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APPROVED

JAN 3-1975

STATEMENT ISSUED 1/4/75

*Posted 1/4/75
TO ARCHIVES
1/6/75*

ACTION

**THE WHITE HOUSE
WASHINGTON**

Last Day: January 4

January 2, 1975

MEMORANDUM FOR THE PRESIDENT
 FROM: KEN COLE
 SUBJECT: Enrolled Bill H.R. 15223
Transportation Safety Act of 1974

Attached for your consideration is H.R. 15223, sponsored by Representative Staggers, which:

- Authorizes appropriations of \$7 million for fiscal year 1975 and expands the authority of the Secretary of Transportation to regulate the transportation of hazardous materials;
- authorizes appropriations of \$35 million for fiscal year 1975 to carry out the Federal Rail Safety Act of 1970;
- establishes the National Transportation Safety Board as an independent agency and expands its powers; and
- provides for concurrent submission of the National Transportation Safety Board's budget and legislative recommendations to the Congress.

OMB recommends approval and provides additional background information in its enrolled bill report (Tab A).

Max Friedersdorf (Loen) and Phil Areeda both recommend approval. Paul Theis has approved the text of the proposed signing statement.

RECOMMENDATION

That you sign H.R. 15223 (Tab C)

Signing Statement (Tab B)

Approve MR 9 Disapprove _____

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

DEC 30 1974

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bill H.R. 15223 - Transportation Safety
Act of 1974
Sponsor - Rep. Staggers (D) West Virginia

Last Day for Action

January 4, 1975 - Saturday

Purpose

Authorizes appropriations of \$7 million for fiscal year 1975 and expands the authority of the Secretary of Transportation to regulate the transportation of hazardous materials; authorizes appropriations of \$35 million for fiscal year 1975 to carry out the Federal Rail Safety Act of 1970; establishes the National Transportation Safety Board (NTSB) as an independent agency and expands its powers; and provides for concurrent submission of NTSB's budget and legislative recommendations to the Congress.

Agency Recommendations

Office of Management and Budget	Approval
Department of Transportation	Approval
National Transportation Safety Board	Approval
Atomic Energy Commission	Approval
Department of Justice	Defers
Department of Defense	Defers to OMB
Department of Labor	

Discussion

In its original version, H.R. 15223 was a much broader bill, containing many objectionable provisions relating to the transportation of hazardous materials, to rail safety, and to establishing the NTSB as an independent agency with greatly expanded powers. After much debate within the Congress and discussions with the executive agencies, Congress eliminated some of those objectionable features. One key provision relating to the NTSB was not eliminated -- the submission of its budget and legislative recommendations to the Congress at the same time they are sent to the President or to OMB.

The main features of the bill are described below.

Title I - Hazardous Materials

H.R. 15223 would expand DOT's authority to regulate the transportation of hazardous materials in interstate or foreign commerce. The bill defines hazardous materials as "a particular quantity and form of material in commerce [that] may pose an unreasonable risk to health and safety or property," and would include, but not be limited to, "explosives, radioactive materials, etiologic agents, flammable liquids or solids, combustible liquids or solids, poisons, oxidizing or corrosive materials, and compressed gases." It would exempt firearms or ammunition from being transported for personal use.

H.R. 15223 would extend DOT's authority to the manufacture, maintenance, repair and testing of containers to be used in the transportation of hazardous materials -- a desirable improvement. Currently, DOT's authority covers only shippers of hazardous materials, not container manufacturers.

The bill would authorize DOT to exempt certain shippers or manufacturers from the hazardous material regulations if their methods result in an equal or higher degree of safety than the regulations require. Exemptions, which would be renewable every two years, could be issued only after public notice and an opportunity for public comment.

A provision requested by DOT would permit the use of civil penalties for violations of hazardous material regulations. Current law is limited to criminal penalties, which are much harder to prosecute. Thus, shippers know that only the most flagrant violations will usually be prosecuted. The civil penalties will enable DOT to bring actions more frequently and thus provide greater incentives to shippers to conform with regulations.

Another desirable section removes the provision in current law which requires mandatory delegation of the Secretary's hazardous material authority to the modal administrations. Since many hazardous material problems are intermodal in nature, especially as to container manufacturers, this should result in substantial improvement in the enforcement process. It will permit a coordinated approach to enforcement, rather than the current fragmented one.

The bill would also delete the current statutory definition of combustible liquids and would authorize DOT to define, by regulations, the flashpoint for combustible and flammable liquids. This will allow standards which are more consistent with existing Federal standards and with international guidelines and will allow greater flexibility to update the standards in response to technological development.

One objectionable provision of title I places restrictions on the transportation of radioactive materials on passenger airplanes. The provision would prohibit radioactive materials having a specific activity of 0.002 microcuries per gram or greater from being carried on passenger planes unless the material is for use in research, medical treatment, or medical diagnosis. This could prevent the transportation of relatively harmless materials such as certain electronic tubes.

