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REAUTHORIZATION OF THE NATIONAL TRANSPORTATION SAFETY BOARD

(110–120)

HEARING

BEFORE THE

SUBCOMMITTEE ON AVIATION

OF THE

COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE
HOUSE OF REPRESENTATIVES

ONE HUNDRED TENTH CONGRESS

SECOND SESSION

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April 21, 2008

SUMMARY OF SUBJECT MATTER

TO: Members of the Subcommittee on Aviation

FROM: Aviation Subcommittee Staff

SUBJECT: Reauthorization of the National Transportation Safety Board

PURPOSE OF HEARING

On Wednesday, April 23, 2008, at 2:00 p.m., in room 2167 of the Rayburn House Office Building, the Subcommittee on Aviation will hold a hearing to consider the reauthorization of the National Transportation Safety Board ("NTSB" or "Board"). The Board is presently authorized through September 30, 2008. The Subcommittee on Coast Guard and Maritime Transportation plans to hold a subsequent hearing to examine maritime issues related to the NTSB's reauthorization. This memorandum does not address the maritime issues.

BACKGROUND

The NTSB was created in 1967 as an independent agency within the newly-created Department of Transportation ("DOT"), and subsequently established as a completely independent agency in 1975, when it was removed from DOT and all administrative ties between the two agencies were severed. The agency is charged with investigating civil aviation accidents and significant transportation accidents in the surface modes – railroad, highway, marine, and pipeline. The NTSB determines the probable cause of all civil aviation accidents and significant surface transportation accidents, conducts safety studies, and evaluates the effectiveness of other government agencies' programs for preventing transportation accidents.

In addition, in 1996, the Aviation Disaster Family Assistance Act (Title VII of P.L. 104-264) authorized the Board to coordinate Federal assistance to victims and family members affected by major aviation accidents. When resources allow, the NTSB also provides family assistance for accidents in other transportation modes.

The Board also serves as the "court of appeal" for airmen, mechanics, and mariners whenever the Federal Aviation Administration ("FAA") or the U.S. Coast Guard takes a certificate action. The Board's four administrative law judges issue decisions on appeals related to FAA actions, and these decisions may be further appealed to the full five-member Board. Marine certificate actions are heard first by the Coast Guard's administrative law judges, and may be appealed to the Commandant of the Coast Guard. The ruling of the Commandant may then be appealed to the full five-member Board.

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

Since 1967, the Board has investigated more than 128,000 aviation accidents, and more than 10,000 accidents in other transportation modes. The Board also investigates accidents involving the transportation of hazardous materials, and is the sole U.S. accredited representative at foreign aviation accident investigations under the Convention on International Civil Aviation.

The NTSB has no authority to issue substantive regulations covering the transportation industry. Therefore, its effectiveness is dependent upon timely accident reports and safety recommendations. According to the NTSB, since its inception in 1967, it has issued more than 12,800 safety recommendations in all modes of transportation. As shown in Attachment A, 37 percent of these recommendations have been in the area of aviation.[1]

In general, the NTSB has been successful in achieving adoption of most of its recommendations. More than 82 percent of all recommendations made by the NTSB in all modes of transportation have eventually been adopted by the regulatory and transportation communities. However, the NTSB also states that it often takes an average of five years from the time it issues a recommendation until it is implemented to the Board's satisfaction.

Status of Open Recommendations

Mode	Open Recommendations as of 4/4/08
Aviation	463
Highway	274
Marine	50
Railroad	121
Pipeline	26
Intermodal	21
Total	955

[1] Source: National Transportation Safety Board.

I. NTSB Structure

The NTSB is composed of five board members who are nominated by the President and confirmed by the Senate. No more than three members may be from the same political party, and at least three members must be appointed on the basis of technical qualification, professional standing, and demonstrated technical knowledge. All board members serve a five-year term. The president designates, and the Senate confirms, one of the five members to serve as Chairman for a term of two years. The president also designates one of the members to serve as Vice Chairman.

The current Chairman is Mark V. Rosenker (R). Chairman Rosenker's two-year term as Chairman extends until August 2008, and his term as a Member will expire on December 31, 2010. On October 26, 2007, Chairman Rosenker was nominated to a second two-year term as Chairman, but the Senate has not yet acted on this nomination. The current Vice-Chairman is Robert L. Sumwalt. Vice-Chairman Sumwalt's two-year term as Vice-Chairman extends until August 20, 2008, and his term as a Member will expire on December 31, 2011. The other members include:

Name	Title	Term Expiration
Steven R. Chealander (R)	Member	December 31, 2007[2]
Deborah A. P. Hersman (D)	Member	December 31, 2008
Kathryn O'Leary Higgins (D)	Member	December 31, 2009

II. NTSB Operations

Each year, the NTSB investigates more than 1,800 aviation accidents and incidents, and about a hundred railroad, highway, maritime, and pipeline transportation accidents. To leverage its limited resources, the Board typically designates other government agencies, organizations, corporations, or foreign authorities (e.g., in the case of investigations involving foreign aircraft) as parties to the investigation. According to the NTSB, the participation of these other parties not only greatly multiplies the Board's resources, it also ensures general agreement on the facts developed during an investigation, and allows first-hand access to information so that the parties can take appropriate and timely corrective actions.

The NTSB has wide discretion over which organizations it designates as parties, except that, by law, the Federal Aviation Administration is a party to each aviation investigation. Only those entities that can provide technical expertise required for the investigation are granted party status, and only those persons who can provide the Board with needed expertise are permitted to serve on the investigative team.

When the NTSB is notified of a major accident, it launches a "go-team" that varies in size depending on the severity of the accident and the complexity of the issues involved. Go-teams consist of Board investigators who are experts in appropriate technical specialties, based on the mode of transportation and the nature of the accident. Each Board expert manages an investigative

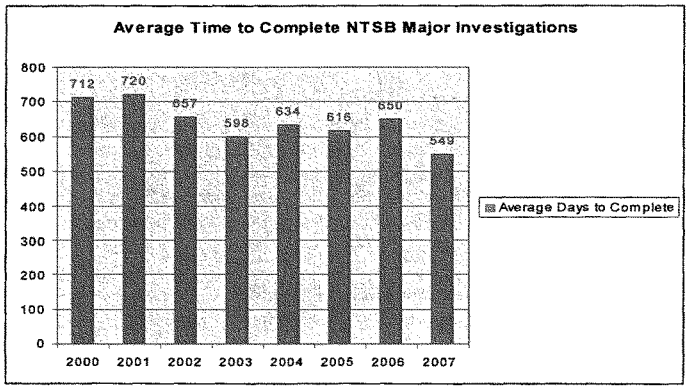
[2] Member Chealander was originally confirmed to an unexpired term of a previous Board Member. Board Members are allowed to remain on the Board after their term expires until someone else is nominated and confirmed. On October 26, 2007, Member Chealander was nominated to another term, but the Senate has not yet acted on this nomination.

group made up of other experts from industry and government organizations that are parties to the investigation. Each Board expert prepares a factual report that is verified for accuracy by the party representatives in the group. The factual reports are placed in the publicly accessible docket and, after the completion of a formal technical review by the entire team, they constitute the factual record of the investigation.

After investigating an accident, the NTSB determines the probable cause and issues a formal report. Parties do not participate in the analytical or report-writing phases of NTSB investigations, although they may submit their proposed findings of probable cause, contributing factors, and proposed safety recommendations directly to the Board.

The NTSB is statutorily required to determine the probable cause of all civil aviation accidents. The Board asks the FAA to send inspectors to document the facts of certain aviation accidents, and the Board uses this information to make a determination of probable cause. In general, the Board relies on the FAA to conduct the on-scene investigation on its behalf for most non-fatal aviation accidents and for some fatal aviation accidents in which the cause is obvious and there is little chance of deriving a safety benefit from the investigation.

The average number of days taken by the NTSB to complete major investigations is shown in the chart below. For the eight-year period from 2000-2007, the average completion time is 642 days per major investigation.



II. NTSB Training Center

The NTSB Training Center provides training in transportation safety and accident investigation techniques to the NTSB's own investigators and the transportation community. The NTSB Academy opened in Ashburn, Virginia, in September 2003. In 2006, the name was changed to the NTSB Training Center. The building houses the forward portion of the TWA flight 800 aircraft fuselage, laboratory spaces, meeting rooms, student and teacher work areas, and various offices including one of the Board's aviation regional offices.

During consideration of the National Transportation Safety Board Reauthorization Act of 2006 ("2006 Act") (P.L. 109-443), which was signed into law on December 21, 2006, concerns about the level of investigative resources being used to support the Academy resulted in the inclusion of several provisions related to the Academy. Specifically, the 2006 Act required the NTSB to: (1) develop a plan to achieve, to the maximum extent feasible, the self-sufficient operation of the Academy; (2) submit a draft of the plan to the Government Accountability Office ("GAO") for review and comment; and (3) submit a draft of the plan to the House Committee on Transportation and Infrastructure and the Senate Commerce on Commerce, Science and Transportation.

As required, the NTSB provided a draft business plan for the Training Center to GAO on March 28, 2007. According to GAO, the draft plan provided an overall strategy to outsource to a vendor: (1) the management and operations of the training center; and (2) development of new courses. Under this plan, the vendor would be responsible for managing the facility and courses, and renting out unused space under a revenue-sharing arrangement with NTSB. The plan projected yearly increases in the percentage of operating expenses (excluding rental costs) covered by revenue, with 100 percent coverage by the end of FY 2010.

On April 18, 2007, the NTSB issued a Request for Proposals ("RFP") for the Management and Operation of the NTSB Training Center. The scope of the work was divided into three primary functional areas: Facility Management, NTSB course and event management, and NTSB-sponsored course development.

On June 5, 2007, GAO provided comments to NTSB on the draft business plan. GAO concluded that the overall strategy presented in the plan -- to hire a vendor to operate the training center -- was reasonable. However, the draft plan provided too little rationale for its marketing and financial assumptions for GAO to assess the viability of this strategy. In particular, GAO noted that the draft business plan lacked sufficient data or analysis to determine whether it was likely to achieve its goal of recovering 100 percent of the Training Center's operating expenses by the end of FY 2010. Furthermore, GAO noted that even if the draft business plan achieved its goal of self-sufficient operations, more than $2 million each year would still have to be covered by annual appropriations because the plan's definition of "self-sufficiency" excluded lease payments from expenses.

In July 2007, the NTSB evaluated the only two proposals it received from vendors in response to the April RFP and determined that both proposals were unacceptable. Subsequent inquiries of organizations that chose not to respond to the RFP revealed that many of those groups chose not to make a proposal because they considered the revenue sharing concept to carry excessive business risk. As a result, the NTSB reevaluated the management approach to the Training Center. It considered an array of other actions, including those recommended by Congress and the GAO, and began to look for other Federal agency partners to share space at the Training Center.

In a revised Business Plan issued in March 2008, the NTSB reported that it has subleased the majority of the ground floor of the Training Center to the Federal Air Marshals Service ("FAMS"), a component of the Department of Homeland Security ("DHS"), for $478,748 per year. In addition, the NTSB is in the process of finalizing an agreement with the DHS Office of Intelligence and Analysis, Training, and Professional Development to sublease approximately one-third of the

second floor classroom space for $275,000 per year. According to the NTSB, these revenue recovery (sublease) efforts have been sufficient to allow NTSB to fund five more full-time-equivalent investigative staff.

GAO has reviewed the March 2008 Business Plan and believes that, while the NTSB has taken steps to increase the utilization of the Training Center and to decrease the Center's overall deficit, the classroom space is still underutilized.

IV. Reauthorization Request

A. Funding

The NTSB's three-year reauthorization request includes additional funding, additional staff, and statutory changes. The table below shows the NTSB's FY 2008 appropriation level, the FY 2009 President's budget request, and the authorization levels that are requested by the NTSB for FYs 2009-2011.

(dollars in millions)					
	2008 Enacted*	**2009 Pres. Bud.**	**2009 Auth. Req.**	**2010 Auth. Req.**	**2011 Auth. Req.**
Salaries & Expenses:					
Funding	$84.499	$87.891	$87.891	$107.208	$113.026
Full-Time Equivalents	399	399	399	475	475
Yr.-to-Yr. Funds Increase		4.0%	4.0%	22.0%	5.4%

*The 2008 figure is the appropriated level, not the authorized funding level, which was $92.625 million.

The FY 2009 President's budget requests $87.9 million for the NTSB, $3.392 million above the FY 2008 enacted level. The increase is related to pay raises, benefit cost increases, and inflation. No new program initiatives or new staff would be funded in the President's request level. The FY 2010 and FY 2011 authorization levels requested by the NTSB are based on increasing the number of NTSB staff to 475 full-time-equivalent employees. The NTSB has determined through a human capital forecast conducted in 2006 that 475 is the minimum number of full time employees needed to effectively and efficiently meet the mission and support efforts that are expected of the Board.

B. Aviation-Related Statutory Changes Proposed by NTSB

1. Authority to Investigate Incidents

The Board requests explicit statutory authority to investigate incidents, as well as accidents. NTSB regulations currently define an "incident" as "an occurrence other than an accident, associated with the operation of an aircraft, which affects or could affect the safety of operations."[3] An

[3] 49 CFR 830.2. Although the NTSB's regulations currently define an "incident" as an occurrence involving an aircraft, the NTSB states that, if it receives explicit statutory authority to investigate incidents, it will likely amend its regulations to define the term "incident" to apply to modes of transportation other than aviation, as well.

example of an incident is if an unmanned aerial vehicle temporarily loses connectivity with the ground and strays into unauthorized airspace, but is eventually recovered without damage or fatalities. Although that is not an accident, the NTSB states that investigating its cause could yield useful safety information. The Board has operated for years with an understanding that it could investigate incidents such as this, even though it does not have clear statutory authority to do so. Therefore, this proposed statutory change would not substantially alter the Board's current practices. However, the NTSB argues that the proposed change would avoid efforts by other entities to thwart such an "incident" investigation by the Board, and permit the Board to amend its rules to bring it into compliance with the Chicago Convention and standards now imposed by the International Civil Aviation Organization.

2. Subpoena Authority

The Board requests explicit statutory authority to subpoena witnesses or evidence outside of a public hearing proceeding. The Board states that, on some occasions, attorneys have resisted its subpoenas for their clients' testimony or records, arguing that 49 U.S.C. §1113(a)(2) only permits the NTSB to subpoena such testimony or things to a "hearing." For example, the NTSB states that, during its investigation of the November 7, 2007 collision of the *Cosco Busan* with the San Francisco-Oakland Bay Bridge, it was reluctant to seek enforcement in Federal court of its subpoena of the pilot's medical records because of the risk a Federal judge would read the Board's subpoena authority as not extending beyond a public hearing. Therefore, the Board's collection of medical records was delayed for over three weeks while it "negotiated" consent from the pilot of the *Cosco Busan* through his counsel.

3. Access to Financial Records

The Board requests explicit authority to subpoena financial records, under the same conditions and protections as apply to law enforcement agencies under the Right to Financial Privacy Act. Occasionally in an accident investigation, primarily those addressing an aspect of human factors or human performance, Board investigators wish to review the credit card charges of an operator for the preceding 24-36 hours in formulating a 72-hour history on the operator. Currently, it may lack authority to do so without a Federal court order. For example, in the Lexington, Kentucky, Comair 5191 accident, the Board concluded it lacked the authority to subpoena the financial (credit card) records of the two pilots to examine whether the pilots took full advantage of their opportunity for adequate rest the night prior to the accident. (In short, the Board wanted to see if charge activity indicated the pilots had stayed up later than they should have.) Therefore, the investigators' access to such information was limited.

The Board is also concerned that it might not be able to access the financial records, and thus trace the financial trail, of an operator violating the terms of an operating certificate by "selling or renting" his operating certificate to other entities acting under his name.

According to the NTSB, the Right to Financial Privacy Act does not address accident investigations at all, and therefore does not provide NTSB with the same access granted "law enforcement" entities under the Act. The statutory change proposed by the Board would make clear it has access to such records, under the same conditions and protections law enforcement agencies are expected to follow under the Act.

4. Access to Medical Records

The Board requests authority to receive medical information upon request and as necessary to further an accident investigation, under the same conditions and protections as a public health authority receives such information under the Health Insurance Portability and Accountability Act ("HIPAA").

The NTSB states that it has numerous examples where hospitals with in-house or retained legal counsel refused NTSB subpoenas for medical records of operators, crew or maintenance personnel because they disputed the NTSB's assertion that it is a public health authority "authorized by law" under HIPAA to request and receive medical records. The NTSB is not named as a public health authority in the statute or in the final implementing regulations. Instead, the "public health authority" acknowledgement for NTSB is only obliquely referenced in the preamble of proposed Department of Health and Human Services ("HHS") rules implementing HIPAA. Specifically, the HHS stated it proposed to interpret the term broadly and then named the NTSB specifically as an entity that would fall within its definition. Because the final regulation did not mention the NTSB, the NTSB states that it has frequently had difficulty persuading counsel for holders of medical records with this non-statutory, non-regulatory reference.[4]

For example, the NTSB states that its attempt to demand the medical records of the pilot of the *Cosco Busan* was resisted by the pilot's counsel. Because the doctor in possession of the records was being threatened with suit by the pilot's counsel if he provided the records to the NTSB, legal counsel for the doctor would not release the records unless NTSB either obtained a release from the pilot or obtained a Federal Court order for the records, both options potentially time consuming. According to NTSB, taking these additional steps would place an individual on notice that the NTSB was attempting to obtain his medical records and could provide such an individual with an opportunity to obtain and possibly secret such records.

As discussed above, contributing to the problem is the language addressing the NTSB's subpoena authority in section 1113(a)(2) which, as now written, can be interpreted to tie the Board's subpoena authority to NTSB "hearings" alone.

The language proposed by the NTSB is, therefore, an effort to clarify that the NTSB has full authority to demand production of all medical records that could shed light on the cause of a transportation accident, and to use that information in explaining the cause or probable cause of an accident where the medical condition of an operator was the cause of or contributed to the accident.

5. Disclosure of Information

The Board requests enhanced protections for trade secrets and similar commercial or financial information from release under the Freedom of Information Act ("FOIA"). Also, the Board proposes the creation of a (b)(3) exemption (i.e., release protected by statute) under FOIA for requests directed at records of an ongoing investigation. In addition, the Board proposes to clarify that voice and/or video recordings obtained from externally mounted recorders (as opposed to those mounted in the cockpit or cabin) may be disclosed. According to the Board, it has

[4] 64 Federal Register 59956 (November 3, 1999).

encountered externally mounted recorders and associated recordings that would have been useful in Board reports, dockets, and/or meetings, but it felt constrained from using video from them in Board hearings and meetings because of existing statutory language prohibiting the disclosure of cockpit voice or video recordings.

6. Multi-Year Leasing Authority

The NTSB requests authority to enter into multi-year capital leases without obligating the budget authority for the entire cost of the lease up-front. According to the NTSB, this authority would be of assistance as it transitions to a new lease for its Headquarters functions during the next three-year reauthorization period. The Board states that it desires to stay in the D.C. area and wishes to procure the lease directly to avoid the added cost associated with procuring such a lease through the General Services Administration. According to the NTSB, the requested authority would also permit leases for accident wreckage storage that span a fiscal year.

7. Accident Investigations in Foreign Countries

The Board requests authority to expend appropriated funds to conduct an accident investigation in a foreign country, under certain circumstances. According to the Board, this provision is intended to address those situations in which the Board agrees to accept the delegation of an investigation from another State under an international convention such as the Chicago Convention for aviation. Such an event arose in the delegation of investigatory authority by the interim Afghanistan government to the U.S. for the Blackwater 61 fatal aircraft crash on Afghan soil.[5] The language proposed by the NTSB would permit it to expend appropriated funds to perform such an investigation, but only after the request and acceptance was properly coordinated through the State Department.

8. Commercial Space Accident Investigations

In anticipation of commercial space tourist flights/launches, the Board requests explicit authority to investigate "commercial space launch accidents".

9. Delegation of Authority

The Board requests explicit authority to delegate to all on-scene accident investigators, acting with Board authority, the same powers of access and entry as the Board. This would provide to FAA and Coast Guard inspectors, when delegated authority by the Board to undertake on-scene fact-gathering for the Board, clear authority to access accident sites.

10. Access to New Data Recording Media

The Board requests express authority to download information from new data recording technology and media in modern aircraft and surface transportation vehicles that store performance and navigation parameters. The data are frequently unreadable without access to proprietary

[5] Blackwater 61 was a private civil aircraft owned by Presidential Airways being operated under a contract with the U.S. Air Force to support military operations in Afghanistan.

information for downloading, reading and/or interpreting the data. To fully utilize the data for accident investigation purposes, the Board would require the authority to obtain such technical information for accident investigation purposes. Such information would be protected as proprietary information.

11. Penalty for Unlawful Solicitations Following Aviation Accidents

Under current law, no unsolicited communications concerning a potential action for personal injury or wrongful death may be made by an attorney, a representative of an attorney, or any potential party to the litigation, to an individual injured in a commercial aviation accident or to a relative of an individual involved in such an accident, before the 45th day following the date of the accident.

As a result of solicitations that occurred following the Comair 5191 accident in Lexington, Kentucky, the Board requests an enhanced penalty for unlawful solicitations following commercial aviation accidents.[6] Specifically, the Board proposes to grant to the presiding Federal judge the authority to order disgorgement of attorneys' fees and contingency fee recoveries that an attorney or firm collects when the fees are garnered by virtue of an unlawful solicitation. According to the NTSB, the way in which judges seem disposed to interpret the existing $1,000 per day penalty provision means they assess the $1,000 penalty for the duration of an actual "solicitation", usually meaning the one day it is received by telephone, mail, or e-mail, and not each day of any subsequent representation. The Board's proposal is intended to provide a greater deterrent to unlawful solicitations.

12. Notification Prior to Destruction of Personal Effects

The Board proposes that air carriers be required to develop a process to notify family members of passengers prior to the destruction of unclaimed and unassociated personal effects as part of their family assistance plans.

V. Selected Provisions of NTSB Reauthorization Act of 2006 (P.L. 109-443)

A. Reporting Requirements

The 2006 Act consolidated a separate report on the activities and operations of the National Transportation Safety Board Academy into the annual report required under 49 U.S.C. §1117. In addition, it required the annual report to include the following new information: (1) a description of the activities and operations of the Board Academy during the prior calendar year; (2) a list of accidents, during the prior calendar year, which the Board was required to investigate under §1131 but did not investigate and an explanation of why they were not investigated; and (3) a list of ongoing investigations that have exceeded the expected time allotted for completion by Board order and an explanation for the additional time required to complete each such investigation. According to the NTSB, the 2006 Annual Report was already in progress by the time the 2006 Act was signed

[6] According to the NTSB, within the 45 days following the Comair 5191 accident, an individual began directly soliciting numerous family member groups, purportedly for a Florida law firm. The solicitations were made via letter and delivery of copies of the law firm's brochure. The individual is facing civil prosecution in Federal court in the State of Kentucky. The law firm denied that the individual had authority to solicit on their behalf.

into law in December 2006, so it was decided that the 2007 Annual Report would be the first report to include the new information. The 2007 Annual Report is due by July 1, 2008.

