

115TH CONGRESS
1ST SESSION

S. 2202

To amend title 49, United States Code, to authorize appropriations for the National Transportation Safety Board, and for other purposes.

IN THE SENATE OF THE UNITED STATES

DECEMBER 6, 2017

Mr. THUNE (for himself, Mr. NELSON, Mrs. FISCHER, Mr. BOOKER, and Mr. BLUNT) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

A BILL

To amend title 49, United States Code, to authorize appropriations for the National Transportation Safety Board, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS; REF-**
4 **ERENCES.**

5 (a) SHORT TITLE.—This Act may be cited as the
6 “National Transportation Safety Board Reauthorization
7 Act”.

8 (b) TABLE OF CONTENTS.—The table of contents of
9 this Act is as follows:

- Sec. 1. Short title; table of contents; references.
- Sec. 2. Definitions.
- Sec. 3. Authorization of appropriations.
- Sec. 4. Still images.
- Sec. 5. Information sharing.
- Sec. 6. Electronic records.
- Sec. 7. Report on Most Wanted List methodology.
- Sec. 8. Methodology sections.
- Sec. 9. Addressing the needs of families of individuals involved in accidents.
- Sec. 10. Government Accountability Office report on investigation launch decision-making processes.
- Sec. 11. Periodic review of safety recommendations.
- Sec. 12. General organization.
- Sec. 13. Technical and conforming amendments.

1 (c) REFERENCES TO TITLE 49, UNITED STATES

2 CODE.—Except as otherwise expressly provided, wherever
 3 in this Act an amendment or repeal is expressed in terms
 4 of an amendment to, or repeal of, a section or other provi-
 5 sion, the reference shall be considered to be made to a
 6 section or other provision of title 49, United States Code.

7 **SEC. 2. DEFINITIONS.**

8 In this Act:

9 (1) BOARD.—The term “Board” means the Na-
 10 tional Transportation Safety Board.

11 (2) CHAIRMAN.—The term “Chairman” means
 12 the Chairman of the National Transportation Safety
 13 Board.

14 (3) MOST WANTED LIST.—The term “Most
 15 Wanted List” means the Board publication entitled
 16 “Most Wanted List”.

17 **SEC. 3. AUTHORIZATION OF APPROPRIATIONS.**

18 Section 1118(a) is amended to read as follows:

1 “(a) IN GENERAL.—There are authorized to be ap-
2 propriated for the purposes of this chapter—

3 “(1) \$111,400,000 for fiscal year 2019;

4 “(2) \$112,400,000 for fiscal year 2020;

5 “(3) \$113,400,000 for fiscal year 2021;

6 “(4) \$114,400,000 for fiscal year 2022; and

7 “(5) \$115,400,000 for fiscal year 2023.”.

8 **SEC. 4. STILL IMAGES.**

9 (a) STILL IMAGES, VOICE RECORDERS, AND VIDEO
10 RECORDERS.—

11 (1) COCKPIT RECORDINGS AND TRANSCRIPTS.—

12 Section 1114(c) is amended—

13 (A) by redesignating paragraph (2) as
14 paragraph (3);

15 (B) in paragraph (3), as redesignated, by
16 inserting “REFERENCES TO INFORMATION IN
17 MAKING SAFETY RECOMMENDATIONS.—” before
18 “This”; and

19 (C) in paragraph (1)—

20 (i) in the first sentence, by striking
21 “The Board” and inserting “CONFIDEN-
22 TIALITY OF RECORDINGS.—Except as pro-
23 vided in paragraph (2), the Board”; and

24 (ii) by amending the second sentence
25 to read as follows:

1 “(2) EXCEPTION.—Subject to subsections (b)
 2 and (g), the Board shall make public any part of a
 3 transcript, any written depiction of visual informa-
 4 tion obtained from a video recorder, or any still
 5 image obtained from a video recorder the Board de-
 6 cides is relevant to the accident—

7 “(A) if the Board holds a public hearing
 8 on the accident or incident, at the time of the
 9 hearing; or

10 “(B) if the Board does not hold a public
 11 hearing, at the time a majority of the other fac-
 12 tual reports on the accident are placed in the
 13 public docket.”.