Another objectionable provision would permit DOT to require all shippers and manufacturers to register every two years with DOT and would prohibit those who are not registered from engaging in hazardous materials activities. This would have limited impact, however, since it would not allow DOT to suspend, revoke or refuse to accept a valid registration, although other provisions of the law would allow noncompliance with the regulations to be penalized. While this authority is discretionary, rather than mandatory, there is a great deal of pressure from Congress and other interested parties to implement it. Its implementation could generate substantial paperwork of little real benefit.

The title would provide that State or local laws which conflict with the Federal laws would be preempted. Preemption would not take place, however, if a State or local law (1) affords an equal or greater degree of protection to the public than is afforded by the Federal law and (2) does not unreasonably burden commerce. This will create a substantial administrative burden.

The bill would also authorize DOT to suspend or restrict the transportation of a hazardous material if it presents an imminent hazard to the public safety. Justice objects to this provision because it would allow DOT to represent itself in the courts, rather than having the Attorney General do so, as is customary. This provision is an improvement over earlier versions, however, which would have allowed DOT to represent itself in many more types of cases.

The bill would authorize appropriations of \$7 million for this title for fiscal year 1975. However, DOT has already received the appropriation for its hazardous materials activities for this year, and thus this authorization is not needed.

Title II - Rail Safety

Title II of H.R. 15223 contains a provision which limits the amount spent for research to no more than the amount spent on rail safety enforcement. In letters to the House Commerce and the conference committees, DOT opposed this provision because of the precedent it sets. However, in its views letter on the enrolled bill, DOT points out that it will not interfere with the rail safety program. The bill would set a bad precedent by setting goals for the first time for staff levels of safety personnel. In addition, those staff numbers are excessively high.

The title would require a comprehensive report to the Congress by March 17, 1976, on rail safety. It would authorize DOT to impose civil penalties, in addition to the current criminal penalties, for violations of the Railroad Accident Reports Act.

The bill would authorize appropriations of \$35 million for the implementation of this title for fiscal year 1975. However, DOT has already received its appropriation for rail safety activities for this year, and thus this authorization is not needed.

Some undesirable provisions relating to citizen suits and petitions contained in the Senate passed version of the bill were deleted at DOT's request.

Title III - National Transportation Safety Board

Title III would establish the NTSB as a completely independent agency. Currently, it is nominally within DOT for organizational purposes, although DOT does not perform any personnel or budget services for NTSB. Many people, however, view the NTSB as part of DOT, although no one appears to doubt its independence in the areas of accident investigation and transportation safety recommendations.

This bill would provide for a five person board to be appointed by the President, with the advice and consent of the Senate, with no more than three members to be of the same political party. The present Board members would serve until the expiration of their terms. It would require the NTSB to submit an annual report to Congress and to review and report on the safety actions of other Federal agencies. It would authorize appropriations of \$12 million each for fiscal years 1975 and 1976. However, NTSB has already received its appropriation for this year, and thus this authorization is not needed.

As originally passed by the Senate, the bill also provided for a large expansion in NTSB's powers. In letters to the Senate Commerce and conference committees, both OMB and DOT strongly opposed this expansion of powers and stated a preference to leave the NTSB within DOT. While the conference committee did not delete Title III from the bill, it did eliminate some of the objectionable provisions, especially those relating to authorizing a safety advocacy role for the NTSB.

The title originally stated that a member of the Board who is designated as chairman or vice chairman by the President, with the advice and consent of the Senate, would serve as chairman or vice chairman throughout his term as a Board member. This could restrict a President's ability to designate as chairman someone who would work well with his Administration; e.g., an outgoing President might designate a chairman who would serve throughout the entire term of a new President. This runs counter to the recommendation of the first Hoover commission that the chairman of a commission should serve at the President's pleasure. The conference committee did amend this section to provide for two-year terms for the chairman and vice chairman of the NTSB. While less than we desired, this compromise does provide greater flexibility than the original provision.



Navy, in its report to the Conferees on the enrolled bill, stated that it objects to the NTSB authority to investigate accidents between Navy vessels and private vessels. The Navy pointed out that they are already authorized to investigate such accidents and the authority in NTSB would be duplicative. Furthermore, Navy lists other reasons they object to NTSB authority to investigate accidents involving Navy ships, including security considerations.

However, Navy has advised us that it hopes to work out regulations with the NTSB to eliminate such duplication and Navy defers to OMB on whether the enrolled bill should be approved.

