

Cantwell Substitute_as modified



AMENDMENT NO._____

Calendar No._____

Purpose: In the nature of a substitute.

IN THE SENATE OF THE UNITED STATES—119th Cong., 2d Sess.**S. 3700**

To establish an expert review panel to make recommendations for a comprehensive agency-wide safety management system at the FAA.

Referred to the Committee on _____ and
ordered to be printed

Ordered to lie on the table and to be printed

**AMENDMENT IN THE NATURE OF A SUBSTITUTE intended
to be proposed by Ms. CANTWELL**

Viz:

1 Strike all after the enacting clause and insert the fol-
2 lowing:

3 SECTION 1. SHORT TITLE.

4 This Act may be cited as the “FAA SMS Compliance
5 Review Act of 2026”.

6 SEC. 2. EXPERT COMPLIANCE REVIEW OF FAA SAFETY

7 MANAGEMENT SYSTEM.

8 (a) EXPERT COMPLIANCE REVIEW.—

9 (1) ESTABLISHMENT.—

10 (A) IN GENERAL.—Not later than 60 days
11 after the date of enactment of this section, the

Administrator shall convene an independent expert panel (in this section referred to as the “review panel”) to review and make findings and recommendations on the matters listed in paragraph (2).

6 (B) PURPOSE.—

12 (ii) REQUIREMENT.—The review panel
13 shall also take into account the United
14 States' obligations as a contracting State
15 under the Convention on International
16 Civil Aviation, including Article 37 (Adop-
17 tion of International Standards and Proce-
18 dures) and Article 38 (Notification of Dif-
19 ferences), and shall consider compliance
20 with ICAO Annex 19, including any dif-
21 ferences formally filed by the United
22 States.

23 (2) CONTENTS OF REVIEW.—The review panel
24 shall review and evaluate the following:

1 (A) The extent to which the FAA's SMS
2 complies with relevant FAA orders and policies.
3 (B) The actual and projected safety en-
4 hancements achieved through the FAA's prior
5 implementation of SMS, including as required
6 by FAA Order 8000.369 and successor orders
7 through FAA Order 8000.369c.
8 (C) The effectiveness of FAA's SMS, in-
9 cluding with respect to the implementation of
10 the following 4 components:
11 (i) Safety policy.
12 (ii) Safety risk management.
13 (iii) Safety assurance.
14 (iv) Safety promotion.
15 (D) The extent to which the FAA's safety
16 culture promotes or fosters the SMS consistent
17 with the principles of the ICAO's Safety Man-
18 agement Manual (Doc. 9859) or any similar
19 successor document.
20 (E) The effectiveness of FAA's internal
21 audit processes to determine, at minimum, the
22 performance of FAA's SMS.
23 (F) The extent to which SMS and each of
24 the 4 components described in subparagraph

1 (C) are integrated appropriately among and
2 across applicable lines of business of the FAA.

3 (G) The extent to which SMS and each of
4 the 4 components described in subparagraph
5 (C) are understood by, communicated to, and
6 included in training for, personnel at the FAA.

7 (H) The efficacy of existing SMS in place
8 at applicable lines of business of the FAA prior
9 to January 1, 2026, including, but not limited
10 to, the Air Traffic Organization, the Aviation
11 Safety Organization, and the Office of Airports.

12 (I) The efficacy of the FAA's Voluntary
13 Safety Reporting Programs as part of SMS, in-
14 cluding the efficacy of specific voluntary safety
15 reporting programs at applicable lines of busi-
16 ness, and any actions taken by the FAA in re-
17 sponse to reports filed under such programs.

18 (J) Whether the Federal Government
19 should advocate for changes to Annex 19—Safe-
20 ty Management of the ICAO to ensure appro-
21 priate updates to the State Safety Program
22 standards and recommended practices, includ-
23 ing—

1 (i) a systems-level approach to evalu-
2 ating and improving SMS for air naviga-
3 tion service providers; and

4 (ii) the implementation of SMS for
5 civil aviation regulators and whether there
6 is a need for globally consistent approaches
7 to State Safety Program implementation
8 and SMS framework across ICAO con-
9 tracting States.