14 (2) SURFACE VEHICLE RECORDINGS AND TRAN-
 15 SCRIPTS.—Section 1114(d) is amended—

16 (A) by redesignating paragraph (2) as
 17 paragraph (3); and

18 (B) in paragraph (1)—

19 (i) in the first sentence, by striking
 20 “The Board” and inserting “Except as
 21 provided in paragraph (2), the Board”;
 22 and

23 (ii) by amending the second sentence
 24 to read as follows:

1 “(2) EXCEPTION.—Subject to subsections (b)
 2 and (g), the Board shall make public any part of a
 3 transcript, any written depiction of visual informa-
 4 tion obtained from a video recorder, or any still
 5 image obtained from a video recorder the Board de-
 6 cides is relevant to the accident—

7 “(A) if the Board holds a public hearing
 8 on the accident, at the time of the hearing; or

9 “(B) if the Board does not hold a public
 10 hearing, at the time a majority of the other fac-
 11 tual reports on the accident are placed in the
 12 public docket.”.

13 (3) PRIVACY PROTECTIONS.—Section 1114 is
 14 amended by adding at the end the following:

15 “(g) PRIVACY PROTECTIONS.—Before making public
 16 any still image obtained from a video recorder under sub-
 17 section (c)(2) or subsection (d)(2), the Board shall take
 18 such action as appropriate to protect from public diselo-
 19 sure any information that readily identifies an individual,
 20 including a decedent.”.

21 (b) COCKPIT AND SURFACE VEHICLE RECORDINGS
 22 AND TRANSCRIPTS.—Section 1154(a) is amended—

23 (1) in the heading, by striking “TRANSCRIPTS
 24 AND RECORDINGS” and inserting “IN GENERAL”;

25 (2) in paragraph (1)—

(A) by redesignating subparagraphs (A) and (B) as subparagraphs (B) and (C), respectively; and

(B) by inserting before subparagraph (B) the following:

“(A) any still image that the National Transportation Safety Board has not made available to the public under section 1114(c) or 1114(d) of this title;”;

(3) in paragraph (3)—

(A) in the matter preceding subparagraph (A), by striking “recorder recording” and inserting “recorder recording, including with regard to a video recording any still image that the National Transportation Safety Board has not made available to the public under section 1114(c) or 1114(d) of this title,”; and

(B) in subparagraph (B), by striking “recorder recording” and inserting “recorder recording, including with regard to a video recording any still image that the National Transportation Safety Board has not made available to the public under section 1114(c) or 1114(d) of this title,”; and

(4) in paragraph (4)—

1 (A) in subparagraph (A)—

2 (i) by inserting “a still image or” be-
3 fore “a part of a cockpit”; and

4 (ii) by striking “the part of the tran-
5 script or the recording” each place it ap-
6 pears and inserting “the still image, the
7 part of the transcript, or the recording”;

8 (B) in subparagraph (B)—

9 (i) by inserting “a still image or” be-
10 fore “a part of a cockpit”; and

11 (ii) by striking “the part of the tran-
12 script or the recording” each place it ap-
13 pears and inserting “the still image, the
14 part of the transcript, or the recording”;
15 and

16 (C) in paragraph (6)—

17 (i) by redesignating subparagraph (B)
18 as subparagraph (C); and

19 (ii) by inserting after subparagraph
20 (A) the following:

21 “(B) STILL IMAGE.—The term ‘still image’
22 means any still image obtained from a video re-
23 corder.”.

1 **SEC. 5. INFORMATION SHARING.**

2 (a) CONFIDENTIAL INFORMATION.—Section 1114(b)
3 is amended—

4 (1) in the heading, by striking “TRADE SE-
5 CRETS” and inserting “CERTAIN CONFIDENTIAL IN-
6 FORMATION”;

7 (2) in paragraph (1)—

8 (A) in the matter preceding subparagraph

9 (A)—

10 (i) by inserting “IN GENERAL.—” be-
11 fore “The Board”; and

12 (ii) by striking “information related to
13 a trade secret referred to in section 1905
14 of title 18” and inserting “information, in-
15 cluding trade secrets, as described in sec-
16 tion 1905 of title 18”; and

17 (B) in subparagraph (D), by striking “to
18 the public to protect health and safety” and in-
19 serting “subject to paragraph (4), to the public
20 when the Board considers it necessary to pro-
21 tect health and safety”;

22 (3) in paragraph (2), by striking “Information”
23 and inserting “PRESERVATION OF CONFIDEN-
24 TIALITY.—Information”; and

25 (4) by adding at the end the following:

1 “(4) LIMITATION.—A disclosure under para-
 2 graph (1)(D) may only be considered necessary to
 3 protect health and safety if the Board is required
 4 under this chapter to explain a finding, a cause or
 5 probable cause, or a safety recommendation related
 6 to an accident or incident investigated by the Board
 7 and cannot reasonably fulfill its duties without such
 8 disclosure.”.

