



Office of the Chair

National Transportation Safety Board

Washington, DC 20594

December 3, 2021

The Honorable Frank Lucas
Ranking Member
Committee on Science, Space, & Technology
US House of Representatives
2321 Rayburn House Office Bldg.
Washington, DC 20515

The Honorable Brian Babin
Ranking Member
Space and Aeronautics Subcommittee
Committee on Science, Space, & Technology
US House of Representatives
2321 Rayburn House Office Bldg.
Washington, DC 20515

Dear Ranking Member Lucas and Ranking Member Babin:

Thank you for your November 18, 2021, letter requesting information regarding the National Transportation Safety Board's (NTSB's) November 16, 2021, notice of proposed rulemaking (NPRM) regarding commercial space accident investigations.

We agree that appropriate oversight of this emerging transportation mode is important, and we will avail ourselves to you and to the Committee to ensure you are informed about our existing authority and the proposed rule. The purpose of this letter is to address your stated concerns and to offer continued dialogue regarding your request for extensive documents and communications regarding an ongoing rulemaking.

Foremost, we want to address your concern that the proposed rule is an attempt by the NTSB "to expand its authority," which "would alter the long-standing commercial space accident investigation process." To the contrary, as described in the NPRM, the intent of the proposed rule is to update and ensure the transparency of the agency's commercial space safety investigative authority, which is likewise long-standing and has been integral to US commercial space activities and the accident investigation process.

As described in the 2015 memorandum referenced in your letter, the NTSB's authority to investigate commercial space launch and reentry accident and incidents is well established. The agency has the general authority to investigate and establish the facts, circumstances, and probable cause of any accident related to the transportation of any individuals or property when the Board decides the accident is catastrophic or involves problems of a recurring character, or when investigating the accident would fulfill the NTSB's statutory mandate.¹ We have been involved in commercial space accident investigations for almost 30 years, since leading the investigation of a procedural anomaly associated with the launch of an Orbital Sciences Corporation Pegasus expendable launch vehicle in 1993.² Most recently, we led the investigation of the fatal in-flight breakup of *SpaceShipTwo* in October 2014.³ We have also assisted in significant noncommercial space investigations, including those involving the Space Shuttle *Columbia* and NASA *Genesis*. NTSB investigative staff have established relationships with all major commercial space stakeholders, including manufacturers and the relevant government agencies.

The NTSB's involvement in commercial space safety investigations was specifically confirmed with the 1985 addition of Appendix H to the 1975 Reimbursable Memorandum of Agreement (MOA) between the NTSB and the US Department of Transportation.⁴ Appendix H established the relationships, notification procedures, coordination requirements, and reporting responsibilities of the NTSB and the Office of Commercial Space Transportation in connection with accident investigations associated with commercial space launch activities. In addition to adhering to the terms of the MOA, the NTSB's 2004 memorandum of understanding with the Federal Aviation Administration and the United States Air Force establishes the relationships among our agencies during space launch accidents.⁵ We believe that the onset and expected growth of commercial human space flight makes it necessary to transition and update the processes established by these agreements so the commercial space industry will have better clarity regarding the circumstances when the NTSB would initiate an investigation of a commercial space mishap. In addition, we believe the rulemaking process providing for public comment is the most transparent way to update these processes now and for any future updates as the industry continues to develop.

As you know, Congress has found that commercial space transportation "is an important element of the transportation system of the United States," and that "the public interest is served by creating a clear legal, regulatory, and safety regime for commercial human space flight."⁶ As in all transportation modes, the NTSB neither issues regulations nor finds fault when investigating accidents; instead, our investigations focus solely on safety issues. Our ability to independently conduct safety investigations and to make recommendations to industry and the appropriate regulator is critical to improving the safety of this emerging area of transportation, as accidents and incidents may suggest deficiencies in the system.