B. Academy Business Plan

As discussed above, the 2006 Act also required the NTSB to develop a plan to achieve, to the maximum extent feasible, the self-sufficient operation of the Academy, to include subleasing the facility to another entity.

C. Report on Status of "Most Wanted" Safety Recommendations

The Secretary of Transportation is required to submit, on February 1 of each year, a report to Congress and the NTSB containing the regulatory status of each recommendation made by the Board to the Secretary that is on the Board's "most wanted" list of safety improvements. The 2006 Act required the NTSB, within 90 days after the date on which the Secretary submits such report, to review the Secretary's report and transmit comments on it to the House Committee on Transportation and Infrastructure and the Senate Committee on Commerce, Science, and Transportation.

D. Investigation Services

The National Transportation Safety Board Reauthorization Act of 2003 (P.L. 108-168) authorized the NTSB to enter into agreements or contracts without competition when necessary to expedite an investigation. This authority was to sunset on September 30, 2006. The 2006 Act made this authority permanent. In addition, the disclosure and reporting requirements associated with this authority were continued and strengthened, and consolidated with the annual report required under 49 U.S.C. §1117. Specifically, the 2006 Act required the Board to report annually each instance in which a contract of any amount was executed by the Board using the expedited contracting authority.

E. Expenses of Inspector General

As part of the National Transportation Safety Board Amendments Act of 2000, the Inspector General of the Department of Transportation ("DOT IG") was authorized to review the financial management, property management, and business operations of the Board. That legislation also provided that the DOT IG would be reimbursed by the Board for the costs associated with carrying out these activities. The 2006 Act authorized the appropriation of funds directly to the DOT IG to cover expenses associated with its review of NTSB operations. The 2006 Act also provided that, in the absence of such an appropriation, the DOT IG and the NTSB shall have a reimbursable agreement to cover such expenses.

F. Annual GAO Audit of NTSB

The 2006 Act required the GAO to evaluate and audit the programs and expenditures of the NTSB at least annually. The annual GAO audit was to evaluate at least the following items: (1) information management and security; (2) resource management; (3) workforce development; (4) procurement and contracting planning, practices and policies; (5) the extent to which the Board

follows leading practices in selected management areas; and (6) the extent to which the Board addresses management challenges in completing accident investigations.

G. Staff of NTSB Members

The 2006 Act authorizes each member of the Board, rather than the Chairman, to appoint employees on his or her own personal staff.

WITNESSES

The Honorable Mark Rosenker
Chairman
National Transportation Safety Board

Dr. Gerald Dillingham
Director, Physical Infrastructure Issues
U.S. Government Accountability Office

HEARING ON REAUTHORIZATION OF THE NATIONAL TRANSPORTATION SAFETY BOARD

Wednesday, April 23, 2008

HOUSE OF REPRESENTATIVES,
COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE,
SUBCOMMITTEE ON AVIATION,
Washington, DC.

The Subcommittee met, pursuant to call, at 2:00 p.m., in Room 2167, Rayburn House Office Building, Hon. Jerry F. Costello [chairman of the Subcommittee] Presiding.

Mr. COSTELLO. The Subcommittee will come to order. The Chair will ask all Members, staff and everyone to turn electronic devices off or on vibrate.

The Subcommittee is meeting today to hear testimony on the reauthorization of the National Transportation Safety Board. I have a statement that I will enter into the record, make brief comments and then recognize the Ranking Member, Mr. Petri, for any comments that he may have or any opening statement that he may have.

So I will enter my statement in the record so that we can get to witnesses. It is my understanding that we will be called for votes about 2:45, so rather than for us to give our opening statements, we would rather hear from you, your testimony, and to give us some time for questions. And so I will enter my statement in the record.

But this hearing, of course, is concerning the reauthorization of the NTSB. The NTSB is requesting both additional statutory authority and funding. The President's budget would not allow for additional staff or additional resources for the NTSB.

It is my position that the NTSB has to have the necessary resources and staffing in order for them not only to carry out their statutory responsibilities but to continue to be the premier investigative agency in the world.

So with that, I will recognize the Ranking Member, Mr. Petri, for his opening statement or brief comments.

Mr. PETRI. Mr. Chairman, thank you very much. And I will follow your excellent example and ask that my full statement be made a part of the record. And let me just summarize by first thank you for having this important hearing.

The National Transportation Safety Board, under the recent able leadership of our Mark Rosenker, is an agency of some 500 professionals; and they have built a tremendous record of making recommendations that have increased the safety of the traveling public in carefully examining instances as they occur. And they are

looked to by safety agencies and by people all over the world when accidents occur, and they operate not only within the United States but abroad.

So this is a national gem. And I am delighted to have people from the agency and the panel before us here today.

Mr. COSTELLO. I thank the Ranking Member for his comments.

And now I want to recognize our witnesses and thank them for being here today: the Chairman of the NTSB, the Honorable Dr. Mark Rosenker; Dr. Gerald Dillingham, who is the Director for Physical Infrastructure Issues with the U.S. Government Accountability Office—and I understand that you are accompanied by, but he will not be offering testimony, but is here to answer questions, Mr. Gregory Wilshusen, who is Director of Information Security Issues, with the Government Accountability Office as well.

Mr. Chairman Rosenker, you are recognized for 5 minutes.

TESTIMONY OF THE HONORABLE MARK V. ROSENKER, CHAIRMAN, NATIONAL TRANSPORTATION SAFETY BOARD

Mr. ROSENKER. Thank you sir.

Chairman Costello, Ranking Member Petri, as Chairman of the NTSB, I am pleased to be appear before you today in support of our request for reauthorization.

First, I would like to thank this Committee for its tremendous support. The Safety Board enjoys a reputation both here at home and abroad for impartial, independent investigation of aviation disasters. As this Committee knows, we have approached accidents in all modes of transportation with that same philosophy.

We are currently in the midst of investigating a highway accident that shocked our Nation, the collapse of the I-35W bridge in Minneapolis. We are making excellent progress in this investigation and hope to present a final report in a public Board meeting before the end of this year.

Other surface transportation accident investigations that will soon be completed are the fiery freight train derailment in New Brighton, Pennsylvania, the crash of a motor coach from Ohio last year in Atlanta that took seven lives, and the grounding of the Empress of the North in Alaska that endangered hundreds of cruise ship passengers.

Since our last reauthorization in 2006, the Board has held 32 public Board meetings and adopted 58 accident investigation reports. We also investigated more than 3,200 aviation accidents and numerous surface transportation accidents, we published over 3,900 aviation accident briefs, and our labs read out 179 flight data recorders, 156 cockpit voice recorders and performed 326 wreckage examinations.

Additionally, the Board issued more than 345 safety recommendations.

I am extremely proud of the significant management improvements we have made in recent years. The number of open general aviation investigations declined from 2,231 cases in 2002 to 647 open cases as of this morning. Several high-profile major investigations were completed in a year or less, among them the Big Dig tunnel ceiling collapse, which was completed in exactly 12 months; the crash of a Comair regional jet in Kentucky, which was com-

pleted in 11 months; and the derailment of a Washington, D.C., Metro train at Mount Vernon Square was completed in only 9 months.

In order to build on this success, the Safety Board is asking for authorized resource levels capable of funding 399 full-time positions in fiscal year 2009 and 475 FTEs in both fiscal years 2010 and 2011.

In fiscal year 2008, several years of virtually no budgetary growth following several years of virtually no budgetary growth, Congress provided the Safety Board with $1.5 million over the President's budget. That enabled us to return 8 FTE investigative personnel back to the Agency's ranks.

We are also able to achieve significant cost savings by consolidating portions of the NTSB Training Center in our headquarters and then subleasing that space to other Federal agencies. Through these savings, we were able to return another five FTEs to our rolls. In order to carry out the mission of the Safety Board effectively, we still need 475 FTEs.

In preparation for this hearing, Agency staff, with the input from our Board members, performed a review of our governing statutes, and we respectfully present some suggested amendments.

The first area is one where we believe technical corrections are advisable to clearly articulate the Board's authority to investigate incidents. The Board already investigates some incidents. One example would be runway incursions that come quite close to causing an accident. However, some on my staff are concerned that our current statutes do not clearly grant this authority.

ICAO is also urging member States to investigate a greater number of serious incidents in order to be proactive in advancing aviation safety. Our proposed amendments would make clear the Safety Board's authority to provide independent investigation of certain incidents.

A second issue reflected in our reauthorization request is our perceived need for a clearer articulation of the Board's authority to access critical information during Board investigations. We believe that Congress expects the Safety Board to access all records, materials and information necessary to make a proper determination of the causes of an accident.

We are seeking clear authority to access medical and financial records. Medical records, say, of a ship's master or pilot, perhaps, in order to assess the accuracy of a medical certificate application and the propriety of the licensing and medical oversight process. Financial records, for example, such as the credit card records of pilot involved in a commercial aircraft disaster in order to examine the activities the night before and their relationship to rest periods and fatigue management.

And finally, the Board proposed changes to enhance its authority to investigate marine accidents, that have sufficient national importance such that an accident is deserving of an independent investigation by the Board. I understand the Coast Guard and Maritime Transportation Subcommittee will be holding a hearing in early May to discuss that specific issue.

Thank you again for your support. And I will be happy to answer any questions.

Mr. COSTELLO. The Chair thanks you, Chairman Rosenker. And let me say to your ending comment that the Coast Guard Subcommittee will, in fact, be reviewing these issues and some of the proposals that you have made for statutory authority and other changes.

The Chair now recognizes Dr. Dillingham.

TESTIMONY OF DR. GERALD DILLINGHAM, DIRECTOR, PHYSICAL INFRASTRUCTURE ISSUES, ACCOMPANIED BY GREGORY WILSHUSEN, DIRECTOR, INFORMATION SECURITY ISSUES, U.S. GOVERNMENT ACCOUNTABILITY OFFICE

Mr. DILLINGHAM. Thank you, Mr. Chairman, Mr. Petri, Chairman Oberstar.

In 2006, at the request of this Subcommittee, we reviewed NTSB's activities and made 18 management and internal control-related recommendations. Our examination of agencies across the government have shown that effective management practices and internal controls are critical for agencies to carry out their missions cost effectively and efficiently.

Mr. Chairman, I want to note that we do not find anything that would diminish NTSB's status as the gold standard for accident investigations in either our 2006 review or the follow-up review that we conducted this year.

My testimony this afternoon provides the Subcommittee with an update of NTSB's performance in the key areas of our 2006 review, namely, general management practices, accident investigations and safety studies and the operation of the NTSB Training Center.

We also reviewed NTSB's information security practices and its reauthorization proposal for issues that the Subcommittee may want to examine closely for potential unintended consequences.

Regarding general management practices, we found that NTSB had made significant progress in this area and established a solid foundation for future improvements. We think that these future improvements should include a training plan for staff that supports the Agency's strategic plan and a full cost accounting system that will enable management to know what Agency resources are being applied to which task across the Agency.

Regarding accident investigation and safety studies, NTSB has developed transparent, risk-based criteria for selecting which rail, pipeline, and hazardous material accidents to investigate. In contrast, NTSB has made limited progress in limiting its use of safety studies. We believe safety studies can increase the scope and impact of NTSB's safety recommendations.

With regard to the training center, NTSB has increased the use of the training center and decreased the center's overall operating deficit. However, the classroom space is still used less than 25 percent of the time. Furthermore, we found that NTSB's business plan for the center lacked marketing strategies to explain how it could further increase its use and how it could reduce the training center's remaining $1 million a year annual deficit.

With regard to information security, NTSB has also made progress in this area. However, we think that this could be among the most serious deficiencies in NTSB's operations; specifically, until NTSB takes action to encrypt all of its laptops and limit ac-

cess privileges on work stations, the Agency is at increased risk that its computers and the data they contain may be compromised.

We are, therefore, making new recommendations in this testimony that NTSB should address these critical information security gaps as soon as possible.

Finally, Mr. Chairman, we would like to draw the Subcommittee's attention to some specific provisions and language of NTSB's reauthorization proposal.

First, the NTSB is seeking an exemption from the Antideficiency Act, which would authorize the Board to incur obligations for both the acquisition and lease of real property in advance or in excess of an appropriation. We recommend that the Subcommittee consider a more narrow authority that addresses NTSB's particular need to obtain a new lease for its headquarters in 2010.

Second, the reauthorization proposal seeks to make several changes to the Agency accident investigation process that has the potential to expand the scope of the Agency's authority. For example, the proposal expands the definition of accidents to include events that affect transportation safety, but do not involve structural damage. The implications for such a change for NTSB's workload are unclear and should be explored further.

Mr. Chairman and Members of the Subcommittee, because a full implementation of effective management practices and internal controls are critical to NTSB's being able to continue to carry out its accident investigation mission and remain the gold standard, we recommend that NTSB report on its progress in improving its management practices and internal controls in its annual performance and accountability report by other congressionally approved forwarding mechanisms.

Thank you, Mr. Chairman. I will be pleased to answer any question that you or Members of the Subcommittee may have.

Mr. COSTELLO. The Chair thanks you, Dr. Dillingham.

Chairman Rosenker, let me ask you a couple of questions concerning your request to both change some statutory language and to give the NTSB more authority, specifically the requirement today that single probable cause be identified as a—the primary factor in aviation accidents in particular.

I understand that the requirement to identify a single probable cause is not consistent with ICAO standards, and I wonder if you might share your thoughts with us as to the benefits of modifying that statutory requirement.

Mr. ROSENKER. Sir, in reality, we do actually have causes, probable causes when, in fact, we make and finish our accident investigations. Sometimes there were one or two; sometimes there can be an entire page or two. The actual heading states ″probable cause,″ but in the language, many times it will include causes and additional factors.

So, as far as we are concerned, it is the way we operate right now. It is our operating procedure and so, therefore, we are not—it is not necessary for us to have to go too far with that issue.

Mr. COSTELLO. But you are aware that there is discussion going on in the aviation community that they have concerns about this issue.

Let me also ask you about what role you think the Safety Board should play in increasing emphasis on human factors as a way to improve aviation safety.

Mr. ROSENKER. Human factors are critical.

As you know, the majority of accidents that result in fatalities, and frankly, the majority of accidents, have a large number of human factors that, in fact, have created the environment for the accident to occur. So when we can, in fact, improve and understand and eliminate some of the mistakes that are being done whether it be by fatigue or whether it be training or whether it be by skill or a host of other distractions, then we can begin the process of actually reducing the number of accidents that we investigate.

Mr. COSTELLO. You mentioned in your testimony concerns about the NTSB's ability to gain access to personal financial records. And can you give examples, either in general or specific, as to how your lack of ability to gain personal financial records has hampered investigations in the past?

Mr. ROSENKER. Sir, when we attempt to subpoena, for example, records—financial records, credit card records—of an accident victim, perhaps an airplane pilot who we are attempting to understand the 72-hour background, getting his credit cards or her credit cards would go a long way to understanding if they were in a bar somewhere, if they were supposedly supposed to be sleeping and they were out at a club or out purchasing something.

So the financial records in those kinds of accidents, along with any operator accident, would help us a great deal toward understanding the 72-hour background before we make determinations.

Mr. COSTELLO. Dr. Dillingham, would you like to follow up and comment on any of the questions that I just asked Chairman Rosenker as far as the authority of identifying the single probable cause versus, which is apparently inconsistent with, ICAO standards? What are your thoughts on changing the NTSB to identify more than one probable cause to an incident or an accident?

Mr. DILLINGHAM. Mr. Chairman, I think there is some value to harmonization of standards; and I think in terms of the ICAO having a different standard than what the NTSB has actually been operating under for quite some time, I think it is worthwhile that NTSB sort of collaborate with ICAO to see if there is a medium that can be reached.

Mr. COSTELLO. And the issue of gaining access to financial records, would you like to comment on that?

Mr. DILLINGHAM. Yes, sir. I think that is a—those are capabilities that I think NTSB needs. I think those are similar kinds of access that law enforcement agencies currently have. And if it allows NTSB to complete a more robust investigation and come to a cause sooner, I think that is important.

I think one of the concerns that we heard as we tried to look at this, was the idea of the violation of privacy issues; and to the best of our knowledge, these kinds of records are protected by freedom of information and, therefore, the privacy issues are also taken care of.

Mr. COSTELLO. Chairman Rosenker, the final question before I recognize the Ranking Member.

You were also—the NTSB is also asking for additional authority to issue subpoenas beyond your current ability concerning public hearings that may include, for example, depositions. Tell us why that is necessary.

Mr. ROSENKER. Sir, we have been issuing subpoenas and, for the most part, we get a good response. But in areas such as medical records and, right now, financial records, there has been some reluctance on behalf of those that we have subpoenaed to provide that information to us. So, they have read our statute narrowly; even though we believe we have the authority, it needs to be clarified.

In the HHS preamble concerning the HIPAA regulations, we are actually named there as a health—not a health provider but a health agency that is, in fact, similar to the FDA or the CDC; but it is not clarified in the actual regulations themselves. So this type of clarification for us would go a long way to enable us to get the medical records which we believe are critical.

We have looked at an accident right now where medical records were extremely important in the collision of the Cosco Busan, where the pilot of the ship had a number of prescription drugs that he had in his records.

Mr. COSTELLO. Would you agree that the President's budget request that he submitted to the Congress is inadequate to deal with what the NTSB wants to do in terms of hiring additional personnel?

Mr. ROSENKER. Sir, earlier in the budgeting process, we submitted to the White House, and we also submitted to Congress as we normally do each year, what we believe would be the appropriate number of people to do this job effectively. We received our budget, and that is what we are—I am here representing at this time.

Mr. COSTELLO. So would the answer be ″yes″ or ″no″?

Mr. ROSENKER. Sir, we can always use more people.

Mr. COSTELLO. The Chair would note that in your information and the testimony that you have submitted to us, you believe that the needs are a minimum of 475 full-time equivalent employees to fully meet the NTSB's core mission of accident investigation.

Clearly, the President's budget that has been submitted to the Congress would not allow for the additional personnel, so I would note that for the record and answer the question for you.

The Chair at this time now recognizes the Ranking Member, Mr. Petri.

Mr. PETRI. Thank you very much, Mr. Chairman.

I noticed from the report that you submitted that you have conducted some 1,800 aviation-related investigations in just the last year. Fortunately, in commercial aviation there have been no fatalities during that period; but there have been a number of incidents that you have investigated and some 100 highway, rail and maritime situations, perhaps the most spectacular of which is the investigation that resulted in some 13 fatalities on I-35 in Minneapolis, Minnesota.

Could you discuss the status of that whole review and the conclusions of your staff and what you are doing to help minimize similar situations occurring in the future?

Mr. ROSENKER. Yes, sir.

As you know, on August 1st it was a terrible tragedy in Minneapolis when the I-35W bridge collapsed. Our team got there on the first day and watched the first responders work very hard. And I have to congratulate the people of Minnesota and the people of Minneapolis and the first responding community; they did an outstanding job.

We brought in all the investigators we possibly could; all of our highway investigators and a number of research and engineering investigators came in. We had about 30 people at the site, many of whom stayed until November when, mid-October, we released the site back to Mn/DOT.

November, we had finished up all of our on-site work in Minneapolis and brought some key pieces of the structure back to our laboratory, restoring a whole host of it in our training center.

In January, we made an announcement. We made a recommendation to the Federal Highway Administration that we had seen some interesting issues as it related to the design of the I-35W bridge in the gusset plates. They seemed to be inadequate. They seemed to be less than what, in fact, would be necessary for the appropriate safety margin.

As a result of that—and we are continuing to test—we made recommendations to the Federal Highway Administration to basically deal with the States that any time a change in weight—whether it be an operational load, a live load; or whether it be an enhancement, additional decking, new systems for it such as guard rails—any time you are going to change that weight, a complete assessment of calculations of the bridge, including gusset plates, must be done.

And as a result of that—one of the things that became quite clear, Mn/DOT took a look at all of their bridges and did that series of calculations, and recently found that the DeSoto Bridge in St. Cloud was not up to the safety margins it needed; and as a result, Mn/DOT closed that bridge.

Mr. PETRI. There are some issues as to whether there should be more hearings on the process. I wonder if you could discuss that.

Mr. ROSENKER. Yes, sir.

Each time we deal with a major accident, the professional investigative staff will create what we call an ″action memo.″ That action memo is an internal document that is used for the Members to decide whether we should vote for having a hearing or vote not to have a hearing.

They give us a very detailed argument for whether they want the hearing and believe it will be of great value and provide additional information to their investigation; or whether they believe it would not be of value and, thus, not invest the intense resources that it takes to do such a hearing.

In this case, the professional investigative team offered its action memo to the Board, and three of the five Board members voted to support their finding which was to not hold a hearing, since it would not provide a return on investment as it related to the amount of time which it would take.

Ultimately, what happens is, since we have small numbers of resources to work on these projects, on all of our projects, in order

to devote the appropriate time it takes to do a good hearing, a thorough hearing, to guarantee we get something for that time, it takes a good deal of time to do that, and it normally will take anywhere from an additional 2 to 4 months in the investigative procedure.

In this case, the professional investigators believe and have indicated to me they can have this investigation completed and provide it to a public sunshine Board meeting before the end of this year.

Mr. COSTELLO. The Chair thanks the Ranking Member and now recognizes the distinguished Chairman of the Full Committee, Chairman Oberstar.

Mr. OBERSTAR. I want to thank you, Mr. Chairman.

And thank you, Mr. Chairman Rosenker, for participating in this hearing, which is necessary because it is your job description. And it is the reauthorization of the Board, so it is a matter of courtesy to thank you, but it is your responsibility to be here for its future.

And you know I have been a strong advocate for the Board over all of its years. I was on the staff of this Committee when the Department of Transportation was created, and we established the National Transportation Safety Board as an independent safety board within the Department.

But several years later, it was determined—it was clear that the Board was not functioning as—although it had held very important inquiries, investigations, made numerous recommendations for improvements—over 10 major accident reports, seven public hearings; in just the first year of the Board's operation, they had done over 800 general aviation accident investigations, 3,000 summary reports. Those they were very significant inquiries undertaken by the Board.

But it is clear to Members of Congress that the Board needed greater independence than it could achieve within the Department of Transportation. And so before my last year as the chief of staff of the Committee, the National Transportation Safety Board was established in its current structure. And over the years, the Board has achieved status in the world community, particularly in aviation investigations, but also in other areas; as I have called it ″the gold standard for accident investigation.″

And the cornerstone of that status is its transparency, the clarity of its actions, the skill of the Board's staff, the ability of the Board to harness the best talent in the public as well as the private sector to conduct investigations, to get the best metallurgists to look at metal fatigue, to get the best people to understand accidents in all modes of transportation. And a very important part of that responsibility has been adequacy of staff.

Now I see that your Board recommendation or request is for exactly the number of staff that the administration requested, and I am puzzled by that: 399 for 2008; 399 for President's budget for 2009, and the Board's request is 399.

For 2010, you do increase your request for 475 full-time equivalents, a 20 percent increase. What caused you to make that recommendation?

Mr. ROSENKER. Sir, first of all, thank you for your compliments to the Board and its history. You are one of the great friends of this Board. You have made tremendous contributions in the time that you have served here, both as staff, as a Member and as

Chairman. So I continue to thank you for that history and hope that you will continue to offer that great support.

As it relates to the Board's submission, as I indicated earlier, we did put out a request when we do our normal Board submissions to both the Congress and to the OMB.