9 (b) SHARING INFORMATION WITH OTHER FEDERAL
 10 AGENCIES.—Section 1114, as amended, is further amend-
 11 ed by adding at the end the following:

12 “(h) LIMITATION.—A department, agency, or instru-
 13 mentality of the United States Government that receives
 14 information from the Board under this section may not
 15 publicly disclose any part of that information if the infor-
 16 mation is exempted or prohibited from disclosure under
 17 this chapter or any other law of the United States.”.

18 **SEC. 6. ELECTRONIC RECORDS.**

19 Section 1134(a)(2) is amended by inserting “includ-
 20 ing an electronic record,” after “record,”.

21 **SEC. 7. REPORT ON MOST WANTED LIST METHODOLOGY.**

22 (a) IN GENERAL.—Not later than the date that the
 23 first Most Wanted List to be published after the date of
 24 enactment of this Act is published, the Chairman shall
 25 publish on a publicly available Web site of the Board and

1 submit to the Committee on Commerce, Science, and
2 Transportation of the Senate and the Committee on
3 Transportation and Infrastructure of the House of Rep-
4 resentatives a report on the methodology used to prioritize
5 and select recommendations to be included by the Board
6 in the Most Wanted List.

7 (b) ELEMENTS.—The report under subsection (a)
8 shall include—

9 (1) a detailed description of how the Board ac-
10 counts for the risk to safety addressed in each of its
11 recommendations, including the extent to which the
12 Board considers—

13 (A) the types of data and other informa-
14 tion, including studies and reports, used to
15 identify the amount and probability of risk to
16 safety;

17 (B) the reduction of the risk to safety, es-
18 timated over a period of time, by implementing
19 each recommendation;

20 (C) the practicality and feasibility of
21 achieving the reduction described in subpara-
22 graph (B); and

23 (D) any alternate means of reducing the
24 risk;

1 (2) a detailed description of the extent to which
2 the Board considers any prior, related investigation,
3 safety recommendation, or other safety action when
4 prioritizing and selecting recommendations; and

5 (3) a description of the extent of coordination
6 and consultation when prioritizing and selecting the
7 recommendations.

8 (c) CONSULTATION.—The Board shall consult with
9 the head of each relevant Federal department and agency
10 in developing the methodology described in subsection (a).

11 (d) GAO REPORT.—Not later than 15 months after
12 the date that the methodology report is published under
13 subsection (a), the Comptroller General of the United
14 States shall submit to the Committee on Commerce,
15 Science, and Transportation of the Senate and the Com-
16 mittee on Transportation and Infrastructure of the House
17 of Representatives a report examining the methodology
18 used by the Board to prioritize and select safety rec-
19 ommendations for inclusion in the Most Wanted List, in-
20 cluding the extent to which the Board—

21 (1) utilized best practices and rigorous analysis
22 to account for and prioritize the reduction of risk to
23 safety;

1 (2) accounted for and factored in practicality,
 2 feasibility, and alternative means of reducing risk;
 3 and

4 (3) coordinated and consulted when prioritizing
 5 and selecting the recommendations.

6 **SEC. 8. METHODOLOGY SECTIONS.**

7 (a) IN GENERAL.—Not later than 2 years after the
 8 date of enactment of this Act, the Chairman shall include
 9 with each investigative report in which a recommendation
 10 is issued by the Board, a methodology section detailing
 11 the process and information underlying the selection of
 12 each recommendation.