Finally, one highly objectionable provision which remains in the enrolled bill provides for submission of NTSB's budget and legislative recommendations to the Congress at the same time that they are sent to the President or to OMB. OMB advised the conference committee that this concurrent submission proposal would "not be in accord with the President's program," because if such "bypass" provisions were widely adopted, they would severely limit the President's power to present unified and coordinated budget and legislative programs. In response to this, the conference committee deleted a provision prohibiting OMB or anyone else from "requesting" prior submission of NTSB's budget to the President or OMB, but left in the prohibition against "requiring" such prior submission.

Both the House and Senate have been putting "bypass" provisions in pending bills dealing with regulatory agencies and Government corporations. Such provisions were included in two recent bills which you approved (P.L. 93-463 and P.L. 93-495), which contained features which were felt of sufficient importance to warrant approval despite the "bypass" provisions. They are also included in S. 3418 -- the privacy bill -- and H.R. 10710 -- the trade reform bill -- both of which are enrolled and awaiting your action.

We have considered recommending that you disapprove this bill because of the bypass provisions, but have decided not to do so for the following reasons. In the overall context of a bill which generally strengthens the Government's hazardous materials and rail safety activities, this provision does not seem weighty enough to warrant disapproval. Also, assuming your approval of S. 3418 and H.R. 10710, there will be four recent precedents for the NTSB bypass provisions -- most of them affecting so-called independent, regulatory commissions.

We believe that the executive branch should continue to oppose bypass provisions and to seek repeal of those enacted this year. Proposals were submitted to the Congress to repeal the bypass provisions in P.L. 93-463 and P.L. 93-495, but neither was passed in the short time before the session ended.


for Director

Enclosures

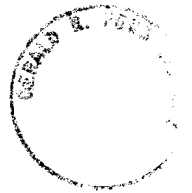
STATEMENT BY THE PRESIDENT

I am signing into law today 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.

OK Duval & Scott (oms)

OK LD OL/EAR

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DEPARTMENT OF THE NAVY
OFFICE OF THE SECRETARY
WASHINGTON, D. C. 20350

December 30, 1974

Dear Mr. Ash:

Your transmittal sheet dated December 24, 1974 enclosing a facsimile of an enrolled bill of Congress, H.R. 15223, "To regulate commerce by improving the protections afforded the public against risk connected with the transportation of hazardous materials, and for other purposes" has been received. The Department of the Navy has been assigned the responsibility for the preparation of a report thereon expressing the views of the Department of Defense.

The House of Representatives passed H.R. 15223 on June 24, 1974. Thereafter, the Senate passed H.R. 15223 on October 8, 1974 after amending it to conform to S. 4057.

Title I of the act is essentially the same as the House-passed version of H.R. 15223, and provides coordinated and consolidated regulatory and enforcement power over the transportation of hazardous materials.

Title II of the act is concerned with increased safety on the railroads of the United States. Title III of the act creates an independent National Transportation Safety Board (hereafter referred to as Board) and increases the independent Board's jurisdiction to include, inter alia, investigation and determination of 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 determines that such investigation and finding is in the public interest.

An investigation by the Board would duplicate investigations already being made because, in almost every such accident, the Navy conducts an investigation or Court of Inquiry of its own. Further, the Coast Guard conducts its own investigation, so that there could be as many as three separate investigations made at Government expense of the same accident. In addition, the Navy already has organizations looking into Navy safety conditions, and this function is coordinated and implemented through the Navy Safety Center (NSC). The Committee report accompanying the bill fails to demonstrate that current Coast Guard and Navy marine investigatory procedures are inadequate or that a serious marine safety problem exists warranting the expense of yet another official hearing on the same accident.

Further, the act contains inadequate procedural safeguards for controlling the authority of the Board to hold marine investigations. Specifically, these powers include:

a. Record Monitoring: Section 304(a)(8) gives the National Transportation Safety Board authority to monitor safety records and programs of other Government agencies. This could result in an unwarranted interference in Navy operations requiring additional burdensome reporting by the command concerned.

b. Unrestricted Hearing Authority: Section 304(b)(1) permits the Board, or a single member or employee appointed by the Board, to convene hearings to carry out the purpose of the bill, including authority to require by subpoena the attendance, testimony, and production of evidence and to manage the hearings in such a manner as the Board or such employee deems advisable. The Board may require hearings to be held anywhere in the United States. This uncontrolled power could, in the case of a serious marine casualty involving a Navy ship, virtually put that ship out of service at whatever time and for whatever period the Board desired. Even the Public Vessels Act provides that no officer or crewmember of a public vessel may be subpoenaed without the consent of the Secretary or the commanding officer of the ship. 46 U.S.C. § 784. This broad and unlimited subpoena power of the Board, including the authority to demand access to classified Navy documents, possibly might also adversely affect national security and inhibit the mission and functions of the U.S. Navy.