Sir, when I received back the budget, I recognized and understood the various budget constraints that the entire United States Federal Government was operating under. And, thus, I unfortunately had to come in and suggest that I won't be able to get the additional people that we could use.

Mr. OBERSTAR. So you made a request for a larger number of personnel?

Mr. ROSENKER. Yes, sir. And Congress received that request.

Mr. OBERSTAR. In a bill that we will consider on the House floor tomorrow, the Coast Guard authorization, we are going to give the—and I am quite confident this will pass the House and the Senate—we will give the Board authority to hear appeals from proceedings of the Coast Guard disciplinary process, their certification of seafarers, certification of uniformed personnel, as well as civilian personnel, give the Board authority to hear appeals to rulings of the Coast Guard, as we have done in aviation, to give the Board—do you have any idea, have you given it some thought, are you aware of the proceeding in the legislative process, given it some thought as to what additional personnel that might entail? Or can it be handled with the existing staff?

Mr. ROSENKER. Not within our 475, Mr. Chairman, or the 399 clearly.

Mr. OBERSTAR. It will take effect next fiscal year?

Mr. ROSENKER. I think the Committee will have to work very hard with our staff to be able to integrate if this legislation becomes law. We will accept that mission, of course, and do it exceptionally well, as we believe we do with the aviation community.

But appropriations are going to have to come with it, because we could not—we could not be able to do it.

Mr. OBERSTAR. Do you recall, when we transferred to the Board the authority to hear appeals in aviation, whether some of the civil appeals, ALJs, were transferred from DOT to NTSB?

My recollection is, there was some movement of personnel, sort of a lateral shift over to NTSB.

Mr. ROSENKER. Mr. Chairman, I don't have that off the top of my head. That is way, way, way before my time here. But, sir, I will find out and get back to you.

Mr. OBERSTAR. Not "way, way before," but before your time.

In another arena, what are the Board's criteria for holding a public hearing?

Mr. ROSENKER. Sir, there are a number of criteria. The one that we look at the most and probably the easiest one to understand is when, in fact, professional investigative staff in their action memo present a reason why they should be doing it and what they intend to get from it for their investment of time and effort.

By the same token, there will be many times where the Board's professional staff will say, we do not believe we have enough information at this time to be able to do a thorough investigation in a

timely way without the additional time and effort it would take to do the hearing.

Mr. OBERSTAR. Are those the only criteria? What about differential between modes? What was the deciding factor in the McDonough rail incident to hold the public hearing?

Mr. ROSENKER. I think that was probably an issue of hazardous material disposal and other issues, as well.

Mr. OBERSTAR. What was the decision to—what would underlie the decision to hold a public hearing on the Minot rail incident?

Mr. ROSENKER. Clearly, that was a terrible hazmat release.

Mr. OBERSTAR. And? And that is it?

Mr. ROSENKER. No, I am sure there were a host of other issues that were involved there. Those were decisions that were made before my time.

Mr. OBERSTAR. What lessons to be learned in that hearing?

Mr. ROSENKER. I believe also there would be a reason to be requesting that information from the investigating staff.

Mr. OBERSTAR. And the allision of recent note in California, where there was an oil spill, there was a public hearing. What were the underlying causes of that?

Mr. ROSENKER. The professional staff said they needed more information, as they could take a look at oversight issues and medical oversight issues and the relationship with the pilots, to the operators and the States.

Mr. OBERSTAR. And do you include in the determination of whether or not to hold a public hearing the opportunity for both a teaching experience and a learning experience?

Mr. ROSENKER. That is also an important part of it, Mr. Chairman. I totally agree.

Mr. OBERSTAR. Now, one of the factors that you have cited that I learned only after our phone conversation about the subject of the bridge, the I-35W bridge in Minneapolis, was that the Board felt that the hearing—the staff felt that the hearing would delay publication of the report.

I am not so concerned about timeliness of a report as I am about the substantive nature of the report and the inclusiveness and the role of the Board in conducting these public meetings which go to the transparency, the clarity, the openness of the Board, and the opportunity to learn and to teach. And you never can never say that we are not going to learn anything from this, because you never know what you are not going to learn.

Mr. ROSENKER. Sir, you are right in that occasion that, in fact, you never know what you don't know.

But there are times, and frankly, what we have looked at through the history of this organization is—as a matter of fact, I wanted to make sure and I wanted to be prepared to be able to answer your question on the numbers——

Mr. OBERSTAR. You knew I would ask this?

Mr. ROSENKER. Yes, sir I did.

Mr. OBERSTAR. You are very clever.

Mr. ROSENKER. We took a look at the number of votes that we had from 1975, dealing with whether to have a hearing or not have a hearing.

During that 33-year period, there were 326 notation items, votes from the Board over that 33-year period; and only 12 times out of 326 did the Board members disagree with what staff's recommendation was—six that said we are not going to have a hearing when, in fact, the staff said we should; and when staff said we shouldn't have a hearing, six where we said we should have a hearing.

Mr. OBERSTAR. Yes. I have looked at those records as well. And I have the years, the major accident investigations and the public hearings that were held, and what I can't find is consistency in the pattern.

It is not so important whether the Board voted with or against the staff, but on what basis and what were the substantive issues. And I find no consistency in the basis on which public hearings, determination to hold public hearings is made or not.

Mr. ROSENKER. I think the vast majority, Mr. Chairman, were based on what the professional staff is presenting to us if they need additional information.

Mr. OBERSTAR. In instant case, for the staff to say it is going to delay publication of the report says to me, you don't have enough staff and that the staff doesn't have enough confidence in, or has a condescending attitude toward, other specialists in the field, who might bring information to the Board the staff have not seen, have not heard, have not been exposed to. And I think this is a critically important matter.

I am going to tell you, in the Minneapolis-St. Paul area, in the greater Minnesota area, there is huge skepticism about the objectivity of the Board in conducting this inquiry. And I am not asking you, I am telling you that a public hearing will dispel—will go a long way to dispel the questions raised and the lack of trust in the Board's actions.

I am constantly asked by citizens, by reporters, by local officials, by State legislators, what has happened with the Board? Why isn't it doing this hearing? What other motives are there?

And I think you need, as Chairman, and your fellow Board members and your staff need, to go back and reconsider that decision and to be inclusive of the public and to be respectful of the loss of life that occurred and of the unique situation of this bridge.

The allision was one of a kind.

There have been other hazmat crashes in the rail sector; 38,000 people were evacuated from Duluth and Superior when a benzene spill occurred in a rail crash. The Board didn't hold a hearing. I don't quarrel with that; there were no unique circumstances.

But this was one of a class of bridges of which there are 740, and we haven't had a public hearing on a bridge failure in over 20 years. This is an opportunity for a teaching moment and a learning moment for the Board and for its staff, and I urge you to go back and reconsider it.

And I don't ask you to make an answer here, but I am just telling you that that is what I expect.

Mr. ROSENKER. Mr. Chairman, you are a very persuasive man, and I have great respect to you. And I don't enjoy being in your dog house, believe me. We have had a wonderful relationship—un-

fortunately, up until just the last month or two—and I want to get that relationship back.

And so I must also tell you, this decision was one of the toughest ones—matter of fact, I can tell you as far as my career at the NTSB, it was the toughest decision to make, and I believe it was the toughest decision for my colleagues to make.

There are 13,000 steel truss bridges, give or take a few hundred, across the United States. There are 50 State DOTs that are waiting for resolution of what we find in this investigation. We are about ready to complete the finite element analysis in the next 45 to 60 days.

It was the professional staff's belief that these were issues of math, mechanics, and computer science that they had to be working with. And transparency, I agree, Mr. Chairman, is of the utmost importance; we try to do that in everything we do, sir.

We opened up our docket, our public docket, and put it on the Web as soon as we made that announcement back in March. We are continuing to populate it with pictures and reports, and the next series of reports should be in there in the next few weeks. These are group chairmen reports which tell us everything we have found, and a good deal of evidence is factual in nature. No analysis, sir.

These people that are working with us right now—and I have 30 investigators, half of which are from our highway department; and another 30, these are internal staff, are from our research and engineering department, computer people, metallurgists, top in their field. They are working hard every day to get this resolved.

We will be doing, Mr. Chairman, an excellent presentation, an excellent sunshine presentation, where this will get a public airing like nothing we have done before, sir. When this is complete, there will be peer review ad nauseam as it relates to that; and we will have it done, sir, before this year is over.

They are working hard to achieve that, Mr. Chairman, believe me, they are.

Mr. OBERSTAR. Thank you, Mr. Chairman, and thank you Chairman Costello. You have just made the best argument for an open public hearing. Thank you.

Mr. COSTELLO. The Chair thanks the gentleman and now recognizes the Ranking Member of the Full Committee, Mr. Mica.

Mr. MICA. Thank you and let me continue along these lines.

First of all, I have the greatest respect for the NTSB. It is one of the finest federal agencies I have ever had to deal with. I Chaired for 6 years, as you know, Aviation; we had a whole host of issues. And I think—one thing that I always caution myself was that, as a legislator, is not trying to influence the direction of your Board.

I admire your staff. I admire you for the positions you take, and I think it is important that you continue that independence no matter what slings and arrows are tossed at you when we call on you to independently evaluate the causes of accidents and incidents.

I read through the memo that the staff prepared to the Board in January of 2008. It lays it out pretty clearly. Let me read from this.

It says, ″Immediately after the″—and this is a staff report to you. ″Immediately after the collapse, congressional interest focused on aging infrastructure, with the suspicion that this bridge collapsed as a result of its deteriorating condition over time. The FHWA's National Bridge Inspection Standards program, which must be used by every State, is designed to address infrastructure aging by finding evidence of fatigue cracking or corrosion that could lead to diminished bridge safety capacity. Staff finds no basis for attributing the collapse to fatigue cracking or corrosion.″ Basically, again, they have a pretty good idea of what happened. Let me go on and read here.

″Staff Recommendation: Staff believes that the issues associated with the accident's probable cause can most effectively and efficiently be addressed through the ongoing efforts of the existing investigative groups. Taking resources away from this activity to conduct a hearing will lengthen the time necessary to complete the investigation and quite probably cause various parties to the investigation to proceed with their independent activities, potentially even separating their activities from the Board's. Therefore, staff recommends that a public hearing not be convened in connection with this accident.″

So I think that to prolong this would also do damage in trying to get information out. This appears pretty much to be a design flaw. I don't know if you are prepared to say that, but there were design errors.

There is something in the NBIS standards that did not take into consideration looking for that kind of defect that, in fact, we have commentary from 1998, we have pictures from 2002, we can see what was happening.

Wasn't it your best judgment to get out to—how many bridges are of a similar design?

Mr. ROSENKER. That particular design was, as Chairman Oberstar said, we are talking about between 400-some or 700-some.

But there are 13,000 steel truss bridges, approximately, yes, sir.

Mr. MICA. But knowing what you know and knowing that we have again a load stress factor on a bridge under construction, the thing collapsed and you have enough evidence to warn others and conclude this investigation and warn others, one, to look for and how to proceed in the future to keep this from reoccurring.

Is that an oversimplification?

Mr. ROSENKER. Mr. Mica, I appreciate your interest in this case, and obviously, you are supportive of the staff's position.

I want to make sure, because I have been sensitized by Chairman Oberstar, and I don't want to do this again, but I am not going to be telling you what happened to that bridge yet.

Mr. MICA. I read the report. This is pretty clear. And, again, the worst thing we can do, as legislators—I have been through this; I have been through with the previous Chair, and I saw the pressure that is put on you all to do certain things in certain time frames, or in a certain manner. That, I think, is highly inappropriate.

I think it is highly inappropriate, and I demand just as much as anybody; I demand that you retain your independence and you proceed in this investigation as you feel best would benefit the general public interest. And the general public interest in what I see is, you

have—we have—your investigators have identified the reason for the collapse of this bridge. We need to get that information to people as soon as possible without delaying the process, without having the investigation go out. And they cite right here what can happen or what would happen in delaying that.

So I see no immediate need for a hearing. I see no need to try to—you know, people are trying to justify, well, I thought it was aging and I said it was aging, but it really didn't turn out to be aging. But maybe we should look at aging, even if they don't want to look at aging.

And we could spend more time looking at a factor that isn't a factor, but maybe we can make it look like it was a factor, so we don't make it look as bad as we did because we said something that might occur. But we could put pressure on NTSB to do something that it probably shouldn't be doing.

So I don't want you to do that. I feel just as strongly. This is very important, and if you do that, you set a bad precedent for the future. You won't be there, but someone else will be there; and the same pressure is going to come from this dais—and people maybe a lot more powerful than myself and Mr. Oberstar—to do something else other than the right thing and what you were set to do.

So I am telling you that I don't want that done unless you think that it is the right thing to do. And if you want to reverse what your staff has said and what you said, you are free to do that. But, again, I want to lay this out in clear terms.

And I have been through it again with the Board, and I have seen the pressure on previous chairmen and Board members to look this way, look that way, to do this, do that. And I tell you, as long as I have been here, I have never seen that to be the case. And I have the highest respect for every one of the Board members, and I don't want that to be the case.

Mr. OBERSTAR. Would the gentleman yield?

Mr. MICA. Yes.

Mr. OBERSTAR. I disagree fundamentally with the gentleman's line of argumentation.

The purpose of holding a public hearing is not to determine an outcome, but to spread upon the record the information and to receive information from others with expertise in the subject matter.

The Board decides who testifies at those hearings. The Board determines whom they will invite to those hearings. And the document from which the gentleman is quoting, I asked the Chairman of the Board for that document when he called. He said, ″It is not available.″

It was subsequently made available. I did not see this information until long after I had the conversation with the Chairman of the Board. And having seen the document, there is a misstatement, a misunderstanding: "congressional interest focused on aging infrastructure, with the suspicion that this bridge collapsed as a result of its deteriorating condition—."

The purpose of the proposal I set forth before this Committee was not a bill; it was a proposal to strengthen the standards, upgrade the standards by which bridge safety is determined, by which bridges are designed, and to improve the quality of inspections and inspectors. It had nothing to do with this sentence.

And, again, I disagree with the gentleman completely. An open, investigative—an open hearing on an investigation is a teaching moment for the Board and a learning moment for the public.

Mr. MICA. Reclaiming my time, again I will read from the staff recommendation, not from any Board member or the Chairman's recommendation, ″Taking resources away from this activity to conduct a hearing will lengthen the time necessary to complete the investigation and quite probably cause various parties to the investigation to proceed with their independent activities, potentially even separating the activities from the Board.″ It goes on.

But, again, I am not taking what he has said; I am taking what the staff and the professionals have recommended. And they have taken that, in most instances in the past they have taken that; in here they have taken it and are proceeding with that. And I am willing to accept that. And I don't think we should be pressuring them to go back and reverse all this on some hunt that will, according to what is said by their professionals, detract from what we are trying to achieve.

Mr. OBERSTAR. I simply observe that it was not a unanimous vote by the Board, which I was led to believe, and that there is a dissenting view on the Board.

But I still feel that open public hearings on categories of issues are vital for the public interest without determining what the outcome should be or what the probable cause should be, but rather to hold that public hearing and engage the public.

Mr. MICA. Again, I have to go——

Mr. OBERSTAR. We have a disagreement on that.

Mr. MICA. We have a disagreement on that, but we have an agreement, Mr. Chairman, that we both want to correct the situation. That is what is most fundamental. We want to make certain this doesn't happen again.

We have identified hundreds of bridges that have the same condition. We need to make certain that something is done, directives are done. And I think you have already taken some steps—and you sent out a memo in January, I was told—because that was my first consideration. My God, we know pretty good that—and, again, I am concluding that it was design—that there are bridges like this.

We also found—and the staff confirms, too—that the criteria by which the National Bridge Inspection Standards program is conducted doesn't take into consideration the factors that we should be taking in like design that could contribute to something like this. So we should be changing our criteria, what you are asking for, and increasing our bridge inspection and take in the criteria to look for the things that cause bridges like this to collapse.

So I think we want to same goal.

But my concern, too, is this Board, its independence. For them to reverse now and go back, it is going to look like congressional pressure made them do something—that we expand this hearing time, that the investigation go in different directions, and that we don't, as the staff recommend, conclude this.

It was a 3-2 vote. But that is the way things are done, so we go on.

But the integrity of this process, NTSB and your credibility, I believe the credibility is at stake when we step over that boundary.

I yield back. Thank you.

Mr. COSTELLO. The Chair now recognizes the gentlelady from California, Ms. Richardson.

Ms. RICHARDSON. Thank you, Mr. Chairman.

According to the background information that we have, part of your objective is not only to evaluate accidents but to evaluate the effectiveness of other Government agency programs for preventing transportation accidents.

How much time and effort and resources are used focusing on that area?

Mr. ROSENKER. We have a large advocacy program that does enable us to move our recommendations to implementation. Most of what we look at is based on accident investigation. That is the facts and the science that we must deal with. So, as it relates to making audits on other Government agencies, we really do not do that.

Ms. RICHARDSON. Okay. My second question is: Under your leadership, what safety improvements would you most like to see adopted by the aviation industry?

Mr. ROSENKER. Well, I just so happen to have, Congresswoman, a copy of my most-wanted list.

Ms. RICHARDSON. I was just asking staff for that.

Mr. ROSENKER. I happen to have it.

Ms. RICHARDSON. Okay.

Mr. ROSENKER. If you would like a copy, I would be delighted to get you a copy and a copy for anyone on the Committee who would also like it. I am trying to save money. That is why I only brought one with me.

As far as aviation is concerned——

Ms. RICHARDSON. Oh, I suggest you try and save money in another area than that.

Mr. ROSENKER. Okay. Runway incursions is probably the biggest thing that keeps me up.

Ms. RICHARDSON. Okay.

Out of respect for the Chairman, I am going to stop there so other Members can ask their questions before our vote time.

Thank you. I would like that copy.

Mr. ROSENKER. Yes, ma'am. Would you like it now?

Mr. COSTELLO. The Chair thanks the gentlelady and recognizes the gentleman from Oregon, Mr. DeFazio.

Mr. DEFAZIO. Thank you, Mr. Chairman.

Chairman Rosenker, with regard to the staff memo which triggers the vote of the Board on whether or not to hold a public hearing, why is that confidential?

Mr. ROSENKER. Sir, sometimes there are things in that that are sensitive.

Mr. DEFAZIO. But, I mean, you can understand the Chairman's concern and, I think, mine. I have to disagree with Mr. Mica. This is how conspiracy theories get born, you know? Your staff secretly makes a recommendation. You have a split vote, three to two. You decide not to hold a public hearing. I understand what you say the end-point disclosure is going to be, but that is going to be the point at which you have made conclusions.

I also do not understand—you know, I understand there is a fair amount of work that goes into holding a good hearing, but I do not

see why it would cause a 4-month delay in the process unless you are saying that, you know, something might come up at the hearing that would trigger further investigation or a different direction in the investigation.

Mr. ROSENKER. Mr. DeFazio, the history and the only thing I can go on, sir—I have been here 5 years. We have looked at the entire history, and the statistics show it adds anywhere between 2 and 4 months to the conclusion of an investigation. As it relates to the——

Mr. DEFAZIO. That is just by the mere fact of holding a hearing because you have to respond to issues raised in the hearing. Is that it?

Mr. ROSENKER. No.

Mr. DEFAZIO. So this, perhaps, goes back to the point you made. We will not be able to get the additional people we could use, and critical work will be delayed or will go undone. So, if you had gotten those additional staff, could you have held the hearing and then not have had a 4-month or a 2-month delay?

Mr. ROSENKER. In this particular case, we have some specialists who have some unique skills and capabilities and knowledge that would be the appropriate people if we were going to do a substantive hearing. They would be taken away and would be drawn into doing the work of getting the witnesses, of coming up with the appropriate agenda, of dealing with the questions, of doing the research.

When that happens, because we are not two- and three- and four-deep, the work that they are doing stops.

Mr. DEFAZIO. Well, I was just going to say that I do not find the 2 to 4 months credible. A week, 2 weeks. And, also, I think that you live in the process. You close, preclude—how about Comair?

How come you did not hold a hearing on Comair? Is it because of a secret staff recommendation.

Mr. ROSENKER. No, sir. That was unanimous, and the professional staff said they did not need it to conclude the investigation.

Mr. DEFAZIO. But you do not think, in a case like that, where you have, you know, parties, a large number of families who have lost loved ones, that holding a hearing would contribute to the public process and also, perhaps, bring some additional pressure to bear on the airline, itself?

You know, I mean, part of your job is to push for safety. You have all of these recommendations that have not been responded to, but part of triggering that is public pressure. So, if you do not hold the hearing, those people are all isolated in their grief, and they do not get to come together; they do not get the coverage; you do not hold the hearing, and there is not additional pressure put on the airline or airlines.

Mr. ROSENKER. Mr. DeFazio, that case was completed in 11 months. It was done. When we finished it, we brought the families that wished to come to Washington. There were others who did it in—I believe we did this through a video capability in Lexington, Kentucky. All of our Board meetings are done in the sunshine through the Web cast. In 11 months, all of the families——

Mr. DEFAZIO. Except the staff recommendations?

Mr. ROSENKER. Sir?

Mr. DEFAZIO. The staff recommendations, though, are not done in the sunshine on whether or not to hold hearings.

Mr. ROSENKER. It is a notation process, but the documentation, at least the history, according to what I have asked my staff, both counsel and managing director, that these are not released.

Mr. OBERSTAR. Would the gentleman yield?

Mr. DEFAZIO. I would yield, although I have another line of questioning.

Mr. OBERSTAR. Just briefly on this, our Committee last year, held 97 hearings. We heard from 705 witnesses, 310 hours of hearings. If your Board staff cannot conduct a hearing on one issue, then they need to come and take lessons from ours.

I think that this judgment that was made—and the staff, in my recollection, rarely, if ever, recommends a public hearing. It is the Board members who make a decision. That is why you are there, to take into account the public interest and the learning opportunity, the learning experience, from, in this case, an issue that reflects upon a whole category of bridge failures or potential failures.

Mr. DEFAZIO. Thank you, Mr. Chairman.

I would like to turn to a different subject, though, your safety recommendations.

Now, my understanding—and there is, sort of, a new emphasis on closing out safety recommendations, more so than in the past. Are you closing out some that have not been acted on?

Mr. ROSENKER. Mr. DeFazio, that is a different administration, as far as Chairman, in taking a different way of closing. We have gone back—as a matter of fact, this Board that we have right now is much tougher in closing recommendations.

Mr. DEFAZIO. Okay. All right.

Mr. ROSENKER. So, no, sir.

Mr. DEFAZIO. All right. The last time we reauthorized NTSB, I got the law changed a little bit to require a more—rather than the black hole downtown, but to get a response from the Secretary when you make an initial recommendation.

Have they followed through on their obligations in all cases?

Mr. ROSENKER. Sir, I do not have a report in front of me yet, but I appreciate that legislative change that you made to help, in fact, their having to respond to us and Congress about where they are in their process.

Mr. DEFAZIO. Well, there are two. There is the initial filing of your recommendation and a response period for that, with a ″we will take action/we are not going to take action/we are going to take partial action.″

But then there is a second provision, which is an annual report of your outstanding recommendations, and the Secretary is supposed to report to the Board by March 1st. And if you do not receive that report by March 1st, you are supposed to notify us.

So did you get a report this year on March 1st?

