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SENATE

{ REPORT
No. 93-1192

TRANSPORTATION SAFETY ACT OF 1974

REPORT

OF THE

SENATE COMMITTEE ON COMMERCE

TOGETHER WITH

SUPPLEMENTAL AND ADDITIONAL VIEWS

ON

S. 4057

TO REGULATE COMMERCE BY IMPROVING THE PROTECTIONS
AFFORDED THE PUBLIC AGAINST RISKS CONNECTED WITH
THE TRANSPORTATION OF HAZARDOUS MATERIALS, AND FOR
OTHER PURPOSES



SEPTEMBER 30, 1974—Ordered to be printed

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TRANSPORTATION SAFETY ACT OF 1974

SEPTEMBER 30, 1974.—Ordered to be printed

Mr. MAGNUSON from the Committee on Commerce, submitted the following

REPORT

together with

ADDITIONAL VIEWS

[To accompany S. 4057, an original bill]

The Committee on Commerce, having considered an original bill (S. 4057), to regulate commerce by improving the protections afforded the public against risks connected with the transportation of hazardous materials, and for other purposes, reports favorably thereon and recommends that the bill do pass.

PURPOSE

It is the purpose of this bill to increase the operational safety of all modes of transportation and thereby to reduce loss of life, personal injury, and damage to property. The legislation proposes to achieve this purpose by increasing the regulatory authority and enforcement powers and duties of the Secretary of Transportation with respect to the movement in commerce of hazardous materials and extremely hazardous materials; by amendments to increase the effectiveness of existing rail safety laws; and by reorganizing the National Transportation Safety Board to assure its independence, to broaden its accident investigation and analysis mission and capability, and to make it an advocate of safety in transportation.

DESCRIPTION

TITLE I—HAZARDOUS MATERIALS TRANSPORTATION ACT

Title I of the bill draws the Federal Government's now-fragmented regulatory and enforcement power over the movement of hazardous materials in commerce into one consolidated and coordinated effort under the direction of the Secretary of Transportation. It also extends the scope of regulatory power to include the manufacturers of pack-

ages and containers that are used to ship hazardous materials and products. It will make possible for the first time a comprehensive approach to minimization of the risks associated with the movement of valuable but dangerous materials.

The Secretary is directed, after study and investigation, to designate certain quantities and forms of substances or materials as "hazardous materials" (sec. 104) if he finds that they may pose a risk to health and safety or property in the course of being transported. The Secretary is further directed to formulate and promulgate regulations governing "any safety aspect of the transportation of hazardous materials," if he finds that they may pose a risk (sec. 105(a)). These regulations will bind any person who transports a hazardous material or who causes a hazardous material to be transported or shipped (i.e., any carrier or shipper of hazardous materials) as well as any person who manufactures (or fabricates, marks, maintains, reconditions, repairs, or tests) a package or container which is represented, marked, certified, or otherwise expected by such person to be used in the transportation of a hazardous material.

The Secretary is also authorized to designate as "extremely hazardous materials" (sec. 106(a)) that form and quantity of a hazardous material which he determines, in his discretion, poses either a risk of catastrophic harm in the event of a foreseeable accident occurring or a risk of serious harm in the event there is a significant likelihood that an accident will occur. With respect to these extremely hazardous materials the Secretary is to develop and issue criteria for handling and transportation. Each person who transports or ships extremely hazardous materials or makes packages or containers for use in such transportation is required to file a registration statement every 2 years with the Secretary detailing his activities. The Secretary is required to revoke or suspend that registration statement (which is a prerequisite for engaging in the transportation of such extremely hazardous materials) if he finds, after a hearing, that the registrant failed to act in conformity with any of the applicable criteria established by the Secretary (sec. 106(e)).

The title would standardize the enforcement mechanisms for hazardous materials regulation among each of the modes. Those subject to regulation (e.g., shippers, carriers, freight forwarders, and container manufacturers) for each mode would be subject to civil penalties of up to \$10,000 for each violation and criminal penalties for a knowing violation of \$25,000 or imprisonment for 5 years or both. With regard to the civil sanction, the bill would, for the first time, give the Secretary guidelines for compromising such penalties.

Under a much criticized current practice, the Secretary grants "special permits" which allow a carrier or shipper to deviate from the hazardous materials regulations. It appears, however, that there is no legislative authority for the Secretary to grant such permits. Accordingly, title I would codify the power of the Secretary to grant an exemption from the regulations. In order to do so, the petitioner for exemption must show that the materials would still be transported in a manner so as to achieve a level of safety which is equal to or exceeds that level of safety which would be required in the absence of such an exemption. It places a limitation of an exemption for a period of 2 years but it allows a renewal of the exemption. The public would have an opportunity to comment on an application for exemption.

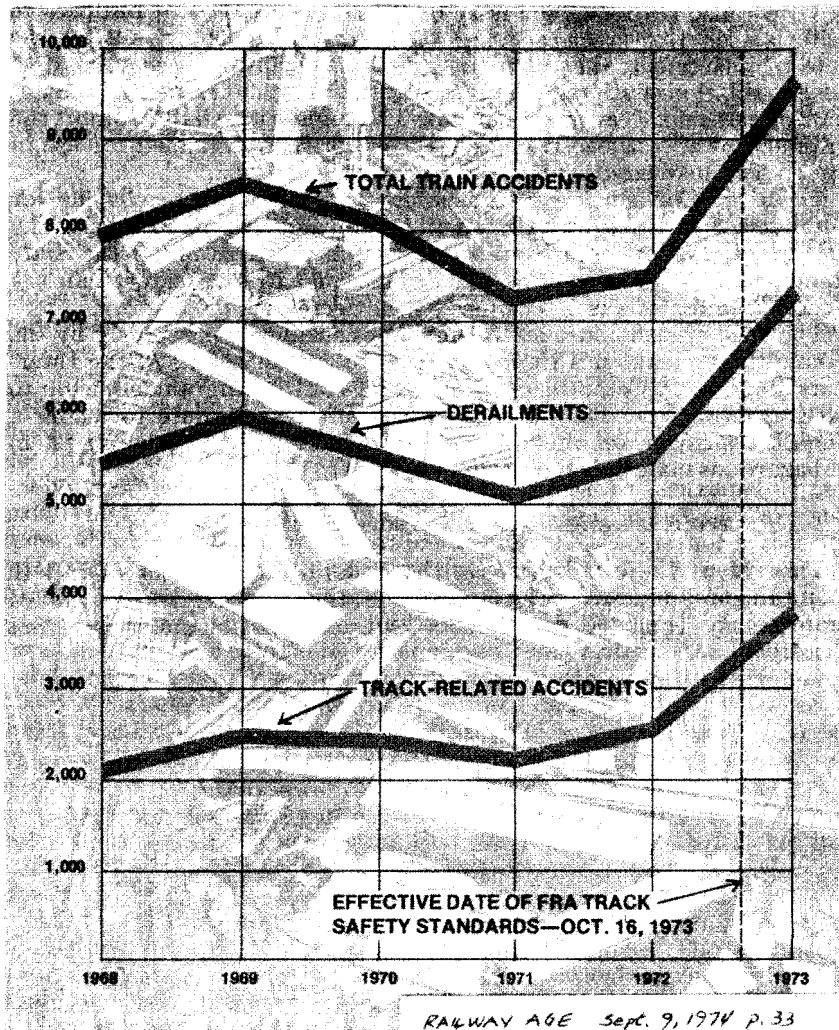
Title I also addresses the issue of the transportation of radioactive materials on passenger-carrying aircraft. Within 90 days after the date of enactment, the Secretary of Transportation is mandated to issue regulations with regard to the transportation of radioactive materials on passenger-carrying aircraft. The regulation shall prohibit the shipment of all radioactive materials except those intended for use in research or medical diagnosis, or treatment.

As in the Consumer Product Safety Act, there are provisions for imminent hazard action, citizen civil action, and citizens petitions. The title would also preempt State regulation in this area unless the State standards provide a level of protection equal to or greater than the Federal regulations as determined by the Secretary.

The title also includes an amendment considered previously by the Committee to make it a Federal offense to assault agents of the Interstate Commerce Commission, a series of conforming amendments to existing laws (sec. 113) and a delayed effectiveness date to insure a smooth transition to, and proper implementation of, the new system of hazardous materials regulation (sec. 114).

TITLE II—RAIL SAFETY IMPROVEMENT ACT OF 1974

Title II of the bill intensifies the Federal Government's effort to maintain and increase safety on the Nation's railroads, in light of increasingly frequent derailments and other accidents. (See inset chart.)



The Federal Railroad Safety Act of 1970 is amended in several important respects, to increase the amount of resources actually spent in the areas of inspection, enforcement, and information gathering.

The Secretary is required to prepare and submit to the President and Congress by March 17, 1976, a comprehensive report on rail safety, which will analyze in depth current Federal and State safety programs, areas in which rail-safety action is authorized but has not been taken, and suggestions for further action. The report, which is to indicate what resources would be necessary for an optimal program of inspection and enforcement and which is to evaluate alternative means of using Federal funds in the most cost-effective way to improve the safety-performance record of the Nation's railroads and to assure a safe rail transportation system, is expected to form the basis for future authorizing and appropriating legislation in this field. (Sec. 202.) It will give the Congress the kind of concrete data and information it needs to legislate in this life-and-death field.

The 1970 rail safety law is also amended to make it a civil offense to fail to file timely reports of rail accidents, as required under the Accident Reports Act (sec. 204), and to authorize the Secretary "to issue cease and desist orders to direct the termination of actions, or omissions to act, in violation of this Act or of any railroad safety rule, regulation, order, or standard under this Act" (sec. 206). The authorization of appropriations for fiscal year 1975 include specific authorizations to insure that more than half of the funds appropriated are used for safety inspection and enforcement activities (sec. 205). The 1970 Act is further amended to permit any interested person to petition the Secretary of Transportation to commence a proceeding to consider a proposed change in rail safety rules, regulations, orders, or standards (sec. 207). The title also contains amendments to the Regional Rail Reorganization Act of 1973 to extend the time for submission of the preliminary system plan and the final system plan for railroads in the Midwest and Northeast region of the United States to permit sufficient planning time to assure that the restructured rail lines will be safe and efficient (sec. 208).

TITLE III—INDEPENDENT SAFETY BOARD ACT OF 1974

Title III of the bill deals with the National Transportation Safety Board created pursuant to the Department of Transportation Act of 1966.

The most important feature of title III is the creation of an independent National Transportation Safety Board which would be unaffiliated with any other Government agency. Presently, while the Safety Board is an independent Government agency, it is located within the Department of Transportation and, in fact, the Department performs many housekeeping and bookkeeping functions for the agency.

The present five-member Board would be preserved under title III. However, in the future, members appointed to the Board would have to possess technical qualifications in the area of transportation safety. Under present law, qualifications of individuals for appointment to the Board are not specified. In addition to retaining the five-member Board as it exists today, title III would require that on January 1, 1975, the President appoint one of the Board members who has not previously served as Chairman to be Chairman and one person to be Vice Chairman, both of whom will serve in those respective positions until their term of office expires. Presently, the President designates a Chairman and a Vice Chairman "from time to time".

Under present law the National Transportation Safety Board has sole and exclusive authority to investigate and determine probable cause of aviation accidents. The authority of the Board under title III would be considerably expanded to determine probable cause in accidents concerning other modes of transportation. In the marine area, the Board could investigate and determine probable cause of any accident involving a vessel of U.S. registry (including a public vessel involved in an accident with a nonpublic vessel) when the Board determined that such investigation and finding was in the public interest. In addition, the Board would be charged with investigating and determining probable cause of motor carrier accidents in which there is a fatality or property damage in excess of \$75,000; highway accidents including rail grade crossing accidents other than those involving a

motor carrier that it selects in cooperation with the States; railroad accidents in which there is a fatality or damage in excess of \$500,000; and pipeline accidents in which there is a fatality.

The Board would have the authority to delegate to the Secretary of Transportation the investigation of any transportation accidents where there is not an initial indication of Government misfeasance or nonfeasance. However, the Board in utilizing the investigatory resources of the Department would make its own determination of probable cause of the accident.

In addition, the Board would be given new authority in the area of hazardous materials transportation to oversee the activities and safety programs of Government agencies charged with dealing with the hazardous materials' shipment problem.

Title III would create a major new responsibility for the National Transportation Safety Board; namely, that of transportation safety advocacy. In exercising this new authority, the Board would be given authority to intervene in any Federal agency hearing or rulemaking which may substantially affect aviation, marine, motor vehicle, railroad or pipeline safety, and to advocate the interest of safety in such proceeding. In addition, the Board or any employee of the Board would be authorized to intervene or participate in State or local agency or court proceedings where the Board determines that the result of such proceeding may substantially affect an important interest of the public in transportation safety.

Section 308 would require that when the Board submits a transportation safety recommendation to the Department of Transportation, the Secretary must respond formally in writing to those recommendations not more than 60 days after their issuance.

Finally, the legislation would authorize the appropriation of \$14 million for the current fiscal year for operations of the Board, \$16 million for fiscal year 1976 and \$18 million for fiscal year 1977. Presently, the National Transportation Safety Board has an open (i.e., unrestricted authorization under the Department of Transportation Act.

BACKGROUND AND NEEDS

TITLE I

Over the past 100 years, Congress has addressed itself a number of times to the question of the transportation of dangerous materials. It has created piecemeal a broad program of regulation and control.

The first step was the 1871 act (46 U.S.C. 170), which limited the transportation of explosives and similar products on vessels and which, as amended over time, provides the legal basis for the role the Coast Guard currently plays in regulating such shipments.

In 1909, similar regulatory authority was created for shipments on land. That legislation (18 U.S.C. 831-35), is the basis of the authority exercised by the Federal Highway Administration and Federal Railway Administration over the shipment of dangerous goods in their respective spheres.

The broad language of the Federal Aviation Act of 1958, codified in part as 49 U.S.C. 1421, gave the Federal Aviation Administration equivalent powers in the area of the shipment of hazardous products by air.

In 1960, the transportation of radioactive material by passenger carriers on land was severely proscribed by an amendment to 18 U.S.C. 831. The Atomic Energy Commission was indirectly brought into the area since certain AEC supervised shipments were exempted from the rules.

In 1966, the Congress responded to the undesirable consequences of fragmentation in transportation by creating the Department of Transportation with broad authority. In 1967, the Department of Transportation formed the Hazardous Materials Regulations Board and created the Office of Hazardous Materials to help coordinate the regulatory effort.

Congress responded in 1970 with the Hazardous Material Transportation Control Act of 1970 (49 U.S.C. 1761-62 which authorized and required the Department of Transportation to improve intermodal information gathering and dissemination about hazardous materials and accidents and which required the Department to make annual reports on the activities of the regulatory bodies dealing with the transportation of hazardous materials.

The annual reports prepared by the Department, as well as a 1973 report from the Comptroller General to the Congress on the "Need for Improved Inspection and Enforcement in Regulating Transportation of Hazardous Materials," indicate that further intermodal coordination and more pervasive regulation are needed for an effective program aimed at the elimination of the risks involved in the transportation of hazardous materials. Subsequently, the administration drafted and sent forward legislation to facilitate implementation of the recommendations in the report.

Many of the provisions of title I have been derived from S. 2064, the Administration request bill introduced by Senators Magnuson, Cotton, and Bayh.

The amount of hazardous material being transported in the United States increases every year. The latest estimate of the Office of Hazardous Materials of the DOT is that more than 2 billion tons of such substances are shipped back and forth in this country each year in as many as 250,000 shipments a day.

The increasing volume of dangerous products in commerce has brought with it an increasing number of accidents. The Fourth Annual Report of the Secretary of Transportation on Hazardous Materials Control indicates that in fiscal 1973 there were 6,014 "incidents"—unintentional releases of hazardous substances in the course of transportation. That number represented an increase from 4,400 during fiscal 1972 and 2,200 during fiscal 1971.

The incidents occurring during fiscal 1973 caused 20 fatalities, 435 injuries, and property damage that was estimated in another context to exceed \$4 million. It is likely that these figures are on the conservative side for, as William Burns, the Director of the Office of Hazardous Materials testified to the Committee there is good reason to believe that few of the carriers actually report the hazardous materials incidents they are supposed to report.

The Coast Guard, the Federal Highway Administration, the Federal Railway Administration, and the Federal Aviation Administration are authorized to regulate the shipment of dangerous products within their respective modal spheres but the record indicates that the current regulations lack cohesiveness, and that the level of enforcement necessary to insure full compliance has yet to be reached. Indeed, the avail-

able studies indicate that noncompliance with existing regulations is the rule rather than the exception in this dangerous business.

The prime difficulty, discussed by almost all of the witnesses in the June 12, 1974, hearing is that the fragmentation of regulatory power among the agencies dealing with the different modes of transportation blocks a coherent approach to the problem and creates a mass of conflicts of jurisdiction and regulation. The problem is heightened by the fact that most shipments involve more than one mode of transportation and thus are faced with differing regulations and enforcement authorities at different stages of a trip. Exacerbating this difficulty is the fact that hitherto the modal authorities have not had significant control over container manufacturers and, therefore, much prepackaged material has avoided regulation entirely. Finally, each separate agency has exempted certain shipments from existing regulations even though there is no present statutory authority or guidelines for such action. Over 1,000 such exemptions were issued or renewed by the four authorities in fiscal 1973. In practice, therefore, there are a tangle of exemptions on an already tangled web of regulations.

Studies further indicate that the existing regulations are not being enforced with the necessary consistency and that those enforcement actions which have been taken point up a pattern of noncompliance. In his testimony on June 12, 1974, William Burns estimated that about two percent of the shipments of hazardous materials are being monitored, although it is thought that a 10-percent monitoring rate is the minimum necessary to insure compliance.

Enforcement efforts have been crippled in the past by a low level of manpower working in the inspection area and by apparent disinterest by both Government and industry. The Federal Aviation Administration, for example, left 18 full-time positions unfilled until recently, although an FAA study indicated that the vast majority of shipments of hazardous materials did not comply with the regulations in one or more ways.

When the FAA conducted a special study of the shipment of hazardous materials in early 1974 it found out that fully 90 percent of the shipments inspected were in violation of the regulations. A total of 240 discrepancies (i.e., violations) were found in 70 shipments examined carefully over a 60-day period. The Director of the Office of Hazardous Materials echoed such findings in his testimony before the Committee; he estimated that 75 percent of all shipments of hazardous materials violate the regulations in one way or another.

Particular dangers are posed by the shipment of radioactive material because of the great hazard involved. Despite the greater danger, testimony showed that the record of noncompliance and of low levels of enforcement of existing regulations was just as dismal in this area. Most of the problems arise from shipments of radioactive material on passenger aircraft, a practice that is allowed although shipment on passenger trains and buses is banned. The Committee's June 13, 1974, hearing brought out the fact that there is currently no consistent monitoring of radiation levels in such aircraft, and that there have been

some spills and leakage of radioactive materials which seriously jeopardized both passengers and airline and terminal employees.

At the same time, testimony indicated that most current air shipments of radioactive materials are not necessary, and that alternate transportation could be arranged without affecting the essential programs utilizing the materials. Only in the medical or research field is a clear-cut case made for the necessity of shipments by air, and then only when the attendant risks are reasonable.

The Committee has not been satisfied with the performance of the Office of Hazardous Materials in safeguarding the American public from the dangers associated with the transportation of hazardous materials. While recognizing that a partial explanation for this poor record lies in the inadequate legislative authority to promulgate and enforce the hazardous materials regulations on a "systems" basis, the Department and the administration must also share some of the blame. Year after year, the hazardous materials effort of the Federal Government has been grossly understaffed and underfinanced.

This legislation is providing the Department with the legislative authority it requested. It is now up to the administration to provide funding and manpower sufficient to get the job done properly. The Committee will scrutinize the performance of the Department closely in the coming year to determine whether the hazardous materials duties are being given the priority they deserve.

TITLE II

In 1970, in response to mounting losses of life and property from railroad accidents, the Congress passed the Federal Railroad Safety Act of 1970 (45 U.S.C. 421-41). The purpose of the law was to promote safety in all aspects of rail service operations in the United States, and the hope of Congress was that a safe rail transportation system would result. To achieve this objective, the law extended and consolidated the authority of the Department of Transportation to issue and enforce regulations and to gather information regarding rail safety.

The record of the rail safety program administered by the Federal Railroad Administration in DOT since 1970 has not borne out the hope of Congress.

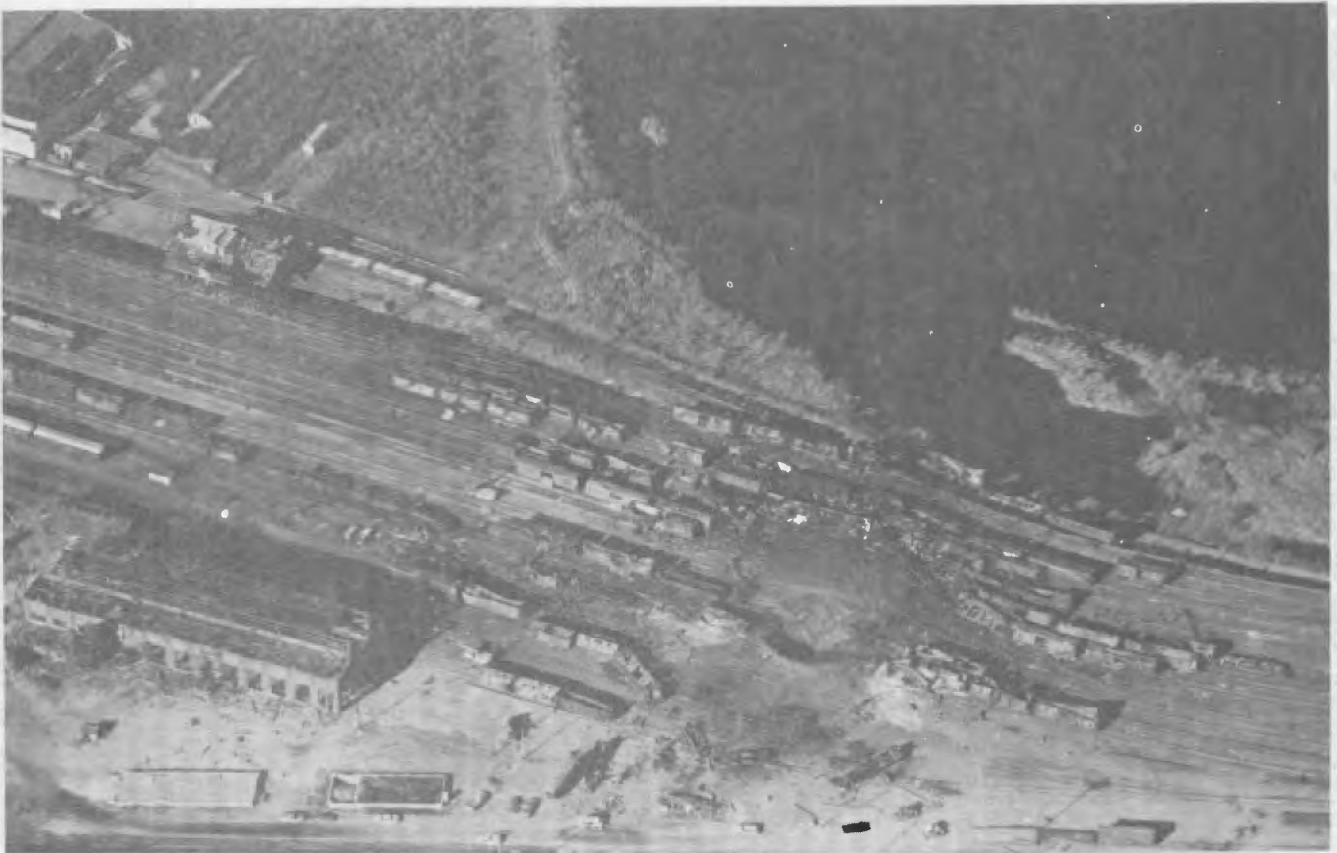
When the 1970 Act was passed, the number of rail accidents was running at a rate double the rail-accident rate in 1960, notwithstanding a 4-year decline in the total number of train-miles traveled in the Nation. Since 1970, that accident rate has continued to increase, and at an alarming rate. There were 24.7 percent more rail accidents in 1973 than in 1972 and in 1973, 1,913 people were killed and 17,718 people were injured in rail accidents. The accident rate for 1974, to date, is higher again than the accident rate for 1973. When a rail accident involves the transportation of hazardous materials, the resulting devastation can be enormous.

Photographs of the August 6, 1974, explosion of a tank car filled with monomethylamine nitrate, traveling under special permit, in Wenatchee, Wash. The rail accident resulted in 2 deaths, 60 injuries, and \$5 to \$10 million in economic loss. (See pp. 10-13.)





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The problem of rail safety is even greater than these figures indicate, for the number of both freight and passenger train-miles traveled is again increasing, as a consequence of the price increases and supply shortages of energy and the increasing availability, through Amtrak, of passenger service. This resurgence of rail service is expected to continue at an increasing rate. This means more accidents, since data received by the Committee indicates that the accident rate increases with the total miles traveled. For example, there were 11 accidents involving Amtrak passenger trains during the whole of 1973, but during just the first 3 months of 1974 there were 12 such accidents. From January through July of 1974, the total cost of derailments and wrecks of Amtrak trains was \$3,541,100.

A major reason for rail accidents, and the increasing rate of rail accidents, is postponement and deferral of necessary track maintenance. The negligent failure to perform regular track inspections, repairs, and other minimum maintenance has resulted in thousands of miles of track and much equipment becoming seriously deteriorated.

Notwithstanding the statistics and the evidence of increasing deterioration, the Department of Transportation has permitted the Federal Railroad Administration to concentrate on activities other than enforcement of rail safety regulations. In early 1974; for example, there were only 12 FRA track inspectors for 300 million miles of railroad trackage and only 50 FRA inspectors for 1,700,000 freight cars and 25,000 locomotives. The number of freight cars inspected by the FRA actually decreased from 1972 to 1973. In fiscal year 1973, the Department indicated that it did not even want the money Congress appropriated (\$1 million) for rail-safety enforcement functions. Contrary to the intent of Congress in the 1970 Act, there is no program within the Department of Transportation for the collection of comprehensive information on rail safety, a lack which makes it difficult for the Committee to make a complete response to the present situation. The Department has also failed to seek the cooperation of State governments in inspection and enforcement programs, despite section 206 of the 1970 Act (45 U.S.C. 435), and it has never assessed the impact of State safety programs or the potential contribution of State resources in this area. The railroad industry has been equally lax in terms of safety improvement efforts, perhaps because of its perception of the low priority accorded rail safety by the Department.

TITLE III

The National Transportation Safety Board is a relatively new Government agency. It was created by Congress in 1966 at the same time that the Department of Transportation was established. The Board's primary purpose was to assume the accident-investigation and probable-cause determination duties as to aviation accidents that were assigned to the Civil Aeronautics Board under the Federal Aviation Act of 1958. In addition to assuming the CAB's investigation function, the Board was given responsibility for investigating major accidents involving surface modes of transportation.

Under the Department of Transportation Act of 1966, the NTSB was established as a five-member independent Board. The Board was located within the Department of Transportation for housekeeping purposes only. In establishing the Board, Congress spelled out clearly

that the Board was to be independent of the executive branch because in the conduct of its duties, the Board would be called upon to investigate the activities of certain governmental departments and agencies in determining the cause or causes of transportation accidents. Congress believed that only if the Board was entirely independent could it impartially, fairly, and without executive interference conduct investigations, determine cause of accidents, and make recommendations (based on its investigations and studies), designed to preclude accidents from occurring in the future.

The Congress was well aware that, for example, in the field of aviation safety, the regulatory or air traffic control activities of the Federal Aviation Administration could be factors in aviation accident causation. The Board was intended by Congress to be independent so that it would be free (and feel free) to criticize activities of the Federal Aviation Administration, where its investigations indicated that the FAA was at fault. Since the FAA was made a part of the Department of Transportation by the same 1966 legislation, such criticism could be precluded absent independent status.

While the Safety Board was established as an independent agency, it was located within the Department of Transportation. The purpose of this structure was to provide the Board with housekeeping, personnel, and budgetary services which the Congress believed could more easily and efficiently be provided by a large department, inasmuch as the Board was to have less than 300 employees.

In retrospect, the arrangement specified in 1966 has not worked out well. It has resulted in ambiguity and led to doubt as to whether the Board is independent.

Beginning in 1971, a series of events occurred which subverted the Board's independence and resulted in politicization of the Board in the mold of the Nixon administration. The events detailed below are cited in support of contention that the Board's independence has been subverted and its efforts subject to undue political pressure.

The first indication that the Board's independence was being undermined came when the Chairman of the Board was importuned by White House assistants to fire a career Government civil servant who was then serving as the Board's Executive Director.

In extensive hearings conducted by the Committee in 1973, comprehensive testimony indicated that the Executive Director, a democrat, was not being ousted because of his lack of competence or fitness to serve. On the contrary, his performance was lauded by the Chairman when the Executive Director was finally forced to retire from the Safety Board.

It seems that the civil servant was forced out because the White House sought to install a former legislative aide to a republican Senator. He was dispatched to the Board in January 1971 to serve as a consultant. Despite the fact that the Executive Director continued at that point to serve in that job, it appears that the political appointee began usurping for himself that title as mail signed by him during that period carried the title, "Executive Director." Then began a series of maneuvers between the Chairman and an Assistant Secretary of Transportation to find a means to oust the Executive Director. Through subterfuges designed to circumvent civil service regulations,

the Executive Director was finally driven to resign his position. Following that, a new job title was created for the political appointee: that being, "General Manager" of the Board. However, the job description attached to the General Manager position was nearly identical to that of the Executive Director.

After becoming General Manager of the Board, and after assuming the responsibilities of Chief Administrative Officer, the General Manager apparently began to interfere in the activities of the Bureau of Aviation Safety, that section of the Board which has responsibility for investigating and determining probable cause of aviation accidents. Testimony indicates that in speeches made to the staff of the Bureau and in conversations with the Director, the General Manager repeatedly indicated that he was sent to the Board by the White House to "straighten the Board out." The General Manager himself continually admonished the Board staff, telling them the Board was not independent of the Department of Transportation and the executive branch.

In addition to attempting to cast doubt on the independence of the Board in the eyes of the Bureau staff, the General Manager also attempted to interfere in the highly complex and technical mission entrusted to the Bureau.

It should be noted that the General Manager has no experience or background whatsoever in the field of aviation safety or accident investigation or reconstruction. Despite that lack of formal training or experience, he sought, unsuccessfully, to singlehandedly change the definition of "probable cause," a subject that has been debated by experts in the field for some time.

While it remains unclear as to why the White House, or certain White House aides, sought to interfere with the independence of the Safety Board, subsequent action indicated a complete lack of respect for the independence of the Board.

Indicative of this lack of respect is an event which occurred in October 1970. At that time, the Administrator and the Deputy Administrator of the Federal Aviation Administration requested an audience with the members of the Board for the purpose of requesting that the FAA—an arm of the Department of Transportation—be given the opportunity to revise and rewrite reports from the Board regarding aviation accidents before the reports were made public. In that particular incident, the FAA was disturbed by a yet-to-be-released report of the Board which indicated some FAA responsibility for a 1969 midair collision in which more than 80 people were killed. The Administrator and Deputy Administrator of the FAA tried to pressure the NTSB to rewrite the report, because the FAA did not like certain findings contained in it. While this attempt to subvert the entire investigation process was properly rebuffed by the Board, the Committee was appalled to learn that it had even been attempted, and that circumstances (i.e., both the NTSB and the FAA were parts of the same department on organization charts and both were physically located in the same headquarters building) made such an attempt seem reasonable to the participants.

Equally disturbing was the failure of the Chairman of the Board to report this attempt to undermine his agency to the appropriate committees of Congress. In an appearance before this Committee in

a 1971 hearing on his renomination to serve on the Board, the Chairman of the Committee expressed strong concern over possible encroachments on the independence of the Board in a colloquy with the Board Chairman.

The Chairman promised that, if attempts were made by officials of the executive branch to interfere with the Board, he would promptly report such attempts to Chairman Magnuson. In the Board Chairman's words: "We do not yield one iota on independence, believe me. The Board is completely independent. We try to be gentlemen, working with them (DOT), but there is no intrusion beyond that independence line, and if there is any influence I would be the first one up here to speak to you and members of the Committee."

The Chairman of the Board, in testifying in 1973, said he never brought the matter to the attention of this Committee in 1971 because he did not feel that FAA's attempt to rewrite the Board's report was a serious matter.

The Board Chairman himself was apparently indifferent to the strong feeling in Congress that the Board be entirely independent. In addition to firing the civil servant Executive Director, in compliance with a request of the White House, he attended and participated in regular weekly meetings of senior officials of the Department of Transportation.

The Committee questions the appropriateness of the Chairman of an independent agency participating in such a meeting. Testimony in the Committee's hearings indicates that the Secretary's staff meetings were often devoted to a discussion of administration politics, the strategy for the reelection of the President, and routine departmental business which was of no interest or concern to the National Transportation Safety Board.

The most egregious example of executive tampering and interference with the responsibility of the Board occurred in April 1973. An Assistant Secretary of Transportation called the Chairman at that time and told him that republican members of the Board would be "disciplined" by the administration if the Board's annual report contained certain statements or information that the administration wanted excluded. Following the message from the Department of Transportation, the Chairman of the Board agreed to transmit the administration message to three members of the Board. The following correspondence between this Committee and the Board members indicates the nature of the activities which took place.



NATIONAL TRANSPORTATION SAFETY BOARD
DEPARTMENT OF TRANSPORTATION
WASHINGTON, D.C. 20591

OFFICE OF
THE CHAIRMAN

May 10, 1973

Honorable Warren G. Magnuson
Chairman
Committee on Commerce
United States Senate
Washington, D. C. 20510

Dear Senator Magnuson:

This is in reply to your letter dated May 3, 1973, wherein certain allegations were made concerning the undersigned and Members of the National Transportation Safety Board.

Concerning the allegations set forth in your letter, I wish to first advise that the events you describe did not occur at a Board meeting on March 18, 1973, as alleged, nor at any other Board meeting prior to that date or since.

The only occurrences which I can recall that could possibly be interpreted in the manner alleged in your letter involved discussions concerning the location of the Safety Board within the Department of Transportation. The majority of the Board voted to include in the Board's Annual Report for 1971 information concerning its independent status. The majority of the Board expressed a view that its location in the Department could serve to create doubts as to its objectivity and integrity.

Later I was advised by the then Secretary of Transportation that he had received an inquiry from the Administration as to whether the discussions of the Board's location in the Department was a problem within the Safety Board. I advised the Secretary that the reference in the Annual Report did not reflect a serious disagreement within the Board, since all Members were convinced that there had been no infringement by the Department on the Board's substantive responsibilities. It was the appearance of a lack of independence that troubled some of the Board Members.

Senator Magnuson

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May 10, 1973

In mid-March 1973, a first draft of the Board's Annual Report for 1972 was before the Board. In anticipation of another discussion concerning the location of the Board within the Department, I sought to ascertain the current position of the Administration. During a courtesy call on the new Under Secretary I raised the issue. He said that he was not aware of a problem and I would be advised of the current position of the Administration. Later the Assistant Secretary for Administration for the Department, who serves as the Department's contact with the Administration on administrative matters, advised me that it was the position of the Administration that the Safety Board was properly located within the Department. It was suggested that I so advise the Republican Members of our Board and indicate that any action taken to the contrary in our Annual Report would be looked upon with disfavor and could result in the disciplining of the Republican Members.

I then transmitted this view to the Republican Members and also advised the Independent Member of the Administration's position on the location of the Board. Later I received another call from the Assistant Secretary advising me that there was no plan to effect any change either by legislation or reorganization and the reference to disciplining of Members should be ignored.

There were no references made to Board accident reports or recommendations in these discussions. I was not ordered to "cease issuing reports which could be construed as being critical of the Department or Executive Branch." I believe the reports and recommendations issued by our Board, prior to and following March of this year, clearly refute this allegation.

Concerning the substantive responsibilities of the Safety Board, I remain of the firm view that this Board is independent, that we report the facts and conditions as we see them, and make recommendations required in the interest of safety, irrespective of the fact that they are often critical of the Department and other government agencies. If an attempt was made to infringe on our independence in the performance of our substantive duties I would, as indicated in March 1971, speak to you and Members of the Committee. I did not consider the events described above as being an infringement requiring such action.

Senator Magnuson

- 3 -

March 10, 1973

Since, as indicated above, this matter was never discussed at a formal Board meeting and my discussions with Members of the Board were informal, I have no minutes, notes, memoranda, or other written matter summarizing or detailing these matters.

I trust the above will be of assistance to you in your investigation of this matter and I am prepared to discuss this personally with you at your convenience.

Sincerely yours,



John H. Reed
Chairman

cc: Honorable Norris Cotton



DEPARTMENT OF TRANSPORTATION
NATIONAL TRANSPORTATION SAFETY BOARD

WASHINGTON, D.C. 20591

OFFICE OF MEMBER

May 9, 1973

Honorable Warren G. Magnuson, Chairman
Honorable Howard W. Cannon, Member
Committee on Commerce
United States Senate
Washington, D. C. 20510

Dear Senators Magnuson and Cannon:

This is in reply to your letter of May 4th, which I received this morning.

During the period March 16th through March 22nd, I was at home on leave and away from the office. However, I have no knowledge of any meeting in which Chairman Reed discussed with the Board members displeasure of the White House staff because of certain reports or recommendations adopted and made public periodically by the Board which were critical of the Department of Transportation and its Federal Aviation Administration.

Chairman Reed told me that he had direction involving the Republican members of the Board who were to be "disciplined" by the White House if our Annual Report for 1972 should contain information critical to the Federal Aviation Administration, or if it should contain a statement with respect to the independence of the Board.

My knowledge stems from a telephone call which Chairman Reed made to me at my home on the evening of March 23rd as nearly as I can recall. He told me at that time that he had received such information from the White House, and had passed it on to the Republican members for

their guidance. He was giving the information to me because of our long friendship, and because he thought I should know it in view of the fact that I would be coming up for consideration for reappointment before long. As you may recall, I am an Independent.

I trust that this letter is responsive.

Sincerely,

L. M. Thayer
L. M. THAYER
Member



NATIONAL TRANSPORTATION SAFETY BOARD
DEPARTMENT OF TRANSPORTATION

WASHINGTON, D.C. 20591

OFFICE OF MEMBER

May 10, 1973

The Honorable Warren G. Magnuson
Chairman, Committee on Commerce
United States Senate
Washington, D. C. 20510

Dear Senator Magnuson:

This is in reply to your letter of May 4 which I received upon my return to Washington at noon today.

To my knowledge, as long as I have been a Member of the National Transportation Safety Board, there has never been any attempt made by either the Secretary of Transportation nor any others in the Department of Transportation to, in any way, influence our decisions concerning our reports or recommendations. Disagreement after the fact - yes, but pressures - no.

However, on March 22 when I was in Anaheim, California, Chairman Reed told me by phone, that "the Secretary was furious", that Members of the Board would consider including in our 1972 Annual Report a statement on our independence as it appeared in our 1971 Report. (I am enclosing a copy of this statement.) That the Secretary, I assumed Chairman Reed meant Secretary Brinegar, would be so concerned over such an innocuous statement seemed incredible to me and I so stated. The Chairman then said that Mr. Heffelfinger, Assistant Secretary for Administration, was also displeased, but that I should make my own decision. The word discipline was not used.

About a week later I learned that the White House felt that the inclusion of a statement on our independence would be a "slap at Secretary Volpe" - whereas Member Haley and I felt that the opposite would be true. Since then the matter has not been considered.

I trust that this letter will help clarify some rather serious allegations.

Sincerely,

Isabel A. Burgess
(Mrs.) Isabel A. Burgess
Member of the Board

THE INDEPENDENCE OF THE
NATIONAL TRANSPORTATION SAFETY BOARD

Since the creation of the Safety Board by the Department of Transportation Act of 1966, its precise status as related to the Department of Transportation has been frequently misinterpreted and misunderstood. The Safety Board, in the performance of its statutory responsibilities, was intended to be an independent agency. It was, however, established "within the Department of Transportation" in an effort to provide for administrative efficiency and economy. This was not an unusual legislative procedure for such a small agency. The Civil Aeronautics Board was "within the Department of Commerce" for 18 years.

Unfortunately, since the inception of the Board, its status within the Department has been misunderstood by the media, the public, and other government agencies. Too often it has been assumed that the Board is not independent, but a subordinate part of the Department, despite the legislative history of the Act, which makes it clear that the Board is fully independent of the Department.

Although the Board is convinced that there has been no infringement upon the Board's independence by the Department, the appearance of a lack of independence, which is broadly accepted by the public is nearly as detrimental as would be actual infringement, because it serves to create doubts as to the objectivity, integrity and credibility of the Board. The Board has sought to clarify its status in the eyes of the public and to substantiate its independence by the manner in which it undertakes its statutory responsibilities. Nevertheless, there remains an element of doubt, prompted by its inclusion within the organization of the Department of Transportation.

In light of the above, it is the view of the Safety Board that this problem should be given careful consideration and analysis looking toward an organizational solution which would remove any doubts as to its independence.



DEPARTMENT OF TRANSPORTATION
NATIONAL TRANSPORTATION SAFETY BOARD

WASHINGTON, D.C. 20591

May 9, 1973

Suite 821
OFFICE OF MEMBER W. R. Haley

The Honorable Warren G. Magnuson
Chairman, Committee on Commerce
United States Senate
Washington, D. C. 20510

The Honorable Howard W. Cannon
Chairman, Commerce Committee Subcommittee
on Aviation
United States Senate
Washington, D. C. 20510

Dear Senators Magnuson and Cannon:

I wish to acknowledge your letter of May 4 in which you set forth certain serious allegations concerning the conduct of Members of the National Transportation Safety Board in carrying out the Board's statutory responsibilities as established by Congress.

Since my swearing-in on June 8, 1972 as a Member of the National Transportation Safety Board, I have been present for and I have participated in the Board's work at all Board Meetings and Executive Sessions except on approximately four occasions when I was out of town on official business.

First, I can state categorically that at no time in this period have I received communications from the White House, from the Secretary of Transportation, from any official in the Department of Transportation or from any official in the Executive Department or from any private party that was intended or could be construed to intend to influence or bear on any decision or determination by me in my consideration of NTSB accident reports, special studies or any other matter coming before the Board. Secondly, I can further state categorically that I have no knowledge of any communication from the White House, Department of Transportation, any other Government agency or private party made to the Chairman

Senators Magnuson and Cannon 2

May 9, 1973

of the Board, John Reed, or any other Member of the Board that was intended to or could be construed to intend to influence the writing or issuance of any accident report or special study.

Apart from the issuance and publication of aviation and surface accident reports and special studies, the NTSB is required by statute to submit an Annual Report to Congress concerning its policies, programs and activities. After some preliminary discussions, the Board considered a first draft of its 1972 Annual Report at a regularly scheduled Board Meeting during the month of March. Among the matters discussed was the possible desirability of including in this year's Report comments which were contained in the Board's 1971 Annual Report relating to the independent status of the NTSB and the numerous advantages of having the NTSB established as a separate entity completely apart from the DOT as compared with its present status as being "within the Department of Transportation" for housekeeping purposes. I should note that at the present time the draft of the Annual Report is being revised by our Aviation and Surface Bureaus and no action has been taken to date by the Board on the Report or any part of the Report.

Sometime in the afternoon of either March 15 or 16, Chairman Reed called me to his office and advised me that he had been informed by a DOT official that the Administration did not wish the matter of the Board's independent status in the DOT raised again in this year's Annual Report and that if any Republican Members of the Board supported the inclusion of such a proposal in the 1972 Annual Report that "those Republican Members will be disciplined."

Furthermore, Chairman Reed advised me that the DOT official had told him that the NTSB should avoid public statements that would be in disagreement with the policies and programs of the various agencies administered by the DOT and that the NTSB should avoid public criticism of the FAA and its programs. Chairman Reed was very careful to point out that this was a matter for my own consideration and that he had been requested to pass this information on to me. Our meeting lasted approximately four minutes. Chairman Reed has not brought these matters up for discussion with me at any subsequent time prior to the receipt of your letter of May 4.

Senators Magnuson and Cannon 3

May 9, 1973

In conclusion, I would like to note that I am the most recently appointed Member of the National Transportation Safety Board and in connection with the Board's independent status, it may be appropriate to recall questions asked of me by your Committee on May 23, 1972 at the Public Hearing on my nomination.

"Senator Pastore. In other words, your position is that this [NTSB] is an independent board and it is not subservient to any other agency of Government, that you act as an independent entity?

Mr. Haley. Yes, sir.

Senator Pastore. The question arose on this question of giving off-the-record reports to Government agencies about the activities with respect to safety which I understand several months ago was objected to by one of the agencies, namely, the FAA.

What is your reaction?

Mr. Haley. My reaction again, going back to my initial premise, is that the Board should act independently without restrictions or limitations.

Senator Pastore. Whether or not you should publish a report ought to be your independent judgment before you clear it with anybody any time, is that so?

Mr. Haley. Yes, sir."

I have to the best of my ability carried out my responsibilities as a Member of the Board in accordance with the Statute and with my testimony before your Committee. I believe my record will speak for itself.

I trust that my answers are responsive to the questions raised in your letter, and if you require any additional information, I will be happy to provide it.

Sincerely yours,

William R. Haley
William R. Haley

WRH:MJ

Copy to the Honorable Norris Cotton



DEPARTMENT OF TRANSPORTATION
NATIONAL TRANSPORTATION SAFETY BOARD
WASHINGTON, D.C. 20591

OFFICE OF MEMBER

May 9, 1973

Honorable Warren G. Magnuson
United States Senate
Washington, D.C. 20510

Dear Senator Magnuson:

This is in reply to your letter of May 4, 1973.

I have no personal knowledge of the events set forth in your letter; nor have I attended any Board meetings, formal or informal, where such matters were discussed, prior to the receipt of your letter.

However, subsequently I was told by two Members of the Board that Chairman Reed in a private meeting some time during March 1973, advised the two Republican Members that a representative of the Department of Transportation, alleging to speak for the White House, had stated in the future there should be no public criticism of either the Department of Transportation or its components by the National Transportation Safety Board. For this reason, therefore, according to the Chairman, the section of the Board's 1971 Annual Report relating to its independent status was not to be included in the 1972 Annual Report as this constituted adverse criticism of the Department. The two Members were then advised that if they voted to include the section they would be disciplined.

During my tenure at the Board there has been no attempt, to my knowledge, by the Secretary of Transportation to influence or intrude upon any substantive decision, report, or recommendation of the Board.

Sincerely,

Francis H. McAdams

Hand delivered

The administration was apparently unhappy with the manner in which the Board planned to discuss the way in which the FAA responded to the Board's safety recommendations. The Board planned to point out the fact that the FAA had not acted upon many of those recommendations. How can a Board retain independence if its members are threatened if they vote to support comments critical of DOT?

In addition to the acts of direct interference with the Board's lawful responsibilities and activities, it is clear from the Committee's hearing record that the administration ordered that certain "political musts" be hired by the Safety Board. For example, testimony indicated that the White House ordered the then-Secretary of Transportation to find a job for a political friend of the administration within the Department.

Not wanting to put the man on the DOT payroll, testimony indicates the Secretary called the Chairman of the Board and "recommended" that the political friend be retained by the Safety Board as a consultant. Our hearing record indicates that the political friend had no experience or expertise in transportation safety whatsoever, but he was nonetheless hired as a \$100-a-day consultant to the Board.

The most important single aspect of the National Transportation Safety Board must be its total independence from those governmental agencies it oversees in regard to their transportation regulatory functions. If the Board is under pressure from any administration to pull its punch or to tone down its reports or to gloss over Government errors in transportation safety, then its watchdog function has been fatally compromised. The public can then have no confidence that its interests are being protected by a professional agency which has no responsibility other than safety. If the public perceives the Board to be merely an arm of the Department of Transportation (and testimony from most of the Board members indicates that such is the case) there is likely to be little public confidence that a full, fair, and impartial investigation will result when transportation accidents occur.

The Committee believes that the appearance of independence is as important as the reality. The current structure of the Board vis-a-vis the Department, coupled with the revelations of repeated executive tampering with the Board, do not create public confidence in the Board or the process. For these reasons, the Committee concludes that an entire reorganization of the Board is required.

In addition to seeking to guarantee the independence of the Safety Board, title III of the bill broadens the mission and responsibility of the Board. In its 1973 report to Congress, the Board summarized its activities for that year as follows:

Air:	Surface:
Total investigations..... 876	Major accident investigations..... 20
Major investigations..... 19	Accident reports adopted.... 18
Safety recommendations..... 122	Safety recommendations..... 149
Total accident reports..... 7,313	Special studies..... 2
Narrative accident reports... 20	Public hearings..... 1
Special studies..... 2	Mariner certificate appeal cases closed..... 4
Public hearings..... 6	
Airman certificate appeal cases closed..... 546	

It is clear from this summary that the Board has, in the past, concentrated the bulk of its resources in the investigation of aviation accidents. The Committee believes that the work of the Board is at least

partially responsible for the comparatively good safety record of American aviation. The Board has served as an "oversight" agency which monitors the regulatory activities of the Federal Aviation Administration and the safety programs of the airlines. In so doing, it has developed the resources, expertise, and knowledge of the regulatory process to provide meaningful input to insure a safe aviation network.

The Committee believes the Board could and should perform to a greater extent than it has a safety advocate's role for the other modes of transportation. As the aforementioned summary indicates, the Board's resources have been divided between (1) its air activities and (2) its activities involving the four surface modes combined. If the Board were allowed to perform its oversight function, unfettered by any conflict of interest by nature of its position in the DOT and to make recommendations where changes are needed, the Committee believes the safety record of those other modes could be significantly improved.

The 1966 Act which created the Department of Transportation provided that the National Transportation Safety Board is authorized to " * * * make such recommendations to the Secretary or Administrators on the basis of the exercise of its functions, powers, and duties which, in its opinion, will tend to prevent transportation accidents and promote transportation safety * * * ." This responsibility would be continued under this new legislation. In its 7 years of existence, the Board has developed expertise in accident analysis and has refined its capability to detect flaws in the Nation's scheme of transportation safety regulations.

While the Board has relied heavily on this expertise and capability in making its safety recommendations and in conducting its special studies, this unique capability can be put to work in another area to implement the mandate of the 1966 Act. This legislation would authorize the Board to take part as a "safety advocate" in Federal proceedings which would affect aviation, marine, motor vehicle, railroad, or pipeline safety. There is similar authorization to participate in State and local proceedings when asked to do so by the State.

Regulations relating to transportation safety are developed and promulgated in a rulemaking procedure in which the public has an opportunity to participate. Often, only those with a direct pecuniary interest in the outcome of the rulemaking procedure take advantage of this opportunity to participate, leaving the public interest unrepresented. This provision of title III is designed to fill that void. The Board would have no regulatory power; it, like any other participant in the rulemaking proceeding, would have the opportunity to present its views on the proposed action. Such input is particularly valuable in view of the fact that the Board's only mission is transportation safety. It not only is an expert in this field, but is also in the unique position of possessing a broad perspective of the safety issues effecting all modes of transportation. Thus, it could provide a "cross fertilization" of safety technology from one mode to another.

SECTION-BY-SECTION ANALYSIS

The bill is divided into three titles.

TITLE I—HAZARDOUS MATERIALS

Section 101. (Short Title)

This section provides that this title may be cited as the "Hazardous Materials Transportation Act".

Section 102. (Declaration of Policy)

The Congress finds that increased regulatory and enforcement authority is necessary so that the Secretary of Transportation can adequately protect the Nation against the increasing risks to life and property posed by the transportation of hazardous materials in commerce.

Section 103. (Definitions)

This section contains the definitions of certain terms used in the title. [References are to paragraphs within this section.]

(1) Provides that "commerce" means commerce among the several States, commerce with foreign nations, between any State and foreign nation, or in or through any State.

(2) Defines "extremely hazardous material" as hazardous material concerning which the Secretary of Transportation has made one of two alternate sets of determinations. If the Secretary, "in his discretion," determines that the hazardous material poses a risk of catastrophic harm and that it is foreseeable that an accident giving rise to such risk may occur, the material is extremely hazardous. Alternatively, if the Secretary determines that certain hazardous material poses a risk of serious harm and that there is a significant likelihood that an accident giving rise to that risk will occur, the material is extremely hazardous. The term "catastrophic harm" is not specially defined for this bill but the Committee's intent is that the term encompass harm of a greater magnitude than that encompassed by the term "serious harm." The term "serious harm" is defined by paragraph (5) of section 103 as "death, serious illness, severe personal injury, or significant economic loss."

(3) Provides that the term "hazardous material" means either a material which involves a risk to health and safety or property when it is transported in commerce or that quantity or form of an otherwise innocuous material that may pose such a risk when it is transported in commerce.

(4) Provides that the term "Secretary" means the Secretary of Transportation or his delegate.

(5) Defines the term "serious harm" (see above).

(6) Defines the word "State" as meaning a State in the United States, as well as the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, and the Trust Territory of the Pacific Islands.

(7) Provides that the terms "transport" and "transportation" means any movement of property by any mode and include all loading, unloading, and storage incident to such movement.

(8) Provides that the term "United States" means all of the States when used as a geographical term and means the Federal Government when used to indicate a governmental body.

(9) Defines the term "vessel" by reference to a definition codified in 46 U.S.C. 170(1). That definition essentially provides that the term

"vessel" covers every vessel, domestic or foreign, regardless of size, on the navigable waters of the United States and its territories and possessions, excluding the Panama Canal Zone, including those vessels which are moored, aground, or on drydock. Excepted from the definition are public vessels not engaged in commercial service and most vessels engaged in the carriage of inflammable cargo, oil, and certain hazardous polluting materials in bulk which are regulated for safety and pollution prevention under the Ports and Waterways Safety Act (46 U.S.C. 391a). Vessels excluded from regulation under section 391a of title 46, United States Code would be subject to regulation by the Secretary under the provisions of this bill, but there is no requirement in this bill that the Secretary regulate such vessels. Only if he discovered particular safety problems which have not as yet come to the attention of this Committee would any reasonable regulations be imposed on previously exempt vessels. (See sec. 107 for special exemption procedure for such vessels.)

Section 104. (Designation of Hazardous Materials)

This section provides that the Secretary is to designate a material or a quantity of material as a hazardous material after finding that the transportation of that material or quantity or form of material in commerce may pose an unreasonable risk to health and safety or property. The Secretary is not limited in the kinds of materials which are within his purview; the section names certain kinds of possibly hazardous materials by way of illustration rather than limitation.

Section 105. (Regulations Governing Transportation of Hazardous Materials)

This section deals with the promulgation of regulations dealing with the transportation of materials which have been designated as hazardous materials.

Subsection (a) provides that the Secretary has the authority to issue regulations for the safe transportation in commerce of hazardous materials. In issuing such regulations, the Secretary is to act in accordance with the provisions of 5 U.S.C. 553, the section of the Administrative Procedure Act that sets out the requirements for rulemaking procedures. In addition, this section requires that the Secretary afford interested persons an opportunity for informal oral presentation within the framework of that procedure.

The section gives the Secretary the authority to issue regulations that affect those who manufacture, maintain, repair, and test packages meant for the transportation of hazardous materials or used in such transportation, as well as regulations that affect those who transport or cause to be transported such materials. The regulations can cover the broad spectrum of activities incidental to the transportation of such materials. By way of illustration, but not limitation, the section authorizes the Secretary to affect the packing, handling, labeling, and routing of such materials as well as the creation, repair, and testing of packages used or meant to be used in such commerce. The section gives the Secretary a broad mandate so that comprehensive regulations can be issued as the need arises covering whatever facet of the transportation requires regulation.

Subsection (b) requires the Secretary to consult and cooperate with the Interstate Commerce Commission and consider suggestions

made by the Commission before issuing regulations with respect to the routing of hazardous materials shipments. The provision further directs the ICC to cooperate with the Secretary in implementing any such regulations. This subsection is needed in order to assure meaningful coordination of the ICC's route-certificating authority under the Interstate Commerce Act (49 U.S.C. 1 et seq.) with the Secretary's safety functions.

Subsection (c) prohibits representing that a container is safe or in compliance with the provisions of the bill or certified for the transportation of hazardous materials unless it meets all of the requirements of all of the applicable regulations issued under the bill.

Section 106. (Extremely Hazardous Materials)

This section describes how materials may be designated as extremely hazardous and indicates the effect of such a designation and how such materials may be transported in commerce.

Subsection (a) indicates that the Secretary is authorized to designate materials as extremely hazardous when those materials match the definition established by section 103(2) for extremely hazardous material. The Secretary, as section 103(2) indicates, is the one authorized to determine if the materials match the definition.

Subsection (b) authorizes the Secretary to set out criteria for the transportation of materials designated as extremely hazardous. These criteria are to be tailored to the requirements of the particular material involved. Such criteria can affect all parts of the transportation process and, by way of illustration and not limitation, can touch on the number of personnel and the training required for handling such materials, inspection procedures, facilities for handling such materials, and monitoring program to insure safe procedures are being followed. The Secretary is authorized to revise such criteria as is necessary.

Subsection (c) provides the authorization for the requirement of registration certificates by certain people involved in the transportation and packaging of certain extremely hazardous materials. The registration form is to be developed by the Secretary but each registration statement is to include, at a minimum, the name and place of business of the registrant, the kinds of extremely hazardous materials this person handles, where they are handled, and an averment that this person is in compliance with the applicable criteria established under subsection (b).

Each person who causes extremely hazardous materials to be transported, or who transports extremely hazardous materials, is to submit a registration form to the Secretary. In addition, each person who makes, repairs, or tests packages or containers represented as for, or used in the transportation of, certain extremely hazardous materials are also to file such forms. The Secretary is to designate what extremely hazardous materials trigger the registration requirement for the package makers, repairers, and testers.

The registration forms are to be filed on or before December 31 of each odd-numbered year. The Secretary may make such statements available for inspection by any person without charge, except to the extent that they reveal trade secrets or other confidential material whose disclosure is prohibited by section 1905 of title 18, United States Code.

Failure to file a required registration statement under this subsection would constitute a violation of the Hazardous Materials Transportation Act, subjecting the violator to possible civil penalties or criminal punishment under section 110. The filing of a registration statement which is knowingly false or misleading in any respect would constitute a violation of the Federal false statement statute, 18 U.S.C. 1001, which provides that:

Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than \$10,000 or imprisoned not more than five years, or both.

Subsection (d) prohibits any person who is required to file such a registration statement from taking any action with respect to the transportation, shipment, or packaging of any extremely hazardous materials, unless he has a currently valid registration statement on file with the Department of Transportation.

Subsection (e) authorizes the Secretary to revoke or suspend a filed registration statement, after notice and an opportunity for a hearing, whenever a registrant fails to act in compliance with the criteria established under subsection (b).

Section 107. (Exemptions from Requirements)

This section sets up the procedure for granting certain parties exemptions from the regulations controlling the transportation of hazardous materials. The Secretary may grant an exemption to a person who handles hazardous materials in a way that achieves a level of safety equal to or better than that which would be reached by following the regulations that have been set out or, when no existing level of safety has been established, in a way that is consistent with the public interest and the policy of this title.

