

**SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION:
QUESTIONS FOR THE RECORD**

**FROM THE NOMINATIONS HEARING
ON JUNE 24, 2021**

**Written Questions Submitted to Jennifer Homendy to be Chair of the National
Transportation Safety Board**

Submitted by Senator Roger Wicker, Ranking Member
Safety Recommendations

Question 1: Ms. Homendy, given the challenges posed by finite resources, what is your view as to the extent to which NTSB should consider costs and unintended consequences when developing safety recommendations, and how does the NTSB prioritize recommendations that will save the most lives?

Response:

Thank you for that question, Ranking Member Wicker. Regarding the first part of the question, the NTSB's mission is to investigate every civil aviation accident in the United States and significant events in other modes of transportation, and issue safety recommendations aimed at preventing accidents and injuries and saving lives. Our goal is always to prevent that accident from re-occurring; however, our recommendations are not mandates. Once we issue safety recommendations, it is up to the recipients to determine whether and how they want to address those recommendations. For federal agencies, that may include a cost-benefit analysis. With that said, we are a principled but also pragmatic agency. We are open to alternative approaches so long as identified safety risks are addressed. Since the NTSB's founding, 11.7% of our recommendations have been closed "acceptable alternate action". The Board is usually willing to close a recommendation with a satisfactory status if the recipient has taken sincere effort and all available reasonable actions to mitigate the safety risks we uncover.

For the second part of the question, the NTSB maintains a biennial Most Wanted List which highlights transportation safety improvements needed now to prevent tragedies, reduce injuries, and save lives. For 2021-2022, the Most Wanted List issues are:

- Require and verify the effectiveness of safety management systems in all revenue passenger-carrying aviation operations
- Install crash-resistant recorders and establish flight data monitoring programs
- Implement a comprehensive strategy to eliminate speeding-related crashes
- Protect vulnerable road users through a safe systems approach
- Prevent alcohol- or other drug-impaired driving
- Requiring collision avoidance and connected vehicle technologies on all vehicles
- Eliminate distracted driving
- Improve passenger and fishing vessel safety
- Improve pipeline leak detection and mitigation
- Improve rail worker safety

To be selected for the Most Wanted List, a safety item must have at least one open safety recommendation. NTSB staff across our modal offices and the Office of Research and Engineering propose the MWL safety items using Board-approved criteria: level of validation; level of action; level of risk and consequence; and potential benefit from focused NTSB advocacy.

The offices apply the criteria to each of their potential safety items in a qualitative ranking tool. This tool is intended to give office directors a consistent way to rank their mode's safety items relative to each other, instead of comparing them across modes. The NTSB's Board deliberates and approves the final Most Wanted List.

These changes were in response to recommendations from the Government Accountability Office in March 2020. We also enhanced the process to allow for greater transparency on how safety items are selected.

- Can you discuss examples of how the NTSB has collaboratively worked with agencies to refine safety recommendations so that they can be more quickly adopted by industry?

Response:

Thank you for that question, Ranking Member Wicker. Our Safety Recommendations and Communications team meets regularly with modal administrations within the U.S. Department of Transportation and the U.S. Coast Guard to discuss our safety recommendations. Agencies or other recommendation recipients may, at times, propose another way of addressing our recommendation which gets at the intent of the recommendation. Staff works through that proposed alternative with the recipient and, if the safety deficiencies will be mitigated through an alternative approach, staff will present it to the Board for consideration.

Three examples are recommendations P-19-1, P-19-2, and H-12-3.

P-19-1 recommended that the Pipeline and Hazardous Materials Safety Administration (PHMSA) require that all new service regulators be installed outside occupied structures, and P-19-2 recommended that PHMSA require existing interior service regulators outside occupied structures whenever the gas service line, meter, or regulator is replaced, prioritizing multifamily structures over single-family dwellings.

