonfatal aviation accidents. States or other agencies often investigate accidents in other modes of transportation.

REAUTHORIZATION REQUEST

NTSB's 3-year reauthorization request includes additional funding, additional staff, and statutory changes. Below is NTSB's fiscal year 1999 appropriation level and NTSB's request for authorization and full-time equivalent (FTE) personnel for fiscal years 2000, 2001, and 2002.

[Dollars in millions]

	1999	2000	2001	2002
Authorization	*$53.5	$57.0	$73.0	$76.4
Percentage Increase	.....	7	28	5
Full-Time Equivalent	402	402	470	470

*The 1999 figure is the appropriated level, not the authorization level, which was $46.6 million.

For FY 2000, NTSB is requesting an authorization of $57 million, which is consistent with its current appropriations request. Its FY 2001 and 2002 requests are the amounts requested in its budget submission to the Office of Management and Budget. This request includes funding for additional training, computers, and laboratory and investigative equipment. Funds have not been requested for new program initiatives.

As shown in the table below, appropriation levels for NTSB have been consistently higher than authorized due to increased needs arising from the TWA 800 tragedy, including the cost of leasing the Calverton facility (which houses the wreckage of the TWA 800 aircraft).

[Dollars in millions]

	Fiscal year		
	1997	1998	1999
Authorization:			
Dollars	$42.4	$44.4	$46.6
Employees (FTEs)	370	370	370
Appropriation:			
Dollars	*$73.0	$55.3	$53.5

[Dollars in millions]

	Fiscal year		
	1997	1998	1999
Employees (FTEs)	368	402	402

*The 1997 Appropriation includes a $29 million supplemental appropriation to cover costs from that year and the previous year as a result of the TWA 800 crash.

NTSB is seeking a $3.5 million increase over its FY 1999 budget. Some of this increase will go to upgrade NTSB facilities, including its Board-wide computer network and the laboratory it uses to analyze accident data recorders. Additional monies will go to training, promotion, and pay raises.

STATUTORY CHANGES PROPOSED BY NTSB

DEFINITIONAL CLARIFICATION

(1) Accident Scene Priority. The NTSB is seeking to clarify that its investigation has priority over that of other agencies. Existing law states that other investigations are subordinate to the NTSB's safety investigation. However, recently most of the major aviation investigations conducted by the NTSB have also involved parallel criminal investigations. Because of the competing interests involved, interagency coordination between a safety and criminal investigation can be complicated. While the NTSB typically accommodates the requirements of these criminal investigations, without a clear statement of congressional intent, the negotiation of compromises and accommodations may depend on the circumstances and personalities involved. NTSB is seeking clarification that it has priority over all accidents under its jurisdiction, including those accidents that may occur in full or in part out of intentional acts of destruction. The NTSB cites the TWA 800 investigation, where the nature of the destructive act was initially unknown, as justification for this proposal.

(2) Marine Jurisdiction on the Territorial Sea. The NTSB is seeking to clarify that its marine jurisdiction over accidents was extended under the 1988 Presidential Proclamation that extended the territorial sea of the United States to 12 miles from the coast. The Proclamation contains language to the effect that it doesn't extend or alter existing law. The Federal Aviation Administration and the Coast Guard have had their jurisdictional statutes amended to reflect the 12-mile territorial sea. While the Independent Safety Board Act references the FAA provisions in the aviation area, it does not reference the Coast Guard provisions. This suggested change would reference the Coast Guard provisions.

PERSONNEL MANAGEMENT

NTSB seeks several changes in the personnel management provisions that would allow it the flexibility to hire and retain qualified individuals.

(1) Prescription of reasonable rates of pay for overtime. The nature of NTSB investigations often involves intensive work and long hours resulting in overtime pay. Currently, the NTSB is limited, as are most Federal agencies, to overtime payment of 1½ times the hourly rate of a GS–10 step 1. Many of NTSB's employees in these

investigations are at the GS–13 and –14 levels. This results in overtime pay that does not in many cases meet the level of basic pay for these employees. NTSB is seeking authority similar to that exercised by DOT over Coast Guard employees to prescribe reasonable rates of overtime pay.

