

PART 831—ACCIDENT/INCIDENT INVESTIGATION PROCEDURES

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AUTHORITY: Independent Safety Board Act of 1974, as amended (49 U.S.C. 1101 *et seq.*); Federal Aviation Act of 1958, as amended (49 U.S.C. 40101 *et seq.*).

SOURCE: 53 FR 15847, May 4, 1988, unless otherwise noted.

§ 831.1 Applicability of part.

Unless otherwise specifically ordered by the National Transportation Safety Board (Board), the provisions of this part shall govern all accident or incident investigations, conducted under the authority of title VII of the Federal Aviation Act of 1958, as amended, and the Independent Safety Board Act of 1974. Rules applicable to accident hearings and reports are set forth in part 845.

§ 831.2 Responsibility of Board.

(a) *Aviation.* (1) The Board is responsible for the organization, conduct, and control of all accident and incident investigations (see § 830.2 of this chapter) within the United States, its territories and possessions, where the accident or incident involves any civil aircraft or certain public aircraft (as specified in § 830.5 of this chapter), including an investigation involving civil or public aircraft (as specified in § 830.5) on the one hand, and an Armed Forces or intelligence agency aircraft on the other hand. It is also responsible for investigating accidents/incidents that occur outside the United States, and which involve civil aircraft and/or certain public aircraft, when the accident/incident is not in the territory of an-

other country (*i.e.*, in international waters).

(2) Certain aviation investigations may be conducted by the Federal Aviation Administration (FAA), pursuant to a “Request to the Secretary of the Department of Transportation to Investigate Certain Aircraft Accidents,” effective February 10, 1977 (the text of the request is contained in the appendix to part 800 of this chapter), but the Board determines the probable cause of such accidents or incidents.¹ Under no circumstances are aviation investigations where the portion of the investigation is so delegated to the FAA by the Board considered to be joint investigations in the sense of sharing responsibility. These investigations remain NTSB investigations.

(3) The Board is the agency charged with fulfilling the obligations of the United States under Annex 13 to the Chicago Convention on International Civil Aviation (Eighth Edition, July 1994), and does so consistent with State Department requirements and in coordination with that department. Annex 13 contains specific requirements for the notification, investigation, and reporting of certain incidents and accidents involving international civil aviation. In the case of an accident or incident in a foreign state involving civil aircraft of U.S. registry or manufacture, where the foreign state is a signatory to Annex 13 to the Chicago Convention of the International Civil Aviation Organization, the state of occurrence is responsible for the investigation. If the accident or incident occurs in a foreign state not bound by the provisions of Annex 13 to the Chicago Convention, or if the accident or incident involves a public aircraft (Annex 13 applies only to civil aircraft), the conduct of the investigation shall be in consonance with any agreement entered into between the United States and the foreign state.

¹The authority of a representative of the FAA during such investigations is the same as that of a Board investigator under this part.

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(b) *Surface*. The Board is responsible for the investigation of: railroad accidents in which there is a fatality, substantial property damage, or which involve a passenger train (see part 840 of this chapter²); major marine casualties and marine accidents involving a public and non-public vessel or involving Coast Guard functions (see part 850 of this chapter²); highway accidents, including railroad grade-crossing accidents, the investigation of which is selected in cooperation with the States; and pipeline accidents in which there is a fatality, significant injury to the environment, or substantial property damage.

(c) *Other accidents/incidents*. The Board is also responsible for the investigation of an accident/incident that occurs in connection with the transportation of people or property which, in the judgment of the Board, is catastrophic, involves problems of a recurring character, or would otherwise carry out the policy of the Independent Safety Board Act of 1974. This authority includes, but is not limited to, marine and boating accidents and incidents not covered by part 850 of this chapter, and accidents/incidents selected by the Board involving transportation and/or release of hazardous materials.

[62 FR 3806, Jan. 27, 1997]

§ 831.3 Authority of Directors.

The Directors, Office of Aviation Safety, Office of Railroad Safety, Office of Highway Safety, Office of Marine Safety, and Office of Pipeline and Hazardous Materials Safety, subject to the provisions of § 831.2 and part 800 of this chapter, may order an investigation into any accident or incident.

[63 FR 71606, Dec. 29, 1998]

§ 831.4 Nature of investigation.

Accident and incident investigations are conducted by the Board to determine the facts, conditions, and circumstances relating to an accident or incident and the probable cause(s) thereof. These results are then used to

ascertain measures that would best tend to prevent similar accidents or incidents in the future. The investigation includes the field investigation (on-scene at the accident, testing, tear-down, etc.), report preparation, and, where ordered, a public hearing. The investigation results in Board conclusions issued in the form of a report or "brief" of the incident or accident. Accident/incident investigations are fact-finding proceedings with no formal issues and no adverse parties. They are not subject to the provisions of the Administrative Procedure Act (5 U.S.C. 504 *et seq.*), and are not conducted for the purpose of determining the rights or liabilities of any person.