10 (K) Any other matter determined by the
11 Administrator for which review by the review
12 panel would be consistent with the public inter-
13 est in aviation safety.

(3) COMPOSITION OF REVIEW PANEL.—

15 (A) APPOINTED MEMBERS.—The review
16 panel shall consist of the following members ap-
17 pointed by the Administrator:

18 (i) Two representatives of the Na-
19 tional Aeronautics and Space Administra-
20 tion with expertise in SMSs.

21 (ii) Five appropriately qualified rep-
22 resentatives of aviation labor organizations
23 (designated by the applicable represented
24 organization), including—

(I) organizations representing certified collective bargaining representatives of airline pilots;

4 (II) the exclusive collective bar-
5 gaining representatives of FAA air
6 traffic controllers certified under sec-
7 tion 7111 of title 5, United States
8 Code; and

9 (III) the exclusive collective bar-
10 gaining representative for aviation
11 safety inspectors certified under sec-
12 tion 7111 of title 5, United States
13 Code

14 (iii) Not less than 5 independent sub-
15 ject matter experts in safety management
16 systems who—

17 (I) have not served as a political
18 appointee in the FAA; and

(II) have a minimum of 10 years of relevant applied experience.

21 (iv) Three air carrier employees whose
22 job responsibilities include administration
23 of a SMS.

24 (v) Two individuals representing hold-
25 ers of a certificate issued under part 21 of

1 title 14, Code of Federal Regulations,
2 whose job responsibilities include adminis-
3 tration of a SMS.

4 (vi) One representative from the aero-
5 space industry who does not meet the cri-
6 teria described in clauses (iv) through (v)
7 and has expertise in SMS or whose job re-
8 sponsibilities include administration of a
9 SMS.

10 (vii) A representative of the United
11 States Mission to the ICAO, as a non-vot-
12 ing member.

(viii) A representative from the National Transportation Safety Board, as a non-voting member.

16 (B) ADVISORY MEMBERS.—

17 (i) IN GENERAL.—In addition to the
18 appointed members described in subpara-
19 graph (A), the review panel shall be ad-
20 vised by up to 5 employees of the FAA, at
21 least 3 of whom shall be subject matter ex-
22 perts in implementing SMS at the FAA.

23 (ii) DUTIES.—The advisory members
24 may take part in deliberations of the re-
25 view panel and provide subject matter ex-

9 (5) REPORT.—

10 (A) SUBMISSION.—Not later than 180
11 days after the date of the first meeting of the
12 review panel, the review panel shall submit to
13 the Administrator and the appropriate commit-
14 tees of Congress a report containing the find-
15 ings and recommendations regarding the mat-
16 ters listed in paragraph (2) that are endorsed
17 by at least ⅔ of the appointed members of the
18 review panel.

19 (B) DISSENTING VIEWS.—In submitting
20 the report under subparagraph (A), the review
21 panel shall append to such report the dissenting
22 views of any individual appointed member or
23 group of appointed members of the review panel
24 regarding the findings or recommendations of
25 the review panel.

1 (C) PUBLICATION.—Not later than 5 days
2 after receiving the report under subparagraph
3 (A), the Administrator shall publish such re-
4 port, including any dissenting views appended
5 to the report, on the website of the FAA.

6 (D) TERMINATION.—The review panel
7 shall terminate upon the submission of the re-
8 port under subparagraph (A).

9 (6) ADMINISTRATIVE PROVISIONS.—

10 (A) ACCESS TO INFORMATION.—

11 (i) IN GENERAL.—The review panel
12 shall have the authority to perform the fol-
13 lowing actions if a majority of the ap-
14 pointed members of the review panel con-
15 sider each action necessary and appro-
16 priate:

17 (I) Entering onto the premises of
18 the FAA for access to and inspection
19 of records.

