

license to specify Driscoll as Station KMIQ(FM)'s community of license. See 59 FR 38950, August 1, 1994.

DATES: Comments must be filed on or before May 1, 1995, and reply comments on or before May 16, 1995.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Lee J. Peltzman, Esq., Shainis & Peltzman, Suite 200, 2000 L Street, Washington, D.C. 20036 (Counsel for petitioner).

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418-2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Further Notice of Proposed Rule Making*, MM Docket No. 94-84, adopted March 1, 1995, and released March 10, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW, Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractor, ITS, Inc., (202) 857-3800, 2100 M Street, NW, Suite 140, Washington, D.C. 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

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NATIONAL TRANSPORTATION SAFETY BOARD

49 CFR Parts 800, 830, and 831

Reporting of Public Aircraft Accidents

AGENCY: National Transportation Safety Board.

ACTION: Notice of proposed rule and request for comments.

SUMMARY: The NTSB is proposing various revisions to its rules to implement P.L. No. 103-411, which expands the scope of its jurisdiction to include investigations of certain public aircraft accidents.

DATES: Comments are invited by April 14, 1995.

ADDRESSES: An original and 2 copies of any comments must be submitted to: Office of General Counsel, National Transportation Safety Board, 490 L'Enfant Plaza East, SW., Washington, DC 20594, Attention: Public Aircraft Rules.

FOR FURTHER INFORMATION CONTACT: Jane F. Mackall, (202) 382-6540.

SUPPLEMENTARY INFORMATION: On October 25, 1994, President Clinton signed H.R. 2440, the Independent Safety Board Act Amendments of 1994. Codified as Public Law No. 103-411 (the Act), it is effective on April 23, 1995, and directly affects aircraft operated by and for Federal, State and local governments. The core of the legislation is amendments to the Federal Aviation Act of 1958 to expand the Federal Aviation Administration's (FAA) safety regulation to previously exempt "public" aircraft, and the FAA is in the process of developing implementing rules and guidance. The Act, however, also changed the jurisdiction of the National Transportation Safety Board (NTSB or Safety Board).

Presently, jurisdiction of the Safety Board to investigate aircraft accidents depends on whether the aircraft involved are "civil" or "public." An aircraft is either one or the other. These two terms are defined in the Federal Aviation Act of 1958, as amended, 49 U.S.C. 40102(a) (17) and (37). Until now, the Safety Board's statutory investigation authority extended only to civil aircraft, although accidents and incidents involving certain public aircraft are required to be reported to the NTSB within 10 days. See 49 CFR 830.20.¹

¹ The Board has also investigated some public aircraft accidents under memoranda of understanding with various Federal agencies and State and local governments.

Section 3(c) of the Act expands the Safety Board's statutory role in investigating aircraft accidents to include all "public" aircraft other than those operated by the Armed Forces or by a United States intelligence agency. Thus, with these two exceptions, aircraft operated by Federal, State and local governments will, as of April 23, 1995, be subject to Board jurisdiction for the purposes of accident investigation in the U.S., in addition to any reporting requirements. We propose in this proceeding to make changes to our regulations, as necessary to reflect the Act.

The key question the Safety Board must answer is: when does an accident "involve" an aircraft "operated by" the Armed Forces or "intelligence agencies" so as to qualify for the exception to our public aircraft jurisdiction? As to what organizations would be included in the term "Armed Forces," we consider the National Guard, and the Coast Guard, for example, to be within the definition, and propose to continue that practice. We construe the term "intelligence agency" strictly, and propose only to apply it to those Federal agencies that are so named or categorized (for example, in their enabling statutes).

In defining the term "operated by," there is no issue of interpretation when the military is flying military-owned aircraft (assuming only one aircraft is involved in any accident/incident). Such an accident would be outside our jurisdiction. But, if the aircraft is not actually owned and operated by the military, we have in the past used a "single-flight" test for Federal use of otherwise private aircraft to determine whether the aircraft is civil or public and, thus, determine our jurisdiction. That is, if the Navy contracted for a civilian aircraft to transport troops, during the aircraft's use for that purpose it might have been deemed a public aircraft and outside our mandatory jurisdiction—even though by inter-agency agreement we might have investigated an accident. After April 23, this matter is to be analyzed differently. Irrespective of the aircraft status as civil or public, we propose to interpret the statute as requiring that any such accident will be investigated by NTSB unless the aircraft was actually operated by Armed Forces personnel.

The new definition of public aircraft is complex, and has generated considerable discussion and interpretation concerning the scope and application of the civil/public aircraft division for the purposes of FAA safety regulation. The distinction between civil and public aircraft (as opposed to the distinction between military and

public aircraft), however, is no longer critical to our investigation authority—under the Act we now investigate all accidents in the U.S. other than those involving aircraft operated by the Armed Forces or intelligence agencies. Although we recognize that the civil/public distinction remains relevant to us for statistical and reporting purposes and in the case of jurisdiction over accidents abroad, as International Civil Aviation Authority agreements only apply to civil aircraft, we see little purpose at this point in adding ourselves to this debate.