c. Security Considerations: Section 304(b)(2) authorizes inspection of records and files without any mention of security consideration. In view of the security classification and sensitive nature of many operations and equipment, the interests of national security are best served by limiting access to such records and equipments and, in some cases, to an entire ship.

d. Improper Timing: Section 304(c) of the bill provides that the Board's investigation reports shall not "be admitted as evidence or used in any suit or action for damages growing out of any matter mentioned in such report or reports." Section 304(a)(2) of the bill states, however, that the Board must cause written reports to be made available to the public at reasonable cost and to publish in the Federal Register notices when such reports are available. Therefore, a Board's investigation of an accident later to be litigated could be an adversary proceeding. If the Board's hearing in such a case is not governed by the legal safeguards of a court proceeding, and there is no indication in the bill that it will be, it is difficult to believe that a spirit of cooperation will prevail enabling the Board to discover the real facts and, as a result, to recommend "meaningful responses to reduce the likelihood of recurrence of transportation accidents similar to those investigated by the Board." Section 304(a)(3). The danger of counterproductive Board investigations, hearings, and reports could be substantially reduced if the Board postponed its hearings until the facts of the accident have been adjudicated by the courts of law. Or, if no litigation appears likely, the Board's hearing procedures should, at a minimum, contain all the procedural safeguards for determining facts that are used in a court of law.

e. Overly Broad Delegations of Authority: Delegations of authority by the Board are indefensibly broad and vague. In many cases powers may be exercised by the Board, or a member of the Board, or even by a single employee of the Board, with no standards indicating how such authority will be used in sensitive situations where unqualified persons clearly should not be given broad discretionary authority.

f. Excessive Interference in Naval Procedures: The broad powers of the Board set forth in Section 304(b)(1) could be considered as constituting authority for the Board to require production of any Navy investigation into an accident under investigation by the Board. This might cause Navy investigative bodies and subsequent reviewers to be affected in their conduct regarding the matter under investigation. For example, recommendations for remedial action or findings and opinions regarding fault or performance of duty might be affected if it were known or anticipated that such recommendations and opinions would be reviewed by the Board and possibly become a part of its record.

g. Potential Violations of Individual Rights: There is scant evidence indicating that the Board's investigations will provide the safeguards to naval personnel currently used in Navy Judge Advocate General's Manual investigations (JAGMAN 0304 and 0305) and Coast Guard investigations into marine casualties (JAGMAN 1208).

The Department of the Navy, on behalf of the Department of Defense, defers to the views of the Office of Management and Budget as to whether the reservations enumerated above are more than offset by the overall merits of the bill.

Sincerely yours,



D. S. Potter
Acting Secretary of the Navy

Honorable Roy L. Ash
Director, Office of Management and Budget
Washington, D. C. 20350

THE WHITE HOUSE

ACTION MEMORANDUM

WASHINGTON

LOG NO.: 931

Date: December 30, 1974

Time: 10:00 p.m.

FOR ACTION: Mike Duval
Phil Areeda *ah*
Max Friedersdorf *ah*

cc (for information): Warren Hendriks
Jerry Jones
Jack Marsh

FROM THE STAFF SECRETARY

DUE: Date: Tuesday, December 31

Time: 1:00 p.m.

SUBJECT:

Enrolled Bill H.R. 15223 - Transportation Safety Act of 1974

ACTION REQUESTED:

- | | |
|---|---|
| <input type="checkbox"/> For Necessary Action | <input type="checkbox"/> For Your Recommendations |
| <input type="checkbox"/> Prepare Agenda and Brief | <input type="checkbox"/> Draft Reply |
| <input type="checkbox"/> For Your Comments | <input type="checkbox"/> Draft Remarks |

REMARKS:

Please return to Judy Johnston, Ground Floor West Wing

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

K. R. COLE, JR.
For the President

THE WHITE HOUSE

ACTION MEMORANDUM

WASHINGTON

LOG NO.: 931

Date: December 30, 1974

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ACTION REQUESTED:

For Necessary Action

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Draft Reply

For Your Comments

Draft Remarks

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OK w/ Signing Statement

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Warren K. Hendriks
For the President

15223

THE WHITE HOUSE
WASHINGTON

DATE: 1/3/75

TO: ~~POK/VL~~

FROM: Max L. Friedersdorf

Please handle _____

Please see me _____

For your information _____

Other

need Comments ASAP

OK/VL

Vern Loen:

May I please have your approval of the attached signing statement asap. You have already signed off on the bill but statement was not in package.

Judy Johnston

OK Duval + Scott (copy)

OK (D) 01/28/74

STATEMENT BY THE PRESIDENT

I am signing into law today 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.