(2) Excepted Service appointment authority. NTSB believes that for certain positions in the agency, the ability to immediately hire someone can be essential to filling an experienced position. NTSB is seeking the ability to recruit and hire accident investigation personnel using excepted service authority. It would have the option of converting the individual to competitive service after a two-year probationary period if the individual has an excellent or outstanding employee rating.

(3) Discretionary base pay supplement for employees engaged in investigative work. NTSB is seeking a tool similar to one afforded to FAA in order to remain competitive with FAA as well as to attract and retain high caliber employees. NTSB is requesting the authority to offer a pay supplement to employees directly engaged in safety investigation work. This would allow the agency to compensate its investigative employees at a level similar to other government alternatives or private sector jobs.

(4) Retirement at age 55 with 20 or more years of service. The same reasons discussed in 1–3 above are the rationale under which NTSB is requesting the authority to offer retirement to its employees who reach age 55 with 20 years of experience. This authority would enhance the NTSB's ability to hire and retain top candidates. In addition, the nature and stress of on-site investigation often causes burn-out or a lack of desire to continue working in this demanding environment.

TECHNICAL SERVICE AGREEMENTS AND COLLECTIONS

(1) Negotiation of foreign technical service agreements. NTSB is seeking a clarification of its existing authority to enter into agreements with foreign countries for training and technical assistance. Currently the Department of State does not believe that NTSB has the authority to do this. NTSB has entered into agreements over the years to do this and maintains that it is necessary to continue to do so in order to maintain its preeminence in this field. The agreements are limited in nature to technical and training assistance and the authority NTSB is seeking is consistent with the FAA's authority to enter into agreements with foreign countries for technical support in safety regulation and aircraft certification.

(2) Collection for Production of Dockets. NTSB is seeking the ability to recover its costs associated with reproduction and dissemination of its products. The NTSB currently provides, at its own expense, copies of accident dockets to persons or organizations involved in accidents. Other interested parties are referred to a clearinghouse that sells copies of the Board's microfiche and electronic records at a profit. The cost of reproducing and distributing the Board's products comes out of its operating budget. If given the authority to charge fees, the Board would develop a fee schedule to be published in the Federal Register and not renew the contract with the clearinghouse. The Board believes that this authority

would allow it to provide better, cheaper service to the American public.

RECORDERS

The NTSB seeks an amendment to provide the same protections for voice and video recorders for all modes of transportation comparable to those provided for cockpit voice recorders (CVR). Current law prohibits public release of CVR recordings. The NTSB has recommended that other modes of transportation incorporate voice or event recorders into their operations (specifically railroad and marine operations). NTSB has met with some resistance on this issue due to the concern over the lack of protection from public disclosure. Additionally, the NTSB believes that video recorders for all modes of transportation may become a reality in the near future. This provision would ensure the same protections for these devices as are currently in place for CVRs.

MARINE PRIORITY

NTSB has requested an amendment to section 1131(a)(2) of title 49, United States Code, to give the NTSB investigative priority over major marine casualties. Currently, the Coast Guard has investigative priority in these cases, except in certain cases described in Part 850 of title 49 of the Code of Federal Regulations. Also, under current regulations, the NTSB may conduct an independent investigation of any major marine casualty. The NTSB has priority over other transportation accident investigations, including other marine casualty investigations.

PUBLIC AIRCRAFT INVESTIGATION CLARIFICATION

NTSB is seeking a clarification to Public Law 103–411. The law codified an investigatory role for the NTSB in accidents of aircraft operated by Federal, State, and local governments similar to the NTSB's role in civil aviation accidents. However the law omitted NTSB's authority to enter property where an accident has occurred, inspect relevant records, conduct tests, and order autopsies—tools that the agency commonly uses in its civil accident investigations. NTSB is seeking an amendment to that law to give it what it believes is essential components of an independent investigation.

REPORTED BILL

Authorized funding levels

The reported bill would increase authorized funding levels for the NTSB to $57 million in FY 2000, $65 million in FY 2001, and $72 million in FY 2002.

The funding levels in the last two years of the authorization represent a significant increase. However, the funds authorized are much less than the Board had sought. The increased funding for new personnel, training, and other programs is necessary to help the Board's employees keep up with rapidly changing technology.