Finally, those responsible for aircraft now subject to our broadened investigation authority should also be aware that the Board may investigate occurrences beyond those that involve serious injury or loss of an aircraft. For example, any flight control system failure or inflight fire is a reportable incident. Title 49 of the Code of Federal Regulations, part 800, identifies all the instances we investigate and sets forth rules (at part 830) for notifying us of what are termed “accidents or incidents.”²

Accordingly, 49 CFR parts 800, 830, and 831 are proposed to be amended as set forth below. We invite comments on our interpretations and proposed rule changes, as well as suggestions for other possible rule changes needed or useful to accommodate our expanded jurisdiction.³

List of Subjects in 49 CFR Part 800

Authority delegations—Government agencies, Organization and functions—Government agencies.

49 CFR Part 830

Aviation safety, Reporting and recordkeeping requirements.

49 CFR Part 831

Aviation safety, Highway safety, Investigations, Marine safety, Pipeline safety, Railroad safety.

²In light of our expanded investigatory role for public aircraft, the reporting requirement heretofore included in § 830.20 is superseded by the § 830.5 and § 830.15 rules. Thus, one of our proposals is to eliminate part 830 subpart E, § 830.20.

³Readers may notice that various provisions subject to the proposals in this notice require other changes to reflect current organization at the Safety Board (e.g., § 800.2) or recent legislative change (e.g., § 800.3 to reflect provisions of P.L. No. 102-345, the FAA Civil Penalty Administrative Assessment Act of 1992). Other rulemakings will shortly be conducted to update provisions, as necessary. This proceeding proposes only the changes needed to implement P.L. No. 103-411.

PART 800—ORGANIZATION AND FUNCTIONS OF THE BOARD AND DELEGATIONS OF AUTHORITY

1. The authority citation for part 800 is proposed to be revised to read as follows:

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.*).

2. Section 800.3 is proposed to be amended by revising paragraph (a) to read as follows:

§ 800.3 Functions.

(a) The primary function of the Safety Board is to promote safety in transportation. The Safety Board is responsible for the investigation, determination of facts, conditions, and circumstances and the cause or probable cause or causes of: all accidents involving civil aircraft and certain public aircraft; highway accidents including railroad grade-crossing accidents, the investigation of which is selected in cooperation with the States; railroad accidents in which there is a fatality, substantial property damage, or which involve a passenger train; pipeline accidents in which there is a fatality or substantial property damage; and major marine casualties and marine accidents involving a public and non-public vessel or involving Coast Guard functions. The Safety Board makes transportation safety recommendations to Federal, State, and local agencies and private organizations to reduce the likelihood of recurrence of transportation accidents. It initiates and conducts safety studies and special investigations on matters pertaining to safety in transportation, assesses techniques and methods of accident investigation, evaluates the effectiveness of transportation safety consciousness and efficacy in preventing accidents of other Government agencies, and evaluates the adequacy of safeguards and procedures concerning the transportation of hazardous materials.

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PART 830—NOTIFICATION AND REPORTING OF AIRCRAFT ACCIDENTS OR INCIDENTS AND OVERDUE AIRCRAFT, AND PRESERVATION OF AIRCRAFT WRECKAGE, MAIL, CARGO, AND RECORDS

4. The authority citation for part 830 is proposed to be revised to read as follows:

Authority: Federal Aviation Act of 1958, as amended (49 U.S.C. 40101 *et seq.*), and the

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

4a. Section 830.1 is proposed to be amended by revising the introductory text and paragraphs (a) and (b) to read as follows:

§ 830.1 Applicability.

This part contains rules pertaining to:

(a) Initial notification and later reporting of aircraft incidents and accidents and certain other occurrences in the operation of aircraft, wherever they occur, when they involve civil aircraft of the United States; when they involve certain public aircraft, as specified in this Part, wherever they occur; and when they involve foreign civil aircraft where the events occur in the United States, its territories, or its possessions.

(b) Preservation of aircraft wreckage, mail, cargo, and records involving all civil and certain public aircraft accidents, as specified in this Part, in the United States and its territories or possessions.

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5. Section 830.2 is proposed to be amended by revising the definition of “public aircraft” to read as follows:

§ 830.2 Definitions.

