



Committee on Transportation and Infrastructure
U.S. House of Representatives
Washington, DC 20515

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June 24, 2022

The Honorable Pete M. Buttigieg
Secretary
U.S. Department of Transportation
1200 New Jersey Avenue S.E.
Washington, D.C. 20590

Dear Secretary Buttigieg:

We are writing to express concerns about oversight of commercial space transportation accident investigations. Recently, representatives of the Federal Aviation Administration (FAA) claimed that FAA has exclusive authority over all commercial space accident investigations and that the National Transportation Safety Board (NTSB) will only be included in such investigations at FAA's invitation. As the leaders of the Committee that oversees the Department of Transportation (DOT), FAA, and NTSB, we contest this assertion. The NTSB's independent investigatory authority over transportation accidents is an important component of transportation safety. Accordingly, we urge you to instruct the FAA to work with the NTSB to update the memorandum of agreement regarding commercial space transportation accident investigations in a manner which ensures the investigatory independence and authority of the NTSB.

Like you, we believe that ensuring proper safety oversight of the commercial space transportation industry is the best way to ensure that the sector continues growing in a responsible manner. An important component of transportation safety oversight is accident investigation. In recent months, FAA representatives have expressed on numerous occasions that the "FAA has statutory authority over all aspects of Commercial Space Launch Activities," implying that such jurisdiction is nearly exclusive.¹ The FAA has also expressed this implied exclusivity gives it authority over all commercial space transportation accident investigations and that—if the FAA deems it appropriate—the FAA will "consult with the head of [the NSTB]" and that the "[NTSB] shall **assist** the Secretary."² While we are reassured that the FAA has promised it "has not and will not exclude NTSB from participating in an accident investigation," we are concerned that the FAA's position

¹ Letter from Steve Dickson, Adm'r, FAA, to Jennifer Homendy, Chair, NTSB (Jan. 14, 2022) (Proposed Rule: 49 CFR 831, NPRM Comment ID: NTSB-2021-0008-0017) [hereinafter *Ltr from Dickson to Homendy*], available at: <https://www.regulations.gov/comment/NTSB-2021-0008-0017>.

² Email from FAA to House T&I Democratic Staff (May 11, 2022) (on file with Democratic Staff) (emphasis added).

improperly portrays the NTSB's statutory role in the commercial space transportation accident investigation process.³

In all modes of transportation, the NTSB has the authority to investigate accidents *independently* of the regulator. The NTSB derives this authority from section 1131 of title 49, United States Code, where it states, “[t]he National Transportation Safety Board shall investigate... and establish the facts, circumstances, and cause or probable cause of—” accidents pertaining to nearly every mode of transportation, each of which is enumerated.⁴ While it has been suggested that NTSB's investigatory role over commercial space accidents is limited because it is not explicitly enumerated, this is a patently erroneous conclusion. Congress understood that there would be other transportation accidents warranting NTSB investigation and established subparagraph (F) of section 1131, which states the NTSB may also investigate “any other accident related to the transportation of individuals or property when the Board decides—(i) the accident is catastrophic; (ii) the accident involves problems of a recurring character; or (iii) the investigation of the accident would carry out this chapter.”⁵ As such, if the Board decides that a commercial space accident meets one of these three criteria, the NTSB may investigate it.

The FAA has previously recognized the application of subparagraph (F) to commercial space transportation accident investigations. Appendix H of the “Reimbursable Memorandum of Agreement between the Department of Transportation and National Transportation Safety Board,” agreed to in 2000, describes the conditions under which the NTSB will investigate a commercial space transportation accident.⁶ The agreement states in part that “[n]othing in this agreement impairs the authority of the NTSB to investigate any other commercial space launch accident which, in the judgement of the Board, is subject of Section 304(a)(1)(F) of the Independent Safety Board Act of 1974 [codified as 49 U.S.C. 1131].”⁷ The NTSB used its authority under subparagraph (F) in 2015 when it investigated the Scaled Composites SpaceShipTwo accident.⁸

Furthermore, in founding the NTSB as it exists today—

*“Congress believed that **only if the Board was entirely independent** could it impartially, fairly, and without executive interference conduct investigations, determine cause of accidents, and make recommendations (based on its investigations and studies), designed to preclude accidents from occurring in the future.”⁹*

³ *Id.*

⁴ 49 U.S.C. § 1131.

⁵ 49 U.S.C. § 1131.

⁶ Appendix H of Reimbursable Mem. of Agreement b/n the NTSB & DOT (revised: 1999), available at: https://www.faa.gov/space/legislation_regulation_guidance/media/mou_space_launch_accidents.pdf (pg. 4-6).