All modes of transportation are experiencing technological growth and NTSB staff must be prepared for those changes. Technological advances in the aviation industry, such as glass cockpits,

satellite navigation systems, and the use of composite materials, increase the complexity of accident investigations. This is also true in the railroad industry where technology has changed the industry with sophisticated electronic alerting devices, digitized electronic event recorders, and computer aided dispatching.

Overtime pay

The reported bill would add a new paragraph (g) to section 1113 of title 49, United States Code, permitting the NTSB to pay an hourly overtime pay rate of one and one-half times the employee's hourly rate of basic pay. This overtime rate could be paid to employees who are on duty at the scene of an accident, or who carry out responsibilities critical to the accident investigation, between 6 p.m. and 7 a.m. on a weekday, or at any time on a weekend or holiday. The provision would also establish a calendar year limit on overtime pay equal to 15 percent of the employee's annual rate of basic pay and an agency-wide limit of $570,000 per year.

The $570,000 is 1% of the agency's total authorized funding level. If requested by the NTSB, the Committee would consider raising this cap in future reauthorization legislation if that is justified.

This provision is intended to permit overtime rates and total overtime pay in excess of current premium pay limitations in title 5 of the U.S. Code. Under title 5, hourly rate of overtime pay may not exceed the overtime rate of GS–10, step 1.

NTSB had requested broader personnel reform similar to FAA's system but NTSB indicated that it was the overtime issue addressed here that it is most interested in.

Inspector General oversight

As the agency's budget increases, it is becoming more important that it be subject to the proper level of oversight.

Therefore, this bill will give the Inspector General of the Department of Transportation the authority to review the business and financial management of the NTSB. To ensure that Inspector General oversight does not undermine the independence of the NTSB, the reported bill restricts that oversight to only the business and financial management of the agency. The Inspector General cannot get involved in the policy choices or safety recommendations of the Board.

This provision should not be construed as implying that there are any improprieties at the agency. We are merely treating the NTSB in the same manner as other agencies that are subject to Inspector General review.

Family assistance

The reported bill does not make any changes in the family assistance responsibilities of the NTSB that were called for by the Family Assistance Task Force. Those are addressed in separate legislation, Title IV of H.R. 1000, House Report 106–167, and in H.R. 2681.

Since H.R. 1000 passed the House, the Committee has become aware of some dissatisfaction on the part of the Salvation Army with its role in the family assistance procedures.

When the committee held hearings on family assistance after the ValuJet crash (Committee Document 104–61), several witnesses suggested that the Red Cross be utilized to help the families who lose loved ones in future crashes.

In writing the Aviation Disaster Family Assistance Act of 1996 (110 Stat. 3264), there was some consideration given to specifically naming the Red Cross as the organization that would assist the NTSB in family assistance matters.

However, in the final legislation enacted, it was decided not to specify a particular organization. Instead, the law directs NTSB to "designate" an organization to help in family assistance matters.

The NTSB has indicated that it plans to designate the Red Cross to help in future air crashes. The Committee recognizes that the Red Cross is an excellent choice to take on this responsibility. But there is nothing in the law that would prevent NTSB from designating another organization in the future.

It is important to note that the law does not specify which organizations can help. That is left up to the NTSB, which will have personnel at the crash scene.

However, the Committee believes that the NTSB should continue to work with the Salvation Army to develop a role in aviation disaster response consistent with U.S. law and with the Salvation Army's historic mission in this area.

Relationship with other agencies and parties

The Committee, in its review of the TWA Flight 800 investigation and other recent major airline investigations undertaken by the NTSB, uncovered problems with these investigations, especially concerning NTSB's interactions with other parties to those investigations. In addition, the Rand Corporation is completing a study, commissioned by the NTSB, focused on how to improve the Board's accident investigation capabilities. The Committee is very interested in the Board's response to these reviews and encourages the Board to submit its views and recommendations when the Rand study is completed.

The Committee also believes that coordination between NTSB and other government agencies like the FBI needs to be improved. The Committee urges NTSB to work with the FBI and other federal agencies to establish clear procedures to govern future investigations of major airline accidents to ensure that the NTSB maintains a lead role in all future airline accident investigations in the United States. Such procedures should ensure, for example, that the NTSB has full and immediate access to the information developed by any parallel federal investigation of a major airline accident, criminal or otherwise.