Mr. ROSENKER. We did not, sir.

Mr. DEFAZIO. So you should have reported to us that you did not receive the report. Did you do that?

Mr. ROSENKER. I do not believe that has been reported yet, sir.

Mr. DEFAZIO. Okay. So we are getting the report now, but——

Mr. ROSENKER. I will get that report for you before this week is over, at least our response that we have not gotten anything yet.

Mr. DEFAZIO. Okay. So did they comply last year?

Dr. Dillingham, are you familiar with any of this? Have you been following this?

Mr. DILLINGHAM. No, sir, we have not.

Mr. DEFAZIO. Okay. Would you be interested in this?

Mr. DILLINGHAM. Well, yes. We have a request in-house to examine the NTSB recommendation, its closure, its rate, and the principal agencies that it gives its recommendations to. We just have not staffed that request yet.

Mr. DEFAZIO. Okay. If you would, look at particularly these new requirements and the new responsiveness that we require to the Secretary. Because we got tired of the fact that they would make major recommendations, then they would disappear in the FAA or wherever, and you would not hear from them for years. Now there is supposed to be an initial and a follow-up, and we seem to be out of compliance, from what the Chairman is telling me here.

Mr. DILLINGHAM. Yes, sir. Will do.

Mr. ROSENKER. Sir, I will research that and guarantee you will have an answer.

Mr. DEFAZIO. Thank you.

Mr. COSTELLO. The Chair will announce to Members that we have a little over 4 minutes to vote. I understand Mr. Carnahan has one question, and we would like a brief answer.

Mr. CARNAHAN. I have so many questions, but I guess I am going to choose the one level of safety issue for commuter air carriers in terms of operating under the same rules as the larger aircraft.

Given the number of fatal accidents since 2003 in the commuter area, in the under-50-seat aircraft, two of those incidents were in the State of Missouri, I think totaling 85 fatalities in all, I would like your opinion on whether we have achieved that one level of safety for commercial flight.

Aren't these statistics a wake-up call in terms of those disparities? What are we doing to attack that?

Mr. ROSENKER. Mr. Carnahan, we agree with that. One level of safety, certainly at the 121, needs to be, when you pay for a ticket, no matter how big that airplane is or no matter how small that airplane is, you ought to be entitled to know that it is a safe ride that will get you there in a manner in which you are entitled, efficiently and safely.

We are not seeing—as a matter of fact, we have done a number of investigations that deal with commuter-type operations, and some of those operations have shown a deep concern to us.

Mr. COSTELLO. The Chair would ask the gentleman, if that answer is not adequate, to contact the Chairman of the NTSB and follow up.

Mr. CARNAHAN. Mr. Chairman, I have some other questions that I could not get to, and I would like to submit those for the agency.

And I would appreciate your response.

Mr. ROSENKER. We will take those questions and respond as quickly as we can, sir.

Mr. COSTELLO. Without objection.

And the Chair thanks the witnesses for testifying here at the Subcommittee hearing today.

And that concludes our hearing.

Mr. ROSENKER. Thank you, Mr. Chairman.

[Whereupon, at 3:13 p.m., the Subcommittee was adjourned.]

STATEMENT OF
THE HONORABLE JERRY F. COSTELLO

AVIATION SUBCOMMITTEE HEARING
NTSB REAUTHORIZATION
APRIL 23, 2008

- I want to welcome everyone to our hearing today on the reauthorization of the National Transportation Safety Board (NTSB).

- The NTSB was created during the 1966 consolidation of various transportation agencies into the Department of Transportation (DOT). Its main mission is to independently investigate accidents in all transportation modes, including aviation, pipelines, maritime, rail, truck, and automotive transportation.

- In 1974, to further ensure that the NTSB would retain its independence, Congress re-established the Board as a totally separate entity distinct from DOT.

- Since its inception in 1967, the NTSB has investigated more than 128,000 aviation accidents and over 10,000 surface transportation accidents, making it one of the world's premier accident investigation agencies. As a result of these investigations, the board has issued approximately 12,000 safety recommendations with an overall acceptance rate of approximately 82 percent.

- As a result of NTSB's recommendations, important changes and procedures have been made to improve the safety of the traveling public. For example, NTSB produces a Most Wanted list of transportation safety improvements. This list

highlights the most serious safety issues facing transportation. Since the Most Wanted list started in 1990, 73 percent of the 279 recommendations on the list have been accepted and implemented.

- To ensure the NTSB can continue to meet its mission to improve transportation safety, it must have the necessary resources and adequately trained staff to handle these complex investigations. Accordingly, the NTSB has submitted a reauthorization proposal that includes additional funding; additional staff; and specific statutory changes to further its mission.

- NTSB is requesting increased funding over the next three years: $87.891 million in FY 2009; $107.208 million in FY 2010; and $113.026 million in FY 2011. Under the

President's FY09 NTSB budget request of $87.9 million, no new program initiatives or staff would be funded at that level.

- Moreover, the NTSB states that it needs a minimum of 475 full time equivalent employees to fully meet the NTSB's core mission of accident investigation – which is reflected in its FY10 and FY11 request. We must ensure that the NTSB is fully funded, and that the Agency has the necessary resources to hire additional investigative resources.

- According to the NTSB, there are gaps in its statutory authority to investigate certain incidents, obtain evidence, enter into leases, access or protect from disclosure certain information, and investigate accidents in foreign countries.

- My colleagues on the Coast Guard Subcommittee also have some concerns with changes in the NTSB proposal which they will be reviewing separately.

- I look forward to hearing the testimony of Chairman Rosenker today to discuss the NTSB's mission and resource needs and changes in its reauthorization proposal that will ensure the highest level of safety for our transportation system.

- I am also interested in hearing from Dr. Gerald Dillingham on GAO's assessment of the NTSB's general management practices and for an examination of other issues important to this Subcommittee, including the training center, contained in the reauthorization proposal.

- Before I recognize Mr. Petri for his opening statement, I ask unanimous consent to allow 2 weeks for all Members to revise and extend their remarks and to permit the submission of additional statements and materials by Members and witnesses. Without objection, so ordered.

Statement of Rep. Harry Mitchell
House Transportation and Infrastructure Committee
Subcommittee on Aviation
4/23/08

--Thank you, Mr. Chairman.

--The National Transportation Safety Board (NTSB) is tasked with the crucial job of investigating civil aviation accidents, determining probable cause, and making safety recommendations based upon its findings.

--In the wake of this committee's investigation into lapses in FAA safety oversight, we are especially aware of the critical role the NTSB plays in protecting the safety of our nation's airline passengers.

--As my colleagues will recall, we heard alarming testimony from FAA whistle blowers about planes that were allowed to fly in violation of mandatory safety inspections.

--These mandatory inspections were established as a result of NTSB accident investigations.

--According to one estimate, 13,000 Sky Harbor passengers were flown on planes in violation of mandatory safety checks.

--Clearly the flying public deserves better.

--I look forward to hearing from today's witnesses about what we can do to help the NTSB keep the flying public safe.

--I yield back.

STATEMENT OF
THE HONORABLE JAMES L. OBERSTAR

AVIATION SUBCOMMITTEE HEARING
NTSB REAUTHORIZATION
APRIL 23, 2008

I want to thank Chairman Costello and Ranking Member Petri for holding this hearing on the reauthorization of the National Transportation Safety Board (NTSB). I believe there are several important issues to be discussed here today.

This Agency's roots go back to 1926 when the Air Commerce Act vested the Department of Commerce with the authority to investigate aircraft accidents.

During the 1966 consolidation of various transportation agencies into the Department of Transportation (DOT), the NTSB was created as an independent agency within DOT to investigate accidents in all transportation modes.

On April 1, 1967, the NTSB opened its doors with an initial staff of 185, which was drawn from the Civil Aeronautics Board's Bureau of Safety and Bureau of Hearing Examiners. That was a busy year. By the end of 1967, the Board's aviation staff had investigated eight major accidents, conducted seven public hearings, issued 10 major accident reports, assisted in seven foreign investigations, and read out 42 cockpit voice recorders and 87 flight data recorders. Investigators in 11 field offices

investigated more than 860 general aviation accidents and issued 3,111 summary reports during the year. Thirty-five safety recommendations were issued to the Federal Aviation Administration.

Seven years later, in 1974, Congress re-established the Board as a totally separate entity distinct from DOT, to ensure that it would retain its independence.

The NTSB's recommendations and its vigilance on safety issues result in improvements in the way we conduct the business of transportation in all modes. While aviation is perhaps the area in which the NTSB's work is most visible, that should not overshadow the very significant and important work the agency performs in pipelines, maritime, rail, truck, and automotive transportation.

In particular, the Board's investigation of the August 1, 2007, collapse of the Interstate 35 West Bridge in Minneapolis, Minnesota, is an extremely important one. The Interstate 35 bridge collapse, which resulted in 13 fatalities, captured the attention of the public across the nation and, indeed, across the world. The Board's decision to not hold a public hearing on this accident was inexplicable. If the sudden collapse of an interstate highway bridge, and the resulting deaths of 13 individuals, does not merit a public hearing, then what type of accident does?

In the aftermath of the Board's decision to not hold a public hearing on the Minneapolis bridge collapse, it came to my attention that the number of public hearings held by the Board has been quite small in recent years, ranging from one to three per year, for all modes of transportation combined.

I am concerned that the benefits of public hearings are not being appropriately weighed against the costs, which admittedly include additional work and time.

In this case, there was considerable local debate about the causes of, and the responsibility for, the bridge collapse. In a situation such as this, a public hearing can assure the public that the Board is conducting a comprehensive, transparent, and independent investigation that transcends local politics. The Members of the Board who were in favor of holding a public hearing on the Minneapolis bridge collapse made this point quite well. These Members stated that, "If [the Board] doe[s] a thorough and conscientious job that includes a public hearing with participation from the parties and that provides answers to the myriad of questions that have been raised, the public will respect and support that effort and the final product."

Beyond the concerns of local residents, a hearing would have helped to educate the entire country about the safety of bridges, and the adequacy of regulatory programs designed to ensure that bridges continue to be safe. The public would have

welcomed a thorough discussion of how the design of this particular bridge was approved; why this bridge failed; whether we need to take steps to prevent other tragedies; whether there have been improvements in bridge design and the design approval process since the I-35W bridge design was approved in the 1960s; and whether we are now devoting sufficient financial and staff resources to ensure continued bridge safety.

In the future, I urge the Board to reconsider the benefits of public hearings and bear in mind that one of the main reasons we have a politically appointed Board, and do not rely solely on professional career investigators, is that we expect Board Members to see needs beyond reaching a technically correct decision, such as the need for transparency, public participation, and education. In other words, hearings can be both a teaching moment and a learning moment for the Board.

It also came to my attention that the Board's lack of primacy in highway accident investigations may have been a consideration in the Board's decision not to hold a public hearing on the Minneapolis bridge collapse. Federal statute currently authorizes the Board to investigate a highway accident "the Board selects in cooperation with a State". In the rare case in which such cooperation is not forthcoming, this lack of primacy could result in a State agency barring the NTSB from a highway accident scene. It is my understanding that this actually occurred

during the NTSB's investigation of an accident in which an elderly driver drove into a crowd of pedestrians at a Santa Monica, California, market. NTSB investigators were reportedly barred from the scene, and denied access to witnesses for months afterward.

At this hearing, we should explore whether the NTSB should have clear authority to assert primacy in a highway accident investigation. This would seem particularly appropriate when there is a possibility that the actions of a State agency, or lack thereof, may have contributed to an accident. In these cases, without primacy, the possibility for a conflict of interest, or a perceived conflict of interest, exists.

Notwithstanding these concerns, I continue to be a strong supporter of the NTSB's mission, and I continue to believe the NTSB does an excellent job in investigating accidents.

To maintain its position as the world's preeminent investigative agency, it is imperative that the NTSB has sufficient resources to perform its mission. The NTSB has requested $87.9 million for fiscal year (FY) 2009, consistent with the FY 2009 President's Budget. No new program initiatives or new staff would be funded at this request level.

Beyond FY 2009, the NTSB has requested $107.2 million for FY 2010, and $113.0 million for FY 2011. These funding levels would support an increase in staff, to 475 full time equivalent employees, which NTSB states is the minimum needed to fully, effectively and efficiently meet the NTSB's core mission of accident investigation.

We must fully fund the NTSB to ensure that it has the necessary resources to conduct independent investigations, without undue reliance on other agencies and parties to the investigation.

Having a well funded, well-trained NTSB workforce is of the utmost importance for the American traveling public. I look forward to hearing the testimony of Chairman Rosenker today, which will help us perform the most important duty of this committee – ensuring the highest level of safety for our transportation system.

STATEMENT OF

REP. THOMAS E. PETRI, Ranking Member

SUBCOMMITTEE ON AVIATION

HEARING ON

Reauthorization of the

National Transportation Safety Board (NTSB)

April 23, 2008, 2:00 pm, 2167 RHOB

Today we will receive testimony on the agency proposal for the National Transportation Safety Board reauthorization. The Board's current authorization expires on September 30, 2008.

The NTSB is a small, but important, part of the Federal Government.

With an annual budget of $84 million and a staff of nearly 400 people, the NTSB makes critical contributions to safety in all modes of our national transportation system.

In the United States, the 2007 commercial aviation accident fatality rate for both scheduled and unscheduled operations was .009 accidents per 100,000 departures. There was not a single fatality on any scheduled passenger service operation in 2007 – an amazing record by any standard.

I believe this unprecedented aviation safety record is, in part, due to the outstanding work over the years by hundreds of NTSB professionals as well as the Federal Aviation Administration and the aviation industry.

But even with this outstanding safety record in commercial air transportation, we must continue to make the system even safer, especially as demand and congestion increase.

Since its creation in 1967, the NTSB has investigated more than 128,000 aviation accidents, and more than 10,000 accidents in other transportation modes.

As a result of these investigations, the Board has issued almost 12,800 safety recommendations, and over 82 percent of those have been adopted.

The NTSB also serves as the "court of appeals" for any airman, mechanic or mariner whenever certificate action is taken by the FAA Administrator or the U.S. Coast Guard Commandant.

Each year since 1990, the NTSB has issued a list of its "Most Wanted" transportation safety improvements. I believe this tool has served the public well. In fact, over the past 17 years, 73% of the 279 recommendations placed on the "Most Wanted" list have been accepted and implemented.

The Board's three-year reauthorization request includes additional funding, additional staff, and legislative changes that appear to expand the Board's statutory mission authority.

The budget request of $87.9 million is $3.392 million above the fiscal year 2008 enacted level. This increase is related to pay raises, benefit cost increases, and inflation.

The fiscal years 2010 and 2011 authorization levels requested by the NTSB are based on 475 full-time employee equivalents.

It is my understanding that after conducting a human capital forecast, the Board has determined that it would need a minimum of 475 full-time equivalent employees to effectively and efficiently meet the mission and support efforts that are currently expected of the Board. This would require an increase over Fiscal Year 2008 enacted funding levels of roughly 26 percent.

Finally, the NTSB has proposed several significant statutory changes, including:

- Additional authority to investigate "Events" and "Incidents" in all modes of transportation;
- Expansion of the Board's subpoena authority;
- Statutorily - mandated access to financial and medical records;

- Enhanced Freedom of Information Act (FOIA) protection for disclosure of information;
- Multi-year leasing authority outside of current General Services Administration (GSA) facility leasing practices;
- Commercial space accident investigation authority;
- Access to new data recording media; and
- Additional penalties for unlawful solicitations following aviation accidents.

We look forward to hearing from the Board's Chairman, Mr. Mark Rosenker (Roe-zen-ker), and Dr. Dillingham of the GAO, on these issues, as well as an update on the NTSB's Training Center and other relevant matters important to the Subcommittee.

With that, I thank the Chairman and yield back the balance of my time.

Congresswoman Laura Richardson
Statement at Subcommittee on Aviation
Hearing on
"Reauthorization of the National Transportation Safety Board"
Wednesday, April 23, 2008
2167 Rayburn House Office Building 2pm

Mr. Chairman, I want to thank you and Ranking Member Mica for holding this important hearing today for a discussion on the Reauthorization of the National Transportation Safety Board. I represent California's 37th Congressional District, which encompasses both Long Beach International and Compton/Woodley airport and neighbors Los Angeles International Airport. Aviation is economically crucial to my district, employing

thousands and delivering over 49,000 tons of goods each year. Ensuring the safe and steady flow of commerce is of utmost importance not just to Southern California but to the nation as a whole.

Since the National Transportation Safety Board was founded, the NTSB has investigated over 128,000 aviation accidents and offered thousands of recommendations to improve aviation safety standards and procedures. In upholding America's high aviation safety standards, innovative approaches need to be continually created and implemented to ensure people and businesses that U.S commercial

aviation is reliable to the individuals that fly and the cargo being delivered.

Ultimately, the NTSB must maintain properly funded operational and investigative capabilities to function effectively domestically or abroad. Recently this Committee held a hearing on the critical lapses occurring with the FAA's safety oversight. It is my hope that this Committee implements some of those recommendations in this upcoming reauthorization.

I look forward to hearing today's testimonies.

Thank you Mr. Chairman

United States Government Accountability Office

GAO

Testimony Before the Subcommittee on Aviation, Committee on Transportation and Infrastructure, House of Representatives

For Release on Delivery
Expected at 2:00 p.m. EDT
April 23, 2008

NATIONAL TRANSPORTATION SAFETY BOARD

Progress Made in Management Practices, Investigation Priorities, Training Center Use, and Information Security, But These Areas Continue to Need Improvement

Statement of Gerald L. Dillingham, Ph.D.
Director, Physical Infrastructure Issues

Gregory C. Wilshusen
Director, Information Security Issues

GAO-08-652T

GAO
Accountability*Integrity*Reliability
Highlights

Highlights of GAO-08-652T, a testimony before the Subcommittee on Aviation, Committee on Transportation and Infrastructure, House of Representatives

Why GAO Did This Study

The National Transportation Safety Board (NTSB) plays a vital role in advancing transportation safety by investigating accidents, determining their causes, issuing safety recommendations, and conducting safety studies. To support its mission, NTSB's training center provides training to NTSB investigators and others. It is important that NTSB use its resources efficiently to carry out its mission. In 2006, GAO made recommendations to NTSB in most of these areas. In 2007, an independent auditor made information security recommendations. This testimony addresses NTSB's progress in following leading practices in selected management areas, increasing the efficiency of aspects of investigating accidents and conducting safety studies, increasing the utilization of its training center, and improving information security. This testimony is based on GAO's assessment of agency plans and procedures developed to address these recommendations.

What GAO Recommends

To assist the agency in continuing to strengthen its overall management as well as information security, GAO recommends that NTSB report the status of GAO recommendations to Congress annually, encrypt all laptops, and remove excessive access privileges for users' workstations. NTSB agreed with the recommendations.

To view the full product, including the scope and methodology, click on GAO-08-652T. For more information, contact Gerald L. Dillingham, Ph.D. at (202) 512-2834 or dillinghamg@gao.gov.

April 23, 2008

NATIONAL TRANSPORTATION SAFETY BOARD

Progress Made in Management Practices, Investigation Priorities, Training Center Use, and Information Security, But These Areas Continue to Need Improvement

What GAO Found

NTSB has made progress in following leading management practices in the eight areas in which GAO made prior recommendations. For example, the agency has improved communication from staff to management by conducting periodic employee surveys, which should help build more constructive relationships within NTSB. Similarly, the agency has made significant progress in improving strategic planning, human capital management, and IT management. It has issued new strategic plans in each area. Although the plans still leave room for improvement, they establish a solid foundation for NTSB to move forward. However, until the agency has developed a full cost accounting system and a strategic training plan, it will miss other opportunities to strengthen the management of the agency.

NTSB has improved the efficiency of activities related to investigating accidents and tracking the status of recommendations. For example, it has developed transparent, risk-based criteria for selecting which rail, pipeline, hazardous materials, and aviation accidents to investigate at the scene. The completion of similar criteria for marine accidents will help provide assurance that NTSB is managing its resources in a manner to ensure a maximum safety benefit. Also, it is in the process of automating its lengthy, paper-based process for closing-out recommendations.

Although NTSB has increased the utilization of its training center—from 10 percent in fiscal year 2006 to a projected 24 percent fiscal year 2008—the classroom space remains significantly underutilized. The increased utilization has helped increase revenues and reduce the center's overall deficit, which declined from about $3.9 million in fiscal year 2005 to about $2.3 million in fiscal year 2007. For fiscal year 2008, NTSB expects the deficit to decline further to about $1.2 million due, in part, to increased revenues from subleasing some classrooms starting July 2008. However the agency's business plan for the training center lacks specific strategies to achieve further increases in utilization and revenue.

NTSB has made progress toward correcting previously reported information security weaknesses. For example, in an effort to implement an effective information security program, the agency's Chief Information Officer is monitoring corrective actions and has procured and, in some cases, begun to implement automated processes and tools to help strengthen its information security controls. While improvements have been made, work remains before the agency is fully compliant with federal policies, requirements, and standards pertaining to information security, access controls, and data privacy. In addition, GAO identified new weaknesses related to unencrypted laptops and excessive user access privileges. Agency officials attributed these weaknesses to incompatible encryption software and a mission need for certain users. Until the agency addresses these weaknesses, the confidentiality, integrity, and availability of NTSB's information and information systems continue to be at risk.

Mr. Chairman and Members of the Subcommittee:

We appreciate the opportunity to testify before you today as you consider the reauthorization of the National Transportation Safety Board (NTSB). NTSB is a relatively small agency that has gained a worldwide reputation as a preeminent agency in conducting transportation accident investigations. With a staff of about 400 and a budget of $84.8 million in fiscal year 2008, NTSB is charged with investigating every civil aviation accident in the United States and significant accidents in the other modes, determining the probable cause of these accidents, and providing recommendations to address safety issues identified during accident investigations and safety studies of multiple accidents. To support its mission, NTSB built a training academy that opened in 2003 and provides training to NTSB investigators and other transportation safety professionals.

While new transportation technologies and NTSB's safety recommendations have made transportation safer than ever, the expected increase in the demand for all transportation modes has the potential to increase the number of accidents, which could place a strain on the ability of NTSB to continue playing its vital role in transportation safety. As the nation's large and growing long-term fiscal imbalance demands a growing share of federal resources, making increases in the budgets of individual agencies uncertain, it is critical that NTSB use its resources in an efficient manner to carry out its safety mission and maintain its preeminent position. For this reason, in 2006, we conducted a broad review of the agency's management practices, examined how it carried out its activities related to accident investigations and safety studies, and analyzed whether its training center was cost-effective.[1] We made recommendations in each of these areas. In addition, in recent years, other entities have conducted reviews and made recommendations to NTSB related to information security practices. Our testimony addresses NTSB's progress in (1) following leading practices in management areas such as strategic planning, human capital management, and financial management; (2) increasing the efficiency of activities related to investigating accidents, issuing recommendations, and conducting safety studies; (3) increasing the utilization of its training center; and (4) responding to

[1] GAO, *National Transportation Safety Board: Progress Made, Yet Management Practices, Investigation Priorities, and Training Center Use Should Be Improved.* GAO-07-118 (Washington, D.C.: Nov. 22, 2006).

recommendations from an independent information security audit. In discussing NTSB's progress in these areas, we will also provide views on several related provisions in the agency's reauthorization proposal.