An exemption cannot be valid for more than 2 years, but it may be renewed. Each application for an initial exemption or an exemption renewal must follow the requirements of this section. The applicant must supply a detailed safety analysis to justify the granting or renewing of the exemption. A public notice of the application is to be placed in the Federal Register, and there must be an opportunity for the public to view the applicant's safety analysis and to make comments on the application.

In another area, the Secretary is also authorized to grant exemption to certain vessels of not more than 500 tons engaged in exploration for but not the carriage of oil and certain cannery vessels of less than 5,000 tons.

Except in the cases of emergencies, this section shall constitute the sole lawful basis for an exemption from the Hazardous Materials Transportation Act and the regulations under it.

Section 108. (Transportation of Radioactive Materials on Passenger-Carrying Aircraft)

This section restricts the transportation of radioactive materials by passenger aircraft and authorizes the Secretary of Transportation to regulate such transportation as is not prohibited.

Subsection (a) authorizes the Secretary to regulate the transportation of radioactive materials on passenger aircraft in air commerce, a term which, as defined in 49 U.S.C. 1301(4), covers all interstate and foreign air commerce, the carriage of mail by air, the operation of aircraft within Federal airways, and the operation of aircraft which directly affect interstate or foreign commerce. At a minimum, such regulations must prohibit transportation of all radioactive materials not involved in or incident to research activities or to medical diagnosis or treatment activities. Radioactive materials intended for research, or medical treatment or diagnosis, can be transported only so long as they do not pose an unreasonable hazard to health and safety. The Committee decided not to set specific standards as to when such materials pose an unreasonable hazard to health and safety, but it reviewed Report No. 1 of the Special Panel to Study Transportation of Nuclear Materials to the Joint Committee on Atomic Energy (Government Printing Office, 1974) with favor and draws the Secretary's attention to that report. It concluded that the maximum safe exposure level for radioactive materials should be set at 1 millirem per hour. The Committee concurs in this recommendation and urges the Secretary to move in this direction in regulating the transportation of such materials. This subsection also directs the Secretary to establish effective procedures for monitoring and enforcing these regulations. The public is not protected by good regulations in the absence of sufficient inspection and enforcement action to assure compliance with these regulations.

Subsection (b) defines "radioactive materials" generally as materials which spontaneously emit ionizing radiation. The definition excludes materials which involve emissions that are uniformly insignificant.

Section 109. (Powers of the Secretary)

Subsection (a) authorizes the Secretary to conduct investigations and hearings, issue subpoenas, and require the production of relevant information and materials. The Secretary may issue cease and desist orders to block violations of the law or regulations, and he or the Attorney General can go to Federal court to enforce such orders.

Subsection (b) authorizes the Secretary to prescribe recordkeeping requirements for those subject to this law. Persons involved must keep records and submit such records and other information as the Secretary may require.

Subsection (c) indicates that authorized representatives of the Secretary may check on compliance by gaining access to the property of those subject to the law. They may inspect records and property of such persons. Such inspection is to be at reasonable times and is to be carried out promptly, and the results are to be promptly relayed back to the affected person.

Section 110. (Penalties)

This section outlines the penalties that may be imposed for various violations of the Hazardous Materials Transportation Act and the regulations issued under it.

Subsection (a) authorizes civil penalties of up to \$10,000 for each violation found by the Secretary. The amount of any such penalty is to be imposed by the Secretary; in doing so he shall take into consideration such factors as the violator's degree of culpability, history of prior offenses, ability to pay, and any effect the penalty will have on the violator's business.

The affected party is authorized to seek judicial review of the penalty in the appropriate U.S. Court of Appeals and that court is to set aside the Secretary's determination if it is not supported by substantial evidence, as provided by section 706(2)(e) of title 5, United States Code. By requiring substantial evidence review, the committee in no way intends to burden the Secretary with the requirement of any formal procedures for making his determination. The Committee does intend the Secretary to send to the court enough information to allow the court to determine that the Secretary's action is supported by substantial evidence, and is not arbitrary and capricious as judged by the information forwarded.

On his side, the Secretary can compromise or remit such penalty at his discretion. He can also go into Federal court to seek collection of a penalty that has not been paid or overturned on appeal. In such a proceeding, the validity and appropriateness of the final order imposing the penalty would not be subject to review.

Subsection (b) indicates that a person is guilty of an offense for knowingly violating a provision or regulation. Such person would be subject to a fine of not more than \$25,000 and/or imprisonment for not more than 5 years.

Section 111. (Specific Relief)

This section outlines the Secretary's power to get equitable relief, and it sets out the role citizens can play in seeking enforcement or enactment of regulations.

Subsection (a) authorizes the Secretary to seek equitable relief to redress a violation and grants the Federal district courts the power to order the appropriate relief, including injunctions and punitive damages.

Subsection (b) authorizes the Secretary to seek a judicial order suspending or restricting the transportation of hazardous or extremely hazardous material in order to avoid an imminent hazard. An imminent hazard exists where there is a substantial likelihood that serious harm will occur prior to the completion of formal administrative action.

Subsection (c) allows any person to seek injunctive relief against an alleged violator of any provision of title I of this bill or of any regulation issued under it, so long as the initiator of the judicial action gives both the alleged violator and the Secretary 60 days notice of his intended action and so long as the Department is not itself diligently pursuing administrative or judicial proceedings with respect

to such alleged violation. This provision is modeled on provisions in many recent Federal laws, including the Air Quality Act of 1967 (42 U.S.C. 1857h-2) and the Consumer Product Safety Act (15 U.S.C. 2073). It is intended to insure that the enforcement power is not neglected, by authorizing individuals and other Government entities to become "private attorneys general" if the Secretary fails to discharge his duties as to enforcement. The subsection allows the court to grant the moving party costs of litigation in the appropriate circumstances, to insure that the cost of litigation does not block good-faith movants from seeking needed enforcement. The subsection also allows the Secretary or Attorney General to intervene as a matter of right in such proceedings. The subsection is meant to be in addition to, and not in lieu of, any other existing rights a person may have to seek relief.

Subsection (d) creates a framework, similar to that in the Consumer Product Safety Act (15 U.S.C. 2059), under which an interested party can prod the Secretary into action should he fail to seek to regulate a situation which poses a hazard to health and safety.

Under this subsection, any person (including a safety organization or a governmental entity) interested in affecting the safety area, may petition the Secretary either to designate certain material as hazardous or extremely hazardous, or to seek the issuance of or a change in regulations dealing with such materials. The petition is to set forth the action the party wishes the Secretary to take and the reasons why the Secretary should take that action. The Secretary then has 120 days in which to act on the petition and to take such action as he deems appropriate. In the event the Secretary denies the petition or fails to act within the 120-day period, the petitioner may proceed in Federal district court to seek to compel him to take such steps. Once in court, if the petitioner can demonstrate in a de novo hearing by a preponderance of the evidence that the material in question is hazardous or extremely hazardous and that the Secretary's action or failure to act exposes the petitioner or others to an unreasonable risk of harm, the court is to order the Secretary to take the appropriate action to alleviate the hazard.

This subsection is meant to insure that the mandate contained in the Hazardous Materials Transportation Act is acted upon, and that the public will not be subjected to unreasonable risks of harm from hazardous materials, when the Secretary has the power and ability to regulate the transportation of materials in such a way as to reduce that risk. The bill gives the Secretary broad discretion in deciding how to act to reduce the risks involved, but the Committee wants to insure that he does take appropriate action rather than that he leave this authority unused in the face of ever-increasing hazards. This subsection is meant to be in addition to, and not in lieu of, any existing remedy a person may have in this area.

Section 112. (Relationship to Other Laws)

This section sets out the general guidelines for how this bill, and regulations promulgated under it, are to interact with certain other Federal laws and with the laws of States and other political subdivisions. The Committee endorses the principle of Federal preemption in order to preclude a multiplicity of State and local regulations and the potential for varying as well as conflicting regulations in the area of hazardous materials transportation. However, the Committee

is aware that certain exceptional circumstances may necessitate immediate action to secure more stringent regulations. For the purpose of meeting such emergency situations, the Committee has provided that any State or political subdivision may request, and the Secretary may grant, approval of regulations which vary from Federal regulations, provided that they are equivalent or more stringent and place no burden on interstate commerce.

Subsection (a) sets out the general rule that conflicting laws of States and other political subdivisions are preempted.

Subsection (b) sets up the mechanism by which a State or other political subdivision can apply to avoid preemption upon a showing that the regulation in question provides protection that is equal to or better than that provided by the Federal regulation.

Subsection (c) subordinates this bill and the rules promulgated under it to the regulations and laws dealing with hazardous working conditions and the marketing of hazardous consumer products under the aegis of the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.) and the Consumer Product Safety Act (15 U.S.C. 2051 et seq.). This subordination represents the Committee's judgment that, in the case of conflict, the mandate of those two acts ought to prevail. Because of the definition of "vessel" in the bill, the Ports and Waterways Safety Act (46 U.S.C. 391a) is also to prevail over the authority conferred in this bill where there is any conflict.

Section 113. (Conforming Amendments)

This section alters the language of various existing laws to bring them in line with this bill.

Subsection (a) alters the penalty provisions of 46 U.S.C. 170 which affects the carriage of hazardous materials by certain vessels. The alteration makes the existing penalty for violation a criminal penalty and authorizes for the first time a sentence of imprisonment. The subsection then authorizes the Secretary to impose civil penalties for such prohibited conduct in the same manner as is set out in section 110 of this act. The purpose of this change is to insure that vessels affected by hazardous materials regulations are treated in the same manner as surface vehicles and aircraft. In accordance with general admiralty law, the vessel itself would be liable for such civil penalties as the Secretary may assess, and seizure of such vessels for such purpose is authorized.

Subsection (b) amends section 6(f)(3)(A) and 6(f)(3)(b) of the Department of Transportation Act (49 U.S.C. 1655(f)(3)(A) and (f)(3)(B)) to exempt from the regulatory authority of the Federal Railroad Administrator and the Federal Highway Administrator the safety responsibility as to the transportation of hazardous materials by railroad carrier and motor carrier.

Subsection (c) amends section 6(c)(1) of the Department of Transportation Act (49 U.S.C. 1655(c)(1)) to exempt the regulatory authority over the transportation of hazardous materials by air from the safety functions required to be carried out by the Federal Aviation Administrator. This amendment, along with those achieved by subsection (b) will consolidate in the Secretary of Transportation the authority needed to regulate the transportation of hazardous materials.

Subsection (d) readjusts the wording of the civil penalty section of the Federal Aviation Act of 1958 (49 U.S.C. 1471(a)(1)) in order

to make it match the wording of the civil penalty section of this Act, to assure that the sanctions for air-carrier violation of hazardous materials regulations are the same as those for violation involving any other mode.

Subsection (e) amends section 902(h) of the Federal Aviation Act of 1958 (49 U.S.C. 1472(h)) to emphasize that the Secretary's power to regulate hazardous materials, as defined by section 105 of this Act, may be exercised within the context of the Federal Aviation Act of 1958. The amendment further makes it a criminal offense to knowingly deliver, or cause to be delivered, any shipment for air transport which violates the applicable regulations dealing with the transportation of hazardous materials. It is further an offense to recklessly cause the transportation in air commerce of a shipment which violates applicable rules and regulations. The sanction upon conviction is a fine of up to \$25,000 and/or a prison sentence of up to 5 years.

Subsection (f) expands the coverage of the regulations dealing with vessels which carry explosives and certain other dangerous substances by amending 46 U.S.C. 170(6)(a) to include passenger vessels which carry inflammable or combustible materials which have a flash point below that determined by the Secretary of Transportation to be safe. This amendment also makes that section more comprehensive by changing the term "inflammable liquids" to "inflammable or combustible liquids".

Subsection (g) is an adjustment to 18 U.S.C. 1114 to deter those who would use force against representatives of the principal surface transportation regulatory agency by adding employees of the Interstate Commerce Commission to the list of Federal officials whom it is a Federal crime to assault or kill.

Section 114. (Effective Date)

This section sets out the effective date of this title. It permits certain actions initiated prior to the date of enactment of this bill to continue for a limited amount of time.

Subsection (a) indicates that the general rule is that the provisions of this title will take effect immediately on the date of enactment.

Subsection (b) makes it clear that licenses, permits, certificates, or contracts, currently in effect, are to continue in effect unchanged until the Secretary or a court acts to revoke or modify them. The subsection reflects the Committee's intention that the Secretary expeditiously take all steps necessary to bring current rules and regulations into conformity with title I of this legislation. In no event are licenses, permits, or contracts entered into before this legislation, or continued by necessity after the Act, to continue beyond 2 years after the date of enactment unless they are in conformity with the provisions and purposes of this legislation.

Subsection (c) indicates that proceedings pending on the date of enactment are not necessarily affected by this title, unless the Secretary makes the determination that the public health and safety dictate otherwise. Of necessity, this exception is of course modified by the intent of the committee that the Secretary, take expeditious action to bring current practices in line with this bill.

Section 115. (Authorization for Appropriations)

This section authorizes up to \$7 million to fulfill the purposes of this bill in fiscal 1974 and up to \$10 million for fiscal 1975.

TITLE II—RAIL SAFETY

Section 201. (Short Title)

This section provides that title II of the bill may be cited as the "Rail Safety Improvement Act of 1974".

Section 202. (Declaration of Policy)

The Congress finds that the Federal Rail Safety Act of 1970 (45 U.S.C. 421 et seq.) has not fulfilled its purposes and must be amended so that there is a comprehensive analysis of the entire rail safety area and so that more resources are brought to bear on the rising problem of rail accidents. The Committee was dismayed at the low level of time and resources currently going into attempts to stem the rising tide of rail accidents, and it is the Committee's desire to greatly intensify and expand current efforts. It has also been brought to the Committee's attention that there have been instances of railroad workers being disciplined for refusing to work under extremely hazardous circumstances and, while the Committee did not believe it appropriate to legislate concerning this matter at the present time, the Committee believes that such situations exacerbate the problem and must be watched closely.

Section 203. (Comprehensive Railroad Safety Report)

This section amends section 211 of the Federal Rail Safety Act of 1970 (45 U.S.C. 440) to require the Secretary to prepare a comprehensive study of the rail safety area and to submit that study to the Congress no later than March 17, 1976. The study will provide the Congress with the kind of complete and certain data that is necessary for it to legislate properly to protect passengers, shippers, and the public from the risks and costs of rail accidents.

This section delineates the areas and uses which the study, at a minimum, must research, analyze, and discuss in depth. They cover the current Federal initiatives and regulations; areas into which the Government is authorized to move but in which it has not acted; possibilities for further Federal action; State action and potentials for action in this area; and cooperation or possibilities for cooperation between the jurisdictions. The study is also to analyze potential strategies for Federal and State action in terms of cost-effective methods for inspection and enforcement, detailed discussion of manpower needs in both Government and private programs, and a discussion of how best to use Federal funds to spur and aid State programs. The study is also to discuss possibilities for further legislation in this area.

In preparing the report, the Secretary is to solicit and seriously consider views from a wide range of people and organizations involved in rail transportation. The final report is to contain the views of several groups, commenting on the recommendations made in the report.

Section 204. (Accident Reports)

This section is largely a housekeeping measure that ties the older Accident Reports Act (45 U.S.C. 39) to the Federal Railroad Safety Act of 1970, by providing that the civil penalties provision of the latter Act (45 U.S.C. 438(b)) shall apply to violations of the reporting requirements of the former Act.

Prior to this amendment, failure to make the required accident reports subjected the violator only to the risk of a criminal penalty. This amendment is intended to give the Secretary more flexibility in enforcing the reporting requirement.

Section 205. (Authorization for Appropriations)

This section amends the appropriations section of the Federal Railroad Safety Act of 1970 (45 U.S.C. 441) to authorize the appropriation of up to \$35 million for the fiscal year ending June 30, 1975. The section goes on to make rough divisions of the appropriation authorization to insure that certain functions are not overfunded at the expense of others. In studying this area, the Committee discovered that the inspection, including mechanical or automated inspection, and regulation-enforcement functions were often slighted. It is the Committee's intent to structure appropriations authority in a broad way to preclude misperception of priorities in the future.

Section 206. (Enforcement)

This section adjusts the Secretary's preexisting authority under the Federal Railroad Safety Act of 1970 (45 U.S.C. 437(a)) to allow him to issue, and seek judicial enforcement of, cease and desist orders to block violations of the Act or of regulations under the Act.

Section 207. (Rail Safety Petitions)

This section creates a mechanism which allows any person, including a safety organization or governmental entity, to act to prod the Secretary into issuing or altering a regulation (under the authority granted him by the Federal Railroad Safety Act of 1970) to control or alleviate a potentially dangerous rail condition. This mechanism is identical to the one created by section 111(d) of title I of this bill (except that in this instance, should the petitioner take the case to court for a de novo proceeding, he would have to show by preponderance of the evidence that there was a substantial risk of personal injury or property damage should no action be taken) and in section 10 of the Consumer Product Safety Act (15 U.S.C. 2059).

The purpose of this provision is to insure that the authority granted the Secretary is used, when necessary to alleviate a dangerous condition. The Committee believes that in the past dangerous conditions have been allowed to develop, although there was the authority to correct them. In the light of such inaction in the past, the Secretary ought not to be insulated from the efforts of concerned citizens, organizations, and government groups to press for effective action. The petition process also provides a good mechanism for insuring that the Secretary receives a good amount of input, even when no specific regulations are under consideration.

Section 208. (Rail Improvement Amendments)

The provisions of this section make various amendments of a largely technical nature to the Regional Rail Reorganization Act of 1973 (87 Stat. 985) in order to meet more precisely the objectives of that statute, to reorganize into a safe and efficient system, the bankrupt railroads of the Midwest and Northeast.

Subsection (a) extends by 120 days the amount of time granted the United States Railway Association for submission of (1) the preliminary system plan and (2) the final system plan. The extension is necessary, in the Committee's opinion, for the USRA to do the high-quality job that is expected. The Committee has been assured by the Chairman of the Association that he will furnish an extended progress report at the time originally required for the preliminary system plan, in lieu of that plan. Therefore, the Committee decided not to include

in the bill the amendments suggested by Senator McIntyre and others because of the assurance by USRA that the Association will submit the requested information without legal compulsion. (See letters from Senator McIntyre and others to Chairman Magnuson and letter from Chairman Lewis to Chairman Magnuson in "Comments" section of this report).

Subsection (b) increases the amount authorized to be appropriated to the United States Railway Association for its work in developing plans for a safe rail system from \$26 million to \$40 million, in the light of more careful appraisals of cost needs than were available at the time of enactment of the Reorganization Act.

Subsection (c) offered as amendment to the bill by the distinguished ranking minority member of the Committee, Senator Cotton, fills a gap in the Regional Rail Reorganization Act by explicitly clarifying the congressional intent of establishing the classification of rail properties that will be eligible for subsidies.

TITLE III—INDEPENDENT SAFETY BOARD

Section 301. (Short Title)

The section sets forth the short title of title III of the bill, "Independent Safety Board Act of 1974".

Section 302. (Findings)

The Congress finds that although the National Transportation Safety Board was established in 1966 (49 U.S.C. 1654) as an independent governmental agency, its current position as a subordinate agency within the Department of Transportation undercuts its ability to effectively perform the functions it was designed to perform. In particular, because many of its investigations involve other Government agencies and because some of its conclusions may involve severe criticism of such agencies, the Congress believes that this agency would best serve the Nation and fulfill its role as a totally separate and independent agency.

Section 303. (National Transportation Safety Board)

This section formally establishes and sets out the basic organization of an independent National Transportation Safety Board, as of December 31, 1974.

Subsection (b) sketches the organization of the independent Board. It is to consist of five members, including a Chairman. The members are to be appointed by the President by and with the advice and consent of the Senate. The appointments are to be made on the basis of technical qualifications and professional standing in the field of transportation safety, safety engineering, and accident reconstruction. It is the intent of the Committee that selections be made primarily on the basis of these criteria. While all shall be technically qualified, no more than three members of the Board are to be members of the same political party. This subsection also requires that on January 1, 1975, the President designate a new Chairman of the Board from among those Members who have not previously served as Chairman. This provision is designed to assure the appointment of a Chairman sympathetic to the goals of independent, nonpolitical decisionmaking set forth by the Committee in this bill.

The members are to serve for 5 year terms; present members of the National Transportation Safety Board are to continue in their positions until their current terms expire. Members of the Board can be

removed by the President for inefficiency, neglect of duty, and/or malfeasance in office.

The President is the one who designates who is to be Chairman and who is to be Vice Chairman. Those designations are to remain unchanged so long as those persons remain members of the Board, thus assuring continuity of leadership. The Chairman is to be the chief executive officer of the Board, but in acting as such, he is subject to the decisions and policies decided upon by the entire Board, and it is intended that each member shall participate actively in all aspects of the executive function. The Vice Chairman is to take his place in case of absence or incapacity. Three members of the Board comprise a quorum.

Finally, the Board is to establish separate bureaus or offices to investigate accidents in each of the different modes of transportation: aviation, marine transportation, highway and motor vehicle transportation, railroad and tracked vehicles, and pipeline transportation. A separate office shall also be established to oversee the transportation of hazardous materials (the area covered by title I of this bill).

Subsection (c) is a housekeeping provision. Judicial recognition of the Board's seal is directed, the General Services Administration is to supply the Board with the appropriate equipment and assistance, and the Board is authorized to hire appropriate personnel.

Section 304. (General Provisions)

This section sets out in detail the duties, responsibilities, and powers of the Board.

Subsection (a) outlines the Board's power to investigate accidents involving civil aircraft; vessels operating on navigable waters (other than accidents involving only public vessels); motor carrier accidents involving a fatality or property damage of more than \$75,000; other highway accidents; railroad accidents involving a fatality or property damage exceeding \$500,000; pipeline accidents involving a death or more than \$100,000 damage to property; and any other accident the Board deems catastrophic or of a sort that its investigation would further the purposes of this title. The section specifically indicates that nothing in this section is meant to eliminate or diminish any responsibility of the Commandant of the Coast Guard under any other Federal statute, and it makes clear that except where Government misfeasance or nonfeasance may be involved, the Board may have the Department of Transportation do the investigating so long as the Board makes the final determination of probable cause.

The Board is to make reports of its investigations. Copies of those reports shall be made available to the public at a reasonable cost. The Board is also required to issue periodic reports to governmental and interested nongovernmental entities discussing and advocating ways of reducing the hazards involved in transportation.

The Board is also given the authority to (1) develop techniques for accident investigation; (2) establish requirements for reporting accidents; and (3) advocate the cause of highway safety (see discussion below with reference to section 305). The Board is also to monitor the safety records and programs of other Government agencies and to publish reports indicating the results of such oversight. Finally, the Board is authorized to review on appeal the denial, suspension, or modification of certain licenses dealing with the operation of aircraft and vessels after the Secretary of Transportation and the

Commandant of the Coast Guard have made the initial determinations in their respective spheres under the terms of existing law (49 U.S.C. 1422, 1429, and 1431(c); 46 U.S.C. 216(b) and 239).

Subsection (b) authorizes the Board, and any employees it designates, to hold hearings, issue subpoenas, administer oaths, and require the production of information for the purpose of carrying out the Act. The subsection goes on to authorize such Board members and employees to enter property where accidents have occurred and to inspect the appropriate materials, records, equipment and facilities. Upon request, a Federal district court can back up the Board's power with an appropriate order. Any violation of such an order would involve contempt of court. The Board is also authorized to enter such contracts and the like as are necessary to its purposes. It is generally permitted to obtain autopsies of victims of accidents occurring within its jurisdiction.

The Board can issue regulations as needed to carry out its task. If an interested person files objections to proposed regulations and request a public hearing, such a hearing would have to be held prior to adopting any final regulation.

The subsection further declares the Board's authority in interacting with the Department of Transportation and other agencies of the Government, with respect to using facilities and manpower. It grants the Board the regular authority to employ experts, to appoint advisory committees, to accept voluntary services and contributions, and to enter into contracts for special studies related to its functions. Any budget estimates, budget requests, legislative recommendations, or comments on legislation which the Board sends to the President or to the Office of Management and Budget must be sent simultaneously to the Congress as well.

Finally, the subsection empowers the Board to designate representatives to maintain effective liaison with other Federal agencies and with State bodies. The Board is empowered to conduct inquiries to gain data necessary for its work, including requiring other governmental agencies to produce necessary information in the course of such inquiries.

Subsection (c) prohibits the use of the Board's accident reports as evidence in legal proceedings for damages resulting from an accident. This subsection evidenced a strong Committee desire to keep the Board free of the entanglement of such suits.

Subsection (d) authorizes any person who discloses a substantial interest in any order of the Board to seek judicial review of that order in the appropriate U.S. Court of Appeals. The court's reviewing power is governed by the Administrative Procedure Act (5 U.S.C. Chapter 7).

Section 305. (Safety Advocacy)

This section creates a new role—that of safety advocate—for the National Transportation Safety Board. The purpose is to insure that the cause of transportation safety is accurately and vigorously put forth in rulemaking and similar proceedings undertaken by other governmental entities. It is the Committee's belief that ancillary proceedings often greatly affect the area of safety, and that because safety matters appear ancillary to the purpose of such proceedings, the interests of safety may be slighted. At such proceedings, the Board is

authorized to intervene as a party and to present information and arguments germane to the safety issue.

Subsection (a) authorizes the Board to intervene as a party in rule-making and similar proceedings conducted by other Federal agencies, when it appears in the judgment of the Board that such proceedings may substantially affect aviation, maritime, motor vehicle, railroad, or pipeline safety. The Board is to be governed by the rules governing regular parties intervening in such proceedings, except that where there are no rules authorizing intervention, the Board shall be afforded an opportunity to present facts and arguments to responsible officials in an orderly manner.

Subsection (b) allows similar intervention in State proceedings where the proceedings may affect transportation safety and where the Board's participation has been requested by the State Governor, the State safety agency, or the State entity conducting the proceeding.

Section 306. (Annual Report)

This section requires the Board to file an extensive report each year that will contain a detailed account of its actions and investigations, and the impact the agency's action has had on the safety field. The report is also to appraise the accident prevention efforts of other Federal agencies and entities.

Section 307. (Public Access to Information)

This section sets up a broad standard for public availability of the information generated by the Board. In doing so, it echoes the broadest part of the Freedom of Information Act (5 U.S.C. 552) and evidences the Committee's belief that such information should be generally available to the public, to give it the maximum life-saving effectiveness. Trade secrets, personnel matters, national security material and the like are excluded from the disclosure obligation. The section reiterates the protections afforded by 18 U.S.C. 1905 to certain confidential material gathered by the Government, but it allows necessary governmental and judicial access to such material provided appropriate safeguards are taken to insure confidentiality. Public access can be allowed to such protected material in emergency situations.

Section 308. (Response to Board Recommendations)

This section empowers the Board to submit formal recommendations on safety matters to the Secretary of Transportation for his consideration. While the Board cannot force the Secretary to take any particular action, the provision is drafted in such a way as to require the Secretary to give serious consideration to the Board's recommendations. The Secretary must respond to the recommendations in writing and he can accept the suggestions and initiate proceedings, pursuant to a proposed time-table which will lead to action in line with the recommendations, or he can reject the recommendations, in whole or in part, in which case he must set forth in detail the reasons for such a rejection. The Board is to publish notice of the making of such recommendations and notice of the response. Copies of any response are to be made available to the public at reasonable cost.

Section 309. (Conforming Amendments)

This section amends sections 1653 and 1654 of title 49, United States Code, to delete those references to the National Transportation Safety

Board which make it or suggest that it is a subordinate agency of the Department of Transportation.

Section 310. (Authorization of Appropriations)

This section authorizes appropriations for the purposes of this title to the extent of \$14 million for fiscal 1974, \$16 million for fiscal 1975, and \$18 million for fiscal 1976.

CHANGES IN EXISTING LAW

In compliance with subsection (4) of rule XXIX 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 matter is printed in italic, existing law in which no change is proposed is shown in roman) :

PARAGRAPH (14), SECTION 4472, REVISED STATUTES (46 U.S.C. 170(14))

(14) Violation of section or regulations; penalty; liability of vessel.

Whoever shall knowingly violate any of the provisions of this section or of any regulations established under this section shall be subject to a *criminal* penalty of not more than \$2,000 or imprisoned not more than one year, or both for each violation. In the case of any such violation on the part of the owner, charterer, agent, master, or person in charge of the vessel, such vessel shall be liable for the penalty and may be seized and proceeded against by way of libel in the district court of the United States in any district in which such vessel may be found.

SECTION 6(f)(3), DEPARTMENT OF TRANSPORTATION ACT (49 U.S.C. 1655(f)(3))

(3)(A) The Federal Railroad Administrator shall carry out the functions, powers, and duties of the Secretary pertaining to railroad and pipeline safety as set forth in the statutes transferred to the Secretary by subsection (e) of this section [.] (*other than subsection (e)(4)*).

(B) The Federal Highway Administrator shall carry out the functions, powers, and duties of the Secretary pertaining to motor carrier safety as set forth in the statutes transferred to the Secretary by subsection (e) of this section [.] (*other than subsection (e)(4)*).

SECTION 6(c)(1), DEPARTMENT OF TRANSPORTATION ACT (49 U.S.C. 1655(c)(1))

(1) There are hereby transferred to and vested in the Secretary all functions, powers, and duties of the Federal Aviation Agency, and of the Administrator and other officers and offices thereof, including the development and construction of a civil supersonic aircraft: *Provided, however*, That there are hereby transferred to the Federal Aviation Administrator, and it shall be his duty to exercise the functions, powers, and duties of the Secretary pertaining to aviation safety (*other than those relating to the transportation, packaging, marking, or description of hazardous materials*) as set forth in sections 306, 307,

308, 309, 312, 313, 314, 1101, 1105, and 1111, and titles VI, VII, IX, and XII of the Federal Aviation Act of 1958, as amended.

SECTION 901(a)(1), FEDERAL AVIATION ACT OF 1958 (49 U.S.C. 1471(a)(1))

§ 1471. Civil penalties; compromise; liens.

(a)(1) Any person who violates (A) any provision of subchapter III, IV, V, VI, VII, or XII of this chapter or any rule, regulation, or order issued thereunder, or under section 1482(i) of this title, or any term, condition, or limitation of any permit or certificate issued under subchapter IV of this chapter, or (B) any rule or regulation issued by the Postmaster General under this chapter, shall be subject to a civil penalty of not to exceed \$1,000 for each such violation [.] *except that the amount of such civil penalty shall not exceed \$10,000 for each such violation which relates to the transportation of hazardous materials.* If such violation is a continuing one, each day of such violation shall constitute a separate offense [.: *Provided, That this*]. *The amount of any such civil penalty which relates to the transportation of hazardous materials shall be assessed by the Secretary, or his delegate, upon written notice upon a finding of violation by the Secretary. In determining the amount of such penalty, the Secretary shall take into account the nature, circumstances, extent, and gravity of the violation committed and, with respect to the person found to have committed such violation, the degree of culpability, any history of prior offenses, ability to pay, effect on ability to continue to do business, and such other matters as justice may require.* This subsection shall not apply to members of the Armed Forces of the United States, or those civilian employees of the Department of Defense who are subject to the provisions of the Uniform Code of Military Justice, while engaged in the performance of their official duties; and the appropriate military authorities shall be responsible for taking any necessary disciplinary action with respect thereto and for making to the Administrator or Board, as appropriate, a timely report of any such action taken.

SECTION 902(H), FEDERAL AVIATION ACT OF 1958 (49 U.S.C. 1472(H))

(h) Transportation of explosives and other dangerous articles.

[.(1) Any person who knowingly delivers or causes to be delivered to an air carrier or to the operator of any civil aircraft for transportation in air commerce, or who causes the transportation in air commerce of, any shipment, baggage, or property, the transportation of which would be prohibited by any rule, regulation, or requirement prescribed by the Administrator under subchapter VI of this chapter, relating to the transportation, packing, marking, or description of explosives or other dangerous articles shall, upon conviction thereof for each such offense, be subject to a fine of not more than \$1,000, or to imprisonment not exceeding one year, or to both such fine and imprisonment: *Provided, That* when death or bodily injury of any person results from an offense punishable under this subsection, the person or persons convicted thereof shall, in lieu of the foregoing penalty, be subject to a fine of not more than \$10,000 or to imprisonment not exceeding 10 years, or to both such fine and imprisonment.

[(2) In the exercise of his authority under subchapter VI of this chapter, the Administrator may provide by regulation for the application in whole or in part of the rules or regulations of the Interstate Commerce Commission (including future amendments and additions thereto) relating to the transportation, packing, marking, or description of explosives or other dangerous articles for surface transportation, to the shipment and carriage by air of such articles. Such applicability may be terminated by the Administrator at any time. While so made applicable, any such rule or regulation, or part thereof, of the Interstate Commerce Commission shall for the purposes of this chapter be deemed to be a regulation of the Administrator prescribed under subchapter VI of this chapter.]

Hazardous materials

(h) (1) *In carrying out his responsibilities under this Act, the Secretary of Transportation may exercise the authority vested in him by section 105 of the Hazardous Materials Transportation Act to provide by regulation for the safe transportation of hazardous materials by air.*

(2) *A person is guilty of an offense if he knowingly delivers or causes to be delivered to an air carrier or to the operator of a civil aircraft for transportation in air commerce, or if he recklessly causes the transportation in air commerce of, any shipment, baggage, or other property which contains a hazardous material, in violation of any rule, regulation, or requirement with respect to the transportation of hazardous materials issued by the Secretary of Transportation under this Act. Upon conviction, such person shall be subject, for each offense, to a fine of not more than \$25,000, imprisonment for a term not to exceed 5 years, or both.*

SECTION 4472 (6), REVISED STATUTES (46 U.S.C. 170 (6))

(6) Transportation, etc., of other explosives or other dangerous articles; exceptions.

(a) It shall be unlawful knowingly to transport, carry, convey, store, stow, or use (except as fuel for its own machinery) on board any vessel, except one specifically exempted by paragraph (b) of this subsection, any other explosives or other dangerous articles or substances, including inflammable or combustible liquids, inflammable solids, oxidizing materials, corrosive liquids, compressed gases, poisonous articles or substances, hazardous articles, and ships' stores and supplies of a dangerous nature, except as permitted by the regulations of the Commandant of the Coast Guard established hereunder [*Provided*, That all of the provisions of this subsection relating to the transportation, carrying, conveying, storing, stowing, or use of explosives or other dangerous articles or substances shall apply to the transportation, carrying, conveying, storing, or using on board any passenger vessel of any barrels, drums, or other packages of any combustible liquid which gives off inflammable vapors (as determined by flash-point in open cup tester as used for test of burning oil) at or below a temperature of one hundred and fifty degrees Fahrenheit and above eighty degrees Fahrenheit.] *The provisions of this subsection*

shall apply to the transportation, carriage, conveyance, storage, stowing, or use on board any passenger vessel of any barrel, drum, or other package containing any inflammable or combustible liquid which has a lower flash point than that which is defined as safe pursuant to regulations establishing the defining flash-point criteria for flammable and combustible liquids. Such regulations shall be prescribed and revised as necessary, by the Secretary of Transportation.

(b) This subsection shall not apply to—

(i) vessels not exceeding fifteen gross tons when not engaged in carrying passengers for hire;

(ii) vessels used exclusively for pleasure;

(iii) vessels not exceeding five hundred gross tons while engaged in the fisheries;

(iv) tugs or towing vessels: *Provided, however*, That any such vessel, when engaged in towing any vessel that has explosives, inflammable or combustible liquids, or inflammable compressed gases on board on deck, shall be required to make such provisions to guard against and extinguish fire as shall be prescribed by the Commandant of the Coast Guard;

(v) cable vessels, dredges, elevator vessels, fireboats, ice-breakers, pile drivers, pilot boats, welding vessels, salvage and wrecking vessels;

(vi) inflammable or combustible liquid cargo in bulk: *Provided, however*, That the handling and stowage of any inflammable or combustible liquid cargo in bulk shall be subject to the provisions of section 391a of this title.

SECTION 1114, TITLE 18, UNITED STATES CODE (18 U.S.C. 1114)

§ 1114. Protection of officers and employees of the United States.

Whoever kills any judge of the United States, any U.S. Attorney, any Assistant U.S. Attorney, or any U.S. marshal or deputy marshal or person employed to assist such marshal or deputy marshal, any officer or employee of the Federal Bureau of Investigation of the Department of Justice, any officer or employee of the Postal Service, any officer or employee of the secret service or of the Bureau of Narcotics and Dangerous Drugs, any officer or enlisted man of the Coast Guard, any officer or employee of any U.S. penal or correctional institution, any officer, employee or agent of the customs or of the internal revenue or any person assisting him in the execution of his duties, any immigration officer, any officer or employee of the Department of Agriculture or of the Department of the Interior designated by the Secretary of Agriculture or the Secretary of the Interior to enforce any Act of Congress for the protection, preservation, or restoration of game and other wild birds and animals, any employee of the Department of Agriculture designated by the Secretary of Agriculture to carry out any law or regulation, or to perform any function in connection with any Federal or State program or any program of Puerto Rico, Guam, the Virgin Islands of the United States, or the District of Columbia, for the control or eradication or prevention of the introduction or dissemination of animal diseases, any officer or employee of the National Park Service, any officer or employee of, or assigned to duty,

in the field service of the Bureau of Land Management, any employee of the Bureau of Animal Industry of the Department of Agriculture, or any officer or employee of the Indian field service of the United States, or any officer or employee of the National Aeronautics and Space Administration directed to guard and protect property of the United States under the administration and control of the National Aeronautics and Space Administration, any security officer of the Department of State or the Foreign Service, or any officer or employee of the Department of Health, Education, and Welfare or of the Department of Labor or the Interstate Commerce Commission assigned to perform investigative, inspection, or law enforcement functions, while engaged in the performance of his official duties, or on account of the performance of his official duties, shall be punished as provided under sections 1111 and 1112 of this title.

SECTION 209 (b), FEDERAL RAILROAD SAFETY ACT OF 1970 (45 U.S.C. 438 (b))

(b) Amount.

The Secretary shall include in, or make applicable to, any railroad safety rule, regulation, order, or standard issued under this subchapter a civil penalty for violation thereof or for violation of section 2 of the Act of May 6, 1910 (45 U.S.C. 39), the Accident Reports Act in such amount, not less than \$250 nor more than \$2,500, as he deems reasonable.

SECTION 2, ACCIDENT REPORTS ACT (45 U.S.C. 39)

§ 39. Penalty for failure to make report.

Any common carrier failing to make the report provided for in section 39 of this title within 30 days after the end of any month shall be deemed guilty of a misdemeanor, and upon conviction thereof by a court of competent jurisdiction shall be punished by a fine of not more than \$100 for each and every offense and for every day during which it shall fail to make such report after the time herein specified for making the same. *In lieu of the foregoing, any such carrier may be required to pay a civil penalty pursuant to subsections (b) and (c) of section 209 of the Federal Railroad Safety Act of 1970 (45 U.S.C. 438(b)).*

SECTION 212. FEDERAL RAILROAD SAFETY ACT OF 1970 (45 U.S.C. 441)

§ 441. Authorization of appropriations.

There is authorized to be appropriated to carry out the provisions of this subchapter not to exceed \$21,000,000 for each of the fiscal years ending June 30, 1971, June 30, 1972, and June 30, 1973.

(a) *There are authorized to be appropriated to carry out the provisions of this Act not to exceed \$35,000,000 for the fiscal year ending June 30, 1975.*

(b) *Except as otherwise provided in subsection (c) of this section, amounts appropriated under subsection (a) of this section shall be available for expenditure as follows:*

(1) *not to exceed \$18,000,000 for the Office of Safety, including salaries and expenses for up to 350 safety inspectors and up to 80 clerical personnel;*

(2) *not to exceed \$3,500,000 to carry out the provisions of section 206 (d) of this Act;*

(3) *not to exceed \$3,500,000 for the Federal Railroad Administration, for salaries and expenses not otherwise provided for; and*

(4) *not to exceed \$10,000,000 for conducting research and development activities under this Act.*

SECTION 208 (a), FEDERAL RAILROAD SAFETY ACT OF 1970 (45 U.S.C. 437 (a))

In carrying out his functions under this subchapter, the Secretary is authorized to perform such acts including, but not limited to, conducting investigations, making reports, issuing subpoenas, requiring production of documents, taking depositions, prescribing recordkeeping and reporting requirements, carrying out and contracting for research, development, testing, evaluations, and training (particularly with respect to those aspects of railroad safety which he finds to be in need of prompt attention), and delegating to any public bodies or qualified persons, functions respecting examination, inspecting, and testing of railroad facilities, equipment, rolling stock, operations, or persons, as he deems necessary to carry out the provisions of this subchapter. *The Secretary is further authorized to issue cease and desist orders to direct the termination of actions, or omissions to act, in violation of this Act or of any railroad safety rule, regulations, order, or standard issued under this Act, and the district courts of the United States shall have jurisdiction to enforce such orders by appropriate means.*

SECTION 207 (A) (1), REGIONAL RAIL REORGANIZATION ACT OF 1973
(87 STAT. 985)

SEC. 207. (a) PRELIMINARY SYSTEM PLAN.—(1) Within [300] 420 days after the date of enactment of this Act, the Association shall adopt and release a preliminary system plan prepared by it on the basis of reports and other information submitted to it by the Secretary, the Office, and interested persons in accordance with this Act and on the basis of its own investigations, consultations, research, evaluation, and analysis pursuant to this Act. . . .

SECTION 207 (C), REGIONAL RAIL REORGANIZATION ACT OF 1973
(87 STAT. 985)

(c) ADOPTION.—Within [420] 540 days after the date of enactment of this Act, the executive committee of the Association shall prepare and submit a final system plan for the approval of the Board of Directors of the Association.

SECTION 214 (C), REGIONAL RAIL REORGANIZATION ACT OF 1973
(87 STAT. 985)

(c) ASSOCIATION.—There are authorized to be appropriated to the Association for purposes of carrying out its administrative expenses under this Act such sums as are necessary, not to exceed [\$26,000,000,] \$40,000,000 to remain available until expended.

SECTION 402(C), REGIONAL RAIL REORGANIZATION ACT OF 1973
(87 STAT. 985)

(c) **ELIGIBILITY.**—(1) A State in the region is eligible to receive rail service continuation subsidies pursuant to subsection (b) of this section in any fiscal year if—

[(1)] (A) the State has established a State plan for rail transportation and local rail services which is administered or coordinated by a designated State agency and such plan provides for the equitable distribution of such subsidies among State, local, and regional transportation authorities;

[(2)] (B) the State agency has authority and administrative jurisdiction to develop, promote, supervise, and support safe, adequate, and efficient rail services; employs or will employ, directly or indirectly, sufficient trained and qualified personnel; and maintains or will maintain adequate programs of investigation, research, promotion, and development with provision for public participation;

[(3)] (C) the State provides satisfactory assurance that such fiscal control and fund accounting procedures will be adopted as may be necessary to assure proper disbursement of, and accounting for, Federal funds paid under this title to the State; and

[(4)] (D) the State complies with the regulations of the Secretary issued under this section.

(2) *Rail properties qualified for rail service continuation subsidies pursuant to subsection (b) of this section are—*

(A) *those rail properties of railroads in reorganization over which the final system plan does not designate rail service to be operated;*

(B) *those rail properties in the region which have been or which are, subsequent to the date of enactment of this Act, purchased, leased, or operated by a State agency or a local or regional transportation authority or with respect to which a State, a political subdivision thereof, or a local or regional transportation authority has invested or invests subsequent to the date of enactment of this Act substantial sums for improvement or maintenance of rail service; and*

(C) *those rail properties in the region with respect to which the Commission issues a certificate of abandonment effective on or after the date of enactment of this Act.*

SECTION 5, DEPARTMENT OF TRANSPORTATION ACT
(49 U.S.C. 1654)

§ 1654. National Transportation Safety Board.

(a) **Establishment.**

There is hereby established within the Department a National Transportation Safety Board (referred to hereafter in this chapter as "Board").

(b) **Functions, powers, and duties of Board.**

There are hereby transferred to, and it shall be the duty of the Board to exercise, the functions, section 1655 of this title and section 8 of this Act with regard to—

[(1)] determining the cause or probable cause of transportation accidents and reporting the facts, conditions, and circumstances relating to such accidents; and

[(2)] reviewing on appeal the suspension, amendment, modification, revocation, or denial of any certificate or license issued by the Secretary or by an Administrator.

(c) **Aircraft accident investigations.**

The Board shall exercise the functions, powers, and duties relating to aircraft accident investigations transferred to the Secretary by section 1655 (d) of this title.

(d) **Transportation safety; investigation of transportation accidents; recommendations.**

The Board is further authorized to—

[(1)] make such recommendations to the Secretary or Administrators on the basis of the exercise of its functions, powers, and duties which, in its opinion, will tend to prevent transportation accidents and promote transportation safety;

[(2)] conduct special studies on matters pertaining to safety in transportation and the prevention of accidents;

[(3)] insure that in cases in which it is required to determine cause or probable cause, reports of investigation adequately state the circumstances of the circumstances of the accident involved;

[(4)] initiate on its own motion or conduct rail, highway, or pipeline accident investigations as the Board deems necessary or appropriate;

[(5)] make recommendations to the Secretary or Administrators concerning rules, regulations, and procedures for the conduct of accident investigations;

[(6)] request the Secretary or Administrators to initiate specific accident investigations or conduct further investigations as the Board determines to be necessary or appropriate;

[(7)] arrange for the personal participation of members or other personnel of the Board in accident investigations conducted by the Secretary or Administrators in such cases as it deems appropriate; and

[(8)] request from the Secretary or Administrators notification of transportation accidents and reports of such accidents as the Board deems necessary.

(e) **Publication of reports, orders, decisions, rules, and regulations.**

Except as otherwise provided by statute, the Board shall make public all reports, orders, decisions, rules, and regulations issued pursuant to subsections (b) (1) and (b) (2) of this section, and the Board shall also make public—

[(1)] every recommendation made to the Secretary or an Administrator;

[(2)] every special study conducted; and

[(3)] every action of the Board requesting the

【Secretary or an Administrator to take action, pursuant to subsection (d) (1), (2), (4), (5), (6), or (8) of this section.

[(f) Independent status of Board.

【In the exercise of its functions, powers, and duties, the Board shall be independent of the Secretary and the other offices and officers of the Department.

[(g) Annual report and recommendations to Congress.

【The Board shall report to the Congress annually on the conduct of its functions under this chapter and the effectiveness of accident investigations in the Department, together with such recommendations for legislation as it may deem appropriate.

[(h) Membership of Board; appointment and political affiliation of members; fitness; removal for inefficiency, neglect of duty, or malfeasance in office.

【The Board shall consist of five members to be appointed by the President, by and with the advice and consent of the Senate. No more than three members of the Board shall be of the same political party. Members of the Board shall be appointed with due regard to their fitness for the efficient dispatch of the functions, powers, and duties vested in and imposed upon the Board, and may be removed by the President for inefficiency, neglect of duty, or malfeasance in office.

[(i) Term of office of members; filling of vacancies.

【Members of the Board shall be appointed for terms of 5 years, except that (1) any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed only for the remainder of such term, and (2) the five members first appointed shall serve for terms (designated by the President at the time of appointment) ending on the last day of the first, second, third, fourth, and fifth calendar years beginning after 1966. Upon the expiration of his term of office, a member shall continue to serve until his successor is appointed and shall have qualified.

[(j) Designation of Chairman and Vice Chairman; administrative authority; three members required for quorum.

【The President shall designate from time to time one of the members of the Board as Chairman and one of the members as Vice Chairman, who shall act as Chairman in the absence or incapacity of the Chairman, or in the event of a vacancy in the office of the Chairman. The Chairman shall be the chief executive and administrative officer of the Board and shall exercise the responsibility of the Board with respect to (1) the appointment and supervision of personnel employed by the Board; (2) the distribution of business among the Board's personnel; and (3) the use and expenditure of funds. In executing and administering the functions of the Board on its behalf, the Chairman shall be governed by the general policies of the Board and by its decisions, findings, and determinations. Three of the members shall constitute a quorum of the Board.

[(k) Rules and regulations.

【The Board is authorized to establish such rules, regulations, and procedures as are necessary to the exercise of its functions.

[(l) Conduct of hearings; issuance of subpoenas; oaths; witnesses; reception of evidence.

【In carrying out its functions, the Board (or, upon the authorization of the Board, any member thereof or any hearing examiner assigned to or employed by the Board) shall have the same powers as are vested in the Secretary to hold hearings, sign and issue subpoenas, administer oaths, examine witnesses, and receive evidence at any place in the United States it may designate.

[(m) Delegation of functions.

【The Board may delegate to any officer or official of the Board, or, with the approval of the Secretary, to any officer or official of the Department such of its functions as it may deem appropriate, except that—

【(1) with respect to aviation, the proviso in section 1441 (g) of this title shall apply to the Secretary, the Federal Aviation Administrator and their representatives, and

【(2) the Board shall not delegate the appellate or determination of probable cause functions transferred to it by section 1655(d) of this title.

[(n) Employment of investigators, attorneys, hearing examiners, and other employees.

【Subject to the civil service and classification laws, the Board is authorized to select, appoint, employ, and fix compensation of such officers and employees, including investigators, attorneys and hearing examiners, as shall be necessary to carry out its powers and duties under this chapter.

[(o) Use of services, equipment, personnel, and facilities of other agencies; use of State facilities.

【The Board is authorized, on a reimbursable basis when appropriate, to use the available services, equipment, personnel, and facilities of the Department and of other civilian or military agencies and instrumentalities of the Federal Government, and to cooperate with the Department and such other agencies and instrumentalities in the establishment and use of services, equipment, and facilities of the Board. The Board is further authorized to confer with and avail itself of the cooperation, services, records, and facilities of State, territorial, municipal, or other local agencies.】

SECTION 4(C), DEPARTMENT OF TRANSPORTATION ACT (49 U.S.C. 1653(C))

(c) Judicial review of orders of the Secretary, National Transportation Safety Board, and Administrators.

Orders and actions of the Secretary [or the National Transportation Safety Board] in the exercise of functions, powers, and duties transferred under this chapter, and orders and actions of the Administrators pursuant to the functions, powers, and duties specifically assigned to them by this chapter, shall be subject to judicial review to the same extent and in the same manner as if such orders and actions had been by the department or agency exercising such functions, powers, and duties immediately preceding their transfer. Any statutory requirements relating to notice, hearings, action upon the record,

or administrative review that apply to any function transferred by this chapter shall apply to the exercise of such functions by the Secretary [, the Administrators, or the National Transportation Safety Board.] or the Administrators.

SECTION 4 (d), DEPARTMENT OF TRANSPORTATION ACT (49 U.S.C. 1653 (d))

(d) Carryover of authority to Secretary, Administrators, and National Transportation Safety Board from departments and agencies formerly exercising functions and duties.

In the exercise of the functions, powers, and duties transferred under this chapter, the Secretary, [the Administrators, and the National Transportation Safety Board] and the Administrators shall have the same authority as that vested in the department or agency exercising such functions, powers, and duties immediately preceding their transfer, and their actions in exercising such functions, powers, and duties shall have the same force and effect as when exercised by such department or agency.

ESTIMATED COSTS

Pursuant to section 252 of the Legislative Reorganization Act of 1970, the Committee estimates that the costs of the proposed legislation will be as follows:

	Fiscal year ending—		
	June 30, 1975	June 30, 1976	June 30, 1977
Title I (hazardous materials transportation regulation).....	\$7,000,000	\$10,000,000
Title II:			
Rail safety.....	35,000,000
United States Railway Association.....	14,000,000 ⁽¹⁾	16,000,000 ⁽¹⁾	\$18,000,000 ⁽¹⁾
Title III (National Transportation Safety Board).....

¹ \$14,000,000 (until expended).

The cost listed for the United States Railway Association represents the difference between the amount authorized in the Regional Rail Reorganization Act of 1973 and the amount authorized in this bill by an amendment to that Act. There are no authorizations for appropriations for hazardous materials regulation for fiscal year 1977 and no authorization for appropriations for rail safety regulation for fiscal years 1976 and 1977.

The Committee knows of no cost estimates made by any Federal agency which differ from those tabulated above.

TEXT OF S. 4057, AS REPORTED

A BILL To regulate commerce by improving the protections afforded the public against risks connected with the transportation of hazardous materials, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Transportation Safety Act of 1974".

TITLE I—HAZARDOUS MATERIALS

SHORT TITLE

SEC. 101. This title may be cited as the "Hazardous Materials Transportation Act".

DECLARATION OF POLICY

SEC. 102. The Congress finds and declares that existing safeguards and enforcement mechanisms are insufficient to protect the Nation adequately against the risks to life and property which are inherent in the transportation of hazardous materials in commerce. It is therefore declared to be the policy of Congress in this Act to increase the regulatory and enforcement authority of the Secretary of Transportation with respect to all modes of such transportation.

DEFINITIONS

SEC. 103. As used in this Act, the term—

(1) "commerce" means commerce among the several States or with foreign nations or in or through any State or between any State and foreign nation;

(2) "extremely hazardous material" means that quantity and form of a hazardous material which the Secretary in his discretion determines poses (A) a risk of catastrophic harm, and it is foreseeable that an accident presenting such risk may occur; or (B) a risk of serious harm, and there is a significant likelihood that an accident presenting such risk will occur;

(3) "hazardous material" means a substance or material in a quantity and form which may pose an unreasonable risk to health and safety or property when transported in commerce;

(4) "Secretary" means the Secretary of Transportation, or his delegate;

(5) "serious harm" means death, serious illness, severe personal injury, or significant economic loss;

(6) "State" means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, or the Trust Territory of the Pacific Islands;

(7) "transports" or "transportation" means any movement of property by any mode, and any loading, unloading, or storage incidental thereto;

(8) "United States", when used in a geographical sense, means all of the States; when used in a governmental sense, the term means the Federal Government; and

(9) "vessel" has the meaning prescribed therefor in paragraph (1) of section 4472 of title 52 of the Revised Statutes, as amended (46 U.S.C. 170).

DESIGNATION OF HAZARDOUS MATERIALS

SEC. 104. Upon a finding that the transportation of a particular quantity and form of material in commerce may pose an unreasonable risk to health and safety or property, the Secretary shall designate

such quantity and form of material or group or class of such materials as a hazardous material. The materials so designated may include, but are not limited to, explosives, radioactive materials, etiologic agents, flammable liquids or solids, combustible liquids or solids, poisons, oxidizing or corrosive materials, and compressed gases.

REGULATIONS GOVERNING TRANSPORTATION OF HAZARDOUS MATERIALS

SEC. 105. (a) GENERAL.—The Secretary is authorized to issue, in accordance with the provisions of section 553 of title 5, United States Code, and after opportunity for informal oral presentation, regulations for the safe transportation in commerce of hazardous materials. Such regulations shall be applicable to any person who transports or causes to be transported or shipped, a hazardous material, or who manufactures, fabricates, marks, maintains, reconditions, repairs, or tests a package or container which is represented, marked, certified or otherwise expected by such person to be used in the transportation in commerce of certain hazardous materials. Such regulations may govern any safety aspect of the transportation of hazardous materials which the Secretary deems necessary or appropriate, including, but not limited to, the packing, repacking, handling, labeling, marking, placarding, and routing of hazardous materials, and the manufacture, fabrication, marking, maintenance, reconditioning, repairing, or testing of a package or container which is represented, marked, certified, or otherwise expected by such person to be used in the transportation of certain hazardous materials.

(b) COOPERATION.—In addition to other applicable requirements, the Secretary shall consult and cooperate with representatives of the Interstate Commerce Commission and shall consider any relevant suggestions made by such Commission, before issuing any regulation with respect to the routing of hazardous materials. Such Commission shall cooperate with the Secretary in the implementation of any such regulation.

(c) REPRESENTATION.—No person may, by marking or otherwise, represent that a container or package for the transportation of hazardous materials is safe, certified, or in compliance with the requirements of this Act unless it meets the requirements of all applicable regulations issued under this Act.

EXTREMELY HAZARDOUS MATERIALS

SEC. 106. (a) DESIGNATION OF.—The Secretary is authorized to designate materials as extremely hazardous materials in accordance with the definition thereof in section 103(2) of this Act.

(b) CRITERIA.—The Secretary is authorized to establish criteria for handling extremely hazardous materials. Such criteria may include, but need not be limited to, a minimum number of personnel; a minimum level of training and qualification for such personnel; type and frequency of inspection; equipment to be used for detection, warning, and control of risks posed by such materials; specifications regarding the use of equipment and facilities used in the handling and transportation of such materials; and a system of monitoring safety assurance

procedures for the transportation of such materials. The Secretary may revise such criteria as required.

(c) REGISTRATION.—On or before December 31 of each odd-numbered year, each person who transports or causes to be transported or shipped in commerce extremely hazardous materials and each person who manufactures, fabricates, marks, maintains, reconditions, repairs, or tests packages or containers which are represented, marked, certified, or otherwise expected by such person to be used in the transportation in commerce of certain extremely hazardous materials shall prepare and submit to the Secretary a registration statement which shall include, but need not be limited to, his name; principal place of business; the location of each activity handling extremely hazardous materials; a complete list of all extremely hazardous materials handled; and an averment that such person is in compliance with all applicable criteria established under subsection (b) of this section. The Secretary shall by regulation prescribe the form of such statement and the information required to be included. The Secretary shall make any registration statement filed pursuant to this subsection available for inspection by any person without charge, except to the extent that such information is a trade secret or other matter referred to in section 1905 of title 18, United States Code.

(d) REQUIREMENT.—No person required to file a registration statement under subsection (c) of this section may transport or cause to be transported or shipped extremely hazardous materials, or manufacture, fabricate, mark, maintain, recondition, repair, or test packages or containers for use in the transportation of extremely hazardous materials, unless he has on file a registration statement that has not been revoked or suspended by the Secretary.

(e) REVOCATION OR SUSPENSION.—After notice and an opportunity for a hearing, the Secretary shall revoke or suspend the registration statement of any registrant who fails to act in conformity with any applicable criteria established under subsection (b) of this section.

EXEMPTIONS FROM REQUIREMENTS

SEC. 107. The Secretary, in accordance with procedures to be prescribed by regulation hereunder, is authorized to issue or renew, to any person subject to the requirements of this Act, an exemption from the provisions of this Act, and from regulations issued under section 105 of this Act, if such person transports or causes to be transported or shipped hazardous materials in a manner so as to achieve a level of safety (1) which is equal to or exceeds that level of safety which would be required in the absence of such exemption; or (2) which would be consistent with the public interest and the policy of this Act in the event there is no existing level of safety established. The maximum period of an exemption issued or renewed under this section shall not exceed 2 years, but any such exemption may be renewed upon application to the Secretary. Each such person applying for such an exemption or renewal shall upon application provide a detailed safety analysis to justify the grant of such exemption. A notice of an application for issuance or renewal of such exemption shall be published in the Federal Register, and the Secretary shall afford access to the applicant's safety analysis and an opportunity for public comment. The Secretary is also authorized to exempt from any

applicable provisions and regulations hereunder, in whole or in part, any vessel which is excluded under section 201(2) of the Act of July 10, 1972, as amended (46 U.S.C. 391a (2)). Except when the Secretary determines an emergency exists, exemptions or renewals granted pursuant to this section shall be the only means by which a person subject to the requirements of this Act may be exempted from or relieved of the obligation to meet any requirements imposed under this Act.