In furtherance of these goals, sections 2 and 6 of the reported bill make explicit NTSB's lead role in transportation disasters without regard to the initiating cause of that disaster. An exception is provided in section 6 covering those situations where circumstances reasonably indicate that the accident may have been caused by an intentional criminal act. In those situations, the Board will relinquish its lead role to the FBI, which has been granted explicit statutory jurisdiction in Title 18 of the U.S. Code over crimes involving aircraft. This ensures that evidence of a potential crime is properly

preserved at the outset of the investigation for later possible criminal prosecution. However, under no circumstances will the Board be impeded from continuing its probable cause investigation.

The effect of sections 2 and 6 will be largely to reaffirm current practice. NTSB has indicated that its investigative procedures are now, and will continue to be, modified to the extent required to protect the integrity of criminal proceedings, particularly where intentional destruction cannot be ruled out. The amendments do not affect the continuing requirement for all agencies, whether involved in safety investigations, regulatory enforcement, or criminal investigations, to share information between one another on a timely basis.

The Committee also believes that the NTSB needs to evaluate how information is disseminated when a major airline accident occurs. In particular, to the maximum extent possible, the NTSB should brief families of accident victims and parties to an accident before making major public statements or announcements on an accident investigation. The NTSB should also consider how parties to an accident investigation could be permitted to be more candid and responsive to media and other inquiries without compromising an ongoing accident investigation.

Relationship with Coast Guard

The Committee is aware of the dual authorities of the Coast Guard and the National Transportation Safety Board to investigate major marine casualties. Both of these agencies need to know the causes of these casualties to decrease the chance for such accidents in the future.

The authorization act proposed by the NTSB would have granted the NTSB primacy over all major marine casualties in the same manner as they have over other transportation accident investigations. The Committee does not feel that this approach is needed at this time. However, the Committee has two concerns regarding these investigations.

First, one of the major purposes of the Independent Safety Board Act was to ensure that regulatory agencies do not investigate themselves when attempting to determine the cause of a transportation accident. Part 850 of title 49 of the Code of Federal Regulations and a Memorandum of Understanding between the Coast Guard and the NTSB prescribe standards for NTSB to be the lead agency in investigating a major marine casualty. Section 850.15(b)(3) of the joint regulations states that the Board shall conduct an investigation when the "Commandant and the Board agree that the Board shall conduct the investigation, and the casualty is a major marine casualty which involves significant safety issues relating to Coast Guard safety functions." For example, on May 1, 1999, an amphibious vessel sank in Arkansas killing 13 of the 21 passengers on board. This tragedy has the potential to raise questions related to Coast Guard safety functions and, in this case, it may have been more appropriate for the NTSB to have been the lead investigating agency. The Committee believes that the Coast Guard and the NTSB should establish clear standards that provide a bright-line test for determining when a "major marine casualty involves significant safety issues relating to Coast Guard safety functions" that

will allow the agencies to know whether or not the NTSB will lead the investigation shortly after the casualty occurs.

Second, the Committee is concerned about the impact that convening a Formal Board of Investigation by the Coast Guard may have on the field investigation being conducted by the NTSB. As we have seen in other accident investigation areas, one agency's actions may have unintended consequences on NTSB investigations. The Committee believes that the Coast Guard and the NTSB should coordinate the convening of Formal Boards of Investigation by the Coast Guard so as not to interfere with the 4–5 day field investigation by the NTSB investigators.

The Committee understands that the Commandant of the Coast Guard, Admiral James Loy, has agreed to work with the NTSB to resolve both of these issues in a fair manner.

SECTION-BY-SECTION SUMMARY

Section 1. Short title; references

Simply indicates that the name of the bill is the "National Transportation Safety Board Amendments Act of 1999."

Section 2. Definitions

Changes two definitions.

The first makes clear that NTSB's jurisdiction over accidents "on the navigable waters and territorial sea of the United States" extends 12 miles from the coast. This is consistent with a 1988 executive order and with the Coast Guard's jurisdiction.