13 (b) ELEMENTS.—Except as provided in subsection
 14 (c), the methodology section under subsection (a) shall in-
 15 clude, for each recommendation—

16 (1) a brief summary of the Board’s collection
 17 and analysis of the specific accident investigation in-
 18 formation most relevant to the recommendation;

19 (2) a description of the Board’s use of external
 20 information, including studies, reports, and experts,
 21 other than the findings of a specific accident inves-
 22 tigation, to inform or support the recommendation,
 23 including a brief summary of the specific safety ben-
 24 efits and other effects identified by each study, re-
 25 port, or expert;

1 (3) a brief summary of any alternative actions
2 considered, including the alternative of not issuing a
3 recommendation; and

4 (4) a brief summary of any examples of actions
5 taken by regulated entities prior to the publication
6 of the safety recommendation, to the extent such ac-
7 tions are known to the Board, that were consistent
8 with the recommendation.

9 (c) EXCEPTION.—Subsection (a) shall not apply if
10 the recommendation is only for a person to disseminate
11 information on—

12 (1) an existing agency best practices document;
13 or

14 (2) an existing regulatory requirement.

15 (d) RULE OF CONSTRUCTION.—Nothing in this sec-
16 tion may be construed to require any change to a rec-
17 ommendation made by the Board prior to the date of en-
18 actment of this Act, unless the recommendation is a repeat
19 recommendation issued on or after the date of enactment
20 of this Act.

21 (e) SAVINGS CLAUSE.—Nothing in this section may
22 be construed to delay publication of the findings, cause,
23 or probable cause of a Board investigation.

1 **SEC. 9. ADDRESSING THE NEEDS OF FAMILIES OF INDIVID-**
 2 **UALS INVOLVED IN ACCIDENTS.**

3 (a) AIR CARRIERS HOLDING CERTIFICATES OF PUB-
 4 LIC CONVENIENCE AND NECESSITY.—Section 41113 is
 5 amended—

6 (1) in subsection (a), by striking “a major” and
 7 inserting “any”; and

8 (2) in subsection (b)—

9 (A) in paragraph (9), by striking “(and
 10 any other victim of the accident)” and inserting
 11 “(and any other victim of the accident, includ-
 12 ing any victim on the ground)”;

13 (B) in paragraph (16), by striking “major”
 14 and inserting “any”; and

15 (C) in paragraph (17)(A), by striking “sig-
 16 nificant” and inserting “any”.

17 (b) FOREIGN AIR CARRIERS PROVIDING FOREIGN
 18 AIR TRANSPORTATION.—Section 41313 is amended—

19 (1) in subsection (b), by striking “a major” and
 20 inserting “any”; and

21 (2) in subsection (c)—

22 (A) in paragraph (1), by striking “a sig-
 23 nificant” and inserting “any”;

24 (B) in paragraph (2), by striking “a sig-
 25 nificant” and inserting “any”;

1 (C) by amending paragraph (9) to read as
2 follows:

3 “(9) EQUAL TREATMENT OF PASSENGERS.—An
4 assurance that the treatment of the families of non-
5 revenue passengers (and any other victim of the ac-
6 cident, including any victim on the ground) will be
7 the same as the treatment of the families of revenue
8 passengers.”;

9 (D) in paragraph (16), by striking
10 “major” and inserting “any”; and

11 (E) in paragraph (17)(A), by striking “sig-
12 nificant” and inserting “any”.

13 (c) ASSISTANCE TO FAMILIES OF PASSENGERS IN-
14 VOLVED IN AIRCRAFT ACCIDENTS.—Section 1136 is
15 amended—

16 (1) in subsection (a), by striking “aircraft acci-
17 dent within the United States involving an air car-
18 rier or foreign air carrier and resulting in a major
19 loss of life” and inserting “aircraft accident involv-
20 ing an air carrier or foreign air carrier, resulting in
21 any loss of life, and for which the National Trans-
22 portation Safety Board will serve as the lead inves-
23 tigative agency”; and

24 (2) by amending subsection (h)(1) to read as
25 follows:

1 “(1) AIRCRAFT ACCIDENT.—The term ‘aircraft
2 accident’ means any aviation disaster, regardless of
3 its cause or suspected cause, for which the National
4 Transportation Safety Board is the lead investiga-
5 tive agency.”.