[62 FR 3806, Jan. 27, 1997]

§ 831.5 Priority of Board investigations.

Any investigation of an accident or incident conducted by the Safety Board directly or pursuant to the appendix to part 800 of this chapter (except major marine investigations conducted under 49 U.S.C. 1131(a)(1)(E)) has priority over all other investigations of such accident or incident conducted by other Federal agencies. The Safety Board shall provide for the appropriate participation by other Federal agencies in any such investigation, except that such agencies may not participate in the Safety Board's determination of the probable cause of the accident or incident. Nothing in this section impairs the authority of other Federal agencies to conduct investigations of an accident or incident under applicable provisions of law or to obtain information directly from parties involved in, and witnesses to, the transportation accident or incident, provided they do so without interfering with the Safety Board's investigation. The Safety Board and other Federal agencies shall assure that appropriate information obtained or developed in the course of their investigations is exchanged in a timely manner.

[62 FR 3807, Jan. 27, 1997]

²Part 850 also governs the conduct of certain investigations in which the Board and the Coast Guard participate jointly.

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§ 831.6 Request to withhold information.

(a) *Trade Secrets Act (18 U.S.C. 1905), Exemption 4 of the Freedom of Information Act (5 U.S.C. 552) (FOIA), and The Independent Safety Board Act of 1974, as amended*—(1) *General*. The Trade Secrets Act provides criminal penalties for unauthorized government disclosure of trade secrets and other specified confidential commercial information. The Freedom of Information Act authorizes withholding of such information; however, the Independent Safety Board Act, at 49 U.S.C. 1114(b), provides that the Board may, under certain circumstances, disclose information related to trade secrets.

(2) *Procedures*. Information submitted to the Board that the submitter believes qualifies as a trade secret or confidential commercial information subject either to the Trade Secrets Act or FOIA Exemption 4 shall be so identified by the submitter on each and every page of such document. The Board shall give the submitter of any information so identified, or information the Board has substantial reason to believe qualifies as a trade secret or confidential commercial information subject either to the Trade Secrets Act or FOIA Exemption 4, the opportunity to comment on any contemplated disclosure, pursuant to 49 U.S.C. 1114(b). In all instances where the Board determines to disclose pursuant to 49 U.S.C. 1114(b) and/or 5 U.S.C. 552, at least 10 days' notice will be provided the submitter. Notice may not be provided the submitter when disclosure is required by a law other than FOIA if the information is not identified by the submitter as qualifying for withholding, as is required by this paragraph, unless the Board has substantial reason to believe that disclosure would result in competitive harm.

(3) *Voluntarily-provided safety information*. It is the policy of the Safety Board that commercial, safety-related information provided to it voluntarily and not in the context of particular accident/incident investigations will not be disclosed. Reference to such information for the purposes of safety recommendations will be undertaken with consideration for the confidential nature of the underlying database(s).

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(b) *Other*. Any person may make written objection to the public disclosure of any other information contained in any report or document filed, or otherwise obtained by the Board, stating the grounds for such objection. The Board, on its own initiative or if such objection is made, may order such information withheld from public disclosure when, in its judgment, the information may be withheld under the provisions of an exemption to the Freedom of Information Act (5 U.S.C. 552, see part 801 of this chapter), and its release is found not to be in the public interest.

[62 FR 3807, Jan. 27, 1997]

§ 831.7 Right to representation.

Any person interviewed by an authorized representative of the Board during the investigation, regardless of the form of the interview (sworn, unsworn, transcribed, not transcribed, etc.), has the right to be accompanied, represented, or advised by an attorney or non-attorney representative.

[62 FR 3807, Jan. 27, 1997]

§ 831.8 Investigator-in-charge.

The designated investigator-in-charge (IIC) organizes, conducts, controls, and manages the field phase of the investigation, regardless of whether a Board Member is also on-scene at the accident or incident site. (The role of the Board member at the scene of an accident investigation is as the official spokesperson for the Safety Board.) The IIC has the responsibility and authority to supervise and coordinate all resources and activities of all personnel, both Board and non-Board, involved in the on-site investigation. The IIC continues to have considerable organizational and management responsibilities throughout later phases of the investigation, up to and including Board consideration and adoption of a report or brief of probable cause(s).

[62 FR 3807, Jan. 27, 1997]

§ 831.9 Authority of Board representatives.