* * * * *

Public aircraft means an aircraft used only for the United States Government, or an aircraft owned and operated (except for commercial purposes) or exclusively leased for at least 90 continuous days by a government other than the United States Government, including a State, the District of Columbia, a territory or possession of the United States, or a political subdivision of that government. “Public aircraft” does not include a government-owned aircraft transporting property for commercial purposes and does not include a government-owned aircraft transporting passengers other than: Transporting (for other than commercial purposes) crewmembers or other persons aboard the aircraft whose presence is required to perform, or is associated with the performance of, a governmental function such as firefighting, search and rescue, law enforcement, aeronautical research, or biological or geological resource management; or transporting (for other than commercial purposes) persons aboard the aircraft if the aircraft is operated by the Armed Forces or an intelligence agency of the United States. Notwithstanding any limitation relating to use of the aircraft for commercial purposes, an aircraft shall be considered to be a public aircraft without regard to whether it is operated by a unit of

government on behalf of another unit of government pursuant to a cost reimbursement agreement, if the unit of government on whose behalf the operation is conducted certifies to the Administrator of the Federal Aviation Administration that the operation was necessary to respond to a significant and imminent threat to life or property (including natural resources) and that no service by a private operator was reasonably available to meet the threat.

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6. Section 830.5 is proposed to be amended by revising the introductory text to read as follows:

§ 830.5 Immediate notification.

The operator of any civil aircraft, or any public aircraft not operated by the Armed Forces or an intelligence agency of the United States, or any foreign aircraft shall immediately, and by the most expeditious means available, notify the nearest National Transportation Safety Board (Board) field office¹ when:

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7. Section 830.15 is proposed to be amended by revising paragraph (a) to read as follows:

§ 830.15 Reports and statements to be filed.

(a) Reports. The operator of a civil, public (as specified in § 830.5), or foreign aircraft shall file a report on Board Form 6120.1/2 (OMB No. 3147-0001)² within 10 days after an accident, or after 7 days if an overdue aircraft is still missing. A report on an incident for which immediate notification is required by § 830.5(a) shall be filed only as requested by an authorized representative of the Board.

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Subpart E [Removed]

8. Subpart E of part 830 is proposed to be removed.

PART 831—ACCIDENT/INCIDENT INVESTIGATION PROCEDURES

9. The authority citation for part 831 is proposed to be revised to read as follows:

Authority: Federal Aviation Act of 1958, as amended (49 U.S.C. 40101 *et seq.*), and the

¹ The Board field offices are listed under U.S. Government in the telephone directories of the following cities: Anchorage, AK, Atlanta, GA, West Chicago, IL, Denver, CO, Arlington, TX, Gardena (Los Angeles), CA, Miami, FL, Parsippany, NJ (metropolitan New York, NY), Seattle, WA, and Washington, DC.

² Forms are available from the Board field offices (see footnote 1), from Board headquarters in Washington, DC, and from the Federal Aviation Administration Flight Standards District Offices.

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

10. Section 831.2 is proposed to be amended by revising paragraph (a)(1) to read as follows:

§ 831.2 Responsibility of Board.

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

* * * * *

11. Section 831.9 is proposed to be amended to revise paragraph (b) to read as follows:

§ 831.9 Authority of Board Representatives.

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(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, aircraft engine, propeller, appliance, or property aboard such aircraft involved in an accident in air commerce.

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Issued in Washington, D.C. on this 8th day of March, 1995.

Jim Hall,

Chairman.

[FR Doc. 95-6216 Filed 3-14-95; 8:45 am]

BILLING CODE 7533-01-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants: 90-Day Finding for a Petition to List the Preble's Meadow Jumping Mouse as Threatened or Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 90-day petition finding.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces a 90-day

finding for a petition to list the Preble's meadow jumping mouse (*Zapus hudsonius preblei*) under the Endangered Species Act of 1973, as amended. The Service finds that there is substantial information to indicate that listing the species may be warranted.

DATES: The finding announced in this document was approved on February 27, 1994. To be considered in the 12-month finding for this petition, information and comments should be submitted to the Service by May 15, 1995.

ADDRESSES: Information, questions, or comments concerning this petition finding may be sent to the Field Supervisor, U.S. Fish and Wildlife Service, 730 Simms Street, Room 290, Golden, Colorado 80401. The petition, finding, supporting data, and comments are available for public inspection by appointment during normal business hours at the above office.

FOR FURTHER INFORMATION CONTACT: LeRoy W. Carlson (see **ADDRESSES**) (303/231-5280).

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(A) of the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*), requires that the U.S. Fish and Wildlife Service (Service) make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information to demonstrate that the petitioned action may be warranted. To the maximum extent practicable, this finding is to be made within 90 days of the receipt of the petition, and a notice regarding the finding is to be published promptly in the **Federal Register**. If the finding is that substantial information was presented, the Service also is required to commence a review of the status of the involved species if one has not already been initiated by the Service. The Service initiated a status review for Preble's meadow jumping mouse (*Zapus hudsonius preblei*) when it categorized the species as a category 2 candidate species in the 1985 Animal Notice of Review (50 FR 37958). This notice meets the requirement for the 90-day finding made earlier on the petition as discussed below.

A petition dated August 9, 1994, was received by the Service from the Biodiversity Legal Foundation on August 16, 1994. The petition requests the Service to list Preble's meadow jumping mouse as endangered or threatened throughout its range and to designate critical habitat within a