The second change broadens the definition of the term "accident" to include "damage to instrumentalities of transportation whether accidental or otherwise."

This is designed to make clear that the priority given in law to NTSB's safety investigation over a parallel criminal investigation applies whether the cause of the crash was accidental, sabotage, or some other intentional act. This priority is subject to section 6 below. NTSB requested both of these definitional changes.

Section 3. Authority to enter into agreements

Authorizes NTSB to enter into agreements with foreign governments for the provision of technical assistance and other services and be reimbursed for those services. NTSB has entered into such agreements in the past, but recently the State Department said that NTSB does not have authority to do so. This would clarify its authority. NTSB requested this clarification.

Section 4. Overtime pay

Permits NTSB to pay time-and-a-half to its employees who work overtime on an accident investigation.

Currently, NTSB employees, like most Federal employees, are permitted only one and one-half times the hourly rate of pay at Grade 10 when they work overtime, even if the employee is at a higher pay grade.

This section would change that to allow NTSB employees to get one and one-half times their hourly pay, even if higher than Grade 10, subject to two limitations. These limitations are that the em-

ployee cannot get more than 15% of base pay in any year and the NTSB cannot pay more than $570,000 per year total under this section.

This section also includes an annual reporting requirement to ensure continued oversight of overtime pay at the NTSB. This information would be useful in ensuring that overtime is not abused and to evaluate whether the caps need to be raised. The Committee would like this report to state separately the amount of overtime paid under this section and the amount paid under regular title 5 procedures.

Section 5. Recorders

Provides the same assurance of confidentiality now provided for voice recorders on aircraft to video recorders on aircraft and to voice and video recorders on surface vehicles. NTSB requested this change. This change would enhance safety by helping to ease the way for the installation of these recorders on more aircraft, trains, trucks, and boats. Subsection (d) makes clear that a requirement for the installation of these recorders would not be subject to the Paperwork Reduction Act although any data collection or reporting requirements that resulted from the installation would be subject to that Act.

Section 6. Priority of investigations

Establishes a procedure for NTSB to turn over its investigation to the FBI when it appears that the accident was caused by a criminal act. This provision has been negotiated with the NTSB and the FBI.

Section 7. Public aircraft investigation clarification

Gives the NTSB the same authority in public aircraft accident investigations to enter property and to inspect and test aircraft that it now has in civil aircraft accident investigations.

Section 8. Authority of the Inspector General

Provides Inspector General oversight of the NTSB. This oversight is limited to the financial management and business operations of the agency. The policy, priorities, or safety recommendations of the Board are not a proper area for Inspector General oversight. The oversight is limited to the financial management and business operations of the agency in order to ensure that the Board's independence is not undermined.

Section 9. Authorization of appropriations

Authorizes $57 million in 2000, $65 million in 2001, and $72 million in 2002 for the NTSB. The $57 million is the amount NTSB requested in 2000. It requested $73 million in 2001 and $76.4 million in 2002. It is receiving $53.5 million in FY 1999. The House-passed Transportation Appropriations bill would provide $57 million for NTSB in FY 2000.

Section 10. Terminal Doppler Weather Radar

Directs the FAA to install a terminal Doppler weather radar at the former Coast Guard station in Brooklyn, New York if needed

for safety. The need for this provision arose out of the July 22, 1999, Aviation Subcommittee hearing held on aviation weather where it was revealed that the Park Service was objecting to the placement of this equipment that would enhance safety at LaGuardia and Kennedy. While it appears that the Park Service is no longer insisting on its objection, the Committee wants to emphasize the importance of this equipment to the safety of air travelers in the New York area. The directive in this section is contingent on the FAA determination that the equipment would enhance aviation safety, which the Committee understands has already occurred.

HEARINGS AND LEGISLATIVE HISTORY

On May 6, 1999, the Aviation Subcommittee held a hearing on the Reauthorization of the National Transportation Safety Board (NTSB). Testimony was given by the Chairman of the NTSB, the Associate Director for the Institute for Civil Justice of RAND, and Cmdr. William S. Donaldson III, a critic of NTSB's investigation of TWA 800.

COMMITTEE CONSIDERATION

On September 23, 1999, the Full Committee met in open session and approved H.R. 2910 by voice vote.