(a) *General*. Any employee of the Board, upon presenting appropriate credentials, is authorized to enter any property where an accident/incident

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subject to the Board's jurisdiction has occurred, or wreckage from any such accident/incident is located, and do all things considered necessary for proper investigation. Further, upon demand of an authorized representative of the Board and presentation of credentials, any Government agency, or person having possession or control of any transportation vehicle or component thereof, any facility, equipment, process or controls relevant to the investigation, or any pertinent records or memoranda, including all files, hospital records, and correspondence then or thereafter existing, and kept or required to be kept, shall forthwith permit inspection, photographing, or copying thereof by such authorized representative for the purpose of investigating an accident or incident, or preparing a study, or related to any special investigation pertaining to safety or the prevention of accidents. The Safety Board may issue a subpoena, enforceable in Federal district court, to obtain testimony or other evidence. Authorized representatives of the Board may question any person having knowledge relevant to an accident/incident, study, or special investigation. Authorized representatives of the Board also have exclusive authority, on behalf of the Board, to decide the way in which any testing will be conducted, including decisions on the person that will conduct the test, the type of test that will be conducted, and any individual who will witness the test.

(b) *Aviation.* Any employee of the Board, upon presenting appropriate credentials, is authorized to examine and test to the extent necessary any civil or public aircraft (as specified in §830.5), aircraft engine, propeller, appliance, or property aboard such aircraft involved in an accident in air commerce.

(c) *Surface.* (1) Any employee of the Board, upon presenting appropriate credentials, is authorized to test or examine any vehicle, vessel, rolling stock, track, pipeline component, or any part of any such item when such examination or testing is determined to be required for purposes of such investigation.

(2) Any examination or testing shall be conducted in such a manner so as not to interfere with or obstruct unnecessarily the transportation services provided by the owner or operator of such vehicle, vessel, rolling stock, track, or pipeline component, and shall be conducted in such a manner so as to preserve, to the maximum extent feasible, any evidence relating to the transportation accident, consistent with the needs of the investigation and with the cooperation of such owner or operator.

[53 FR 15847, May 4, 1988, as amended at 60 FR 40113, Aug. 7, 1995; 62 FR 3807, Jan. 27, 1997]

§ 831.10 Autopsies.

The Board is authorized to obtain, with or without reimbursement, a copy of the report of autopsy performed by State or local officials on any person who dies as a result of having been involved in a transportation accident within the jurisdiction of the Board. The investigator-in-charge, on behalf of the Board, may order an autopsy or seek other tests of such persons as may be necessary to the investigation, provided that to the extent consistent with the needs of the accident investigation, provisions of local law protecting religious beliefs with respect to autopsies shall be observed.

§ 831.11 Parties to the investigation.

(a) *All Investigations, regardless of mode.* (1) The investigator-in-charge designates parties to participate in the investigation. Parties shall be limited to those persons, government agencies, companies, and associations whose employees, functions, activities, or products were involved in the accident or incident and who can provide suitable qualified technical personnel actively to assist in the investigation. Other than the FAA in aviation cases, no other entity is afforded the right to participate in Board investigations.

(2) Participants in the investigation (*i.e.*, party representatives, party coordinators, and/or the larger party organization) shall be responsive to the direction of Board representatives and may lose party status if they do not comply with their assigned duties and activity proscriptions or instructions,

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or if they conduct themselves in a manner prejudicial to the investigation.

(3) No party to the investigation shall be represented in any aspect of the NTSB investigation by any person who also represents claimants or insurers. No party representative may occupy a legal position (see § 845.13 of this chapter). Failure to comply with these provisions may result in sanctions, including loss of status as a party.

(4) Title 49, United States Code § 1132 provides for the appropriate participation of the FAA in Board investigations, and § 1131(a)(2) provides for such participation by other departments, agencies, or instrumentalities. The FAA and those other entities that meet the requirements of paragraph (a)(1) of this section will be parties to the investigation with the same rights and privileges and subject to the same limitations as other parties, provided however that representatives of the FAA need not sign the "Statement of Party Representatives to NTSB Investigation" (see paragraph (b) of this section).

(b) *Aviation investigations.* In addition to compliance with the provisions of paragraph (a) of this section, and to assist in ensuring complete understanding of the requirements and limitations of party status, all party representatives in aviation investigations shall sign "Statement of Party Representatives to NTSB Investigation" immediately upon attaining party representative status. Failure timely to sign that statement may result in sanctions, including loss of status as a party.

[62 FR 3808, Jan. 27, 1997, as amended at 63 FR 71606, Dec. 29, 1998]

§ 831.12 Access to and release of wreckage, records, mail, and cargo.