Our testimony is based on our analysis of policies and procedures developed by NTSB in response to recommendations made by GAO and the independent audit, updates to information we reported in 2006, and our analysis of provisions in NTSB's reauthorization proposal. We considered NTSB to have made *limited progress* in implementing a recommendation when the agency was in the early planning stages and documents or milestones for actions did not exist or they did not follow leading practices. Recognizing that many recommendations may take considerable time and effort to fully implement, we considered NTSB to have made *significant progress* in implementing a recommendation if the agency had taken steps beyond the early planning stages toward addressing the concerns. In this case, documents or policies had been developed that, for the most part, followed leading practices. We considered NTSB to have *fully implemented* a recommendation when the agency had fully implemented plans or processes that followed leading practices. We undertook this work in response to a legislative mandate that we conduct an annual audit of NTSB.[2] Appendix I provides additional information on the recommendations discussed below.

NTSB Has Made Progress in Improving Many Management Practices, But Further Improvements are Needed in Training and Financial Management

Overall, NTSB has made progress in following leading management practices in the eight areas in which we made recommendations in 2006. Our recommendations are based on leading practices identified through our government wide work that are important for managing an agency. Although NTSB is a relatively small agency, such practices remain relevant. Figure 1 provides a summary of NTSB's progress in implementing our 12 management recommendations.

[2]The National Transportation Safety Board Reauthorization Act of 2006 (P.L. 109-443) requires GAO to conduct an annual review of NTSB.

Figure 1: Status of GAO's Recommendations Related to NTSB's Management

Area	GAO recommendation	Status
Communication	Develop mechanisms to facilitate communication from staff to management	
Strategic planning	Develop a revised strategic plan	◐
Information technology (IT)	Develop an IT plan	◐
Knowledge management	Develop a knowledge management plan	◐
Organizational structure	Align organizational structure to implement strategic plan	
	Eliminate unnecessary management layers	◐
Human capital management	Develop a human capital plan	◐
Training	Develop a strategic training plan	○
	Develop a core curriculum for investigators	○
Financial management	Correct violation of the Anti-Deficiency Act related to purchasing accident insurance for employees on official travel[a]	
	Correct violation of the Anti-Deficiency Act related to agency's lease of the training center	◐
	Develop a full cost accounting system to track time employees spend on each investigation and in training	○

Status key: ●Fully implemented ◐Significant progress ○Limited progress

Source: GAO.

[a]We did not make a recommendation regarding this violation of the act because we reported the violation in a Comptroller General's decision, and such decisions do not include recommendations. Nevertheless, a Comptroller General's decision that an agency has violated the Anti-Deficiency Act, in and of itself, suggests that the agency should correct the deficiency.

Among the areas that NTSB has made the most progress is improving communication from staff to management, which should help staff and management build more constructive relationships, identify operational and work-life improvements, and enable management to better understand and respond to issues faced by investigators and other staff. The agency managers have, for example, hosted brown bag lunches with staff to facilitate communication and conducted periodic surveys of employees to determine, among other things, their level of satisfaction and ways to improve communication. In addition, NTSB has made significant progress in improving its strategic planning and human capital management, and

progress in developing an information technology (IT) strategic plan. For example, NTSB has revised its strategic plan to follow some performance-based requirements, and it has developed strategic human capital and IT plans. Although these plans still offer room for improvement, they establish a solid foundation for NTSB to move forward, both broadly as an agency and specifically with respect to IT efforts.

In addition, NTSB has made significant progress in improving its knowledge management (i.e., a way for it to create, capture, and reuse knowledge to achieve its objectives). While the agency has adopted a strategy for knowledge management activities and hired a chief information officer (CIO) to implement policies and procedures on information sharing, until NTSB completes its strategic training plan, which NTSB has told us will include a knowledge management component, the implementation of NTSB's knowledge management strategy will be unclear.

To its credit, NTSB has taken some steps to improve its training activities, such as hiring a training officer in April 2007 and requiring all staff to complete individual development plans aimed at improving their capabilities in support of the agency's needs; however, NTSB does not expect to complete a strategic training plan until later this year. In addition, NTSB's core competencies and associated courses for its investigators lack sufficient information on the knowlegdge, skills, and abilities for each competency to provide assurance that the agency's training curriculum supports its mission.

NTSB has also improved some aspects of its financial management by correcting a violation of the Anti-Deficiency Act related to purchasing accident insurance for employees on official travel, making progress toward correcting another violation of the Act related to lease payments of its training center, and receiving an unqualified or "clean" opinion from independent auditors on its financial statements from fiscal years ending September 30, 2003, through 2007. However, NTSB has made limited progress in developing a full cost accounting system to track the time employees spend on each investigation and in training. It intends to request funding to begin this effort in fiscal year 2010. Without a full cost accounting system, project managers lack a comprehensive means to understand how staff resources are utilized and to monitor workload. Until NTSB improves its financial management and develops a strategic training plan, it will miss the opportunity to better understand how its limited resources are applied to activities that support the agency's

mission, such as accident investigation, as well as individual staff development.

In addition, a provision of NTSB's reauthorization proposal would exempt the agency from the Anti-Deficiency Act and allow it to incur obligations both for the acquisition and lease of real property in advance or in excess of an appropriation. If Congress decides to grant this exemption, we suggest more narrow authority that addresses NTSB's particular need to obtain a new lease for its headquarters when the current lease expires in 2010. For example, authority to enter into leases for up to a specified number of years using annual funds over the term of the lease would be a more appropriate option. Typically, federal agencies do not require such an exemption because they rent real property through the General Services Administration (GSA), which has realty specialists, staff knowledgeable about the leasing market, and experience in lease administration. As part of the fee that GSA charges agencies (7 percent for NTSB), agencies have the ability to walk away from a lease with 120 days notice. If NTSB does not lease through GSA and instead is granted delegation authority to deal directly with lessors, it might not have the 120-day agreement and would be responsible for all aspects of negotiating and administering its leases.

NTSB Has Made Improvements Related to Accident Investigation, But Its Safety Impact Could be Greater with More Safety Studies

NTSB has improved the efficiency of activities related to investigating accidents, such as selecting accidents to investigate and tracking the status of recommendations, but it has not increased its use of safety studies (see fig. 2). Since 1997, NTSB has issued about 2,400 recommendations. The agency has closed about 1,500 (63 percent) of those recommendations, and of those it closed, 88 percent were closed with the agency having taken acceptable action, while 12 percent were closed with an "unacceptable" status.

Figure 2: Status of Recommendations Related to NTSB's Accident Investigation Mission and Safety Studies

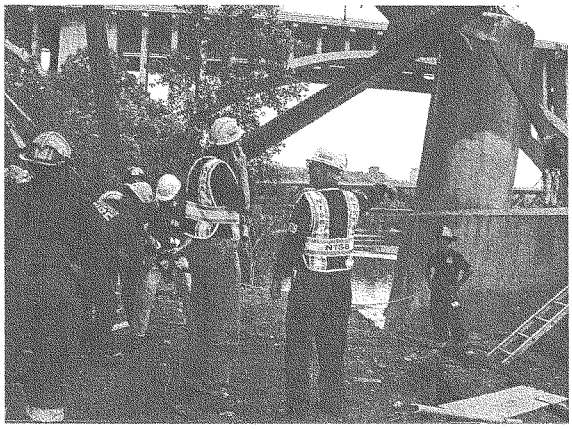
Area	Recommendation(s)	Status
Accident selection	Develop agency orders for all modes articulating risk-based criteria for selecting which accidents to investigate	◐
Recommendation close-out	Computerize related documentation and use concurrent reviews	◐
Report development	Identify better practices in the agency and apply them to all modes	◐
Safety studies	Increase utilization of safety studies	○

Status key: ●Fully implemented ◐Significant progress ○Limited progress

Source GAO

NTSB is required by statute to investigate all civil aviation accidents and selected accidents in other modes—highway, marine, railroad, pipeline, and hazardous materials. NTSB has improved its process for selecting accidents to investigate by developing transparent, risk-based criteria for selecting which rail, pipeline, and hazardous materials accidents to investigate and which aviation accidents to investigate at the scene, or remotely, in a limited manner. The completion of its effort to develop similar criteria for marine accidents will help provide assurance and transparency that the agency is managing investigative resources in a manner that ensures a maximum safety benefit. NTSB has also made significant progress in improving its recommendation close-out process by working to automate this process by the end of this fiscal year. Completion of the automation should help speed the process and aid the expedient delivery of information about recommendation status to affected agencies. In addition, NTSB has begun to identify and share best practices for accident investigations among investigators in all transportation modes. These activities, when fully implemented, will help to ensure the effective and efficient use of agency resources. In contrast, NTSB has not increased its utilization of safety studies, which provide analyses of multiple accidents and usually result in safety recommendations. NTSB officials told us that the agency does not have enough staff to increase the number of safety studies and, therefore, they hope to identify more cost effective ways to conduct the studies. We believe that greater progress in this area, which could result in more safety recommendations, would improve NTSB's impact on safety.

Figure 3: NTSB Investigators at an Accident Site



Source: NTSB.

NTSB's reauthorization proposal seeks to make several changes to the agency's accident investigation process that have the potential to expand the scope of the agency's authority. For example, the proposal would expand the definition of accidents to include events that affect transportation safety, but do not involve destruction or damage. It is unclear if this new authority would expand NTSB's workload, since "events" are not defined in the proposal, unlike "accidents" and "incidents," which NTSB already investigates and are defined in regulation. In addition, NTSB has not explained the criteria for identifying events to investigate. Without explicit criteria, the agency cannot be assured it is making the most effective use of its resources.

NTSB Has Made Progress in Increasing the Utilization of the Training Center, But the Facility Remains Underutilized

While NTSB has taken steps to increase the utilization of the training center and to decrease the center's overall deficit, the classroom space remains significantly underutilized. The agency increased utilization of classroom space in the training center from 10 percent in fiscal year 2006 to 13 percent in fiscal year 2007. In addition, NTSB is finalizing a sublease agreement with the Department of Homeland Security to rent approximately one-third of the classroom space beginning July 1, 2008, which would help increase utilization of classroom space to 24 percent in fiscal year 2008. Further, in 2008, NTSB expects to deliver 14 core investigator courses at the training center. While we do not expect any classroom space ever to be 100 percent utilized, we believe a 60 percent utilization rate for training center classrooms would be reasonable, based on our knowledge of similar facilities.

The agency's actions to increase utilization also helped increase training center revenues from about $630,000 in fiscal year 2005 to about $820,000 in fiscal year 2007. By simultaneously reducing the center's expenses—for example, by reducing the number of staff working at the center—NTSB reduced the training center's annual deficit from about $3.9 million to about $2.3 million over the same time period. We believe these actions to increase utilization and their impact on the financial position of the training center are positive steps and provide some progress toward addressing our recommendations (see fig. 4).

Figure 4: Status of Recommendations Related to Training Center Utilization

Recommendation	Status
Maximize the delivery of core investigator curriculum at its training center	◐
Develop plans to increase utilization of the training center	◐

Status key: ●Fully implemented ◐Significant progress ○Limited progress

Source: GAO.

In addition, for fiscal year 2008, NTSB's March 2008 business plan for the training center estimates that revenues will increase by about $570,000 to about $1.4 million and expenses will be $2.6 million, leaving a deficit of about $1.2 million. The increase in revenues is due primarily to subleasing all available office space at the training center to the Federal Air Marshals starting in September 2007 for $479,000 annually. According to agency

officials, the projected deficit is no more than they would pay to provide training and store accident wreckage somewhere else,[3] but as discussed in detail in appendix I, we do not believe that the plan provides enough information to support this conclusion.

Going forward, however, the agency's business plan for the training center lacks specific strategies to explain how further increases in utilization and revenue enhancement can be achieved. According to agency officials, they do not believe further decreases in the deficit are possible. However, without strategies to guide its efforts to market its classes and the unused classrooms, NTSB may be missing further opportunities to improve the cost-effectiveness of the center.

NTSB Has Made Progress in Implementing Information Security-Related Recommendations, But Weaknesses Remain

Overall, NTSB has made progress in resolving or addressing weaknesses identified in an independent external audit of NTSB's information security program, as required by the Federal Information Security Management Act of 2002 (FISMA).[4] This evaluation, which was performed for fiscal year 2007 made eight recommendations to NTSB to improve compliance with FISMA, strengthen system access controls, and take steps to meet the requirements of the Privacy Act and related guidance by the Office of Management and Budget (OMB). Regarding FISMA compliance, NTSB made important progress by, among other things, hiring a contractor to perform security testing and evaluation of its general support system—an interconnected set of information resources, which supports the agency's two major applications. Although the contractor identified 113

[3] The training center contains a large area that houses reconstructed wreckage from TWA 800, damaged aircraft, and other wreckage.

[4] The Federal Information Security Management Act of 2002 (FISMA) requires that each agency shall have performed an independent evaluation of the information security program and practices of that agency to determine their effectiveness. Agencies that do not have an Inspector General, such as the National Transportation Safety Board (NTSB), shall engage an independent external auditor to perform the evaluation. NTSB contracted with Leon Snead & Company to perform the independent external audit. See Leon Snead & Company, P.C., *National Transportation Safety Board: Compliance with the Requirements of the Federal Information Security Management Act, Fiscal Year 2007* (Sept. 24, 2007). The audit, which was performed for fiscal year 2007 and submitted to OMB, as required by FISMA, identified weaknesses in NTSB's compliance with FISMA requirements and included an assessment of the agency's actions to address recommendations in prior year FISMA reports. Those prior reports include U.S. Department of Transportation, Office of Inspector General, *Information Security Program: National Transportation Safety Board,* Report No. FI-2006-001 (Washington, D.C.: Oct. 7, 2005); and *Information Security Program: National Transportation Safety Board,* Report No. FI-2007-001 (Washington, D.C.: Oct. 13, 2006).

vulnerabilities which collectively place information at risk, NTSB has documented these vulnerabilities in a plan of action and milestones. NTSB officials stated that they have resolved many of the vulnerabilities and have actions under way to address the remaining vulnerabilities. Figure 5 shows NTSB's progress specific to each of the recommendation made in the independent evaluation.

Figure 5: Status of Recommendations from an Independent Evaluation

Information security area	Recommendation	Status
FISMA	Ensure that the CIO monitors all key corrective actions and provides the necessary funding and human resources	◐
Access controls	Remove access authorities to NTSB's systems from personnel who are no longer NTSB employees	●
	Maintain documentation supporting the initial access granted to a user	◐
	Develop detailed operational procedures to guide system security officers and system owners in the process of recertifying users	○
	Develop a process to properly analyze and complete the annual recertification of users' access authorities	○
	Implement a control to automatically suspend an account after a period of non-use	○
Privacy Act	Update the plan of action and milestones to reflect the current status of NTSB's actions to address Privacy Act and OMB Memoranda	●
	Comply with requirements of the Privacy Act and policy set forth by OMB Memoranda	○

Status key: ●Fully implemented ◐Significant progress ○Limited progress

Source: GAO.

In addition to the weaknesses addressed in these recommendations, our limited review of NTSB's information security controls identified two new weaknesses regarding unencrypted laptop computers and excessive access privileges on users' workstations. Federal policy requires agencies to encrypt, using only National Institute of Standards and Technology (NIST) certified cryptographic modules, all data on mobile computers/devices that contain agency data unless the data are determined not to be sensitive by the agency's Deputy Secretary or his/her designate. However, NTSB has not encrypted data on 184 of 383 of its laptop computers. As a result, agency data on these laptops are at increased risk of unauthorized access and unauthorized disclosure.

According to NTSB officials, the hardware on these laptops is not compatible with NTSB's encryption product. To help mitigate the risk, NTSB officials stated that employees in the agency's telework program use encrypted laptops and that non-encrypted laptops are to remain in the headquarters building. NTSB officials stated that they have ongoing efforts to identify and test compatible encryption software for these laptop computers. Until NTSB encrypts data on its laptops, agency data will remain at increased risk of unauthorized access and unauthorized disclosure.

With regard to access, NTSB has inappropriately granted excessive access privileges to users. Users with local administrator privileges on their workstations have complete control over all local resources, including accounts and files, and have the ability to load software with known vulnerabilities, either unintentionally or intentionally, and to modify or reconfigure their computers in a manner that could negate network security policies as well as provide an attack vector into the internal network. Accordingly, industry best practices provide that membership in the local administrators' groups should be limited to only those accounts that require this level of access. However, NTSB configures all users' workstations with these privileges in order to allow investigators the ability to load specialized software needed to accomplish their mission. As a result, increased risk exists that these users could compromise NTSB's computers and internal network. NTSB officials stated that they are planning to deploy standard desktop configurations, which they believe should address this vulnerability; however, the agency has not yet provided a timeframe when this will be completed. In the meantime, the agency asserts that it continuously monitors and scans workstations for vulnerabilities and centrally enforces the deployment and use of local firewall applications. Until NTSB takes action to remove or limit users' ability to load software and modify configurations on their workstations, the agency is at increased risk that its computers and network may be compromised. We believe that by fully resolving the weaknesses described in the 2007 FISMA evaluation and addressing the newly identified weaknesses, NTSB can decrease risks related to the confidentiality, integrity, and availability of its information and information systems.

Conclusions

While NTSB has made progress in improving its management processes and procedures, the full implementation of effective management practices are critical to NTSB being able to carry out its accident investigation mission and maintain its preeminent reputation in this area. Further, until NTSB protects agency data and limits users' access to its

systems, its information and information systems are at increased risk of unauthorized access and unauthorized disclosure. For continuing Congressional oversight, it is important that Congress have updated information on challenges that the agency faces in improving its management. While NTSB is required to submit an annual report on information security, there is no similar reporting requirement for the other management challenges.

Recommendations for Executive Action

To assist NTSB in continuing to strengthen its overall management of the agency as well as information security, we are making three recommendations to the Chairman of the National Transportation Safety Board. To ensure that Congress is kept informed of progress in improving the management of the agency, we recommend that the Chairman (1) report on the status of GAO recommendations concerning management practices in the agency's annual performance and accountability report or other congressionally approved reporting mechanism.

We also recommend that the Chairman direct NTSB's Chief Information Officer to (2) encrypt information/data on all laptops and mobile devices unless the data are determined to be non-sensitive by the agency's deputy director or his/her designate and (3) remove user's local administrative privileges from all workstations except administrators' workstations, where applicable, and document any exceptions granted by the Chief Information Officer.

Agency Comments

We provided NTSB a draft of this statement to review. NTSB agreed with our recommendations and provided technical clarifications and corrections, which we incorporated as appropriate.

Scope and Methodology

To determine the extent to which NTSB has implemented the recommendations we issued in 2006, we reviewed NTSB's strategic plan, IT strategic plan, draft human capital strategic plan, training center business plan, and office operating plans. To obtain additional information about these documents and other efforts to address our recommendations we interviewed NTSB's Chief Information Officer, Chief Financial Officer, General Counsel, and other agency officials as well as representatives from NTSB's employees union. To determine the extent to which NTSB has implemented other auditors' recommendations related to information security, we reviewed work performed in support of the fiscal year 2007 FISMA independent evaluation, as well as FISMA independent evaluations performed by the Department of Transportation's Office of

Inspector General in 2005 and 2006. We obtained evidence concerning the qualifications and independence of the auditors who performed the 2007 FISMA review, and determined that the scope, quality, and timing of the audit work performed by this audit supported our audit objectives. In addition, we reviewed agency documents, and interviewed agency officials, including information security officials. We compared evaluations presented in audit documentation with applicable OMB and NIST guidance, and the Federal Information Security Management Act legislation. We also conducted a limited review of security controls on NTSB's information systems. We considered NTSB to have made *limited progress* in implementing a recommendation when the agency was in the early planning stages and documents or milestones for actions did not exist or they did not follow leading practices. Recognizing that many recommendations may take considerable time and effort to fully implement, we considered NTSB to have made *significant progress* in implementing a recommendation if the agency had taken steps beyond the early planning stages toward addressing the concerns. In this case, documents or policies had been developed that, for the most part, followed leading practices. We considered NTSB to have *fully implemented* a recommendation when the agency had fully implemented plans or processes that followed leading practice.

This work was conducted in accordance with generally accepted government auditing standards between October 2007 and April 2008. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Contacts and Acknowledgments

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Appendix I: Additional Information on Prior Recommendations Issued to NTSB by GAO and an Independent Auditor

Management-Related Recommendations

Communication

What Was Found

In 2006, we found that NTSB had taken positive steps to improve communications from senior management to staff, such as periodically sending e-mails to all staff to share information on new developments and policies. However, the agency lacked upward communications mechanisms—such as town hall meetings, regular staff meetings, and confidential employee surveys—which are central to forming effective partnerships within the organization.

What Was Recommended

To improve agency communications, we recommended that NTSB develop mechanisms that will facilitate communication from staff level employees to senior management, including consideration of contracting out a confidential employee survey to obtain feedback on management initiatives.

Our Assessment of NTSB's Progress

NTSB has fully implemented this recommendation. NTSB management officials have put in place processes to improve communication within the agency, and NTSB union officials told us that they believe that upward communication has improved as a result. For example, managers and Board members hold periodic meetings with staff, such as brown bag lunches; conduct outreach visits to regional offices; hold "town-hall" meetings in which NTSB employees ask questions of the managing director; and conduct meetings with union leadership to provide information on upcoming actions by the agency and to allow union leaders the opportunity to pose questions to management.

In addition, the agency has formed two bodies comprising representatives from management and staff intended to enhance internal communication, including upward communication. One body is comprised of employees from NTSB's administrative offices, and the other from NTSB's program offices. In addition, NTSB has begun conducting several periodic surveys of employees, including (1) a survey to measure staff satisfaction with internal communications; (2) a survey to obtain employees' views on the mission statement and goals that NTSB proposed for its revised strategic plan; (3) four separate surveys to measure employee satisfaction with services provided by NTSB's administrative, human resources, and acquisition divisions and NTSB's health and safety program; and (4) a biennial survey to obtain employee feedback on NTSB's human resources efforts. This latter survey supplements—by being conducted during alternating years—the Office of Personnel Management's biennial survey of federal employees that measures employees' perceptions of the extent to which conditions characterizing successful organizations are present in their agencies. NTSB officials told us that because the communications survey indicated a need for NTSB's individual offices to hold more frequent staff meetings, the agency has established a goal for fiscal year 2008 for each of its offices to achieve 75 percent of staff being either satisfied or very satisfied with their office staff meetings.

Strategic Planning

What Was Found

In 2006, we found that NTSB's strategic plan, issued in December 2005 for fiscal years 2006 through 2010, generally did not follow performance-based strategic planning requirements in the Government Performance and Results Act of 1993 (GPRA)[1] and related guidance in the Office of Management and Budget's Circular A-11.

As required by GPRA, the plan had a mission statement, four general goals and related objectives, and mentioned key factors that could affect the agency's ability to achieve those goals. However, the goals and objectives in the plan did not have sufficient specificity to know whether they had been achieved, and the plan lacked specific strategies for achieving those goals, including a description of the operational processes, skills and technology, and the resources required to meet the goals and objectives as mandated by GPRA. Without a more comprehensive strategic plan, NTSB could not align staffing, training, or other human resource management to its strategic goals or align its organizational structure and layers of management with the plan.