TRANSPORTATION OF RADIOACTIVE MATERIALS ON PASSENGER-CARRYING AIRCRAFT

SEC. 108. (a) GENERAL.—Within 90 days after the date of enactment of this section, the Secretary shall issue regulations, in accordance with this section and pursuant to section 105 of this Act, with respect to the transportation of radioactive materials on any passenger-carrying aircraft in air commerce, as defined in section 101(4) of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301(4)). Such regulations shall prohibit any transportation of radioactive materials on any such aircraft unless the radioactive materials involved are intended for use in, or incident to, research, or medical diagnosis or treatment, so long as such materials as prepared for and during transportation do not pose an unreasonable hazard to health and safety. The Secretary shall further establish effective procedures for monitoring and enforcing the provisions of such regulations.

(b) DEFINITION.—As used in this section, "radioactive materials" means any materials or combination of materials which spontaneously emit ionizing radiation. The term does not include materials in which (1) the estimated specific activity is not greater than 0.002 microcuries per gram of material; and (2) the radiation is distributed in an essentially uniform manner.

POWERS OF THE SECRETARY

SEC. 109. (a) GENERAL.—The Secretary is authorized, to the extent necessary to carry out his responsibilities under this Act, to conduct investigations, make reports, issue subpoenas, conduct hearings, require the production of relevant documents, records, and property, take depositions and conduct, directly or indirectly, research, development, demonstration, and training activities. The Secretary is further authorized to issue cease and desist orders to direct the termination of actions, or omissions to act, in violation of this Act or regulations issued under this Act, and the district courts of the United States shall have jurisdiction to enforce such orders by appropriate means at the request of the Secretary or the Attorney General.

(b) RECORDS.—Each person subject to requirements under this Act shall establish and maintain such records, make such reports, and provide such information as the Secretary shall by order or regulation prescribe, and shall submit such reports and shall make such records and information available as the Secretary may request.

(c) INSPECTION.—Any officer or employee duly designated by the Secretary, upon presenting appropriate credentials to any person subject to requirements under this Act shall be allowed access to any

property or facility, to determine whether such person has acted or is acting in compliance with the provisions of this Act and orders and regulations hereunder. Such officer or employee may inspect, at reasonable times, records, files, papers, processes, controls, and facilities and may test any feature thereof, and may examine, copy, and verify the correctness of any records or property. Each inspection shall be conducted with reasonable promptness and such person shall be notified of the results of such inspection.

PENALTIES

SEC. 110. (a) CIVIL.—(1) Any person (except an employee who acts without knowledge) who is determined by the Secretary to have violated a provision of this Act, or an order or regulation issued under this Act, shall be liable to the United States for a civil penalty of not more than \$10,000 for each violation. Each day of a continuing violation is a separate violation. The amount of such civil penalty shall be assessed by the Secretary by written notice. In determining the amount of such penalty, the Secretary shall take into account the nature, circumstances, extent, and gravity of the violation committed and, with respect to the person found to have committed such violation, the degree of culpability, any history of prior offenses, ability to pay, effect on ability to continue to do business, and such other matters as justice may require.

(2) Any person against whom a violation is found and a civil penalty assessed, under paragraph (1) of this subsection, may obtain review in the appropriate court of appeals of the United States by filing a notice of appeal in such court within 30 days from the date of such order and by simultaneously sending a copy of such notice by certified mail to the Secretary. The Secretary shall promptly file in such court a certified copy of the record upon which such violation was found and such penalty imposed, as provided in section 2112 of title 28, United States Code. The determinations of the Secretary shall be set aside if found to be unsupported by substantial evidence, as provided by section 706(2)(e) of title 5, United States Code.

(3) The Secretary may, in his discretion, compromise, modify, or remit, with or without conditions, any civil penalty which is subject to imposition or which has been imposed under this section.

(4) If any person fails to pay an assessment of a civil penalty after it has become a final and unappealable order, or after the appropriate court of appeals has entered final judgment in favor of the Secretary, the Secretary (or at his request the Attorney General) shall recover the amount assessed in any appropriate district court of the United States. In such action, the validity and appropriateness of the final order imposing the civil penalty shall not be subject to review.

(b) CRIMINAL.—A person is guilty of an offense if he knowingly violates a provision of this Act or a regulation issued under this Act. Upon conviction, such person shall be subject, for each offense, to a fine of not more than \$25,000, imprisonment for a term not to exceed 5 years, or both.

SPECIFIC RELIEF

SEC. 111. (a) GENERAL.—The Secretary, or at his request the Attorney General, may bring an action in an appropriate district court of the United States for equitable relief to redress a violation by any

person of a provision of this Act, or an order or regulation issued under this Act. Such district courts shall have jurisdiction to determine such actions and may grant such relief as is necessary or appropriate, including mandatory or prohibitive injunctive relief, interim equitable relief, and punitive damages.

(b) **IMMINENT HAZARD.**—If the Secretary has reason to believe that an imminent hazard exists, he may petition an appropriate district court of the United States, or upon his request the Attorney General shall so petition, for an order suspending or restricting the transportation of the hazardous or extremely hazardous material responsible for such imminent hazard, or for such other order as is necessary to eliminate or ameliorate such imminent hazard. As used in this subsection, an “imminent hazard” exists if there is substantial likelihood that serious harm will occur prior to the completion of an administrative hearing or other formal proceeding initiated to abate the risk of such harm.

(c) **CITIZEN’S CIVIL ACTION.**—(1) Except as provided in paragraph (2) of this subsection, any person may commence a civil action for mandatory or prohibitive injunctive relief, including interim equitable relief, whenever such action constitutes a case or controversy against any person who is alleged to be in violation of a provision of this Act, or an order or regulation issued under this Act. The district courts of the United States shall have jurisdiction over actions brought under this section, without regard to the amount in controversy or the citizenship of the parties.

(2) No civil action may be commenced (A) prior to 60 days after the moving party has given notice of the alleged violation to the Secretary and to any alleged violator in such manner as the Secretary may by regulation require; or (B) if the Secretary, or at his request the Attorney General, has commenced and is diligently pursuing administrative or judicial proceedings with respect to such alleged violation.

(3) In any action under this subsection, the Secretary or the Attorney General may intervene as a matter of right.

(4) The court, in issuing any final order in any action brought under paragraph (1) of this subsection, may award costs of litigation (including reasonable attorney and expert witness fees) to any party, whenever the court determines such an award is appropriate.

(5) Nothing in this subsection shall restrict any right which any person (or class of persons) may have under any statute or common law to seek enforcement of any provision, order, or regulation or to seek any other relief.

(6) As used in this subsection, “person” includes a governmental entity.

(d) **CITIZEN’S PETITIONS.**—(1) Any interested person, including a safety organization or a governmental entity, may petition the Secretary to commence a proceeding to designate a material to be a hazardous or extremely hazardous material or for the issuance, amendment, or revocation of an order or regulation with respect to the quantity and form of a material alleged to be a hazardous or extremely hazardous material.

(2) Such a petition shall be filed with the Secretary and shall set forth (A) facts which it is claimed establish that an order or regula-

tion with respect to a hazardous or extremely hazardous material or an amendment or revocation thereof is necessary, and (B) a brief description of the substance of the order or regulation or amendment thereof which it is claimed should be issued by the Secretary.

(3) The Secretary may hold a public hearing or may conduct such investigation or proceeding as he deems appropriate in order to determine whether or not such petition should be granted.

(4) Within 120 days after the filing of such a petition, the Secretary shall either grant or deny the petition. If the Secretary grants such petition, he shall promptly commence the appropriate proceeding with respect to the subject thereof. If the Secretary denies such petition, he shall publish in the Federal Register his reasons for such denial.

(5) (A) If the Secretary denies a petition made under this subsection (or if he fails to grant or deny such petition within the 120-day period), the petitioner may commence a civil action in an appropriate district court of the United States to compel the Secretary to initiate a proceeding to take the action requested. Any such action shall be filed within 60 days after the Secretary’s denial of the petition, or (if the Secretary fails to grant or deny the petition within 120 days after the petition is filed) within 60 days after the expiration of the 120-day period.

(B) If the petitioner can demonstrate to the satisfaction of the court, by a preponderance of evidence in a de novo proceeding before such court, that a material poses a hazard to health and safety or property, or that a material is extremely hazardous within the definition of such term in section 103(2) of this Act, and that the failure of the Secretary to act exposes the petitioners or other persons to an unreasonable risk of harm arising out of the transportation of such material in a particular quantity and form, the court shall order the Secretary to initiate the action requested by the petitioner.

(6) The remedies under this subsection shall be in addition to, and not in lieu of, other remedies provided by law.

RELATIONSHIP TO OTHER LAWS

SEC. 112. (a) GENERAL.—Except as provided in subsection (b) of this section, any requirement of a State or political subdivision inconsistent with any requirement set forth in this Act or a regulation issued under this Act, is preempted.

(b) **STATE LAWS.**—Any requirement of a State or political subdivision thereof not consistent with any requirement set forth in this Act or regulation issued under this Act is not preempted if, upon the application of an appropriate State agency, the Secretary determines, in accordance with procedures to be prescribed by regulation, that such requirement affords an equal or greater level of protection to the public than is afforded by the requirements of this Act or regulations issued under this Act and does not burden interstate commerce. Such requirement shall not be preempted to the extent specified in such determination by the Secretary for so long as such State or political subdivision thereof continues to administer and enforce effectively such requirement.

(c) **OTHER FEDERAL LAWS.**—To the extent that hazardous materials are subject to regulation by other Federal laws, including the Occupa-

tional Safety and Health Act of 1970 (29 U.S.C. 651 et seq.) and the Consumer Product Safety Act (15 U.S.C. 2051 et seq.), the Secretary shall not regulate a hazardous or extremely hazardous material with respect to any risk to employees in their places of employment or to consumers of marketed products containing such material.

CONFORMING AMENDMENTS

SEC. 113. (a) Section 4472 of title 52 of the Revised Statutes, as amended (46 U.S.C. 170) is amended—

(1) by inserting, in the first sentence of paragraph (14) thereof, "criminal" before the word "penalty" and "or imprisoned not more than 5 years, or both" before the phrase "for each violation"; and

(2) by adding at the end thereof the following new paragraph: "(17) (A) Any person who is determined by the Secretary to have violated any of the provisions of this section, or any regulations issued under this section, shall be liable to the United States for a civil penalty of not more than \$10,000 for each day of each violation. The amount of such civil penalty shall be assessed by the Secretary by written notice. In determining the amount of such penalty, the Secretary shall take into account the nature, circumstances, extent, and gravity of the violation committed and, with respect to the person found to have committed such violation, the degree of culpability, any history of prior offenses, ability to pay, effect on ability to continue to do business, and such other matters as justice may require.

"(B) If the violation is committed by the owner, charterer, agent, master, or person in charge of a vessel, the vessel shall be liable for a civil penalty assessed under subparagraph (A) of this paragraph, and such vessel may be seized and proceeded against by way of libel in the appropriate district court of the United States.

"(C) Any person against whom a violation is found and a civil penalty assessed, under subparagraph (A) of this paragraph, may obtain review in the appropriate court of appeals of the United States by filing a notice of appeal in such court within 30 days from the date of such order and by simultaneously sending a copy of such notice by certified mail to the Secretary. The Secretary shall promptly file in such court a certified copy of the record upon which such violation was found and such penalty imposed, as provided in section 2112 of title 28, United States Code. The determinations of the Secretary shall be set aside if found to be unsupported by substantial evidence, as provided by section 706(2)(e) of title 5, United States Code.

"(D) The Secretary may, in his discretion, compromise, modify, or remit, with or without conditions, any civil penalty which is subject to imposition or which has been imposed under this section.

"(E) If any person fails to pay an assessment of a civil penalty after it has become a final and unappealable order, or after the appropriate court of appeals has entered final judgment in favor of the Secretary, the Secretary (or at his request the Attorney General) shall recover the amount assessed in any appropriate district court of the United States. In such action, the validity and appropriateness of the final order imposing the civil penalty shall not be subject to review."

(b) (1) Section 6(f)(3)(A) of the Department of Transportation Act (49 U.S.C. 1655(f)(3)(A)) is amended by striking the period at the end thereof and by inserting in lieu thereof "(other than subsection (e)(4))."

(2) Section 6(f)(3)(B) of the Department of Transportation Act (49 U.S.C. 1655(f)(3)(B)) is amended by striking the period at the end thereof and by inserting in lieu thereof "(other than subsection (e)(4))."

(c) Section 6(c)(1) of the Department of Transportation Act (49 U.S.C. 1655(c)(1)) is amended by inserting in the first sentence thereof after "aviation safety" and before "as set forth in" the following: "(other than those relating to the transportation, packaging, marking, or description of hazardous materials)."

(d) Section 901(a)(1) of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1471(a)(1)) is amended—

(1) by deleting "." at the end of the first sentence thereof and by inserting in lieu thereof: ", except that the amount of such civil penalty shall not exceed \$10,000 for each such violation which relates to the transportation of hazardous materials."; and

(2) by deleting in the second sentence thereof ": Provided, That this" and by inserting in lieu thereof the following: ". The amount of any such civil penalty which relates to the transportation of hazardous materials shall be assessed by the Secretary, or his delegate, upon written notice upon a finding of violation by the Secretary. In determining the amount of such penalty, the Secretary shall take into account the nature, circumstances, extent, and gravity of the violation committed and, with respect to the person found to have committed such violation, the degree of culpability, any history of prior offenses, ability to pay, effect on ability to continue to do business, and such other matters as justice may require. This".

(e) Section 902(h) of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1472(h)) is amended to read as follows:

"HAZARDOUS MATERIALS

"(h) (1) In carrying out his responsibilities under this Act, the Secretary of Transportation may exercise the authority vested in him by section 105 of the Hazardous Materials Transportation Act to provide by regulation for the safe transportation of hazardous materials by air.

"(2) A person is guilty of an offense if he knowingly delivers or causes to be delivered to an air carrier or to the operator of a civil aircraft for transportation in air commerce, or if he recklessly causes the transportation in air commerce of, any shipment, baggage, or other property which contains a hazardous material, in violation of any rule, regulation, or requirement with respect to the transportation of hazardous materials issued by the Secretary of Transportation under this Act. Upon conviction, such person shall be subject, for each offense, to a fine of not more than \$25,000, imprisonment for a term not to exceed 5 years, or both."

(f) Subsection (6) of section 4472 of the Revised Statutes, as amended (46 U.S.C. 170(6)), is amended—

(1) in paragraph (a) thereof, by inserting after "inflammable" and before "liquids" the following: "or combustible"; and by deleting the colon and the proviso in its entirety and by inserting in lieu thereof a period and the following two new sentences: "The provisions of this subsection shall apply to the transportation, carriage, conveyance, storage, stowing, or use on board any passenger vessel of any barrel, drum, or other package containing any inflammable or combustible liquid which has a lower flash point than that which is defined as safe pursuant to regulations establishing the defining flash-point criteria for flammable and combustible liquids. Such regulations shall be prescribed, and revised as necessary, by the Secretary of Transportation."

(2) in paragraph (b) thereof, by inserting in clause (iv) thereof after "inflammable" and before "liquids" the following: "or combustible".

(g) Section 1114 of title 18, United States Code, is amended by deleting the words "or of" after the phrase "Department of Health, Education, and Welfare" and inserting in lieu thereof a comma and by inserting after the phrase "Department of Labor" the following: "or the Interstate Commerce Commission".

EFFECTIVE DATE

SEC. 114. (a) Except as provided in this section, the provisions of this Act shall take effect on the date of enactment.

(b) (1) Except as provided in paragraph (2) of this subsection, any order, determination, rule, regulation, permit, contract, certificate, license, or privilege issued, granted, or otherwise authorized or allowed, prior to the date of enactment of this Act, pursuant to any provision of law amended by this Act, shall continue in effect until repealed, terminated, withdrawn, amended, or modified by the Secretary or a court of competent jurisdiction.

(2) The Secretary shall take all steps necessary to bring orders, determinations, rules, and regulations into conformity with the purposes and provisions of this Act as soon as practicable, but in any event no permits, contracts, certificates, licenses, or privileges granted prior to the date of enactment of this Act, or renewed or extended thereafter, shall be of any effect more than 2 years after the date of enactment of this Act, unless there is full compliance with the purposes and provisions of this Act and regulations thereunder.

(c) Proceedings pending upon the date of enactment of this Act shall not be affected by the provisions of this Act and shall be completed as if this Act had not been enacted, unless the Secretary makes a determination that the public health and safety otherwise require.

AUTHORIZATION FOR APPROPRIATIONS

SEC. 115. There is authorized to be appropriated for the purposes of this Act, such sums as are necessary, not to exceed \$7,000,000 for the fiscal year ending June 30, 1975, and not to exceed \$10,000,000 for the fiscal year ending June 30, 1976.

TITLE II—RAIL SAFETY

SHORT TITLE

SEC. 201. This title may be cited as the "Rail Safety Improvement Act of 1974".

DECLARATION OF POLICY

SEC. 202. The Congress finds that more effective realization of the purposes of the Federal Railroad Safety Act of 1970 requires that Act to be amended to mandate comprehensive analysis and evaluation of the rail safety program, to increase the amount and percentage of available resources for inspection, investigation, and enforcement, to increase the enforcement powers of the Secretary of Transportation, and to authorize citizen's safety petitions.

COMPREHENSIVE RAILROAD SAFETY REPORT

SEC. 203. Section 211 of the Federal Railroad Safety Act of 1970 (45 U.S.C. 440) is amended by adding at the end thereof the following new subsection:

"(c) **SPECIAL REPORT.**—The Secretary shall prepare and submit to the President and the Congress, not later than March 17, 1976, a comprehensive railroad safety report. Such report shall—

"(1) contain a description of the areas of railroad safety with respect to which Federal safety standards issued under this Act are in effect (as of June 30, 1975);

"(2) identify any area of railroad safety with respect to which Federal safety standards have been proposed but have not been issued under this Act (as of June 30, 1975);

"(3) identify any area of railroad safety with respect to which Federal safety standards have not been issued under this Act (as of June 30, 1975);

"(4) identify alternative and more cost-effective methods for inspection and enforcement of Federal safety standards, including mechanical and electronic inspection, and contain an evaluation of problems involved in implementing such alternatives, with specific attention to the need for cooperation with the railroad industry;

"(5) identify the areas of railroad safety listed in accordance with paragraphs (1) through (3) of this subsection which involve, or which may involve, State participation under section 206 of this Act;

"(6) contain a description of the railroad safety program which is in effect or planned in each State (as of June 30, 1975), including (A) State program development; (B) State plans to participate in program areas listed in accordance with paragraph (1) of this subsection, which are not covered by State certification or agreement; (C) State interest in participating in each program area listed in accordance with paragraphs (2) and (3) of this subsection, following issuance of the applicable safety standards; (D) annual projections of each State agency's needs for personnel, equipment, and activities reasonably required to carry out its State program during each fiscal year from 1976 through 1980

together with estimates of the annual costs thereof separately stated as to projections under subparagraphs (B) and (C) of this paragraph; (E) the sources from which the State expects to draw the funds to finance such programs; and (F) the amount of State funds and of Federal financial assistance needed during each such fiscal year, by category;

"(7) contain detailed analysis of (A) the number of safety inspectors needed (by industry and Government respectively) to maintain an adequate and reasonable railroad safety program and record; (B) the minimum training and other qualifications needed for each such inspector; (C) the present and projected availability of such personnel in comparison to the need therefor; (D) the salary levels of such personnel in relation to comparable pay scales maintained by industry, State governments, and the Federal Government;

"(8) evaluate alternative methods of allotting Federal funds among the States applying for Federal financial assistance, including recommendations, if needed, for a formula for such apportionment;

"(9) contain a discussion of other problems affecting cooperation among the States that relate to effective participation of State agencies in the nationwide railroad safety program; and

"(10) contain recommendations for any additional Federal and State legislation needed to further realization of the objectives of this Act.

Such report shall be prepared by the Secretary, directly or indirectly, after research, examination, study, and consultation with the national associations representing railroad employee unions, railroad management, cooperating State agencies, the national organization of State commissions, universities, and other persons having special expertise or experience with respect to railroad safety. Such report shall include, in an appendix, a statement of the views of the national associations representing railroad employee unions, of the carriers, and of the national organization of State commissions with respect to the content of such report in its final form."

ACCIDENT REPORTS

SEC. 204. (a) Section 209(b) of the Federal Railroad Safety Act of 1970 (45 U.S.C. 438(b)) is amended by inserting after "for violation thereof" and before "in such amount" the following: "or for violation of section 2 of the Act of May 6, 1910 (45 U.S.C. 39), the Accident Reports Act".

(b) Section 2 of the Act of May 6, 1910 (45 U.S.C. 39), commonly referred to as the Accident Reports Act, is amended by adding at the end thereof the following new sentence: "In lieu of the foregoing, any such carrier may be required to pay a civil penalty pursuant to subsections (b) and (c) of section 209 of the Federal Railroad Safety Act of 1970 (45 U.S.C. 438(b))."

AUTHORIZATION FOR APPROPRIATIONS

SEC. 205. Section 212 of the Federal Railroad Safety Act of 1970 (45 U.S.C. 441) is amended to read as follows:

"(a) There are authorized to be appropriated to carry out the provisions of this Act not to exceed \$35,000,000 for the fiscal year ending June 30, 1975.

"(b) Amounts appropriated under subsection (a) of this section shall be available for expenditure as follows:

"(1) not to exceed \$18,000,000 for the Office of Safety, including salaries and expenses for up to 350 safety inspectors and up to 80 clerical personnel;

"(2) not to exceed \$3,500,000 to carry out the provisions of section 206(d) of this Act;

"(3) not to exceed \$3,500,000 for the Federal Railroad Administration, for salaries and expenses not otherwise provided for; and

"(4) not to exceed \$10,000,000 for conducting research and development activities under this Act.

ENFORCEMENT

SEC. 206. Section 208(a) of the Federal Railroad Safety Act of 1970 (45 U.S.C. 437(a)) is amended by adding at the end thereof the following new sentence: "The Secretary is further authorized to issue cease and desist orders to direct the termination of actions, or omissions to act, in violation of this Act or of any railroad safety rule, regulations, order, or standard issued under this Act, and the district courts of the United States shall have jurisdiction to enforce such orders by appropriate means."

RAIL SAFETY PETITIONS

SEC. 207. Section 208 of the Federal Railroad Safety Act of 1970 (45 U.S.C. 437) is amended by adding at the end thereof the following new subsection:

"(e) CITIZEN'S SAFETY PETITIONS.—(1) Any interested person, including a safety organization or a governmental entity, may petition the Secretary to commence a proceeding for the issuance, amendment, or revocation of a railroad safety rule, regulation, order, or standard under this Act.

"(2) Such a petition shall be filed with the Secretary and shall set forth (A) facts which it is claimed establish that a railroad safety rule, regulation, order, or standard, or an amendment or revocation thereof, is necessary, and (B) a brief description of the substance of the railroad safety rule, regulation, order, or standard or amendment thereof which it is claimed should be issued by the Secretary.

"(3) The Secretary may hold a public hearing or may conduct such investigation or proceeding as he deems appropriate in order to determine whether or not such petition should be granted.

"(4) Within 120 days after the filing of such a petition, the Secretary shall either grant or deny the petition. If the Secretary grants such petition, he shall promptly commence the appropriate proceeding with respect to the subject thereof. If the Secretary denies such petition, he shall publish in the Federal Register his reasons for such denial.

"(5) (A) If the Secretary denies a petition made under this subsection (or if he fails to grant or deny such petition within the 120-

day period), the petitioner may commence a civil action in an appropriate district court of the United States to compel the Secretary to initiate a proceeding to take the action requested. Any such action shall be filed within 60 days after the Secretary's denial of the petition, or (if the Secretary fails to grant or deny the petition within 120 days after the petition is filed) within 60 days after the expiration of the 120-day period.

"(B) If such petitioner can demonstrate to the satisfaction of such court, by a preponderance of evidence in a de novo proceeding before such court, that there is a substantial risk of personal injury or property damage, and that the failure of the Secretary to grant a petition made under this subsection unreasonably exposes the petitioner or other persons to a risk of such harm, the court shall order the Secretary to initiate the action requested by the petitioner.

"(6) The remedies under this subsection shall be in addition to, and not in lieu of, other remedies provided by law."

RAIL IMPROVEMENT AMENDMENTS

SEC. 208. (a) (1) Section 207(a) (1) of the Regional Rail Reorganization Act of 1973 (87 Stat. 985) is amended by striking "300" in the first sentence thereof and substituting therefore "420".

(2) Section 207(c) of the Regional Rail Reorganization Act of 1973 (87 Stat. 985) is amended by striking "420" in the first sentence thereof and substituting therefor "540".

Section 214(c) of the Regional Rail Reorganization Act of 1973 (87 Stat. 985) is amended by striking "\$26,000,000" and substituting therefor "\$40,000,000".

Section 402(c) of the Regional Rail Reorganization Act of 1973 (87 Stat. 985) is amended by inserting "(1)" before the first sentence thereof, redesignating paragraphs (1), (2), (3), and (4) as subparagraphs (A), (B), (C), and (D), respectively, and by adding the following new paragraph:

"(2) Rail properties qualified for rail service continuation subsidies pursuant to subsection (b) of this section are—

"(A) those rail properties of railroads in reorganization over which the final system plan does not designate rail service to be operated;

"(B) those rail properties in the region which have been or which are, subsequent to the date of enactment of this Act, purchased, leased, or operated by a State agency or a local or regional transportation authority or with respect to which a State, a political subdivision thereof, or a local or regional transportation authority has invested or invests subsequent to the date of enactment of this Act substantial sums for improvement or maintenance of rail service; and

"(C) those rail properties in the region with respect to which the Commission issues a certificate of abandonment effective on or after the date of enactment of this Act."

TITLE III—INDEPENDENT SAFETY BOARD

SHORT TITLE

SEC. 301. This title may be cited as the "Independent Safety Board Act of 1974".

FINDINGS

SEC. 302. The Congress finds and declares that—

(1) The National Transportation Safety Board was established by statute in 1966 (Public Law 89-670; 80 Stat. 935) as an independent Government agency, located within the Department of Transportation, to promote transportation safety by conducting independent accident investigations and by formulating safety improvement recommendations.

(2) Proper conduct of the responsibilities assigned to this Board requires rigorous investigation of accidents involving transportation modes regulated by other agencies of Government; demands continual review, appraisal, and assessment of the operating practices and regulations of all such agencies; and calls for the making of conclusions and recommendations that may be critical of or adverse to any such agency or its officials. No Federal agency can properly perform such functions unless it is totally separate and independent from any other department, bureau, commission, or agency of the United States.

NATIONAL TRANSPORTATION SAFETY BOARD

SEC. 303. (a) ESTABLISHMENT.—The National Transportation Safety Board (hereinafter referred to as the "Board"), previously established within the Department of Transportation, shall be an independent agency of the United States, in accordance with this section, on December 31, 1974.

(b) ORGANIZATION.—(1) The Board shall consist of five members, including a Chairman. Members of the Board shall be appointed by the President, by and with the advice and consent of the Senate. No more than three members of the Board shall be of the same political party. The President shall appoint individuals to be members to the Board upon the basis of technical qualification and professional standing in the field of accident reconstruction, safety engineering, or transportation safety.

(2) The terms of office of members of the Board shall be 5 years, except as otherwise provided in this paragraph. Any individual appointed to fill a vacancy occurring on the Board prior to the expiration of the term of office for which his predecessor was appointed shall be appointed for the remainder of that term. Upon the expiration of his term of office, a member shall continue to serve until his successor is appointed and shall have qualified. Present members of the National Transportation Safety Board shall continue to serve until the expiration of their current term of office. Any Member of the Board may be removed by the President for inefficiency, neglect of duty, or malfeasance in office.

(3) On or before January 1, 1975 (and thereafter as required), the President shall designate any person who has not previously been designated as Chairman, to serve as the Chairman of the National

Transportation Safety Board (hereafter referred to as the "Chairman") and any other person to serve as Vice Chairman, both of whom shall serve as Chairman and Vice Chairman throughout their respective terms. The Chairman shall be the chief executive officer of the Board and shall exercise the executive and administrative functions of the Board with respect to the appointment and supervision of personnel employed by the Board; the distribution of business among such personnel and among any administrative units of the Board; and the use and expenditure of funds. The Vice Chairman shall act as Chairman in the event of the absence or incapacity of the Chairman or in case of a vacancy in the office of Chairman. The Chairman or acting Chairman shall be governed by the general policies established by the Board, including any decisions, findings, determinations, rules, regulations, and formal resolutions.

(4) Three members of the Board shall constitute a quorum for the transaction of any function of the Board.

(5) The Board shall establish and maintain distinct and appropriately staffed bureaus, divisions, or offices to investigate and report on accidents involving each of the following modes of transportation: (A) aviation; (B) marine and maritime; (C) highway and motor vehicle; (D) railroad and tracked vehicle; and (E) pipeline. The Board shall in addition establish and maintain an appropriately staffed bureau, division, or office to oversee efforts to insure the safe transportation of hazardous materials.

(c) GENERAL.—(1) The General Services Administration shall furnish the Board with such offices, equipment, supplies, and services as it is authorized to furnish to any other agency or instrumentality of the United States.

(2) The Board shall have a seal which shall be judicially recognized.

(3) Subject to the civil service and classification laws, the Board is authorized to select, appoint, employ, and fix compensation of such officers and employees, including investigators, attorneys, and administrative law judges, as shall be necessary to carry out its powers and duties under this Act.

GENERAL PROVISIONS

SEC. 304. (a) DUTIES OF BOARD.—The Board shall—

(1) investigate or cause to be investigated (in such detail as it shall prescribe), and determine the facts, conditions, and circumstances and the cause or probable cause or causes of any—

(A) aircraft accident which is within the scope of the functions, powers, and duties transferred from the Civil Aeronautics Board under section 6(d) of the Department of Transportation Act (49 U.S.C. 1655(d)) pursuant to title VII of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1441);

(B) marine casualty (excluding those involving only public vessels) which occurs on the navigable or territorial waters of the United States or which involves a vessel of United States registry, whenever the Board finds such an investigation would tend to promote safety of life at sea and be in the public interest. Nothing in this subparagraph shall

be construed to eliminate or diminish any responsibility under any other Federal statute of the Secretary of the Department in which the Coast Guard is operating;

(C) accidents involving a motor carrier (as defined by the Secretary of Transportation in motor carrier safety regulations) in which there is a fatality or property damage in excess of \$75,000;

(D) highway accidents, including railroad grade crossing accidents, other than those involving a motor carrier, that it selects in cooperation with the States;

(E) railroad accident in which there is a fatality or property damage in excess of \$500,000;

(F) pipeline accident in which there is a fatality or property damage in excess of \$100,000; and

(G) other accident which occurs in connection with the transportation of people or property which, in the judgment of the Board, is catastrophic, involves problems of a recurring character, or would otherwise carry out the policy of this Act;

In accidents which the Board is required to investigate under this paragraph, where there is not initial indication of Government misfeasance or nonfeasance, the Board may request the Secretary of Transportation to make investigations with regard to such accidents and to report to the Board the facts, conditions, and circumstances thereof. The Board thereafter, utilizing such reports, shall make its determination of probable cause under this section. The Secretary or his designees are authorized to make such investigations.

(2) report in writing on the facts, conditions, and circumstances of each accident investigated pursuant to paragraph (1) of this subsection and cause such reports to be made available to the public at reasonable cost and cause notice of the issuance and availability of such reports to be published in the Federal Register;

(3) issue periodic reports to the Congress, Federal, State, and local agencies concerned with transportation safety, and other interested persons recommending and advocating meaningful responses to reduce the likelihood of recurrence of transportation accidents similar to those investigated by the Board and proposing corrective steps to make the transportation of persons as safe and free from risk of injury as is possible, including steps to minimize human injuries from transportation accidents;

(4) advocate the cause of safety in transportation in accordance with section 305 of this Act;

(5) initiate and conduct special studies and special investigations on matters pertaining to safety in transportation, including human injury avoidance;

(6) assess and reassess techniques and methods of accident investigation and prepare and publish from time to time recommended procedures for accident investigations;

(7) establish by regulation requirements binding on persons reporting accidents subject to the Board's investigatory jurisdiction under this subsection;

(8) evaluate, assess the effectiveness, and publish the findings of the Board with respect to the transportation safety conscious-

ness and efficacy in preventing accidents of other Government agencies;

(9) evaluate the adequacy of safeguards and procedures concerning the transportation of hazardous materials and the performance of other Government agencies charged with assuring the safe transportation of such materials; and

(10) review on appeal (A) the suspension, amendment, modification, revocation, or denial of any operating certificate or license issued by the Secretary of Transportation under sections 602, 609, or 611 (c) of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1422, 1429, or 1431 (c)); and (B) the decisions of the Commandant of the Coast Guard, on appeals from the orders of any administrative law judge revoking, suspending, or denying a license, certificate, document, or register in proceedings under section 4450 of the Revised Statutes, as amended (46 U.S.C. 239); the Act of July 15, 1954 (46 U.S.C. 239 (a) and (b)); or section 4 of the Great Lakes Pilotage Act (46 U.S.C. 216 (b)).

(b) **POWERS OF BOARD.**—(1) The Board, or upon the authority of the Board, any member thereof, any administrative law judge employed by or assigned to the Board, or any officer or employee duly designated by the Chairman, may, for the purpose of carrying out this Act, hold such hearings, sit and act at such times and places, administer such oaths, and require by subpoena or otherwise the attendance and testimony of such witnesses and the production of such evidence as the Board or such employee deems advisable. Subpoenas shall be issued under the signature of the Chairman, or his delegate, and may be served by any person designated by the Chairman. Witnesses summoned to appear before the Board shall be paid the same fees and mileage that are paid witnesses in the courts of the United States. Such attendance of witnesses and production of evidence may be required from any place in the United States to any designated place of such hearing in the United States.

(2) Any employee of the Board, upon presenting appropriate credentials and a written notice of inspection authority, is authorized to enter any property wherein a transportation accident has occurred or wreckage from any such accident is located and do all things therein necessary for a proper investigation. The employee may inspect, at reasonable times, records, files, papers, processes, controls, and facilities relevant to the investigation of such accident. Each inspection shall be commenced and completed with reasonable promptness and the results of such inspection made available.

(3) In case of contumacy or refusal to obey a subpoena, an order, or an inspection notice of the Board, or any duly designated employee thereof, by any person who resides, is found, or transacts business within the jurisdiction of any district court of the United States, such district court shall, upon the request of the Board, have jurisdiction to issue to such person an order requiring such person to comply forthwith. Failure to obey such an order is punishable by such court as a contempt of court.

(4) The Board is authorized to enter into, without regard to section 3709 of the Revised Statutes (41 U.S.C. 5), such contracts, leases, cooperative agreements, or other transactions as may be necessary in

the conduct of the functions and the duties of the Board under this Act, with any government entity or any person.

(5) The Board is authorized to obtain, and shall be furnished with or without reimbursement, a copy of the report of the autopsy performed by State or local officials on any person who dies as a result of having been involved in a railroad, highway, or pipeline accident and, if necessary, the Board may order the autopsy or seek other tests of such persons as may be necessary to the investigation of the accident: *Provided*, That to the extent consistent with the need of the accident investigation, provisions of local law protecting religious beliefs with respect to autopsies shall be observed.

(6) At the Board's initiative, or upon the petition of any person, the Board is authorized to issue regulations to carry out the purposes of this Act and to amend or rescind such regulations at any time. The Board shall publish any regulations proposed under this Act in the Federal Register at least 60 days prior to the time when such regulations shall become final. If any person adversely affected by a proposed regulation files objections and requests a public hearing within 45 days of the date of publication of the proposed regulation, the Board shall grant such request. If such public hearing is held, final regulations shall not be promulgated by the Board until the conclusion of such hearing. All public hearings authorized by this paragraph shall consist of the oral and written presentation of data or arguments in accordance with such conditions or limitations as the Board may make applicable thereto.

(7) The Board is authorized to (A) use, on a reimbursable basis or otherwise, when appropriate, available services, equipment, personnel, and facilities of the Department of Transportation and of other civilian or military agencies and instrumentalities of the Federal Government; (B) confer with employees and use available services, records, and facilities of State, municipal, or local governments and agencies; (C) employ experts and consultants in accordance with section 3109 of title 5, United States Code; (D) appoint one or more advisory committees composed of qualified private citizens or officials of Federal, State, or local governments as it deems necessary or appropriate, in accordance with the Federal Advisory Committee Act (5 U.S.C. App. I); (E) accept voluntary and uncompensated services notwithstanding any other provision of law; (F) accept gifts or donations of money, or of property, real, personal, or mixed, tangible, or intangible; and (G) enter into contracts with public or private non-profit entities for the conduct of studies related to any of its functions.

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

(9) The Board is empowered to designate representatives to serve or assist on such committees as the Chairman determines to be necessary or appropriate to maintain effective liaison with other Federal and with State and local government agencies and with independent standard-setting bodies carrying out programs and activities related to transportation safety.

(10) The Board, or an employee of the Board duly designated by the Chairman, may conduct an inquiry to secure data with respect to any matter pertinent to transportation safety, upon publication of notice of such inquiry in the Federal Register, and may require, by special or general orders, Federal, State, and local government agencies and persons engaged in the transportation of people or property in commerce to submit written reports and answers to such requests and questions as are propounded with respect to any matter pertinent to the duties of the Board. Reports and answers required under this paragraph shall be submitted to the Board or such employee within such reasonable period of time and in such form as the Board may determine, and copies shall be made available for inspection by the public at any office of the Board.

(c) USE OF REPORTS AS EVIDENCE.—No part of any report or reports of the Board relating to any accident or the investigation thereof, shall be admitted as evidence or used in any suit or action for damages growing out of any matter mentioned in such report or reports.

(d) JUDICIAL REVIEW.—Any order, affirmative or negative, issued by the Board under this Act shall be subject to review by the appropriate court of appeals of the United States or the United States Court of Appeals for the District of Columbia, upon petition filed within 60 days after the entry of such order, by any person disclosing a substantial interest in such order. Such review shall be conducted in accordance with the provisions of chapter 7 of title 5, United States Code, except as otherwise provided in this subsection.

SAFETY ADVOCACY

SEC. 305. (a) FEDERAL PROCEEDING.—Whenever the Board determines that the result of any Federal department or agency proceeding which is subject to the provisions of section 553, 554, 556, or 557 of title 5, United States Code, or which is otherwise conducted on the record after opportunity for an agency hearing, may substantially affect aviation, marine, motor vehicle, railroad, or pipeline safety, the Board, or any duly designated employee of the Board acting on behalf of the Board, may as of right intervene as a party and participate in such proceeding, for the purpose of representing the interests of safety. The Board or such employee shall comply with statutes and rules of procedure of general applicability governing the timing of intervention or participation in such proceeding, and, upon intervening or participating in such proceeding, shall comply with statutes and rules of procedure of general applicability governing the conduct thereof: *Provided*, That in the absence of statutes or rules of procedure authorizing such intervention, the Board or such employees shall have full opportunity to present to responsible officials of such Federal department or agency, orally or in writing, in an orderly manner and without causing undue delay, relevant information, briefs, and arguments.

(b) STATE OR LOCAL PROCEEDING.—The Board, or any duly designated employee of the Board, is authorized to intervene, or otherwise to participate, in any State or local agency or court proceeding, where the Board determines that the result of such proceeding may substantially affect an important interest of the public in transportation safety, accident avoidance, or accident loss reduction and such intervention or participation has been requested in writing by (1) the Governor of a State or any official designated by him for such purpose; (2) an agency or official duly authorized by a State to represent the interests of safety before any State or local agency or court; or (3) the State or local agency or court conducting the proceeding.

ANNUAL REPORT

SEC. 306. The Board shall report to the Congress on July 1 of each year. Such report shall include—

(a) a statistical and analytical summary of the transportation accident investigations conducted and reviewed by the Board during the preceding 12 months;

(b) a survey and summary, in such detail as the Board deems advisable, of the recommendations made by the Board to reduce the likelihood of recurrence of such accidents together with the observed response to each such recommendation;

(c) a summary of the activity of the Board in advocating the cause of safety in transportation, including a detailed listing of the interventions and appearances made on behalf of the Board and the action, if any, taken in response to such intervention, participation, or appearance;

(d) an appraisal in detail of the accident investigation and accident prevention activities of other government agencies charged by Federal or State law with responsibility in this field;

(e) a biennial appraisal and critical evaluation and review, including recommendations for legislative and administrative action and change, with respect to—

(1) aviation accident investigation and aviation safety;

(2) marine accident investigation and marine safety;

(3) highway and motor vehicle accident investigation and motor vehicle safety;

(4) railroad accident investigation and railroad safety, including grade crossing accidents;

(5) pipeline accident investigation and pipeline safety;

and
(6) the organization, management, and conduct of operations of the Board, and the performance of the Board's hazardous materials transportation and safety advocacy activities.

PUBLIC ACCESS TO INFORMATION

SEC. 307. (a) GENERAL.—Copies of any communication, document, investigation, or other report, or information received or sent by the Board, or any member or employee of the Board, shall be made available to the public upon identifiable request, and at reasonable cost, unless such information may not be publicly released pursuant to sub-

section (b) of this section. Nothing contained in this section shall be deemed to require the release of any information described by subsection (b) of section 552 of title 5, United States Code, or which is otherwise protected by law from disclosure to the public.

(b) EXCEPTION.—The Board shall not disclose information obtained under this Act which concerns or relates to a trade secret referred to in section 1905 of title 18, United States Code, except that such information may be disclosed in a manner designed to preserve confidentiality—

- (1) upon request, to other Federal Government departments and agencies for official use;
- (2) upon request, to any committee of Congress having jurisdiction over the subject matter to which the information relates;
- (3) in any judicial proceeding under a court order formulated to preserve the confidentiality of such information without impairing the proceedings; and
- (4) to the public in order to protect health and safety after notice and opportunity for comment in writing or for discussion in closed session within 15 days by the party to which the information pertains (if the delay resulting from such notice and opportunity for comment would not be detrimental to health and safety).

RESPONSE TO BOARD RECOMMENDATIONS

SEC. 308. Whenever the Board submits a recommendation regarding transportation safety to the Secretary of Transportation, the Secretary shall respond to such recommendation formally and in writing not later than 60 days after receipt thereof. The response to the Board by the Secretary shall indicate his intention to—

- (1) initiate and conduct procedures for adopting such recommendation in full, pursuant to a proposed timetable, a copy of which shall be included;
- (2) initiate and conduct procedures for adopting such recommendation in part, pursuant to a proposed timetable, a copy of which shall be included. Such response shall set forth in detail the reasons for the refusal to proceed as to the remainder of such recommendation; or
- (3) refuse to initiate or conduct procedures for adopting such recommendation. Such response shall set forth in detail the reasons for such refusal.

The Board shall cause notice of the issuance of each such recommendation and receipt of a response thereto to be published in the Federal Register, and shall make copies thereof available to the public at reasonable cost.

CONFORMING AMENDMENTS

SEC. 309. The Department of Transportation Act is amended—

- (1) by deleting section 5 thereof (49 U.S.C. 1654) in its entirety;
- (2) by amending section 4(c) thereof (49 U.S.C. 1653(c)) by deleting “or the National Transportation Safety Board” in the first sentence thereof; and by deleting in the second sentence thereof “, the Administrators, or the National Transportation Safety Board.” and by inserting in lieu thereof “or the Administrators.”; and

(3) by amending section 4(d) thereof (49 U.S.C. 1653(d)) by deleting “, the Administrators, and the National Transportation Safety Board” and by inserting in lieu thereof “and the Administrators”.

AUTHORIZATION OF APPROPRIATIONS

SEC. 310. There are authorized to be appropriated for the purposes of this Act such sums as are necessary, not to exceed \$14,000,000 for the fiscal year ending June 30, 1975; \$16,000,000 for the fiscal year ending June 30, 1976; and \$18,000,000 for the fiscal year ending June 30, 1977.

AGENCY COMMENTS

(PERTINENT TO TITLE I)

DEPARTMENT OF THE ARMY,
Washington, D.C., October 31, 1973.

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

DEAR MR. CHAIRMAN: Reference is made to your request to the Secretary of Defense for the views of the Department of Defense on S. 2064, 93d Congress, a bill “To amend the laws governing the Transportation of Hazardous Materials.” The Department of the Army has been assigned the responsibility for expressing the views of the Department of Defense thereon.

S. 2064 which is being sponsored by the Department of Transportation, generally, is intended to improve the structure and the enforcement mechanism of laws administered by the Department of Transportation governing the transportation of hazardous materials. Specifically, the bill would amend present law to: (a) strengthen and refine the enforcement mechanism for these laws; (b) expand the coverage of present regulation (49 Code of Federal Regulations 170-180) to include manufacturers of packaging materials for hazardous cargo and impose civil and criminal sanctions on such manufacturers for mislabeling or falsely certifying their materials; and (c) consolidate the functions with respect to hazardous materials within the Office of the Secretary of Transportation and thus provide for prompt, single regulatory action.

The Department of Defense, as one of the world's largest shippers of ammunition, explosives and other hazardous materials is required to comply with Department of Transportation hazardous materials regulations which among things cover the various transportation restrictions, special permits, waivers, and other matters related to military shipping requirements. Because the authority for hazardous materials regulation presently is decentralized within the Department of Transportation and exercised by the several subordinate officials of the Department, each of whom is responsible for a single mode of transportation, administrative action to respond to military requirements, particularly on intermodal shipments has proven to be slow and cumbersome. Enactment of S. 2064 would consolidate duplicate functions and thus provide for prompt, single regulatory action which

should be more responsive to Department of Defense hazardous materials shipping requirements. The proposed changes in the present enforcement mechanism relative to violation of hazardous materials regulations would add flexibility to the enforcement process thus ensuring future or continuing compliance with such laws and regulations. The expansion of present regulation to include manufacturers of packaging materials for hazardous cargo will eliminate the necessity of carriers and shippers to independently test containers and packaging materials to meet regulatory specification requirements. Finally, the bill would provide for maximum uniformity in the packaging, marking and labeling of hazardous materials shipped by all modes of transportation. While United States Coast Guard regulations presently require specific markings on hazardous materials, such markings are not specifically required under other Department of Defense transportation regulations. As a result many Department of Defense shipments have at times been frustrated at military ocean terminals until proper markings are applied.

In view of the foregoing, the Department of the Army on behalf of the Department of Defense favors the enactment of S. 2064.

The fiscal effects of the proposed legislation are unknown to the Department of Defense.

This report has been coordinated within the Department of Defense in accordance with procedures prescribed by the Secretary of Defense.

The Office of Management and Budget advises that, from the standpoint of the Administration's program, there is no objection to the presentation of this report for the consideration of the Committee.

Sincerely yours,

(Signed) HOWARD H. CALLAWAY,
Secretary of the Army.

U.S. ATOMIC ENERGY COMMISSION,
Washington, D.C., October 26, 1973.

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

DEAR SENATOR MAGNUSON: The Atomic Energy Commission is pleased to reply to your letter of July 10, 1973, requesting our views on S. 2064, a bill "[t]o amend the laws governing the Transportation of Hazardous Materials."

Subject to certain recommended clarifications, as indicated below, we strongly support enactment of this bill which would serve to clarify the scope and applicability of the Transportation of Explosives Act of 1960 (P.L. 86-710, 18 U.S.C. 831-35), relating to the transportation, marking and regulation of explosives and other hazardous materials.

Essentially, the amendments of the bill would reflect the transfer of regulatory functions from the Interstate Commerce Commission to the Secretary of Transportation as effected under the Department of Transportation Act (49 U.S.C. 1655). The transportation regulations to be prescribed by the Secretary would apply to all carrier, shippers and manufacturers of "explosives and other hazardous materials" whose cargoes or products are intended for interstate or foreign commerce. Violations of the Act and regulations issued thereunder

would be subject to civil and criminal penalties as well as injunctive relief.

The key term in the current law, "dangerous articles," would be changed to "hazardous materials" and, as provided in proposed section 834 of the bill, the Secretary's regulatory authority would cover the safe transportation:

"... of explosives and other hazardous materials, including radioactive materials, etiologic agents, flammable liquids, flammable solids, oxidizing materials, corrosive materials, compressed gases and poisonous substances."

We recommend that the definition of "hazardous materials" in section 834, revised as indicated below by underscoring, be included in section 831 to read as follows:

"' Hazardous materials' includes radioactive materials, etiologic agents, flammable liquids, flammable solids, oxidizing materials, corrosive materials, compressed gases; poisonous substances, *and such other materials as the Secretary may by regulation determine from time to time.*"

Concomitant with the inclusion of the foregoing definition of "hazardous materials" in section 831, we recommend the following corollary revisions:

(a) the catchline of section 832 should be revised to read: "Transportation of explosives and other hazardous materials"

(b) Subsection 832(a) would read: "No person may transport, carry, or convey within the United States any dangerous explosives or other hazardous materials on or in any passenger car. . . ."

(c) Subsection 832(b) would read: "No person may transport, carry, or convey within the United States liquid nitroglycerin, fulminate of mercury in bulk or dry condition, or other similarly dangerous explosives or other hazardous materials, on or in any car. . . ."

The foregoing suggested revisions would not only further the bill's overall objective of clarity and consistency, but they would also eliminate the present unwarranted attention that is laid upon "radioactive materials" with the underlying unsubstantiated implication that such materials are more dangerous than other hazardous materials. That "radioactive materials" should not be singled out, as is done in the present act, is amply shown by actual experience and statistical studies which demonstrate that radioactive materials have presented a *much lower degree of hazard* to the public than any other classification of hazardous materials listed in section 834 of the act.

In summary, the Commission wholeheartedly endorses enactment of the proposed legislation, subject to the recommended clarifying changes indicated.

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

Sincerely,

JOHN A. ERLEWINE,
Deputy General Manager.

NATIONAL TRANSPORTATION SAFETY BOARD,
DEPARTMENT OF TRANSPORTATION,
Washington, D.C., February 22, 1974.

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

DEAR MR. CHAIRMAN: Thank you for your letter of July 10, 1973, requesting comments of the National Transportation Safety Board on S. 2064, which has been referred to your Committee for consideration.

The Board endorses the three principal objectives in the bill. Of concern to the Safety Board, however, is the provision of section 9(a) of the bill which repeals section 6(e)(4) of the Department of Transportation Act. The section to be repealed provides the existing authority of the Safety Board to investigate and determine probable cause of certain hazardous materials accidents. In order to clarify and preserve the Safety Board's causal determination function with respect to transportation accidents involving hazardous materials under section 5(b)(1) of the Department of Transportation Act, we believe it is vital that a new subsection (3) be incorporated in Section 8 of S. 2064 as follows:

"(3) by striking out subsection (c) and inserting in place thereof:

"(c) The National Transportation Safety Board shall have authority to determine the cause or probable cause and report the facts, conditions, and circumstances, relating to accidents and incidents involving transportation of hazardous materials investigated under subsection (b) of this section. In exercising the authority under this subsection, the Board shall have the same powers as the Secretary under subsection (b) hereof, to hold hearings, sign and issue subpoenas, administer oaths, examine witnesses, and receive evidence at any place in the United States it may designate. The Board may delegate such authority to any office or official of the Board, or to any office or official of the Department of Transportation with the approval of the Secretary, as it may determine appropriate."

This proposed change is similar to that which was incorporated in the Federal Railroad Safety Act of 1970 to preserve this Board's causal determination function with respect to railroad accident investigation (45 U.S.C. 437). It would require that subsection (3) of section 8 in S. 2064 be renumbered as subsection (4) thereof and that subsection (c) thereunder be relettered as subsection (d).

The Office of Management and Budget has advised us that while there is no objection to the submission of this report, it believes that the amendment suggested by NTSB is not necessary and that NTSB's investigation authority in accidents involving the transportation of hazardous materials would not be impaired by the enactment of S. 2064. It believes that NTSB still retains power to investigate any transportation accident involving hazardous materials under Section 5(d) of the DOT Act.

We thank you for the opportunity to comment on this important legislation. Please advise us if we may provide any further assistance in this matter.

Sincerely,

JOHN H. REED, *Chairman.*

FEDERAL POWER COMMISSION,
Washington, D.C., November 9, 1973.

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

DEAR MR. CHAIRMAN: S. 2064 is a bill designed to amend the law governing transportation of hazardous materials. The amendments contain numerous pro forma changes in terminology, such as administrative codification of the transfer of regulatory authority from the Interstate Commerce Committee to the Department of Transportation.

The major thrust of the amendments relates to a reorganization of the penalties in order to provide civil and criminal liability under § 832(d)(1). Furthermore, under § 835(1)(c), litigation against the manufacturer as well as the carrier is permitted. Although the term "flammable liquids" might be held to encompass "flammable liquefied gases," we suggest that for purposes of clarification the latter term should be added to paragraph 834(a) to ensure that liquefied natural gas will be covered by the proposed safety amendments.

The Commission has no further comments or suggestions regarding the proposed amendments.

The Office of Management and Budget advises that there is no objection to submission of this report from the standpoint of the Administration's program.

Sincerely,

JOHN N. NASSIKAS,
Chairman.

COMPTROLLER GENERAL OF THE UNITED STATES,
Washington, D.C., September 27, 1973.

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

DEAR MR. CHAIRMAN: With respect to your letter of July 10, 1973, requesting our comments on S. 2064, a bill to amend the laws governing the Transportation of Hazardous Materials, this is to advise that we have no comments to offer.

Sincerely yours,

PAUL G. DEMBLING,
Acting Comptroller General of the United States.

INTERSTATE COMMERCE COMMISSION,
Washington, D.C., July 26, 1973.

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

DEAR CHAIRMAN MAGNUSON: Thank you for your recent letter requesting our views on S. 2064, a bill, "To amend the laws governing the Transportation of Hazardous Materials".

As you know, responsibility for enforcing safety regulations in the area of surface transportation has been assumed by the Department of Transportation pursuant to Public Law 89-670.

Inasmuch as the responsibility for enforcing the proposed legislation does not lie with the Interstate Commerce Commission, we have no further comment to make on S. 2064.

Sincerely yours,

GEORGE M. STAFFORD,
Chairman.

THE SECRETARY OF TRANSPORTATION,
Washington, D.C., September 24, 1974.

HON. JAMES B. PEARSON,
*Subcommittee on Surface Transportation, Committee on Commerce,
U.S. Senate, Washington, D.C.*

DEAR SENATOR PEARSON: You have requested that we comment upon the proposed legislation with respect to hazardous materials, rail safety, and the National Transportation Safety Board as reflected in the staff working paper, dated September 9, 1974, and the staff technical amendments. We greatly appreciate the efforts that you, the Committee, and the Committee staff have put into this bill.

Although we believe the need for legislation for hazardous materials is critical, we believe that certain refinements are necessary to Title I of the Committee Print.

First, Section 110 of the bill would provide for the imposition of civil penalties, but would require that such penalties be imposed in accordance with the formal adjudication procedures referred to in 5 U.S.C. 554. The Department strongly supports the need for civil penalties for violations of hazardous materials regulations. We need an effective and flexible enforcement mechanism in this area, but we are concerned that a requirement for formal adjudications may greatly reduce the effectiveness and flexibility of such procedures and jeopardize the success of the hazardous materials enforcement program. At the same time, the Department is making an in-depth analysis of the use of formal adjudicatory procedures, but that analysis is not completed. Until that analysis is finished we think that the wisest course would be to provide for informal procedures similar to those found in other Departmental legislation, such as the Rail Safety Act, the Natural Gas Pipeline Safety Act, and the Federal Aviation Act. We therefore ask for the deletion in Section 110 of the reference to "an adjudicative hearing in accordance with section 554 of title 5".

Secondly, Section 106 of the bill would authorize the Secretary to engage in a registration program with respect to "extremely hazardous materials." The Secretary would also have the authority to revoke such registrations if the registrant was not in conformity with the hazardous materials regulations. We particularly appreciate the effort that has gone into the drafting of this section, but we continue to feel that this section is unnecessary and that the process of granting and revoking registrations is burdensome and unnecessary. The civil penalty program will provide us with an adequate enforcement mechanism. If the Committee, however, continues to feel that registration is

necessary, we urge that the Committee indicate in the legislative history that this cumbersome and expensive registration procedure be used only in the discretion of the Secretary and only in instances where all other approaches have failed.

Finally, Section 108 would prohibit the transportation of all radioactive materials on passenger aircraft, except for those used for medical purposes. This prohibition is too broad and would preclude a great many non-medical packages which see an important usage in industrial and academic research programs and whose transportation does not pose an unreasonable risk to the public. Included in this category would be electron tubes, luminous timepieces and watch dials. We are enclosing an amendment to Section 108 which would allow transportation of such items.

With respect to Title III regarding the National Transportation Safety Board we strongly object to this title and ask that it be stricken in its entirety. The present Department of Transportation Act provides for the independence of the Board, and we have always respected the independence of the Board. We do not have any objection to removing the Board from the Department, but we do strongly oppose expanding the authority of the Board.

We are particularly opposed to the proposed expansion of the Board's authority into the area of marine safety, "advocacy," and evaluation of other governmental agencies. Although we understand from the Committee staff that the title is not intended in any way to remove any authority from the Coast Guard, we see the expansion of the Board's authority into the marine area, into the advocacy area, and into the evaluation of the efforts of other governmental agencies as causing an unnecessary duplication of effort and possible confusion.

We also strongly object to the requirement that the Board submit its budget concurrently to the President and to the Congress, especially since there is such a great potential for duplication of effort proposed in this title and, therefore, a great need for interdepartmental coordination prior to the submission of the budget.

The Office of Management and Budget has advised that there is no objection to the submission of this report.

Again, we thank you for the efforts that have gone into this bill, and we stand ready to help you in any way.

Sincerely,

CLAUDE S. BRINEGAR.

Enclosure.

Alternate wording for § 108(a)(2). Insert on page 8, line 15, before the period:

or radioactive materials which do not pose any unreasonable hazard to health and safety.

(PERTINENT TO TITLE II)

U.S. SENATE,
Washington, D.C., September 24, 1974.

HON. WARREN G. MAGNUSON,
*Chairman, Commerce Committee, 5202 Dirksen Senate Office Building,
Washington, D.C.*

DEAR MR. CHAIRMAN: It is our understanding that during the Commerce Committee's Executive Session this week, consideration will be

given to the proposed 120 day extension of the Rail Reorganization Act.

While it is generally recognized that an extension is necessary in order to develop a quality plan for rails in the Northeast Corridor, public and Congressional oversight during this process would best fulfill the spirit of the original Act. With this in mind, we ask that you consider the enclosed proposed amendments.

Amendment I would require a broad philosophical document indicating the outline and direction of the preliminary plan. Many states are reorganizing their own short lines and several businesses must stay crucial decisions pending action by USRA. A progress report would enable all interested parties to be better informed of developments subsequent to the release of the Secretary of Transportation's Report last February.

Amendment II merely seeks to define the somewhat vague language in the original Act regarding the preliminary plan. It is our hope that the preliminary plan would resemble the final plan in depth and detail and serve as a working draft.

Amendment III, if enacted, would strengthen the states' access to information, however, has been hampered. This amendment reaffirms our belief that state and local governments must be actively involved in the planning of the Northeast Rail System.

We hope these amendments will be given all due consideration.

THOMAS J. MCINTYRE,
LOWELL P. WEICKER, Jr.,
WILLIAM D. HATHAWAY,
U.S. Senators.