PHMSA proposed an alternative to the NTSB: changing distribution forms to emphasize compliance with existing service regulator requirements and revising the state program evaluation form to verify that states check operator compliance with regulations for inside regulators. PHMSA would also review and emphasize current requirements for inside meters and regulators with operators, and issue an advisory bulletin alerting operators to the existing requirements for inside meters and regulators.

PHMSA proposed to provide data showing that their actions were achieving similar results to a regulation by working with the National Association of Pipeline Safety Representatives to determine a baseline for the number of inside regulators, and then annually track this data to

determine the rate of reduction in inside regulators. PHMSA would submit this data to the NTSB and evaluate it to see if it showed their alternative was effective.

On February 11, 2020, the Board classified the two recommendations as “Open – Acceptable Alternative Response” pending implementation of their plan, our review of PHMSA data demonstrating that the plan is successful, and development of a revised plan if the data do not show that the alternative is achieving the same results as a regulation.

Another example is H-12-3, which was issued as a result of a July 15, 2009, hazmat release of anhydrous ammonia from a ruptured transfer hose from a cargo tank truck to a storage tank at the Tanner Industries, Inc. in Swansea, South Carolina. NTSB recommended that PHMSA require cargo tank motor vehicle carriers and transfer facilities to verify (1) that cargo transfer hose assemblies, whether carried on the vehicle or provided by the facility, are chemically compatible with the hazardous material to be transferred and (2) that drivers verify hoses are marked as compatible with the material to be transferred before either loading or unloading operations begin.

PHMSA developed a comprehensive safety program to address cargo tank motor vehicle loading and unloading. In addition to the ongoing regulatory enforcement efforts maintained in partnership with FMCSA and state agencies, PHMSA published two guidance documents. NTSB staff reviewed these guidance documents and suggested revisions to some of the language to remind users to verify equipment compatibility during transfer operations. The guidance documents are (1) A comprehensive best practices reference guide that includes an appendix with relevant OSHA and EPA regulations; (2) A quick-reference pocket guide. PHMSA was promoting these guidance documents with industry representatives through social media and Hazardous Materials Safety Assistance Team outreach efforts. On October 27, 2015, the NTSB classified Safety Recommendation H 12-3 “Closed—Acceptable Alternate Action.”

Determination of Investigations

Question 2: Ms. Homendy, given that NTSB cannot investigate all incidents and accidents, could you describe the process the Board uses to determine which events to investigate?

Response:

Thank you for that question, Ranking Member Wicker. Our determination of which events we investigate is based on our legislative mandate contained in 49 United States Code (USC) § 1131, which requires the Board to investigate an aircraft accident the Board has authority to investigate under section 49 USC 1132 or an aircraft accident involving a public aircraft (other than an aircraft operated by the Armed Forces or by an intelligence agency of the United States); a highway accident, including a railroad grade crossing accident, the Board selects in cooperation with a State; a railroad accident in which there is a fatality or substantial property damage, or that involves a passenger train; a pipeline accident in which there is a fatality or substantial property damage, or significant injury to the environment; a major marine casualty occurring on or under navigable waters, internal waters, or the territorial sea of the United States, or involving a vessel of the United States, under regulations prescribed jointly by the Board and the head of the department in which the Coast Guard is operating; and any other accident related

to the transportation of individuals or property when the Board decides (1) the accident is catastrophic; (2) the accident involves problems or a recurring character; or (3) the investigation of the accident would carry out this chapter.

The Board does not have the resources, nor believes there is a safety benefit, to investigate every grade crossing or trespasser event. Although our highway mandate under 49 USC 1131(a)(1)(B) states that the Board shall conduct a grade crossing accident “the Board selects in cooperation with a State,” our railroad accident mandate under 49 USC 1131(a)(1)(C) seems to suggest that we have to investigate every single grade crossing accident in which there is a fatality or substantial property damage or involves a passenger train, not just those we select in cooperation with a State. It would be helpful for Congress to clarify this “dual mandate” on grade crossing accidents in the next reauthorization bill, as well as eliminate trespasser events. To address trespasser events, we suggest the following: Amend 49 USC § 1131(c) to read as follows:

(c) a railroad accident in which there is a fatality or substantial property damage, or that involves a passenger train, other than a railroad accident involving an unauthorized person who enters or remains on a railroad right of way, equipment, or facility. The term “railroad right of way” does not include grade crossings;

This language does not address the dual mandate but, if confirmed, I am happy to work with the Committee to address that issue.