⁷ *Id.*

⁸ NTSB, *In-Flight Breakup During Test Flight, Scaled Composites SpaceShipTwo, N339SS, Near Koehn Dry Lake, CA, Oct. 31, 2014*, Rpt. No. AAR 15/02 (Washington, DC: NTSB 2015) [hereinafter *SpaceShipTwo NTSB Investigation*], available at: <https://www.nts.gov/investigations/AccidentReports/Reports/AAR1502.pdf>.

⁹ Senate Report No. 93-1192 (1974), *Transportation Safety Act of 1974*, at p. 15 (emphasis added), available at <https://www.fordlibrarymuseum.gov/library/document/0055/12006477.pdf>.

Towards this end, in situations where the FAA was the regulator, Congress expressed its desire for the NTSB to “be free (and feel free) to criticize activities of the [FAA].”¹⁰ And when the NTSB’s independence from the FAA was called into question in 1974—because both were housed under the Department of Transportation (DOT)—Congress concluded “that an entire reorganization of the Board [was] required,” in order to “guarantee the independence of the [NTSB].”¹¹

As an independent agency, “the NTSB can carry out unbiased investigations and make recommendations regarding safety regulations and oversight practices of the DOT without inherent conflicts of interest.”¹² This independence from the DOT has proven crucial numerous times when the NTSB has found the regulator to be partially at fault. In the 2015 investigation into the breakup of SpaceShipTwo, the NTSB found that FAA/Office of Commercial Space Transportation (AST) technical staff’s “questions that did not [appear] directly relate[d] to public safety were filtered by FAA/AST management to reduce the burden on Scaled¹³ [but that such a] dividing line between the questions... is not always apparent...”¹⁴ This and other examples demonstrate the need for NTSB’s independence.

Finally, independence from influence is similarly crucial to maintaining the integrity of the NTSB’s investigatory recommendations. Once an investigation is complete, the NTSB must be able to issue safety recommendations uninhibited by politics, industry, and costs, and—perhaps most crucially—without fear of retribution or censorship from parties who may be biased, vested, or even at fault.

As to whether commercial space launches constitute transportation—which some have used to argue away the NTSB’s authority over the transportation of individuals or property—section 50901 of title 51, United States Code, codified in 1994, enumerates the Congressional finding that “**space transportation**, including... the providing of launch services and reentry services... **is an important element of the transportation system of the United States.**”¹⁵ In the FAA’s own letter to the NTSB on this very issue, the FAA similarly admitted that “[t]he FAA’s authority [is] delegated through the Secretary of **Transportation**...”¹⁶ Specifically, section 50901 of title 51 provides “that the **Secretary of Transportation** is to oversee and coordinate the conduct of commercial launch and reentry operations, issue permits and commercial licenses and transfer commercial licenses authorizing those operations, and protect the public health and safety, safety of property, and national security and foreign policy interests of the United States; and... facilitate the strengthening and expansion of the United States **space transportation** infrastructure.”¹⁷ Thus, it stands without question that the movement of individuals and property to, from, and within space meets the plain definition of transportation.

¹⁰ *Id.* at 15.

¹¹ *Id.* at 29.

¹² CRS, *The National Transportation Safety Board (NTSB): Background and Possible Issues for Reauthorization and Oversight*, R44587, (Aug. 10, 2016), at 3-4, available at <https://www.crs.gov/reports/pdf/R44587>.

¹³ Scaled Composites LLC (“Scaled”) was the operator of the launch vehicle, SpaceShipTwo.

¹⁴ *SpaceShipTwo NTSB Investigation*, *supra* note 8.

¹⁵ Pub. L. No. 103-272, § 70101, 108 Stat. 745, 1330-31 (1994) (codified as 51 U.S.C. § 50901(a)(8)) (emphasis added).

¹⁶ *Ltr from Dickson to Homendy* (emphasis added).

¹⁷ 51 U.S.C. § 50901(b)(3) (emphasis added).

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With this in mind, it is clear the NTSB's independence must be protected in order to maintain the integrity and safety of the U.S. transportation system. Since commercial space transportation is an important element of the U.S. transportation system, the NTSB's authority to investigate such commercial space accidents is unequivocal. As such, we urge the FAA and the NTSB to work together to finalize an updated memorandum of agreement regarding commercial space transportation that continues to recognize NTSB's investigatory independence.

Sincerely,



PETER A. DeFAZIO

Chair



SAM GRAVES

Ranking Member



RICK LARSEN

Chair

Subcommittee on Aviation



GARRET GRAVES

Ranking Member

Subcommittee on Aviation

CC: The Honorable Billy Nolen
Acting Administrator, Federal Aviation Administration

The Honorable Jennifer Homendy
Chair, National Transportation Safety Board

The Honorable Kamala Harris
Vice President of the United States
Chair, National Space Council