6 (d) INFORMATION FOR FAMILIES OF INDIVIDUALS
7 INVOLVED IN ACCIDENTS.—

8 (1) IN GENERAL.—Chapter 11 is amended by
9 inserting after section 1139 the following:

10 **“§ 1140. Information for families of individuals in-**
11 **involved in accidents**

12 “In the course of an investigation of an accident de-
13 scribed in section 1131(a)(1), except an aircraft accident
14 described in section 1136 or a rail passenger accident de-
15 scribed in section 1139, the Board may, to the maximum
16 extent practicable, ensure that the families of individuals
17 involved in the accident, and other individuals the Board
18 deems appropriate—

19 “(1) are informed as to the roles, with respect
20 to the accident and the post-accident activities, of
21 the Board;

22 “(2) are briefed, prior to any public briefing,
23 about the accident, its causes, and any other find-
24 ings from the investigation; and

1 “(3) are individually informed of and allowed to
 2 attend any public hearings and meetings of the
 3 Board about the accident.”.

4 (2) TABLE OF CONTENTS.—The table of con-
 5 tents of chapter 11 is amended by inserting after the
 6 item relating to section 1139 the following:

“1140. Information for families of individuals involved in accidents.”.

7 **SEC. 10. GOVERNMENT ACCOUNTABILITY OFFICE REPORT**
 8 **ON INVESTIGATION LAUNCH DECISION-MAK-**
 9 **ING PROCESSES.**

10 Section 1138 is amended—

11 (1) in subsection (b)—

12 (A) by redesignating paragraphs (5) and
 13 (6) as paragraphs (6) and (7), respectively; and

14 (B) by inserting after paragraph (4) the
 15 following:

16 “(5) the process and procedures to select an ac-
 17 cident to investigate;”; and

18 (2) in subsection (c), by inserting a comma
 19 after “Science”.

20 **SEC. 11. PERIODIC REVIEW OF SAFETY RECOMMENDA-**
 21 **TIONS.**

22 (a) REPORTS.—Section 1117 is amended—

23 (1) in the heading, by striking “**Annual re-**
 24 **port**” and inserting “**Reports**”;

1 (2) by inserting “(a) IN GENERAL.—” before
 2 “The National Transportation Safety Board shall”;
 3 and

4 (3) by adding at the end the following:

5 “(b) RETROSPECTIVE REVIEW TO ENSURE UP-
 6 DATED AND EFFECTIVE SAFETY RECOMMENDATIONS.—

7 “(1) IN GENERAL.—Not later than June 1,
 8 2019, the Chairman shall complete, based on the
 9 public comments under paragraph (2), a comprehen-
 10 sive review of recommendations issued by the Board
 11 that are classified as ‘open’ by the Board.

12 “(2) PUBLIC COMMENTS.—

13 “(A) IN GENERAL.—Before conducting a
 14 review under paragraph (1), and at least every
 15 5 years thereafter, the Chairman shall publish
 16 in the Federal Register a request for public
 17 comment on recommendations to be updated or
 18 closed.

19 “(B) RECOMMENDATIONS.—A request for
 20 public comment under subparagraph (A) shall
 21 solicit—

22 “(i) recommendations to be updated
 23 or closed, including a reference to the ap-
 24 plicable recommendation number;

1 “(ii) justifications, including any sup-
 2 porting information, for updating or clos-
 3 ing a recommendation; and

4 “(iii) if applicable, specific suggestions
 5 for updating a recommendation.

6 “(C) PUBLIC COMMENT PERIOD.—The
 7 Chairman shall provide 90 days for public com-
 8 ment under this subsection.

9 “(3) CONTENTS.—A review under paragraph
 10 (1) shall include for each recommendation under
 11 paragraph (2)—

12 “(A) consideration of each justification
 13 under paragraph (2)(B)(ii) and, if applicable,
 14 each suggestion under clause (iii) of that para-
 15 graph;

16 “(B) an assessment of whether the rec-
 17 ommendation is—

18 “(i) outmoded or outdated in light of
 19 changed circumstances, including the avail-
 20 ability of new technologies;

21 “(ii) ineffective, insufficient, impracti-
 22 cable, or infeasible for achieving its objec-
 23 tive;

24 “(iii) unclear; or

1 “(iv) inconsistent with or duplicative
2 of other recommendations;

3 “(C) a determination, based on the assess-
4 ment under subparagraph (B), whether it is ap-
5 propriate to update or close the recommenda-
6 tion; and

7 “(D) a justification for each determination
8 under subparagraph (C).