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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. X

THE WHITE HOUSE

WASHINGTON

December 31, 1974

MEMORANDUM FOR:

WARREN HENDRIKS

FROM:

Van Laen for

MAX L. FRIEDERSDORF

SUBJECT:

Action Memorandum - Log No. 931

The Office of Legislative Affairs concurs with the Agencies that the enrolled bill should be signed.

Attachments

THE WHITE HOUSE

ACTION MEMORANDUM

WASHINGTON

LOG NO.: 931

Date: December 30, 1974

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Phil Areeda
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___ For Your Recommendations

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___ Draft Reply

___ For Your Comments

___ Draft Remarks

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*No Objection
P Areeda*

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Warren F. Hendriks
For the President



OFFICE OF THE SECRETARY OF TRANSPORTATION
WASHINGTON, D.C. 20590

DEC 20 1974

Honorable Roy L. Ash
Director
Office of Management and Budget
Executive Office Building
Washington, D. C. 20503

Dear Mr. Ash:

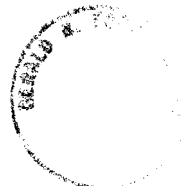
This letter is in response to your request for the Department's comments regarding H.R. 15223, an enrolled bill, entitled:

"The Transportation Safety Act of 1974".

Title I of the bill would greatly strengthen the Department's hazardous materials program by: (1) centralizing the existing authority in the Secretary; (2) providing the Secretary with direct authority over the manufacturers of hazardous materials containers; and (3) providing civil penalty authority, in addition to the criminal sanctions. Essentially, these were the three objectives that the Department wished to achieve when it submitted its own legislation. Title II of the bill provides the Department with necessary authorizations for its rail safety program. Title III of the bill provides for an independent National Transportation Safety Board, and also provides in section 304(b)(7) for the concurrent submission of the NTSB budget and legislative program to the Congress and the President.

Your office indicated to us, and we stated in our letter on this bill to the House and Senate Conferees, that passage of the bill with the requirement for concurrent submission of the NTSB budget and legislative program would not be in accord with the President's program.

Although the Department also objects to the inclusion of section 304(b)(7), we believe that its inclusion is vastly outweighed by the



bill's other beneficial provisions, and we strongly recommend that the President sign the bill for the following reasons. First, the Department needs this bill if it is to have an effective hazardous materials program. Title I basically contains the major elements of the Department's original legislative request. We have testified before the Congress that the present hazardous materials program needs to be greatly improved. There have been several major hazardous materials incidents that have focused attention upon the need to strengthen the hazardous materials program. The problem will get worse with the rapidly increasing volume of hazardous materials transportation. Without this legislation we cannot substantially improve the hazardous materials program. Also, the form of this bill is good. Many of the provisions that we objected to in Title I, II, and III have been deleted from this bill. In addition, approval of this measure would forestall demands for more severe restrictions on the transportation of hazardous materials, many of which are vital to future industrial growth and development.

Secondly, this bill may represent the last chance to amend the present hazardous materials laws. Under the recent House Committee changes, the surface transportation jurisdiction was split between the Commerce and Public Works Committees. The hazardous materials problem is uniquely intermodal, and introduction of the bill in the next Congress would have to face review by at least the Commerce and Public Works Committees, and possibly by the Merchant Marine and Judiciary Committees.

Thirdly, if the bill is not signed into law, the Department would not have any authorizations for its important rail safety program. Finally, with respect to section 304(b)(7), the provision was amended to delete the prohibitions against "requesting" a prior submission from the NTSB. The authority to request, but not require, prior review, coupled with the President's authority to appoint Board members does not leave the Administration totally lacking in a review mechanism.

The following is our detailed analysis of the bill.

Sections 101-105. The Secretary is authorized to regulate the transportation of hazardous materials in interstate commerce or in any commerce "affecting" interstate commerce. The conference report makes clear that non-commercial transportation is not to be

covered. Any rulemaking must include the "opportunity for an informal oral presentation" - which is more of an annoyance than a serious impediment. Except for the last procedural requirement, the Department supports these sections.

Section 106. This section authorizes the Secretary to "register" any hazardous materials carrier, shipper or container manufacturer. The provisions allowing the Secretary to revoke or suspend a registration were specifically deleted, and the report indicates that the Secretary may not revoke or suspend a registration. In view of the other enforcement mechanisms, we do not believe that the removal of the revocation or suspension power is critical to our program.

Section 107. This section requires that all exemptions be granted only after notice and comment. We support these provisions. This section also provides that nothing in this hazardous materials title or in the regulations issued thereunder shall be construed "to regulate or prohibit the transportation by an individual, for personal use", of any firearms or ammunition or "to prohibit any transportation of firearms or ammunition in commerce." We object to this exclusion, although the conference report views this confusingly drafted restriction in a limited manner as applying only to "firearms and ammunition for personal use". We note, however, that this exclusion will be of little effect since unloaded firearms may not be regulated by this bill and ammunition may still be regulated under 18 U.S.C. 831 et seq. Moreover, the quoted language appears to permit "regulation" of ammunition that falls short of "prohibition".