What Was Recommended

To improve agency performance in the key functional management area of strategic planning, we recommended that NTSB develop a revised strategic plan that follows performance-based practices.

Our Assessment of NTSB's Progress

NTSB has made significant progress in implementing this recommendation. NTSB issued a revised strategic plan in February 2007 for fiscal years 2007 through 2012. The revised plan more closely follows GPRA's performance-based requirements than did the previous plan, but it still does not fully follow several important requirements. (See table 1.)

Table 1: Extent to Which NTSB's Previous and Revised Strategic Plans Follow GPRA Elements

	Follows GPRA elements?	
GPRA elements	**Previous plan**	**Current plan**
Mission statement	Yes	Yes
General goals and objectives	No	Partially
Approaches or strategies to achieve goals and objectives	No	Yes
Relationship between general goals and annual goals	No	Yes
External factors	Yes	Yes
Program evaluations	No	Yes
5-year time frame	Yes	Yes
Stakeholder involvement	No	Partially

[1]P.L. 103-62.

The revised plan improves upon the previous plan by

- expressing most goals with sufficient specificity to enable a future assessment of whether they were achieved;
- including strategies for achieving 15 of 17 goals and objectives (NTSB describes strategies for achieving the other two goals in its annual operating plans), indicating that agency offices will establish annual performance goals designed to measure progress in achieving general goals of the revised plan;
- detailing the use of program evaluations to establish or revise goals and objectives;
- incorporating input that NTSB solicited from internal stakeholders (agency management and employees);
- indicating that agency offices will establish annual performance goals designed to measure progress in achieving general goals of the revised plan;
- detailing the use of program evaluations to establish or revise goals and objectives; and
- incorporating input that NTSB solicited from internal stakeholders (agency management and employees).

The revised plan does not fully follow two other GPRA requirements:

- The plan does not incorporate two of the five agency mission areas in its goals and objectives.[2] NTSB officials told us that it chose to cover these two mission areas in the annual operating plans of the responsible offices because the areas are not the primary activity of the agency. Nevertheless, GPRA requires strategic plans to cover all mission areas.
- Although NTSB officials told us that the agency addressed concerns from Congress in its revised plan, the agency did not obtain comments on a draft of the plan from Congress. Nor did NTSB consult with other external stakeholders, such as the federal and state transportation agencies to which it addresses many of its recommendations. NTSB officials told us that they do not believe it would be appropriate to consult with these agencies, which sometimes prefer not to implement NTSB's recommendations. Nevertheless, GPRA requires agencies, when developing a strategic plan, to "solicit and consider the views and suggestions of those entities potentially affected by or interested in the plan."

[2]The two mission areas are (1) the performance of fair and objective airman and mariner certification appeals and (2) the assistance of victims of transportation accidents and their families.

Information Technology

What Was Found

In 2006, we found that NTSB was minimally following leading information technology (IT) management practices. NTSB did not have a strategic plan for IT, and it had not developed an enterprise architecture for modernizing its IT systems. It also lacked an investment management process to control and evaluate the agency's IT investment portfolio. NTSB did not have acquisition policies for IT, such as project planning, budgeting and scheduling, requirements management, and risk management. These shortcomings suggested that NTSB was not ensuring that its management of information technology was aligned to fully and effectively support its mission.

What Was Recommended

To improve agency performance in IT management, we recommended that NTSB develop plans or policies for IT. The IT plan should include a strategy to guide IT acquisitions.

Our Assessment of NTSB's Progress

NTSB has made progress in implementing this recommendation. In August 2007, NTSB issued an IT strategic plan that takes the following steps to address the concerns that led to the recommendation:

- It establishes goals and milestones for developing an enterprise architecture by 2012. (In November 2007, NTSB hired an enterprise architect to lead this effort.)
- It includes a draft investment management process.
- It establishes goals for implementing key aspects of the investment management process by 2008 and the full process by 2012.
- It establishes the goal of reaching Capability Maturity Model Integration[3] level 2 (the level at which IT acquisitions and development can be said to be "managed" rather than "chaotic") by 2012.

To fully implement our recommendation, NTSB needs to improve one important aspect of its IT strategic plan. Although other GAO work and NTSB's IT strategic plan stress the importance of aligning IT with agency strategic goals, the IT strategic plan is not well aligned with the agency's strategic plan. Specifically, the IT plan does not address NTSB's two top strategic priorities, namely (1) accomplishing objective investigations of transportation accidents to identify issues and actions that improve transportation safety and (2) increasing the agency's impact on the safety of the transportation system. NTSB officials told us that the agency is improving its IT in ways that support these goals. For example, they said that efforts to develop a project tracking system and upgrade its investigation docket system support the first goal, and that the agency is redesigning its Web site and improving its Freedom of Information Act information system in support of the second goal.

[3]Carnegie Mellon University's Software Engineering Institute, recognized for its expertise in software and system processes, has developed the Capability Maturity Model® Integration (CMMIsm) and a CMMI appraisal methodology to evaluate, improve, and manage system and software development processes. The CMMI model and appraisal methodology provide a logical framework for measuring and improving key processes needed for achieving quality software and systems.

Knowledge Management

What Was Found

In 2006, we found that NTSB was minimally following leading knowledge management practices. NTSB did not have a knowledge management initiative or program and lacked a chief information officer to implement policies and procedures on information sharing.

What Was Recommended

To improve agency performance in knowledge management, we recommended that NTSB develop plans or policies for knowledge management.

Our Assessment of NTSB's Progress

NTSB has made significant progress in implementing this recommendation. NTSB has taken the following steps to improve its knowledge management:

- It has issued an agency strategic plan and an IT strategic plan as well as other plans and policies that include knowledge management activities.
- It has made the deputy managing director responsible for knowledge management activities within the agency.
- It has hired a chief information officer to implement policies and procedures on IT and information sharing.

NTSB still needs to take the following steps to improve its knowledge management:

- It needs to revise its strategic plan and IT strategic plan to clearly identify which agency plans, activities, and goals pertain to management of agency knowledge.
- It needs to develop its strategic training plan, which NTSB officials told us will include a knowledge management component. Until NTSB develops this plan and revises the other two plans, its knowledge management activities pertaining to training will be unclear.

Organizational Structure

What Was Found

In 2006, we found that NTSB developed a draft agencywide staffing plan in December 2005 that followed several leading practices in workforce planning but lacked other leading practices such as a workforce deployment strategy that considers the organizational structure and its balance of supervisory and nonsupervisory positions.[4] In addition, while managers were involved in the workforce planning process, employees were not. Employee input provides greater assurance that new policies are accepted and implemented because employees have a stake in their development.

What Was Recommended

To avoid excess organizational layers and to properly balance supervisory and nonsupervisory positions, we recommended that NTSB align its organizational structure to implement its strategic plan. In addition, we recommended that NTSB eliminate any unnecessary management layers.

Our Assessment of NTSB's Progress

NTSB has fully implemented our recommendation to align its organizational structure to implement NTSB's revised strategic plan. NTSB's office operating plans describe how each office serves the NTSB's mission as defined in its mission statement. Further, the plans align their offices' respective performance objectives, and actions addressing such objectives, to strategic goals in NTSB's revised strategic plan.

NTSB has made significant progress in implementing our recommendation to eliminate unnecessary management layers. For example, to streamline the management structure in the Office of Aviation Safety, NTSB realigned the operations at 10 regional offices into four regions. This action simplified its reporting structure and made available a larger pool of accident investigators per region. NTSB union officials told us that the union has been involved in planning this consolidation. NTSB officials told us that the agency is not likely to consolidate any of its other modal offices because doing so would not allow the agency to eliminate supervisory positions since the supervisors in these offices spend a large portion of their time performing investigative duties.

[4]In workforce deployment, it is important to have human capital strategies to avoid excessive organizational layers and to properly balance supervisory and nonsupervisory positions.

Human Capital Management

What Was Found

In 2006, we found that NTSB partially followed leading human capital practices in workforce planning; performance management; and recruiting, hiring, and retention and minimally followed leading practices in training and diversity management. In December 2005, NTSB developed a draft agencywide staffing plan that followed several leading practices but lacked a workforce deployment strategy that considered the agency's organizational structure, its balance of supervisory and non-supervisory positions,[5] and succession plans to anticipate upcoming employee retirement and workforce shifts. NTSB had issued performance plans for its senior managers and overall workforce. However, the goals in NTSB's strategic plan were not sufficiently specific for staff to know whether their performance was contributing to meeting those goals. NTSB had implemented several flexibilities to assist with recruiting and retention; however, NTSB had neither a strategic recruitment and retention policy nor any succession plans. Further, NTSB did not follow the leading practices of integrating diversity management into its strategic plan and having a formal mentoring program and advisory groups to foster employee involvement in diversity management.

What Was Recommended

To ensure that NTSB's human capital management is aligned to fully and effectively support its mission, we recommended that the agency develop a strategic human capital plan that is linked to its overall strategic plan. The human capital plan should include strategies on staffing, recruitment and retention, training, and diversity management.

Our Assessment of NTSB's Progress

NTSB has made significant progress in implementing this recommendation. In April 2008, NTSB provided us its draft human capital plan, which includes strategies for addressing eight human capital objectives included in NTSB's revised strategic plan. However, these strategies do not always have clear linkages to the strategic plan. For example, the draft human capital plan objective and strategies for attracting well-qualified applicants to critical occupations clearly aligns with the revised strategic plan objective of maintaining a competent and effective investigative workforce. However, the draft human capital plan objective and strategies for monitoring execution of human capital strategic objectives does not align with the revised strategic plan objective of project planning; while the strategies lay out the provision of annual updates regarding the human capital plan, they do not specifically address the development of a project plan or its evaluation.

The draft human capital plan incorporates several strategies on enhancing the recruitment process for critical occupations, and addresses succession management through several courses of action, such as implementing operations plans on executive leadership and management development. While the plan cites recruiting and retaining a diverse workforce, its strategies address recruitment but not other leading practices of diversity management that could contribute to retaining a diverse workforce, such as mentoring, employee involvement in diversity management, or succession planning. For example, one strategy involves the use of the NTSB diversity resource guide,

[5]These principles were discussed in: GAO, *Executive Agency Management Diagnostic Survey (draft)*.

which narrowly focuses on the recruitment of underrepresented groups, and does not address other leading practices of diversity management. Another strategy mentioned related to diversity involves the incorporation of diversity objectives into NTSB's office operating plans, which also focus on recruitment.

NTSB officials told us that the agency's diversity management efforts focus on recruiting because NTSB needs to attract a more diverse workforce. The officials also told us that because the agency has a low attrition rate, it does not put as much emphasis on retention of a diverse workforce. We agree that it is important to attract a diverse workforce, however, a low attrition rate does not assure a work environment that retains and promotes a diverse workforce.

Training

What Was Found

In 2006, we found that NTSB was minimally following leading practices in training, which is a key area of human capital management.[6] In particular, NTSB had neither developed a strategic training plan, nor had it identified the core competencies needed to support its mission and a curriculum to develop those competencies. Although NTSB staff annually identified what training they needed to improve their individual performance, as a result of not having a core curriculum that was linked to core competencies and the agency's mission, NTSB lacked assurance that the courses taken by agency staff provided the necessary technical knowledge and skills.

What Was Recommended

To improve agency performance in the key functional management areas of strategic and human capital planning, we recommended that NTSB develop a strategic training plan that is aligned with the revised strategic plan, identifies skill gaps that pose obstacles to meeting the agency's strategic goals, and establishes curriculum that would eliminate those gaps. In addition, we recommended that NTSB develop core investigator curriculum for each mode.[7]

Our Assessment of NTSB's Progress

NTSB has made limited progress in implementing our first recommendation. NTSB officials told us that later in 2008, the agency intends to complete a strategic training plan that is linked to the agency's strategic goals. To help develop the plan, NTSB plans to survey staff about their skill gaps and to develop a curriculum to eliminate those gaps. In fiscal year 2008, NTSB began requiring all staff to complete individual development plans aimed at improving their capabilities in support of organizational needs.[8] NTSB also plans to use information gleaned from these plans in developing its strategic training plan. Once NTSB has completed the training plan and the curriculum, we will be able to assess the extent to which they address our recommendation.

NTSB has also made limited progress in implementing our second recommendation. Although NTSB has developed a list of core competencies and associated courses for investigators, the agency has not described the knowledge, skills, and abilities for each competency. We have previously reported that well-designed training and development

[6]Work on human capital management has shown the importance for agencies to develop a strategic approach to training their workforce, which involves establishing training priorities and leveraging investments in training to achieve agency results; identifying specific training initiatives that improve individual and agency performance; ensuring the effective and efficient delivery of training opportunities in an environment that supports learning and change; and demonstrating how training efforts contribute to improved performance and results.

[7]We further recommended that NTSB maximize the delivery of its investigator core curriculum at the training center, which is discussed later in this testimony.

[8]An individual development plan is a written plan, cooperatively prepared by the employee and his or her supervisor that outlines the steps the employee will take to develop knowledge, skills, and abilities in building on strengths and addressing weaknesses as he or she seeks to improve job performance and pursue career goals.

programs are linked to, among other things, the individual competencies staff need for the agency to perform effectively.[9] Without such descriptions, NTSB does not have assurance that its core curriculum supports its mission. In addition, NTSB has not described the specialized competencies for its investigators in its various modes. However, the marine office plans to develop specialized core competencies and curriculum for its investigators in 2008, and NTSB's other modal offices plan to do so at some later date after evaluating their investigators' individual development plans. Because these curricula are important to help NTSB effectively meet its mission, we believe that NTSB's senior managers and training managers should participate in the development and review of the curricula and the underlying competencies.

To its credit, NTSB has taken or plans the following additional steps to improve its training:

- In April 2007, the agency hired a training officer, who is responsible for helping to identify training needs, developing related curriculum, and evaluating training courses.
- In fiscal year 2007, it began to encourage senior investigators to increase their participation in non-traditional training opportunities, such as spending time aboard oil tankers and in flight simulators to learn about marine and aviation operations, respectively.
- In fiscal year 2008, it began requiring all staff to complete at least 24 hours of training per year.
- In fiscal year 2008, it plans to evaluate the extent to which individual training courses resulted in desired changes in on-the-job behaviors for each of the 27 courses it plans to offer at the training center.

[9]GAO, *Human Capital: A Guide for Assessing Strategic Training and Development Efforts in the Federal Government*, GAO-04-546G (Washington, D.C.: Mar. 2004).

Financial Management—Violations of the Anti-Deficiency Act

What Was Found

In 2006, we found that NTSB had violated the Anti-Deficiency Act because it did not obtain budget authority for the net present value of the entire 20-year lease for its training center lease obligation at the time the lease agreement was signed in 2001. This violation occurred as a result of NTSB classifying the lease as an operating lease rather than a capital lease. NTSB realized the error in 2003 and reported its noncompliance to Congress and the President. NTSB had proposed in the President's fiscal year 2007 budget to remedy this violation by inserting an amendment in its fiscal year 2007 appropriation that would allow NTSB to fund this obligation from its salaries and expense account through fiscal year 2020. However, this proposal was removed once the budget went to the House and Senate Appropriations Committees, leaving the violation uncorrected.

In 2007, NTSB believed it had violated the Anti-Deficiency Act on a separate matter, namely the improper use of its appropriated funds to purchase accident insurance for its employees on official travel, and it asked GAO for an opinion on the matter. We determined that this was a violation because NTSB did not have an appropriation specifically available for such a purpose, and the payments could not be justified as a necessary expense.[10]

What Was Recommended

We recommended that NTSB should identify and implement actions to correct its violation of the Anti-Deficiency Act related to its lease of the training center. These actions could include obtaining a deficiency appropriation for the full costs of the lease, renegotiating or terminating the training center lease so that it complies with the Anti-Deficiency Act, or obtaining authority to obligate lease payments using annual funds over the term of the lease.

We did not make a recommendation regarding NTSB's other violation of the act because we reported that violation in a Comptroller General's decision and such decisions do not include recommendations. Nevertheless, a Comptroller General's decision that an agency has violated the Anti-Deficiency Act, in and of itself, suggests that the agency should correct the deficiency.

Our Assessment of NTSB's Progress

NTSB has made significant progress in addressing its violation of the Anti-Deficiency Act related to lease payments of its training center. NTSB officials told us that because congressional appropriators do not want to appropriate funds for the remaining lease payments in a single appropriation law, NTSB worked with Congress to obtain authority to use its appropriations for fiscal years 2007 and 2008 to make its lease payments during those periods. To avoid future violations, NTSB will need to continue to work with Congress to obtain similar authority in its future annual appropriations. In addition, NTSB officials told us that the agency has asked Congress to ratify the lease payments it made from 2001 through 2006.

[10]GAO, Decision of the Comptroller General of the United States, B-309715, September 25, 2007, National Transportation Safety Board—Insurance for Employees Traveling on Official Business.

NTSB has fully addressed its violation related to purchasing accident insurance for employees on official travel. In September 2007, NTSB reported the violation to Congress and the President, as required by the act. NTSB also successfully worked with Congress to remedy the violation through a fiscal year 2008 appropriation. NTSB cancelled the insurance policy, and NTSB officials told us that the agency has worked with Congress to obtain authority for future purchases of accident insurance. A bill to reauthorize the Federal Aviation Administration would provide NTSB with such authority.[11]

Financial Management—Cost Accounting

What Was Found

In 2006, we found that NTSB had made significant progress in improving its financial management by hiring a Chief Financial Officer and putting controls on its purchasing activities. As a result of actions taken by NTSB, the agency received an unqualified or "clean" opinion from independent auditors on its financial statements for the fiscal years ending September 30 for the years 2003, 2004, and 2005. The audit report concluded that NTSB's financial statements presented fairly, in all material respects, the financial position, net cost, changes in net position, budgetary resources, and financing in conformity with generally accepted accounting principles for the three years. However, without a full cost accounting system capable of tracking hours that staff spent on individual investigations, in training, or at conferences, NTSB lacked sufficient information to plan the allocation of staff time or to effectively manage staff workloads.

What Was Recommended

To improve agency performance in the key functional management area of financial management, we recommended that NTSB develop a full cost accounting system that would track the amount of time employees spend on each investigation and in training.

Our Assessment of NTSB's Progress

NTSB has made limited progress in implementing this recommendation. Although NTSB routinely assigns a project code to many non payroll costs, its time and attendance system still does not allow the agency to routinely and reliably track the time that employees spend on each investigation or other activities, such as training. However, NTSB officials told us that the agency wants to add the ability to charge costs to projects (i.e., activities) and that it has discussed this addition with the provider of most of NTSB's financial system needs—the Department of Interior's (DOI) National Business Center. According to NTSB officials, this modification would enable direct recording by activity of hours worked and of corresponding payroll costs. NTSB officials also said that because the agency has not had sufficient funding to make this modification, it intends to request specific funding for this effort as part of its budget appropriation for fiscal year 2010. NTSB said that in the meantime, it will continue discussions with DOI and that it has begun to benchmark the planned modification to systems of agencies of comparable size. It anticipates that, once underway, DOI would work with NTSB to manage the implementation.

[11]H.R. 2881.

Recommendations Related to NTSB's Accident Investigation Mission and Safety Studies

Accident Selection

What Was Found

In 2006, we found that for some transportation modes, NTSB had detailed, risk-based criteria for selecting which accidents to investigate, while for others it did not. For example, NTSB had criteria to select highway accidents for investigation based on the severity of the accident and amount of property damage. In contrast, NTSB did not have a documented policy with criteria for selecting rail, pipeline, and hazardous materials accidents. Instead, the decisions to investigate accidents were made by the office directors based on their judgment. As a result, for these modes, the agency lacked assurance and transparency that it was managing resources in a manner that ensured a maximum safety benefit. Such criteria were also important because NTSB did not have enough resources to investigate all accidents.

What Was Recommended

To make the most effective use of its investigation resources and increase transparency, we recommended that NTSB develop orders for all transportation modes that articulate risk-based criteria for determining which accidents would provide the greatest safety benefit to investigate or, in the case of aviation accidents, explain which accidents are investigated at the scene, or remotely, in a limited manner.[12]

Our Assessment of NTSB's Progress

NTSB has made significant progress in implementing this recommendation. NTSB developed a transparent policy containing risk-based criteria for selecting which rail, pipeline, and hazardous materials accidents to investigate. This policy assigns priority to investigating accidents based on whether the accident involved a collision or derailment and whether it involved fatalities or injuries, among other factors. For marine accidents, NTSB has a memorandum of understanding with the U.S. Coast Guard that includes criteria for selecting which accidents to investigate. To enhance the memorandum of understanding, NTSB plans to consult with stakeholders and develop an internal policy on selecting marine accidents in 2008 once certain legal issues are resolved. In addition, NTSB has developed a transparent, risk-based policy explaining which aviation accidents are investigated at the scene, or remotely, in a limited manner, depending on whether they involve a fatality and the type of aircraft.

[12]NTSB conducts all of its marine, rail, pipeline, hazardous material, and highway accident investigations at the scene of the accident. In contrast, for aviation accidents, NTSB conducts on-scene investigations of major accidents and more limited investigations of accidents not designated as major. NTSB defines a major accident as one that involves an issue related to a current safety study or special investigation, impacts public confidence or transportation safety in a significant way, or is catastrophic.

Recommendation Close-Out

What Was Found

In 2006, we found that NTSB's process for changing the status of recommendations was paper-based and used sequential reviews, which slowed the process and prevented expedient delivery of information about recommendation status to affected agencies.

What Was Recommended

We recommended that NTSB improve the efficiency of its process for changing the status of recommendations by computerizing the documentation and implementing concurrent reviews.

Our Assessment of NTSB's Progress

NTSB has made significant progress in implementing this recommendation. NTSB recently completed a pilot program that involved electronic distribution of documents related to recommendation status. The results of that test are helping to guide development of an information system intended to help the agency manage its process for changing the status of recommendations. NTSB aims to fully implement the system by the end of fiscal year 2008. NTSB said that the system is being developed to support concurrent reviews. When fully implemented, this system should serve to close our recommendation.

Report Development

What Was Found

NTSB faced challenges to efficiently develop its reports; partly as a result, its investigations of major accidents routinely took longer than 2 years to complete. These challenges included multiple revisions of draft investigation reports at different levels in the organization, excessive workloads for writer/editors, and too few final layout and typesetting staff. NTSB had taken several actions aimed at shortening report development time, such as reemphasizing its policy on holding report development meetings to obtain early buy-in on report messages and holding modal directors accountable for specific issuance dates. We also identified practices in certain offices, such as the use of a project manager or deputy investigator-in-charge to handle report production, which had the potential to improve the efficiency of the agency's report development process if used by all modal offices.

What Was Recommended

To enhance the efficiency of its report development process, we recommended that NTSB identify better practices in the agency and apply them to all modes. NTSB should consider such things as using project managers or deputy investigators-in-charge in all modes, using incentives to encourage performance in report development, and examining the layers of review to find ways to streamline the process, such as eliminating some levels of review and using concurrent reviews as appropriate.