ROLLCALL VOTES

Clause 3(b) of rule XIII of the House of Representatives requires each committee report to include the total number of votes cast for and against on each roll call vote on a motion to report and on any amendment offered to the measure or matter, and the names of those members voting for and against. There was no roll call vote on H.R. 2910.

COMMITTEE OVERSIGHT FINDINGS

With respect to the requirements of clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee's oversight findings and recommendations are reflected in this report.

COST OF LEGISLATION

Clause 3(d)(2) of rule XIII of the Rules of the House of Representatives does not apply where a cost estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974 has been timely submitted prior to the filing of the report and is included in the report. Such a cost estimate is included in this report.

COMPLIANCE WITH HOUSE RULE XIII

1. With respect to the requirement of clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, and 308(a) of the Congressional Budget Act of 1974, the Committee references the report of the Congressional Budget Office included below.

2. With respect to the requirement of clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee has

received no report of oversight findings and recommendations from the Committee on Government Reform and Oversight on the subject of H.R. 2910.

3. With respect to the requirement of clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 402 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for H.R. 2910 from the Director of the Congressional Budget Office.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, September 24, 1999.

Hon. BUD SHUSTER,
Chairman, Committee on Transportation and Infrastructure, House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 2910, the National Transportation Safety Board Amendments Act of 1999.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is James O'Keeffe.

Sincerely,

DAN L. CRIPPEN, *Director.*

Enclosure.

H.R. 2910—National Transportation Safety Board Amendments Act of 1999

Summary: The National Transportation Safety Board Amendments Act of 1999 would authorize the appropriation of $194 million for the National Transportation Safety Board (NTSB) over the 2000–2003 period and would revise various NTSB policies and procedures. Certain fees collected by the NTSB would be classified as offsetting collections credited to appropriations. In addition, the bill would authorize the Inspector General of the Department of Transportation to conduct audits of the NTSB's financial management and business operations and would require the NTSB to reimburse the department for such costs. Finally, H.R. 2910 would direct the Federal Aviation Administration (FAA) to install a Terminal Doppler Weather Radar at Floyd Bennett Field in King's County, New York, if the Administrator finds it would enhance aviation safety.

Assuming appropriation of the specified amounts, CBO estimates that implementing H.R. 2910 would result in discretionary spending of $194 million over the 2000–2004 period. The bill would not affect direct spending or receipts; therefore, pay-as-you-go procedures would not apply. H.R. 2910 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments.

Estimated Cost to the Federal Government: The estimated budgetary impact of H.R. 2910 is shown in the following table. The costs of this legislation fall within budget function 400 (transportation).

	By fiscal years, in millions of dollars—					
	1999	2000	2001	2002	2003	2004
SPENDING SUBJECT TO APPROPRIATION						
Spending Under Current Law:						
Budget Authority [1]	53	0	0	0	0	0
Estimated Outlays	60	18	5	1	0	0
Proposed Changes:						
Authorization Level	0	57	65	72	0	0
Estimated Outlays	0	52	64	71	7	0
Spending Under H.R. 2910:						
Authorization Level [1]	53	57	65	72	0	0
Estimated Outlays	60	70	69	72	7	0

[1] The 1999 level is the amount appropriated for that year.

Basis of estimate: For the purposes of this estimate, CBO assumes that the amounts authorized by H.R. 2910 will be appropriated by the beginning of each fiscal year. Estimated outlays are based on historical spending patterns. CBO estimates that provisions classifying certain proceeds as offsetting collections would have no significant effect on discretionary spending.

CBO estimates that the Inspector General of the Department of Transportation would spend less than $500,000 a year to conduct financial audits of the NTSB and that such costs would be funded from the amount authorized in the bill for the board. Based on information from the FAA, CBO expects that a Doppler radar system will be installed at the Floyd Bennett Field under current law. Hence, we estimate that this provision would have no effect on discretionary spending.

Pay-as-you-go considerations: None.

Intergovernmental and private-sector impact: None.

Estimate prepared by: Federal Costs: James O'Keefe.