¹ 49 USC § 1131(a)(1)(F)

² National Transportation Safety Board, [Commercial Space Launch Incident, Launch Procedure Anomaly, Orbital Sciences Corporation, Pegasus/SCD-1](#), Rpt. No. SIR 93/02 (Washington, DC: NTSB 1993).

³ National Transportation Safety Board, [In-Flight Breakup During Test Flight, Scaled Composites SpaceShipTwo, N339SS, Near Koehn Dry Lake, California, October 31, 2014](#), Rpt. No. AAR 15/02 (Washington, DC: NTSB 2015).

⁴ Appendix H is included in the appendix of the 1993 Orbital Sciences Corporation Pegasus report.

⁵ [Memorandum of Understanding Between the NTSB, Department of the Air Force, and the FAA Regarding Space Launch Accidents](#)

⁶ 51 USC § 50901

Again, we welcome the opportunity to address your concerns, and we are committed to working with Congress to ensure it has the information you need to evaluate this proposed rule and its impact on the safety of US commercial space operations. NTSB staff will follow up with your staff as soon as possible to further discuss the scope of your request, and I am also happy to meet with you at any time to discuss these issues.

Sincerely,

A handwritten signature in blue ink, appearing to read "Jennifer Homendy".

Jennifer Homendy
Chair

cc: The Honorable Eddie Bernice Johnson
Chair

Congress of the United States

House of Representatives

COMMITTEE ON SCIENCE, SPACE, AND TECHNOLOGY

2321 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6301

(202) 225-6375

www.science.house.gov

November 18, 2021

The Honorable Jennifer L. Homendy
Chair
National Transportation Safety Board
490 L'Enfant Plaza, SW
Washington, DC 20594

Dear Ms. Homendy:

We write you to seek information regarding the National Transportation Safety Board's (NTSB) recent Notice of Proposed Rule Making (NPRM) on Commercial Space Investigations.¹ NTSB's attempts to expand its authority would alter the long-standing commercial space accident investigation process and significantly impact the commercial space launch industry, U.S. economic competitiveness, scientific discovery, space exploration, international cooperation, national security, and safety. The expansion of authorities, alteration of processes and policies, and the codification of procedures require appropriate oversight, coordination, review, deliberation, and approval.

The House Committee on Science, Space, and Technology is committed to ensuring the continued growth and safety of the commercial space industry. Our Committee has a long history of legislation related to, and oversight of, space activities. Additionally, we have jurisdiction over "[o]uter space, including exploration and **control thereof**" (emphasis added).² The Committee was established in response to the Soviet launch of Sputnik, and wrote not only the Space Act which established the National Aeronautics and Space Administration (NASA), but also the Commercial Space Launch Act that established commercial launch activities. Commercial space activities fall firmly within our jurisdiction, and our Space and Aeronautics Subcommittee has broad oversight over the following:

"All matters relating to astronautical and aeronautical research and development; **national space policy**, including access to space; suborbital access and applications; National Aeronautics and Space Administration and its contractor and government-operated labs; **space commercialization**, including commercial space activities relating to the Department of Transportation and the Department of Commerce; exploration and **use of outer space**; **international space cooperation**; **the National Space Council**; **space applications**, space

¹ <https://www.federalregister.gov/documents/2021/11/16/2021-24766/commercial-space-investigations>

² Rules of the House of Representatives, One Hundred Seventeenth Congress, February 2, 2021; Rule X(1)(p).
<https://rules.house.gov/sites/democrats.rules.house.gov/files/117-House-Rules-Clerk.pdf>

communications and related matters; Earth remote sensing policy; civil aviation research, development, and demonstration; research, development, and demonstration programs of the Federal Aviation Administration; **space law**; other appropriate matters as referred by the Chair; and relevant oversight” (emphasis added).³

So that we can better understand NTSB’s attempts to expand its authorities and evaluate the impact this might have on the success and safety of U.S. commercial space activities, we are requesting the following information:

- 1) All documents and communications (as defined by attachment A) related to the development, drafting, and publishing of NTSB’s NPRM titled “Commercial Space Investigations” in the Federal Register on Tuesday, November 16, 2021.
- 2) All documents and communications related to the memorandum titled “SUBJECT: THE NATIONAL TRANSPORTATION SAFETY BOARD’S AUTHORITY TO INVESTIGATE COMMERCIAL SPACE LAUNCH ACCIDENTS” dated July 1, 2015.