AMENDMENT I

Within forty-five days after date of enactment of this extension, the USRA shall adopt and release an interim report to include:

- (a) A description of the major-industry structure alternatives under consideration
- (b) A presentation of major policy issues to be decided
- (c) Description of status of USRA analyses relating to eight goals in Section 206(a) of the Act
- (d) Status of information gathered and of staff and consultant analyses
- (e) Description of making and planning decision time table.
- (f) Outline of preliminary system plan
- (g) Recommendation of continued operation, abandonments, or subsidy decision for light density lines, to extent that the status of Board evaluations permit
- (h) Descriptions of USRA financial assistance program and strategies for their employment.

AMENDMENT II

Add to Section 207(a)(1) "preliminary system plan shall contain to the maximum extent possible those elements required to be included in the final system pursuant to Section 206 of this Act.

AMENDMENT III

Add to Section 203(a) "all operating engineering, and commercial information requested in this subsection shall be made available to the states.

UNITED STATES RAILWAY ASSOCIATION,
2100 SECOND STREET, SW.,
Washington, D.C., September 24, 1974.

HON. WARREN G. MAGNUSON,
U.S. Senate,
Washington, D.C.

DEAR MR. CHAIRMAN: This is in reply to your request for information regarding the issuance of a progress report by the United States Railway Association in the event that Congress enacts S. 4003, an amendment to the Regional Rail Reorganization Act extending the Association's planning deadlines by 120 days.

We have considered the publication of an interim or a progress report and I can assure you that, pending approval of substantive matters by our Board of Directors, the following items will be included as part of the Association's annual report to Congress: (1) An identification of issues that will be addressed in the preliminary and final system plans, including the process to be utilized in determining light density line questions and a discussion of the role of competition and availability of services by alternate modes; (2) an outline of USRA's progress in defining alternative industry structures for the Northeast and Midwest rail system with a discussion of several of those alternatives; and (3) a discussion of USRA financial assistance programs, including a status report on the development of criteria for their employment. This annual report to Congress would be made around the end of October and, pending approval by the Association's Board of Directors, could be supplemented later by special reports dealing with such matters as specific recommendations on light density lines and forecasts of future rail traffic in the region.

We realize that if a legislative extension of 120 days is granted by Congress it will be necessary to ensure that information continues to flow to the public between now and the new date of February 28 for issuing a preliminary system plan.

I trust that this explanation of the proposed content of the United States Railway Association's progress reports will assist the Committee in considering the merits of S. 4003.

Sincerely yours,

ARTHUR LEWIS,
Chairman.

(PERTINENT TO TITLE III)

COMPTROLLER GENERAL OF THE UNITED STATES,
Washington, D.C., December 6, 1973.

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

DEAR MR. CHAIRMAN: Your letter of September 20, 1973, requests our comments on S. 2401 which would establish the National Agency

for Transportation Safety for the purpose of promoting safe transportation of people and property in commerce.

The National Agency for Transportation Safety would be an independent agency of the United States to investigate transportation accidents, to make recommendations for avoiding such accidents, to represent the safety interests of the public before regulatory agencies, and for other purposes.

Section 5(a) of the bill provides that the Administrator shall be appointed by the President, by and with the advice and consent of the Senate, from lists of qualified individuals recommended by the Consumer Product Safety Commission and the Comptroller General of the United States.

We believe it would be inappropriate for the Comptroller General to participate in the nomination of an Administrator because the proposed agency would be subject to audit by the General Accounting Office. Also, the General Accounting Office has no special expertise for identifying individuals in the field of transportation safety nor is it presently organized or staffed to develop the necessary information for identifying such individuals. We therefore recommend that section 5(a) be revised to exclude the requirement for the Comptroller General to recommend individuals qualified to be the Administrator.

Section 5(c)(5) of the bill would give the Administrator authority to enter into contracts, leases, cooperative agreements, or other transactions without regard to section 3709 of the revised statutes, as amended (41 U.S.C. 5). In making purchases for Government use it long has been a policy, with certain exceptions made by the Congress, to require open competitive bidding. This is designed not only to secure the best financial results for the United States and minimize opportunities for fraud but also to permit to all potential suppliers equal opportunity to bid for Government business. No cogent reason for the proposed exemption has come to our attention and we therefore suggest the deletion of this provision.

Section 7(e) provides for a biennial appraisal and critical evaluation and review of the Agency's activities, to be conducted and prepared separately by a person who is independent of the Agency but retained by the Agency, specifically for this purpose and no other, as consultant, at rates not to exceed \$200 a day for an individual. The same person would be precluded from preparing such an evaluation and review for the Agency more than once.

The nature and extent of the evaluation and review to be conducted appears to be a rather ambitious "one-time" undertaking for either an outside individual or an organization. We suggest that more specific program goals and objectives be developed to guide the persons making such evaluations and reviews and to insure that their reports contain the kinds of information which will enable Congress to assess how well the Agency is working. Consideration also should be given to setting forth the qualifications an individual must possess in order to perform the specified evaluation and review.

Section 7 of the bill would require the Administrator to submit to the Congress, on July 1 of each year, a report containing certain specified information, including the independent biennial appraisal an evaluation reports cited above. We note, however, that the bill contains no requirements for the Agency to include in these reports

either its own evaluation of the effectiveness of the programs or its own recommendations for legislative action deemed necessary or desirable for carrying out the programs.

It is our view that program evaluation is a fundamental part of effective program administration. The responsibility therefore should rest initially upon the responsible agencies. In line with this concept, we believe that the Congress should attempt to specify the kinds of information which will enable it to better assess how well programs are working and whether alternative approaches may offer greater promise. Too frequently, in our opinion, the Congress requests periodic reports from agencies without adequate consideration as to whether those reports will contain the information needed by it to discharge its oversight and legislative responsibilities. We suggest that language substantially as follows be inserted in section 7 of the bill following subsection (d) and that subsections (e) and (f) be designated (j) and (k).

(e) the Agency's statement of specific and detailed objectives for the programs developed pursuant to the provisions of the Act, and relate these objectives to those in this Act;

(f) statements of the Agency's conclusions as to effectiveness of the programs in meeting the stated objectives, measured through the end of the preceding fiscal year;

(g) recommendations with respect to any changes or additional legislative action deemed necessary or desirable for carrying out the programs;

(h) a listing identifying the principle analyses and studies supporting the major conclusions and recommendation; and

(i) the Agency's annual evaluation plan for the programs through the ensuing fiscal year for which the budget was transmitted to Congress by the President, in accordance with section 201(a) of the Budget and Accounting Act, 1921, as amended (31 U.S.C. 11).

Attached for your consideration are some technical or editorial changes which we believe should be considered by the committee.

Sincerely yours,

PAUL G. DEMBLING,

For the Comptroller General of the United States.

Attachment.

SUGGESTED TECHNICAL CHANGES FOR S. 2401

On page 6, line 9, delete the word "only" and insert it in line 10 following the words "take office."

On page 8, line 16, following the word "or" insert "the investigation of which."

NATIONAL TRANSPORTATION SAFETY BOARD,
DEPARTMENT OF TRANSPORTATION,
Washington, D.C., November 26, 1973.

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

DEAR MR. CHAIRMAN: This is in reply to your letter of September 20, 1973, wherein you request the comments of the National Transportation Safety Board on S. 2401, a bill "To promote safe transportation of people and property in commerce by establishing the National Agency for Transportation Safety as an independent agency of the United States to investigate transportation accidents, to make recommendations for avoiding such accidents, to represent the safety interests of the public before regulatory agencies, and for other purposes."

We have reviewed S. 2401 and find it is identical to the Committee's Working Paper No. 1, which was the subject of hearings held on September 12, 1973, before Senator Cannon's Subcommittee on Aviation. The position of the Safety Board on this matter was provided at that time and all Members of our Board were present to answer questions concerning such position. The Safety Board is opposed to the enactment of this legislation for the reasons stated in detail on September 12, 1973.

Sincerely yours,

JOHN H. REED, *Chairman.*

SUPPLEMENTAL VIEWS OF MR. LONG

Navigation safety and protection of life and property are inherent elements of the marine industry. Statistics of the National Transportation Safety Board show that water transportation is the safest of all modes of surface transportation. Over a 6-year study, the fatality rates for marine, rail, and highway modes of freight transportation in the United States, show that .31 deaths per billion ton miles occurred in the marine industry, compared with 2.5 and 10.9 deaths per billion ton miles in the rail and highway modes respectively. This data for water transportation includes all losses of life sustained in water transportation, whether on the inland waterways, or on the high seas.

Moreover, the National Transportation Safety Board's data has been specifically validated by a recent study completed by the Maritime Administration of the transportation of certain hazardous substances by water. Long and intermediate distance movements of large bulk quantities by water have been found to be much more preferable from a safety and cost standpoint, to similar movements by rail and truck.

Since 1969, this Committee has given the highest priority to measures involving safety for human life, and the protection of the marine environment. Measures approved by the Merchant Marine Subcommittee, and subsequently enacted into law, include legislation requiring that all vessels be equipped with a continuously-monitored bridge to bridge voice communication system; authorizing the establishment of integrated marine traffic control systems; requiring the testing and licensing of personnel operating towing vessels on our inland rivers and waterways; and the broad and comprehensive Ports and Waterway Safety Act of 1972. I frankly feel, that these important measures, and their efficient enforcement by the United States Coast Guard, make the marine mode by far, the safest for the storage, shipping, and handling of hazardous materials.

The United States Coast Guard regulations contain comprehensive rules governing the water transportation by unmanned barges of all bulk dangerous cargoes, other than petroleum products. These regulations specify hull types, cargo containment and segregation characteristics, gauge and venting methods and construction standards providing various degrees of compartmentation and other collision protection. In addition, operating standards including inspection and testing are prescribed.

Under authority of the Ports and Waterways Safety Program the Coast Guard has established Vessel Traffic Systems in busy harbors and hazardous crossing areas which are similar to airport traffic control systems. These systems already have produced sharply improved accident statistics and have facilitated the flow of traffic.

Under the terms of the Towing Vessel Licensing Act, operators of diesel towing vessels are now required to be licensed by the Coast

Guard. A major program has been completed whereby over 17,000 operators have been licensed.

The maritime industry is the most safety inspected of all transportation modes. The United States Coast Guard has the prime responsibility to insure the safety of personnel and vessels, as well as protect the waters, docks, and public welfare, has assigned over 2,200 field personnel from Marine Inspection and Captain of the Port offices to be on continuing duty in the port areas of the United States. This compares to the approximately 103 general safety inspectors of the Federal Highway Administration, who are responsible for the operational safety of nearly four million trucks engaged in interstate traffic. The Federal Railroad Administration has about 150 inspectors at the present time who, according to a recent government report, are responsible for 334,000 miles of track, hundreds of railroad yards, 1.8 million items of rolling stock, and about 165,000 railroad employees.

In the marine industry there is approximately one inspector for every 11 vessels, even though they may not require inspection. By comparison, railroads have one inspector for every 12,000 pieces of rolling stock, 2,226 miles of track, and 1,100 railroad employees. The ratio of inspectors to truck transporters is even more staggering.

Statistics show water transportation as being the most energy efficient mode. Less energy per ton-mile is consumed in barge transportation than in comparable movements overland. According to a March 1974 statement by the Department of Transportation Secretary Claude Brinegar, for every ton-mile of freight moved by water 462 BTU's of energy are consumed as compared with 770 BTU's for rail and 2,770 BTU's for truck. Rail movement consumes $\frac{2}{3}$ more fuel than the water haul per ton-mile, and trucking requires six times as much. Without doubt, conservation of our fuel supplies will remain high on our list of national priorities for many years to come.

The rapid growth in chemical process plants has taken place largely along navigable waters in order to take advantage of low cost water transportation. Economical transportation of feed stocks to these plants and economical distribution of bulk products from these plants are basic factors in a basic industry whose products are feedstocks for the plants of manufacturers in a hundred other industries. A huge portion of the work force thus depends directly or indirectly for its livelihood upon the availability of bulk chemicals at reasonable prices delivered safely and efficiently by water transport.

Barge transportation on the Lower Mississippi River has been growing at an annual compounded rate of almost 8 percent. It doesn't take much effort to calculate that traffic will therefore double in 10 years. When we consider that barges primarily move energy products, raw materials, and agricultural products so vital to our national economy and international commerce, and that these movements are accomplished efficiently and at low cost, we must then conclude that barge transportation is an asset to be sustained, indeed encouraged.

While the Coast Guard has been successful in assuring a relatively safe network of marine transportation, this legislation is designed to assure that the Secretary of Transportation has the regulatory and enforcement authority to insure the safe transportation of hazardous materials in all modes.

RUSSELL B. LONG.

ADDITIONAL VIEWS OF MESSRS. COTTON AND BEALL

Shortly before this Committee report on the bill, S. 4057, was to be filed, we had occasion to examine the language in the report concerning title III with respect to the National Transportation Safety Board (NTSB), and we felt compelled to file additional views dissassociating ourselves from the views expressed therein.

We did so *not* because of the stated need that the NTSB be independent of the Department of Transportation (DOT). On the contrary, this independence was what the Congress intended when, in 1966, there was enacted the Department of Transportation Act. Rather, we felt compelled to dissassociate ourselves from the language in the majority report because we felt strongly that a Committee report on legislation is not an appropriate vehicle to raise allegations concerning specific *named* individual conduct when those individuals, by virtue of the manner in which such Committee reports are prepared, are denied an opportunity to defend themselves or their reputations.

When our views on this matter did become known, there ensued what we are sure was a good faith effort to meet our stated objections by rewriting that portion of the report concerning title III of S. 4057 with respect to the NTSB (*viz.*, pp. 14-30). And, again we examined this redrafted report language with the hope that it would not be necessary for us to file additional views. Unfortunately, we found the report language to be identical, except for the deletion of one paragraph and the reference to individuals by position title rather than name. Thus, the changes in the report language were simply cosmetic, rather than substantive, since identification of named individuals would require no great intellect and would be readily ascertainable. We therefore feel that we had no alternative but to file these views.

It was and is our belief that the Committee's hearing record, not this report on legislation, represents the best evidence of these matters. It could and it should be allowed to speak for itself. Certainly the hearing record in its entirety would be preferable to the editorial commentary set forth in the majority report in this regard.

In conclusion, although we neither held, nor do we now hold any brief with any attempt to subvert the independence of the NTSB as was envisaged by the Congress when establishing it in the 1966 Department of Transportation Act, we continue to be repelled at the concept of utilizing a Committee report on legislation to render judgments on individuals, be they designated by name, or in this instance, by position title. Such a concept is totally repugnant to us, recognizing that once set in print it will result in an indelible blemish upon the character of such individuals, however they may be designated for identification. Whether it be by name or by title, the end result is the same—a potential stigma—and it is for this reason that we still feel compelled to file these views to speak for those designated individuals who cannot!

NORRIS COTTON,
J. GLENN BEALL, JR.

FEDERAL RAILROAD SAFETY AND HAZARDOUS MATERIALS TRANSPORTATION AMENDMENTS OF 1974

JUNE 6, 1974.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. STAGGERS, from the Committee on Interstate and Foreign Commerce, submitted the following

REPORT

[To accompany H.R. 15223]

The Committee on Interstate and Foreign Commerce, to whom was referred the bill H.R. 15223 to amend the Federal Railroad Safety Act of 1970 and the Hazardous Materials Transportation Control Act of 1970 to authorize additional appropriations, and for other purposes, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE

H.R. 15223 amends the Federal Railroad Safety Act of 1970 and the Hazardous Materials Transportation Control Act of 1970 to provide authorization for appropriations for fiscal year 1975.

The bill also makes certain other changes in existing railroad safety statutes to modernize their provisions, to keep Congress better informed, to establish safety enforcement priorities on an equal footing with safety research programs, and to broaden federal regulatory control over interstate and foreign shipments of hazardous materials by rail and other transportation modes.

HEARINGS

The Subcommittee on Transportation and Aeronautics held three days of public hearings on H.R. 14076 and H.R. 14077, on May 3, 6 and 17. Witnesses included the Administrator of the Federal Railroad Administration, the Chairman of the National Transportation Safety Board, the Association of American Railroads, the United Transportation Union, the International Association of Machinists and Aerospace Workers, the National Association of Railroad Passengers and the National Association of Regulatory Utility Commissioners.

COMMITTEE ACTION

The Subcommittee on Transportation and Aeronautics held an open mark-up session on May 20, 1974 and reported by voice vote H.R. 14932 to the full committee. The reported bill is identical to H.R. 14076 with the exception of several additions in the form of amendments.

The Interstate and Foreign Commerce Committee considered H.R. 14932 in open session on June 4 and 5, 1974, and voted to introduce a clean bill by voice vote. On June 6, the Committee reported H.R. 15223 by voice vote.

SUMMARY OF REPORTED BILL

Section 1 of the bill establishes the short title, "Federal Railroad Safety Authorization Act of 1974."

Section 2(a) of the bill amends the Federal Railroad Safety Act of 1970 to authorize appropriations for fiscal year 1975 a sum not to exceed \$35 million. A limit is imposed on the amount authorized for various functions under the Federal Railroad Safety Act of 1970 for Fiscal Year 1975—\$18 million for the Office of Safety to hire up to 350 safety inspectors and 80 clerical personnel, \$3.5 million for state participation in the safety inspection program under sec. 206(d) of the Act, \$3.5 million for salaries and expenses of the Federal Railroad Administration not otherwise provided in this legislation, \$10 million for research and development.

Section 2 also limits research and development funds expended and obligated under this Act for fiscal year 1975 to an amount not to exceed the amount expended and obligated for enforcement of rules, regulations, orders and standards under the Act.

Section 2(b) of the bill requires the Secretary of Transportation to report to Congress on or before March 17, 1976 on various programs under the Act.

Section 3 of the bill imposes civil penalties for violations of the "Accident Reports Act" (45 U.S.C. 39) as an alternative to criminal penalties which remain in the 1910 law.

Section 4 of the bill amends the Hazardous Materials Transportation Control Act of 1970 (49 U.S.C. 1762) to authorize \$3 million for fiscal year 1975 programs.

Section 5 of the bill expands the authority of the Secretary of Transportation to regulate hazardous materials in interstate and foreign commerce by any mode of transportation. The Secretary is empowered to issue regulations covering the manufacture, fabrication, marking, maintenance, reconditioning, repair, testing, distribution of packages and containers used in hazardous material transportation, and to regulate the carrier and shipper who transports such materials. He is given appropriate powers to enforce his regulations, and civil penalties are spelled out. While the Secretary issues the regulations, it will be up to the Administrators of the Federal Railroad Administration, Federal Highway Administration and Federal Aviation Administration to enforce the regulations that apply to shippers and carriers.

Section 6 of the bill authorizes the Secretary of Transportation to issue certain regulations governing the transportation of explosives (classified as Explosives A) by rail. Such regulations will stipulate the

use of railroad cars with roller bearings and with either composition brake shoes or spark shields; periodic inspection of cars carrying such materials enroute between origin and destination, and of the loading of such cars as well as the selection of the cars to be used; and discretionary authority by the Secretary to require spacer cars between cars carrying explosives. The Secretary can suspend the regulations in the case of national necessity.

BACKGROUND AND NEED

On October 16, 1970, President Nixon signed Public Law 91-458, the Federal Railroad Safety Act of 1970. The statute was an attempt to promote safety in all areas of railroad operations, and was passed at a time when rail accidents had doubled over the previous decade.

Despite enactment of the 1970 statute, in 1973 rail accidents reached a 16-year high and increased by 24.7% over the number of accidents in 1972. The statistics are grim: 1,913 dead, and 17,718 injured. The casualty rate increased by 11.3% in this period.

For the past quarter of 1974, the rate is running ahead of the 16 year high of 1973. Clearly, rail safety is of continuing concern for Congress.

In 1973, the number of train miles operated was approximately 542 million, the highest since 1968. In 1974, the number of train miles operated promises to be even higher than the previous year. The reversal of the trend of a decline in train miles operated which started in 1967 and ended in 1973 seems assured now with the advent of the energy crisis. Unfortunately, an increase of rail accidents historically follows the increase in train miles operated. But unlike 1968, carriers are running heavier trains over roadbed and tracks which have suffered years of neglect, and the potential for accidents is magnified.

The energy crisis has produced not only an upsurge in rail carriage of freight, but also an increase in passengers. In 1972, 87 per cent of the public moved in intercity travel by private automobile, 10% by air, 2% by bus, and 1% by rail. While the curtailed availability and high cost of fuel will cut down on overall intercity travel, rail passenger travel will likely increase its share of the market, particularly with the growth of Amtrak. There was evidence of this in 1973, when Amtrak carried 16,848,444 passengers, a 6.6 per cent increase over 1972. First quarter statistics for 1974 indicate this increase is rising astronomically.

There were 11 Amtrak passenger train accidents in 1973, injuring 189 persons and killing 3. This year, there have been 12 accidents during the first four months alone, injuring 88 and killing one. Defective equipment and bad track accounted for most of the accidents.

FIGURE 1.
AMTRAK PASSENGER TRAIN ACCIDENTS
[Investigated May 1, 1971 through May 1, 1974]

Railroad	Date	Place	Type accident	Damages	Killed	Injured	Cause
1. IC (NTSB)	June 10, 1971	Salem, Ill.	Derailment	\$619,000	11	163	Displacement of rail by false flange of locomotive wheel.
2. PC	Sept. 21, 1971	Newcomerstown, Ohio	Collision	1,500	0	2	Shifted lading on freight train moving on adjacent track striking locomotive of Amtrak train.
3. SCL	Dec. 23, 1971	Cross Bayou, Fla.	Derailment	808,305	0	22	Malicious opening of switch and failure of enginemen to maintain a proper lookout ahead.
4. BN	Jan. 28, 1972	Cut Bank, Mont.	do	225,845	0	27	Train striking frozen snowdrift.
5. BN	Feb. 23, 1972	South Seattle, Wash.	do	35,565	0	56	Trackman opening crossover switch in front of an approaching train.
6. IC	May 30, 1972	Chicago, Ill.	do	116,000	0	36	Dragging equipment (steam connector).
7. BN	Dec. 4, 1972	Inland, Nebr.	do	237,617	0	73	Broken rail.
8. BN	Sept. 20, 1972	Arlington, Ill.	Rail/highway collision	8,043	2	1	Failure of truckdriver to stop short of crossing.
9. BN	Dec. 9, 1972	Wabaska, Minn.	Derailment	13,600	0	0	Broken rail.
10. ICG	do	Hayes, Ill.	do	(?)	0	32	Unknown object struck rail shattering same.
11. SCL	Dec. 13, 1972	Grandy, Va.	do	33,131	0	14	Excessive pressure on high rail of 4° curve. Inadequate track maintenance.
12. ICG	Dec. 30, 1972	Champaign, Ill.	do	18,900	0	16	Broken steam conduit.
13. CV	Jan. 5, 1973	Brain Tree, Vt.	do	184,000	0	4	Malicious tampering of switch.
14. PC	Mar. 14, 1973	Cheverly, Md.	Rear-end collision	146,200	0	13	Failure of the crewmembers to operate the work train in accordance with restricted signal indications.
15. ATSF	Mar. 16, 1973	Newton, Kans.	Derailment	(?)	0	0	Broken angle bars.
16. PC	Mar. 18, 1973	East Palestine, Ohio	do	383,500	1	49	Failure of the crew members to inspect the track after the preceding train had separated and "run-in" which resulted in track out of alignment.
17. ICG	July 12, 1973	Chebasse, Ill.	do	112,000	0	72	Inadequately maintained spring frog.
18. ICG	Aug. 21, 1973	Levarett Jct., Ill.	do	44,500	0	3	Thin flange on locomotive wheel.
19. UP	Sept. 20, 1973	Gilcrest, Colo.	Rail-highway collision	41,900	0	0	Crossing.
20. BN	Oct. 4, 1973	Earlville, Ill.	Derailment	33,523	0	25	Inadequate track maintenance.
21. ICG	Oct. 19, 1973	Odell, Ill.	Rail-highway collision	3,000	2	0	Crossing.
22. ICG	Nov. 7, 1973	Memphis, Tenn.	Derailment	750	0	1	Low track joint.
23. SP	Dec. 28, 1973	Anderson, Calif.	do	220,615	0	22	Broken rail.
24. ATSF	Jan. 1, 1974	Deerfield, Kans.	do	8,925	0	0	Broken wheel.
25. PC	Jan. 2, 1974	New York, N.Y.	Side collision	2,575	0	5	Failure of the engineer of the light locomotive unit to stop at a stop signal.
26. SP	Jan. 4, 1974	Newark, Calif.	Rail-highway collision	55,200	0	3	Crossing.
27. ICG	Jan. 11, 1974	Lenox, Ill.	Derailment	31,350	0	3	Snow and ice accumulation on track structure.
28. PC	Jan. 13, 1974	West Mansfield, Mass.	do	(?)	0	0	Broken wheel.
29. ATSE	Jan. 14, 1974	Ardmore, Okla.	do	(?)	0	25	Wide gage of track.
30. BN	Feb. 12, 1974	Stratton, Nebr.	do	67,000	0	19	Broken wheel.
31. SP	Mar. 6, 1974	Shedd, Oreg.	Rail-highway collision	92,700	1	6	Crossing.
32. SP	Mar. 11, 1974	Dayton, Tex.	Derailment	(?)	0	3	Rock and roll.
33. ICG	Mar. 14, 1974	South Bloomington	do	18,000	0	0	Locomotive wheels out of gage.
34. PC	Mar. 26, 1974	Van Wert, Ohio	do	913	0	0	Broken rail.
35. PC	Apr. 30, 1974	Winamac, Ind.	do	34,000	0	25	Welded rail joint.
Total (35 accidents)				3,897,657	17	721	

¹ No estimate.
² Undetermined.

³ Unknown.

The increase in passenger travel by rail underscores the necessity of a renewed effort in railroad safety. Unfortunately, the Committee does not find evidence of a sense of commitment on the part of the Federal Railroad Administration. If there is a sense of urgency in this regard within the Department of Transportation and the FRA, it did not manifest itself in the testimony presented in three days of hearings on this legislation. Indeed, the Committee was alarmed at the priorities set by the FRA's Office of Safety in regard to the use of their federal appropriations, and in the manner in which the agency responds to the intent of Congress in the 1970 Act.

The Committee focused on several areas which warrant further examination here: (1) the administration of the safety laws by the FRA, (2) the growing problem of track maintenance and consequent increase in rail-related accidents, (3) and the problems of transportation of hazardous materials.

FEDERAL RAILROAD ADMINISTRATION

The weight of evidence gathered in testimony before the Subcommittee indicated the Federal Railroad Administration simply was not living up to neither the spirit of the Federal Railroad Safety Act of 1970, nor, in some cases, the letter of the law.

The Act of 1970 transferred all safety regulatory functions over transportation to the DOT. The Amtrak Improvement Act of 1973 further clarified this intention of Congress.

The Committee found that the Federal Railroad Administration has consistently downgraded enforcement and inspection, and has devoted most of their resources to research and development. The evidence presented in testimony before the subcommittee, and in staff research, indicated a strange set of priorities in this regard, and a conscious effort by the Department to deemphasize inspection of rail carriers. In FY 1973, the Department did not use, nor did they request, almost \$1 million in authorized funds for enforcement. Indeed, they requested the House Appropriations Committee permission to utilize these funds for other purposes. There was further testimony presented at the hearings that the rail industry itself was not spending more than \$3 million for safety-related research. The industry apparently is content to allow the FRA to fund most of the research in this area.

The Committee also noted that the National Transportation Safety Board has found that rail failure is the largest single cause of train accidents, and such rail failures have a "catastrophic potential". The Board said that the "casual categories by which FRA currently classifies train accidents which result from rail failures are inconsistent with other FRA regulations and provide little information for instituting corrective action". The Board, in its special study "Broken Rails: A Major Cause of Train Accidents", Jan. 2, 1974, found current FRA track standards "inadequate" in attempting to control rail failures. Further, it found FRA procedures inadequate in testing standards for detection of internal defects. The Board also states, "there are few research projects underway that involve the advancement of rail technology. . . . FRA research priorities have not included projects directed to the correction of the rail failure problem," even though this is the major cause of rail accidents.

The Committee found that after three and one half years, the FRA inspection of rail equipment and plant seems to be a stepchild of the Department's low key safety approach. By April 1974, the FRA had only 12 track inspectors for over 300,000 miles of rail track, 16 signal and train control inspectors, and only 50 inspectors for more than 1.7 million freight cars and 25,000 locomotives. There were only 8 inspectors for hazardous materials. When questioned about bridges and tunnels, the FRA witness revealed his department had only one bridge and tunnel expert in Washington, and yet he stated that there was 192,000 bridges. Many of these bridges are old, and one, which crosses the Mississippi River, was first opened in 1856 and is still in operation today.

FIGURE 2.—FRA INSPECTORS
 [(A)—Authorized; (B)—On board Apr. 19, 1974]

Safety field distribution	Region 1		Region 2		Region 3		Region 4		Region 5		Region 6		Region 7		Region 8		Total	
	(A)	(B)	(A)	(B)	(A)	(B)	(A)	(B)	(A)	(B)	(A)	(B)	(A)	(B)	(A)	(B)	(A)	(B)
(1) Regional directors.....	1	(4)	1	(4)	1	(4)	1	(4)	1	(4)	1	(4)	1	(4)	1	(4)	8	(31)
(2) Supervisors.....	1	(4)	1	(4)	1	(4)	1	(4)	1	(4)	1	(4)	1	(4)	1	(4)	8	(8)
(a) Motive power and equip- ment(s).....	1	(4)	1	(4)	1	(4)	1	(4)	1	(4)	1	(4)	1	(4)	1	(4)	8	(8)
(b) Op practices inspector(s).....	1	(4)	1	(4)	1	(4)	1	(4)	1	(4)	1	(4)	1	(4)	1	(4)	8	(8)
(c) Supervisor civil engineer.....	1	(4)	1	(4)	1	(4)	1	(4)	1	(4)	1	(4)	1	(4)	1	(4)	8	(8)
(d) RR/sig/train con. safety insp.(s).....	1	(4)	1	(4)	1	(4)	1	(4)	1	(4)	1	(4)	1	(4)	1	(4)	8	(8)
(3) Inspectors.....	9	7	18	12	10	4	10	8	9	8	6	1	5	4	8	6	75	50
(a) Motive power and equipment.....	4	4	7	8	6	4	5	6	3	7	2	4	2	4	4	6	32	41
(b) Operating practices.....	3	1	5	2	6	3	9	5	5	4	3	2	2	2	7	3	40	18
(c) Track and structures.....	3	3	4	3	2	2	3	2	2	2	1	1	2	1	4	4	21	16
(d) Signal and train control.....	2	1	3	1	2	1	3	2	2	1	1	1	2	1	2	1	17	8
(e) Hazardous materials.....	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	6	6
(4) Trainees.....	5	5	6	6	5	5	4	4	5	5	3	3	3	3	5	5	36	36
(5) Clerical.....	32	26	49	37	35	25	41	30	32	30	21	15	21	15	36	30	267	208
Total.....	32	26	49	37	35	25	41	30	32	30	21	15	21	15	36	30	267	208
Headquarters.....																	159	153
Total.....																	326	26

1 Source: Federal Railroad Administration.

Furthermore, the number of FRA inspections on equipment is going down, instead of up. In 1972, 927,684 freight cars, passenger cars and locomotives were inspected. In 1973, less than half that number were inspected (406,336.)

The Committee is concerned with this obvious inadequacy in inspection when, at the same time the Department and the FRA testify about the deterioration of the rail industry's physical plant. For example, FRA Administrator John Ingram testified that "the replacement (of new rail) for the industry for the last 20 years is far below that necessary in our minds for safe and efficient operation." Ingram further testified that the conditions responsible for the present increase in derailments are "the result of at least a decade of deferring maintenance on track and equipment so as to make ends meet".

The Committee also is concerned with the FRA's refusal to implement Section 206 of the 1970 Act, i.e., the State participation in the inspection and enforcement programs under the Act. Only after hearings were scheduled by the Committee in 1974 did the FRA indicate its willingness to start a program in this field—three and a half years after the enactment of the statute. The Committee amended its bill to require the Secretary to report to Congress in 1976 on the Section 206 program to assure that the Department will take advantage of the features of section 206. Here again, the tardiness by FRA in moving in this program prompts the Committee to question its desire to live up to the intent of Congress.

The Committee also is concerned with the tardiness of the FRA in promulgating safety regulations, noting that it was in late 1973 before the first regulation under the 1970 act went into effect. Furthermore, the annual safety report required by the 1970 Act to be transmitted on or before May 1 of each year, was not transmitted by the time the committee reported the bill (June, 1974). Nor has the committee received a specific report mandated by section 4 of P.L. 93-90 (Aug. 14, 1973) on feasibility of alternative routing of transportation of hazardous materials and proposed revised handling procedures for said cargo.

TRACK MAINTENANCE INADEQUACIES

The number one cause of rail accidents in America is track failure. There is growing evidence that track failure is a direct result of industry policy to defer maintenance.

As a business policy, the practice of allowing physical plant to deteriorate is questionable, in view of the \$52 million lost last year alone in property damage in track-related accidents—not to mention the loss to employee health and morale, and danger to the public.

The industry charges outmoded ICC accounting procedures and inadequate federal tax laws remove the incentive to maintain track and equipment. Department of Transportation spokesmen say that track maintenance is so expensive that many marginal and bankrupt carriers cannot afford the cost. The rail industry as a whole has a return on investment of a little more than 3% per annum, which indeed does not encourage large private investor input.

Inflation certainly has made the cost of repair enormous for the industry. Five years ago the cost of maintaining a modern signal track was \$12,000.00 per mile, and \$5,000 per mile for unsignaled track. The cost today has soared.

But the Committee has found other factors involved. A General Accounting Office study for the Subcommittee on Transportation on Amtrak train on-time-performance indicated most Amtrak train delays in 1972 were due to track conditions. Some of the railroads involved certainly cannot be classified as financially "marginal", nor bankrupt. Further, the Interstate Commerce Commission, in its study on Rail Conglomerates (August, 1973) indicated that 15 major Class I railroads are owned or directly controlled by holding companies. Deferred maintenance on track and equipment according to the ICC study often occurs when the assets of the transportation units are siphoned off to the parent holding company. The report said inadequate maintenance in some of these railroads could be traced to the conglomerate nature of the business.

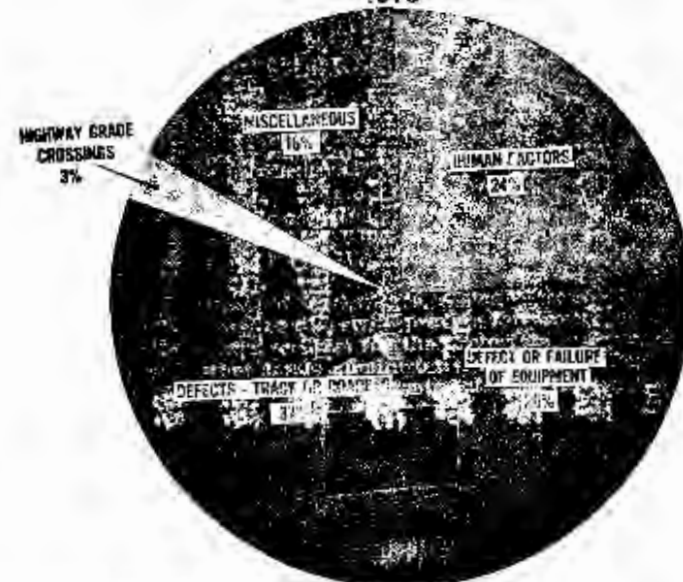
FIGURE 3

TRAIN ACCIDENTS BY GENERAL CAUSE

1972



1973



Source: Federal Railroad Administration.

The most stark example of conglomerate influence over railroad maintenance practices is the Penn Central Railroad. Now in bankruptcy, the Penn Central's physical plant has eroded to the point that 6,900 miles of track cannot meet even minimum federal track safety standards. The importance of the Penn Central to the Nation's economy led the Department of Transportation to exempt the carrier from track standards because (1) to fine the bankrupt corporation for violations would merely make the federal government a creditor, and (2) to shut it down would precipitate economic chaos throughout the region. The point is that the tracks of Penn Central did not deteriorate to such a critical level in only three years—the deferred maintenance of the road bed, track and equipment was a rule, rather than an exception; in the latter pre-bankruptcy years.

The Committee expressed an interest in investigating the conglomerate influences over transportation companies in more depth in the next Congress.

Whatever the justifications are for deferred maintenance, the Committee found that it exists in varying degrees throughout the country and poses a threat to the safety of rail employees, rail property, shipper's property and to communities in which the condition exists. As the National Transportation Safety Board stated in its Jan. 1974 Study on Rail Accidents, "Rail failure is the number one cause of accidents . . . (and) rail failure could be reduced by better maintenance of the entire track structure." The Report further states:

"The exact cause of the increase in train accidents attributed to rail failure is not known; there are many possibilities. Increased wheel loads is an important factor. Also, one obvious reason for the increase in rail failures is the deferred maintenance of track.

"The effect of other changes in track maintenance procedures, however, is not so obvious. For instance, the practice of oiling rail joints to accommodate for rail expansion and contraction has almost been eliminated.

"Since trackwork has been mechanized and the number of track department personnel has been reduced, fewer experienced track workers pass over the track to check for rail defects, and fewer men are available to correct defects when they are found. The number of train accidents that have resulted from these changes and others is not known.

"However, since some railroads have deferred their maintenance to a greater extent than others, this has obviously had an effect on train accidents caused by rail failure, as renewal of rail, ties and ballast should result in fewer rail failures. New welded rail that is properly designed for the loads to which it will be subjected, does not fail as much as old, over-loaded rail. Similarly, rail which is supported on solid ties and ballast does not fail as quickly as inadequately supported rail."

The Committee found that there is no federal agency which collects data on deferred maintenance. Inspections to see whether railroads meet track and equipment regulations are the only yardstick to gauge this practice.

TIE RENEWALS [ANNUAL AVERAGE FOR FIVE YEAR PERIOD]

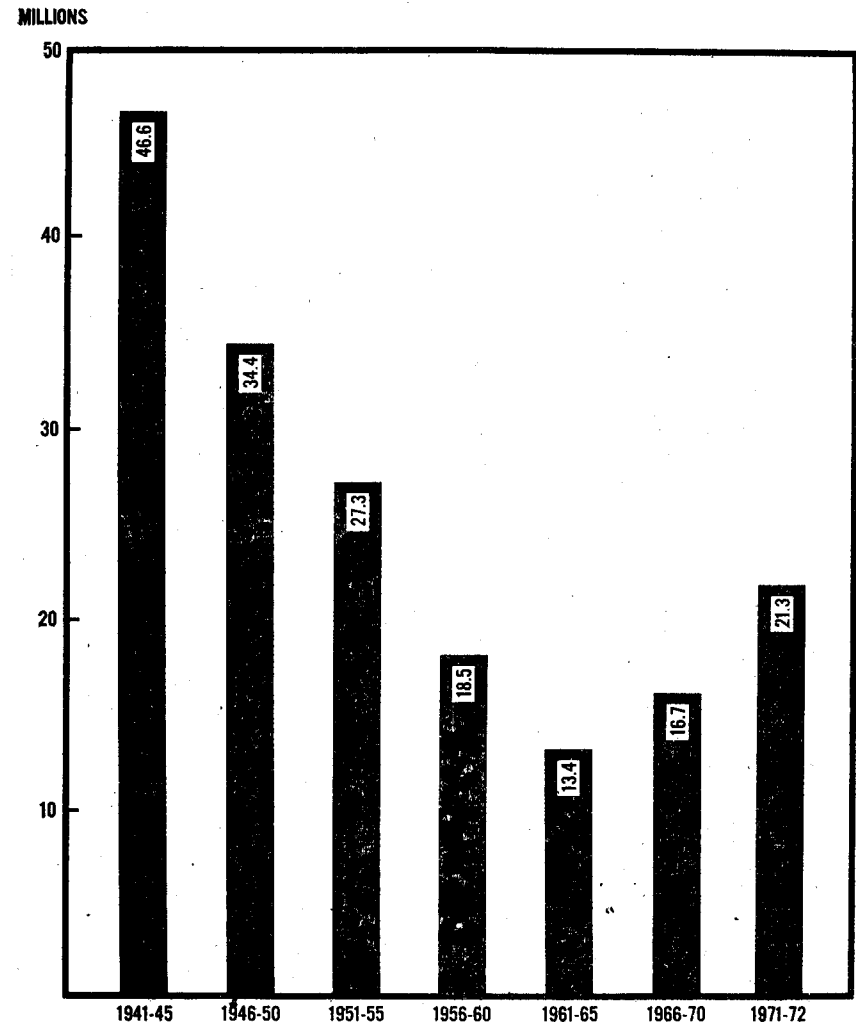
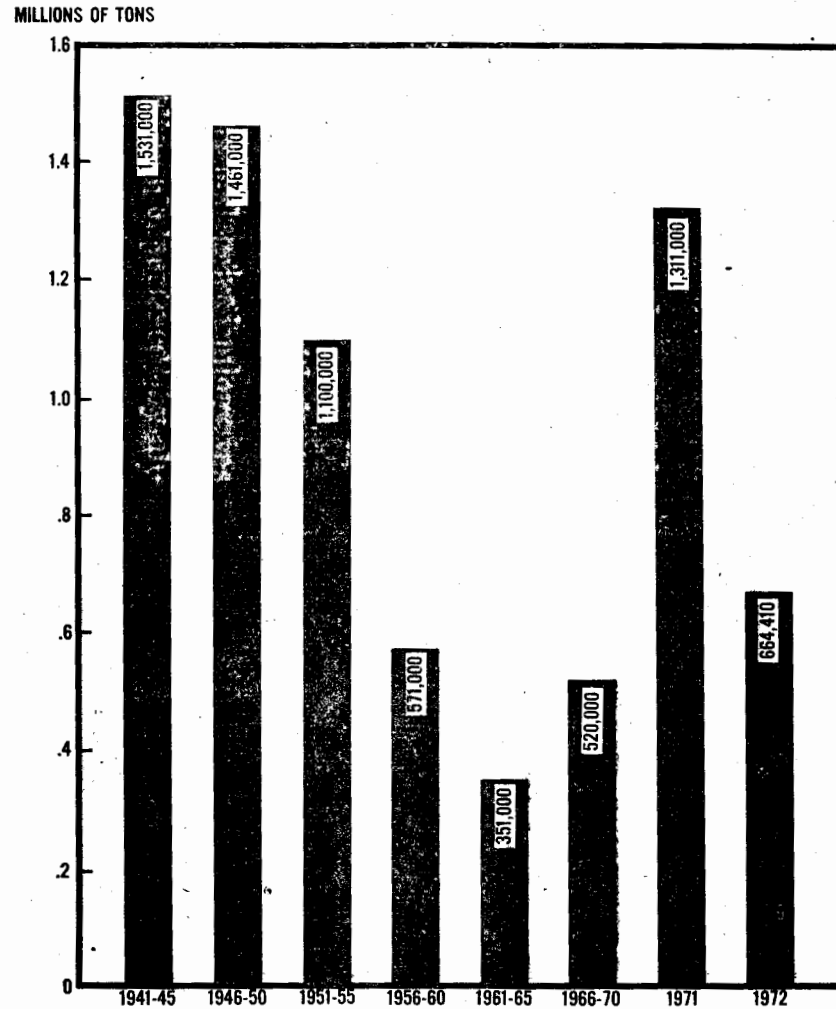


FIGURE 4

FIGURE 5

NEW RAIL LAID IN REPLACEMENT

ANNUAL AVERAGE FOR FIVE YEAR PERIOD



Source: Federal Railroad Administration.

The Association of American Railroads, in a statement before the Interstate Commerce Commission on April 22, 1974 (ex parte No. 305) in support of a 10% increase in freight rates and charges, stated that the industry needs to spend \$200 million a year to prevent further deterioration—not to “catch up on past deferrals”. The AAR estimates the “backlog of deferred maintenance” costs alone would cost the industry \$3 billion over a 10-year period (\$300 million a year).

Thus a half a billion a year price tag on overall maintenance is an indication of what the industry itself believes to be the price tag for bringing the track and roadbed up to or above federal standards. The Penn Central Trustees have said, however, in a request for waiver of federal track standards, that \$2.8 billion would be needed to clear up their deferred maintenance problems. The AAR in recent press releases cite studies indicating that “accumulated deferred track work alone may amount to as much as \$7 billion.”

The problem of deferred maintenance in regard to passenger travel by rail is of great concern. The National Transportation Safety Board, in testimony before the Committee, reviewed the most recent Amtrak accident in which 25 persons were injured when a passenger train derailed on April 30, 1974 at Winamac, Indiana. NTSB Chairman John Reed said his investigator pulled up parts of the track with his fingers. The train had been running late because of another trains derailment in Florida.

HAZARDOUS MATERIALS IN TRANSPORTATION

One of the most dramatic illustrations of the need for upgrading track and roadbed conditions in the American rail industry involves incidents where dangerous cargo is carried on unsafe track. (see Appendix).

Since January 1, 1973, there have been 124 rail accidents in which hazardous materials carried aboard the train were involved. Casualties included 7 persons killed and 159 injured. In 30 of the accidents, evacuation was necessary for employees in terminal or plant areas, or for persons in communities adjacent to the accident site. In 29 of the accidents, contamination by potentially lethal chemicals occurred. Fires occurred in 34 incidents, and in 92 of the accidents, the hazardous materials were spilled out of their containers.

Eight of the 124 accidents involved bombs, ammunition or other explosives. Most of the accidents involved chemicals such as chlorine, LP gas, hydrochloric acid, ammonia, sulfuric acid and crude cyanide. Some examples of recent accidents show the potential disasters involved.

Fifteen hundred persons had to be evacuated from Downingtown, Pa. when a Penn Central train released nitrating acid from tank cars because of equipment failure on Feb. 5, 1973. More than 2000 persons had to be evacuated from the Roseville, Calif., area when a Southern Pacific train carrying Defense Department bombs exploded, injuring 35 persons on April 28, 1973. A defect in track caused 900 persons to be evacuated near Herty, Texas when a Southern Pacific tank car loaded with vinyl chloride leaked on May 4, 1973. An equipment failure on a Penn Central train carrying vinyl chloride forced evacuation of some 4500 persons in Fort Wayne, Ind. on July 20, 1973. An equipment failure on an SLSF train near Marked Tree, Ark. on Oct. 10, 1973 forced an evacuation of 2500 persons when LP gas was spilled from a tank car. A track defect caused a Delaware & Hudson train carrying LP gas to explode near Oneonta, N.Y. on February 12, 1974, injuring 54 persons.

Twenty-seven per cent of the known causes of accidents involving hazardous materials in 1973 were defective tracks. And by May 1, 1974, two thirds of the accidents in the current year involved track defects.

Railroads are operating more train miles in 1974 than in any other year since 1967. They are operating heavier trains, but at the same time, they are operating—in the words of Federal Railroad Administrator John Ingram,—over tracks which have suffered “at least a decade of deferring maintenance”. Thus the potential for catastrophic disasters as a result of track-related accidents involving hazardous materials has accelerated over the past decade.

In the Northeast region of the country, where the majority of rail carriers are in bankruptcy and track maintenance is at the lowest level since the Depression, we are actually playing Russian Roulette with the public safety when trains carrying lethal chemicals and dangerous explosives pass over thousands of miles of substandard track. On some 6,900 miles of Penn Central track, for example, conditions cannot meet even the bare minimum federal track standards. Slow orders on much of this track prohibits a train from exceeding 10 miles per hour. This condition was described in subcommittee hearings as being worse than the Civil War era.

A mere glance at the statistics of rail freight in the Northeast area underscores the dangers involved. Over one million tons of freight pass over Penn Central tracks every 24 hours. The Penn Central is the leading carrier of chemicals in the United States, and serves 59 U.S. military installations. It also serves the most urban area in the nation, and more than half the manufacturing plants of this country are located in the region. Thus hazardous materials are passing hourly over poor tracks in the most heavily populated region of the country, literally exposing millions of people to potential danger without their even knowing the danger exists.

The low fatality and injury rate should not deter Congress and the public from concern over shipments of hazardous materials over rail. Congress recognized the potential danger involved when it passed the Hazardous Materials Transportation Control Act in 1970. But the potential for disaster has mushroomed since that time because of the industry maintenance program. Unfortunately, nothing in the testimony before the committee, nor in staff research, gives any indication that conditions will become better before they get worse.

A rail accident involving hazardous materials does not receive the public attention that similar accidents by airlines or ships receive. Therefore, the public is not aware of the potential danger, and many communities are not sufficiently prepared for emergency measures in the event of such tragedies.

RAIL SAFETY IN PERSPECTIVE

As a means of public transportation, rail passenger service still ranks as one of the safest. In 1973, 54,385 fatalities occurred on the highways. More people were killed riding bicycles than in rail passenger accidents. A total of 1,567 aircraft fatalities occurred compared to the 698 lives lost in rail passenger accidents. Furthermore, the shipment of hazardous materials on the highways in the context of the tonnage shipped by rail would not be a viable alternative, in safety considerations as well as economical reasons.

But the low fatality rate is by no means a yardstick to use on priorities in transportation safety. Rail passenger service in 1974 is increasing by a faster rate than any other mode of travel, due almost entirely to the energy crisis and the improvements in Amtrak service.

Section 5(b) of H.R. 15223 increases maximum civil and criminal penalties imposable upon violators of the regulations applicable to the transportation of hazardous materials by air from \$1,000 to \$2,000. The purpose of this section is to make these maximum penalties consistent with those that may be imposed on violators of regulations applicable to shipment and carriage in surface transportation.

Section 5(c) of H.R. 15223 amends the provisions of the Department of Transportation Act which delegated to the Federal Aviation Administration all authorities with respect to aviation safety transferred to the DOT by the Act. Section 6(c)(1) of the Department of Transportation Act is amended to exclude from the specific delegation the authority of the Secretary to issue regulations relating to the transportation, packaging, marking, or description of hazardous materials.

Authority to enforce such regulations with respect to air carriers and shippers by air remains delegated to FAA.

Sections 5 (d) and (e) amend Subparagraphs (A) and (B) of Subsection 6(f) of the Department of Transportation Act which delegated to the Federal Railroad Administration and the Federal Highway Administration all authorities over the transportation of hazardous materials. Section 6(f)(3) of the Department of Transportation Act is amended to exclude authority over hazardous materials from the specific delegation to the Federal Railroad Administration and the Federal Highway Administration of the DOT's authority over railroad and highway safety. The Secretary of DOT, is, in turn, required to delegate to the Federal Railroad Administration and the Federal Highway Administration all functions, powers, and duties of the Secretary pertaining to the enforcement of hazardous materials regulations applicable to railroad and highway shippers and carriers. Examples of the enforcement authority that the Secretary would be required to delegate include the authority under Section 304(d) of the Hazardous Materials Transportation Control Act to conduct investigations and require production of records.

The intent of the Committee in these provisions is to consolidate in the Department of Transportation the certain basic functions with respect to regulated hazardous materials, while the enforcement of the regulations pertaining to the shippers and carriers of hazardous materials remains delegated to the particular Administration within DOT having jurisdiction over the mode by which such materials move. The desirability of some sort of consolidation of authorities was articulated in a letter dated June 6, 1973 from Claude S. Brinegar, Secretary of Transportation, to the Speaker of the House:

The bill would also remove existing restraints upon the Secretary's authority to delegate the authority concerning hazardous materials within this Department . . . Present legislation decentralizes the authority for hazardous materials among officials of this Department, each of whom is responsible for only one mode of transportation. The bill would enable us to consolidate the functions with respect to hazardous materials within the Office of the Secretary to provide for prompt, single regulatory action.

The Committee emphasizes most emphatically that it has always demanded that the Federal Aviation Administration remain an independent regulatory entity. While the Committee has in the

present case, for purposes of public health and safety, transferred to the Secretary a portion of authority previously specifically delegated to the Federal Aviation Administration, the Committee adheres to its traditional view that the FAA should discharge its responsibilities relative to aviation safety without interference from DOT.

The Secretary may delegate such other functions, powers, and duties, as he deems appropriate to the Administrators of the Federal Railroad Administration and the Federal Highway Administration.

Section 5(e) preserves all orders, determinations, rules, regulations, permits, contracts, certificates, licenses, and privileges issued, made, granted, or allowed to become effective under any provision of law amended by this section which are in effect at the time Section 5 takes effect until modified, terminated, superseded, set aside, or repealed by the Secretary, by a court or by operation of law.

The section further provides that any proceeding relating to functions vested in the Secretary by this section pending at the time this section takes effect shall not be affected. The proceedings shall continue as if this section had not been enacted and orders issued in those proceedings shall continue in effect until modified, terminated, superseded or repealed by the Secretary, a court or by operation of law.

Finally, suits, and appeals and judgments involved therewith, commenced prior to the date this section takes effect shall be completed. No proceeding involving any agency or any officer in his official capacity as an officer of any agency shall abate because of the enactment of this section. Proceedings may be asserted by or against the United States or such official or agency as may be appropriate and, in any litigation pending when this section takes effect, the court may at any time on its own motion or that of any party, enter an order which will give effect to the provisions of this paragraph. The Secretary shall continue any suit in which any agency or officer thereof in his official capacity is a party before the date on which this section takes effect.

Section 6. (DOT Regulations)

This section provides for the Secretary of Transportation to issue regulations as soon as practicable after date of enactment of this Act governing the transportation by rail of explosives classified as "Explosives A."

The regulations will require the use of railroad cars with roller bearings and with either composition brake shoes or spark shields.

The Secretary may issue a regulation requiring the placement of spacer cars not containing hazardous materials between cars containing such explosives en route between origin and destination by rail, or the establishment of a reasonable linear distance between locations of such explosives.

The Secretary will issue regulations requiring the inspection of railroad car selection, and of the loading of each such car, to be used in the rail transportation of explosives and the periodic inspection of each such car en route between origin and destination in rail transportation service.

In each regulation issued by the Secretary pursuant to this section, he may, in his discretion, suspend in whole or in part, the application of the regulation whenever he finds that conditions of national necessity so warrant.

This section was passed by the Committee, drawing upon the preliminary studies of rail accidents involving transportation of Class A explosives by the National Transportation Safety Board. It reflects the Committee's deep concern with protecting communities and the employees of the carriers involved when such materials are being shipped by rail.

AGENCY COMMENTS

The Department of Transportation requested introduction of H.R. 14077, and testified in favor of its passage. The National Transportation Safety Board testified in favor of the passage of H.R. 14077. Comments on both H.R. 14076 and H.R. 14077 were solicited from the Department of Labor and the Department of Justice, however they had not responded by the date the Committee report was filed. H.R. 14932 was a clean bill reported by the Subcommittee, reflecting essentially H.R. 14076 with amendments, and H.R. 15223 is a clean bill which reflects the contents of H.R. 14932 with amendments. Therefore agency comments have not been received on H.R. 14932 or H.R. 15223 at the time the latter bill was reported to the House.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 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 italics, existing law in which no change is proposed is shown in roman):

SECTION 212 OF THE FEDERAL RAILROAD SAFETY ACT OF 1970

SEC. 212. AUTHORIZATION FOR APPROPRIATIONS.

(a) There **[is]** *are* authorized to be appropriated to carry out the provisions of this title not to exceed **[\$19,440,000]** *\$35,000,000* for the fiscal year ending June 30, **[1974]** *1975*.

(b) *Except as otherwise provided in subsection (c) of this section, amounts appropriated under subsection (a) shall be available for expenditure as follows:*

(1) *Not to exceed \$18,000,000 shall be available for expenditure by the Office of Safety, including salaries and expenses for up to three hundred and fifty safety inspectors and up to eighty clerical personnel.*

(2) *Not to exceed \$3,500,000 shall be available to carry out section 206(d) of this title, relating to Federal grants to carry out State safety programs.*

(3) *Not to exceed \$3,500,000 shall be available for salaries and expenses of the Federal Railroad Administration, not otherwise provided for in this title.*

(4) *Not to exceed \$10,000,000 shall be available for conducting research and development activities under this title.*

(c) *The aggregate of amounts obligated and expended in fiscal year 1975 for conducting research and development activities under this title shall not exceed the aggregate of amounts expended in such fiscal year for the investigation and enforcement of railroad safety rules, regulations, orders, and standards prescribed or in effect under this title.*

SECTION 2 OF THE ACT OF MAY 6, 1910

An Act Requiring common carriers engaged in interstate and foreign commerce to make full reports of all accidents to the Interstate Commerce Commission, and authorizing investigations thereof by said commission

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That it shall be the duty of the general manager, superintendent, or other proper officer of every common carrier engaged in interstate or foreign commerce by railroad to make to the Interstate Commerce Commission, at its office in Washington, District of Columbia, a monthly report, under oath, of all collisions, derailments, or other accidents resulting in death or injury to any person or damage to equipment or roadbed, arising from the operation of such railroad, which report shall state the nature and causes thereof and the circumstances connected therewith: *Provided,* That hereafter all said carriers shall be relieved from the duty of reporting accidents in their annual financial and operating reports made to the Commission.

SEC. 2. That any common carrier failing to make such report within thirty days after the end of any month shall be deemed guilty of a misdemeanor, and upon conviction thereof by a court of competent jurisdiction shall be punished by a fine of not more than one hundred dollars for each and every offense and for every day during which it shall fail to make such report after the time herein specified for making the same. *In any case in which the penalty provided for by the first sentence of this section is not imposed with respect to any common carrier for failure to make such report as required by this section, such common carrier shall be liable to a civil penalty, to be assessed by the Secretary of Transportation in an amount not less than \$250 nor more than \$2,500 for each violation, as the Secretary deems reasonable. Each day of violation shall constitute a separate offense. The civil penalty is to be recovered in a suit or suits to be brought by the Attorney General on behalf of the United States in the district court of the United States having jurisdiction in the locality where the violation occurred. The civil penalty may, prior to referral to the Attorney General, be compromised by the Secretary for any amount, but not for an amount less than the minimum provided in this section. The amount of a civil penalty, when finally determined or the amount agreed upon in compromise, may be deducted from any sums owing by the United States to the person charged. All penalties collected under this section shall be covered into the Treasury as miscellaneous receipts.*

SECTION 303 OF THE HAZARDOUS MATERIALS TRANSPORTATION CONTROL ACT OF 1970

SEC. 303. AUTHORIZATION FOR APPROPRIATIONS.

There [is] are authorized to be appropriated to carry out the provisions of this title not to exceed [\$1,200,000] \$3,000,000 for the fiscal year ending June 30, [1974] 1975.

SEC. 304. REGULATION OF HAZARDOUS MATERIALS TRANSPORTATION.

(a) As used in this section—

(1) The term "carrier" means any person engaged in the transportation of passengers or property by land, as a common, contract,

or private carrier, or freight forwarder as those terms are defined in sections 1(3), 203(14-17), and 402(a)(5) of the Interstate Commerce Act, as amended (49 U.S.C. 1(3), 303(14-17), and 1002(a)(5)), and the officers, agents, and employees of that person.

(2) The term "shipper" means any person who ships, offers for shipment, or packages for shipment any hazardous material, and the officers, agents, and employees of that person.

(3) The term "interstate and foreign commerce" means commerce between a point in one State and a point in another State, between points in the same State through another State or through a foreign country, between points in a foreign country or countries through the United States, and commerce between a point in the United States and a point in a foreign country or in a territory or possession of the United States, but only insofar as such commerce takes place in the United States.

(4) The term "United States" means all the States and the District of Columbia.

(5) The term "State" includes the District of Columbia.