(a) Only the Board's accident investigation personnel, and persons authorized by the investigator-in-charge to participate in any particular investigation, examination or testing shall be permitted access to wreckage, records, mail, or cargo in the Board's custody.

(b) Wreckage, records, mail, and cargo in the Board's custody shall be released by an authorized representative of the Board when it is determined

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that the Board has no further need of such wreckage, mail, cargo, or records. When such material is released, Form 6120.15, "Release of Wreckage," will be completed, acknowledging receipt.

[62 FR 3808, Jan. 27, 1997]

§ 831.13 Flow and dissemination of accident or incident information.

(a) Release of information during the field investigation, particularly at the accident scene, shall be limited to factual developments, and shall be made only through the Board Member present at the accident scene, the representative of the Board's Office of Public Affairs, or the investigator-in-charge.

(b) All information concerning the accident or incident obtained by any person or organization participating in the investigation shall be passed to the IIC through appropriate channels before being provided to any individual outside the investigation. Parties to the investigation may relay to their respective organizations information necessary for purposes of prevention or remedial action. However, no information concerning the accident or incident may be released to any person not a party representative to the investigation (including non-party representative employees of the party organization) before initial release by the Safety Board without prior consultation and approval of the IIC.

[53 FR 15847, May 4, 1988, as amended at 62 FR 3808, Jan. 27, 1997]

§ 831.14 Proposed findings.

(a) *General.* Any person, government agency, company, or association whose employees, functions, activities, or products were involved in an accident or incident under investigation may submit to the Board written proposed findings to be drawn from the evidence produced during the course of the investigation, a proposed probable cause, and/or proposed safety recommendations designed to prevent future accidents.

(b) *Timing of submissions.* To be considered, these submissions must be received before the matter is calendared for consideration at a Board meeting. All written submissions are expected to

have been presented to staff in advance of the formal scheduling of the meeting. This procedure ensures orderly and thorough consideration of all views.

(c) *Exception.* This limitation does not apply to safety enforcement cases handled by the Board pursuant to part 821 of this chapter. Separate *ex parte* rules, at part 821, subpart J, apply to those proceedings.

[62 FR 3808, Jan. 27, 1997]

PART 835—TESTIMONY OF BOARD EMPLOYEES

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AUTHORITY: 5 U.S.C. 301; Independent Safety Board Act of 1974, as amended (49 U.S.C. 1101 *et seq.*).

§ 835.1 Purpose.

This part prescribes policies and procedures regarding the testimony of employees of the National Transportation Safety Board (Board) in suits or actions for damages and criminal proceedings arising out of transportation accidents when such testimony is in an official capacity and arises out of or is related to accident investigation. The purpose of this part is to ensure that the time of Board employees is used only for official purposes, to avoid embroiling the Board in controversial issues that are not related to its duties, to avoid spending public funds for non-Board purposes, to preserve the impartiality of the Board, and to prohibit the discovery of opinion testimony.

[63 FR 71607, Dec. 29, 1998]

§ 835.2 Definitions.

Accident, for purposes of this part includes “incident.”

Board accident report means the report containing the Board’s determinations, including the probable cause of an accident, issued either as a narrative report or in a computer format (“briefs” of accidents). Pursuant to section 701(e) of the Federal Aviation Act of 1958 (FA Act), and section 304(c) of the Independent Safety Board Act of 1974 (49 U.S.C. 1154(b)) (Safety Act), no part of a Board accident report may be admitted as evidence or used in any suit or action for damages growing out of any matter mentioned in such reports.

Factual accident report means the report containing the results of the investigator’s investigation of the accident. The Board does not object to, and there is no statutory bar to, admission in litigation of factual accident reports. In the case of a major investigation, group chairman factual reports are factual accident reports.

[63 FR 71607, Dec. 29, 1998, as amended at 64 FR 5622, Feb. 4, 1999]

§ 835.3 Scope of permissible testimony.

(a) Section 701(e) of the FA Act and section 304(c) of the Safety Act preclude the use or admission into evidence of Board accident reports in any suit or action for damages arising from accidents. These sections reflect Congress’ “strong * * * desire to keep the Board free of the entanglement of such suits.” Rep. No. 93–1192, 93d Cong., 2d Sess., 44 (1974), and serve to ensure that the Board does not exert an undue influence on litigation. The purposes of these sections would be defeated if expert opinion testimony of Board employees, which may be reflected in the views of the Board expressed in its reports, were admitted in evidence or used in litigation arising out of an accident. The Board relies heavily upon its investigators’ opinions in its deliberations. Furthermore, the use of Board employees as experts to give opinion testimony would impose a significant administrative burden on the Board’s investigative staff. Litigants must obtain their expert witnesses from other sources.