Our Assessment of NTSB's Progress

NTSB has made significant progress in implementing this recommendation. NTSB examined and made several improvements to its report development process. For example, NTSB directed its office of safety recommendations and advocacy to provide comments on draft reports at the same time as other offices, instead of beforehand. NTSB estimates that this has reduced the time it takes to develop a report by 2 weeks. NTSB officials also told us that the agency established and filled a permanent position with a primary responsibility of quality assurance in the report development process. In addition, NTSB officials told us that the agency held a comprehensive training program in February 2008 for investigators in charge to learn about and share best practices across NTSB's modal offices related to investigations and report development. NTSB also took or is taking the following steps to improve the efficiency with which Board members are able to review and approve draft reports:

- It is relying more on electronic rather than paper distribution of draft reports.
- It reduced the time allotted to Board members to concur or non-concur with staff responses to a Board member's proposed revisions from up to 20 days to up to 10 days.
- It is developing an information system to manage the process, which it aims to fully implement by the end of fiscal year 2008.

Aside from its highway office which was already doing so, NTSB's modal offices decided not to use project managers or deputy investigators-in-charge to lead report development because the offices did not believe that doing so would appropriately address their report development issues; NTSB did not provide any further explanation of the basis for this decision. NTSB officials told us that its office of marine safety has improved the efficiency and effectiveness of its report development process by shifting responsibility for writing reports from three writer/editors to investigators-in-charge; the office's one remaining writer/editor now focuses on editing. Finally, in December 2007, NTSB's office of railroad, pipeline, and hazardous materials safety hired a deputy chief in the railroad division who will be responsible for streamlining the division's report development process.

Safety Studies

What Was Found

In 2006, we found that in addition to its accident investigations, NTSB conducts studies on issues that may be relevant to more than one accident. These safety studies, which usually result in recommendations, are intended to improve transportation safety by effecting changes to policies, programs, and activities of agencies that regulate transportation safety. From 2000 to 2005, NTSB completed only four safety studies; NTSB officials told us that the number of safety studies it conducts is resource-driven. Industry stakeholders stated they would like NTSB to conduct more safety studies because the studies address NTSB's mission in a proactive way, allowing for trend analysis and preventative actions. NTSB officials recognized the importance of safety studies, and they said that they would like to find ways to reduce the time and resources required to complete the studies. We concluded that NTSB's limited use of safety studies to proactively examine and highlight safety issues may limit the effectiveness of its efforts to improve transportation safety.

What Was Recommended

To be more proactive in identifying and correcting safety problems before accidents occur, we recommended that NTSB increase its utilization of safety studies.

Our Assessment of NTSB's Progress

NTSB has made limited progress in implementing this recommendation. NTSB has not completed any safety studies since we made our recommendation and has only one study in progress. Although it has established a goal of developing and submitting to NTSB's Board for approval two safety study proposals per year, it does not have a goal related to completing safety studies. NTSB officials told us that the agency still does not have enough staff to increase its output of safety studies on its own. NTSB told us that it has therefore begun to place more emphasis on a number of alternative products to safety studies which address important safety issues but are not as resource intensive. In addition, NTSB is examining the potential of using contractors to perform certain aspects of safety studies, such as data collection, and conducting some studies in collaboration with other entities, such as the National Aeronautics and Space Administration, the Federal Aviation Administration, a national laboratory, and foreign accident investigation organizations.

Recommendations Related to Training Center Utilization

Core Investigator Curriculum

What Was Found

In 2006, we found that the training center was underutilized, with less than 10 percent of the available classroom capacity being used during fiscal years 2005 and 2006. This contributed to the training center not being cost-effective, as the combination of the training center's revenues and external training costs avoided by NTSB staff's use of the facility did not cover the center's costs.

What Was Recommended

We recommended that NTSB maximize the delivery of core investigator curriculum at its training center.

Our Assessment of NTSB's Progress

NTSB has made significant progress in implementing this recommendation by scheduling 14 core investigator courses at its training center in fiscal year 2008. In addition, NTSB started a new workforce development curriculum intended to address competencies not directly related to investigate activity, such as information security and written communications. NTSB officials told us that since it began this curriculum, the frequency and attendance of classes has increased significantly, but we could not verify this statement.

Utilization of the Training Center

What Was Found

In 2006, we found that NTSB's training center was not cost-effective, as the combination of the training center's revenues and external training costs avoided by NTSB staff's use of the facility did not cover the center's costs. As a result, those portions of the training center's costs that were not covered by the revenues from tuition and other sources—approximately $6.3 million in fiscal year 2004 and $3.9 million in fiscal year 2005—were offset by general appropriations to the agency. While NTSB was generating revenues from other sources, such as renting training center space for conferences and securing contracts that allowed federal agencies to use training center space for continuity of operations in emergency situations, the training center was underutilized, with less than 10 percent of the available classroom capacity being used during fiscal years 2005 and 2006. NTSB lacked a comprehensive strategy for addressing this issue.

What Was Recommended

We recommended that NTSB develop a business plan and a marketing plan to increase utilization of the training center or vacate its training center. NTSB should determine the costs and feasibility of alternative actions such as adding more courses for NTSB staff, moving headquarters staff to the center, subleasing space to other entities, or buying out the lease.

Our Assessment of NTSB's Progress

NTSB has made significant progress in implementing this recommendation. For example, according to NTSB, it assessed the advantages and disadvantages of moving headquarters staff and functions to the training center but determined it was not cost effective. NTSB also told us that it determined that buying out the training center lease was not an available option. NTSB completed a draft business plan in March 2007 and a revised business plan in March 2008.[13] We reviewed the 2007 draft plan and concluded that the overall strategy presented in the business plan to hire a vendor to manage and operate the training center was reasonable, but the plan provided too little rationale for its marketing and financial assumptions for us to assess the validity of this strategy. In July 2007, NTSB abandoned the strategy laid out in its business plan because it could not find a suitable vendor.

While certain aspects of the revised business plan have been improved over the previous plan, overall, the revised plan lacks key financial and marketing information that is essential to a business plan. For example, NTSB's revised business plan does not contain historical financial information or forecast financial information beyond fiscal year 2008[14] Further, the plan does not describe assumptions included in the plan, such as the inclusion of imputed fees for NTSB students in NTSB's tuition revenues. In addition, although the revised business plan contains some goals, such as subleasing space to other federal entities and obtaining an

[13]On December 21, 2006, Congress passed Public Law 109-443, requiring NTSB to prepare a utilization plan for the training center and submit the plan to us for review and comment within 90 days of passage of the act.

[14]In our 2007 review of NTSB's draft business plan, we recommended that NTSB revise its business plan to included detailed statements of net costs, balance sheets, and cash flow statements for 3 historical and 5 forecast years.

additional continuity of operations agreement, the plan does not contain strategies for achieving these goals[15] Further, while NTSB's revised business plan indicates that the training center is cost-effective if cost savings—such as avoided costs of renting outside space for one regional office and storage of the reconstructed wreckage of TWA flight 800—are accounted for. However, the plan does not provide enough information to support this conclusion. While we believe that NTSB is justified in offsetting expenses that the agency would incur in the absence of the training center, the plan does not explain how NTSB estimated the values of these offsets. The plan does not include a rationale for assuming that NTSB would have to maintain all 30,000 square feet of warehouse space in the absence of the training center, or that space for both its regional aviation investigation office and the warehouse would cost NTSB $35 per square foot if rented elsewhere. In addition, it is not clear why certain items, such as the warehouse space rental, is included as an offset, while other items, such as savings for necessary accident investigation and family assistance training space needs, are not included as an offset. Finally, the plan lacks discussion of cost-saving alternatives, such as using space already available at NTSB headquarters for certain offset activities, such as select training courses. When asked about these shortfalls in the business plan, agency officials indicated that there was no flexibility in changing the configuration of the warehouse space, requiring the warehouse space to be considered an offset. In contrast, office and training space is included in the financial analysis due to its flexibility for expanded utilization. The agency did not comment on our other comments about the business plan.

NTSB has taken steps to increase utilization of the training center and to decrease the center's overall deficit, including the following:

- NTSB subleased all available office space at its training center to the Federal Air Marshal program at an annual amount of $479,000.
- NTSB increased utilization of the training center's classroom space and the associated revenues from course fees and renting classroom and conference space. From fiscal year 2006 to fiscal year 2007, NTSB increased utilization of classroom space from 10 to 13 percent, and increased revenues by over $160,000. NTSB officials expressed concerns with our calculation of utilization rates because they assumed that holiday weeks and other scheduling difficulties were not considered in the calculation. However, our analysis excluded holidays and Christmas week from the calculation.
- NTSB is finalizing a sublease agreement with the Department of Homeland Security (DHS), which is expected to rent approximately one-third of the classroom space beginning July 1, 2008. We estimate that this would help increase utilization of classroom space in fiscal year 2008 to 24 percent.
- NTSB is undertaking efforts to increase utilization of the training center's large area that houses wreckage used for instructional purposes, including the reconstructed wreckage of TWA flight 800, by seeking to acquire additional wreckage for instructional purposes.
- NTSB considered moving certain staff from headquarters to the training center, but halted these considerations upon subleasing all of the training center's available office space.
- NTSB decreased personnel expenses related to the training center, from about $980,000 in fiscal year 2005 to $470,000 in fiscal year 2007 by reducing the center's full-time equivalents from 8.5 to 3 over the same period.

As a result of these efforts, from fiscal year 2005 to 2007, training center revenues increased 29 percent while the center's overall deficit decreased by 41 percent. (Table

[15] Rider 1 of NTSB's lease with George Washington University limits subleases and assignments to other agencies of the federal government. NTSB's General Counsel believes the lessor interprets the lease as limiting building use to (1) a government purpose that is transportation-related, educational, or a government administrative function, or (2) a use that is affiliated with the lessor.

2 shows direct expenses and revenues for the training center in fiscal years 2004 through 2007.) In fiscal year 2007, training center revenues nearly covered the center's operating expenses, not including lease costs. However, the salaries and other personnel-related expenses associated with NTSB investigators and managers teaching at the training center, which would be appropriate to include in training center costs, are not included. NTSB officials told us that they believe the investigators and managers teaching at the training center would be teaching at another location even if the training center did not exist. In 2006, we recommended that NTSB develop a full cost accounting system that would allow them to calculate these expenses.

Table 2: Direct Expenses and Revenues for the NTSB Training Center, Fiscal Years 2004 through 2007 (unaudited)

	Fiscal year 2004	Fiscal year 2005	Fiscal year 2006	Fiscal year 2007
Expenses				
Personnel related	$1,011,717	$978,591	$688,716	$466,582
Travel	$24,428	$56,912	$31,009	$22,284
Space rental[a]	$2,521,440	$2,500,896	$2,221,430	$2,286,660
Maintenance/repair of buildings[b]	$706,279	$238,203	$23,151	($4,215)
Contract services	$2,204,880	$558,540	$287,873	$330,491
Miscellaneous expenses[c]	$42,258	$182,136	$57,099	$19,720
Total expenses	**$6,511,003**	**$4,515,279**	**$3,309,277**	**$3,121,521**
Total earned revenue[d]	**$258,760**	**$634,800**	**$651,191**	**$817,555**
Overall deficit	-$6,252,243	-$3,880,479	-$2,658,086	-$2,303,966
Deficit when space rental expense is excluded	-$3,730,803	-$1,379,583	-$436,656	-$17,306

Source: GAO analysis of information from NTSB.

[a]NTSB leases the training center from George Washington University under a 20-year lease that will expire in 2021.

[b]The amount reported in the maintenance and repair category during fiscal year 2007 includes a refund of $28,377 to NTSB because of the reconciliation of the utility costs, as required by the lease.

[c]Miscellaneous expenses such as telephone, mail, photography services, printing, office supplies and equipment.

[d]Earned revenue includes imputed fees for NTSB students

However, even at the 24-percent utilization rate for fiscal year 2008 that we estimate would result from the DHS sublease, the training center classroom space would still be underutilized. If NTSB does not finalize this agreement, we estimate that only 15 percent of classroom space would be utilized during the fiscal year. While we do not expect any classroom space ever to be 100 percent utilized, we believe a 60 percent utilization rate for training center classrooms would be reasonable, based on our knowledge of similar facilities. Without a functional business plan, NTSB lacks a comprehensive strategy to address these challenges.

Recommendations Related to Information Security

Compliance with the Federal Information Security Management Act (FISMA)

What an Independent Auditor Found

In June 2007, NTSB reported that its information security program was a prior year material weakness[16] that had not yet been corrected.[17] An independent FISMA evaluation completed in September 2007 assessed NTSB's actions to address recommendations in prior year FISMA reports.[18] The independent auditors reported that while NTSB continues to be in material non-compliance with FISMA, it had taken substantive corrective actions to address the material information security weaknesses identified in prior FISMA reports issued by the Department of Transportation, Office of Inspector General. Overall, the independent auditor reported that the corrective actions it observed, those underway or planned, if implemented timely and effectively, would further strengthen NTSB's information security program.

The assessment completed in September 2007 found that NTSB met two requirements of FISMA: 1) having in place policies and procedures to reduce risks to an acceptable level and 2) ensuring that the agency has adequately trained its personnel in IT security practices. However, NTSB partially met or did not meet FISMA and NIST requirements in the following six areas: 1) providing periodic assessments of risk, 2) documenting policies and procedures based on risk assessments, 3) developing and maintaining an IT security program, 4) periodically testing security controls, 5) carrying out remedial actions, and 6) having in place plans and procedures for continuity of operations.

What an Independent Auditor Recommended

Assure that the Chief Information Officer monitors all key corrective actions and provides necessary funding and human resources to accomplish these actions so that no further delays occur.

Our Assessment of NTSB's Progress

The agency has made progress in implementing this recommendation. For example, the Chief Information Officer has documented prior recommendations and newly identified vulnerabilities in a plan of action and milestones and is monitoring corrective actions to implement the recommendations and mitigate the vulnerabilities. Nevertheless, NTSB needs to take further actions to meet FISMA, OMB, and NIST guidance in the following four areas to help ensure an effective information security program:

- Risk assessments: Agencies are required to periodically assess the harm that could result if their information and information systems suffered unauthorized access, use, disclosure, disruption, modification, or destruction. NTSB has completed a risk

[16] U.S. Department of Transportation, Office of Inspector General, *Information Security Program: National Transportation Safety Board*, Report No. FI-2006-001 (Washington, D.C.; Oct. 7, 2005); and *Information Security Program: National Transportation Safety Board*, Report No. FI-2007-001 (Washington, D.C.; Oct. 13, 2006). See also Leon Snead & Company, P.C., *National Transportation Safety Board: Fiscal Year 2007*.

[17] National Transportation Safety Board, *Correspondence to President Bush*, June 30, 2007.

[18] Leon Snead & Company, P.C., *National Transportation Safety Board: Fiscal Year 2007*.

assessment of its general support system in February 2008. The general support system is an interconnected set of information resources, and it supports the agency's two major applications. In addition, a contract has been awarded to complete the risk assessments for the two major applications—the Accident Investigation System and the Lab Environment System, both of which the agency plans to complete by the end of September 2008. Until it assesses the risks associated with these two applications, NTSB cannot determine that the controls it has implemented for these two applications cost-effectively reduce risk to an acceptable level.

- Information security planning: To ensure effective security protection of information resources, agencies must develop plans describing how they will provide security for their systems, networks, and facilities. According to NIST, the security plan is to provide, among other things, an overview of the security requirements of the system and describe the controls that are in place or planned for meeting those requirements. NTSB has completed the security plan for the general support system, but development of security plans for its two major applications are not scheduled to be developed until after April 2008. Until these plans are completed, NTSB will not have in place a documented, structured process for adequate, cost-effective security protection for these systems.
- Periodic testing: Information security policies, procedures, practices, and controls should be tested periodically to ensure their effectiveness. These tests and evaluations should be conducted at least annually and include testing of the management, operational, and technical controls of every system identified in the systems inventory. In 2007, NTSB hired a contractor to perform a security test and evaluation of its general support system. The contractor identified 113 information security vulnerabilities, which collectively increased the risk of unauthorized disclosure and modification of agency information. NTSB has documented these vulnerabilities in a plan of action and milestones. According to NTSB officials, they have resolved many of the vulnerabilities, and are currently addressing the remaining ones. Because NTSB has not finished addressing the vulnerabilities identified in the security test and evaluation of its general support system, the agency cannot ensure that the controls it has in place are commensurate with an acceptable level of risk.
- Continuity of operations plan: To ensure that, in the event of an emergency, interim measures are available to restore critical systems, including arrangements for alternative processing facilities in case the usual facilities are significantly damaged or cannot be accessed, agencies must develop, document, and test contingency plans and procedures. Testing the continuity plan is essential to determining whether plans will function as intended in an emergency. A contingency plan for the general support system is under review by agency officials; and, according to these officials, this contingency plan also supports its two major applications and is part of the overall agency continuity of operations plan. However, the plan has not yet been approved or tested. Without an approved plan that has been tested, NTSB has limited assurance that it will be able to protect its information and information systems and resume operations promptly when unexpected events or unplanned interruptions occur.

Access controls—Access Authorities

What an Independent Auditor Found

The independent auditor identified several weaknesses in NTSB's access controls. Specifically, NTSB did not promptly remove system access privileges for 28 individuals who had left the agency, was unable to provide documentation to support the original access granted to employees in most instances, did not have a process to determine the specific access authorities assigned to users for the general support system, had not performed the required annual review of users' access authorities for the general support system, and did not implement a control to require the system to automatically disable inactive accounts after a period of non-use. The independent auditor noted that as a result of these weaknesses, the agency did not effectively implement the control processes required in its policies and in NIST guidance.

What an Independent Auditor Recommended

The independent auditor made five recommendations to improve access controls at NTSB.

1. Take immediate action to remove the access authorities from all NTSB systems for the 28 personnel who are no longer employed by or work for NTSB. Strengthen procedures for removing users' access for interns, contractors, and executive training personnel who leave the agency.
2. Maintain documentation supporting the initial access granted to a user.
3. Develop a process to identify the specific systems, and within these systems, the specific access authorities granted to each general support system user, to enable user's supervisors and system owners to properly analyze and complete the annual recertification of users' access authorities.
4. Develop a more detailed operational procedure to guide system security officers and system owners in the process of recertification of users. This should include: (1) specific dates for the review, (2) requirements that documentation be retained to show the recertification by the users' supervisors, and (3) actions that system security officers should take to remove or modify a user's access to the system, based on the review.
5. Implement a control to automatically suspend an account after a period of nonuse, as required.

Our Assessment of NTSB's Progress

The NTSB has taken important steps to improve the controls that safeguard access to its systems, but has not completed actions on all related recommendations. Specifically, NTSB removed the accounts of 28 personnel who left the agency. The agency has procured and in some cases begun to implement automated software tools to help implement recommendations related to granting, removing, and recertifying users' access permissions. However, agency officials expect that these tools will be fully implemented in fiscal year 2008. Furthermore, NTSB has not yet completed identifying, for each system, the specific access permissions for each user and has not yet completed implementing a control to automatically suspend an account after a period of nonuse.

Privacy Act—Privacy Act Compliance

What an Independent Auditor Found

The independent auditor determined that NTSB did not comply with OMB requirements for implementing provisions of the Privacy Act. OMB Memorandum M-03-22 requires an agency to conduct privacy impact assessments for electronic information systems and collections and to make these assessments available to the public. The review found that NTSB had not issued sufficient written guidance in this area and had not conducted a privacy impact assessment of its information systems. In addition, the agency is required to report annually to OMB on compliance with sections 207 and 208 of the E-government Act. NTSB did not have available any guidance in this area, and had not issued the required annual reports. Furthermore, NTSB did not conduct an OMB-required review of its privacy policies and processes to ensure it has adequate controls to prevent the intentional or negligent misuse of or unauthorized access to personally identifiable information.

What an Independent Auditor Recommended

Assure actions are taken to meet the requirements of the Privacy Act and the requirements contained in related OMB memoranda and to update the plan of action and milestones to reflect the current status of NTSB actions in these areas.

Our Assessment of NTSB's Progress

The agency has updated its plan of action and milestones to reflect the status of its corrective actions to implement the requirements of the Privacy Act. In addition, agency officials have recently taken action to develop a formal privacy program; however, work remains before it is fully compliant with the requirements of the Privacy Act. For example, NTSB completed privacy impact assessments on two of its public facing applications and stated that it plans to complete assessments for other applications and systems such as the accident investigation system. Furthermore, the agency is currently drafting a Systems of Records Notice, as required by OMB, which will, among other things, inform the public of the existence of records containing personal information and give individuals access to those records. The agency expects to have the Systems of Records Notice finalized in June 2008. Moreover, NTSB recently awarded a contract to a vendor to develop specific training to its employees on Privacy Act requirements. The agency expects this training to be available in June 2008.

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Mark V. Rosenker
Chairman

Testimony of
Mark V. Rosenker, Chairman
National Transportation Safety Board
before the
Transportation and Infrastructure Committee
Aviation Subcommittee
U.S. House of Representatives
Reauthorization of the National Transportation Safety Board
April 23, 2008

Good afternoon Chairman Costello, Ranking Member Petri, and Members of the Aviation Subcommittee. As Chairman of the National Transportation Safety Board, I am pleased to appear before you today in support of our request for reauthorization.

First, let me say I appreciate this Committee for its support on our last reauthorization legislation and all your assistance during our appropriations process. The Members on this Committee have a great deal of knowledge about our Board and a genuine interest in transportation safety issues.

As you know, the Safety Board has a critical mission: we investigate transportation accidents to determine what happened and why – not so that we can assign blame or determine fault – but rather to advance transportation safety. We do this work so that future accidents can be prevented through what we learn today. The core mission of the Safety Board has remained the same since the Board's inception in 1967. In recent years, we have refocused our efforts and activities on that core mission by examining all of our programs and activities to ensure that we are diligently investigating accidents within our purview and promptly issuing safety recommendations. Transportation accidents are increasingly complex, and the tools and technology required to accomplish modern accident investigations are also growing in sophistication. We intend to ensure that our emphasis remains on quality investigations and timely safety recommendations that help prevent transportation accidents, and reduce the deaths and injuries resulting from accidents that do occur. Our obligation is to work with you to ensure that the Board maintains an expert technical staff and state-of-the art investigative tools to competently and efficiently conduct the thorough and unbiased investigations that you and the public have come to expect.

Volume alone however does not represent the significant advancements made the Board regarding our investigative efforts. For example, in recent years, the Safety Board has taken significant steps to reduce the time to complete a major transportation accident investigation. As a result, the Board has been able to issue needed safety recommendations to the transportation industry much more rapidly. Concurrently, the Board has increased the number of major reports by over 20% even though, due to funding levels, we suffered a staff reduction of 9%. During the same timeframe, the Board has reduced the average time to complete regional aviation accident investigations and has reduced our backlog of open aviation investigations by more 200%.

Safety Board Activity

Let me give you a brief overview of what the Board has accomplished since I last appeared before the Committee on our reauthorization hearing. Since April 2006, the Safety Board has investigated more than 3,200 aviation accidents and hundreds of surface transportation accidents. We have also held 32 Sunshine meetings and 8 public hearings, forums and symposia. We adopted 58 accident investigation reports (19 aviation reports, 8 highway reports, 20 railroad reports, 8 marine reports, and 3 pipeline reports). We published more than 3,900 aviation accident brief reports, and our laboratories read out 179 flight data recorders, 156 cockpit voice recorders, and performed 326 wreckage examinations. Also during this time period, the Board issued more than 345 safety recommendations (about 54 percent pertain to aviation, and the remaining recommendations pertain to surface transportation).