(b) Whenever the Secretary finds that the transportation of a material in interstate and foreign commerce may pose a hazard to public health and safety, he may designate the material to be a hazardous material. The materials so designated shall include, but shall not be limited to, any explosive, radioactive material, etiologic agent, flammable liquid or solid, combustible liquid or solid, poison, oxidizing or corrosive material, or compressed gas.

(c) In order to assure safe transportation of hazardous materials in interstate and foreign commerce the Secretary may prescribe regulation applicable to—

(1) the manufacture, fabrication, marking, maintenance, reconditioning, repair, testing, and distribution of packages or containers which may be used for such transportation of hazardous materials; and

(2) any carrier who engages in interstate or foreign transportation and who transports hazardous materials and any shipper who transports hazardous materials by carrier.

The regulations may cover any aspect of the transportation of hazardous materials which the Secretary deems necessary or appropriate and shall include, but are not limited to, regulations covering the packing, handling, labeling, marking, placarding, and routing of hazardous materials.

(d) In carrying out this subsection, the Secretary may issue orders, conduct investigations, make reports, issue subpoenas, require production of documents, records, and properties, take depositions, prescribe record-keeping and reporting requirements, and conduct or contract for research, training, and development. The Secretary may authorize any officer, employee, or agent to enter upon, inspect, and examine, at reasonable times and in a reasonable manner, the records and properties of persons to the extent such records and properties relate to—

(1) the manufacture, fabrication, marking, maintenance, reconditioning, repair, testing, or distribution of packages or containers for use in the transportation of hazardous materials in interstate and foreign commerce; or

(2) the transportation or shipment of hazardous materials in interstate and foreign commerce.

Any such officer, employee, or agent shall, upon request, display proper credentials.

(e) (1) Whoever violates any regulation issued under subsection (c) (1) of this section shall be subject to a civil penalty of not more than \$10,000 for each violation.

(2) Whoever violates any regulation issued under subsection (c) (2) of this section shall be subject to a civil penalty of not more than \$2,000 for each violation. If the violation is a continuing one, each day of violation constitutes a separate offense.

(3) Such civil penalty may be recovered in an action brought by the Attorney General on behalf of the United States in the district court of the United States having jurisdiction in the locality where the violation occurred or, prior to referral to the Attorney General, such civil penalty may be compromised by the Secretary. The amount of penalty, when finally determined (or agreed upon in compromise), may be deducted from any sums owing by the United States to the person charged. All penalties collected under this subsection shall be covered into the Treasury as miscellaneous receipts.

(f) The United States district courts shall have jurisdiction, subject to rules 65 (a) and (b) of the Federal Rules of Civil Procedure, to restrain violations of regulations issued under this subsection, upon petition by the appropriate United States attorney or the Attorney General on behalf of the United States.

FEDERAL AVIATION ACT OF 1958

TITLE IX—PENALTIES

CIVIL PENALTIES

SAFETY, ECONOMIC, AND POSTAL OFFENSES

SEC. 901. (a)(1) Any person who violates (A) any provision of title III, IV, V, VI, VII, or XII of this Act, or any rule, regulation, or order issued thereunder, or under section 1002(i), or any term, condition, or limitation or any permit or certificate issued under title IV, or (B) any rule or regulation issued by the Postmaster General under this Act, shall be subject to a civil penalty of not to exceed \$1,000 for each such violation. If such violation is a continuing one, each day of such violation shall constitute a separate offense: *Provided*, That this subsection shall not apply to members of the Armed Forces of the United States, or those civilian employees of the Department of Defense who are subject to the provisions of the Uniform Code of Military Justice, while engaged in the performance of their official duties; and the appropriate military authorities shall be responsible for taking any necessary disciplinary action with respect thereto and for making to the Secretary of Transportation or Board, as appropriate, a timely report of any such action taken, except that, if the violation is of a rule, regulation, or order relating to the transportation of hazardous materials, the penalty may not exceed \$2,000 for each violation.

CRIMINAL PENALTIES

GENERAL

SEC. 902. * * *

TRANSPORTATION OF EXPLOSIVES AND OTHER DANGEROUS ARTICLES

(h)(1) Any person who knowingly delivers or causes to be delivered to an air carrier or to the operator of any civil aircraft for transportation in air commerce, or who causes the transportation in air commerce of, any shipment, baggage, or property, the transportation of which would be prohibited by any rule, regulation, or requirement prescribed by the Secretary of Transportation under title VI of this Act, relating to the transportation, packing, marking, or description of explosives or other dangerous articles shall, upon conviction thereof for each such offense, be subject to a fine of not more than **[\$1,000]** \$2,000 or to imprisonment not exceeding one year, or to both such fine and imprisonment: *Provided*, That when death or bodily injury of any person results from an offense punishable under this subsection, the person or persons convicted thereof shall, in lieu of the foregoing penalty, be subject to a fine of not more than \$10,000 or to imprisonment not exceeding ten years, or to both such fine and imprisonment.

(2) In the exercise of his authority under title VI of this Act, the Secretary of Transportation may provide by regulation for the application in whole or in part of the rules or regulations of the Interstate Commerce Commission (including future amendments and additions thereto) relating to the transportation, packing, marking, or description of explosives or other dangerous articles for surface transportation, to the shipment and carriage by air of such articles. Such applicability may be terminated by the Secretary of Transportation at any time. While so made applicable, any such rule or regulation, or part thereof, of the Interstate Commerce Commission shall for the purposes of this Act be deemed to be a regulation of the Secretary of Transportation prescribed under title VI.

DEPARTMENT OF TRANSPORTATION ACT

TRANSFERS TO DEPARTMENT

SEC. 6. * * *

(c)(1) There are hereby transferred to and vested in the Secretary all functions, powers, and duties of the Federal Aviation Agency, and of the Administrator and other officers and offices thereof, including the development and construction of a civil supersonic aircraft: *Provided, however*, That there are hereby transferred to the Federal Aviation Administrator, and it shall be his duty to exercise the functions powers, and duties of the Secretary pertaining to aviation safety (other than those authorizing the Secretary to issue regulations relating to the transportation, packaging, marking, or description of hazardous materials) as set forth in sections 306, 307, 308, 309, 312, 313, 314, 1101,

1105, and 1111, and titles VI, VII, IX, and XII of the Federal Aviation Act of 1958, as amended. In exercising these enumerated functions, powers and duties the Administrator shall be guided by the declaration of policy in section 103 of the Federal Aviation Act of 1958 as amended. Decisions of the Federal Aviation Administrator made pursuant to the exercise of the functions, powers, and duties enumerated in this subsection to be exercised by the Administrator shall be administratively final, and appeals as authorized by law or this Act shall be taken directly to the National Transportation Safety Board or to the courts, as appropriate.

* * * * *

(e) There are hereby transferred to and vested in the Secretary all functions, powers, and duties of the Interstate Commerce Commission, and of the Chairman, members, officers, and offices thereof, under—

(1) the following laws relating generally to safety appliances and equipment on railroad engines and cars, and protection of employees and travelers:

(A) The Act of March 2, 1893, as amended (27 Stat. 531; 45 U.S.C. 1 et seq.).

(B) The Act of March 2, 1903, as amended (32 Stat. 943; 45 U.S.C. 8 et seq.).

(C) The Act of April 14, 1910, as amended (36 Stat. 298; 45 U.S.C. 11 et seq.).

(D) The Act of May 30, 1908, as amended (35 Stat. 476; 45 U.S.C. 17 et seq.).

(E) The Act of February 17, 1911, as amended (36 Stat. 913; 45 U.S.C. 22 et seq.).

(F) The Act of March 4, 1915, as amended (38 Stat. 1192; 45 U.S.C. 30).

(G) Reorganization Plan No. 3 of 1965 (79 Stat. 1320).

(H) Joint Resolution of June 30, 1906, as amended (34 Stat. 838; 45 U.S.C. 35).

(I) The Act of May 27, 1908, as amended (35 Stat. 325; 45 U.S.C. 36 et seq.).

(J) The Act of March 4, 1909, as amended (35 Stat. 965; 45 U.S.C. 37).

(K) The Act of May 6, 1910, as amended (36 Stat. 350; 45 U.S.C. 38 et seq.).

(2) the following law relating generally to hours of service of employees: The Act of March 4, 1907, as amended (34 Stat. 1415; 45 U.S.C. 61 et seq.).

(3) the following law relating generally to medals for heroism: The Act of February 23, 1905, as amended (33 Stat. 743; 49 U.S.C. 1201 et seq.).

(4) the following provisions of law relating generally to explosives and other dangerous articles: Sections 831-835 of title 18, United States Code, as amended.

(5) the following laws relating generally to standard time zones and daylight saving time:

(A) The Act of March 19, 1918, as amended (40 Stat. 450; 15 U.S.C. 261 et seq.).

(B) The Act of March 4, 1921, as amended (41 Stat. 1446; 15 U.S.C. 265).

(C) The Uniform Time Act of 1966, as amended (80 Stat. 107).

(6) the following provisions of the Interstate Commerce Act, as amended—

(A) relating generally to safety appliances methods and systems: Section 25 (49 U.S.C. 26).

(B) relating generally to investigation of motor vehicle sizes, weights, and service of employees: Section 226 (49 U.S.C. 325).

(C) relating generally to qualifications and maximum hours of service of employees and safety of operation and equipment: Sections 204(a) (1) and (2), to the extent that they relate to qualifications and maximum hours of service of employees and safety of operation and equipment; and sections 204(a) (3), (3a), and (5) (49 U.S.C. 304).

(D) to the extent they relate to private carriers of property by motor vehicle and carriers of migrant workers by motor vehicle other than contract carriers: Sections 221(a), 221(c), and 224 (49 U.S.C. 321 et seq.).

(f)(1) * * *

(3)(A) The Federal Railroad Administrator shall carry out the functions, powers, and duties of the Secretary pertaining to railroad and pipeline safety as set forth in the statutes transferred to the Secretary by subsection (e) of this section (*other than subsection (e)(4)*). *The Secretary shall delegate to the Federal Railroad Administrator all functions, powers, and duties of the Secretary with respect to the enforcement of regulations pertaining to the transportation of explosives and other dangerous articles; and may delegate to such Administrator such other functions, powers, and duties of the Secretary pertaining to the transportation of explosives and other dangerous articles as the Secretary may deem appropriate.*

(B) The Federal Highway Administrator shall carry out the functions, powers, and duties of the Secretary pertaining to motor carrier safety as set forth in the statutes transferred to the Secretary by subsection (e) of this section (*other than subsection (e)(4)*). *The Secretary shall delegate to the Federal Highway Administrator all functions, powers, and duties of the Secretary with respect to the enforcement of regulations pertaining to the transportation of explosives and other dangerous articles; and may delegate to such Administrator such other functions, powers, and duties of the Secretary pertaining to the transportation of explosives and other dangerous articles as the Secretary may deem appropriate.*

* * * * *

APPENDIX

SUMMARY OF RAILROAD ACCIDENTS INVOLVING HAZARDOUS MATERIALS 1

Date	Railroad	Location	Commodity	Type of car	Car and contents				Persons			
					Fire	Explosion	Contamination	Release of product	Killed	Injured	Evacuation	No. evacuated
Dec. 12, 1972	Louisville & Nashville	La Follette, Tenn.	Toluene	Tank	No	No	No	Yes	0	0	Yes	1 family.
Dec. 13, 1972	Baltimore & Ohio	Iuka, Ill.	Naptha	Tank	Yes	No	No	No	0	0	Yes	7.
Dec. 21, 1972	do	do	do	Tank	Yes	No	No	No	0	0	Yes	18.
	Westvaco Corp. (Western Md. Ry.)	Luke, Md.	Chlorine	Tank	No	No	No	Yes	0	0	Yes	plant
Dec. 7, 1972	Southern Pacific	Tucson, Ariz.	Methyl methacrylate	Tank	No	No	No	Yes	0	0	No	No.
Dec. 27, 1972	Penn Central	Russell, Mass.	Vinyl chloride	Tk	No	No	No	No	0	0	No	No.
Do	do	do	Vinyl chloride	Tk	No	No	No	No	0	0	No	No.
Dec. 28, 1972	Santa Fe	Melvern, Kans.	LP gas, etc.	Tk	Yes	No	No	No	0	0	No	No.
Dec. 16, 1972	Santa Fe	Hughson, Calif.	Bombs	B/C	Yes	No	No	No	0	0	No	No.
Dec. 13, 1972	Penn Central	London, Ohio	Liquid ethylene	Tank	No	No	No	No	0	0	No	No.
Dec. 29, 1972	Belt Rwy of Chgo.	Clearing, Ill.	Toluol.	Tank	No	No	Yes	Yes	0	0	No	No.
Dec. 21, 1972	Penn Central	Elkhart, Ind.	LP gas	Tank	No	No	No	Yes	0	0	No	No.
Jan. 4, 1973	Erie-Lackawanna	Harrod, Ohio	Pentane	Tank	Yes	No	No	Yes	1	0	Yes	No.
Jan. 7, 1973	Kansas City Southern	Page, Okla.	Ethylene oxide	Tank	Yes	No	No	Yes	0	0	Yes	31.
Jan. 6, 1973	Norfolk, Franklin & Da wille.	Broadnax, Va.	Sulfuric acid	Tank	No	No	No	No	0	0	No	No.
Jan. 8, 1973	Missouri Pacific	AMA (Luling), La.	Hexamethylamine Diabromine.	Tank	No	No	Yes	Yes	0	0	No	No.
Jan. 9, 1973	Southern Pacific	Berwick, La.	Chlorine									
Jan. 12, 1973	Frisco-SLSF	Oklahoma City, Okla.	Methanol	Tank	No	No	No	Yes	0	0	No	No.
Jan. 8, 1973	CRI & P	Spartand, Ill.	Ethyl alcohol	Tank	No	No	No	Yes	0	0	No	No.
Jan. 22, 1973	Seaboard Coast Line	Powder Springs, Ga.	LP gas	Tank	Yes	Yes	No	Yes	0	0	No	No.
Jan. 21, 1973	Penn Central	Selma, Ind.	Methyl Methacrylate	Tank	No	No	No	Yes	0	0	No	No.
Do	do	do	Vinyl Chloride	Tank	No	No	No	No	0	0	No	No.
Jan. 15, 1973	Burlington Northern	Palmira, Mo.	LP gas	Tank	No	No	No	No	0	0	No	No.
Jan. 18, 1973	O. & I.—B. & O	Detroit, Mich.	Chlorotoluene									
Jan. 22, 1973	C. Rock Island & Pacific	Stuttgart, Ark.			No	No	No	Yes	0	0	No	No.
Jan. 25, 1973	Louisville & Nashville	Stites, Ky.	Acetone		No	No	No	Yes	0	0	No	No.
Jan. 30, 1973	Union Pacific	Topeka, Kans.	Anhydrous ammonia	Tank	No	No	No	No	0	0	No	No.
Feb. 5, 1973	Penn Central	Donnington, Pa.	Nitrating acid	Tank	No	No	Yes	Yes	0	0	Yes	1,500.
Jan. 31, 1973	Seaboard Coast Line	Hilliard, Fla.	Ammonium nitrate	Box car	Yes	No	No	No	0	0	No	No.
Feb. 1, 1973	Chicago Southern & Eastern Illinois	Chicago, Ill.	Ethylene	Tank	Yes	No	No	No	0	1	No	No.
Feb. 13, 1973	International Paper Co.	No. Tonawanda, N.Y.	Chlorine		No	No	No	Yes	0	17	No	No.
Feb. 8, 1973	Southern Pacific	San Antonio, Tex.	To FC trailer	TOFC	No	No	No	No	0	0	No	No.
Feb. 18, 1973	SLSF	Oakwood, Ala.	Acrylonitrile	Tank	Yes	No	No	Yes	0	0	Yes	No.
Feb. 20, 1973	Texas & Pacific	Pecos, Tex.	Vinyl chloride	Tank	No	No	No	No	0	0	No	No.
Feb. 21, 1973	T. & P.	Taft, La.	Hexamethylene diamine	Tank	Yes	No	No	Yes	3	4	No	No.
Do	Chicago Rock Island & Pacific	Dubach, La.	Mapp gas (LPG)	Tank	No	No	No	Yes	0	0	Yes	10.
Feb. 24, 1973	CRI & P	Kremlin, Okla.	Methyl alcohol	Tank	Yes	No	No	Yes	0	1	No	No.
March 5, 1973	Duluth, Winnipeg & Pacific	Duluth, Minn.	LP gas (propane)	Tank	No	No	No	Yes	0	0	No	No.
March 10, 1973	Seaboard coastline	Bogart, Ga.	Butylamine, propylene	Tank	Yes	No	No	No	0	0	No	No.
Do	Chessie system	Flint, Mich.	Toluene	Tank	No	No	Yes	Yes	0	0	No	No.
March 8, 1973	ATSF	Kansas City, Kan.	Thionyl chloride	Tank	No	No	No	Yes	0	0	No	No.
March 17, 1973	BN	St. Helens, Oreg.	Chlorine	Tank	No	No	Yes	Yes	0	19	No	No.
March 19, 1973	N. & W.	Longview, Pa.	Vinyl Chloride	Tank	No	No	No	No	0	0	No	No.
March 5, 1973	SCL	Oglesby, Ga.	Caustic soda	Tank	No	No	Yes	Yes	0	0	No	No.
March 14, 1973	ATSF	Melvern, Kan.	LP gas	Tank	No	No	No	No	0	0	No	No.
March 26, 1973	Illinois Central Gulf	Louisville, Ky.	Acrylonitrile	Tank	No	No	No	No	0	0	Yes	50.
March 31, 1973	Clinchfield	Kingsport, Tenn.	Hydrochloric acid	Tank	No	No	No	Yes	0	0	No	No.
Do	Lou & Nashville	Chipley, Fla.	Anhydrous Ammonia								Yes	No.
April 2, 1973	Missouri Pacific	Greyburg, Tex.	Chlorine	Tank	No	No	No	No	0	0	No	No.
Do	Southern	Lovick, Ala.	Anhydrous ammonia	Tank	No	No	No	No	0	0	Yes	No.
April 4, 1973	do	Anniston, Ala.	White phosphorus	Tank	No	No	No	No	0	0	No	No.
April 13, 1973	Union Pacific	Denver Colo.	LP gas	Tank	No	No	No	No	0	0	No	No.
April 23, 1973	Southern Pacific	McNary, Tex.	Methyl alcohol	Tank	Yes	No	No	Yes	0	0	No	No.
Do	Seaboard Coast Line	Moore, S.C.	Xylol	Tank	Yes	No	No	Yes	0	0	No	No.
Mar. 25, 1973	Southern Pacific	Harlem, Texas	Methyl alcohol	Tank	No	No	No	Yes	0	0	No	No.
April 28, 1973	I.C.G.	Viola, Ky.	Hydrofluoric acid	Tank	No	No	No	No	0	0	Yes	30.
Do	Southern Pacific	Roseville, Calif.	Explosive bombs		Yes	Yes	No	Yes	0	35	Yes	2,000.
May 4, 1973	do	Herty, Texas	Vinyl chloride	Tank	No	No	No	Yes	0	0	Yes	900.
May 3, 1973	SCL—USHNT	Leland, N.C.	Class A bombs	B/C	Yes	No	No	No	0	0	No	No.
May 14, 1973	LN	???????????????? Ky	Sulfur chloride	Tank	No	No	No	Yes	0	2	No	No.
May 3, 1973	ICG	Trimble, Tenn.	Fertilizer sol.	Tank	No	No	No	Yes	0	0	No	No.
June 10, 1973	SCL	Leeds, S.C.	Bombs	Box	No	No	No	No	0	0	No	No.
April 16, 1973	PC	Pittsburgh, Pa.	Hydrochloric acid	Tank	No	No	No	Yes	0	0	No	No.
May 3, 1973	Southern Pacific	Lufkin, Tex.	Vinyl chloride	Tank	No	No	No	Yes	0	0	Yes	300.
May 13, 1973	PC	Cleveland, Ohio	Petroleum naptha	Tank	No	No	No	Yes	0	0	No	No.
May 23, 1973	PC	Mentor, Ohio	Chlorosulfank acid	Tank	No	No	No	Yes	0	0	Yes	500.
June 9, 1973	SLSF	Denison, Tex.	Tolvol.	Tank	Yes	No	No	Yes	0	0	No	No.
Do	Louisiana & Arkansas Ry.	Greenville, Tex.	155 mm. proj. (class 3)	Box	No	No	No	Yes	0	0	No	No.
July 9, 1973	P.C.R.A.	Woodard, N.Y.	TNT	Box								
May	FEC	Fl. Lauderdale, Fla.										
May 9, 1973	SLSF	Tenbrook, Mo.	Anhydrous ammonia	T/C	No	No	No	Yes	0	0	No	No.
May 13, 1973	EL	Deposit, N.Y.	do	T/C								
May 14, 1973	B. & O.	Brunswick, Md.	LP gas	T/C								
May 19, 1973	SCL	Rockmart, Ga.	Adrylonitrile	T/C	Yes	No	No	Yes	0	0	No	No.
May 1973	Southern Pacific	Benson, Ariz.	Class A bombs									
June 3, 1973	I.C.G.	Louisville, Ky.	Butadiene	T/C	No	No	No	No	0	0	No	No.
June 7, 1973	W.M. Ry.	Cumberland, Md.	Ethyl chloride	T/C	No	No	No	No	0	0	No	No.
June 8, 1973	BN	Foxboro, Wis.	Gasoline	T/C	No	No	Yes	Yes	0	0	No	No.
June 9, 1973	I.C.G.	Knoxville, Miss.	Benzol	T/C	Yes	No	No	Yes	0	0	No	No.
June 20, 1973	I.C.G.	Solsburg, Ind.	Sulfuric acid	T/C	No	No	Yes	Yes	0	0	No	No.
June 28, 1973	C. & O. R.R.	Lake Odessa, Mich.	Anhydrous ammonia	T/C	No	No	No	No	0	0	Yes	No.
Do	ATSF	Joliet, Ill.	High explosives	B/C	No	No	No	No	0	0	No	No.
July 5, 1973	Reading	Bethlehem, Pa.	Vinyl chloride	T/C	No	No	No	No	0	0	No	No.
July 8, 1973	SCL	M.O.T., Sunny Point, N.C.	Class A explosives	B/C	No	No	No	No	0	0	No	No.

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See footnotes at end of table, p. 34.

SUMMARY OF RAILROAD ACCIDENTS INVOLVING HAZARDOUS MATERIALS—Continued

Date	Railroad	Location	Commodity	Type of car	Car and contents				Persons			
					Fire	Explosion	Contamination	Release of product	Killed	Injured	Evacuation	No. evacuated
July 20, 1973	PC	Fort Wayne, Ind	Vinyl chloride	T/C	Yes	Yes	No	Yes	0	0	Yes	4,500
July 13, 1973	EL	Wilmington, Ohio	Propylene oxide	T/C	No	No	No	No	0	0	Yes	200.
July 17, 1973	B. & O	Willard, Ohio	Chlorine	T/C	No	No	No	No	0	0	No	No.
July 23, 1973	PC	Indianapolis, Ind	Caustic soda	T/C	No	No	No	Yes	0	0		
July 27, 1973	SP	Kosse, Tex	LP gas	T/C	No	No	No	Yes	0	0		
Aug. 21, 1973	Union Pacific	Cortland, Nebr	Anhydrous ammonia	T/C	No	No	Yes	Yes	0	0		
Aug. 23, 1973	KCS	Bossier City, Blenheim, La	Butadiene	T/C	No	No	No	No	0	0		
Aug. 30, 1973	MP	San Antonio, Tex	Sulfur chloride	MR	No	Yes	Yes	Yes	0	0		
Sept. 1, 1973	D.R.G. & W	Woodside, Utah	Explosives ;,A"	B/C	No	No	No	No	0	0		
Sept. 3, 1973	MP	Murray, Nebr	Gasoline	T/C	Yes	No	No	Yes	0	0	Yes	20
Sept. 5, 1973	ICG	Memphis, Tenn (Sarah, Miss.)	LP gas	T/C	Yes	No	Yes	Yes	0	2		
Sept. 5, 1973	PC (private siding)	Greensburg, Pa	Chlorine	T/C	No	No	Yes	Yes	0	20	Yes	20
Sept. 18, 1973	B. & O.R.R	Pennsboro, W. Va.	Vinyl chloride	T/C	No	No	No	No	0	0		
Sept. 20, 1973	Southern Pacific	Alpine, Tex	Methyl methacrylate	T/C	No	No	No	No	0	0		
Sept. 23, 1973	CRIP	Fairbury, Nebr	Anhydrous ammonia	T/C	No	No	No	No	0	0		
Sept. 25, 1973	ICG	Philipp, Miss	Vinyl chloride	T/C	No	No	No	Yes	0	0	Yes	
Sept. 30, 1973	SOOL	Allenton, Wis										
Oct. 10, 1973	SLSF	Marked Tree, Ark	LP gas	T/C	Yes	No	Yes	Yes	0	0	Yes	2,500.
Oct. 11, 1973	SOOL	Bemidji, Minn	Chlorine	T/C	No	No	No	No	0	0		
Oct. 14, 1973	ATSP	Lamar, Colo	Sodium chlorate	T/C	No	No	No	Yes	0	5		
Oct. 15, 1973	WM	Hagerstown, Md	Alkaline caustic	T/C	No	No	No	No				
Oct. 16, 1973	SP	Sinton, Tex	Chlorine	T/C	No	No	No	No				
Aug. 3, 1973	ATSP	Merrick, Kans	Alcohol	T/C	No	No	No	Yes	0	0		
July 6, 1973	ATSF	Chanute, Kans	Acetic anhydride	T/C	No	No	Yes	Yes	0	0		
July 31, 1973	KCS	Daratus, La	Caustic soda	T/C	No	No	Yes	Yes	0	0		
Oct. 30, 1973	ATSF	Hackberry, Ariz	Nitrocellulose		Yes	No		Yes	0	0	No	0.
Do	C. & O	Grant, Ky	Acrylonitrile	Tank	Yes	No		Yes	0	0	Yes	10.
Oct. 24, 1973	SCL	Midway, Fla	Anhydrous ammonia	Tank	No	No	Yes	Yes	0	0		
Oct. 30, 1973	SP	Carlson, Tex	Spent sulfuric	Tank	No	No	No	No	0	0		
Nov. 2, 1973	PC	Hamlet, Ind	Couvene Hydroperoxide	Tank	No	No	No	No	0	0		
Nov. 6, 1973	SP	Ventura, Calif	LP gas	Tank	No	No	Yes	Yes	2	0		
Nov. 10, 1973	B. & O.	Newton Falls, Ohio	Ethyl alcohol	Tank	No	No	Yes	Yes	0	0		
Nov. 11, 1973	UP	Topoka, Kans	White phosphorus	Tank	No	No	No	No	0	0		
Nov. 12, 1973	KCS	Delay, Mo	Aniline oil	Tanks	No	No			0	0		
Nov. 13, 1973	CRIP	Columbus Junction, Iowa	Hydrochloric acid	Tank	No	No	Yes	Yes	0	0		
Nov. 16, 1973	Orchard Supply Co. (SP)	Yountville, Calif	Carbon bisulfide	Tank	Yes		Yes	Yes	0	1		
Nov. 31, 1973	Sool	Minot, N.D	Methanol	Tank	No	No		Yes	0	0		
Nov. 29, 1973	C. & O./B. & O. (L. & N.)	McKee, Ky	Anhydrous ammonia						0	0		
Nov. 30, 1973	SSW	East St. Louis, Ill	Class A and B explosives.	B/C	No	No	No		0	0		
Dec. 6, 1973	Sool	Fesseden, N.D	LP gas	Tanks	No	No	No	No	0	0		
Do	BN	Craig, Mont.	do	Tank	No	No	No	No	0	0		
Do	CRIP	Manley, Iowa	do	Tank	No	No	No	No	0	0		
Dec. 7, 1973	PC	Perryville, Md	Vinyl chloride	Tanks	No	No	No	No	0	0		
Dec. 6, 1973	SP	Benicia, Calif	LP gas	T/C	No	No	No	Yes	0	0		
Dec. 8, 1973	CRIP	Ioia, Tex	Anti-knock compound	T/C	No	No	No	No	0	0	Yes	25.
Dec. 9, 1973	SP	Oxnard, Calif	Primers, class C	Box car	Yes	Yes	No	Yes	0	0		
Do	SLSF	Winslow, Ark (Clary)	Anhydrous ammonia	T/C	No	No	No	Yes				
Dec. 12, 1973	B.O	Sunnyside, Md	Methyl ethylketons	T/C	No	No	No	No			0	No.
Dec. 14, 1973	BN	Madras, Ore	LP gas									
Dec. 31, 1973	ICG	Louisville, Ky	Acrylonitrile	T/C	No	No	No	Slight leak.	0	0	No	
Dec. 15, 1973	ATSF	Borger, Tex	Butadiene	T/C	Yes	Yes	Yes	Yes	1	7		
Jan. 7, 1974	MP	Ardeola, Mo	Vinyl chloride	T/C	No	No	No	No	0	0	No	
Dec. 23, 1973	T.P. & W	Reed City, Ill	Acrylonitrile	T/C	No	No	Yes	Yes	0	0	Yes	4.
Dec. 31, 1974	SOU	Lexington, S.C	Sulfuric acid	T/C	No	No	No	Yes	0	0		
Jan. 14, 1974	LV	White Haven, Pa	Chlorine	T/C	No	No	No	Yes	0	0	Yes	No.
Do	C & S	Horse Creek, Wyo	Vinyl acetate	T/C	No	No	Yes	Yes	0	0	No	
Do			Phenol	T/C	No	No	Yes	Yes	0	0	No	
Do	ATSF	McGregor, Tex	Vinyl chloride	T/C	Yes	Yes	Yes	Yes	0	0	Yes	2560
Jan. 18, 1974	SOOL	Hewitt, Wis	Caustic soda	T/C	No	No	Yes	Yes	0	0	No	
Jan. 26, 1974	ICG	Crawford, Miss	Vinyl chloride	T/C	Yes	Yes		Yes	0	0		
Feb. 8, 1974	ICG	Diana, Ill	Hydrogen peroxide				Yes	Yes				
Feb. 12, 1974	Port Time, R.R	Deer Park (Houston) Tex	Ethyl acrylate (Methyl Methacrylate Monomer)	T/C					0	0		
Do	D. & H.	Oneonta (Emmons) N.Y	LP gas	T/C						54		
Feb. 8, 1974	PC	St. Jacob, Ill	VCM	T/C	Yes	Yes	Yes	Yes				
Mar. 9, 1974	PC	Claybank, Ohio	VCM	T/C								
Mar. 10, 1974	ATSF	Louisville, Ky	Butadiem					Yes				
Mar. 12, 1974	PC	Philadelphia, Pa	VCM	T/C				No				
Mar. 14, 1974	SP	West Dayton, Tex	Vinyl acetate	T/C				Yes				
Mar. 19, 1974	PC	Terri Haute, Ind	VCM	T/C	No	No	No	Yes				500
Feb. 16, 1974	SP	Colmesweil, Tex	LP gas	T/C	Yes							
Mar. 20, 1974	PC	Columbus, Ohio	Liquid ethylene	T/C	Yes	No					Yes	
Mar. 5, 1974	Reading	Philadelphia, Pa	LP gas	T/C				Yes				
Do	HBT	Houston, Tex	Styranchinen	T/C	Yes	Yes	No	Yes			No	
Feb. 12, 1974	B. & O., C. & O	Detroit, Mich	Chlorine	T/C	No	No	No	No				
Mar. 9, 1974	BN	Blum Pit-Silesia, Mont	LP gas	T/C	No	No		Yes				
Mar. 29, 1974	SCL	Hamlet, N.C	RAM	F/C								
Mar. 30, 1974	ATSF	Fort Worth, Tex	N-butyl alcohol	T/C				Yes				
Feb. 25, 1974	ICG	(near) Diana, Ill	Hexane, etc	T/C	Yes	Yes	Yes	Yes				
Apr. 14, 1974	PC	Philadelphia, Pa	Vinyl chloride	T/C	No	No	Yes	Yes				
May 1, 1974	CEI	Chicago, Ill	Ethylene chloride	T/C				Yes			No	
Apr. 17, 1974	N. & W	Fort Wayne, Ind	Anhy Ammonia	T/C	No	No	No	Yes			No	

See footnotes at end of table, p. 34.

APPENDIX—Continued

SUMMARY OF RAILROAD ACCIDENTS INVOLVING HAZARDOUS MATERIALS 1—Continued

Date	Railroad	Location	Commodity	Type of car	Car and contents				Persons			
					Fire	Explosion	Contamination	Release of product	Killed	Injured	Evacuation	No. evacuated
Apr. 13, 1974	B.-O. R.R.	Clarksburg, W. Va.	Alcohol	T/C	Yes	No	No	Yes		4	Yes	3 families
Apr. 27, 1974	C. & O.—B. & O.	Eagle, N.Y.	Gasoline	Tank	No	No	No	Yes			No	
Apr. 19, 1974	C.R.I. & P.	Des Moines, Iowa	Crude cyanide	Bop.	No	No	No	Yes			No	
Mar. 2, 1974	B.N. R.R.	East Bridger, Mont.	Corrosive liquid	T/C	No	No						
Apr. 13, 1974	B. & O. R.R.	Eighty-four, Pa.	Muriatic acid	T/C	No	No		Yes			No	
			LP gas	T/C	No	No		No			No	
			Caustic soda	T/C	No	No		Yes			No	
Apr. 22, 1974	C.R.I. & P.	Catesville, Ark.	Allyl alcohol	T/C	No	No		No			No	
Do.	C.R.I. & P.	Little Rock, Ark.	Chlorine compressed gas	T/C	No	No		No			No	
Apr. 24, 1974	Port Terminal R.R.	Pasadena, Tex.	F-L methyl methacrylate	T/C	No	No		No			No	
May 1, 1974	C. & E. Illinois R.R.	Parnell, Chicago, Ill.	VCM	T/C								
			Methylene chloride	T/C								
			Methyl chloride	T/C								
			Ethylene oxide	T/C								

¹ The records maintained by the Hazardous Materials Branch include some, but not all, of the incidents reported by rail carriers. All incident reports are maintained on a separate file, the more serious incidents are recorded in the accident file.

The Department's Hazardous Materials Regulations, 49 CFR 171.15 and 171.16, require a carrier that transports hazardous materials (including loading, unloading and temporary storage) to give notice to the Department of incidents in which as a direct result of hazardous materials: a person is killed; a person receives injuries requiring hospitalization; property damage exceeds \$50,000; fire breakage or suspected radioactive contamination occurs involving shipments of radioactive materials

and/or etiologic agents; or a situation exists of such a nature that, in the judgment of the carrier a continuing danger to life exists at the scene of the incident.

If an incident meets any of the above criteria, such incidents must be reported by telephone at the earliest possible moment. In addition, any such incident must be reported in the proper form within 15 days following the incident.

A carrier must also report within 15 days, any unintentional releases of hazardous materials from a package (including a tank).

DECEMBER 13, 1974.—Ordered to be printed

Mr. STAGGERS, from the committee of conference,
submitted the following

CONFERENCE REPORT

[To accompany H.R. 15223]

The committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 15223) to amend the Federal Railroad Safety Act of 1970 and the Hazardous Materials Transportation Control Act of 1970 to authorize additional appropriations, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendment of the Senate to the text of the House bill and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the Senate amendment insert the following:

That this Act may be cited as the "Transportation Safety Act of 1974".

TITLE I—HAZARDOUS MATERIALS

SHORT TITLE

SEC. 101. This title may be cited as the "Hazardous Materials Transportation Act".

DECLARATION OF POLICY

SEC. 102. It is declared to be the policy of Congress in this title to improve the regulatory and enforcement authority of the Secretary of Transportation to protect the Nation adequately against the risks to life and property which are inherent in the transportation of hazardous materials in commerce.

DEFINITIONS

SEC. 103. As used in this title, the term—

(1) "commerce" means trade, traffic, commerce, or transportation, within the jurisdiction of the United States, (A) between a place in a State and any place outside of such State, or (B) which affects trade, traffic, commerce, or transportation described in clause (A);

(2) "hazardous material" means a substance or material in a quantity and form which may pose an unreasonable risk to health and safety or property when transported in commerce;

(3) "Secretary" means the Secretary of Transportation, or his delegate;

(4) "serious harm" means death, serious illness, or severe personal injury,

(5) "State" means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, or Guam;

(6) "transports" or "transportation" means any movement of property by any mode, and any loading, unloading, or storage incidental thereto; and

(7) "United States" means all of the States.

DESIGNATION OF HAZARDOUS MATERIALS

SEC. 104. Upon a finding by the Secretary, in his discretion, that the transportation of a particular quantity and form of material in commerce may pose an unreasonable risk to health and safety or property, he shall designate such quantity and form of material or group or class of such materials as a hazardous material. The materials so designated may include, but are not limited to, explosives, radioactive materials, etiologic agents, flammable liquids or solids, combustible liquids or solids, poisons, oxidizing or corrosive materials, and compressed gases.

REGULATIONS GOVERNING TRANSPORTATION OF HAZARDOUS MATERIALS

SEC. 105. (a) GENERAL.—The Secretary may issue, in accordance with the provisions of section 553 of title 5, United States Code, including an opportunity for informal oral presentation, regulations for the safe transportation in commerce of hazardous materials. Such regulations shall be applicable to any person who transports, or causes to be transported or shipped, a hazardous material, or who manufactures, fabricates, marks, maintains, reconditions, repairs, or tests a package or container which is represented, marked, certified, or sold by such person for use in the transportation in commerce of certain hazardous materials. Such regulations may govern any safety aspect of the transportation of hazardous materials which the Secretary deems necessary or appropriate, including, but not limited to, the packing, repacking, handling, labeling, marking, placarding, and routing (other than with respect to pipelines) of hazardous materials, and the manufacture, fabrication, marking, maintenance, reconditioning, repairing, or testing of a package or container which is represented, marked, certified, or sold by such person for use in the transportation of certain hazardous materials.

(b) COOPERATION.—In addition to other applicable requirements, the Secretary shall consult and cooperate with representatives of the Interstate

Commerce Commission and shall consider any relevant suggestions made by such Commission, before issuing any regulation with respect to the routing of hazardous materials. Such Commission shall, to the extent of its lawful authority, take such action as is necessary or appropriate to implement any such regulation.

(c) REPRESENTATION.—No person shall, by marking or otherwise, represent that a container or package for the transportation of hazardous materials is safe, certified, or in compliance with the requirements of this Act, unless it meets the requirements of all applicable regulations issued under this Act.

HANDLING OF HAZARDOUS MATERIALS

SEC. 106. (a) CRITERIA.—The Secretary is authorized to establish criteria for handling hazardous materials. Such criteria may include, but need not be limited to, a minimum number of personnel; a minimum level of training and qualification for such personnel; type and frequency of inspection; equipment to be used for detection, warning, and control of risks posed by such materials; specifications regarding the use of equipment and facilities used in the handling and transportation of such materials; and a system of monitoring safety assurance procedures for the transportation of such materials. The Secretary may revise such criteria as required.

(b) REGISTRATION.—Each person who transports or causes to be transported or shipped in commerce hazardous materials or who manufactures, fabricates, marks, maintains, reconditions, repairs, or tests packages or containers which are represented, marked, certified, or sold by such person for use in the transportation in commerce of certain hazardous materials (designated by the Secretary) may be required by the Secretary to prepare and submit to the Secretary a registration statement not more often than once every 2 years. Such a registration statement shall include, but need not be limited to, such person's name; principal place of business; the location of each activity handling such hazardous materials; a complete list of all such hazardous materials handled; and an averment that such person is in compliance with all applicable criteria established under subsection (a) of this section. The Secretary shall by regulation prescribe the form of any such statement and the information required to be included. The Secretary shall make any registration statement filed pursuant to this subsection available for inspection by any person, without charge, except that nothing in this sentence shall be deemed to require the release of any information described by subsection (b) of section 552 of title 5, United States Code, or which is otherwise protected by law from disclosure to the public.

(c) REQUIREMENT.—No person required to file a registration statement under subsection (b) of this section may transport or cause to be transported or shipped extremely hazardous materials, or manufacture, fabricate, mark, maintain, recondition, repair, or test packages or containers for use in the transportation of extremely hazardous materials, unless he has on file a registration statement.

EXEMPTIONS

SEC. 107. (a) GENERAL.—The Secretary, in accordance with procedures prescribed by regulation, is authorized to issue or renew, to any person subject to the requirements of this title, an exemption from the provisions of this title, and from regulations issued under section 105 of this title, if such person transports or causes to be transported or shipped hazardous

materials in a manner so as to achieve a level of safety (1) which is equal to or exceeds that level of safety which would be required in the absence of such exemption, or (2) which would be consistent with the public interest and the policy of this title in the event there is no existing level of safety established. The maximum period of an exemption issued or renewed under this section shall not exceed 2 years, but any such exemption may be renewed upon application to the Secretary. Each person applying for such an exemption or renewal shall, upon application, provide a safety analysis as prescribed by the Secretary to justify the grant of such exemption. A notice of an application for issuance or renewal of such exemption shall be published in the Federal Register. The Secretary shall afford access to any such safety analysis and an opportunity for public comment on any such application, except that nothing in this sentence shall be deemed to require the release of any information described by subsection (b) of section 552 of title 5, United States Code, or which is otherwise protected by law from disclosure to the public.

(b) **VESSELS.**—The Secretary shall exclude, in whole or in part, from any applicable provisions and regulations under this title, any vessel which is excepted from the application of section 201 of the Ports and Waterways Safety Act of 1972 by paragraph (2) of such section (46 U.S.C. 391a(2)), or any other vessel regulated under such Act, to the extent of such regulation.

(c) **FIREARMS AND AMMUNITION.**—Nothing in this title, or in any regulation issued under this title, shall be construed to prohibit or regulate the transportation by any individual, for personal use, of any firearm (as defined in paragraph (4) of section 232 of title 18, United States Code) or any ammunition therefor, or to prohibit any transportation of firearms or ammunition in commerce.

(d) **LIMITATION ON AUTHORITY.**—Except when the Secretary determines that an emergency exists, exemptions or renewals granted pursuant to this section shall be the only means by which a person subject to the requirements of this title may be exempted from or relieved of the obligation to meet any requirements imposed under this title.

TRANSPORTATION OF RADIOACTIVE MATERIALS ON PASSENGER-CARRYING AIRCRAFT

SEC. 108. (a) GENERAL.—Within 120 days after the date of enactment of this section, the Secretary shall issue regulations in accordance with this section and pursuant to section 105 of this title, with respect to the transportation of radioactive materials on any passenger-carrying aircraft in air commerce, as defined in section 101(4) of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301(4)). Such regulations shall prohibit any transportation of radioactive materials on any such aircraft unless the radioactive materials involved are intended for use in, or incident to, research, or medical diagnosis or treatment, so long as such materials as prepared for and during transportation do not pose an unreasonable hazard to health and safety. The Secretary shall further establish effective procedures for monitoring and enforcing the provisions of such regulations.

(b) **DEFINITION.**—As used in this section, “radioactive materials” means any materials or combination of materials which spontaneously emit ionizing radiation. The term does not include materials in which (1) the estimated specific activity is not greater than 0.002 microcuries per gram of material; and (2) the radiation is distributed in an essentially uniform manner.

POWERS AND DUTIES OF THE SECRETARY

SEC. 109. (a) GENERAL.—The Secretary is authorized, to the extent necessary to carry out his responsibilities under this title, to conduct investigations, make reports, issue subpoenas, conduct hearings, require the production of relevant documents, records, and property, take depositions, and conduct, directly or indirectly, research, development, demonstration, and training activities. The Secretary is further authorized, after notice and an opportunity for a hearing, to issue orders directing compliance with this title or regulations issued under this title; the district courts of the United States shall have jurisdiction, upon petition by the Attorney General, to enforce such orders by appropriate means.

(b) **RECORDS.**—Each person subject to requirements under this title shall establish and maintain such records, make such reports, and provide such information as the Secretary shall by order or regulation prescribe, and shall submit such reports and shall make such records and information available as the Secretary may request.

(c) **INSPECTION.**—The Secretary may authorize any officer, employee, or agent to enter upon, inspect, and examine, at reasonable times and in a reasonable manner, the records and properties of persons to the extent such records and properties relate to—

(1) the manufacture, fabrication, marking, maintenance, reconditioning, repair, testing, or distribution of packages or containers for use by any person in the transportation of hazardous materials in commerce; or

(2) the transportation or shipment by any person of hazardous materials in commerce.

Any such officer, employee, or agent shall, upon request, display proper credentials.

(d) **FACILITIES AND DUTIES.**—The Secretary shall—

(1) establish and maintain facilities and technical staff sufficient to provide, within the Federal government, the capability of evaluating risks connected with the transportation of hazardous materials and materials alleged to be hazardous;

(2) establish and maintain a central reporting system and data center so as to be able to provide the law-enforcement and firefighting personnel of communities, and other interested persons and government officers, with technical and other information and advice for meeting emergencies connected with the transportation of hazardous materials; and

(3) conduct a continuing review of all aspects of the transportation of hazardous materials in order to determine and to be able to recommend appropriate steps to assure the safe transportation of hazardous materials.

(e) **ANNUAL REPORT.**—The Secretary shall prepare and submit to the President for transmittal to the Congress on or before May 1 of each year a comprehensive report on the transportation of hazardous materials during the preceding calendar year. Such report shall include, but need not be limited to—

(1) a thorough statistical compilation of any accidents and casualties involving the transportation of hazardous materials;

(2) a list and summary of applicable Federal regulations, criteria, orders, and exemptions in effect;

(3) a summary of the basis for any exemptions granted or maintained;

- (4) an evaluation of the effectiveness of enforcement activities and the degree of voluntary compliance with applicable regulations;
- (5) a summary of outstanding problems confronting the administration of this title, in order of priority; and
- (6) such recommendations for additional legislation as are deemed necessary or appropriate.

PENALTIES

SEC. 110. (a) CIVIL.—(1) Any person (except an employee who acts without knowledge) who is determined by the Secretary, after notice and an opportunity for a hearing, to have knowingly committed an act which is a violation of a provision of this title or of a regulation issued under this title, shall be liable to the United States for a civil penalty. Whoever knowingly commits an act which is a violation of any regulation, applicable to any person who transports or causes to be transported or shipped hazardous materials, shall be subject to a civil penalty of not more than \$10,000 for each violation, and if any such violation is a continuing one, each day of violation constitutes a separate offense. Whoever knowingly commits an act which is a violation of any regulation applicable to any person who manufactures, fabricates, marks, maintains, reconditions, repairs, or tests a package or container which is represented, marked, certified, or sold by such person for use in the transportation in commerce of hazardous materials shall be subject to a civil penalty of not more than \$10,000 for each violation. The amount of any such penalty shall be assessed by the Secretary by written notice. In determining the amount of such penalty, the Secretary shall take into account the nature, circumstances, extent, and gravity of the violation committed and, with respect to the person found to have committed such violation, the degree of culpability, any history of prior offenses, ability to pay, effect on ability to continue to do business, and such other matters as justice may require.

“(2) Such civil penalty may be recovered in an action brought by the Attorney General on behalf of the United States in the appropriate district court of the United States or, prior to referral to the Attorney General, such civil penalty may be compromised by the Secretary. The amount of such penalty, when finally determined (or agreed upon in compromise), may be deducted from any sums owed by the United States to the person charged. All penalties collected under this subsection shall be deposited in the Treasury of the United States as miscellaneous receipts.

(b) CRIMINAL.—A person is guilty of an offense if he willfully violates a provision of this title or a regulation issued under this title. Upon conviction, such person shall be subject, for each offense, to a fine of not more than \$25,000, imprisonment for a term not to exceed 5 years, or both.

SPECIFIC RELIEF

SEC. 111. (a) GENERAL.—The Attorney General, at the request of the Secretary, may bring an action in an appropriate district court of the United States for equitable relief to redress a violation by any person of a provision of this title, or an order or regulation issued under this title. Such district courts shall have jurisdiction to determine such actions and may grant such relief as is necessary or appropriate, including mandatory or prohibitive injunctive relief, interim equitable relief, and punitive damages.

(b) IMMINENT HAZARD.—If the Secretary has reason to believe that an imminent hazard exists, he may petition an appropriate district court of the United States, or upon his request the Attorney General shall so petition, for an order suspending or restricting the transportation of the hazardous material responsible for such imminent hazard, or for such other order as is necessary to eliminate or ameliorate such imminent hazard. As used in this subsection, an “imminent hazard” exists if there is substantial likelihood that serious harm will occur prior to the completion of an administrative hearing or other formal proceeding initiated to abate the risk of such harm.

RELATIONSHIP TO OTHER LAWS

SEC. 112. (a) GENERAL.—Except as provided in subsection (b) of this section, any requirement, of a State or political subdivision thereof, which is inconsistent with any requirement set forth in this title, or in a regulation issued under this title, is preempted.

(b) STATE LAWS.—Any requirement, of a State, or political subdivision thereof, which is not consistent with any requirement set forth in this title, or in a regulation issued under this title, is not preempted if, upon the application of an appropriate State agency, the Secretary determines, in accordance with procedures to be prescribed by regulation, that such requirement (1) affords an equal or greater level of protection to the public than is afforded by the requirements of this title or of regulations issued under this title and (2) does not unreasonably burden commerce. Such requirement shall not be preempted to the extent specified in such determination by the Secretary for so long as such State or political subdivision thereof continues to administer and enforce effectively such requirement.

(c) OTHER FEDERAL LAWS.—The provisions of this title shall not apply to pipelines which are subject to regulation under the Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. 1671 et seq.) or to pipelines which are subject to regulation under chapter 39 of title 18, United States Code.

CONFORMING AMENDMENTS

SEC. 113. (a) Section 4472 of title 52 of the Revised Statutes of the United States as amended (46 U.S.C. 170) is amended—

(1) by inserting, in the first sentence of paragraph (14) thereof, “criminal” before the word “penalty” and “or imprisoned not more than 5 years, or both” before the phrase “for each violation”; and

(2) by adding at the end thereof the following new paragraph:

“(17)(A) Any person (except an employee who acts without knowledge) who is determined by the Secretary, after notice and an opportunity for a hearing, to have knowingly committed an act which is a violation of any provision of this section, or of any regulation issued under this section, shall be liable to the United States for a civil penalty of not more than \$10,000 for each day of each violation. The amount of such civil penalty shall be assessed by the Secretary by written notice. In determining the amount of such penalty, the Secretary shall take into account the nature, circumstances, extent, and gravity of the violation committed and, with respect to the person found to have committed such violation, the degree of culpability, any history of prior offenses, ability to pay, effect on ability to continue to do business, and such other matters as justice may require.

“(B) Such civil penalty may be recovered in an action brought by the Attorney General on behalf of the United States, in the appropriate district court of the United States or, prior to referral to the Attorney General, such civil penalty may be compromised by the Secretary. The amount of such penalty, when finally determined (or agreed upon in compromise), may be deducted from any sums owed by the United States to the person charged. All penalties collected under this subsection shall be deposited in the Treasury of the United States as miscellaneous receipts.”

(b) Section 901(a)(1) of the Federal Aviation Act of 1958, (49 U.S.C. 1471(a)(1)) is amended—

(1) by inserting immediately before the period at the end of the first sentence thereof and inserting in lieu thereof: “, except that the amount of such civil penalty shall not exceed \$10,000 for each such violation which relates to the transportation of hazardous materials.”; and

(2) by deleting in the second sentence thereof “: Provided, That this” and inserting in lieu thereof the following: “. The amount of any such civil penalty which relates to the transportation of hazardous materials shall be assessed by the Secretary, or his delegate, upon written notice upon a finding of violation by the Secretary, after notice and an opportunity for a hearing. In determining the amount of such penalty, the Secretary shall take into account the nature, circumstances, extent, and gravity of the violation committed and, with respect to the person found to have committed such violation, the degree of culpability, any history of prior offenses, ability to pay, effect on ability to continue to do business, and such other matters as justice may require. This”.

(c) Section 902(h) of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1472(h)) is amended to read as follows:

“HAZARDOUS MATERIALS

“(h)(1) In carrying out his responsibilities under this Act, the Secretary of Transportation may exercise the authority vested in him by section 105 of the Hazardous Materials Transportation Act to provide by regulation for the safe transportation of hazardous materials by air.

“(2) A person is guilty of an offense if he willfully delivers or causes to be delivered to an air carrier or to the operator of a civil aircraft for transportation in air commerce, or if he recklessly causes the transportation in air commerce of, any shipment, baggage, or other property which contains a hazardous material, in violation of any rule, regulation, or requirement with respect to the transportation of hazardous materials issued by the Secretary of Transportation under this Act. Upon conviction, such person shall be subject, for each offense, to a fine of not more than \$25,000, imprisonment for a term not to exceed 5 years, or both.

“(3) Nothing in this subsection shall be construed to prohibit or regulate the transportation by any individual, for personal use, of any firearm (as defined in paragraph (4) of section 232 of title 18, United States Code) or any ammunition therefor.”

(d) Section 6(c)(1) of the Department of Transportation Act (49 U.S.C. 1655(c)(1)) is amended by inserting in the first sentence thereof after “aviation safety” and before “as set forth in” the following: “(other

than those relating to the transportation, packaging, marking, or description of hazardous materials)”.

(e)(1) Section 6(f)(3)(A) of the Department of Transportation Act (49 U.S.C. 1655(f)(3)(A)) is amended by striking out the period at the end thereof and by inserting in lieu thereof “(other than subsection (e)(4)).”.

(2) Section 6(f)(3)(B) of the Department of Transportation Act (49 U.S.C. 1165(f)(3)(B)) is amended by striking out the period at the end thereof and by inserting in lieu thereof “(other than subsection (e)(4)).”.

(f) Subsection (6) of section 4472 of the Revised Statutes, as amended (46 U.S.C. 170(6)), is amended—

(1) in paragraph (a) thereof, by striking out “inflammable” each place it appears and inserting in lieu thereof at each such place “flammable”; by inserting before “liquids” the following: “or combustible”; and by deleting the colon and the proviso in its entirety and by inserting in lieu thereof a period and the following two new sentences: “The provisions of this subsection shall apply to the transportation, carriage, conveyance, storage, stowing, or use on board any passenger vessel of any barrel, drum, or other package containing any flammable or combustible liquid which has a lower flash point than that which is defined as safe pursuant to regulations establishing the defining flash-point criteria for flammable and combustible liquids. Such regulations shall be prescribed, and revised as necessary, by the Secretary of Transportation.”.

(2) in paragraph (b) thereof, by striking out in clause (iv) thereof “inflammable liquids” and inserting in lieu thereof “flammable or combustible liquids”.

(g) The Hazardous Materials Transportation Control Act of 1970 (Pub. L. 91-458, title III; 49 U.S.C. 1761-1762) is repealed.

EFFECTIVE DATE

SEC. 114. (a) Except as provided in this section, the provisions of this title shall take effect on the date of enactment.

(b)(1) Except as provided in section 108 of this title or paragraph (2) of this subsection, any order, determination, rule, regulation, permit, contract, certificate, license, or privilege issued, granted, or otherwise authorized or allowed, prior to the date of enactment of this title, pursuant to any provision of law amended or repealed by this title, shall continue in effect according to its terms or until repealed, terminated, withdrawn, amended, or modified by the Secretary or a court of competent jurisdiction.

(2) The Secretary shall take all steps necessary to bring orders, determinations, rules, and regulations into conformity with the purposes and provisions of this title as soon as practicable, but in any event no permits, contracts, certificates, licenses, or privileges granted prior to the date of enactment of this title, or renewed or extended thereafter, shall be of any effect more than 2 years after the date of enactment of this title, unless there is full compliance with the purposes and provisions of this Act and regulations thereunder.

(c) Proceedings pending upon the date of enactment of this title shall not be affected by the provisions of this title and shall be completed as if this title had not been enacted, unless the Secretary makes a determination that the public health and safety otherwise require.

AUTHORIZATION FOR APPROPRIATIONS

SEC. 115. There is authorized to be appropriated for the purposes of this title, not to exceed \$7,000,000 for the fiscal year ending June 30, 1975.

TITLE II—RAIL SAFETY

SHORT TITLE

SEC. 201. This title may be cited as the "Rail Safety Improvement Act of 1974".

DECLARATION OF POLICY

SEC. 202. The Congress finds that more effective realization of the purposes of the Federal Railroad Safety Act of 1970 requires that Act to be amended to mandate comprehensive analysis and evaluation of the rail safety program, to increase the amount and percentage of available resources for inspection, investigation, and enforcement, and to increase the enforcement powers of the Secretary of Transportation.

COMPREHENSIVE RAILROAD SAFETY REPORT

SEC. 203. Section 211 of the Federal Railroad Safety Act of 1970 (45 U.S.C. 440) is amended by adding at the end thereof the following new subsection:

"(c) SPECIAL REPORT.—The Secretary shall prepare and submit to the President and the Congress, not later than March 17, 1976, a comprehensive railroad safety report. Such report shall—

"(1) contain a description of the areas of railroad safety with respect to which Federal safety standards issued under this Act are in effect (as of June 30, 1975);

"(2) identify any area of railroad safety with respect to which Federal safety standards have been proposed but have not been issued under this Act (as of June 30, 1975);

"(3) identify any area of railroad safety with respect to which Federal safety standards have not been issued under this Act (as of June 30, 1975);

"(4) identify alternative and more cost-effective methods for inspection and enforcement of Federal safety standards, including mechanical and electronic inspection, and contain an evaluation of problems involved in implementing such alternatives, with specific attention to the need for cooperation with the railroad industry;

"(5) identify the areas of railroad safety listed in accordance with paragraphs (1) through (3) of this subsection which involve, or which may involve, State participation under section 206 of this Act;

"(6) contain a description of the railroad safety program which is in effect or planned in each State (as of June 30, 1975), including—

"(A) State program development;

"(B) State plans to participate in program areas listed in accordance with paragraph (1) of this subsection, which are not covered by a State certification or agreement;

"(C) State interest in participating in each program area listed in accordance with paragraphs (2) and (3) of this subsection, following issuance of the applicable safety standards;

"(D) annual projections of each State agency's needs for personnel, equipment, and activities reasonably required to carry out its State program during each fiscal year from 1976 through 1980 together with estimates of the annual costs thereof separately stated as to projections under subparagraphs (B) and (C) of this paragraph;

"(E) the sources from which the State expects to draw the funds to finance such programs; and

"(F) the amount of State funds and of Federal financial assistance needed during each such fiscal year, by category;

"(7) contain a detailed analysis of (A) the number of safety inspectors needed (by industry and Government respectively) to maintain an adequate and reasonable railroad safety program and record; (B) the minimum training and other qualifications needed for each such inspector; (C) the present and projected availability of such personnel in comparison to the need therefor; (D) the salary levels of such personnel in relation to salary levels for comparable positions in industry, State governments, and the Federal Government;

"(8) evaluate alternative methods of allotting Federal funds among the States applying for Federal financial assistance, including recommendations, if needed, for a formula for such apportionment;

"(9) contain a discussion of other problems affecting cooperation among the States that relate to effective participation of State agencies in the nationwide railroad safety program; and

"(10) contain recommendations for any additional Federal and State legislation needed to further realization of the objectives of this Act.

Such report shall be prepared by the Secretary, directly or indirectly, after research, examination, study, and consultation with the national associations representing railroad employee unions, railroad management, cooperating State agencies, the national organization of State commissions, universities, and other persons having special expertise or experience with respect to railroad safety. Such report shall include, in an appendix, a statement of the views of the national associations representing railroad employee unions, of the carriers, and of the national organization of State commissions with respect to the content of such report in its final form."