Esimate approved by: Robert A. Shunshine, Assistant Director for Budget Analysis.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause (3)(d)(1) of rule XIII of the Rules of the House of Representatives, committee reports on a bill or joint resolution of a public character shall include a statement citing the specific powers granted to the Congress in the Constitution to enact the measure. The Committee on Transportation and Infrastructure finds that Congress has the authority to enact this measure pursuant to its powers granted under article I, section 8 of the Constitution.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act. (Public Law 104–4.)

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

APPLICABILITY TO THE LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act. (Public Law 104–1.)

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, 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 matter is printed in italic, existing law in which no change is proposed is shown in roman):

TITLE 49, UNITED STATES CODE

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SUBTITLE I—DEPARTMENT OF TRANSPORTATION

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CHAPTER 3—GENERAL DUTIES AND POWERS

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SUBCHAPTER II—ADMINISTRATIVE

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§ 329. Transportation information

(a) * * *

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(e) REQUIREMENTS FOR INSTALLATION AND USE OF RECORDING DEVICES.—A requirement for the installation and use of an automatic voice, video, or data recording device on an aircraft, vessel, or surface vehicle shall not be construed to be the collection of information for the purpose of any Federal law or regulation, if the requirement—

(1) meets a safety need for the automatic recording of realtime voice or data experience that is restricted to a fixed period of the most recent operation of the aircraft, vessel, or surface vehicle;

(2) does not place a periodic reporting burden on any person; and

(3) does not necessitate the collection and preservation of data separate from the device.

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SUBTITLE II—OTHER GOVERNMENT AGENCIES

CHAPTER 11—NATIONAL TRANSPORTATION SAFETY BOARD

SUBCHAPTER I—GENERAL

Sec.
1101. Definitions.

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SUBCHAPTER III—AUTHORITY

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1137. Authority of the Inspector General.

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SUBCHAPTER IV—ENFORCEMENT AND PENALTIES

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[1154. Discovery and use of cockpit voice and other material.]
1154. Discovery and use of cockpit and surface vehicle recordings and transcripts.

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SUBCHAPTER I—GENERAL

[§ 1101. Definitions

[Section 40102(a) of this title applies to this chapter.]

§ 1101. Definitions

Section 2101(17a) of title 46 and section 40102(a) of this title apply to this chapter. In this chapter, the term "accident" includes damage to or destruction of vehicles in surface or air transportation or pipelines, regardless of whether the initiating event is accidental or otherwise.

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SUBCHAPTER II—ORGANIZATION AND ADMINISTRATIVE

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§ 1113. Administrative

(a) * * *

* * * * * * *

(b) ADDITIONAL POWERS.—(1) The Board may—

(A) * * *

* * * * * * *

[(I) require that the departments, agencies, and instrumentalities of the Government, State and local governments, and governments of foreign countries provide appropriate consideration for the reasonable costs of goods and services supplied by the Board.]

(I) negotiate and enter into agreements with private entities and departments, agencies, and instrumentalities of the Government, State and local governments, and governments of foreign countries for the provision of technical services or training in

accident investigation theory and technique, and require that such entities provide appropriate consideration for the reasonable costs of any goods, services, or training provided by the Board.

(2) The Board shall deposit in the Treasury amounts received under paragraph (1)(I) of this subsection *and section 1114(a)* to be credited to the appropriation of the Board *as offsetting collections*.

* * * * * * *

(g) OVERTIME PAY.—

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

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

(3) LIMITATION ON TOTAL AMOUNT OF OVERTIME PAY.—The Board may not make overtime payments under paragraph (1), for work performed in a calendar year, in a total amount that exceeds $570,000.

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

(5) ANNUAL REPORT.—Not later than January 31, 2001, and annually thereafter, the Board shall transmit to Congress a report identifying the total amount of overtime payments made under this subsection in the preceding fiscal year and the number of employees whose overtime pay under this subsection was limited in such fiscal year as a result of the 15 percent limit established by paragraph (2).

§ 1114. Disclosure, availability, and use of information

(a) GENERAL.—Except as provided in subsections (b), (c), [and (e)] *(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.