Just last week, on April 15th, the Board held a meeting to consider the runway overrun during landing of Shuttle America doing business as Delta Connection flight 6448, an Embraer ERJ-170, at Cleveland, Ohio, on February 18, 2007. Although there were no serious injuries in that accident, our investigation did reveal serious deficiencies in crew performance and operator fatigue.

Since our last reauthorization, the following significant accident investigations are among those the Safety Board has completed:

- The February 2, 2005, accident involving a Canadair CL-600 corporate jet, at Teterboro Airport in New Jersey. The airplane overran the runway during an aborted takeoff resulting in 4 seriously injured persons;

- The February 16, 2005, accident in Pueblo, Colorado involving a Circuit City Cessna Citation 560 corporate jet. The 2 pilots and 6 passengers were killed in the crash;

- The September 23, 2005, bus fire near Wilmer, Texas, that killed 23 elderly and mobility impaired nursing home residents who were being evacuated due to Hurricane Rita;

- The October 2, 2005, tour boat *Ethan Allen* capsizing in Lake George, New York, which resulted in 20 deaths;

- The December 8, 2005 Southwest Airlines runway overrun at Chicago's Midway airport that killed a six-year-old boy who was a passenger in an automobile on an adjacent roadway;

- The December 13, 2005, natural gas explosion in Bergenfield, New Jersey that killed 3;

- The December 19, 2005, in-flight separation of the right wing on Chalk's Ocean Airways Flight 101, a Grumman G-73T, N2969, at Port of Miami, Florida, that killed all 20 persons aboard;

- The February 8, 2006, fire involving a UPS DC-8 cargo airplane at Philadelphia

International Airport;

- Three accidents on the Washington Metropolitan Area Transit Authority (WMATA) Metrorail system that resulted in 3 employee fatalities (May 14, 2006, November 30, 2006, and January 7, 2007);

  The July 10, 2006, ceiling collapse in the Interstate 90 Connector Tunnel (the so-called "Big Dig"), in Boston, Massachusetts, July 10, 2006, killing one person;

  The July 11, 2006, Chicago Transit Authority train derailment that resulted in the evacuation of 1,000 passengers from the tunnel;

- The July 18, 2006, heeling incident of the Bermuda registered cruise ship *Crown Princess* near Port Canaveral, Florida, in which 298 persons were injured; and

- The October 11, 2006, crash during turn maneuver of a Cirrus SR-20, N929CD, into a building in Manhattan, New York City, (that killed baseball player Cory Lidle and one other person).

The Safety Board is conducting a number of other important accident investigations. For example, the allision of the *Cosco Busan* container ship with the San Francisco-Oakland Bay Bridge in California, and the collapse of the I-35W bridge in Minneapolis, Minnesota. We are also investigating an aircraft incident that occurred last month in which a panel from the wing of a USAirways Boeing 757 separated from the aircraft somewhere over Maryland. The aircraft landed in Philadelphia about 30 minutes later. None of the passengers or crew were injured.

Next week, the Safety Board will hold a public forum on Unmanned Aircraft Systems. The catalyst for this forum was the Safety Board's investigation into a Predator B unmanned aircraft operated by the U.S. Customs and Border Protection that crashed near Nogales, Arizona, in April 2006. At the Board's October 2007 meeting on this accident, we adopted 22 safety recommendations to address deficiencies associated with the civilian use of unmanned aircraft. The upcoming forum will provide an opportunity for the Board and interested parties to understand the safety implications presented by the growing use of these aircraft in the National Airspace System.

In addition to domestic accidents, the Board often sends investigators to other countries to participate in the investigation of foreign aviation accidents. When a U.S.-manufactured, U.S.-registered, or U.S.-operated aircraft is involved in an accident overseas, the Safety Board leads the contingent of U.S. investigators to participate in the investigation. Each year, our investigators participate in about 20 major foreign aviation accidents and provide laboratory support for recorder read-out and material failure analysis for many more foreign investigations. For example, in January 2008, there was a highly publicized crash of a British Airways Boeing 777 at the approach end of a runway at Heathrow Airport in London. Our Safety Board team is fully engaged in that ongoing investigation with our counterpart agency, the UK Air Accidents Investigation Branch, and we remain alert to any possible fleet implications and corrective actions. Also, in August 2007, on the airport ramp in Okinawa, Japan, a China Air Boeing 737

experienced a wing fire while taxiing. Evacuation of 165 passengers was successful before the airplane was destroyed by the resultant fire. Our Safety Board team was immediately dispatched from Washington. Within a few days on scene, the cause of a major fuel leak was identified within the flap retraction system and the manufacturer and the Federal Aviation Administration (FAA) quickly initiated corrective action on a worldwide scale.

Another example was the tragic midair collision in Brazil between a GOL Boeing 737 passenger flight and an ExcelAire Legacy executive aircraft over the Amazon jungle. The Board sent investigators to participate in the on-site investigation. Safety recommendations were made based on our findings, and we continue to be engaged with Brazilian investigators as they work to conclude their investigation.

Our foreign investigation and training efforts are vitally important to aviation safety because some countries may lack the technology and expertise we developed over many years in this business, and it serves the global aviation industry by ensuring a thorough investigation when American-built and American-registered aircraft are involved in accidents in other countries. Also, because many of the accidents that happen in other countries may have implications for aviation in the United States, our participation in these investigations results in major safety improvements for the domestic fleet and the American traveling public.

Each investigation is important, but our goal is preventing future accidents, saving lives, and reducing injuries. That is why we often say that safety recommendations are our most important products. Each year, the Board meets to determine which of its open recommendations should appear on its Most Wanted List of Transportation Safety Improvements. Our 2008 Most Wanted List includes safety recommendations to the FAA urging them to reduce the dangers of in-flight icing, eliminate flammable vapors in transport category airplane fuel tanks, improve runway safety, improve audio and data recorders and require video recorders, and improve crew resource management. The most important safety improvement needed for our country's railroads is positive train control. If the Federal Railroad Administration (FRA) required positive train control systems, it would prevent numerous collisions and overspeed accidents. The Most Wanted List for the highway mode includes enhanced vehicle safety technology for preventing collisions, improving motor carrier safety, preventing medically unqualified drivers from operating commercial vehicles, and enhancing the protection of motorcoach and school bus passengers. Reducing accidents caused by human fatigue is another vital issue. We are urging the FAA, FRA, U.S Coast Guard, and Pipeline and Hazardous Materials Safety Administration to set working hour limits for safety sensitive jobs based on fatigue research, circadian rhythms, and sleep and rest requirements. We also want the FAA and National Air Traffic Controllers Association to develop a fatigue awareness and countermeasures program for air traffic controllers. In addition, our Most Wanted List includes recommendations to the states to enact laws that promote seatbelt usage, ensure child occupant protection, improve youth highway safety, eliminate hard-core drinking driving, require motorcycle helmet use, and improve recreational boating safety.

On average, it takes recipients of our safety recommendations from 3 to 5 years to implement the recommended changes. The time to closure for our safety recommendations varies based on the type of action recommended; for example, whether we are asking for improvements in education or training programs, federal regulations, or state legislation.

Recommendations to Federal agencies requesting rulemaking can take much longer. The FAA's proposed regulations regarding the Board's fuel tank inerting recommendation, for example, which was issued in 1996, is just now being reviewed at the Office of Management and Budget for final regulatory approval.

Reauthorization Request

The Safety Board is asking for authorized resource levels capable of funding 399 full-time equivalent (FTE) positions in fiscal year 2009, and 475 FTEs in both fiscal years 2010 and 2011. The necessary resource levels for fiscal years 2009-2011 are $87.891 million, $107.208 million, and $113.026 million, respectively.

We began fiscal year 2006 with the equivalent of 416 full-time employees at the Safety Board. That number was significantly more than our fiscal year 2006 budget could support, so we were obligated to reduce the number of employees at the Board. We allowed attrition to steadily reduce the number of employees to a sustainable level. The number of FTEs eventually dropped to 396, and we sustained that number through the remainder of fiscal year 2006. Fiscal Year 2007 appropriations provided us $79.338 million, only $262 thousand below the President's Budget, and allowed us to avoid further cuts, but we were not appropriated sufficient resources to regain the previously lost positions. In fiscal year 2008, Congress recognized our need to recover previous losses, and provided us $1.5 million over the President's Budget. We used that to return 8 FTE investigative personnel back to the agency's ranks. We were also able to achieve significant cost savings within our budget by subleasing portions of the NTSB Training Center building to another Federal agency and consolidating headquarters space and then subleasing a portion of the headquarters facilities to another Federal agency. Through these savings, we were able to return another 5 FTEs to our rolls. Our planning continues to indicate that to carry out the mission of the Safety Board, we will still need 475 FTE staff. Consequently, this is the number that we have proposed for fiscal years 2010 through 2011. We recognize that this represents growth, but this staffing level is needed to allow us to investigate accidents appropriately and issue timely and effective safety recommendations.

Our reauthorization request contains a number of proposals for specific legislative language that we believe would improve the Board's operation. The agency performed a comprehensive review of its statutory authorization structure, and considered various issues that have arisen under the current framework. The Safety Board respectfully asks Congress to consider addressing these suggested amendments, and we have proposed language that might achieve these objectives. We would welcome further dialogue with you or your staff should you wish to discuss these or other proposals in detail.

The Board has proposed a number of what we believe to be realistic, and in practice, modest modifications to the investigative responsibility of the Safety Board, as currently directed by Congress. I will discuss a couple of what we believe are the most important proposals.

First, the Safety Board recommends that Congress modify the Board's authority to investigate marine accidents under 49 United States Code section 1131(a)(1)(E) by granting the Board authority to investigate any accident the Board determines to have sufficient national importance to maritime transportation safety such that the accident is deserving of an

independent investigation by the Board. If approved by Congress, our proposal would permit the Safety Board to "elect" primary Federal investigative jurisdiction for such an accident, as is the case with most of the other modes of transportation.

This change would primarily modify the relationship between the U.S. Coast Guard and the Safety Board. Currently, the Board interacts with the Coast Guard with regard to marine accident investigation under the framework of a National Transportation Safety Board and Coast Guard Memorandum of Understanding (MOU) dated September 12, 2002. That MOU sets out criteria under which either the Safety Board or the Coast Guard will take lead status in a particular marine accident or casualty investigation. While that MOU has provided a solid framework for Safety Board and Coast Guard cooperation, it does not resolve either's authority to direct the course of an investigation should the Safety Board and Coast Guard not agree on how to conduct the investigation. Furthermore, in some instances there is complexity, and some degree of uncertainty by all involved, in working through the MOU framework while incoming information is unknown or initially inaccurate. The Safety Board believes it would benefit the public if the Safety Board were allowed to assert the lead in certain marine accident investigations and manage the evidence being collected.

The second suggested amendment to the Safety Board's accident investigation charter from Congress is the Board's request for explicit authority to investigate incidents. Congress has given the Safety Board a broad direction to investigate accidents, but the language is not explicit when it comes to incidents. As this Committee is fully aware, the Board already investigates many transportation incidents, even if there is no loss of life or damage to property. One example would be runway incursions that come quite close to causing a significant accident. This investigation practice, which has been a part of NTSB activities throughout the history of the agency, reflects the consensus of most concerned that there is value in using things such as safety indicators, self-reporting mechanisms, and incident investigation as a way to proactively bolster transportation safety instead of doing so solely in a reactive fashion by limiting ourselves to post-accident analysis. The International Civil Aviation Organization is also urging member nations to adopt this as a standard practice under their aviation accident investigation structure.

There are some other practical benefits to this proposed change. It would permit the Safety Board to assert its authority in a timely manner to provide independent investigation of certain events that otherwise might only be examined under a process internal to the owning agency or entity. One hypothetical example we give is a "lost link" situation (interruption of communications) between the ground station and an Unmanned Aerial Vehicle (UAV) that results in uncontrolled intrusion by the UAV into the National Airspace causing loss of separation with one or more commercial airliners and other aircraft. If the communications link with the UAV is subsequently reestablished and the UAV is brought back to a safe landing, there is no requirement for the owning agency to report the incident and the agency could argue that the Safety Board has no authority to insist upon examining that sequence of events or the underlying safety mechanisms in place for the vehicle. This proposed legislation explicitly authorizing the Safety Board to investigate incidents would remedy that, and in the process, direct in law what we believe is already almost certainly the desire and expectation of Congress.

The next distinct topic in our reauthorization request that I would like to discuss is the

Board's request that Congress more clearly articulate the Board's right to access critical information related to an accident during a Board investigation. Currently, the Board has the ability to request information related to an accident, has a right of access to places and things that is enforceable in Federal Court, and has subpoena authority that is again enforceable in Federal Court. We believe it clear that Congress intended and has always intended that the Board investigate the accidents it was charged to investigate and to have the necessary powers to thoroughly collect all relevant factual material.

In rare instances, the Board has received resistance from counsel for some entities with whom we have interacted in an investigation resisting the Board's authority to subpoena records or things in an investigation, particularly medical records. We are also concerned about our statutory authority to gain access to personal financial records. It is the interplay between our investigative directive from Congress and statutes that provide appropriate protections for the financial and medical privacy of individuals that create the occasional complication, mainly because when these other statutes were drafted, it appears the drafters did not contemplate the important transportation accident safety investigations that the Board is also directed by Congress to conduct. While we fully recognize the important societal interests represented by these privacy statutes, there is an equally important societal interest at play in accident investigation, namely the identification of probable cause(s) and the issuance of recommendations to prevent similar accidents from happening in the future.

Specific examples of the types of records the Safety Board could deem relevant to the human factors analysis in an investigation might be the medical records of a ship's captain, master, or pilot to examine his fitness for duty, accuracy of his medical certificate application, and the propriety of the licensing and medical oversight process administered by the Coast Guard; the credit card records of a pilot involved in a commercial aircraft disaster for the information they might shed on the activities of that crewmember the night before or even 24-72 hours prior to the accident; or the financial records of a sole proprietor of an aviation business to determine if there were financial pressures on the owner as a result of the charter business operations under a particular operating certificate. We believe we currently have such authority, but the ability to subpoena medical records is addressed in the rather obscure Federal Register passages related to the Department of Health and Human Services Notice of Proposed Rule Making efforts under the Health Insurance Portability and Accountability Act (HIPAA), and possibly requires assistance from Federal Court to access individual financial records.

Accordingly, the Safety Board has made several proposals that would clarify the authority of the Safety Board to access such records by subpoena by 1) clearly stating, for any Federal Court that might review a Safety Board investigation subpoena in the future, the Board's authority to issue such an investigative subpoena; 2) instructing that the Board may obtain financial records via subpoena using the same procedure law enforcement investigators can, and 3) clearly stating the Board's authority to obtain medical records via a request, to include via subpoena, under HIPAA. We appreciate your support in this regard.

As I close, I want to assure you that we are working hard to ensure that the people and resources of the Board are well managed. In fact, I am proud to tell you that in each of the last five fiscal years, our timely and accurate financial statements have received clean audit opinions.

We have also achieved a more efficient and cost effective structure, and have engaged in continuing strategic and operational planning across the agency.

As I said at the beginning of my testimony, every day the Safety Board is serving the American public with dedicated work, thorough investigations, and sound technical analysis. But we continue to need the support of Congress to ensure that we have the resources and statutory structure needed to accomplish our mission as Congress intends.

I thank you for the opportunity to appear before you today, and I am happy to respond to any questions you may have.

Status of NTSB's Efforts to Implement Recommendations By GAO and an Independent Information Security Auditor

Management Practices			
Area	**Past finding**	**Recommendation**	**Status**
Communication	NTSB lacked upward communications mechanisms central to forming effective partnerships within the organization.	Develop mechanisms to facilitate upward communication from staff to management	
Strategic planning	Without a more comprehensive strategic plan, NTSB could not align staffing, training, or other aspects of human resource management to its strategic goals.	Develop a revised strategic plan	
Information technology (IT)	Without an IT plan, NTSB was not ensuring that its management of information technology is aligned to fully and effectively support its mission.	Develop an IT plan	
Knowledge management	Without a knowledge management initiative or program, NTSB was not ensuring that its knowledge management was aligned to fully and effectively support its mission.	Develop a knowledge management plan	
Organizational structure	NTSB lacked a workforce development strategy that considered the agency's organizational structure.	Align organizational structure to implement strategic plan	
	NTSB lacked a workforce development strategy that considered the agency's balance of supervisory and non-supervisory positions.	Eliminate unnecessary management layers	
Human capital management	NTSB was not ensuring that its human capital management was aligned to fully and effectively support its mission.	Develop a human capital plan	
Training	NTSB had not developed a strategic training plan.	Develop a strategic training plan	
	NTSB had not established a core curriculum for investigators.	Develop a core curriculum for investigators	
Financial management	NTSB had violated the Anti-Deficiency Act by improper use of funds to purchase accident insurance for employees on official travel.	Correct violation of the Act related to purchasing accident insurance for employees on official travel	
	NTSB had violated the Anti-Deficiency Act by not obtaining budgetary authority for the net present value of its 20-year lease of its training center.	Correct violation of the Act related to agency's lease of the training center	
	Without a full cost accounting system, NTSB lacked sufficient information to plan the allocation of staff time or to effectively manage staff workloads.	Develop a full cost accounting system to track time employees spend on each investigation and in training	

Legend
Fully implemented
Significant progress
Limited progress

1

Accident Investigation Mission and Safety Studies

Area	Past finding	Recommendation	Status
Accident selection	Without detailed, risk-based criteria for selecting which accidents to investigate in some modes, NTSB lacked assurance and transparency that it was managing resources in a manner that ensured a maximum safety benefit.	Develop board orders for all modes articulating risk-based criteria for selecting which accidents to investigate	
Recommendation close-out	NTSB's process for changing the status of recommendations prevented expedient delivery of information about recommendation status to affected agencies.	Computerize related documentation and use concurrent reviews	
Report development	NTSB faced challenges to efficiently developing its reports that contributed to its investigations of major accidents routinely taking longer than 2 years complete.	Identify better practices in the agency and apply them to all modes	
Safety studies	NTSB's limited use of safety studies to proactively examine and highlight safety issues may limit the effectiveness of its efforts to improve transportation safety.	Increase utilization of safety studies	

Training Center Utilization

Area	Past finding	Recommendation	Status
Training center utilization	NTSB had the ability to provide more courses geared to NTSB staff to replace some external courses.	Maximize the delivery of core investigator curriculum at its training center	
	NTSB's training center was underutilized and the agency lacked a comprehensive strategy for addressing this issue.	Develop plans to increase utilization of the training center	

Information Security

Area	Past finding	Recommendation	Status
Information security—FISMA	NTSB only partially met or did not meet Federal Information Security Management Act of 2002 (FISMA) and National Institute of Standards and Technology (NIST) requirements in six areas	Ensure that the CIO monitors all key corrective actions and provides the necessary funding and human resources	
Information security—Access controls	28 active users of NTSB's general support system had retained an active user account but had left the agency.	Remove access authorities to NTSB's systems from personnel who are no longer NTSB employees	
	In most instances, auditors were unable to obtain documentation to support the original access granted to NTSB employees for the agency's general support system.	Maintain documentation supporting the initial access granted to a user	
	NTSB had not performed the required annual review of users' access authorities for the general support system.	Develop detailed operational procedures to guide system security officers and system owners in the process of recertifying users	

Legend
Fully implemented
Significant progress
Limited progress

2

Information Security (Cont.)

Area	Past finding	Recommendation	Status
Information security—Access control (cont.)	NTSB was unable to readily identify a person's access authorities granted through the general support system to the agency's mission systems.	Develop a process to properly analyze and complete the annual recertification of users' access authorities	
	NTSB did not implement a control to require the system to automatically disable inactive accounts after a period of non-use.	Implement a control to automatically suspend an account after a period of non-use	
Information security—Privacy Act	NTSB did not take actions required by the Privacy Act and related Office of Management and Budget (OMB) memoranda to safeguard personally identifiable information.	Update the Plan of Action and Milestone to reflect current status of NTSB's actions to address Privacy Act and OMB Memoranda	
	NTSB was not complying with OMB requirements for compliance with the Privacy Act, such as conducting a privacy assessment of its information systems or performing periodic reviews of contracts and recordkeeping practices.	Comply with requirements of the Privacy Act and policy set forth by OMB Memoranda	

Sources:
Findings and recommendations from:

- GAO, *National Transportation Safety Board: Preliminary Observations on the Value of Comprehensive Planning, and Greater Use of Leading Practices and the Training Academy*, GAO-06-801T (Washington, D.C.: May 26, 2006);
- GAO, *National Transportation Safety Board: Progress Made, Yet Management Practices, Investigation Priorities, and Training Center Use Should Be Improved*, GAO-07-118 (Washington, D.C.: Nov. 30, 2006); and
- Leon Snead & Company, P.C., *National Transportation Safety Board: Compliance with the Requirements of the Federal information Security Management Act, Fiscal Year 2007*, a special report prepared at the request of NTSB, Sept. 24, 2007.

Status based on GAO analysis of information provided by NTSB.

Legend
Fully implemented
Significant progress
Limited progress

May-19-08 04:41pm From-NTSB 202-314-6110 T-830 P.046/048 F-396

Nati nal Transportation Safety Board
Washington, D.C. 20594

Office of the Chairman

APR 2 4 2008

Honorable John L. Mica
Ranking Republican Member
Transportation and Infrastructure Committee
U.S. House of Representatives
2163 Rayburn House Office Building
Washington, D.C. 20515

Dear Congressman Mica:

Pursuant to 49 United States Code, Section 1135(d)(2), the National Transportation Safety Board is required to notify Congress if the Board has not received a report from the Secretary of Transportation containing the regulatory status of each recommendation made by the Board to the Secretary that is on the Board's Most Wanted List of Safety Recommendations by March 1 of each year.

Please be advised, as of March 1, 2008, the Safety Board had not received the required report from the Secretary of Transportation. The Board did receive the report from the Department of Transportation on April 23, 2008.

Sincerely,

Mark V. Rosenker
Chairman

National Transportation Safety Board

Washington, D.C. 20594

Office of the Chairman

APR 25 2008

Honorable James L. Oberstar
Chairman
Transportation and Infrastructure Committee
U.S. House of Representatives
2165 Rayburn House Office Building
Washington, D.C. 20515

Dear Chairman Oberstar:

Thank you for the opportunity to respond to your question during the National Transportation Safety Board's (NTSB) Reauthorization hearing on Wednesday, April 23rd, before the House Transportation and Infrastructure Committee, Aviation Subcommittee, about how the NTSB acquired our current administrative law judges (ALJs).

I am happy to report that your recollection is correct.

My Office of Administrative Law Judges informs me that in 1967, when the NTSB was initially established, hearing examiners were transferred from the Civil Aeronautics Board to the newly created NTSB. Those hearing examiners were reclassified as ALJs in 1972. When Congress made the NTSB an independent agency in 1975, those ALJs remained with the NTSB. They continue to perform a valuable role and remain an important component of the agency today.

Again, Chairman Oberstar, thank you for your continued interest in the vitality of the NTSB and for your support. Please contact me if your have further questions on this or any other topic.

Sincerely,

Mark V. Rosenker
Chairman

cc: Honorable John L. Mica, Ranking Member
Honorable Jerry Costello, Chairman
Aviation Subcommittee
Honorable Thomas Petri, Ranking Member
Aviation Subcommittee

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