ACCIDENT REPORTS

SEC. 204. (a) Section 209(b) of the Federal Railroad Safety Act of 1970 (45 U.S.C. 438(b)) is amended by inserting after "for violation thereof" and before "in such amount" the following: "or for violation of section 2 of the Act of May 6, 1910 (45 U.S.C. 39)".

(b) Section 2 of the Act of May 6, 1910 (45 U.S.C. 39) is amended by adding at the end thereof the following new sentence: "In lieu of the foregoing, any such carrier may be required to pay a civil penalty pursuant to subsections (b) and (c) of section 209 of the Federal Safety Act of 1970 (45 U.S.C. 438(b))."

AUTHORIZATION FOR APPROPRIATIONS

SEC. 205. Section 212 of the Federal Railroad Safety Act of 1970 (45 U.S.C. 441) is amended to read as follows:

"(a) There are authorized to be appropriated to carry out the provisions of this Act not to exceed \$35,000,000 for the fiscal year ending June 30, 1975.

"(b) Subject to the provisions of subsection (c), amounts appropriated under subsection (a) of this section shall be available for expenditure as follows:

"(1) Not to exceed \$18,000,000 for the Office of Safety, including salaries and expenses for up to 350 safety inspectors and up to 80 clerical personnel.

"(2) Not to exceed \$3,500,000 to carry out the provisions of section 206(d) of this Act.

"(3) Not to exceed \$3,500,000 for the Federal Railroad Administration, or salaries and expenses not otherwise provided for.

"(4) Not to exceed \$10,000,000 for conducting research and development activities under this Act.

"(c) The aggregate of amounts obligated and expended in fiscal year 1975 for conducting research and development activities under this Act shall not exceed the aggregate of amounts expended in such fiscal year for the investigation and enforcement of railroad safety rules, regulations, orders, and standards prescribed or in effect under this Act."

ENFORCEMENT

SEC. 206. Section 208(a) of the Federal Railroad Safety Act of 1970 (45 U.S.C. 437(a)) is amended by adding at the end thereof the following new sentence: "The Secretary is further authorized to issue orders directing compliance with this Act or with any railroad safety rule, regulation, order, or standard issued under this Act; the district courts of the United States shall have jurisdiction, upon petition by the Attorney General, to enforce such orders by appropriate means."

TITLE 111—INDEPENDENT SAFETY BOARD

SHORT TITLE

SEC. 301. This title may be cited as the "Independent Safety Board Act of 1974".

FINDINGS

SEC. 302. The Congress finds and declares:

(1) The National Transportation Safety Board was established by statute in 1966 (Public Law 89-670; 80 Stat. 935) as an independent Government agency, located within the Department of Transportation, to promote transportation safety by conducting independent accident investigations and by formulating safety improvement recommendations.

(2) Proper conduct of the responsibilities assigned to this Board requires rigorous investigation of accidents involving transportation modes regulated by other agencies of Government; demands continual review, appraisal, and assessment of the operating practices and

regulations of all such agencies; and calls for the making of conclusions and recommendations that may be critical of or adverse to any such agency or its officials. No Federal agency can properly perform such functions unless it is totally separate and independent from any other department, bureau, commission, or agency of the United States.

NATIONAL TRANSPORTATION SAFETY BOARD

SEC. 303. (a) ESTABLISHMENT.—The National Transportation Safety Board (hereafter in this title referred to as the "Board"), previously established within the Department of Transportation, shall be an independent agency of the United States, in accordance with this section, on and after April 1, 1975.

(b) ORGANIZATION.—(1) The Board shall consist of five members, including a Chairman. Members of the Board shall be appointed by the President, by and with the advice and consent of the Senate. No more than three members of the Board shall be of the same political party. At any given time, no less than two members of the Board shall be individuals who have been appointed upon the basis of technical qualification and professional or management standing in the field of accident reconstruction, safety engineering, or transportation safety.

(2) The terms of office of members of the Board shall be 5 years, except as otherwise provided in this paragraph. Any individual appointed to fill a vacancy occurring on the Board prior to the expiration of the term of office for which his predecessor was appointed shall be appointed for the remainder of that term. Upon the expiration of his term of office, a member shall continue to serve until his successor is appointed and shall have qualified. Individuals serving as members of the National Transportation Safety Board on the date of enactment of this title shall continue to serve as members of the Board until the expiration of their then current term of office. Any member of the Board may be removed by the President for inefficiency, neglect of duty, or malfeasance in office.

(3) On or before January 1, 1976 (and thereafter as required), the President shall—

(A) designate, by and with the advice and consent of the Senate, an individual to serve as the Chairman of the Board (hereafter in this title referred to as the "Chairman"); and

(B) an individual to serve as Vice Chairman.

The Chairman and Vice Chairman each shall serve for a term of 2 years. The Chairman shall be the chief executive officer of the Board and shall exercise the executive and administrative functions of the Board with respect to the appointment and supervision of personnel employed by the Board; the distribution of business among such personnel and among any administrative units of the Board; and the use and expenditure of funds. The Vice Chairman shall act as Chairman in the event of the absence or incapacity of the Chairman or in case of a vacancy in the office of Chairman. The Chairman or acting Chairman shall be governed by the general policies established by the Board, including any decisions, findings, determinations, rules, regulations, and formal resolutions.

(4) Three members of the Board shall constitute a quorum for the transaction of any function of the Board.

(5) The Board shall establish and maintain distinct and appropriately staffed bureaus, divisions, or offices to investigate and report on accidents

involving each of the following modes of transportation: (A) aviation; (B) highway and motor vehicle; (C) railroad and tracked vehicle; and (D) pipeline. The Board shall, in addition, establish and maintain any other such office as is needed, including an office to investigate and report on the safe transportation of hazardous materials.

(c) GENERAL.—(1) The General Services Administration shall furnish the Board with such offices, equipment, supplies, and services as it is authorized to furnish to any other agency or instrumentality of the United States.

(2) The Board shall have a seal which shall be judicially recognized.

(3) Subject to the civil service and classification laws, the Board is authorized to select, appoint, employ, and fix the compensation of such officers and employees, including investigators, attorneys, and administrative law judges, as shall be necessary to carry out its powers and duties under this title.

GENERAL PROVISIONS

SEC. 304. (a) DUTIES OF BOARD.—The Board shall—

(1) investigate or cause to be investigated (in such detail as it shall prescribe), and determine the facts, conditions, and circumstances and the cause or probable cause or causes of any—

(A) aircraft accident which is within the scope of the functions, powers, and duties transferred from the Civil Aeronautics Board under section 6(d) of the Department of Transportation Act (49 U.S.C. 1655(d)) pursuant to title VII of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1441);

(B) highway accident, including any railroad grade crossing accident, that it selects in cooperation with the States;

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

(D) pipeline accident in which there is a fatality or substantial property damage;

(E) major marine casualty, except one involving only public vessels, occurring on the navigable waters or territorial seas of the United States, or involving a vessel of the United States, in accordance with regulations to be prescribed jointly by the Board and the Secretary of the department in which the Coast Guard is operating. Nothing in this subparagraph shall be construed to eliminate or diminish any responsibility under any other Federal statute of the Secretary of the department in which the Coast Guard is operating: Provided, that any marine accident involving a public vessel and any other vessel shall be investigated and the facts, conditions, and circumstances, and the cause or probable cause determined and made available to the public by either the Board or the Secretary of the Department in which the Coast Guard is operating; and

(F) other accident which occurs in connection with the transportation of people or property which, in the judgment of the Board, is catastrophic, involves problems of a recurring character, or would otherwise carry out the policy of this title.

The Board may request the Secretary of Transportation (hereafter in this title referred to as the "Secretary") to make investigations with

regard to such accidents and to report to the Board the facts, conditions, and circumstances thereof (except in accidents where misfeasance or nonfeasance by the Federal Government is alleged), and the Secretary or his designees are authorized to make such investigations. Thereafter, the Board, utilizing such reports, shall make its determination of cause or probable cause under this paragraph;

(2) report in writing on the facts, conditions, and circumstances of each accident investigated pursuant to paragraph (1) of this subsection and cause such reports to be made available to the public at reasonable cost and to cause notice of the issuance and availability of such reports to be published in the Federal Register;

(3) issue periodic reports to the Congress, Federal, State, and local agencies concerned with transportation safety, and other interested persons recommending and advocating meaningful responses to reduce the likelihood of recurrence of transportation accidents similar to those investigated by the Board and proposing corrective steps to make the transportation of persons as safe and free from risk of injury as is possible, including steps to minimize human injuries from transportation accidents;

(4) initiate and conduct special studies and special investigations on matters pertaining to safety in transportation including human injury avoidance;

(5) assess and reassess techniques and methods of accident investigation and prepare and publish from time to time recommended procedures for accident investigations;

(6) establish by regulation requirements binding on persons reporting accidents subject to the Board's investigatory jurisdiction under this subsection;

(7) evaluate, assess the effectiveness, and publish the findings of the Board with respect to the transportation safety consciousness and efficacy in preventing accidents of other Government agencies;

(8) evaluate the adequacy of safeguards and procedures concerning the transportation of hazardous materials and the performance of other Government agencies charged with assuring the safe transportation of such materials; and

(9) review on appeal (A) the suspension, amendment, modification, revocation, or denial of any operating certificate or license issued by the Secretary of Transportation under sections 602, 609, or 611(c) of the Federal Aviation Act of 1958 (49 U.S.C. 1422, 1429, or 1431(c)); and (B) the decisions of the Commandant of the Coast Guard, on appeals from the orders of any administrative law judge revoking, suspending, or denying a license, certificate, document, or register in proceedings under section 4450 of the Revised Statutes of the United States (46 U.S.C. 239); the Act of July 15, 1954 (46 U.S.C. 239 (a) and (b)); or section 4 of the Great Lakes Pilotage Act (46 U.S.C. 216(b)).

(b) POWERS OF BOARD.—(1) The Board, or upon the authority of the Board, any member thereof, any administrative law judge employed by or assigned to the Board, or any officer or employee duly designated by the Chairman, may, for the purpose of carrying out this title, hold such hearings, sit and act at such times and places, administer such oaths, and require by subpoena or otherwise the attendance and testimony of such witnesses and the production of such evidence as the Board or such officer or

employee deems advisable. Subpoenas shall be issued under the signature of the Chairman, or his delegate, and may be served by any person designated by the Chairman. Witnesses summoned to appear before the Board shall be paid the same fees and mileage that are paid witnesses in the courts of the United States. Such attendance of witnesses and production of evidence may be required from any place in the United States to any designated place of such hearing in the United States.

(2) Any employee of the Board, upon presenting appropriate credentials and a written notice of inspection authority, is authorized to enter any property wherein a transportation accident has occurred or wreckage from any such accident is located and do all things therein necessary for a proper investigation. The employee may inspect, at reasonable times, records, files, papers, processes, controls, and facilities relevant to the investigation of such accident. Each inspection shall be commenced and completed with reasonable promptness and the results of such inspection made available.

(3) In case of contumacy or refusal to obey a subpoena, an order, or an inspection notice of the Board, or of any duly designated employee thereof, by any person who resides, is found, or transacts business within the jurisdiction of any district court of the United States, such district court shall, upon the request of the Board, have jurisdiction to issue to such person an order requiring such person to comply forthwith. Failure to obey such an order is punishable by such court as a contempt of court.

(4) The Board is authorized to enter into, without regard to section 3709 of the Revised Statutes of the United States (41 U.S.C. 5), such contracts, leases, co-operative agreements, or other transactions as may be necessary in the conduct of the functions and the duties of the Board under this title, with any government entity or any person.

(5) The Board is authorized to obtain, and shall be furnished, with or without reimbursement, a copy of the report of the autopsy performed by State or local officials on any person who dies as a result of having been involved in a transportation accident within the jurisdiction of the Board and, if necessary, the Board may order the autopsy or seek other tests of such persons as may be necessary to the investigation of the accident: Provided, That to the extent consistent with the need of the accident investigation, provisions of local law protecting religious beliefs with respect to autopsies shall be observed.

(6) The Board is authorized to (A) use, on a reimbursable basis or otherwise, when appropriate, available services, equipment, personnel, and facilities of the Department of Transportation and of other civilian or military agencies and instrumentalities of the Federal Government; (B) confer with employees and use available services, records, and facilities of State, municipal, or local governments and agencies; (C) employ experts and consultants in accordance with section 3109 of title 5, United States Code; (D) appoint one or more advisory committees composed of qualified private citizens or officials of Federal, State, or local governments as it deems necessary or appropriate, in accordance with the Federal Advisory Committee Act (5 U.S.C. App. I); (E) accept voluntary and uncompensated services notwithstanding any other provision of law; (F) accept gifts or donations of money or property (real, personal, mixed, tangible, or intangible); and (G) enter into contracts with public or private nonprofit entities for the conduct of studies related to any of its functions.

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

(8) The Board is empowered to designate representatives to serve or assist on such committees as the Chairman determines to be necessary or appropriate to maintain effective liaison with other Federal agencies, and with State and local government agencies, and with independent standard-setting bodies carrying out programs and activities related to transportation safety.

(9) The Board, or an employee of the Board duly designated by the Chairman, may conduct an inquiry to secure data with respect to any matter pertinent to transportation safety, upon publication of notice of such inquiry in the Federal Register; and may require, by special or general orders, Federal, State, and local government agencies and persons engaged in the transportation of people or property in commerce to submit written reports and answers to such requests and questions as are propounded with respect to any matter pertinent to any function of the Board. Such reports and answers shall be submitted to the Board or to such employee within such reasonable period of time and in such form as the Board may determine. Copies thereof shall be made available for inspection by the public.

(10) Establish such rules and regulations as may be necessary to the exercise of its functions.

(c) USE OF REPORTS AS EVIDENCE.—No part of any report of the Board, relating to any accident or the investigation thereof, shall be admitted as evidence or used in any suit or action for damages growing out of any matter mentioned in such report or reports.

(d) JUDICIAL REVIEW.—Any order, affirmative or negative, issued by the Board under this title shall be subject to review by the appropriate court of appeals of the United States or the United States Court of Appeals for the District of Columbia, upon petition filed within 60 days after the entry of such order, by any person disclosing a substantial interest in such order. Such review shall be conducted in accordance with the provisions of chapter 7 of title 5, United States Code.

ANNUAL REPORT

SEC. 305. The Board shall report to the Congress on July 1 of each year. Such report shall include, but need not be limited to—

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

(2) a survey and summary, in such detail as the Board deems advisable, of the recommendations made by the Board to reduce the likelihood of recurrence of such accidents together with the observed response to each such recommendation;

(3) an appraisal in detail of the accident investigation and accident prevention activities of other government agencies charged by Federal or State laws with responsibility in this field; and

(4) a biennial appraisal and evaluation and review, and recommendations for legislative and administrative action and change, with respect to transportation safety.

PUBLIC ACCESS TO INFORMATION

SEC. 306. (a) GENERAL.—Copies of any communication, document, investigation, or other report, or information received or sent by the Board, or any member or employee of the Board, shall be made available to the public upon identifiable request, and at reasonable cost, unless such information may not be publicly released pursuant to subsection (b) of this section. Nothing contained in this section shall be deemed to require the release of any information described by subsection (b) of section 552 of title 5, United States Code, or which is otherwise protected by law from disclosure to the public.

(b) EXCEPTION.—The Board shall not disclose information obtained under this title which concerns or relates to a trade secret referred to in section 1905 of title 18, United States Code, except that such information may be disclosed in a manner designed to preserve confidentiality—

(1) upon request, to other Federal Government departments and agencies for official use;

(2) upon request, to any committee of Congress having jurisdiction over the subject matter to which the information relates;

(3) in any judicial proceeding under a court order formulated to preserve the confidentiality of such information without impairing the proceedings; and

(4) to the public in order to protect health and safety, after notice to any interested person to whom the information pertains and an opportunity for such person to comment in writing, or orally in closed session, on such proposed disclosure (if the delay resulting from such notice and opportunity for comment would not be detrimental to health and safety).

RESPONSE TO BOARD RECOMMENDATIONS

SEC. 307. Whenever the Board submits a recommendation regarding transportation safety to the Secretary, he shall respond to each such recommendation formally and in writing not later than 90 days after receipt thereof. The response to the Board by the Secretary shall indicate his intention to—

(1) initiate and conduct procedures for adopting such recommendation in full, pursuant to a proposed timetable, a copy of which shall be included;

(2) initiate and conduct procedures for adopting such recommendation in part, pursuant to a proposed timetable, a copy of which shall be included. Such response shall set forth in detail the reasons for the refusal to proceed as to the remainder of such recommendation; or

(3) refuse to initiate or conduct procedures for adopting such recommendation. Such response shall set forth in detail the reasons for such refusal.

The Board shall cause notice of the issuance of each such recommendation and of each receipt of a response thereto to be published in the Federal Register, and shall make copies thereof available to the public at reasonable cost.

CONFORMING AMENDMENTS

SEC. 308. The Department of Transportation Act is amended—

(1) by deleting section 5 (49 U.S.C. 1654);

(2) by amending section 4(c) thereof (49 U.S.C. 1653(c)) by deleting “or the National Transportation Safety Board” in the first sentence thereof; and by deleting in the second sentence thereof “, the Administrators, or the National Transportation Safety Board.” and by inserting in lieu thereof “or the Administrators.”; and

(3) by amending section 4(d) thereof (49 U.S.C. 1653(d)) by deleting “, the Administrators, and the National Transportation Safety Board” and by inserting in lieu thereof “and the Administrators”.

AUTHORIZATION OF APPROPRIATIONS

SEC. 309. There are authorized to be appropriated for the purposes of this Act not to exceed \$12,000,000 for the fiscal year ending June 30, 1975; and \$12,000,000 for the fiscal year ending June 30, 1976; such sums to remain available until expended.

And the Senate agree to the same.

That the House recede from its disagreement to the amendment of the Senate to the title of the House bill.

HARLEY O. STAGGERS,
JOHN JARMAN,
JOHN D. DINGELL,
SAM DEVINE,
DICK SHOUP,

Managers on the Part of the House.

WARREN MAGNUSON,
VANCE HARTKE,
HOWARD W. CANNON,
TED STEVENS,
J. GLENN BEALL, JR.,

Managers on the Part of the Senate.

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE
OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 15223) to amend the Federal Railroad Safety Act of 1970 and the Hazardous Materials Transportation Control Act of 1970 to authorize additional appropriations, and for other purposes, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

The Senate amendments struck out all of the House bill after the enacting clause and inserted a substitute text and provided a new title for the House bill, and the House disagreed to the Senate amendments.

The committee of conference recommends that the House recede from its disagreement to the amendment of the Senate to the text of the bill, with an amendment which is a substitute for both the text of the House bill and the Senate amendment to the text of the House bill, and also recede from its disagreement to the Senate amendment to the title of the House bill.

The differences between the text of the House bill, the Senate amendment thereto, and the substitute agreed to in conference are noted below, except for clerical corrections, conforming changes made necessary by reason of agreements reached by the conferees, and minor drafting and clarifying changes.

TITLE I—HAZARDOUS MATERIALS TRANSPORTATION

EXTREMELY HAZARDOUS MATERIAL CLASSIFICATION

House bill

No provision.

Senate amendment

The Senate amendment authorized the Secretary of Transportation, in his discretion, to designate certain hazardous materials as "extremely hazardous materials", if they pose a risk of catastrophic harm and an accident giving rise to such risk is foreseeable or if they pose a risk of serious harm and there is a significant likelihood of an accident giving rise to such risk occurring. The designation as extremely hazardous would have triggered a mandatory registration program applicable to persons who transported or handled such materials.

Conference substitute

The conference substitute omits this provision of the Senate amendment.

House bill

No provision.

Senate amendment

The Senate amendment would require the Secretary to establish and maintain a mandatory registration program with respect to extremely hazardous materials. Each person who transports or causes to be transported or shipped in commerce extremely hazardous materials and each person who manufactures, fabricates, marks, maintains, reconditions, repairs, or tests packages or containers for the transportation in commerce of certain extremely hazardous materials was required to submit a registration statement to the Secretary before December 31 of every odd-numbered year. The registration statement, in addition to formal statements of business name and location, would include an averment by the registrant that he is in compliance with any criteria established by the Secretary for the handling of extremely hazardous materials. The Secretary would be authorized to revoke or suspend the registration statement of any registrant who failed to act in conformity with those criteria.

Conference substitute

The conference substitute permits the Secretary, as part of his hazardous materials transportation program, to require a registration statement as in the Senate amendment, but not more often than once every two years. The Secretary is not authorized to revoke or suspend any registration statement which is filed.

TRANSPORTATION OF RADIOACTIVE MATERIALS ON PASSENGER AIRCRAFT

House bill

No specific provision.

Senate amendment

The Senate amendment required the Secretary to issue regulations regarding the transportation of radioactive materials on any passenger-carrying aircraft. These regulations were required to prohibit any such transportation unless the radioactive materials involved are intended for use in, or incident to, research, or medical diagnosis or treatment and are packaged in such a way that they do not pose an unreasonable hazard to health and safety. The term "radioactive materials" is defined to exclude from this prohibition materials which emit less than 0.002 microcuries per gram of material.

Conference substitute

The conferees adopted the provision of the Senate amendment on this issue, except that the period of time within which regulations must be issued was extended to 120 days.

AUTHORITY OF THE SECRETARY IN THE COURTS

House bill

Wherever action in the courts was authorized, it was the Attorney General who was authorized to appear on behalf of the Secretary,

without limitation on his independent discretion. The Secretary was not authorized to appear on his own behalf.

Senate amendment

Wherever action in the courts was authorized, the Secretary may appear on his own behalf or, at his request, the Attorney General was authorized to appear on behalf of the Secretary.

Conference substitute

The conference substitute is the position taken in the House bill with one exception. The Attorney General is to represent the Secretary of Transportation in all matters in court, except that in the case of an imminent hazard the Secretary may himself initiate and conduct proceedings (or he may request the Attorney General to do so and the Attorney General shall so proceed).

PENALTIES

House bill

The House bill provided for the imposition of civil penalties (1) on carriers and shippers in a maximum amount of \$2,000 for each violation of an applicable regulation, except that if the violation by the carrier or shipper is a continuing one each day of violation shall be considered a separate offense, and (2) in a maximum amount of \$10,000 for each violation of a regulation applicable to the manufacture, fabrication, marking, maintenance, reconditioning, repair, testing, and distribution of packages or containers that may be used for the transportation of hazardous materials. Such civil penalties were to be recovered in an action brought by the Attorney General in Federal district court, with authority in the Secretary to compromise the amount.

Senate amendment

The Senate amendment provided for the imposition of civil penalties on any person (except an employee who acts without knowledge) who violates a provision of the Act or a regulation issued under it in a maximum amount of \$10,000 for each violation, except that each day of a continuing violation was a separate violation. The violation and civil penalty were to be determined and assessed by the Secretary, in accordance with listed criteria. A person against whom such a penalty was assessed may obtain review in the appropriate court of appeals of the United States; the determinations of the Secretary were to be set aside if found to be unsupported by substantial evidence. The Secretary has authority to compromise the amount. If any person failed to pay an assessment of a civil penalty, the Secretary (or at his request the Attorney General) recovered such amount after the penalty order had become final and unappealable or after the court of appeals had entered final judgment in favor of the Secretary. The Senate amendment further made it a crime, punishable by a \$25,000 fine or 5 years imprisonment, to knowingly violate a provision of the Act or a regulation thereunder.

Conference substitute

The conference substitute—

(1) Adopts the House provision as to the maximum penalty amounts, with a distinction between the civil liability of those who

transport and ship hazardous materials and those who manufacture etc. packages and containers for use in such transportation and shipment, except that the maximum penalty per carrier or shipper violation is also to be \$10,000;

(2) Adopts the Senate amendment as to the criteria or factors to be taken into account by the Secretary in determining the amount of a civil penalty.

(3) Adopts the House provision as to enforcement with an affirmative obligation on the Government to recover such penalty in an appropriate district court of the United States;

(4) Provides that a civil penalty may be imposed only upon proof that the defendant knowingly committed the act which constitutes the violation (it is not necessary to show that he knew the act constituted a violation) and only after the Secretary affords such person notice and an opportunity for an administrative hearing; and

(5) Adopts the Senate provision as to criminal penalties except that the term "knowingly" is changed to "willfully."

REGULATIONS GOVERNING TRANSPORTATION OF HAZARDOUS MATERIALS

House bill

The House bill authorized the Secretary of Transportation to prescribe regulations in order to assure safe transportation of hazardous materials in interstate and foreign commerce. The regulations may cover any aspect of the transportation of such materials as the Secretary deems necessary or appropriate and shall include, but are not limited to, regulations covering the packing, handling, labeling, marking, placarding, and routing of hazardous materials.

Senate amendment

The Secretary was authorized to issue regulations for the safe transportation in commerce of hazardous materials. Such regulations would have been applicable to any person who transported or caused to be transported or shipped a hazardous material, or who manufactured, etc., a package or container which is represented, marked, certified, or otherwise expected by such person to be used in the transportation in commerce of certain hazardous materials. Such regulations may cover any safety aspect of the transportation of hazardous materials which the Secretary deems necessary or appropriate, including, but not limited to, the packing, repacking, handling, labeling, making, placarding and routing of hazardous materials. The Secretary was further mandated to consult and cooperate with the ICC before issuing such regulations.

Conference substitute

The conference substitute adopts the provisions of the Senate amendment. While the regulations are applicable "to any person" who transports or causes to be transported hazardous materials, the conferees intend that these requirements apply to commercial (rather than personal) transportation. Additionally, while the Secretary may prescribe routing regulations for hazardous materials transportation, such regulations may not be promulgated with respect to pipelines.

Finally, conferees clarified the provision of the Senate amendment with respect to I.C.C. cooperation to require the Interstate Commerce Commission, to the extent of its lawful authority, to take such steps as are necessary to implement such regulations with respect to the routing of hazardous materials.

CITIZEN'S CIVIL ACTIONS

House bill

No provision.

Senate amendment

Subject to exclusions, prerequisites, and notice requirements, a citizen was authorized to sue for equitable relief against any person alleged to be in violation of the Act or an order or regulation issued thereunder.

Conference substitute

The conference substitute omits this provision of the Senate amendment.

CITIZEN'S PETITIONS

House bill

No provision.

Senate amendment

The Senate amendment authorized any interested person to petition the Secretary to commence a proceeding to designate a particular material as hazardous or extremely hazardous or to issue, amend, or revoke an order or regulation with respect thereto. If the Secretary failed to consider the petition or denied it within 120 days, the petitioner could seek a court order directing the Secretary to initiate a proceeding to take the action requested; such an order was to be issued if the court was satisfied by a preponderance of the evidence that the failure of the Secretary to act exposed the petitioner or other persons to an unreasonable risk of harm arising out of the transportation of the nature, quantity, and form of material which was the subject of the petition.

Conference substitute

The conferees accepted the House position and omit the Senate provision.

The conference substitute omits the provision of the Senate amendment. The conferees agreed, however, that the respective committees should monitor the procedures of the Office of Hazardous Materials with respect to petitions filed under the Administrative Procedure Act to insure that the Office is responsive thereto.

RELATIONSHIP TO OTHER LAWS

House bill

The House bill authorized the Secretary to issue regulations to assure the safe transportation of hazardous materials in interstate and foreign commerce. This authority did not extend to any such transportation which is solely between points in the same State.

Senate amendment

The Senate amendment authorized the Secretary to issue regulations for the safe transportation of hazardous materials in commerce. The term commerce was defined to include commerce "in . . . any State". The Senate amendment further provided for the preemption of any requirement of a State or political subdivision which is inconsistent with any requirement of, or regulation under, this legislation, except that such State or political subdivision may seek to apply its own statute or regulation where they afford an equal or greater level of protection and they do not burden interstate commerce.

Conference substitute

The conference substitute adopts the House definition of commerce, amended to include activity "which affects" interstate commerce as well as the types of commerce enumerated therein. The conference substitute adopts the Senate provision on preemption, except that provision is added specifically excluding from the authority granted by this Act the transportation of firearms and ammunition for personal use.

The Senate amendment with regard to the regulation of hazardous materials would have applied to all modes of transportation. The conferees agreed, however, that to prevent duplication of effort, the provisions of this title shall not apply to pipelines which are subject to regulation under the Natural Gas Pipeline Safety Act of 1968, or to pipelines which are subject to regulation under Chapter 39 of title 18, United States Code.

CONFORMING AMENDMENTS TO STATUTES APPLICABLE TO THE COAST GUARD

House bill

No provision.

Senate amendment

The Senate amendment modified the penalty provisions of the section of law regulating the carriage of explosives or other dangerous articles on vessels by authorizing a sentence of imprisonment upon conviction of knowing violation and by authorizing civil penalties. The Senate amendment also amended the same section to the Coast Guard to prescribe regulations for and regulate the carriage of "combustible" as well as flammable materials, and to prescribe the defining flash-point criteria therefor.

Conference substitute

The conference substitute adopts the provisions of the Senate amendment.

TRANSPORTATION OF EXPLOSIVES BY RAIL

House bill

The Secretary was required to issue regulations governing the transportation of explosives by rail. Such regulations shall have required (subject to possible suspension by the Secretary when conditions of

national necessity so warrant) the use of railroad cars with roller bearing and either composition brakeshoes or spark shields; the use of spacer cars not containing hazardous materials in between railroad cars carrying explosives, or an equivalent linear separation of explosives as the Secretary finds necessary or prudent; and periodic inspection of railroad cars in use and to be used to carry explosives.

Senate amendment

No specific provision.

Conference substitute

The conference substitute omits the provision of the House bill in view of the fact that the Secretary of Transportation promulgated regulations, effective November 19, 1974, to protect against the hazards of transporting explosives by rail.

PROTECTION OF I.C.C. OFFICERS

House bill

No provision.

Senate amendment

The Senate amendment modified 18 U.S.C. 1114 to deter those who would use force against representatives of the principal surface transportation regulatory agency by adding officers and employees of the Interstate Commerce Commission to the list of Federal officials whom it is a Federal crime to assault or kill.

Conference substitute

The conference substitute omits this provision of the Senate amendment.

MANDATORY DELEGATION OF ENFORCEMENT RESPONSIBILITY
BY SECRETARY TO MODAL ADMINISTRATORS

House bill

The House bill required the Secretary to delegate to the Federal Railroad Administrator, Federal Aviation Administrator, and to the Federal Highway Administrator, all functions, powers, and duties with respect to the enforcement of regulations pertaining to the transportation of explosives and other dangerous articles. The House bill also authorized the Secretary to delegate to the modal administrators such other functions, powers, and duties pertaining to the transportation of explosives and other dangerous articles as the Secretary may deem appropriate.

Senate amendment

No provision.

Conference substitute

The conference substitute omits the House provision.

TITLE II—RAIL SAFETY

DECLARATION OF POLICY

House bill

No provision.

Senate amendment

The Senate amendment provided that the Congress found that more effective realization of the purposes of the Federal Railroad Safety Act of 1970 requires that Act to be amended to mandate comprehensive analysis and evaluation of the rail safety program, to increase the amount and percentage of available resources for inspection, investigation, and enforcement, to increase the enforcement powers of the Secretary of Transportation, and to authorize citizens safety petitions.

Conference substitute

The conference substitute adopted the Senate amendment except the reference to citizen's safety petitions was deleted.

COMPREHENSIVE RAILROAD SAFETY REPORT

House bill

The House bill required the Secretary of Transportation to prepare and submit to the President for transmittal to the Congress by March 17, 1976 a report which shall contain (1) a description of the areas of railroad safety for which Federal safety standards have been issued under authority of the Federal Railroad Safety Act of 1970 and which are enforced as of June 30, 1975; (2) identification of any area of railroad safety for which Federal railroad safety standards have not been issued under authority of the Federal Railroad Safety Act of 1970 as of June 30, 1975; (3) identification of the aforementioned areas of railroad safety which involve State participation under Section 206 of the Federal Railroad Safety Act of 1970; (4) a description of the railroad safety program underway or planned in each State as of June 30, 1975; (5) a discussion of the number and qualification of personnel for service as safety inspectors by the industry, and by the Federal and State governments, needed for reasonable safety program performance; (6) an evaluation of alternative methods of allotting Federal funds among the States that desire Federal assistance, including recommendations, if needed, for a statutory formula for apportioning Federal funds; (7) a discussion of other problems affecting cooperation among the States and relate to effective participation of State agencies in the nationwide railroad safety program; and (8) recommendations for additional Federal and State legislation needed to further the objectives of the Federal Railroad Safety Act of 1970. The House bill further provided that the report shall be prepared by the Secretary after consultation with the national associations representing railroad employee unions, the carriers, the cooperating State agen-

cies, and the national organization of State commissions. Finally, their report shall include a statement of the views of the national associations representing railroad employee unions, of the carriers, and of the national organization of State commissions on the content of the report as prepared in final form.

Senate Amendment

Like the House bill, the Senate amendment required the Secretary to prepare a comprehensive rail safety report. However, the Senate amendment required the Secretary to prepare and submit such reports to the President and the Congress, concurrently.

The contents of the report as required by the Senate amendment were similar to that required by the House bill with the following two additions: First, the Secretary shall identify any area of railroad safety with respect to which Federal railroad safety standards have been proposed but have not been issued under this Act (as of June 30, 1975). Second, the Secretary shall identify alternative and more cost effective methods for inspection and enforcement of Federal safety standards and evaluate the problems involved in implementing such alternatives. Additionally, the report shall be prepared by the Secretary directly or indirectly, after research, examination, study and consultation with the national associations representing railroad employee unions, railroad management, cooperating State agencies, the national organization of State commissions, universities, and other persons having special expertise or experience with respect to railroad safety. Finally, the report shall include an appendix composed of statements of the views of the national associations representing railroad employee unions, carriers, and the national organization of State commissions with respect to the content of such report in its final form.

Conference substitute

The conference substitute adopted the Senate amendment.

ACCIDENT REPORTS

House bill

The House bill amended Section 2 of the Accident Reports Act of 1910 (45 U.S.C. 39) to extend to the Secretary of Transportation the right to assess a civil penalty in lieu of the criminal penalty contained in the Act of 1910. The Secretary was authorized to assess a civil penalty in an amount not less than \$250 nor more than \$2,500 for each violation, as the Secretary deemed reasonable.

Senate amendment

Like the House bill, the Senate amendment provided for the assessment of civil penalties for violation of the Accident Report Act (the Act of May 6, 1910) (45 U.S.C. 39). The amendment provided that the civil penalties provision of the Federal Railroad Safety Act of 1970 (45 U.S.C. 438(b)) shall apply to violations of the reporting requirements of the Accident Reports Act.

Conference substitute

The conference substitute adopted the Senate amendment.

AUTHORIZATION FOR APPROPRIATIONS

House bill

The House bill amended Section 212 of the Federal Railroad Safety Act of 1970 (45 U.S.C. 441) to provide for authorization of \$35,000,000 for appropriations for the fiscal year ending June 30, 1975 to carry out the purposes of the Act.

The authorization of \$35 million was further limited by the following guidelines: First, not more than \$18 million shall be available for expenditure by the Office of Safety, including salaries and expenses for up to 350 safety inspectors and up to 80 clerical personnel. Second, not more than \$3.5 million shall be available to carry out Section 206(d) of the Federal Railroad Safety Act of 1970, relating to Federal grants to carry out State safety programs. Third, not more than \$3.5 million shall be available for salaries and expenses of the Federal Railroad Administration, not otherwise provided for in the Act. Fourth, not more than \$10 million shall be available for conducting research and development activities under the Act. Finally, the House bill provided that the aggregate of amounts obligated and expended in fiscal year 1975 for conducting research and development activities under the Act shall not exceed the aggregate of amounts expended in such fiscal year for the investigation and enforcement of Federal safety rules, regulations, orders and standards prescribed or in effect under the Act.

Senate amendment

The Senate amendment included an authorization for appropriations identical to that contained in the House bill with one exception. The Senate bill did not contain the provision prohibiting the aggregate of amounts obligated and expended in fiscal year 1975 for conducting research and development to exceed the aggregate of such amounts for the investigation and enforcement of railroad safety rules, regulations, orders, and standards.

Conference substitute

The conference substitute adopted the language of the House bill.

ENFORCEMENT

House bill

No provision.

Senate amendment

The Senate amendment would change section 208(a) of the Federal Railroad Safety Act of 1970 (45 U.S.C. 437(a)) to authorize the Secretary to issue cease and desist orders to direct the termination of actions, or omissions to act, in violation of the Act or of any railroad safety, rule, regulation, order, or standard issued thereunder. It would further give the district courts of the United States jurisdiction to enforce such orders by appropriate means.

Conference substitute

The conference substitute adopted the Senate amendment with a minor conforming amendment allowing the Secretary to issue orders to direct compliance with the Federal Railroad Safety Act or rules, regulations, orders, or standards issued thereunder.

RAIL SAFETY PETITIONS

House bill

No provision.

Senate amendment

The Senate amendment amended Section 208 of the Federal Railroad Safety Act of 1970 (45 U.S.C. 437) by providing for a new subsection relating to rail safety petitions. Under the provision, any interested person, including a safety organization or governmental entity could petition the Secretary to commence a proceeding for the issuance, amendment, or revocation of any railroad safety rule, regulation, order or standard under the Act.

Upon the receipt of a petition, the Secretary was given 120 days within which to respond. During such period, if he responded affirmatively, he would commence an action to develop and promulgate a rule to respond to the petition. If the Secretary denied the petition or failed to respond within the 120 day period, the petitioner could commence a civil action in an appropriate district court of the United States to compel the Secretary to initiate a proceeding to take the action requested.

If the petitioner could demonstrate to the satisfaction of the Court, by a preponderance of the evidence in a de novo proceeding, that there is a substantial risk of personal injury or property damage and that the failure of the Secretary to grant the petition exposes the petitioner or other persons to a risk of such harm, then the Court could order the Secretary to initiate the action requested by the petitioner.

Conference substitute

The conference substitute omits the Senate amendment.

RAIL IMPROVEMENT AMENDMENTS

House bill

No provision.

Senate amendment

The Senate amendment would amend the Regional Rail Reorganization Act of 1973 (87 Stat. 985), with various technical and conforming amendments.

Conference substitute

The conference substitute omits this provision of the Senate amendment because it has already been enacted into law as Public Law 93-488.

TITLE III—INDEPENDENT SAFETY BOARD

SHORT TITLE

FINDINGS

House bill

No provision.

Senate amendment

The Senate amendment found that although the National Transportation Safety Board was established in 1966 (49 U.S.C. 1654) as an independent governmental agency, its current position as a sub-

ordinate agency within the Department of Transportation undercuts its ability to effectively perform the functions it was designed to perform. Because many of its investigations involve other government agencies and because some of its conclusions may involve severe criticism of such agencies, the Senate amendment concluded that this agency would best serve the Nation and fulfill its role if it were a totally separate and independent agency.

Conference substitute

The conference substitute adopts the provisions of the Senate amendment.

NATIONAL TRANSPORTATION SAFETY BOARD

House bill

No provision.

Senate amendment

The Senate amendment established the National Transportation Safety Board as an independent agency of the United States as of April 1, 1975. The Board consisted of five members appointed by the President, by and with the advice and consent of the Senate. No more than three members of the Board were to be of the same political party and such members were to be appointed upon the basis of technical qualification and professional standing in the field of accident reconstruction, safety engineering, or transportation safety. The terms of office of the members of the Board were to be five years. The Senate amendment further provided that the present members of the Board shall continue to serve until the expiration of their current terms of office.

Under the Senate amendment, on or before April 1, 1975, and thereafter as required, the President would designate, with the advice and consent of the Senate, a person to serve as Chairman of the National Transportation Safety Board and any other person to serve as Vice Chairman. Both were to serve as Chairman and Vice Chairman throughout their respective terms. The Chairman was designated as the chief executive officer of the Board and would exercise executive and administrative functions of the Board.

Additionally, the Board was mandated to establish and maintain distinct and appropriately staffed bureaus, divisions, or offices to investigate and report on accidents involving the five modes of transportation: aviation, marine and maritime, highway and motor vehicle, railroad and tracked vehicle, and pipeline. The Board also was mandated to establish and maintain an office to oversee efforts to insure the safe transportation of hazardous materials.

Conference substitute

The conference substitute adopts the provisions of the Senate amendment with several modifications. Two members of the Board shall be individuals who have been appointed on the basis of technical qualification and professional or management standing in the field of accident reconstruction, safety engineering, or transportation safety.

Second, the conferees agreed that the President shall designate a member of the Board to serve as new Chairman on or before January 1,

1976, and thereafter as required. In so doing, the term of office of the current Chairman would not be cut short. This provision, coupled with the provision which appeared in the Senate amendment allowing present members of the Board to continue to serve until the expiration of their current terms of office, in effect will "grandfather" the positions of the current Chairman and Board members at least until the expiration of their current terms.

Third, the conferees further agreed that the Chairman and Vice Chairman once so designated, would serve in those positions for a term of two years. After two years, the President could reappoint the Chairman and Vice Chairman to serve additional two year terms. The designation of the Chairman would be subject to the advice and consent of the Senate.

Fourth, the conferees agreed not to require the Board to establish and maintain a separate bureau, division, or office for the purpose of investigating and reporting marine and maritime accidents. By adopting such a provision, the conferees do not intend that the new Board should not be involved in the investigation of marine and maritime accidents. The conferees however intend that the National Transportation Safety Board continue the role it currently plays in the investigation of marine and maritime accidents.

GENERAL PROVISIONS

House bill

No provision.

Senate amendment

The Senate amendment set out in detail the duties, responsibilities, and powers of the Board.

The Board was required to investigate and determine the facts, conditions, and circumstances, and the cause or probable cause or causes of: (1) certain aircraft accidents; (2) marine casualties (excluding those involving only public vessels) which occur on the navigable or territorial waters of the United States or which involved a vessel of United States registry, whenever the Board found such an investigation would tend to promote safety of life at sea and be in the public interest; (3) accidents involving a motor carrier in which there was a fatality or property damage in excess of \$75,000; (4) highway accidents, including railroad grade crossing accidents that it selected in cooperation with the States; (5) railroad accidents in which there was a fatality or property damage in excess of \$500,000; (6) pipeline accidents in which there was a fatality or property damage in excess of \$100,000; and (7) other accidents which occurred in connection with the transportation of people or property which, in the judgment of the Board, was catastrophic, involved problems of a recurring character, or would otherwise carry out the policy of this Act.

The Board was empowered to request the Secretary of Transportation to make investigations of the facts, conditions, and circumstances of accidents. The Board thereafter, utilizing such investigations, would then make the determination of the probable cause of the accident. However, if there was an initial indication of government misfea-

sance or nonfeasance, the Board itself was required to conduct the investigation with regard to the accident.

In addition, the Senate amendment provided that the Board shall report in writing on the facts, conditions, and circumstances of each accident investigated and cause such reports to be made available to the public at reasonable cost. Other duties of the Board included (1) the issuance of periodic reports to Congress, Federal, State, and local agencies concerned with transportation safety, and other interested persons regarding transportation safety; (2) the advocacy of the cause of safety and transportation; (3) the initiation and conduct of special studies and investigations pertaining to transportation safety and human injury avoidance; (4) the assessment of techniques and methods of accident investigation; (5) the establishment by regulation of requirements binding on persons reporting accidents subject to the Board's investigatory jurisdiction; (6) the evaluation of the transportation safety consciousness and efficacy in preventing accidents of other government agencies; (7) the evaluation of the adequacy of safeguards and procedures concerning the transportation of hazardous materials and the performance of other government agencies charged with assuring the safe transportation of such materials; and (8) the review on appeal of the (A) suspension, amendment, modification, revocation, or denial of any operating certificate of license issued by the Secretary of Transportation under Section 602, 609 or 611(c) of the Federal Aviation Act of 1958 and (B) the decisions of the Commandant of the Coast Guard, on appeals from the orders of any administrative law judge revoking, suspending or denying a license, certificate, document, or register in proceedings under section 4450 of the Revised Statutes, the act of July 15, 1954, or Section 4 of the Great Lakes Pilotage Act.

Subsection (6) of section 304 of the Senate amendment further defined the powers of the Board. It provided that the Board, and any employees it designates, may hold hearings, issue subpoenas, administer oaths, and require the production of information for the purpose of carrying out the Act. The Board and its authorized employees were also authorized to enter property where accidents have occurred to inspect the appropriate materials, records, equipment and facilities. Upon request, a Federal court could back up the Board's power with an appropriate order. Any violation of such an order would involve a contempt of court. The Board was also authorized to enter such contracts, leases, cooperative agreements, or other transactions as may be necessary in the conduct of the functions and duties of the Board. The Board was also authorized to obtain autopsies of victims of accidents occurring within its jurisdiction.

The Senate amendment further empowered the Board to issue regulations as needed to carry out its task. If an interested person filed an objection to a proposed regulation and requested a public hearing, such a hearing must have been held prior to adopting any final regulation. Other powers granted to the Board included the authority to (1) use on a reimbursable basis or otherwise, available services, equipment, personnel, and facilities of the Department of Transportation and of other civilian or military agencies or instrumentalities of the Federal government; (2) confer with employees and use available services, records, and facilities of State, municipal, or local governments and

agencies; (3) employ experts and consultants in accordance with section 3109 of Title 5, U.S.C.; (4) appoint one or more advisory committees as is necessary; (5) accept voluntary and uncompensated services; (6) accept gifts or donations of money or property; and (7) enter into contracts with public or private non-profit entities for the conduct of studies related to any of its functions.

The Senate amendment provides for joint submission of budget requests and recommendations and empowers the Board to designate representatives to serve or assist on such committees as the Chairman deemed necessary and to conduct inquiries to secure data necessary to carry out its functions.

With regard to the use of Board reports as evidence, subsection (c) of section 304 of the Senate amendment provided that no part of any such reports relating to any accident or the investigation thereof shall be admitted as evidence or used in any suit or action for damages growing out of any matter mentioned in such report or reports. Finally, subsection (d) provided that any order issued by the Board under this Act shall be subject to review by the appropriate court of appeals of the United States.

Conference substitute

The conference substitute adopts the provisions of the Senate amendment with the following modifications:

First, the conferees substituted a new provision outlining the nature of marine accidents which the Board shall investigate. This modification was made in deference to the Merchant Marine and Fisheries Committee of the House which has jurisdiction over the Coast Guard. The new section provides that the Board shall investigate or cause to be investigated, and determine cause or probable cause of a major marine casualty, except as involving only public vessels, occurring on the navigable waters or territorial seas of the United States or involving a vessel of the United States, in accordance with regulations to be prescribed jointly by the Board and the Secretary of the department in which the Coast Guard is operating. This section should not be construed to eliminate or diminish any responsibility under any other Federal statute of such Secretary. Finally, where there is a marine casualty involving a public vessel and any other vessel, such casualty shall be investigated, the cause or probable cause determined, and the report made available to the public by either the Board or the Coast Guard.

The conferees intend the Board to continue the role it has always played in the investigation of marine casualties; this new legislation is not intended to modify that role. Under both the language which was deleted in the Senate amendment and the new language in the conference substitute, an agency of the Federal Government will now be required to investigate and report publicly on a marine casualty which involves a public vessel and a non public vessel.

Second, the conference substitute provides new criteria which define the type of accidents in the other modes which the Board shall investigate. With regard to motor carrier, railroad, and pipeline accidents, the conferees deleted the reference to property damage in terms of dollars. With regard to railroad and pipeline accidents, the Board shall investigate those accidents where there is "a fatality or substantial

property damage". With regard to motor carrier accidents, the Board shall investigate those accidents that it selects in cooperation with the States.

The Board's record of investigating aviation accidents has, in general, been outstanding, and the conferees do not intend that the Board relax its efforts in this area. Rather, additional resources should be sought and utilized in the investigation of more accidents involving the surface modes—particularly railroads and pipelines.

Third, the conferees agreed to clarify the Board's authority to establish regulations to carry out its duties under the Act. Under the language contained in the Senate amendment, there was some confusion as to whether the Board would have regulatory authority. To clarify this, the conferees have deleted the language that was in the Senate amendment and replaced it with language which is in the existing section 5 of the Department of Transportation Act. This language provides that "the Board shall . . . establish such rules and regulations as may be necessary to the exercise of its functions."

Fourth, a change was made in the simultaneous budget submission provision. As changed, an office or agency of the United States may request (but not compel) the Board to submit its budget estimates, information, requests, testimony or comments prior to the submission of such recommendations, estimates, information, testimony or comments to the Congress.

SAFETY ADVOCACY

House bill

No provision.

Senate amendment

The Senate amendment would have created a new role for the National Transportation Safety Board—that of Safety Advocate. Under the provision, the Board was authorized to intervene as a party in rulemaking and similar proceedings conducted by other Federal agencies, when it appeared in the judgment of the Board, that such proceedings may substantially affect aviation, maritime, motor vehicle, railroad, or pipeline safety. The Board was to be governed by the rules governing regular parties intervening in such proceedings, except that where no rules authorized intervention, the Board was afforded an opportunity to present facts and arguments to responsible officials in an orderly manner. The provision additionally allowed intervention in State proceedings where the proceedings may affect transportation safety and where the Board's participation had been requested by the State governor, the State safety agency, or the State entity conducting the proceeding.

Conference substitute

The conference substitute omits this provision of the Senate amendment. The conferees do not intend by this deletion to alter any authority of the NTSB to participate in rulemaking proceedings of the various transportation safety agencies.

House bill

No provision.

Senate amendment

The Senate amendment required the Board to report to Congress on its activities on July 1 of each year. The report shall include (a) a statistical and analytical summary of transportation accidents investigated and reviewed by the Board; (b) a survey and summary of the Board's recommendations; (c) a summary of the activity of the Board in advocating the cause of safety in transportation; (d) an appraisal in detail of the accident investigation and accident prevention activities of other government agencies; (e) a biennial appraisal and critical evaluation and review including recommendations for legislative and administrative action and change with respect to aviation accident investigation and safety, marine accident investigation and safety; highway and motor vehicle accident investigation and safety, railroad accident investigation and safety, pipeline accident investigation and safety, and hazardous materials transportation and safety advocacy activities.

Conference substitute

The conference substitute adopts the report provisions of the Senate amendment with technical and conforming modifications to reflect the substantive provisions of the law as reported by the conferees.

PUBLIC ACCESS TO INFORMATION

House bill

No provision.

Senate amendment

The Senate amendment provided that copies of any communication, document, investigation, or other report, or information received or sent by the Board or any member or employee thereof, shall be made available to the public upon identifiable request, and at reasonable cost. Nothing contained in the information provisions of the Senate amendment shall be deemed to require the release of any information described by 5 U.S.C. 552(b), or which is otherwise protected by loss in exposure to the public. Additionally, the information may not be publicly released if it concerns or relates to a trade secret referred to in section 1905 of title 18, United States Code, except that such information may be disclosed in a manner to preserve confidentiality (1) upon request, to other Federal Government departments and agencies for official use; (2) upon request, to any Committee of Congress having jurisdiction over the subject matter to which the information relates; (3) in any judicial proceeding under a court order formulated to preserve the confidentiality of such information without impairing the proceedings; or (4) to the public in order to protect health and safety after notice and opportunities or comments in writing.

Conference substitute

The conference substitute adopts the provision of the Senate amendment with minor drafting modifications.

House bill

No provisions.

Senate amendment

The Senate amendment provided that whenever the Board submitted any recommendation regarding transportation safety to the Secretary of Transportation, the Secretary shall respond to such recommendation formally and in writing not later than sixty days after receipt thereof. The Secretary could adopt the recommendation in whole, in part, or not at all. However, to the extent to which he indicated that he would not adopt a recommendation, he was required to state his reasons therefor. To the extent that he had decided to adopt the recommendation, then he would be required to provide a proposed time-table for adopting the recommendation.

Conference substitute

The conference substitute adopts the provision of the Senate amendment with one modification. Rather than requiring the Secretary to respond within sixty days of the date of receipt of the recommendation, the conferees extended that period to ninety days.

Authorization of Appropriations*House bill*

No provision.

Senate amendment

The Senate amendment authorized to be appropriated for the purposes of this Act not to exceed \$14 million for the fiscal year ending June 30, 1975; \$16 million for the fiscal year ending June 30, 1976; and \$18 million for the fiscal year ending June 30, 1977.

Conference substitute

The conference substitute authorized to be appropriated for the purposes of this Act, such sums as are necessary, not to exceed \$12 million for the fiscal year ending June 30, 1975 and \$12 million for the fiscal year ending June 30, 1976, such sums to remain available until expended.

HARLEY O. STAGGERS,
JOHN JARMAN,
JOHN D. DINGELL,
SAM DEVINE,
DICK SHOUP,

Managers on the Part of the House.

WARREN MAGNUSON,
VANCE HARTKE,
HOWARD W. CANNON,
TED STEVENS,
J. GLENN BEALL, Jr.,

Managers on the Part of the Senate.

TRANSPORTATION SAFETY ACT OF 1974

DECEMBER 13, 1974.—Ordered to be printed

Mr. HARTKE, from the committee of conference, submitted the following

CONFERENCE REPORT

[To accompany H.R. 15223]

The committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 15223) to amend the Federal Railroad Safety Act of 1970 and the Hazardous Materials Transportation Control Act of 1970 to authorize additional appropriations, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendment of the Senate to the text of the House bill and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the Senate amendment insert the following:

That this Act may be cited as the "Transportation Safety Act of 1974".

TITLE I—HAZARDOUS MATERIALS

SHORT TITLE

Sec. 101. This title may be cited as the "Hazardous Materials Transportation Act".

DECLARATION OF POLICY

Sec. 102. It is declared to be the policy of Congress in this title to improve the regulatory and enforcement authority of the Secretary of Transportation to protect the Nation adequately against the risks to life and property which are inherent in the transportation of hazardous materials in commerce.

DEFINITIONS

SEC. 103. As used in this title, the term—

(1) "commerce" means trade, traffic, commerce, or transportation, within the jurisdiction of the United States, (A) between a place in a State and any place outside of such State, or (B) which affects trade, traffic, commerce, or transportation described in clause (A);

(2) "hazardous material" means a substance or material in a quantity and form which may pose an unreasonable risk to health and safety or property when transported in commerce;

(3) "Secretary" means the Secretary of Transportation, or his delegate;

(4) "serious harm" means death, serious illness, or severe personal injury,

(5) "State" means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, or Guam;

(6) "transports" or "transportation" means any movement of property by any mode, and any loading, unloading, or storage incidental thereto; and

(7) "United States" means all of the States.

DESIGNATION OF HAZARDOUS MATERIALS

SEC. 104. Upon a finding by the Secretary, in his discretion, that the transportation of a particular quantity and form of material in commerce may pose an unreasonable risk to health and safety or property, he shall designate such quantity and form of material or group or class of such materials as a hazardous material. The materials so designated may include, but are not limited to, explosives, radioactive materials, etiologic agents, flammable liquids or solids, combustible liquids or solids, poisons, oxidizing or corrosive materials, and compressed gases.

REGULATIONS GOVERNING TRANSPORTATION OF HAZARDOUS MATERIALS

SEC. 105. (a) GENERAL.—The Secretary may issue, in accordance with the provisions of section 553 of title 5, United States Code, including an opportunity for informal oral presentation, regulations for the safe transportation in commerce of hazardous materials. Such regulations shall be applicable to any person who transports, or causes to be transported or shipped, a hazardous material, or who manufactures, fabricates, marks, maintains, reconditions, repairs, or tests a package or container which is represented, marked, certified, or sold by such person for use in the transportation in commerce of certain hazardous materials. Such regulations may govern any safety aspect of the transportation of hazardous materials which the Secretary deems necessary or appropriate, including, but not limited to, the packing, repacking, handling, labeling, marking, placarding, and routing (other than with respect to pipelines) of hazardous materials, and the manufacture, fabrication, marking, maintenance, reconditioning, repairing, or testing of a package or container which is represented, marked, certified, or sold by such person for use in the transportation of certain hazardous materials.

(b) COOPERATION.—In addition to other applicable requirements, the Secretary shall consult and cooperate with representatives of the Interstate

Commerce Commission and shall consider any relevant suggestions made by such Commission, before issuing any regulation with respect to the routing of hazardous materials. Such Commission shall, to the extent of its lawful authority, take such action as is necessary or appropriate to implement any such regulation.

(c) REPRESENTATION.—No person shall, by marking or otherwise, represent that a container or package for the transportation of hazardous materials is safe, certified, or in compliance with the requirements of this Act, unless it meets the requirements of all applicable regulations issued under this Act.

HANDLING OF HAZARDOUS MATERIALS

SEC. 106. (a) CRITERIA.—The Secretary is authorized to establish criteria for handling hazardous materials. Such criteria may include, but need not be limited to, a minimum number of personnel; a minimum level of training and qualification for such personnel; type and frequency of inspection; equipment to be used for detection, warning, and control of risks posed by such materials; specifications regarding the use of equipment and facilities used in the handling and transportation of such materials; and a system of monitoring safety assurance procedures for the transportation of such materials. The Secretary may revise such criteria as required.

(b) REGISTRATION.—Each person who transports or causes to be transported or shipped in commerce hazardous materials or who manufactures, fabricates, marks, maintains, reconditions, repairs, or tests packages or containers which are represented, marked, certified, or sold by such person for use in the transportation in commerce of certain hazardous materials (designated by the Secretary) may be required by the Secretary to prepare and submit to the Secretary a registration statement not more often than once every 2 years. Such a registration statement shall include, but need not be limited to, such person's name; principal place of business; the location of each activity handling such hazardous materials; a complete list of all such hazardous materials handled; and an averment that such person is in compliance with all applicable criteria established under subsection (a) of this section. The Secretary shall by regulation prescribe the form of any such statement and the information required to be included. The Secretary shall make any registration statement filed pursuant to this subsection available for inspection by any person, without charge, except that nothing in this sentence shall be deemed to require the release of any information described by subsection (b) of section 552 of title 5, United States Code, or which is otherwise protected by law from disclosure to the public.

(c) REQUIREMENT.—No person required to file a registration statement under subsection (b) of this section may transport or cause to be transported or shipped extremely hazardous materials, or manufacture, fabricate, mark, maintain, recondition, repair, or test packages or containers for use in the transportation of extremely hazardous materials, unless he has on file a registration statement.

EXEMPTIONS

SEC. 107. (a) GENERAL.—The Secretary, in accordance with procedures prescribed by regulation, is authorized to issue or renew, to any person subject to the requirements of this title, an exemption from the provisions of this title, and from regulations issued under section 105 of this title, if such person transports or causes to be transported or shipped hazardous

materials in a manner so as to achieve a level of safety (1) which is equal to or exceeds that level of safety which would be required in the absence of such exemption, or (2) which would be consistent with the public interest and the policy of this title in the event there is no existing level of safety established. The maximum period of an exemption issued or renewed under this section shall not exceed 2 years, but any such exemption may be renewed upon application to the Secretary. Each person applying for such an exemption or renewal shall, upon application, provide a safety analysis as prescribed by the Secretary to justify the grant of such exemption. A notice of an application for issuance or renewal of such exemption shall be published in the Federal Register. The Secretary shall afford access to any such safety analysis and an opportunity for public comment on any such application, except that nothing in this sentence shall be deemed to require the release of any information described by subsection (b) of section 552 of title 5, United States Code, or which is otherwise protected by law from disclosure to the public.