* * * * * * *

(c) COCKPIT [VOICE] RECORDINGS AND TRANSCRIPTS.—(1) The Board may not disclose publicly any part of a [cockpit voice recorder] *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) * * *

* * * * * * *

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

(d) SURFACE VEHICLE RECORDINGS AND TRANSCRIPTS.—

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

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

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

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

[(d)] *(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) * * *

* * * * * * *

[(e)] *(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) * * *

* * * * * * *

§ 1118. Authorization of appropriations

[(a) IN GENERAL.—There is authorized to be appropriated for the purposes of this chapter $37,580,000 for fiscal year 1994,

$44,000,000 for fiscal year 1995, $45,100,000 for fiscal year 1996, $42,400,00 for fiscal year 1997, $44,400,000 for fiscal year 1998, and $46,600,000 for fiscal year 1999. Such sums shall remain available until expended.]

(a) IN GENERAL.—There is authorized to be appropriated for the purposes of this chapter $57,000,000 for fiscal year 2000, $65,000,000 for fiscal year 2001, and $72,000,000 for fiscal year 2002. Such sums remain available until expended.

* * * * * * *

SUBCHAPTER III—AUTHORITY

§ 1131. General authority

(a) GENERAL.—(1) * * *

* * * * * * *

[(2) An investigation] *(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 law enforcement agency suspects and notifies the Board that an accident being investigated by the Board under paragraph (1) (A)–(D) 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.

* * * * * * *

(d) ACCIDENTS INVOLVING PUBLIC AIRCRAFT.—The Board, in furtherance of its investigative duties with respect to public aircraft accidents under subsection (a)(1)(A) of this section, shall have the same duties and powers as are specified for civil aircraft accidents under sections 1132(a), 1132(b), and [1134(b)(2)] *1134 (a), (b), (d), and (f)* of this title.

* * * * * * *

§ 1137. Authority of the Inspector General

(a) IN GENERAL.—The Inspector General of the Department of Transportation, in accordance with the mission of the Inspector General to prevent and detect fraud and abuse, shall have authority to review only the financial management and business operations of

the National Transportation Safety Board, including internal accounting and administrative control systems, to determine compliance with applicable Federal laws, rules, and regulations.

(b) DUTIES.—In carrying out this section, the Inspector General shall—

(1) keep the Chairman of the Board and Congress fully and currently informed about problems relating to administration of the internal accounting and administrative control systems of the Board;

(2) issue findings and recommendations for actions to address such problems; and

(3) report periodically to Congress on any progress made in implementing actions to address such problems.

(c) ACCESS TO INFORMATION.—In carrying out this section, the Inspector General may exercise authorities granted to the Inspector General under subsections (a) and (b) of section 6 of the Inspector General Act of 1978 (5 U.S.C. App.).

(d) REIMBURSEMENT.—The Inspector General shall be reimbursed by the Board for the costs associated with carrying out activities under this section.

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SUBCHAPTER IV—ENFORCEMENT AND PENALTIES

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§ 1154. Discovery and use of [cockpit voice and other material] *cockpit and surface vehicle recordings and transcripts*

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

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

(B) a [cockpit voice recorder] *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 voice recorder] *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)] *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 voice recorder] *cockpit or surface vehicle recorder* transcript that the Board has not made available under [section 1114(c)] *section 1114(c) or 1114(d)* of this title only if the

[cockpit voice recorder] *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 voice recorder] *cockpit or surface vehicle recorder* recording if, after an in camera review of the recording, the court decides that—

(A) the parts of the transcript made available to the public under [section 1114(c)] *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 voice recorder] *cockpit or surface vehicle recorder* recording is necessary to provide the party with sufficient information for the party to receive a fair trial.

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

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

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

(B) A court may allow a part of a [cockpit voice recorder] *cockpit or surface vehicle recorder* transcript not made available to the public under [section 1114(c)] *section 1114(c) or 1114(d)* of this title or a [cockpit voice recorder] *cockpit or surface vehicle recorder* recording to be admitted into evidence in a judicial proceeding, only if the court places the part of the transcript or the recording under seal to prevent the use of the part of the transcript or the recording for purposes other than for the proceeding.

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

(6) In this subsection—

(A) the term "recorder" means a voice or video recorder; and

(B) the term "transcript" includes any written depiction of visual information obtained from a video recorder.

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