Please provide two copies of all documents and communications (one for the Majority and one for the Minority) by December 3, 2022. Please contact Mr. Tom Hammond of the Committee minority staff at 202-225-6371 with any questions related to this inquiry.

Thank you for your consideration of this matter. We are sure we share the same goals of ensuring safety and U.S. economic competitiveness and leadership in space. As the Board considers future actions related space investigations, please avail yourselves to the Committee and its staff. This would ensure that procedural measures such as the Congressional Review Act are not necessary.

Sincerely,



Frank Lucas
Ranking Member



Brian Babin
Ranking Member
Space and Aeronautics
Subcommittee

CC: Rep. Eddie Bernice Johnson
Chair

³ Rules of the Committee on Science, Space, and Technology, U.S. House of Representatives, One Hundred Seventeenth Congress. Rule VI(b)(4). <https://science.house.gov/imo/media/doc/117th%20Rules%20Final2.pdf>

Responding to Committee Document Requests

1. In complying with this request, you are required to produce all responsive documents, in unredacted form, that are in your possession, custody, or control, whether held by you or your past or present agents, employees, and representatives acting on your behalf. You should also produce documents that you have a legal right to obtain, that you have a right to copy or to which you have access, as well as documents that you have placed in the temporary possession, custody, or control of any third party. Requested records, documents, data or information should not be destroyed, modified, removed, transferred or otherwise made inaccessible to the Committees.
2. In the event that any entity, organization or individual denoted in this request has been, or is also known by any other name than that herein denoted, the request shall be read also to include that alternative identification.
3. The Committee's preference is to receive documents in electronic form (i.e., CD, memory stick, or thumb drive) in lieu of paper productions.
4. Documents produced in electronic format should also be organized, identified, and indexed electronically.
5. Electronic document productions should be prepared according to the following standards:
 - (a) The production should consist of single page Tagged Image File ("TIF"), or PDF files.
 - (b) Document numbers in the load file should match document Bates numbers and TIF or PDF file names.
 - (c) If the production is completed through a series of multiple partial productions, field names and file order in all load files should match.
6. Documents produced to the Committee should include an index describing the contents of the production. To the extent more than one CD, hard drive, memory stick, thumb drive, box or folder is produced, each CD, hard drive, memory stick, thumb drive, box or folder should contain an index describing its contents.
7. Documents produced in response to this request shall be produced together with copies of file labels, dividers or identifying markers with which they were associated when the request was served.
8. When you produce documents, you should identify the paragraph in the Committee's schedule to which the documents respond.
9. It shall not be a basis for refusal to produce documents that any other person or entity also possesses non-identical or identical copies of the same documents.