(b) **VESSELS.**—The Secretary shall exclude, in whole or in part, from any applicable provisions and regulations under this title, any vessel which is exempted from the application of section 201 of the Ports and Waterways Safety Act of 1972 by paragraph (2) of such section (46 U.S.C. 391a(2)), or any other vessel regulated under such Act, to the extent of such regulation.

(c) **FIREARMS AND AMMUNITION.**—Nothing in this title, or in any regulation issued under this title, shall be construed to prohibit or regulate the transportation by any individual, for personal use, of any firearm (as defined in paragraph (4) of section 232 of title 18, United States Code) or any ammunition therefor, or to prohibit any transportation of firearms or ammunition in commerce.

(d) **LIMITATION ON AUTHORITY.**—Except when the Secretary determines that an emergency exists, exemptions or renewals granted pursuant to this section shall be the only means by which a person subject to the requirements of this title may be exempted from or relieved of the obligation to meet any requirements imposed under this title.

TRANSPORTATION OF RADIOACTIVE MATERIALS ON PASSENGER-CARRYING AIRCRAFT

SEC. 108. (a) GENERAL.—Within 120 days after the date of enactment of this section, the Secretary shall issue regulations in accordance with this section and pursuant to section 105 of this title, with respect to the transportation of radioactive materials on any passenger-carrying aircraft in air commerce, as defined in section 101(4) of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301(4)). Such regulations shall prohibit any transportation of radioactive materials on any such aircraft unless the radioactive materials involved are intended for use in, or incident to, research, or medical diagnosis or treatment, so long as such materials as prepared for and during transportation do not pose an unreasonable hazard to health and safety. The Secretary shall further establish effective procedures for monitoring and enforcing the provisions of such regulations.

(b) **DEFINITION.**—As used in this section, "radioactive materials" means any materials or combination of materials which spontaneously emit ionizing radiation. The term does not include materials in which (1) the estimated specific activity is not greater than 0.002 microcuries per gram of material; and (2) the radiation is distributed in an essentially uniform manner.

POWERS AND DUTIES OF THE SECRETARY

SEC. 109. (a) GENERAL.—The Secretary is authorized, to the extent necessary to carry out his responsibilities under this title, to conduct investigations, make reports, issue subpoenas, conduct hearings, require the production of relevant documents, records, and property, take depositions, and conduct, directly or indirectly, research, development, demonstration, and training activities. The Secretary is further authorized, after notice and an opportunity for a hearing, to issue orders directing compliance with this title or regulations issued under this title; the district courts of the United States shall have jurisdiction, upon petition by the Attorney General, to enforce such orders by appropriate means.

(b) **RECORDS.**—Each person subject to requirements under this title shall establish and maintain such records, make such reports, and provide such information as the Secretary shall by order or regulation prescribe, and shall submit such reports and shall make such records and information available as the Secretary may request.

(c) **INSPECTION.**—The Secretary may authorize any officer, employee, or agent to enter upon, inspect, and examine, at reasonable times and in a reasonable manner, the records and properties of persons to the extent such records and properties relate to—

(1) the manufacture, fabrication, marking, maintenance, reconditioning, repair, testing, or distribution of packages or containers for use by any person in the transportation of hazardous materials in commerce; or

(2) the transportation or shipment by any person of hazardous materials in commerce.

Any such officer, employee, or agent shall, upon request, display proper credentials.

(d) **FACILITIES AND DUTIES.**—The Secretary shall—

(1) establish and maintain facilities and technical staff sufficient to provide, within the Federal government, the capability of evaluating risks connected with the transportation of hazardous materials and materials alleged to be hazardous;

(2) establish and maintain a central reporting system and data center so as to be able to provide the law-enforcement and firefighting personnel of communities, and other interested persons and government officers, with technical and other information and advice for meeting emergencies connected with the transportation of hazardous materials; and

(3) conduct a continuing review of all aspects of the transportation of hazardous materials in order to determine and to be able to recommend appropriate steps to assure the safe transportation of hazardous materials.

(e) **ANNUAL REPORT.**—The Secretary shall prepare and submit to the President for transmittal to the Congress on or before May 1 of each year a comprehensive report on the transportation of hazardous materials during the preceding calendar year. Such report shall include, but need not be limited to—

(1) a thorough statistical compilation of any accidents and casualties involving the transportation of hazardous materials;

(2) a list and summary of applicable Federal regulations, criteria, orders, and exemptions in effect;

(3) a summary of the basis for any exemptions granted or maintained;

(4) an evaluation of the effectiveness of enforcement activities and the degree of voluntary compliance with applicable regulations;

(5) a summary of outstanding problems confronting the administration of this title, in order of priority; and

(6) such recommendations for additional legislation as are deemed necessary or appropriate.

PENALTIES

SEC. 110. (a) CIVIL.—(1) Any person (except an employee who acts without knowledge) who is determined by the Secretary, after notice and an opportunity for a hearing, to have knowingly committed an act which is a violation of a provision of this title or of a regulation issued under this title, shall be liable to the United States for a civil penalty. Whoever knowingly commits an act which is a violation of any regulation, applicable to any person who transports or causes to be transported or shipped hazardous materials, shall be subject to a civil penalty of not more than \$10,000 for each violation, and if any such violation is a continuing one, each day of violation constitutes a separate offense. Whoever knowingly commits an act which is a violation of any regulation applicable to any person who manufactures, fabricates, marks, maintains, reconditions, repairs, or tests a package or container which is represented, marked, certified, or sold by such person for use in the transportation in commerce of hazardous materials shall be subject to a civil penalty of not more than \$10,000 for each violation. The amount of any such penalty shall be assessed by the Secretary by written notice. In determining the amount of such penalty, the Secretary shall take into account the nature, circumstances, extent, and gravity of the violation committed and, with respect to the person found to have committed such violation, the degree of culpability, any history of prior offenses, ability to pay, effect on ability to continue to do business, and such other matters as justice may require.

“(2) Such civil penalty may be recovered in an action brought by the Attorney General on behalf of the United States in the appropriate district court of the United States or, prior to referral to the Attorney General, such civil penalty may be compromised by the Secretary. The amount of such penalty, when finally determined (or agreed upon in compromise), may be deducted from any sums owed by the United States to the person charged. All penalties collected under this subsection shall be deposited in the Treasury of the United States as miscellaneous receipts.

(b) CRIMINAL.—A person is guilty of an offense if he willfully violates a provision of this title or a regulation issued under this title. Upon conviction, such person shall be subject, for each offense, to a fine of not more than \$25,000, imprisonment for a term not to exceed 5 years, or both.

SPECIFIC RELIEF

SEC. 111. (a) GENERAL.—The Attorney General, at the request of the Secretary, may bring an action in an appropriate district court of the United States for equitable relief to redress a violation by any person of a provision of this title, or an order or regulation issued under this title. Such district courts shall have jurisdiction to determine such actions and may grant such relief as is necessary or appropriate, including mandatory or prohibitive injunctive relief, interim equitable relief, and punitive damages.

(b) IMMINENT HAZARD.—If the Secretary has reason to believe that an imminent hazard exists, he may petition an appropriate district court of the United States, or upon his request the Attorney General shall so petition, for an order suspending or restricting the transportation of the hazardous material responsible for such imminent hazard, or for such other order as is necessary to eliminate or ameliorate such imminent hazard. As used in this subsection, an “imminent hazard” exists if there is substantial likelihood that serious harm will occur prior to the completion of an administrative hearing or other formal proceeding initiated to abate the risk of such harm.

RELATIONSHIP TO OTHER LAWS

SEC. 112. (a) GENERAL.—Except as provided in subsection (b) of this section, any requirement, of a State or political subdivision thereof, which is inconsistent with any requirement set forth in this title, or in a regulation issued under this title, is preempted.

(b) STATE LAWS.—Any requirement, of a State, or political subdivision thereof, which is not consistent with any requirement set forth in this title, or in a regulation issued under this title, is not preempted if, upon the application of an appropriate State agency, the Secretary determines, in accordance with procedures to be prescribed by regulation, that such requirement (1) affords an equal or greater level of protection to the public than is afforded by the requirements of this title or of regulations issued under this title and (2) does not unreasonably burden commerce. Such requirement shall not be preempted to the extent specified in such determination by the Secretary for so long as such State or political subdivision thereof continues to administer and enforce effectively such requirement.

(c) OTHER FEDERAL LAWS.—The provisions of this title shall not apply to pipelines which are subject to regulation under the Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. 1671 et seq.) or to pipelines which are subject to regulation under chapter 39 of title 18, United States Code.

CONFORMING AMENDMENTS

SEC. 113. (a) Section 4472 of title 52 of the Revised Statutes of the United States as amended (46 U.S.C. 170) is amended—

(1) by inserting, in the first sentence of paragraph (14) thereof, “criminal” before the word “penalty” and “or imprisoned not more than 5 years, or both” before the phrase “for each violation”; and

(2) by adding at the end thereof the following new paragraph:

“(17)(A) Any person (except an employee who acts without knowledge) who is determined by the Secretary, after notice and an opportunity for a hearing, to have knowingly committed an act which is a violation of any provision of this section, or of any regulation issued under this section, shall be liable to the United States for a civil penalty of not more than \$10,000 for each day of each violation. The amount of such civil penalty shall be assessed by the Secretary by written notice. In determining the amount of such penalty, the Secretary shall take into account the nature, circumstances, extent, and gravity of the violation committed and, with respect to the person found to have committed such violation, the degree of culpability, any history of prior offenses, ability to pay, effect on ability to continue to do business, and such other matters as justice may require.

“(B) Such civil penalty may be recovered in an action brought by the Attorney General on behalf of the United States, in the appropriate district court of the United States or, prior to referral to the Attorney General, such civil penalty may be compromised by the Secretary. The amount of such penalty, when finally determined (or agreed upon in compromise), may be deducted from any sums owed by the United States to the person charged. All penalties collected under this subsection shall be deposited in the Treasury of the United States as miscellaneous receipts.”

(b) Section 901(a)(1) of the Federal Aviation Act of 1958, (49 U.S.C. 1471(a)(1)) is amended—

(1) by inserting immediately before the period at the end of the first sentence thereof and inserting in lieu thereof: “, except that the amount of such civil penalty shall not exceed \$10,000 for each such violation which relates to the transportation of hazardous materials.”; and

(2) by deleting in the second sentence thereof “: Provided, That this” and inserting in lieu thereof the following: “. The amount of any such civil penalty which relates to the transportation of hazardous materials shall be assessed by the Secretary, or his delegate, upon written notice upon a finding of violation by the Secretary, after notice and an opportunity for a hearing. In determining the amount of such penalty, the Secretary shall take into account the nature, circumstances, extent, and gravity of the violation committed and, with respect to the person found to have committed such violation, the degree of culpability, any history of prior offenses, ability to pay, effect on ability to continue to do business, and such other matters as justice may require. This”.

(c) Section 902(h) of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1472(h)) is amended to read as follows:

“HAZARDOUS MATERIALS

“(h)(1) In carrying out his responsibilities under this Act, the Secretary of Transportation may exercise the authority vested in him by section 105 of the Hazardous Materials Transportation Act to provide by regulation for the safe transportation of hazardous materials by air.

“(2) A person is guilty of an offense if he willfully delivers or causes to be delivered to an air carrier or to the operator of a civil aircraft for transportation in air commerce, or if he recklessly causes the transportation in air commerce of, any shipment, baggage, or other property which contains a hazardous material, in violation of any rule, regulation, or requirement with respect to the transportation of hazardous materials issued by the Secretary of Transportation under this Act. Upon conviction, such person shall be subject, for each offense, to a fine of not more than \$25,000, imprisonment for a term not to exceed 5 years, or both.

“(3) Nothing in this subsection shall be construed to prohibit or regulate the transportation by any individual, for personal use, of any firearm (as defined in paragraph (4) of section 232 of title 18, United States Code) or any ammunition thereof.”.

(d) Section 6(c)(1) of the Department of Transportation Act (49 U.S.C. 1655(c)(1)) is amended by inserting in the first sentence thereof after “aviation safety” and before “as set forth in” the following: “(other

than those relating to the transportation, packaging, marking, or description of hazardous materials)”.

(e)(1) Section 6(f)(3)(A) of the Department of Transportation Act (49 U.S.C. 1655(f)(3)(A)) is amended by striking out the period at the end thereof and by inserting in lieu thereof “(other than subsection (e)(4)).”.

(2) Section 6(f)(3)(B) of the Department of Transportation Act (49 U.S.C. 1655(f)(3)(B)) is amended by striking out the period at the end thereof and by inserting in lieu thereof “(other than subsection (e)(4)).”.

(f) Subsection (6) of section 4472 of the Revised Statutes, as amended (46 U.S.C. 170(6)), is amended—

(1) in paragraph (a) thereof, by striking out “inflammable” each place it appears and inserting in lieu thereof at each such place “flammable”; by inserting before “liquids” the following: “or combustible”; and by deleting the colon and the proviso in its entirety and by inserting in lieu thereof a period and the following two new sentences: “The provisions of this subsection shall apply to the transportation, carriage, conveyance, storage, stowing, or use on board any passenger vessel of any barrel, drum, or other package containing any flammable or combustible liquid which has a lower flash point than that which is defined as safe pursuant to regulations establishing the defining flash-point criteria for flammable and combustible liquids. Such regulations shall be prescribed, and revised as necessary, by the Secretary of Transportation.”.

(2) in paragraph (b) thereof, by striking out in clause (iv) thereof “inflammable liquids” and inserting in lieu thereof “flammable or combustible liquids”.

(g) The Hazardous Materials Transportation Control Act of 1970 (Pub. L. 91-458, title III; 49 U.S.C. 1761-1762) is repealed.

EFFECTIVE DATE

SEC. 114. (a) Except as provided in this section, the provisions of this title shall take effect on the date of enactment.

(b)(1) Except as provided in section 108 of this title or paragraph (2) of this subsection, any order, determination, rule, regulation, permit, contract, certificate, license, or privilege issued, granted, or otherwise authorized or allowed, prior to the date of enactment of this title, pursuant to any provision of law amended or repealed by this title, shall continue in effect according to its terms or until repealed, terminated, withdrawn, amended, or modified by the Secretary or a court of competent jurisdiction.

(2) The Secretary shall take all steps necessary to bring orders, determinations, rules, and regulations into conformity with the purposes and provisions of this title as soon as practicable, but in any event no permits, contracts, certificates, licenses, or privileges granted prior to the date of enactment of this title, or renewed or extended thereafter, shall be of any effect more than 2 years after the date of enactment of this title, unless there is full compliance with the purposes and provisions of this Act and regulations thereunder.

(c) Proceedings pending upon the date of enactment of this title shall not be affected by the provisions of this title and shall be completed as if this title had not been enacted, unless the Secretary makes a determination that the public health and safety otherwise require.

AUTHORIZATION FOR APPROPRIATIONS

SEC. 115. There is authorized to be appropriated for the purposes of this title, not to exceed \$7,000,000 for the fiscal year ending June 30, 1975.

TITLE II—RAIL SAFETY

SHORT TITLE

SEC. 201. This title may be cited as the "Rail Safety Improvement Act of 1974".

DECLARATION OF POLICY

SEC. 202. The Congress finds that more effective realization of the purposes of the Federal Railroad Safety Act of 1970 requires that Act to be amended to mandate comprehensive analysis and evaluation of the rail safety program, to increase the amount and percentage of available resources for inspection, investigation, and enforcement, and to increase the enforcement powers of the Secretary of Transportation.

COMPREHENSIVE RAILROAD SAFETY REPORT

SEC. 203. Section 211 of the Federal Railroad Safety Act of 1970 (45 U.S.C. 440) is amended by adding at the end thereof the following new subsection:

"(c) SPECIAL REPORT.—The Secretary shall prepare and submit to the President and the Congress, not later than March 17, 1976, a comprehensive railroad safety report. Such report shall—

"(1) contain a description of the areas of railroad safety with respect to which Federal safety standards issued under this Act are in effect (as of June 30, 1975);

"(2) identify any area of railroad safety with respect to which Federal safety standards have been proposed but have not been issued under this Act (as of June 30, 1975);

"(3) identify any area of railroad safety with respect to which Federal safety standards have not been issued under this Act (as of June 30, 1975);

"(4) identify alternative and more cost-effective methods for inspection and enforcement of Federal safety standards, including mechanical and electronic inspection, and contain an evaluation of problems involved in implementing such alternatives, with specific attention to the need for cooperation with the railroad industry;

"(5) identify the areas of railroad safety listed in accordance with paragraphs (1) through (3) of this subsection which involve, or which may involve, State participation under section 206 of this Act;

"(6) contain a description of the railroad safety program which is in effect or planned in each State (as of June 30, 1975), including—

"(A) State program development;

"(B) State plans to participate in program areas listed in accordance with paragraph (1) of this subsection, which are not covered by a State certification or agreement;

"(C) State interest in participating in each program area listed in accordance with paragraphs (2) and (3) of this subsection, following issuance of the applicable safety standards;

"(D) annual projections of each State agency's needs for personnel, equipment, and activities reasonably required to carry out its State program during each fiscal year from 1976 through 1980 together with estimates of the annual costs thereof separately stated as to projections under subparagraphs (B) and (C) of this paragraph;

"(E) the sources from which the State expects to draw the funds to finance such programs; and

"(F) the amount of State funds and of Federal financial assistance needed during each such fiscal year, by category;

"(7) contain a detailed analysis of (A) the number of safety inspectors needed (by industry and Government respectively) to maintain an adequate and reasonable railroad safety program and record; (B) the minimum training and other qualifications needed for each such inspector; (C) the present and projected availability of such personnel in comparison to the need therefor; (D) the salary levels of such personnel in relation to salary levels for comparable positions in industry, State governments, and the Federal Government;

"(8) evaluate alternative methods of allotting Federal funds among the States applying for Federal financial assistance, including recommendations, if needed, for a formula for such apportionment;

"(9) contain a discussion of other problems affecting cooperation among the States that relate to effective participation of State agencies in the nationwide railroad safety program; and

"(10) contain recommendations for any additional Federal and State legislation needed to further realization of the objectives of this Act.

Such report shall be prepared by the Secretary, directly or indirectly, after research, examination, study, and consultation with the national associations representing railroad employee unions, railroad management, cooperating State agencies, the national organization of State commissions, universities, and other persons having special expertise or experience with respect to railroad safety. Such report shall include, in an appendix, a statement of the views of the national associations representing railroad employee unions, of the carriers, and of the national organization of State commissions with respect to the content of such report in its final form."

ACCIDENT REPORTS

SEC. 204. (a) Section 209(b) of the Federal Railroad Safety Act of 1970 (45 U.S.C. 438(b)) is amended by inserting after "for violation thereof" and before "in such amount" the following: "or for violation of section 2 of the Act of May 6, 1910 (45 U.S.C. 39)".

(b) Section 2 of the Act of May 6, 1910 (45 U.S.C. 39) is amended by adding at the end thereof the following new sentence: "In lieu of the foregoing, any such carrier may be required to pay a civil penalty pursuant to subsections (b) and (c) of section 209 of the Federal Safety Act of 1970 (45 U.S.C. 438(b))."

AUTHORIZATION FOR APPROPRIATIONS

SEC. 205. Section 212 of the Federal Railroad Safety Act of 1970 (45 U.S.C. 441) is amended to read as follows:

"(a) There are authorized to be appropriated to carry out the provisions of this Act not to exceed \$35,000,000 for the fiscal year ending June 30, 1975.

"(b) Subject to the provisions of subsection (c), amounts appropriated under subsection (a) of this section shall be available for expenditure as follows:

"(1) Not to exceed \$18,000,000 for the Office of Safety, including salaries and expenses for up to 350 safety inspectors and up to 80 clerical personnel.

"(2) Not to exceed \$3,500,000 to carry out the provisions of section 206(d) of this Act.

"(3) Not to exceed \$3,500,000 for the Federal Railroad Administration, or salaries and expenses not otherwise provided for.

"(4) Not to exceed \$10,000,000 for conducting research and development activities under this Act.

"(c) The aggregate of amounts obligated and expended in fiscal year 1975 for conducting research and development activities under this Act shall not exceed the aggregate of amounts expended in such fiscal year for the investigation and enforcement of railroad safety rules, regulations, orders, and standards prescribed or in effect under this Act."

ENFORCEMENT

SEC. 206. Section 208(a) of the Federal Railroad Safety Act of 1970 (45 U.S.C. 437(a)) is amended by adding at the end thereof the following new sentence: "The Secretary is further authorized to issue orders directing compliance with this Act or with any railroad safety rule, regulation, order, or standard issued under this Act; the district courts of the United States shall have jurisdiction, upon petition by the Attorney General, to enforce such orders by appropriate means."

TITLE III—INDEPENDENT SAFETY BOARD

SHORT TITLE

SEC. 301. This title may be cited as the "Independent Safety Board Act of 1974".

FINDINGS

SEC. 302. The Congress finds and declares:

(1) The National Transportation Safety Board was established by statute in 1966 (Public Law 89-670; 80 Stat. 935) as an independent Government agency, located within the Department of Transportation, to promote transportation safety by conducting independent accident investigations and by formulating safety improvement recommendations.

(2) Proper conduct of the responsibilities assigned to this Board requires rigorous investigation of accidents involving transportation modes regulated by other agencies of Government; demands continual review, appraisal, and assessment of the operating practices and

regulations of all such agencies; and calls for the making of conclusions and recommendations that may be critical of or adverse to any such agency or its officials. No Federal agency can properly perform such functions unless it is totally separate and independent from any other department, bureau, commission, or agency of the United States.

NATIONAL TRANSPORTATION SAFETY BOARD

SEC. 303. (a) ESTABLISHMENT.—The National Transportation Safety Board (hereafter in this title referred to as the "Board"), previously established within the Department of Transportation, shall be an independent agency of the United States, in accordance with this section, on and after April 1, 1975.

(b) ORGANIZATION.—(1) The Board shall consist of five members, including a Chairman. Members of the Board shall be appointed by the President, by and with the advice and consent of the Senate. No more than three members of the Board shall be of the same political party. At any given time, no less than two members of the Board shall be individuals who have been appointed upon the basis of technical qualification and professional or management standing in the field of accident reconstruction, safety engineering, or transportation safety.

(2) The terms of office of members of the Board shall be 5 years, except as otherwise provided in this paragraph. Any individual appointed to fill a vacancy occurring on the Board prior to the expiration of the term of office for which his predecessor was appointed shall be appointed for the remainder of that term. Upon the expiration of his term of office, a member shall continue to serve until his successor is appointed and shall have qualified. Individuals serving as members of the National Transportation Safety Board on the date of enactment of this title shall continue to serve as members of the Board until the expiration of their then current term of office. Any member of the Board may be removed by the President for inefficiency, neglect of duty, or malfeasance in office.

(3) On or before January 1, 1976 (and thereafter as required), the President shall—

(A) designate, by and with the advice and consent of the Senate, an individual to serve as the Chairman of the Board (hereafter in this title referred to as the "Chairman"); and

(B) an individual to serve as Vice Chairman.

The Chairman and Vice Chairman each shall serve for a term of 2 years. The Chairman shall be the chief executive officer of the Board and shall exercise the executive and administrative functions of the Board with respect to the appointment and supervision of personnel employed by the Board; the distribution of business among such personnel and among any administrative units of the Board; and the use and expenditure of funds. The Vice Chairman shall act as Chairman in the event of the absence or incapacity of the Chairman or in case of a vacancy in the office of Chairman. The Chairman or acting Chairman shall be governed by the general policies established by the Board, including any decisions, findings, determinations, rules, regulations, and formal resolutions.

(4) Three members of the Board shall constitute a quorum for the transaction of any function of the Board.

(5) The Board shall establish and maintain distinct and appropriately staffed bureaus, divisions, or offices to investigate and report on accidents

involving each of the following modes of transportation: (A) aviation; (B) highway and motor vehicle; (C) railroad and tracked vehicle; and (D) pipeline. The Board shall, in addition, establish and maintain any other such office as is needed, including an office to investigate and report on the safe transportation of hazardous materials.

(c) GENERAL.—(1) The General Services Administration shall furnish the Board with such offices, equipment, supplies, and services as it is authorized to furnish to any other agency or instrumentality of the United States.

(2) The Board shall have a seal which shall be judicially recognized.

(3) Subject to the civil service and classification laws, the Board is authorized to select, appoint, employ, and fix the compensation of such officers and employees, including investigators, attorneys, and administrative law judges, as shall be necessary to carry out its powers and duties under this title.

GENERAL PROVISIONS

SEC. 304. (a) DUTIES OF BOARD.—The Board shall—

(1) investigate or cause to be investigated (in such detail as it shall prescribe), and determine the facts, conditions, and circumstances and the cause or probable cause or causes of any—

(A) aircraft accident which is within the scope of the functions, powers, and duties transferred from the Civil Aeronautics Board under section 6(d) of the Department of Transportation Act (49 U.S.C. 1655(d)) pursuant to title VII of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1441);

(B) highway accident, including any railroad grade crossing accident, that it selects in cooperation with the States;

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

(D) pipeline accident in which there is a fatality or substantial property damage;

(E) major marine casualty, except one involving only public vessels, occurring on the navigable waters or territorial seas of the United States, or involving a vessel of the United States, in accordance with regulations to be prescribed jointly by the Board and the Secretary of the department in which the Coast Guard is operating. Nothing in this subparagraph shall be construed to eliminate or diminish any responsibility under any other Federal statute of the Secretary of the department in which the Coast Guard is operating: Provided, that any marine accident involving a public vessel and any other vessel shall be investigated and the facts, conditions, and circumstances, and the cause or probable cause determined and made available to the public by either the Board or the Secretary of the Department in which the Coast Guard is operating; and

(F) other accident which occurs in connection with the transportation of people or property which, in the judgment of the Board, is catastrophic, involves problems of a recurring character, or would otherwise carry out the policy of this title.

The Board may request the Secretary of Transportation (hereafter in this title referred to as the "Secretary") to make investigations with

regard to such accidents and to report to the Board the facts, conditions, and circumstances thereof (except in accidents where misfeasance or nonfeasance by the Federal Government is alleged), and the Secretary or his designees are authorized to make such investigations. Thereafter, the Board, utilizing such reports, shall make its determination of cause or probable cause under this paragraph;

(2) report in writing on the facts, conditions, and circumstances of each accident investigated pursuant to paragraph (1) of this subsection and cause such reports to be made available to the public at reasonable cost and to cause notice of the issuance and availability of such reports to be published in the Federal Register;

(3) issue periodic reports to the Congress, Federal, State, and local agencies concerned with transportation safety, and other interested persons recommending and advocating meaningful responses to reduce the likelihood of recurrence of transportation accidents similar to those investigated by the Board and proposing corrective steps to make the transportation of persons as safe and free from risk of injury as is possible, including steps to minimize human injuries from transportation accidents;

(4) initiate and conduct special studies and special investigations on matters pertaining to safety in transportation including human injury avoidance;

(5) assess and reassess techniques and methods of accident investigation and prepare and publish from time to time recommended procedures for accident investigations;

(6) establish by regulation requirements binding on persons reporting accidents subject to the Board's investigatory jurisdiction under this subsection;

(7) evaluate, assess the effectiveness, and publish the findings of the Board with respect to the transportation safety consciousness and efficacy in preventing accidents of other Government agencies;

(8) evaluate the adequacy of safeguards and procedures concerning the transportation of hazardous materials and the performance of other Government agencies charged with assuring the safe transportation of such materials; and

(9) review on appeal (A) the suspension, amendment, modification, revocation, or denial of any operating certificate or license issued by the Secretary of Transportation under sections 602, 609, or 611(c) of the Federal Aviation Act of 1958 (49 U.S.C. 1422, 1429, or 1431(c)); and (B) the decisions of the Commandant of the Coast Guard, on appeals from the orders of any administrative law judge revoking, suspending, or denying a license, certificate, document, or register in proceedings under section 4450 of the Revised Statutes of the United States (46 U.S.C. 239); the Act of July 15, 1954 (46 U.S.C. 239 (a) and (b)); or section 4 of the Great Lakes Pilotage Act (46 U.S.C. 216(b)).

(b) POWERS OF BOARD.—(1) The Board, or upon the authority of the Board, any member thereof, any administrative law judge employed by or assigned to the Board, or any officer or employee duly designated by the Chairman, may, for the purpose of carrying out this title, hold such hearings, sit and act at such times and places, administer such oaths, and require by subpoena or otherwise the attendance and testimony of such witnesses and the production of such evidence as the Board or such officer or

employee deems advisable. Subpoenas shall be issued under the signature of the Chairman, or his delegate, and may be served by any person designated by the Chairman. Witnesses summoned to appear before the Board shall be paid the same fees and mileage that are paid witnesses in the courts of the United States. Such attendance of witnesses and production of evidence may be required from any place in the United States to any designated place of such hearing in the United States.

(2) Any employee of the Board, upon presenting appropriate credentials and a written notice of inspection authority, is authorized to enter any property wherein a transportation accident has occurred or wreckage from any such accident is located and do all things therein necessary for a proper investigation. The employee may inspect, at reasonable times, records, files, papers, processes, controls, and facilities relevant to the investigation of such accident. Each inspection shall be commenced and completed with reasonable promptness and the results of such inspection made available.

(3) In case of contumacy or refusal to obey a subpoena, an order, or an inspection notice of the Board, or of any duly designated employee thereof, by any person who resides, is found, or transacts business within the jurisdiction of any district court of the United States, such district court shall, upon the request of the Board, have jurisdiction to issue to such person an order requiring such person to comply forthwith. Failure to obey such an order is punishable by such court as a contempt of court.

(4) The Board is authorized to enter into, without regard to section 3709 of the Revised Statutes of the United States (41 U.S.C. 5), such contracts, leases, co-operative agreements, or other transactions as may be necessary in the conduct of the functions and the duties of the Board under this title, with any government entity or any person.

(5) The Board is authorized to obtain, and shall be furnished, with or without reimbursement, a copy of the report of the autopsy performed by State or local officials on any person who dies as a result of having been involved in a transportation accident within the jurisdiction of the Board and, if necessary, the Board may order the autopsy or seek other tests of such persons as may be necessary to the investigation of the accident: Provided, That to the extent consistent with the need of the accident investigation, provisions of local law protecting religious beliefs with respect to autopsies shall be observed.

(6) The Board is authorized to (A) use, on a reimbursable basis or otherwise, when appropriate, available services, equipment, personnel, and facilities of the Department of Transportation and of other civilian or military agencies and instrumentalities of the Federal Government; (B) confer with employees and use available services, records, and facilities of State, municipal, or local governments and agencies; (C) employ experts and consultants in accordance with section 3109 of title 5, United States Code; (D) appoint one or more advisory committees composed of qualified private citizens or officials of Federal, State, or local governments as it deems necessary or appropriate, in accordance with the Federal Advisory Committee Act (5 U.S.C. App. I); (E) accept voluntary and uncompensated services notwithstanding any other provision of law; (F) accept gifts or donations of money or property (real, personal, mixed, tangible, or intangible); and (G) enter into contracts with public or private nonprofit entities for the conduct of studies related to any of its functions.

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

(8) The Board is empowered to designate representatives to serve or assist on such committees as the Chairman determines to be necessary or appropriate to maintain effective liaison with other Federal agencies, and with State and local government agencies, and with independent standard-setting bodies carrying out programs and activities related to transportation safety.

(9) The Board, or an employee of the Board duly designated by the Chairman, may conduct an inquiry to secure data with respect to any matter pertinent to transportation safety, upon publication of notice of such inquiry in the Federal Register; and may require, by special or general orders, Federal, State, and local government agencies and persons engaged in the transportation of people or property in commerce to submit written reports and answers to such requests and questions as are propounded with respect to any matter pertinent to any function of the Board. Such reports and answers shall be submitted to the Board or to such employee within such reasonable period of time and in such form as the Board may determine. Copies thereof shall be made available for inspection by the public.

(10) Establish such rules and regulations as may be necessary to the exercise of its functions.

(c) *USE OF REPORTS AS EVIDENCE.*—No part of any report of the Board, relating to any accident or the investigation thereof, shall be admitted as evidence or used in any suit or action for damages growing out of any matter mentioned in such report or reports.

(d) *JUDICIAL REVIEW.*—Any order, affirmative or negative, issued by the Board under this title shall be subject to review by the appropriate court of appeals of the United States or the United States Court of Appeals for the District of Columbia, upon petition filed within 60 days after the entry of such order, by any person disclosing a substantial interest in such order. Such review shall be conducted in accordance with the provisions of chapter 7 of title 5, United States Code.

ANNUAL REPORT

SEC. 305. The Board shall report to the Congress on July 1 of each year. Such report shall include, but need not be limited to—

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

(2) a survey and summary, in such detail as the Board deems advisable, of the recommendations made by the Board to reduce the likelihood of recurrence of such accidents together with the observed response to each such recommendation;

(3) an appraisal in detail of the accident investigation and accident prevention activities of other government agencies charged by Federal or State laws with responsibility in this field; and

(4) a biennial appraisal and evaluation and review, and recommendations for legislative and administrative action and change, with respect to transportation safety.

PUBLIC ACCESS TO INFORMATION

SEC. 306. (a) GENERAL.—Copies of any communication, document, investigation, or other report, or information received or sent by the Board, or any member or employee of the Board, shall be made available to the public upon identifiable request, and at reasonable cost, unless such information may not be publicly released pursuant to subsection (b) of this section. Nothing contained in this section shall be deemed to require the release of any information described by subsection (b) of section 552 of title 5, United States Code, or which is otherwise protected by law from disclosure to the public.

(b) EXCEPTION.—The Board shall not disclose information obtained under this title which concerns or relates to a trade secret referred to in section 1905 of title 18, United States Code, except that such information may be disclosed in a manner designed to preserve confidentiality—

(1) upon request, to other Federal Government departments and agencies for official use;

(2) upon request, to any committee of Congress having jurisdiction over the subject matter to which the information relates;

(3) in any judicial proceeding under a court order formulated to preserve the confidentiality of such information without impairing the proceedings; and

(4) to the public in order to protect health and safety, after notice to any interested person to whom the information pertains and an opportunity for such person to comment in writing, or orally in closed session, on such proposed disclosure (if the delay resulting from such notice and opportunity for comment would not be detrimental to health and safety).

RESPONSE TO BOARD RECOMMENDATIONS

SEC. 307. Whenever the Board submits a recommendation regarding transportation safety to the Secretary, he shall respond to each such recommendation formally and in writing not later than 90 days after receipt thereof. The response to the Board by the Secretary shall indicate his intention to—

(1) initiate and conduct procedures for adopting such recommendation in full, pursuant to a proposed timetable, a copy of which shall be included;

(2) initiate and conduct procedures for adopting such recommendation in part, pursuant to a proposed timetable, a copy of which shall be included. Such response shall set forth in detail the reasons for the refusal to proceed as to the remainder of such recommendation;

or

(3) refuse to initiate or conduct procedures for adopting such recommendation. Such response shall set forth in detail the reasons for such refusal.

The Board shall cause notice of the issuance of each such recommendation and of each receipt of a response thereto to be published in the Federal Register, and shall make copies thereof available to the public at reasonable cost.

CONFORMING AMENDMENTS

SEC. 308. The Department of Transportation Act is amended—

(1) by deleting section 5 (49 U.S.C. 1654);

(2) by amending section 4(c) thereof (49 U.S.C. 1653(c)) by deleting “or the National Transportation Safety Board” in the first sentence thereof; and by deleting in the second sentence thereof “, the Administrators, or the National Transportation Safety Board.” and by inserting in lieu thereof “or the Administrators.”; and

(3) by amending section 4(d) thereof (49 U.S.C. 1653(d)) by deleting “, the Administrators, and the National Transportation Safety Board” and by inserting in lieu thereof “and the Administrators”.

AUTHORIZATION OF APPROPRIATIONS

SEC. 309. There are authorized to be appropriated for the purposes of this Act not to exceed \$12,000,000 for the fiscal year ending June 30, 1975; and \$12,000,000 for the fiscal year ending June 30, 1976; such sums to remain available until expended.

And the Senate agree to the same.

That the House recede from its disagreement to the amendment of the Senate to the title of the House bill.

WARREN MAGNUSON,
VANCE HARTKE,
HOWARD W. CANNON,
TED STEVENS,
J. GLENN BEALL, JR.,

Managers on the Part of the Senate.

HARLEY O. STAGGERS,
JOHN JARMAN,
JOHN D. DINGELL,
SAM DEVINE,
DICK SHOUP,

Managers on the Part of the House.

REGISTRATION PROGRAM

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE
OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 15223) to amend the Federal Railroad Safety Act of 1970 and the Hazardous Materials Transportation Control Act of 1970 to authorize additional appropriations, and for other purposes, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

The Senate amendments struck out all of the House bill after the enacting clause and inserted a substitute text and provided a new title for the House bill, and the House disagreed to the Senate amendments.

The committee of conference recommends that the House recede from its disagreement to the amendment of the Senate to the text of the bill, with an amendment which is a substitute for both the text of the House bill and the Senate amendment to the text of the House bill, and also recede from its disagreement to the Senate amendment to the title of the House bill.

The differences between the text of the House bill, the Senate amendment thereto, and the substitute agreed to in conference are noted below, except for clerical corrections, conforming changes made necessary by reason of agreements reached by the conferees, and minor drafting and clarifying changes.

TITLE I—HAZARDOUS MATERIALS TRANSPORTATION

EXTREMELY HAZARDOUS MATERIAL CLASSIFICATION

House bill

No provision.

Senate amendment

The Senate amendment authorized the Secretary of Transportation, in his discretion, to designate certain hazardous materials as "extremely hazardous materials", if they pose a risk of catastrophic harm and an accident giving rise to such risk is foreseeable or if they pose a risk of serious harm and there is a significant likelihood of an accident giving rise to such risk occurring. The designation as extremely hazardous would have triggered a mandatory registration program applicable to persons who transported or handled such materials.

Conference substitute

The conference substitute omits this provision of the Senate amendment.

(20)

House bill

No provision.

Senate amendment

The Senate amendment would require the Secretary to establish and maintain a mandatory registration program with respect to extremely hazardous materials. Each person who transports or causes to be transported or shipped in commerce extremely hazardous materials and each person who manufactures, fabricates, marks, maintains, reconditions, repairs, or tests packages or containers for the transportation in commerce of certain extremely hazardous materials was required to submit a registration statement to the Secretary before December 31 of every odd-numbered year. The registration statement, in addition to formal statements of business name and location, would include an averment by the registrant that he is in compliance with any criteria established by the Secretary for the handling of extremely hazardous materials. The Secretary would be authorized to revoke or suspend the registration statement of any registrant who failed to act in conformity with those criteria.

Conference substitute

The conference substitute permits the Secretary, as part of his hazardous materials transportation program, to require a registration statement as in the Senate amendment, but not more often than once every two years. The Secretary is not authorized to revoke or suspend any registration statement which is filed.

TRANSPORTATION OF RADIOACTIVE MATERIALS ON PASSENGER AIRCRAFT

House bill

No specific provision.

Senate amendment

The Senate amendment required the Secretary to issue regulations regarding the transportation of radioactive materials on any passenger-carrying aircraft. These regulations were required to prohibit any such transportation unless the radioactive materials involved are intended for use in, or incident to, research, or medical diagnosis or treatment and are packaged in such a way that they do not pose an unreasonable hazard to health and safety. The term "radioactive materials" is defined to exclude from this prohibition materials which emit less than 0.002 microcuries per gram of material.

Conference substitute

The conferees adopted the provision of the Senate amendment on this issue, except that the period of time within which regulations must be issued was extended to 120 days.

AUTHORITY OF THE SECRETARY IN THE COURTS

House bill

Wherever action in the courts was authorized, it was the Attorney General who was authorized to appear on behalf of the Secretary,

without limitation on his independent discretion. The Secretary was not authorized to appear on his own behalf.

Senate amendment

Wherever action in the courts was authorized, the Secretary may appear on his own behalf or, at his request, the Attorney General was authorized to appear on behalf of the Secretary.

Conference substitute

The conference substitute is the position taken in the House bill with one exception. The Attorney General is to represent the Secretary of Transportation in all matters in court, except that in the case of an imminent hazard the Secretary may himself initiate and conduct proceedings (or he may request the Attorney General to do so and the Attorney General shall so proceed).

PENALTIES

House bill

The House bill provided for the imposition of civil penalties (1) on carriers and shippers in a maximum amount of \$2,000 for each violation of an applicable regulation, except that if the violation by the carrier or shipper is a continuing one each day of violation shall be considered a separate offense, and (2) in a maximum amount of \$10,000 for each violation of a regulation applicable to the manufacture, fabrication, marking, maintenance, reconditioning, repair, testing, and distribution of packages or containers that may be used for the transportation of hazardous materials. Such civil penalties were to be recovered in an action brought by the Attorney General in Federal district court, with authority in the Secretary to compromise the amount.

Senate amendment

The Senate amendment provided for the imposition of civil penalties on any person (except an employee who acts without knowledge) who violates a provision of the Act or a regulation issued under it in a maximum amount of \$10,000 for each violation, except that each day of a continuing violation was a separate violation. The violation and civil penalty were to be determined and assessed by the Secretary, in accordance with listed criteria. A person against whom such a penalty was assessed may obtain review in the appropriate court of appeals of the United States; the determinations of the Secretary were to be set aside if found to be unsupported by substantial evidence. The Secretary has authority to compromise the amount. If any person failed to pay an assessment of a civil penalty, the Secretary (or at his request the Attorney General) recovered such amount after the penalty order had become final and unappealable or after the court of appeals had entered final judgment in favor of the Secretary. The Senate amendment further made it a crime, punishable by a \$25,000 fine or 5 years imprisonment, to knowingly violate a provision of the Act or a regulation thereunder.

Conference substitute

The conference substitute—

(1) Adopts the House provision as to the maximum penalty amounts, with a distinction between the civil liability of those who

transport and ship hazardous materials and those who manufacture etc. packages and containers for use in such transportation and shipment, except that the maximum penalty per carrier or shipper violation is also to be \$10,000;

(2) Adopts the Senate amendment as to the criteria or factors to be taken into account by the Secretary in determining the amount of a civil penalty.

(3) Adopts the House provision as to enforcement with an affirmative obligation on the Government to recover such penalty in an appropriate district court of the United States;

(4) Provides that a civil penalty may be imposed only upon proof that the defendant knowingly committed the act which constitutes the violation (it is not necessary to show that he knew the act constituted a violation) and only after the Secretary affords such person notice and an opportunity for an administrative hearing; and

(5) Adopts the Senate provision as to criminal penalties except that the term "knowingly" is changed to "willfully."

REGULATIONS GOVERNING TRANSPORTATION OF HAZARDOUS MATERIALS

House bill

The House bill authorized the Secretary of Transportation to prescribe regulations in order to assure safe transportation of hazardous materials in interstate and foreign commerce. The regulations may cover any aspect of the transportation of such materials as the Secretary deems necessary or appropriate and shall include, but are not limited to, regulations covering the packing, handling, labeling, marking, placarding, and routing of hazardous materials.

Senate amendment

The Secretary was authorized to issue regulations for the safe transportation in commerce of hazardous materials. Such regulations would have been applicable to any person who transported or caused to be transported or shipped a hazardous material, or who manufactured, etc., a package or container which is represented, marked, certified, or otherwise expected by such person to be used in the transportation in commerce of certain hazardous materials. Such regulations may cover any safety aspect of the transportation of hazardous materials which the Secretary deems necessary or appropriate, including, but not limited to, the packing, repacking, handling, labeling, making, placarding and routing of hazardous materials. The Secretary was further mandated to consult and cooperate with the ICC before issuing such regulations.

Conference substitute

The conference substitute adopts the provisions of the Senate amendment. While the regulations are applicable "to any person" who transports or causes to be transported hazardous materials, the conferees intend that these requirements apply to commercial (rather than personal) transportation. Additionally, while the Secretary may prescribe routing regulations for hazardous materials transportation, such regulations may not be promulgated with respect to pipelines.

Finally, conferees clarified the provision of the Senate amendment with respect to I.C.C. cooperation to require the Interstate Commerce Commission, to the extent of its lawful authority, to take such steps as are necessary to implement such regulations with respect to the routing of hazardous materials.

CITIZEN'S CIVIL ACTIONS

House bill

No provision.

Senate amendment

Subject to exclusions, prerequisites, and notice requirements, a citizen was authorized to sue for equitable relief against any person alleged to be in violation of the Act or an order or regulation issued thereunder.

Conference substitute

The conference substitute omits this provision of the Senate amendment.

CITIZEN'S PETITIONS

House bill

No provision.

Senate amendment

The Senate amendment authorized any interested person to petition the Secretary to commence a proceeding to designate a particular material as hazardous or extremely hazardous or to issue, amend, or revoke an order or regulation with respect thereto. If the Secretary failed to consider the petition or denied it within 120 days, the petitioner could seek a court order directing the Secretary to initiate a proceeding to take the action requested; such an order was to be issued if the court was satisfied by a preponderance of the evidence that the failure of the Secretary to act exposed the petitioner or other persons to an unreasonable risk of harm arising out of the transportation of the nature, quantity, and form of material which was the subject of the petition.

Conference substitute

The conferees accepted the House position and omit the Senate provision.

The conference substitute omits the provision of the Senate amendment. The conferees agreed, however, that the respective committees should monitor the procedures of the Office of Hazardous Materials with respect to petitions filed under the Administrative Procedure Act to insure that the Office is responsive thereto.

RELATIONSHIP TO OTHER LAWS

House bill

The House bill authorized the Secretary to issue regulations to assure the safe transportation of hazardous materials in interstate and foreign commerce. This authority did not extend to any such transportation which is solely between points in the same State.

Senate amendment

The Senate amendment authorized the Secretary to issue regulations for the safe transportation of hazardous materials in commerce. The term commerce was defined to include commerce "in . . . any State". The Senate amendment further provided for the preemption of any requirement of a State or political subdivision which is inconsistent with any requirement of, or regulation under, this legislation, except that such State or political subdivision may seek to apply its own statute or regulation where they afford an equal or greater level of protection and they do not burden interstate commerce.

Conference substitute

The conference substitute adopts the House definition of commerce, amended to include activity "which affects" interstate commerce as well as the types of commerce enumerated therein. The conference substitute adopts the Senate provision on preemption, except that provision is added specifically excluding from the authority granted by this Act the transportation of firearms and ammunition for personal use.

The Senate amendment with regard to the regulation of hazardous materials would have applied to all modes of transportation. The conferees agreed, however, that to prevent duplication of effort, the provisions of this title shall not apply to pipelines which are subject to regulation under the Natural Gas Pipeline Safety Act of 1968, or to pipelines which are subject to regulation under Chapter 39 of title 18, United States Code.

CONFORMING AMENDMENTS TO STATUTES APPLICABLE TO THE COAST GUARD

House bill

No provision.

Senate amendment

The Senate amendment modified the penalty provisions of the section of law regulating the carriage of explosives or other dangerous articles on vessels by authorizing a sentence of imprisonment upon conviction of knowing violation and by authorizing civil penalties. The Senate amendment also amended the same section to the Coast Guard to prescribe regulations for and regulate the carriage of "combustible" as well as flammable materials, and to prescribe the defining flash-point criteria therefor.

Conference substitute

The conference substitute adopts the provisions of the Senate amendment.

TRANSPORTATION OF EXPLOSIVES BY RAIL

House bill

The Secretary was required to issue regulations governing the transportation of explosives by rail. Such regulations shall have required (subject to possible suspension by the Secretary when conditions of

national necessity so warrant) the use of railroad cars with roller bearing and either composition brakeshoes or spark shields; the use of spacer cars not containing hazardous materials in between railroad cars carrying explosives, or an equivalent linear separation of explosives as the Secretary finds necessary or prudent; and periodic inspection of railroad cars in use and to be used to carry explosives.

Senate amendment

No specific provision.

Conference substitute

The conference substitute omits the provision of the House bill in view of the fact that the Secretary of Transportation promulgated regulations, effective November 19, 1974, to protect against the hazards of transporting explosives by rail.

PROTECTION OF I.C.C. OFFICERS

House bill

No provision.

Senate amendment

The Senate amendment modified 18 U.S.C. 1114 to deter those who would use force against representatives of the principal surface transportation regulatory agency by adding officers and employees of the Interstate Commerce Commission to the list of Federal officials whom it is a Federal crime to assault or kill.

Conference substitute

The conference substitute omits this provision of the Senate amendment.

MANDATORY DELEGATION OF ENFORCEMENT RESPONSIBILITY
BY SECRETARY TO MODAL ADMINISTRATORS

House bill

The House bill required the Secretary to delegate to the Federal Railroad Administrator, Federal Aviation Administrator, and to the Federal Highway Administrator, all functions, powers, and duties with respect to the enforcement of regulations pertaining to the transportation of explosives and other dangerous articles. The House bill also authorized the Secretary to delegate to the modal administrators such other functions, powers, and duties pertaining to the transportation of explosives and other dangerous articles as the Secretary may deem appropriate.

Senate amendment

No provision.

Conference substitute

The conference substitute omits the House provision.

TITLE II—RAIL SAFETY

DECLARATION OF POLICY

House bill

No provision.

Senate amendment

The Senate amendment provided that the Congress found that more effective realization of the purposes of the Federal Railroad Safety Act of 1970 requires that Act to be amended to mandate comprehensive analysis and evaluation of the rail safety program, to increase the amount and percentage of available resources for inspection, investigation, and enforcement, to increase the enforcement powers of the Secretary of Transportation, and to authorize citizens safety petitions.

Conference substitute

The conference substitute adopted the Senate amendment except the reference to citizen's safety petitions was deleted.

COMPREHENSIVE RAILROAD SAFETY REPORT

House bill

The House bill required the Secretary of Transportation to prepare and submit to the President for transmittal to the Congress by March 17, 1976 a report which shall contain (1) a description of the areas of railroad safety for which Federal safety standards have been issued under authority of the Federal Railroad Safety Act of 1970 and which are enforced as of June 30, 1975; (2) identification of any area of railroad safety for which Federal railroad safety standards have not been issued under authority of the Federal Railroad Safety Act of 1970 as of June 30, 1975; (3) identification of the aforementioned areas of railroad safety which involve State participation under Section 206 of the Federal Railroad Safety Act of 1970; (4) a description of the railroad safety program underway or planned in each State as of June 30, 1975; (5) a discussion of the number and qualification of personnel for service as safety inspectors by the industry, and by the Federal and State governments, needed for reasonable safety program performance; (6) an evaluation of alternative methods of allotting Federal funds among the States that desire Federal assistance, including recommendations, if needed, for a statutory formula for apportioning Federal funds; (7) a discussion of other problems affecting cooperation among the States and relate to effective participation of State agencies in the nationwide railroad safety program; and (8) recommendations for additional Federal and State legislation needed to further the objectives of the Federal Railroad Safety Act of 1970. The House bill further provided that the report shall be prepared by the Secretary after consultation with the national associations representing railroad employee unions, the carriers, the cooperating State agen-

cies, and the national organization of State commissions. Finally, their report shall include a statement of the views of the national associations representing railroad employee unions, of the carriers, and of the national organization of State commissions on the content of the report as prepared in final form.

Senate Amendment

Like the House bill, the Senate amendment required the Secretary to prepare a comprehensive rail safety report. However, the Senate amendment required the Secretary to prepare and submit such reports to the President and the Congress, concurrently.

The contents of the report as required by the Senate amendment were similar to that required by the House bill with the following two additions: First, the Secretary shall identify any area of railroad safety with respect to which Federal railroad safety standards have been proposed but have not been issued under this Act (as of June 30, 1975). Second, the Secretary shall identify alternative and more cost effective methods for inspection and enforcement of Federal safety standards and evaluate the problems involved in implementing such alternatives. Additionally, the report shall be prepared by the Secretary directly or indirectly, after research, examination, study and consultation with the national associations representing railroad employee unions, railroad management, cooperating State agencies, the national organization of State commissions, universities, and other persons having special expertise or experience with respect to railroad safety. Finally, the report shall include an appendix composed of statements of the views of the national associations representing railroad employee unions, carriers, and the national organization of State commissions with respect to the content of such report in its final form.

Conference substitute

The conference substitute adopted the Senate amendment.

ACCIDENT REPORTS

House bill

The House bill amended Section 2 of the Accident Reports Act of 1910 (45 U.S.C. 39) to extend to the Secretary of Transportation the right to assess a civil penalty in lieu of the criminal penalty contained in the Act of 1910. The Secretary was authorized to assess a civil penalty in an amount not less than \$250 nor more than \$2,500 for each violation, as the Secretary deemed reasonable.

Senate amendment

Like the House bill, the Senate amendment provided for the assessment of civil penalties for violation of the Accident Report Act (the Act of May 6, 1910) (45 U.S.C. 39). The amendment provided that the civil penalties provision of the Federal Railroad Safety Act of 1970 (45 U.S.C. 438(b)) shall apply to violations of the reporting requirements of the Accident Reports Act.

Conference substitute

The conference substitute adopted the Senate amendment.

AUTHORIZATION FOR APPROPRIATIONS

House bill

The House bill amended Section 212 of the Federal Railroad Safety Act of 1970 (45 U.S.C. 441) to provide for authorization of \$35,000,000 for appropriations for the fiscal year ending June 30, 1975 to carry out the purposes of the Act.

The authorization of \$35 million was further limited by the following guidelines: First, not more than \$18 million shall be available for expenditure by the Office of Safety, including salaries and expenses for up to 350 safety inspectors and up to 80 clerical personnel. Second, not more than \$3.5 million shall be available to carry out Section 206(d) of the Federal Railroad Safety Act of 1970, relating to Federal grants to carry out State safety programs. Third, not more than \$3.5 million shall be available for salaries and expenses of the Federal Railroad Administration, not otherwise provided for in the Act. Fourth, not more than \$10 million shall be available for conducting research and development activities under the Act. Finally, the House bill provided that the aggregate of amounts obligated and expended in fiscal year 1975 for conducting research and development activities under the Act shall not exceed the aggregate of amounts expended in such fiscal year for the investigation and enforcement of Federal safety rules, regulations, orders and standards prescribed or in effect under the Act.

Senate amendment

The Senate amendment included an authorization for appropriations identical to that contained in the House bill with one exception. The Senate bill did not contain the provision prohibiting the aggregate of amounts obligated and expended in fiscal year 1975 for conducting research and development to exceed the aggregate of such amounts for the investigation and enforcement of railroad safety rules, regulations, orders, and standards.

Conference substitute

The conference substitute adopted the language of the House bill.

ENFORCEMENT

House bill

No provision.

Senate amendment

The Senate amendment would change section 208(a) of the Federal Railroad Safety Act of 1970 (45 U.S.C. 437(a)) to authorize the Secretary to issue cease and desist orders to direct the termination of actions, or omissions to act, in violation of the Act or of any railroad safety, rule, regulation, order, or standard issued thereunder. It would further give the district courts of the United States jurisdiction to enforce such orders by appropriate means.

Conference substitute

The conference substitute adopted the Senate amendment with a minor conforming amendment allowing the Secretary to issue orders to direct compliance with the Federal Railroad Safety Act or rules, regulations, orders, or standards issued thereunder.

RAIL SAFETY PETITIONS

House bill

No provision.

Senate amendment

The Senate amendment amended Section 208 of the Federal Railroad Safety Act of 1970 (45 U.S.C. 437) by providing for a new subsection relating to rail safety petitions. Under the provision, any interested person, including a safety organization or governmental entity could petition the Secretary to commence a proceeding for the issuance, amendment, or revocation of any railroad safety rule, regulation, order or standard under the Act.

Upon the receipt of a petition, the Secretary was given 120 days within which to respond. During such period, if he responded affirmatively, he would commence an action to develop and promulgate a rule to respond to the petition. If the Secretary denied the petition or failed to respond within the 120 day period, the petitioner could commence a civil action in an appropriate district court of the United States to compel the Secretary to initiate a proceeding to take the action requested.

If the petitioner could demonstrate to the satisfaction of the Court, by a preponderance of the evidence in a de novo proceeding, that there is a substantial risk of personal injury or property damage and that the failure of the Secretary to grant the petition exposes the petitioner or other persons to a risk of such harm, then the Court could order the Secretary to initiate the action requested by the petitioner.

Conference substitute

The conference substitute omits the Senate amendment.

RAIL IMPROVEMENT AMENDMENTS

House bill

No provision.

Senate amendment

The Senate amendment would amend the Regional Rail Reorganization Act of 1973 (87 Stat. 985), with various technical and conforming amendments.

Conference substitute

The conference substitute omits this provision of the Senate amendment because it has already been enacted into law as Public Law 93-488.

TITLE III—INDEPENDENT SAFETY BOARD

SHORT TITLE

FINDINGS

House bill

No provision.

Senate amendment

The Senate amendment found that although the National Transportation Safety Board was established in 1966 (49 U.S.C. 1654) as an independent governmental agency, its current position as a sub-

ordinate agency within the Department of Transportation undercuts its ability to effectively perform the functions it was designed to perform. Because many of its investigations involve other government agencies and because some of its conclusions may involve severe criticism of such agencies, the Senate amendment concluded that this agency would best serve the Nation and fulfill its role if it were a totally separate and independent agency.

Conference substitute

The conference substitute adopts the provisions of the Senate amendment.

NATIONAL TRANSPORTATION SAFETY BOARD

House bill

No provision.

Senate amendment

The Senate amendment established the National Transportation Safety Board as an independent agency of the United States as of April 1, 1975. The Board consisted of five members appointed by the President, by and with the advice and consent of the Senate. No more than three members of the Board were to be of the same political party and such members were to be appointed upon the basis of technical qualification and professional standing in the field of accident reconstruction, safety engineering, or transportation safety. The terms of office of the members of the Board were to be five years. The Senate amendment further provided that the present members of the Board shall continue to serve until the expiration of their current terms of office.

Under the Senate amendment, on or before April 1, 1975, and thereafter as required, the President would designate, with the advice and consent of the Senate, a person to serve as Chairman of the National Transportation Safety Board and any other person to serve as Vice Chairman. Both were to serve as Chairman and Vice Chairman throughout their respective terms. The Chairman was designated as the chief executive officer of the Board and would exercise executive and administrative functions of the Board.

Additionally, the Board was mandated to establish and maintain distinct and appropriately staffed bureaus, divisions, or offices to investigate and report on accidents involving the five modes of transportation: aviation, marine and maritime, highway and motor vehicle, railroad and tracked vehicle, and pipeline. The Board also was mandated to establish and maintain an office to oversee efforts to insure the safe transportation of hazardous materials.

Conference substitute

The conference substitute adopts the provisions of the Senate amendment with several modifications. Two members of the Board shall be individuals who have been appointed on the basis of technical qualification and professional or management standing in the field of accident reconstruction, safety engineering, or transportation safety.

Second, the conferees agreed that the President shall designate a member of the Board to serve as new Chairman on or before January 1,

1976, and thereafter as required. In so doing, the term of office of the current Chairman would not be cut short. This provision, coupled with the provision which appeared in the Senate amendment allowing present members of the Board to continue to serve until the expiration of their current terms of office, in effect will "grandfather" the positions of the current Chairman and Board members at least until the expiration of their current terms.

Third, the conferees further agreed that the Chairman and Vice Chairman once so designated, would serve in those positions for a term of two years. After two years, the President could reappoint the Chairman and Vice Chairman to serve additional two year terms. The designation of the Chairman would be subject to the advice and consent of the Senate.