Section 108. This section prohibits the transportation of radioactive materials on passenger aircraft except for certain research or medical materials. We object to this section, but it will impact upon a limited amount of transportation.

Section 109. This section sets forth the general powers and duties of the Secretary and carries forward the provisions of the Hazardous Materials Control Act of 1970 requiring an annual report. We do not have any objection.

Section 110. This section provides for civil and criminal penalties for violations of the act or any regulations issued under the act. The civil penalty section would apply to any person who "knowingly" violates the Act or regulation. "Knowingly" is not defined in the bill, but the conference report indicates that a civil penalty may be imposed if the defendant "knowingly committed the act which constitutes the violation (it is not necessary to show that he knew the act constituted a violation)". The conference report would seem to indicate that the Congress intended to adopt the Supreme Court's interpretation of "knowingly" in 18 U.S.C. 831 et seq. in which the Court held that a person could be convicted of "knowingly" violating a hazardous material regulation without proof that he knew the content of a specified regulation, so long as the Government proved he knew that the material was a "hazardous material" which was covered by a regulatory scheme. U.S. v. International Minerals & Chemical Corp., 91 S.Ct. 1697, 402 U.S. 558(1971). Although the Department would have preferred that the civil penalty provision did not include the reference to "knowingly", we do not think that such a requirement will have a substantial impact upon the effectiveness of the civil penalty provision.

Section 111. This section provides for injunctive relief and authorizes court action if the Secretary determines that there is an imminent hazard. We do not have any objection to this section.

Section 112. This section retains the Senate provision preempting State regulation of hazardous materials unless the Secretary finds that the State regulations are more stringent than the Federal Standard and do not "unreasonably" burden interstate commerce. ("Unreasonable" was added in the conference bill). This section also excludes interstate oil and gas pipelines from the operation of this act. The exclusion of gas pipelines is not important since they are already covered by the Gas Pipeline Safety Act, which is similar in its operation to this act. Interstate oil pipelines are covered by 18 U.S.C. 831 et seq., but that act does not provide civil penalties.

Section 113. This section provides for certain conforming amendments to the Federal Aviation Act and the Dangerous Cargo Act. In addition, this section removes the provisions in the Department of Transportation Act requiring mandatory delegation of the Secretary's hazardous materials authority. The language in the House bill requiring delegation of the "enforcement" authority was not retained in this bill. We fully support these changes.

Sections 114, 115. Section 114 provides that the Act is effective on the date of enactment. Section 115 provides an authorization of \$7 million for fiscal year 1975.

We also note that the conference bill does not contain the House provision relating to "spacer-cars", the Senate provisions for citizens suits or citizens petitions, nor the Senate provision which attempted to define the Department's role in relation to OSHA, to which we objected.

RAIL SAFETY

This title requires the Secretary to prepare a comprehensive rail safety report. It also authorizes the Secretary to impose civil penalties for violations of the Accident Reports Act. \$35 million is authorized to carry out the purposes of the Federal Railroad Safety Act of 1970 for fiscal 1975. This amount is then allocated for particular functions relating to the Federal Railroad Safety Act. This title did adopt the House language which provided that the amount spent for research may not exceed the amount spent for enforcement. Although we objected to this limitation for the precedent it might create, it will not interfere with the rail safety program, and we support this title. We also note that the provisions relating to citizen suits and petitions included in the Senate bill were not included in the conference bill.

NATIONAL TRANSPORTATION SAFETY BOARD

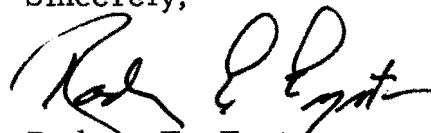
This title establishes the NTSB as an independent agency on and after April 1, 1975. The present Board members are grandfathered until the expiration of their terms, except that a new Chairman must be appointed by January 1, 1976. As indicated before, section 304(b)(7) would provide for the concurrent submission of the NTSB budget and legislative programs to the President and the Congress. In addition to this provision, the Department had previously objected to several proposed expansions of the NTSB authority, but the conference bill was modified to meet substantially the Department's objections.

Although the NTSB was given the authority to investigate "major marine casualties", the bill specifically provides that the bill is not intended to diminish the Coast Guard authority in any way and that the Coast Guard and the NTSB will jointly issue regulations to define their respective roles. The section dealing with "safety advocacy" has been deleted, and a correction was made to ensure that the rulemaking authority of the Board is of a procedural nature only. Title III does not substantially expand the functions of the NTSB, nor does it take any functions from the Department. Although the Department did not favor title III, we do not have any strong objection to this title as it is presently proposed.