10. If any of the requested information is only reasonably available in machine-readable form (such as on a computer server, hard drive, or computer backup tape), you should consult with the Committee staff to determine the appropriate format in which to produce the information.
11. If compliance with the request cannot be made in full by the specified return date, compliance shall be made to the extent possible by that date. An explanation of why full compliance is not possible shall be provided along with any partial production. Failure to provide an explanation constitutes a waiver of any objections to the subpoena (if one was issued).
12. In the event that a document is withheld on the basis of privilege, provide a privilege log containing the following information concerning any such document: (a) the privilege asserted; (b) the type of document; (c) the general subject matter; (d) the date, author and addressee; and (e) the relationship of the author and addressee to each other.
13. In complying with this request, be apprised that the U.S. House of Representatives and the Committee on Science, Space, and Technology do not recognize: any of the purported non-disclosure privileges associated with the common law including, but not limited to, the deliberative process privilege, the attorney-client privilege, and attorney work product protections; any purported privileges such as privileges over law-enforcement sensitive disclosures; or protections from disclosure under the Freedom of Information Act; or any purported contractual privileges, such as non-disclosure agreements.
14. If any document responsive to this request was, but no longer is, in your possession, custody, or control, identify the document (stating its date, author, subject and recipients) and explain the circumstances under which the document ceased to be in your possession, custody, or control.
15. If a date or other descriptive detail set forth in this request referring to a document is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the request, you are required to produce all documents which would be responsive as if the date or other descriptive detail were correct.
16. This request is continuing in nature and applies to any newly-discovered information. Any record, document, compilation of data or information, not produced because it has not been located or discovered by the return date, shall be produced immediately upon subsequent location or discovery.
17. All documents shall be Bates-stamped sequentially and produced sequentially.
18. Two sets of documents shall be delivered, one set to the Majority Staff and one set to the Minority Staff. When documents are produced to the Committee on Science, Space, and Technology, production sets shall be delivered to the Majority Staff in Room 2321 of the Rayburn House Office Building and the Minority Staff in Room 324 of the Ford House Office Building. Upon completion of the document production, you should submit a written certification, signed by you or your counsel, stating that: (1) a diligent search has been completed of all documents in your possession, custody, or control which reasonably could

contain responsive documents; and (2) all documents located during the search that are responsive have been produced to the Committees.

19. When representing a witness or entity before the Committee in response to a document request, request for transcribed interview, or subpoena from the Committee, or in connection with testimony before the Committee at a hearing, counsel for the witness or entity must promptly submit to the Committee a notice of appearance specifying the following: (a) counsel's name, firm or organization, and contact information; and (b) each client represented by the counsel in connection with the proceeding. Submission of a notice of appearance constitutes acknowledgement that counsel is authorized to accept service of process by the Committee on behalf of such client(s), and that counsel is bound by and agrees to comply with all applicable House and Committee rules and regulations.

Schedule Definitions

1. The term "document" means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including, but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, working papers, records, notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, inter-office and intra-office communications, electronic mail (e-mail), contracts, cables, notations of any type of conversation, telephone call, meeting or other communication, bulletins, printed matter, computer printouts, teletypes, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, and work sheets (and all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments of any of the foregoing, as well as any attachments or appendices thereto), and graphic or oral records or representations of any kind (including without limitation, photographs, charts, graphs, microfiche, microfilm, videotape, recordings and motion pictures), and electronic, mechanical, and electric records or representations of any kind (including, without limitation, tapes, cassettes, disks, and recordings) and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, disk, videotape or otherwise. A document bearing any notation not a part of the original text is to be considered a separate document. A draft or non-identical copy is a separate document within the meaning of this term.
2. The term "communication" means each manner or means of disclosure or exchange of information, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether in a meeting, by telephone, facsimile, email (desktop or mobile device), text message, instant message, MMS or SMS message, regular mail, telexes, releases, or otherwise.
3. The terms "and" and "or" shall be construed broadly and either conjunctively or disjunctively to bring within the scope of this request any information which might otherwise be construed to be outside its scope. The singular includes plural number, and vice versa. The masculine includes the feminine and neuter genders.

4. The terms “person” or “persons” mean natural persons, firms, partnerships, associations, corporations, subsidiaries, divisions, departments, joint ventures, proprietorships, syndicates, or other legal, business or government entities, and all subsidiaries, affiliates, divisions, departments, branches, or other units thereof.
5. The term “identify,” when used in a question about individuals, means to provide the following information: (a) the individual's complete name and title; and (b) the individual's business address and phone number.
6. The term “referring or relating,” with respect to any given subject, means anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with or is pertinent to that subject in any manner whatsoever.