9 “(4) REPORT.—Not later than 180 days after
10 the date the review under paragraph (1) is complete,
11 the Chairman shall submit to the Committee on
12 Commerce, Science, and Transportation of the Sen-
13 ate and the Committee on Transportation and Infra-
14 structure of the House of Representatives a report
15 that includes—

16 “(A) the findings of the review under para-
17 graph (1);

18 “(B) each determination under paragraph
19 (3)(C) and justification under paragraph
20 (3)(D); and

21 “(C) if applicable, a schedule for updating
22 or closing a recommendation.”.

23 (b) SAVINGS CLAUSE.—Nothing in this section or the
24 amendments made by this section may be construed to

1 limit the authority of the Board to update or close a rec-
 2 ommendation.

3 **SEC. 12. GENERAL ORGANIZATION.**

4 (a) TERMS OF THE CHAIRMAN AND VICE CHAIR-
 5 MAN.—Section 1111(d) is amended by striking “2 years”
 6 and inserting “3 years”.

7 (b) NONPUBLIC COLLABORATIVE DISCUSSIONS.—
 8 Section 1111 is amended by adding at the end the fol-
 9 lowing:

10 “(k) OPEN MEETINGS.—

11 “(1) IN GENERAL.—The Board shall be deemed
 12 to be an agency for purposes of section 552b of title
 13 5.

14 “(2) NONPUBLIC COLLABORATIVE DISCUS-
 15 SIONS.—

16 “(A) IN GENERAL.—Notwithstanding sec-
 17 tion 552b of title 5, a majority of the members
 18 may hold a meeting that is not open to public
 19 observation to discuss official agency business
 20 if—

21 “(i) no formal or informal vote or
 22 other official agency action is taken at the
 23 meeting;

1 “(ii) each individual present at the
 2 meeting is a member or an employee of the
 3 Board; and

4 “(iii) the General Counsel of the
 5 Board is present at the meeting.

6 “(B) DISCLOSURE OF NONPUBLIC COL-
 7 LABORATIVE DISCUSSIONS.—Except as provided
 8 under subparagraph (C), not later than 2 busi-
 9 ness days after the conclusion of a meeting
 10 under subparagraph (A), the Board shall make
 11 available to the public, in a place easily acces-
 12 sible to the public—

13 “(i) a list of the individuals present at
 14 the meeting; and

15 “(ii) a summary of the matters dis-
 16 cussed at the meeting, except for any mat-
 17 ter the Board properly determines may be
 18 withheld from the public under section
 19 552b(c) of title 5.

20 “(C) SUMMARY.—If the Board properly
 21 determines a matter may be withheld from the
 22 public under section 552b(c) of title 5, the
 23 Board shall provide a summary with as much
 24 general information as possible on each matter
 25 withheld from the public.

1 “(D) PRESERVATION OF OPEN MEETINGS
 2 REQUIREMENTS FOR AGENCY ACTION.—Noth-
 3 ing in this paragraph may be construed to limit
 4 the applicability of section 552b of title 5 with
 5 respect to a meeting of the members other than
 6 that described in this paragraph.

7 “(E) STATUTORY CONSTRUCTION.—Noth-
 8 ing in this paragraph may be construed—

9 “(i) to limit the applicability of sec-
 10 tion 552b of title 5 with respect to any in-
 11 formation which is proposed to be withheld
 12 from the public under subparagraph
 13 (B)(ii); or

14 “(ii) to authorize the Board to with-
 15 hold from any individual any record that is
 16 accessible to that individual under section
 17 552a of title 5.”.

18 (c) INVESTIGATIVE OFFICERS.—Section 1113 is
 19 amended by striking subsection (h).

20 **SEC. 13. TECHNICAL AND CONFORMING AMENDMENTS.**

21 (a) TABLE OF CONTENTS.—The table of contents of
 22 chapter 11 is amended in the item relating to section 1138
 23 by striking “Board” and inserting “Board.”.

24 (b) GENERAL AUTHORITY.—Section 1131(a)(1)(A) is
 25 amended by striking “a public aircraft as defined by sec-

- 1 tion 40102(a)(37) of this title” and inserting “a public
- 2 aircraft as defined by section 40102(a) of this title”.