SUMMARY

Once again the Department wishes to stress that it strongly recommends that the President sign this bill. The Department needs the hazardous materials and rail safety titles, and we think the benefits that will accrue from the enactment of these two titles outweigh the possible problems that could arise because of Section 304(b)(7).

Sincerely,


Rodney E. Eyster



NATIONAL TRANSPORTATION SAFETY BOARD

DEPARTMENT OF TRANSPORTATION

WASHINGTON, D.C. 20591

**OFFICE OF
THE CHAIRMAN**

December 23, 1974

Mr. W. H. Rommel
Assistant Director for Legislative Reference
Office of Management and Budget
Washington, D.C. 20503

Dear Mr. Rommel:

This is in response to your request for views of the National Transportation Safety Board on the enrolled 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."

The Safety Board recommends that the President approve this bill.

With respect to Titles I and II of H.R. 15223, concerning transportation of hazardous materials and rail safety, the Safety Board views both of these portions of the bill as beneficial to the effort to achieve greater safety in the transportation modes affected. However, since Department of Transportation agencies rather than the Safety Board are directly involved in the implementation and enforcement of these Titles, we defer to the Department for specific comment on Titles I and II.

The Safety Board believes Title III of H.R. 15223 will provide a significant improvement in the functions and operations of the Safety Board. At the same time, as Senator Hartke noted in submitting the conference report to the Senate: "The structure of the National Transportation Safety Board was left largely unchanged by the conferees who agreed that it has proved sufficient in the past and should be sufficient for the independent agency."

The greatest change with respect to Safety Board functions affected by H. R. 15223 concern the responsibilities in the area of surface transportation safety. The basic functions involving the Board's role in aviation safety remain virtually the same as under existing law. We believe that the minor modifications enhance our responsibilities in regard to the investigation and the determination of probable cause.

H. R. 15223 makes the following changes in the responsibilities of the Safety Board in surface transportation:

1. It provides clear and understandable evidence-gathering authority for use in accident investigations and other safety investigations, replacing an irregular pattern of derived authorities. A new authority for the reporting of accidents, which is essential to achieving a productive investigation, is also provided.
2. A broader pattern of functions is provided from which safety improvement recommendations can be derived with more flexibility. These include special safety investigations, assessments of the effectiveness of investigations made by others, evaluation of adequacy of hazardous materials safeguards, and publication of recommended procedures for accident investigations.
3. H. R. 15223 provides in railroad safety and pipeline safety the same complete coverage, by some form of investigation, of all fatal accidents within the Federal purview that is now found in aviation. When this authority is coordinated with actions of the Federal Railroad Administration, the Office of Pipeline Safety and the States, and the requirement is made that the Board issue annual statistical reports, the result will be a centralized review of fatality causes determined by a Federal authority (instead of private reports) in these fields.
4. The total volume of safety improvement work of the Board in all four surface modes will be increased, while permitting an improved balance of effort among the modes as compared with the present statute.

5. Close cooperation with the States in the investigation of highway accidents is authorized. This opens to investigative authority certain classes of highway accidents which were previously difficult to reach.
6. The legislation effectively requires that statistical accident data generated by the Board be coordinated with data generated by other transportation agencies. This will improve and regularize comparisons of overall results between and within modes.
7. H. R. 15223 maintains almost the same pattern of marine accident investigative action in relation to the Coast Guard but requires publication of reports of accidents involving certain public vessels which were investigated heretofore only by the operating agencies for their internal purposes. Some changes will be necessary in existing agreements, and new regulations will be required to define more closely conditions of investigations. The bill does not increase the volume of the present type of marine casualty investigations.
8. The bill specifically provides authority in the performance of investigations, and studies which will facilitate such investigations, and permits expansion of the base of expert manpower when needed.
9. Detailed appraisals in annual reports to Congress of accident investigation and accident prevention activities of other Government agencies will be required. This will be particularly effective in that a different point of view from that of the agencies themselves will be presented.
10. Appraisal, evaluation, review, and recommendations for legislative administrative action and change with respect to transportation safety will be required every 2 years.
11. Broader public notice of NTSB investigative actions will be required.

The overall effect of the changes which would result from enactment of H. R. 15223 is to produce a more flexible and better coordinated pattern of authorities and functions than before. The investigative patterns of the Administrations of the Department of Transportation need not be altered, but may be coordinated by changes in existing agreements. The previous

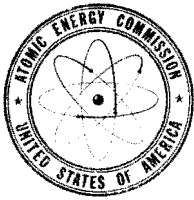
absence of a statistical function in the surface modes, which hindered comparative appraisals, has been corrected.

The Safety Board will not require the full \$12 million authorized for FY 1975; however, it is anticipated there will be a need for supplemental appropriations not exceeding \$1 million in FY 1975. The Safety Board will require the full \$12 million authorized in the bill for FY 1976.