Fourth, the conferees agreed not to require the Board to establish and maintain a separate bureau, division, or office for the purpose of investigating and reporting marine and maritime accidents. By adopting such a provision, the conferees do not intend that the new Board should not be involved in the investigation of marine and maritime accidents. The conferees however intend that the National Transportation Safety Board continue the role it currently plays in the investigation of marine and maritime accidents.

GENERAL PROVISIONS

House bill

No provision.

Senate amendment

The Senate amendment set out in detail the duties, responsibilities, and powers of the Board.

The Board was required to investigate and determine the facts, conditions, and circumstances, and the cause or probable cause or causes of: (1) certain aircraft accidents; (2) marine casualties (excluding those involving only public vessels) which occur on the navigable or territorial waters of the United States or which involved a vessel of United States registry, whenever the Board found such an investigation would tend to promote safety of life at sea and be in the public interest; (3) accidents involving a motor carrier in which there was a fatality or property damage in excess of \$75,000; (4) highway accidents, including railroad grade crossing accidents that it selected in cooperation with the States; (5) railroad accidents in which there was a fatality or property damage in excess of \$500,000; (6) pipeline accidents in which there was a fatality or property damage in excess of \$100,000; and (7) other accidents which occurred in connection with the transportation of people or property which, in the judgment of the Board, was catastrophic, involved problems of a recurring character, or would otherwise carry out the policy of this Act.

The Board was empowered to request the Secretary of Transportation to make investigations of the facts, conditions, and circumstances of accidents. The Board thereafter, utilizing such investigations, would then make the determination of the probable cause of the accident. However, if there was an initial indication of government misfea-

sance or nonfeasance, the Board itself was required to conduct the investigation with regard to the accident.

In addition, the Senate amendment provided that the Board shall report in writing on the facts, conditions, and circumstances of each accident investigated and cause such reports to be made available to the public at reasonable cost. Other duties of the Board included (1) the issuance of periodic reports to Congress, Federal, State, and local agencies concerned with transportation safety, and other interested persons regarding transportation safety; (2) the advocacy of the cause of safety and transportation; (3) the initiation and conduct of special studies and investigations pertaining to transportation safety and human injury avoidance; (4) the assessment of techniques and methods of accident investigation; (5) the establishment by regulation of requirements binding on persons reporting accidents subject to the Board's investigatory jurisdiction; (6) the evaluation of the transportation safety consciousness and efficacy in preventing accidents of other government agencies; (7) the evaluation of the adequacy of safeguards and procedures concerning the transportation of hazardous materials and the performance of other government agencies charged with assuring the safe transportation of such materials; and (8) the review on appeal of the (A) suspension, amendment, modification, revocation, or denial of any operating certificate of license issued by the Secretary of Transportation under Section 602, 609 or 611(c) of the Federal Aviation Act of 1958 and (B) the decisions of the Commandant of the Coast Guard, on appeals from the orders of any administrative law judge revoking, suspending or denying a license, certificate, document, or register in proceedings under section 4450 of the Revised Statutes, the act of July 15, 1954, or Section 4 of the Great Lakes Pilotage Act.

Subsection (6) of section 304 of the Senate amendment further defined the powers of the Board. It provided that the Board, and any employees it designates, may hold hearings, issue subpoenas, administer oaths, and require the production of information for the purpose of carrying out the Act. The Board and its authorized employees were also authorized to enter property where accidents have occurred to inspect the appropriate materials, records, equipment and facilities. Upon request, a Federal court could back up the Board's power with an appropriate order. Any violation of such an order would involve a contempt of court. The Board was also authorized to enter such contracts, leases, cooperative agreements, or other transactions as may be necessary in the conduct of the functions and duties of the Board. The Board was also authorized to obtain autopsies of victims of accidents occurring within its jurisdiction.

The Senate amendment further empowered the Board to issue regulations as needed to carry out its task. If an interested person filed an objection to a proposed regulation and requested a public hearing, such a hearing must have been held prior to adopting any final regulation. Other powers granted to the Board included the authority to (1) use on a reimbursable basis or otherwise, available services, equipment, personnel, and facilities of the Department of Transportation and of other civilian or military agencies or instrumentalities of the Federal government; (2) confer with employees and use available services, records, and facilities of State, municipal, or local governments and

agencies; (3) employ experts and consultants in accordance with section 3109 of Title 5, U.S.C.; (4) appoint one or more advisory committees as is necessary; (5) accept voluntary and uncompensated services; (6) accept gifts or donations of money or property; and (7) enter into contracts with public or private non-profit entities for the conduct of studies related to any of its functions.

The Senate amendment provides for joint submission of budget requests and recommendations and empowers the Board to designate representatives to serve or assist on such committees as the Chairman deemed necessary and to conduct inquiries to secure data necessary to carry out its functions.

With regard to the use of Board reports as evidence, subsection (c) of section 304 of the Senate amendment provided that no part of any such reports relating to any accident or the investigation thereof shall be admitted as evidence or used in any suit or action for damages growing out of any matter mentioned in such report or reports. Finally, subsection (d) provided that any order issued by the Board under this Act shall be subject to review by the appropriate court of appeals of the United States.

Conference substitute

The conference substitute adopts the provisions of the Senate amendment with the following modifications:

First, the conferees substituted a new provision outlining the nature of marine accidents which the Board shall investigate. This modification was made in deference to the Merchant Marine and Fisheries Committee of the House which has jurisdiction over the Coast Guard. The new section provides that the Board shall investigate or cause to be investigated, and determine cause or probable cause of a major marine casualty, except as involving only public vessels, occurring on the navigable waters or territorial seas of the United States or involving a vessel of the United States, in accordance with regulations to be prescribed jointly by the Board and the Secretary of the department in which the Coast Guard is operating. This section should not be construed to eliminate or diminish any responsibility under any other Federal statute of such Secretary. Finally, where there is a marine casualty involving a public vessel and any other vessel, such casualty shall be investigated, the cause or probable cause determined, and the report made available to the public by either the Board or the Coast Guard.

The conferees intend the Board to continue the role it has always played in the investigation of marine casualties; this new legislation is not intended to modify that role. Under both the language which was deleted in the Senate amendment and the new language in the conference substitute, an agency of the Federal Government will now be required to investigate and report publicly on a marine casualty which involves a public vessel and a non public vessel.

Second, the conference substitute provides new criteria which define the type of accidents in the other modes which the Board shall investigate. With regard to motor carrier, railroad, and pipeline accidents, the conferees deleted the reference to property damage in terms of dollars. With regard to railroad and pipeline accidents, the Board shall investigate those accidents where there is "a fatality or substantial

property damage". With regard to motor carrier accidents, the Board shall investigate those accidents that it selects in cooperation with the States.

The Board's record of investigating aviation accidents has, in general, been outstanding, and the conferees do not intend that the Board relax its efforts in this area. Rather, additional resources should be sought and utilized in the investigation of more accidents involving the surface modes—particularly railroads and pipelines.

Third, the conferees agreed to clarify the Board's authority to establish regulations to carry out its duties under the Act. Under the language contained in the Senate amendment, there was some confusion as to whether the Board would have regulatory authority. To clarify this, the conferees have deleted the language that was in the Senate amendment and replaced it with language which is in the existing section 5 of the Department of Transportation Act. This language provides that "the Board shall . . . establish such rules and regulations as may be necessary to the exercise of its functions."

Fourth, a change was made in the simultaneous budget submission provision. As changed, an office or agency of the United States may request (but not compel) the Board to submit its budget estimates, information, requests, testimony or comments prior to the submission of such recommendations, estimates, information, testimony or comments to the Congress.

SAFETY ADVOCACY

House bill

No provision.

Senate amendment

The Senate amendment would have created a new role for the National Transportation Safety Board—that of Safety Advocate. Under the provision, the Board was authorized to intervene as a party in rulemaking and similar proceedings conducted by other Federal agencies, when it appeared in the judgment of the Board, that such proceedings may substantially affect aviation, maritime, motor vehicle, railroad, or pipeline safety. The Board was to be governed by the rules governing regular parties intervening in such proceedings, except that where no rules authorized intervention, the Board was afforded an opportunity to present facts and arguments to responsible officials in an orderly manner. The provision additionally allowed intervention in State proceedings where the proceedings may affect transportation safety and where the Board's participation had been requested by the State governor, the State safety agency, or the State entity conducting the proceeding.

Conference substitute

The conference substitute omits this provision of the Senate amendment. The conferees do not intend by this deletion to alter any authority of the NTSB to participate in rulemaking proceedings of the various transportation safety agencies.

House bill

No provision.

Senate amendment

The Senate amendment required the Board to report to Congress on its activities on July 1 of each year. The report shall include (a) a statistical and analytical summary of transportation accidents investigated and reviewed by the Board; (b) a survey and summary of the Board's recommendations; (c) a summary of the activity of the Board in advocating the cause of safety in transportation; (d) an appraisal in detail of the accident investigation and accident prevention activities of other government agencies; (e) a biennial appraisal and critical evaluation and review including recommendations for legislative and administrative action and change with respect to aviation accident investigation and safety, marine accident investigation and safety; highway and motor vehicle accident investigation and safety, railroad accident investigation and safety, pipeline accident investigation and safety, and hazardous materials transportation and safety advocacy activities.

Conference substitute

The conference substitute adopts the report provisions of the Senate amendment with technical and conforming modifications to reflect the substantive provisions of the law as reported by the conferees.

PUBLIC ACCESS TO INFORMATION

House bill

No provision.

Senate amendment

The Senate amendment provided that copies of any communication, document, investigation, or other report, or information received or sent by the Board or any member or employee thereof, shall be made available to the public upon identifiable request, and at reasonable cost. Nothing contained in the information provisions of the Senate amendment shall be deemed to require the release of any information described by 5 U.S.C. 552(b), or which is otherwise protected by loss in exposure to the public. Additionally, the information may not be publicly released if it concerns or relates to a trade secret referred to in section 1905 of title 18, United States Code, except that such information may be disclosed in a manner to preserve confidentiality (1) upon request, to other Federal Government departments and agencies for official use; (2) upon request, to any Committee of Congress having jurisdiction over the subject matter to which the information relates; (3) in any judicial proceeding under a court order formulated to preserve the confidentiality of such information without impairing the proceedings; or (4) to the public in order to protect health and safety after notice and opportunities or comments in writing.

Conference substitute

The conference substitute adopts the provision of the Senate amendment with minor drafting modifications.

House bill

No provisions.

Senate amendment

The Senate amendment provided that whenever the Board submitted any recommendation regarding transportation safety to the Secretary of Transportation, the Secretary shall respond to such recommendation formally and in writing not later than sixty days after receipt thereof. The Secretary could adopt the recommendation in whole, in part, or not at all. However, to the extent to which he indicated that he would not adopt a recommendation, he was required to state his reasons therefor. To the extent that he had decided to adopt the recommendation, then he would be required to provide a proposed time-table for adopting the recommendation.

Conference substitute

The conference substitute adopts the provision of the Senate amendment with one modification. Rather than requiring the Secretary to respond within sixty days of the date of receipt of the recommendation, the conferees extended that period to ninety days.

Authorization of Appropriations*House bill*

No provision.

Senate amendment

The Senate amendment authorized to be appropriated for the purposes of this Act not to exceed \$14 million for the fiscal year ending June 30, 1975; \$16 million for the fiscal year ending June 30, 1976; and \$18 million for the fiscal year ending June 30, 1977.

Conference substitute

The conference substitute authorized to be appropriated for the purposes of this Act, such sums as are necessary, not to exceed \$12 million for the fiscal year ending June 30, 1975 and \$12 million for the fiscal year ending June 30, 1976, such sums to remain available until expended.

WARREN MAGNUSON,
VANCE HARTKE,
HOWARD W. CANNON,
TED STEVENS,
J. GLENN BEALL, JR.,

Managers on the Part of the Senate.

HARLEY O. STAGGERS,
JOHN JARMAN,
JOHN D. DINGELL,
SAM DEVINE,
DICK SHOUP,

Managers on the Part of the House.

Ninety-third Congress of the United States of America

AT THE SECOND SESSION

*Begun and held at the City of Washington on Monday, the twenty-first day of January,
one thousand nine hundred and seventy-four*

An Act

To regulate commerce by improving the protections afforded the public against risks connected with the transportation of hazardous materials, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Transportation Safety Act of 1974".

TITLE I—HAZARDOUS MATERIALS

SHORT TITLE

SEC. 101. This title may be cited as the "Hazardous Materials Transportation Act".

DECLARATION OF POLICY

SEC. 102. It is declared to be the policy of Congress in this title to improve the regulatory and enforcement authority of the Secretary of Transportation to protect the Nation adequately against the risks to life and property which are inherent in the transportation of hazardous materials in commerce.

DEFINITIONS

SEC. 103. As used in this title, the term—

- (1) "commerce" means trade, traffic, commerce, or transportation, within the jurisdiction of the United States, (A) between a place in a State and any place outside of such State, or (B) which affects trade, traffic, commerce, or transportation described in clause (A);
- (2) "hazardous material" means a substance or material in a quantity and form which may pose an unreasonable risk to health and safety or property when transported in commerce;
- (3) "Secretary" means the Secretary of Transportation, or his delegate;
- (4) "serious harm" means death, serious illness, or severe personal injury;
- (5) "State" means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, or Guam;
- (6) "transports" or "transportation" means any movement of property by any mode, and any loading, unloading, or storage incidental thereto; and
- (7) "United States" means all of the States.

DESIGNATION OF HAZARDOUS MATERIALS

SEC. 104. Upon a finding by the Secretary, in his discretion, that the transportation of a particular quantity and form of material in commerce may pose an unreasonable risk to health and safety or property, he shall designate such quantity and form of material or group or class of such materials as a hazardous material. The materials so designated may include, but are not limited to, explosives, radioactive materials, etiologic agents, flammable liquids or solids, combustible liquids or solids, poisons, oxidizing or corrosive materials, and compressed gases.

REGULATIONS GOVERNING TRANSPORTATION OF HAZARDOUS MATERIALS

SEC. 105. (a) GENERAL.—The Secretary may issue, in accordance with the provisions of section 553 of title 5, United States Code, including an opportunity for informal oral presentation, regulations for the safe transportation in commerce of hazardous materials. Such regulations shall be applicable to any person who transports, or causes to be transported or shipped, a hazardous material, or who manufactures, fabricates, marks, maintains, reconditions, repairs, or tests a package or container which is represented, marked, certified, or sold by such person for use in the transportation in commerce of certain hazardous materials. Such regulations may govern any safety aspect of the transportation of hazardous materials which the Secretary deems necessary or appropriate, including, but not limited to, the packing, repacking, handling, labeling, marking, placarding, and routing (other than with respect to pipelines) of hazardous materials, and the manufacture, fabrication, marking, maintenance, reconditioning, repairing, or testing of a package or container which is represented, marked, certified, or sold by such person for use in the transportation of certain hazardous materials.

(b) COOPERATION.—In addition to other applicable requirements, the Secretary shall consult and cooperate with representatives of the Interstate Commerce Commission and shall consider any relevant suggestions made by such Commission, before issuing any regulation with respect to the routing of hazardous materials. Such Commission shall, to the extent of its lawful authority, take such action as is necessary or appropriate to implement any such regulation.

(c) REPRESENTATION.—No person shall, by marking or otherwise, represent that a container or package for the transportation of hazardous materials is safe, certified, or in compliance with the requirements of this Act, unless it meets the requirements of all applicable regulations issued under this Act.

HANDLING OF HAZARDOUS MATERIALS

SEC. 106. (a) CRITERIA.—The Secretary is authorized to establish criteria for handling hazardous materials. Such criteria may include, but need not be limited to, a minimum number of personnel; a minimum level of training and qualification for such personnel; type and frequency of inspection; equipment to be used for detection, warning, and control of risks posed by such materials; specifications regarding the use of equipment and facilities used in the handling and transportation of such materials; and a system of monitoring safety assurance procedures for the transportation of such materials. The Secretary may revise such criteria as required.

(b) REGISTRATION.—Each person who transports or causes to be transported or shipped in commerce hazardous materials or who manufactures, fabricates, marks, maintains, reconditions, repairs, or tests packages or containers which are represented, marked, certified, or sold by such person for use in the transportation in commerce of certain hazardous materials (designated by the Secretary) may be required by the Secretary to prepare and submit to the Secretary a registration statement not more often than once every 2 years. Such a registration statement shall include, but need not be limited to, such person's name; principal place of business; the location of each activity handling such hazardous materials; a complete list of all such hazardous materials handled; and an averment that such person is in compliance with all applicable criteria established under subsection (a) of this section.

The Secretary shall by regulation prescribe the form of any such statement and the information required to be included. The Secretary shall make any registration statement filed pursuant to this subsection available for inspection by any person, without charge, except that nothing in this sentence shall be deemed to require the release of any information described by subsection (b) of section 552 of title 5, United States Code, or which is otherwise protected by law from disclosure to the public.

(c) REQUIREMENT.—No person required to file a registration statement under subsection (b) of this section may transport or cause to be transported or shipped extremely hazardous materials, or manufacture, fabricate, mark, maintain, recondition, repair, or test packages or containers for use in the transportation of extremely hazardous materials, unless he has on file a registration statement.

EXEMPTIONS

SEC. 107. (a) GENERAL.—The Secretary, in accordance with procedures prescribed by regulation, is authorized to issue or renew, to any person subject to the requirements of this title, an exemption from the provisions of this title, and from regulations issued under section 105 of this title, if such person transports or causes to be transported or shipped hazardous materials in a manner so as to achieve a level of safety (1) which is equal to or exceeds that level of safety which would be required in the absence of such exemption, or (2) which would be consistent with the public interest and the policy of this title in the event there is no existing level of safety established. The maximum period of an exemption issued or renewed under this section shall not exceed 2 years, but any such exemption may be renewed upon application to the Secretary. Each person applying for such an exemption or renewal shall, upon application, provide a safety analysis as prescribed by the Secretary to justify the grant of such exemption. A notice of an application for issuance or renewal of such exemption shall be published in the Federal Register. The Secretary shall afford access to any such safety analysis and an opportunity for public comment on any such application, except that nothing in this sentence shall be deemed to require the release of any information described by subsection (b) of section 552 of title 5, United States Code, or which is otherwise protected by law from disclosure to the public.

(b) VESSELS.—The Secretary shall exclude, in whole or in part, from any applicable provisions and regulations under this title, any vessel which is excepted from the application of section 201 of the Ports and Waterways Safety Act of 1972 by paragraph (2) of such section (46 U.S.C. 391a(2)), or any other vessel regulated under such Act, to the extent of such regulation.

(c) FIREARMS AND AMMUNITION.—Nothing in this title, or in any regulation issued under this title, shall be construed to prohibit or regulate the transportation by any individual, for personal use, of any firearm (as defined in paragraph (4) of section 232 of title 18, United States Code) or any ammunition therefor, or to prohibit any transportation of firearms or ammunition in commerce.

(d) LIMITATION ON AUTHORITY.—Except when the Secretary determines that an emergency exists, exemptions or renewals granted pursuant to this section shall be the only means by which a person subject to the requirements of this title may be exempted from or relieved of the obligation to meet any requirements imposed under this title.

TRANSPORTATION OF RADIOACTIVE MATERIALS ON PASSENGER-CARRYING
AIRCRAFT

SEC. 108. (a) GENERAL.—Within 120 days after the date of enactment of this section, the Secretary shall issue regulations, in accordance with this section and pursuant to section 105 of this title, with respect to the transportation of radioactive materials on any passenger-carrying aircraft in air commerce, as defined in section 101(4) of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301(4)). Such regulations shall prohibit any transportation of radioactive materials on any such aircraft unless the radioactive materials involved are intended for use in, or incident to, research, or medical diagnosis or treatment, so long as such materials as prepared for and during transportation do not pose an unreasonable hazard to health and safety. The Secretary shall further establish effective procedures for monitoring and enforcing the provisions of such regulations.

(b) DEFINITION.—As used in this section, “radioactive materials” means any materials or combination of materials which spontaneously emit ionizing radiation. The term does not include materials in which (1) the estimated specific activity is not greater than 0.002 microcuries per gram of material; and (2) the radiation is distributed in an essentially uniform manner.

POWERS AND DUTIES OF THE SECRETARY

SEC. 109. (a) GENERAL.—The Secretary is authorized, to the extent necessary to carry out his responsibilities under this title, to conduct investigations, make reports, issue subpoenas, conduct hearings, require the production of relevant documents, records, and property, take depositions, and conduct, directly or indirectly, research, development, demonstration, and training activities. The Secretary is further authorized, after notice and an opportunity for a hearing, to issue orders directing compliance with this title or regulations issued under this title; the district courts of the United States shall have jurisdiction, upon petition by the Attorney General, to enforce such orders by appropriate means.

(b) RECORDS.—Each person subject to requirements under this title shall establish and maintain such records, make such reports, and provide such information as the Secretary shall by order or regulation prescribe, and shall submit such reports and shall make such records and information available as the Secretary may request.

(c) INSPECTION.—The Secretary may authorize any officer, employee, or agent to enter upon, inspect, and examine, at reasonable times and in a reasonable manner, the records and properties of persons to the extent such records and properties relate to—

(1) the manufacture, fabrication, marking, maintenance, reconditioning, repair, testing, or distribution of packages or containers for use by any person in the transportation of hazardous materials in commerce; or

(2) the transportation or shipment by any person of hazardous materials in commerce.

Any such officer, employee, or agent shall, upon request, display proper credentials.

(d) FACILITIES AND DUTIES.—The Secretary shall—

(1) establish and maintain facilities and technical staff sufficient to provide, within the Federal government, the capability of evaluating risks connected with the transportation of hazardous materials and materials alleged to be hazardous;

(2) establish and maintain a central reporting system and data center so as to be able to provide the law-enforcement and firefighting personnel of communities, and other interested persons and government officers, with technical and other information and advice for meeting emergencies connected with the transportation of hazardous materials; and

(3) conduct a continuing review of all aspects of the transportation of hazardous materials in order to determine and to be able to recommend appropriate steps to assure the safe transportation of hazardous materials.

(e) ANNUAL REPORT.—The Secretary shall prepare and submit to the President for transmittal to the Congress on or before May 1 of each year a comprehensive report on the transportation of hazardous materials during the preceding calendar year. Such report shall include, but need not be limited to—

(1) a thorough statistical compilation of any accidents and casualties involving the transportation of hazardous materials;

(2) a list and summary of applicable Federal regulations, criteria, orders, and exemptions in effect;

(3) a summary of the basis for any exemptions granted or maintained;

(4) an evaluation of the effectiveness of enforcement activities and the degree of voluntary compliance with applicable regulations;

(5) a summary of outstanding problems confronting the administration of this title, in order of priority; and

(6) such recommendations for additional legislation as are deemed necessary or appropriate.

PENALTIES

SEC. 110. (a) CIVIL.—(1) Any person (except an employee who acts without knowledge) who is determined by the Secretary, after notice and an opportunity for a hearing, to have knowingly committed an act which is a violation of a provision of this title or of a regulation issued under this title, shall be liable to the United States for a civil penalty. Whoever knowingly commits an act which is a violation of any regulation, applicable to any person who transports or causes to be transported or shipped hazardous materials, shall be subject to a civil penalty of not more than \$10,000 for each violation, and if any such violation is a continuing one, each day of violation constitutes a separate offense. Whoever knowingly commits an act which is a violation of any regulation applicable to any person who manufactures, fabricates, marks, maintains, reconditions, repairs, or tests a package or container which is represented, marked, certified, or sold by such person for use in the transportation in commerce of hazardous materials shall be subject to a civil penalty of not more than \$10,000 for each violation. The amount of any such penalty shall be assessed by the Secretary by written notice. In determining the amount of such penalty, the Secretary shall take into account the nature, circumstances, extent, and gravity of the violation committed and, with respect to the person found to have committed such violation, the degree of culpability, any history of prior offenses, ability to pay, effect on ability to continue to do business, and such other matters as justice may require.

(2) Such civil penalty may be recovered in an action brought by the Attorney General on behalf of the United States in the appropriate district court of the United States or, prior to referral to the Attorney General, such civil penalty may be compromised by the Secretary.

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The amount of such penalty, when finally determined (or agreed upon in compromise), may be deducted from any sums owed by the United States to the person charged. All penalties collected under this subsection shall be deposited in the Treasury of the United States as miscellaneous receipts.

(b) **CRIMINAL.**—A person is guilty of an offense if he willfully violates a provision of this title or a regulation issued under this title. Upon conviction, such person shall be subject, for each offense, to a fine of not more than \$25,000, imprisonment for a term not to exceed 5 years, or both.

SPECIFIC RELIEF

SEC. 111. (a) GENERAL.—The Attorney General, at the request of the Secretary, may bring an action in an appropriate district court of the United States for equitable relief to redress a violation by any person of a provision of this title, or an order or regulation issued under this title. Such district courts shall have jurisdiction to determine such actions and may grant such relief as is necessary or appropriate, including mandatory or prohibitive injunctive relief, interim equitable relief, and punitive damages.

(b) **IMMINENT HAZARD.**—If the Secretary has reason to believe that an imminent hazard exists, he may petition an appropriate district court of the United States, or upon his request the Attorney General shall so petition, for an order suspending or restricting the transportation of the hazardous material responsible for such imminent hazard, or for such other order as is necessary to eliminate or ameliorate such imminent hazard. As used in this subsection, an “imminent hazard” exists if there is substantial likelihood that serious harm will occur prior to the completion of an administrative hearing or other formal proceeding initiated to abate the risk of such harm.

RELATIONSHIP TO OTHER LAWS

SEC. 112. (a) GENERAL.—Except as provided in subsection (b) of this section, any requirement, of a State or political subdivision thereof, which is inconsistent with any requirement set forth in this title, or in a regulation issued under this title, is preempted.

(b) **STATE LAWS.**—Any requirement, of a State or political subdivision thereof, which is not consistent with any requirement set forth in this title, or in a regulation issued under this title, is not preempted if, upon the application of an appropriate State agency, the Secretary determines, in accordance with procedures to be prescribed by regulation, that such requirement (1) affords an equal or greater level of protection to the public than is afforded by the requirements of this title or of regulations issued under this title and (2) does not unreasonably burden commerce. Such requirement shall not be preempted to the extent specified in such determination by the Secretary for so long as such State or political subdivision thereof continues to administer and enforce effectively such requirement.

(c) **OTHER FEDERAL LAWS.**—The provisions of this title shall not apply to pipelines which are subject to regulation under the Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. 1671 et seq.) or to pipelines which are subject to regulation under chapter 39 of title 18, United States Code.

CONFORMING AMENDMENTS

SEC. 113. (a) Section 4472 of title 52 of the Revised Statutes of the United States, as amended (46 U.S.C. 170) is amended—

(1) by inserting, in the first sentence of paragraph (14) thereof, "criminal" before the word "penalty" and "or imprisoned not more than 5 years, or both" before the phrase "for each violation"; and

(2) by adding at the end thereof the following new paragraph:

"(17) (A) Any person (except an employee who acts without knowledge) who is determined by the Secretary, after notice and an opportunity for a hearing, to have knowingly committed an act which is a violation of any provision of this section, or of any regulation issued under this section, shall be liable to the United States for a civil penalty of not more than \$10,000 for each day of each violation. The amount of such civil penalty shall be assessed by the Secretary by written notice. In determining the amount of such penalty, the Secretary shall take into account the nature, circumstances, extent, and gravity of the violation committed and, with respect to the person found to have committed such violation, the degree of culpability, any history of prior offenses, ability to pay, effect on ability to continue to do business, and such other matters as justice may require.

"(B) Such civil penalty may be recovered in an action brought by the Attorney General on behalf of the United States, in the appropriate district court of the United States or, prior to referral to the Attorney General, such civil penalty may be compromised by the Secretary. The amount of such penalty, when finally determined (or agreed upon in compromise), may be deducted from any sums owed by the United States to the person charged. All penalties collected under this subsection shall be deposited in the Treasury of the United States as miscellaneous receipts."

(b) Section 901(a)(1) of the Federal Aviation Act of 1958 (49 U.S.C. 1471(a)(1)) is amended—

(1) by inserting immediately before the period at the end of the first sentence thereof and inserting in lieu thereof: "except that the amount of such civil penalty shall not exceed \$10,000 for each such violation which relates to the transportation of hazardous materials."; and

(2) by deleting in the second sentence thereof " : *Provided, That this*" and inserting in lieu thereof the following: "The amount of any such civil penalty which relates to the transportation of hazardous materials shall be assessed by the Secretary, or his delegate, upon written notice upon a finding of violation by the Secretary, after notice and an opportunity for a hearing. In determining the amount of such penalty, the Secretary shall take into account the nature, circumstances, extent, and gravity of the violation committed and, with respect to the person found to have committed such violation, the degree of culpability, any history of prior offenses, ability to pay, effect on ability to continue to do business, and such other matters as justice may require. This".

(c) Section 902(h) of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1472(h)) is amended to read as follows:

"HAZARDOUS MATERIALS

"(h)(1) In carrying out his responsibilities under this Act, the Secretary of Transportation may exercise the authority vested in him by section 105 of the Hazardous Materials Transportation Act to provide by regulation for the safe transportation of hazardous materials by air.

"(2) A person is guilty of an offense if he willfully delivers or causes to be delivered to an air carrier or to the operator of a civil aircraft for transportation in air commerce, or if he recklessly causes the transportation in air commerce of, any shipment, baggage, or other

property which contains a hazardous material, in violation of any rule, regulation, or requirement with respect to the transportation of hazardous materials issued by the Secretary of Transportation under this Act. Upon conviction, such person shall be subject, for each offense, to a fine of not more than \$25,000, imprisonment for a term not to exceed 5 years, or both.

“(3) Nothing in this subsection shall be construed to prohibit or regulate the transportation by any individual, for personal use, of any firearm (as defined in paragraph (4) of section 232 of title 18, United States Code) or any ammunition therefor.”.

(d) Section 6(c)(1) of the Department of Transportation Act (49 U.S.C. 1655(c)(1)) is amended by inserting in the first sentence thereof after “aviation safety” and before “as set forth in” the following: (other than those relating to the transportation, packaging, marking, or description of hazardous materials)”.

(e)(1) Section 6(f)(3)(A) of the Department of Transportation Act (49 U.S.C. 1655(f)(3)(A)) is amended by striking out the period at the end thereof and by inserting in lieu thereof “(other than subsection (e)(4)).”.

(2) Section 6(f)(3)(B) of the Department of Transportation Act (49 U.S.C. 1655(f)(3)(B)) is amended by striking out the period at the end thereof and by inserting in lieu thereof “(other than subsection (e)(4)).”.

(f) Subsection (6) of section 4472 of the Revised Statutes, as amended (46 U.S.C. 170(6)), is amended—

(1) in paragraph (a) thereof, by striking out “inflammable” each place it appears and inserting in lieu thereof at each such place “flammable”; by inserting before “liquids” the following: “or combustible”; and by deleting the colon and the proviso in its entirety and by inserting in lieu thereof a period and the following two new sentences: “The provisions of this subsection shall apply to the transportation, carriage, conveyance, storage, stowing, or use on board any passenger vessel of any barrel, drum, or other package containing any flammable or combustible liquid which has a lower flash point than that which is defined as safe pursuant to regulations establishing the defining flash-point criteria for flammable and combustible liquids. Such regulations shall be prescribed, and revised as necessary, by the Secretary of Transportation.”.

(2) in paragraph (b) thereof, by striking out in clause (iv) thereof “inflammable liquids” and inserting in lieu thereof “flammable or combustible liquids”.

(g) The Hazardous Materials Transportation Control Act of 1970 (Pub. L. 91-458, title III; 49 U.S.C. 1761-1762) is repealed.

EFFECTIVE DATE

SEC. 114. (a) Except as provided in this section, the provisions of this title shall take effect on the date of enactment.

(b)(1) Except as provided in section 108 of this title or paragraph (2) of this subsection, any order, determination, rule, regulation, permit, contract, certificate, license, or privilege issued, granted, or otherwise authorized or allowed, prior to the date of enactment of this title, pursuant to any provision of law amended or repealed by this title, shall continue in effect according to its terms or until repealed, terminated, withdrawn, amended, or modified by the Secretary or a court of competent jurisdiction.

(2) The Secretary shall take all steps necessary to bring orders, determinations, rules, and regulations into conformity with the purposes and provisions of this title as soon as practicable, but in any event no permits, contracts, certificates, licenses, or privileges granted prior to the date of enactment of this title, or renewed or extended thereafter, shall be of any effect more than 2 years after the date of enactment of this title, unless there is full compliance with the purposes and provisions of this Act and regulations thereunder.

(c) Proceedings pending upon the date of enactment of this title shall not be affected by the provisions of this title and shall be completed as if this title had not been enacted, unless the Secretary makes a determination that the public health and safety otherwise require.

AUTHORIZATION FOR APPROPRIATIONS

SEC. 115. There is authorized to be appropriated for the purposes of this title, not to exceed \$7,000,000 for the fiscal year ending June 30, 1975.

TITLE II—RAIL SAFETY

SHORT TITLE

SEC. 201. This title may be cited as the "Rail Safety Improvement Act of 1974".

DECLARATION OF POLICY

SEC. 202. The Congress finds that more effective realization of the purposes of the Federal Railroad Safety Act of 1970 requires that Act to be amended to mandate comprehensive analysis and evaluation of the rail safety program, to increase the amount and percentage of available resources for inspection, investigation, and enforcement, and to increase the enforcement powers of the Secretary of Transportation.

COMPREHENSIVE RAILROAD SAFETY REPORT

SEC. 203. Section 211 of the Federal Railroad Safety Act of 1970 (45 U.S.C. 440) is amended by adding at the end thereof the following new subsection:

"(c) SPECIAL REPORT.—The Secretary shall prepare and submit to the President and the Congress, not later than March 17, 1976, a comprehensive railroad safety report. Such report shall—

"(1) contain a description of the areas of railroad safety with respect to which Federal safety standards issued under this Act are in effect (as of June 30, 1975);

"(2) identify any area of railroad safety with respect to which Federal safety standards have been proposed but have not been issued under this Act (as of June 30, 1975);

"(3) identify any area of railroad safety with respect to which Federal safety standards have not been issued under this Act (as of June 30, 1975);

"(4) identify alternative and more cost-effective methods for inspection and enforcement of Federal safety standards, including mechanical and electronic inspection, and contain an evaluation of problems involved in implementing such alternatives, with specific attention to the need for cooperation with the railroad industry;

"(5) identify the areas of railroad safety listed in accordance with paragraphs (1) through (3) of this subsection which involve, or which may involve, State participation under section 206 of this Act;

“(6) contain a description of the railroad safety program which is in effect or planned in each State (as of June 30, 1975), including—

“(A) State program development;

“(B) State plans to participate in program areas listed in accordance with paragraph (1) of this subsection, which are not covered by a State certification or agreement;

“(C) State interest in participating in each program area listed in accordance with paragraphs (2) and (3) of this subsection, following issuance of the applicable safety standards;

“(D) annual projections of each State agency's needs for personnel, equipment, and activities reasonably required to carry out its State program during each fiscal year from 1976 through 1980 together with estimates of the annual costs thereof separately stated as to projections under subparagraphs (B) and (C) of this paragraph;

“(E) the sources from which the State expects to draw the funds to finance such programs; and

“(F) the amount of State funds and of Federal financial assistance needed during each such fiscal year, by category;

“(7) contain a detailed analysis of (A) the number of safety inspectors needed (by industry and Government respectively) to maintain an adequate and reasonable railroad safety program and record; (B) the minimum training and other qualifications needed for each such inspector; (C) the present and projected availability of such personnel in comparison to the need therefor; (D) the salary levels of such personnel in relation to salary levels for comparable positions in industry, State governments, and the Federal Government;

“(8) evaluate alternative methods of allotting Federal funds among the States applying for Federal financial assistance, including recommendations, if needed, for a formula for such apportionment;

“(9) contain a discussion of other problems affecting cooperation among the States that relate to effective participation of State agencies in the nationwide railroad safety program; and

“(10) contain recommendations for any additional Federal and State legislation needed to further realization of the objectives of this Act.

Such report shall be prepared by the Secretary, directly or indirectly, after research, examination, study, and consultation with the national associations representing railroad employee unions, railroad management, cooperating State agencies, the national organization of State commissions, universities, and other persons having special expertise or experience with respect to railroad safety. Such report shall include, in an appendix, a statement of the views of the national associations representing railroad employee unions, of the carriers, and of the national organization of State commissions with respect to the content of such report in its final form.”.

ACCIDENT REPORTS

SEC. 204. (a) Section 209(b) of the Federal Railroad Safety Act of 1970 (45 U.S.C. 438(b)) is amended by inserting after “for violation thereof” and before “in such amount” the following: “or for violation of section 2 of the Act of May 6, 1910 (45 U.S.C. 39)”.

(b) Section 2 of the Act of May 6, 1910 (45 U.S.C. 39) is amended by adding at the end thereof the following new sentence: "In lieu of the foregoing, any such carrier may be required to pay a civil penalty pursuant to subsections (b) and (c) of section 209 of the Federal Railroad Safety Act of 1970 (45 U.S.C. 438(b)).".

AUTHORIZATION FOR APPROPRIATIONS

SEC. 205. Section 212 of the Federal Railroad Safety Act of 1970 (45 U.S.C. 441) is amended to read as follows:

"(a) There are authorized to be appropriated to carry out the provisions of this Act not to exceed \$35,000,000 for the fiscal year ending June 30, 1975.

"(b) Subject to the provisions of subsection (c), amounts appropriated under subsection (a) of this section shall be available for expenditure as follows:

"(1) Not to exceed \$18,000,000 for the Office of Safety, including salaries and expenses for up to 350 safety inspectors and up to 80 clerical personnel.

"(2) Not to exceed \$3,500,000 to carry out the provisions of section 206(d) of this Act.

"(3) Not to exceed \$3,500,000 for the Federal Railroad Administration, for salaries and expenses not otherwise provided for.

"(4) Not to exceed \$10,000,000 for conducting research and development activities under this Act.

"(c) The aggregate of amounts obligated and expended in fiscal year 1975 for conducting research and development activities under this Act shall not exceed the aggregate of amounts expended in such fiscal year for the investigation and enforcement of railroad safety rules, regulations, orders, and standards prescribed or in effect under this Act."

ENFORCEMENT

SEC. 206. Section 208(a) of the Federal Railroad Safety Act of 1970 (45 U.S.C. 437(a)) is amended by adding at the end thereof the following new sentence: "The Secretary is further authorized to issue orders directing compliance with this Act or with any railroad safety rule, regulation, order, or standard issued under this Act; the district courts of the United States shall have jurisdiction, upon petition by the Attorney General, to enforce such orders by appropriate means."

TITLE III—INDEPENDENT SAFETY BOARD

SHORT TITLE

SEC. 301. This title may be cited as the "Independent Safety Board Act of 1974".

FINDINGS

SEC. 302. The Congress finds and declares:

(1) The National Transportation Safety Board was established by statute in 1966 (Public Law 89-670; 80 Stat. 935) as an independent Government agency, located within the Department of Transportation, to promote transportation safety by conducting independent accident investigations and by formulating safety improvement recommendations.

(2) Proper conduct of the responsibilities assigned to this Board requires vigorous investigation of accidents involving transportation modes regulated by other agencies of Government; demands

continual review, appraisal, and assessment of the operating practices and regulations of all such agencies; and calls for the making of conclusions and recommendations that may be critical of or adverse to any such agency or its officials. No Federal agency can properly perform such functions unless it is totally separate and independent from any other department, bureau, commission, or agency of the United States.

NATIONAL TRANSPORTATION SAFETY BOARD

SEC. 303. (a) ESTABLISHMENT.—The National Transportation Safety Board (hereafter in this title referred to as the "Board"), previously established within the Department of Transportation, shall be an independent agency of the United States, in accordance with this section, on and after April 1, 1975.

(b) ORGANIZATION.—(1) The Board shall consist of five members, including a Chairman. Members of the Board shall be appointed by the President, by and with the advice and consent of the Senate. No more than three members of the Board shall be of the same political party. At any given time, no less than two members of the Board shall be individuals who have been appointed in the field of accident reconstruction, safety engineering, or transportation safety.

(2) The terms of office of members of the Board shall be 5 years, except as otherwise provided in this paragraph. Any individual appointed to fill a vacancy occurring on the Board prior to the expiration of the term of office for which his predecessor was appointed shall be appointed for the remainder of that term. Upon the expiration of his term of office, a member shall continue to serve until his successor is appointed and shall have qualified. Individuals serving as members of the National Transportation Safety Board on the date of enactment of this title shall continue to serve as members of the Board until the expiration of their then current term of office. Any member of the Board may be removed by the President for inefficiency, neglect of duty, or malfeasance in office.

(3) On or before January 1, 1976 (and thereafter as required), the President shall—

(A) designate, by and with the advice and consent of the Senate, an individual to serve as the Chairman of the Board (hereafter in this title referred to as the "Chairman"); and

(B) an individual to serve as Vice Chairman.

The Chairman and Vice Chairman each shall serve for a term of 2 years. The Chairman shall be the chief executive officer of the Board and shall exercise the executive and administrative functions of the Board with respect to the appointment and supervision of personnel employed by the Board; the distribution of business among such personnel and among any administrative units of the Board; and the use and expenditure of funds. The Vice Chairman shall act as Chairman in the event of the absence or incapacity of the Chairman or in case of a vacancy in the office of Chairman. The Chairman or Acting Chairman shall be governed by the general policies established by the Board, including any decisions, findings, determinations, rules, regulations, and formal resolutions.

(4) Three members of the Board shall constitute a quorum for the transaction of any function of the Board.

(5) The Board shall establish and maintain distinct and appropriately staffed bureaus, divisions, or offices to investigate and report on accidents involving each of the following modes of transportation:

(A) aviation; (B) highway and motor vehicle; (C) railroad and tracked vehicle; and (D) pipeline. The Board shall, in addition, establish and maintain any other such office as is needed, including an office to investigate and report on the safe transportation of hazardous materials.

(c) GENERAL.—(1) The General Services Administration shall furnish the Board with such offices, equipment, supplies, and services as it is authorized to furnish to any other agency or instrumentality of the United States.

(2) The Board shall have a seal which shall be judicially recognized.

(3) Subject to the civil service and classification laws, the Board is authorized to select, appoint, employ, and fix the compensation of such officers and employees, including investigators, attorneys, and administrative law judges, as shall be necessary to carry out its powers and duties under this title.

GENERAL PROVISIONS

SEC. 304. (a) DUTIES OF BOARD.—The Board shall—

(1) investigate or cause to be investigated (in such detail as it shall prescribe), and determine the facts, conditions, and circumstances and the cause or probable cause or causes of any—

(A) aircraft accident which is within the scope of the functions, powers, and duties transferred from the Civil Aeronautics Board under section 6(d) of the Department of Transportation Act (49 U.S.C. 4655(d)) pursuant to title VII of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1441);

(B) highway accident, including any railroad grade crossing accident, that it selects in cooperation with the States;

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

(D) pipeline accident in which there is a fatality or substantial property damage;

(E) major marine casualty, except one involving only public vessels, occurring on the navigable waters or territorial seas of the United States, or involving a vessel of the United States, in accordance with regulations to be prescribed jointly by the Board and the Secretary of the department in which the Coast Guard is operating. Nothing in this subparagraph shall be construed to eliminate or diminish any responsibility under any other Federal statute of the Secretary of the department in which the Coast Guard is operating: *Provided*, That any marine accident involving a public vessel and any other vessel shall be investigated and the facts, conditions, and circumstances, and the cause or probable cause determined and made available to the public by either the Board or the Secretary of the Department in which the Coast Guard is operating; and

(F) other accident which occurs in connection with the transportation of people or property which, in the judgment of the Board, is catastrophic, involves problems of a recurring character, or would otherwise carry out the policy of this title.

The Board may request the Secretary of Transportation (hereafter in this title referred to as the "Secretary") to make investigations with regard to such accidents and to report to the

Board the facts, conditions, and circumstances thereof (except in accidents where misfeasance or nonfeasance by the Federal Government is alleged), and the Secretary or his designees are authorized to make such investigations. Thereafter, the Board, utilizing such reports, shall make its determination of cause or probable cause under this paragraph;

(2) report in writing on the facts, conditions, and circumstances of each accident investigated pursuant to paragraph (1) of this subsection and cause such reports to be made available to the public at reasonable cost and to cause notice of the issuance and availability of such reports to be published in the Federal Register;

(3) issue periodic reports to the Congress, Federal, State, and local agencies concerned with transportation safety, and other interested persons recommending and advocating meaningful responses to reduce the likelihood of recurrence of transportation accidents similar to those investigated by the Board and proposing corrective steps to make the transportation of persons as safe and free from risk of injury as is possible, including steps to minimize human injuries from transportation accidents;

(4) initiate and conduct special studies and special investigations on matters pertaining to safety in transportation including human injury avoidance;

(5) assess and reassess techniques and methods of accident investigation and prepare and publish from time to time recommended procedures for accident investigations;

(6) establish by regulation requirements binding on persons reporting accidents subject to the Board's investigatory jurisdiction under this subsection;

(7) evaluate, assess the effectiveness, and publish the findings of the Board with respect to the transportation safety consciousness and efficacy in preventing accidents of other Government agencies;

(8) evaluate the adequacy of safeguards and procedures concerning the transportation of hazardous materials and the performance of other Government agencies charged with assuring the safe transportation of such materials; and

(9) review on appeal (A) the suspension, amendment, modification, revocation, or denial of any operating certificate or license issued by the Secretary of Transportation under sections 602, 609, or 611(c) of the Federal Aviation Act of 1958 (49 U.S.C. 1422, 1429, or 1431(c)); and (B) the decisions of the Commandant of the Coast Guard, on appeals from the orders of any administrative law judge revoking, suspending, or denying a license, certificate, document, or register in proceedings under section 4450 of the Revised Statutes of the United States (46 U.S.C. 239); the Act of July 15, 1954 (46 U.S.C. 239 (a) and (b)); or section 4 of the Great Lakes Pilotage Act (46 U.S.C. 216(b)).

(b) POWERS OF BOARD.—(1) The Board, or upon the authority of the Board, any member thereof, any administrative law judge employed by or assigned to the Board, or any officer or employee duly designated by the Chairman, may, for the purpose of carrying out this title, hold such hearings, sit and act at such times and places, administer such oaths, and require by subpoena or otherwise the attendance and testimony of such witnesses and the production of such evidence as the Board or such officer or employee deems advisable. Subpoenas shall be issued under the signature of the Chairman, or his delegate, and may

be served by any person designated by the Chairman. Witnesses summoned to appear before the Board shall be paid the same fees and mileage that are paid witnesses in the courts of the United States. Such attendance of witnesses and production of evidence may be required from any place in the United States to any designated place of such hearing in the United States.

(2) Any employee of the Board, upon presenting appropriate credentials and a written notice of inspection authority, is authorized to enter any property wherein a transportation accident has occurred or wreckage from any such accident is located and do all things therein necessary for a proper investigation. The employee may inspect, at reasonable times, records, files, papers, processes, controls, and facilities relevant to the investigation of such accident. Each inspection shall be commenced and completed with reasonable promptness and the results of such inspection made available.

(3) In case of contumacy or refusal to obey a subpoena, an order, or an inspection notice of the Board, or of any duly designated employee thereof, by any person who resides, is found, or transacts business within the jurisdiction of any district court of the United States, such district court shall, upon the request of the Board, have jurisdiction to issue to such person an order requiring such person to comply forthwith. Failure to obey such an order is punishable by such court as a contempt of court.

(4) The Board is authorized to enter into, without regard to section 3709 of the Revised Statutes of the United States (41 U.S.C. 5), such contracts, leases, cooperative agreements, or other transactions as may be necessary in the conduct of the functions and the duties of the Board under this title, with any government entity or any person.

(5) The Board is authorized to obtain, and shall be furnished, with or without reimbursement, a copy of the report of the autopsy performed by State or local officials on any person who dies as a result of having been involved in a transportation accident within the jurisdiction of the Board and, if necessary, the Board may order the autopsy or seek other tests of such persons as may be necessary to the investigation of the accident: *Provided*, That to the extent consistent with the need of the accident investigation, provisions of local law protecting religious beliefs with respect to autopsies shall be observed.

(6) The Board is authorized to (A) use, on a reimbursable basis or otherwise, when appropriate, available services, equipment, personnel, and facilities of the Department of Transportation and of other civilian or military agencies and instrumentalities of the Federal Government; (B) confer with employees and use available services, records, and facilities of State, municipal, or local governments and agencies; (C) employ experts and consultants in accordance with section 3109 of title 5, United States Code; (D) appoint one or more advisory committees composed of qualified private citizens or officials of Federal, State, or local governments as it deems necessary or appropriate, in accordance with the Federal Advisory Committee Act (5 U.S.C. App. I); (E) accept voluntary and uncompensated services notwithstanding any other provision of law; (F) accept gifts or donations of money or property (real, personal, mixed, tangible, or intangible); and (G) enter into contracts with public or private nonprofit entities for the conduct of studies related to any of its functions.

(7) Whenever the Board submits or transmits any budget estimate, budget request, supplemental budget estimate, or other budget information, legislative recommendation, prepared testimony for congressional hearings, or comment on legislation to the President or to the Office of Management and Budget, it shall concurrently transmit a copy thereof to the Congress. No officer or agency of the United States

shall have any authority to require the Board to submit its budget requests or estimates, legislative recommendations, prepared testimony for congressional hearings, or comments on legislation to any officer or agency of the United States for approval, comments, or review, prior to the submission of such recommendations, testimony, or comments to the Congress.

(8) The Board is empowered to designate representatives to serve or assist on such committees as the Chairman determines to be necessary or appropriate to maintain effective liaison with other Federal agencies, and with State and local government agencies, and with independent standard-setting bodies carrying out programs and activities related to transportation safety.

(9) The Board, or an employee of the Board duly designated by the Chairman, may conduct an inquiry to secure data with respect to any matter pertinent to transportation safety, upon publication of notice of such inquiry in the Federal Register; and may require, by special or general orders, Federal, State, and local government agencies and persons engaged in the transportation of people or property in commerce to submit written reports and answers to such requests and questions as are propounded with respect to any matter pertinent to any function of the Board. Such reports and answers shall be submitted to the Board or to such employee within such reasonable period of time and in such form as the Board may determine. Copies thereof shall be made available for inspection by the public.

(10) Establish such rules and regulations as may be necessary to the exercise of its functions.

(c) USE OF REPORTS AS EVIDENCE.—No part of any report of the Board, relating to any accident or the investigation thereof, shall be admitted as evidence or used in any suit or action for damages growing out of any matter mentioned in such report or reports.

(d) JUDICIAL REVIEW.—Any order, affirmative or negative, issued by the Board under this title shall be subject to review by the appropriate court of appeals of the United States or the United States Court of Appeals for the District of Columbia, upon petition filed within 60 days after the entry of such order, by any person disclosing a substantial interest in such order. Such review shall be conducted in accordance with the provisions of chapter 7 of title 5, United States Code.

ANNUAL REPORT

SEC. 305. The Board shall report to the Congress on July 1 of each year. Such report shall include, but need not be limited to—

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

(2) a survey and summary, in such detail as the Board deems advisable, of the recommendations made by the Board to reduce the likelihood of recurrence of such accidents together with the observed response to each such recommendation;

(3) an appraisal in detail of the accident investigation and accident prevention activities of other government agencies charged by Federal or State law with responsibility in this field; and

(4) a biennial appraisal and evaluation and review, and recommendations for legislative and administrative action and change, with respect to transportation safety.

PUBLIC ACCESS TO INFORMATION

SEC. 306. (a) GENERAL.—Copies of any communication, document, investigation, or other report, or information received or sent by the Board, or any member or employee of the Board, shall be made available to the public upon identifiable request, and at reasonable cost, unless such information may not be publicly released pursuant to subsection (b) of this section. Nothing contained in this section shall be deemed to require the release of any information described by subsection (b) of section 552 of title 5, United States Code, or which is otherwise protected by law from disclosure to the public.

(b) EXCEPTION.—The Board shall not disclose information obtained under this title which concerns or relates to a trade secret referred to in section 1905 of title 18, United States Code, except that such information may be disclosed in a manner designed to preserve confidentiality—

(1) upon request, to other Federal Government departments and agencies for official use;

(2) upon request, to any committee of Congress having jurisdiction over the subject matter to which the information relates;

(3) in any judicial proceeding under a court order formulated to preserve the confidentiality of such information without impairing the proceedings; and

(4) to the public in order to protect health and safety, after notice to any interested person to whom the information pertains and an opportunity for such person to comment in writing, or orally in closed session, on such proposed disclosure (if the delay resulting from such notice and opportunity for comment would not be detrimental to health and safety).

RESPONSE TO BOARD RECOMMENDATIONS

SEC. 307. Whenever the Board submits a recommendation regarding transportation safety to the Secretary, he shall respond to each such recommendation formally and in writing not later than 90 days after receipt thereof. The response to the Board by the Secretary shall indicate his intention to—

(1) initiate and conduct procedures for adopting such recommendation in full, pursuant to a proposed timetable, a copy of which shall be included;

(2) initiate and conduct procedures for adopting such recommendation in part, pursuant to a proposed timetable, a copy of which shall be included. Such response shall set forth in detail the reasons for the refusal to proceed as to the remainder of such recommendation; or

(3) refuse to initiate or conduct procedures for adopting such recommendation. Such response shall set forth in detail the reasons for such refusal.

The Board shall cause notice of the issuance of each such recommendation and of each receipt of a response thereto to be published in the Federal Register, and shall make copies thereof available to the public at reasonable cost.

CONFORMING AMENDMENTS

SEC. 308. The Department of Transportation Act is amended—

(1) by deleting section 5 (49 U.S.C. 1654);

(2) by amending section 4(c) thereof (49 U.S.C. 1653(c)) by deleting “or the National Transportation Safety Board” in the first sentence thereof; and by deleting in the second sentence thereof “, the Administrators, or the National Transportation Safety Board.” and by inserting in lieu thereof “or the Administrators.”; and

(3) by amending section 4(d) thereof (49 U.S.C. 1653(d)) by deleting “, the Administrators, and the National Transportation Safety Board” and by inserting in lieu thereof “and the Administrators”.

AUTHORIZATION OF APPROPRIATIONS

SEC. 309. There are authorized to be appropriated for the purposes of this Act not to exceed \$12,000,000 for the fiscal year ending June 30, 1975; and \$12,000,000 for the fiscal year ending June 30, 1976, such sums to remain available until expended.

Speaker of the House of Representatives.

*Vice President of the United States and
President of the Senate.*

JANUARY 4, 1975

Office of the White House Press Secretary

THE WHITE HOUSE

STATEMENT BY THE PRESIDENT

I am signing into law H.R. 15223, the Transportation Safety Act of 1974. This bill will make revisions to laws concerning the transportation of hazardous materials, authorize funds for rail safety enforcement and research, and make the National Transportation Safety Board (NTSB) a completely independent agency.

This bill will expand the powers of the Department of Transportation to regulate the safe transportation of hazardous materials. While this expansion of powers goes against my general goal of reducing Federal regulation where possible, I recognize the problems that have existed in the past with the handling of hazardous materials. That concern has led me to approve the bill because of the significant dangers associated with handling these materials and the possible effects on people living near transportation facilities.

I remain committed, however, to the principle of maintaining the minimum possible Federal involvement in matters that are best handled by State, local or private authorities, and the elimination of unnecessary regulation. I am directing the Secretary of Transportation to implement this bill in such a way as to insure the public safety, while at the same time not putting any unnecessary burden or paperwork on our Nation's industry and trade. I think regulations on hazardous materials can be enforced in a way to meet both these objectives.

Travel in the United States will be safer because of Federal actions which will be taken under this new law. However, the Congress and the Executive also have the responsibility to ensure that expenditures of the taxpayer's dollars are kept to an absolute minimum and that only the most necessary new Federal programs are pursued. This requires the President and the Congress to carefully review the total Federal budget and not each item separately. H.R. 15223 requires NTSB to submit its budget and legislative recommendations directly to the Congress. This severely limits my ability to view these recommendations in the context of the overall budgets and their effect on the economy, in public borrowing, and other considerations.

Although I have signed H.R. 15223 into law because it will improve transportation safety, I will ask Congress to correct this unacceptable budget and legislative submission provision.

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December 24, 1974

Dear Mr. Director:

The following bills were received at the White House on December 24th:

S.J. Res. 40 ✓	B. 3481 ✓	H.R. 8958 ✓	H.R. 14600 ✓
S.J. Res. 133 ✓	B. 3548 ✓	H.R. 8981 ✓	H.R. 14689 ✓
S.J. Res. 262 ✓	B. 3934 ✓	H.R. 9182 ✓	H.R. 14718 ✓
✓S. 251 ✓	✓B. 3943 ✓	H.R. 9199 ✓	✓H.R. 15173 ✓
S. 356 ✓	S. 3976 ✓	H.R. 9588 ✓	✓H.R. 15223 ✓
S. 521 ✓	S. 4073 ✓	H.R. 9654 ✓	✓H.R. 15229 ✓
S. 544 ✓	✓S. 4206 ✓	H.R. 10212 ✓	✓H.R. 15322 ✓
S. 663 ✓	H.J. Res. 1178 ✓	✓H.R. 10701 ✓	H.R. 15977 ✓
✓S. 754 ✓	✓H.J. Res. 1180 ✓	✓H.R. 10710 ✓	✓H.R. 16045 ✓
S. 1017 ✓	✓H.R. 421 ✓	H.R. 10827 ✓	✓H.R. 16215 ✓
S. 1083 ✓	H.R. 1715 ✓	✓H.R. 11144 ✓	H.R. 16596 ✓
✓S. 1296 ✓	H.R. 1820 ✓	✓H.R. 11273 ✓	✓H.R. 16925 ✓
S. 1418 ✓	H.R. 2208 ✓	✓H.R. 11796 ✓	✓H.R. 17010 ✓
S. 2149 ✓	✓H.R. 2933 ✓	✓H.R. 11802 ✓	H.R. 17045 ✓
S. 2446 ✓	H.R. 3203 ✓	✓H.R. 11847 ✓	✓H.R. 17085 ✓
S. 2807 ✓	H.R. 3339 ✓	✓H.R. 11897 ✓	✓H.R. 17468 ✓
S. 2854 ✓	H.R. 5264 ✓	✓H.R. 12044 ✓	✓H.R. 17558 ✓
S. 2888 ✓	H.R. 5463 ✓	✓H.R. 12113 ✓	H.R. 17597 ✓
S. 2994 ✓	✓H.R. 5773 ✓	✓H.R. 12427 ✓	✓H.R. 17628 ✓
✓S. 3022 ✓	H.R. 7599 ✓	✓H.R. 12884 ✓	✓H.R. 17655 ✓
S. 3289 ✓	H.R. 7684 ✓	✓H.R. 13022 ✓	
S. 3358 ✓	H.R. 7767 ✓	✓H.R. 13296 ✓	
S. 3359 ✓	H.R. 8214 ✓	✓H.R. 13869 ✓	
S. 3394 ✓	H.R. 8322 ✓	H.R. 14449 ✓	
✓S. 3433 ✓	H.R. 8591 ✓	✓H.R. 14461 ✓	

Please let the President have reports and recommendations as to the approval of these bills as soon as possible.

Sincerely,

Robert D. Linder
Chief Executive Clerk

The Honorable Roy L. Ash
Director
Office of Management and Budget
Washington, D. C.