20 (II) Notwithstanding any other
21 provision of law, except as provided in
22 clause (ii), accessing and inspecting
23 de-identified, but otherwise
24 unredacted, records directly necessary
25 for the completion of the review pan-

1 el's work under this section that are
2 records and information created by
3 the FAA.

4 (III) Notwithstanding any other
5 provision of law, and with the ap-
6 proval of the Administrator, inter-
7 viewing employees of the FAA as nec-
8 essary for the review panel to com-
9 plete its work.

10 (ii) NON-FEDERAL GOVERNMENT
11 MEMBERS.—Members of the review panel
12 who are not officers or employees of the
13 Federal Government shall only have access
14 to, and be allowed to inspect, information
15 provided to the FAA pursuant to section
16 40123 of title 49, United States Code, and
17 part 193 of title 14, Code of Federal Regu-
18 lations, in a de-identified form.

19 (iii) ACCESS TO CLASSIFIED INFORMA-
20 TION.—Nothing in this Act shall be con-
21 strued as authorizing access to classified
22 information by any member of the review
23 panel who does not possess the appropriate
24 level of security clearance, have a need-to-

1 know, or meet all other applicable access
2 requirements.

3 (B) NONDISCLOSURE OF NON-PUBLIC IN-
4 FORMATION.—

5 (i) NONDISCLOSURE FOR NON-FED-
6 ERAL GOVERNMENT MEMBERS.—

7 (I) NON-FEDERAL GOVERNMENT
8 PARTICIPANTS.—Prior to particip-
9 pating on the review panel, each indi-
10 vidual serving on the review panel rep-
11 resenting a non-Federal entity shall
12 execute an agreement with the Admin-
13 istrator in which the individual shall
14 be prohibited from disclosing at any
15 time, except as required by applicable
16 Federal law, to any person, foreign or
17 domestic, any non-public information
18 made available to the panel under
19 subparagraph (A).

20 (II) FEDERAL GOVERNMENT
21 PARTICIPANTS.—Federal officers or
22 employees serving on the review panel
23 as representatives of the Federal Gov-
24 ernment and subject to the require-
25 ment to protect confidential informa-

16 (iii) PROTECTION OF PROPRIETARY
17 INFORMATION AND TRADE SECRETS.—
18 Members of the review panel shall protect
19 proprietary information, trade secrets, and
20 other information otherwise exempt under
21 section 552 of title 5, United States Code,
22 to the extent permitted under applicable
23 Federal law.

24 (7) INAPPLICABILITY OF FACA.—The review
25 panel shall not be subject to chapter 10 of title 5,

1 United States Code (commonly referred to as the
2 “Federal Advisory Committee Act”).

3 (8) CONGRESSIONAL BRIEFINGS.—Not later
4 than 180 days after the submission of the report
5 under paragraph (5), and every 90 days thereafter,
6 the Administrator shall report to the appropriate
7 committees of Congress on the status of any ongoing
8 actions in response to such recommendations, includ-
9 ing the status of implementation of each of the rec-
10 ommendations of the review panel, if any, with
11 which the Administrator concurs. The briefing re-
12 quirement shall cease to be effective 2 years after
13 the date of the submission of the report under para-
14 graph (5).

15 (b) NON-CONCURRENCE WITH RECOMMENDA-
16 TIONS.—Not later than 6 months after submission of the
17 recommendations under subsection (a)(4), with respect to
18 each recommendation of the review panel with which the
19 Administrator does not concur, if any, the Administrator
20 shall publish on the website of the FAA and submit to
21 the appropriate committees of Congress a detailed expla-
22 nation for such determination.

23 (c) DEFINITIONS.—In this section:

10 (3) FAA.—The term “FAA” means the Fed-
11 eral Aviation Administration.

12 (4) ICAO.—The term “ICAO” means the
13 International Civil Aviation Organization.