Sincerely

A handwritten signature in black ink, appearing to read "John H. Reed, acting". The signature is written in a cursive style and is positioned above the typed name.

John H. Reed
Chairman



UNITED STATES
ATOMIC ENERGY COMMISSION
WASHINGTON, D.C. 20545

DEC 27 1974

Mr. Wilfred H. Rommel
Assistant Director for
Legislative Reference
Attn: Martha Ramsey
Legislative Reference Division
Office of Management and Budget

Dear Mr. Rommel:

The Atomic Energy Commission is pleased to respond to your request for views and recommendations regarding Enrolled Bill H.R. 15223, "[t]o regulate commerce by improving the protections afforded the public against risks connected with the transportation of hazardous materials, and for other purposes."

We believe the objectives of this bill are meritorious and the Atomic Energy Commission recommends that the President sign this bill.

Title I of the bill relating to the transportation of hazardous materials, and particularly Section 108 thereof, is of immediate interest to us. The other two titles relate to improvement of rail safety (Title II) and establishment of the National Transportation Board, currently within the Department of Transportation, as an independent safety board (Title III).

Subsection 108(a) of the bill provides in pertinent part that, within 120 days after enactment, the Secretary of DOT shall issue such regulations which:

"... shall prohibit any transportation of radioactive materials on any such [passenger-carrying] 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."

Subsection 106(a) is technically incorrect where it refers to "extremely hazardous materials" rather than to "hazardous materials" as is the case

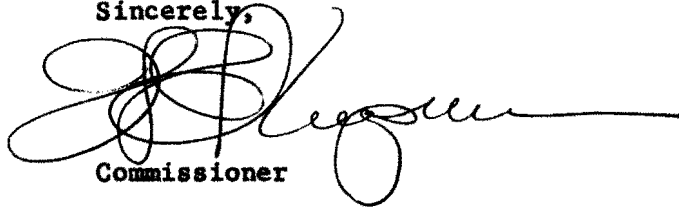
DEC 27 1974

Wilfred H. Rommel

- 2 -

in subsection 106(b). However, we understand that DOT intends, upon enactment of the bill, to issue a corrective regulation designed to rectify this matter. Similarly, a corrective amendment can be made in the next Congress for the syntactical error which appears in subsection 113(b), paragraph (1), where the words "and inserting in lieu thereof" should be deleted and the words "the following" substituted therefor.

Sincerely,

A handwritten signature in black ink, appearing to read "W. H. Rommel", with a long horizontal flourish extending to the right. The signature is written over the word "Commissioner".

Commissioner



Department of Justice
Washington, D.C. 20530

DEC 23 1974

Honorable Roy L. Ash
Director, Office of Management
and Budget
Washington, D.C. 20503

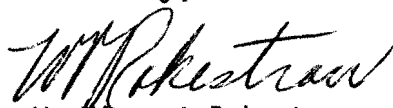
Dear Mr. Ash:

In compliance with your request, I have examined a facsimile of the enrolled bill H.R. 15223, 93d Congress, the "Federal Railroad Safety Act."

The enrolled bill relates most expressly to the responsibilities of the Department of Transportation, and it is to that Department that we defer on the issue of Executive approval.

Our main problem insofar as this legislation is concerned regards those portions of the bill which affect the litigative authority of the Department. We were fortunate that the Conference Report, in sections 110(b) and 111(a), retained the House language. However, sections 111(b) and 304(b)(3) remain inconsistent with your circular no. 99, published June 30, 1970.

Sincerely,



W. Vincent Rakestraw
Assistant Attorney General

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

T.
H. Hendricks
12-30-74
6:30 p.m.

DEC 30 1974

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bill H.R. 15223 - Transportation Safety Act of 1974
Sponsor - Rep. Staggers (D) West Virginia

Last Day for Action

January 4, 1975 - Saturday

Purpose

Authorizes appropriations of \$7 million for fiscal year 1975 and expands the authority of the Secretary of Transportation to regulate the transportation of hazardous materials; authorizes appropriations of \$35 million for fiscal year 1975 to carry out the Federal Rail Safety Act of 1970; establishes the National Transportation Safety Board (NTSB) as an independent agency and expands its powers; and provides for concurrent submission of NTSB's budget and legislative recommendations to the Congress.

Agency Recommendations

Office of Management and Budget	Approval
Department of Transportation	Approval
National Transportation Safety Board	Approval
Atomic Energy Commission	Approval
Department of Justice	Defers
Department of Defense	Defers to OMB
Department of Labor	

Phil Areeda:

May I please have your approval of the attached signing statement. You have already signed off on the bill, but package did not contain statement.

Judy Johnston

No Objection
r. Areeda