Regulatory Authority

Question 3: Should NTSB have the authority to mandate recommendations?

Response:

Thank you for that question, Ranking Member Wicker. No, the NTSB is the foremost transportation safety agency in the world. Our greatest power is the ability to investigate a crash, without bias, and determine how lives could have been saved if safety improvements were implemented. If we had the authority to mandate recommendations, we would lose our independence and be subject to cost-benefit analyses that could limit the scope and effectiveness of our safety recommendations. Rather, public interest is best served by having an agency that impartially and objectively investigates a crash and provides safety recommendations for review and consideration.

Submitted by Senator John Thune

Question 1: The National Transportation Safety Board (NTSB) has been active in recent years on accidents relating to emerging transportation safety technologies. Automated vehicles, for example, have the potential to drastically reduce fatalities and improve safety on our nation’s roads.

Based on your experience, do you believe that automated vehicles present an enormous opportunity to improve motor vehicle and traffic safety?

Response:

Thank you for that question, Senator Thune. Nearly 40,000 people die annually on our nation’s roads; millions of others are injured. New technologies, like automated vehicles, have the potential to improve safety on our roads and save lives, but the federal government needs to put

in place a robust safety framework to protect the public and ensure those lifesaving benefits are realized.

- If confirmed, how would you work with both Congress and the Department of Transportation to encourage the wider adoption of this technology?

Response:

Thank you for that question, Senator Thune. If confirmed, I will work with Congress and the Department of Transportation to share lessons learned from NTSB investigations of automated and partially-automated vehicles. I am also happy to provide you and the Committee with any technical assistance you may need as you develop future legislation to address automated vehicles. We are already on record strongly supporting collision avoidance technologies which are the building blocks of automated vehicle technologies.

Question 2: As you know, the NTSB Reauthorization Act, included in the FAA Reauthorization Act of 2018 (P.L. 115-254) included a requirement for the agency to include a methodology section accompanying safety recommendation reports. The intent behind the requirement was to better inform Congress and regulatory agencies of the basis for safety recommendations when choosing how to take action.

Do you agree that these methodology sections provide helpful information to Congress and the agencies as they seek to address NTSB recommendations?

Response:

Thank you for that question, Senator Thune. Yes, I believe these methodology sections provide important information that helps recipients and Congress better understand and address our recommendations.

Submitted by Senator Capito

Question 1: Earlier this month, I introduced – along with my colleague Senator Sinema – the *Multiple Substance Impaired Driving Prevention Act*. Among the provisions, our legislation would expand the use of the National Highway Traffic Safety Administration’s (NHTSA) 405d grants to be used for drug toxicology and impaired-driving related training for law enforcement – including drug recognition expert (DRE) training. Thankfully, we were also able to get this legislation into the *Surface Transportation Investment Act (STIA)* that passed this Committee last week.

- Could you speak to the value to the value of investing in DREs?

Response:

Thank you for that question, Senator Capito, and thank you for all your work to provide law enforcement with the tools they need to prevent impaired driving. West Virginia currently has only 54 drug recognition experts (DREs) in the state. DRE training is expensive; it’s a three-stage training program of about 160 hours that can cost around \$1,500 per class. That does not include the cost to law enforcement agencies of sending officers to training, and then backfilling

their jobs while they are in training. Allowing the use of grants to be used for drug toxicology and impaired-driving related training for law enforcement officers would go a long way toward ending drug impaired driving.

- If confirmed, do you commit to working with me on this issue?

Response:

Thank you for that question, Senator Capito. Yes, if confirmed, I would be pleased to work with you on this issue and other initiatives to prevent alcohol and other drug impaired driving, an issue that remains on our 2021-2022 Most Wanted List.