

PART 2852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**2852.000 [Removed]**

51. Section 2852.000 is removed.

Subpart 2852.1—Instructions for Using Provisions and Clauses**2852.100 [Removed]**

52. Section 2852.100 is removed.

Subpart 2852.2—Texts and Provisions of Clauses**2852.200 [Removed]**

53. Section 2852.200 is removed.

PART 2870—ACQUISITION OF LEASEHOLD INTERESTS IN REAL PROPERTY**2870.000 [Removed]**

54. Section 2870.000 is removed.

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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: Final rules.

SUMMARY: Following review of the comments received, the NTSB is adopting revisions to its rules to implement Public Law 103-411, which expands the scope of its jurisdiction to include investigations of certain public aircraft accidents.

DATES: The rules are effective September 6, 1995.

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 103-411 (the Act), it was effective on April 23, 1995, and directly affects aircraft operated by and for Federal, State and local governments. In addition to expanding the Federal Aviation Administration's (FAA) safety regulation to previously exempt "public" aircraft, the Act expanded the jurisdiction of the National Transportation Safety Board (NTSB or Safety Board) to encompass the investigation of all public aircraft other than those operated by the Armed Forces or by a United States intelligence agency.

By notice of proposed rulemaking (NPR) published in the **Federal Register** March 15, 1995 (60 FR 13948), we proposed and sought comment on rules to implement this new authority. We received 14 comments.¹ The States welcome the Board's investigation, in the unfortunate event that a State aircraft is involved in an accident, and either support or have no comment on the proposed rules themselves. ALPA favors this expansion of the Board's authority, but urges that funding levels be adequate for the Board to continue to investigate thoroughly public and civil aircraft accidents.

The Forest Service and Helicopter Association International are concerned that the exception for aircraft operated by the Armed Forces and U.S. intelligence agency aircraft not be read too broadly. The Forest Service's letter notes:

The Forest Service supplements its aerial firefighting resources during times of extreme fire activity with aircraft and flight crews from the Armed Forces. These resources are furnished to us by active military, Reserve, and National Guard units. The Forest Service pays the Armed Forces an hourly rate for this service, has operational control over their movement, and uses them for the same missions as civil and other public aircraft which includes the transportation of passengers. In the case of Reserve and National Guard units, the flight crews are often pilots that normally fly commercial aircraft, including airliners, and fly the Armed Forces aircraft on a part-time basis.

The Forest Service considers these flights to be under its auspices and control and therefore "public" for investigation purposes. It objects to the proposal in the NPR to define "operated by the Armed Forces" only with reference to the actual, physical manipulation of the controls. The Forest Service requests that we reconsider this approach and interpret the Armed Forces exception narrowly and exclude aircraft from Reserve and National Guard units that are under the operational control of non-defense agencies (that is, to define control not in a physical sense but in a sense of directing the use to which the aircraft is put).

Mr. Kuchta argues that the Armed Forces/intelligence agency exception, as we have proposed to interpret it, is too narrow. He cites the Federal Aviation

Act's definition of "operation of aircraft,"

"operate aircraft" and "operation of aircraft" mean using aircraft for the purposes of air navigation, including—

- (A) the navigation of aircraft; and
- (B) causing or authorizing the operation of aircraft with or without the right of legal control of the aircraft.²

Thus, the definition includes both types of control we have discussed. Mr. Kuchta also notes that, in its adjudication of FAA-instituted certificate actions (the so-called enforcement docket), the Board interprets the term "operation" expansively to include other than actual physical manipulation of the controls.

The comments of the parties should demonstrate, and have convinced us, that defining our jurisdiction with regard to the exception is not as straightforward as we had hoped. At the same time, however, FA Act definitions, while they may inform the process, do not control the interpretation of language in our enabling statute, nor does Board precedent from other contexts. The critical consideration is to ensure that the exception is not so broad as to unduly limit our investigatory role, and not so narrow as to intrude improperly in military concerns that have little or no implication for civilian air safety.

On review of the comments, we will revise our future approach. We will consider both the physical manipulation of the controls and the broader operational control concept in determining whether an aircraft is operated by the Armed Forces or an intelligence agency so as to remove it from our investigatory responsibility. Using this approach, we would find, for example, that a cloud-seeding flight using a National Guard pilot and aircraft, but arranged and contracted for by the Forest Service, is not a flight "operated by" the Armed Forces. Indeed, such a flight, because cloud seeding is also conducted by civilian aircraft, has implications for civilian aircraft safety and, therefore, prompts exercise of our statutory role to promote air safety. On the other hand, investigations of accidents involving combat aircraft, combat maneuvers, or military surveillance or air navigational control are clearly on the other side of the equation and we believe that it is examples such as these that prompted Congress' exception.

There may be instances where analysis under the standards of (A) and (B) above produces opposite conclusions. For example, if the Army

¹ We received comments from 10 States (Alaska, Connecticut, Hawaii, Iowa, Maine, Maryland, Mississippi, Montana, Pennsylvania, and Wisconsin), three associations (the Air Line Pilots Association (ALPA), the Helicopter Association International, and the National Business Aircraft Association, Inc.), one government agency (the Department of Agriculture, Forest Service), and one individual (Joseph D. Kuchta).

² 49 U.S.C. 40102(a)(32), as recodified.

uses a civilian aircraft and crew to transport troops, application of (A) would produce a conclusion that the aircraft was a civil aircraft, not "operated by" the Armed Forces, but consideration under (B) would lead to the conclusion that, because the Army "caused" the operation, it involved aircraft operated by the Armed Forces and not subject to our investigation jurisdiction. Again, we would resolve the question by analyzing the circumstances with special reference to our statutory responsibility: With a civilian aircraft and crew, there are such implications for civilian air safety that the exception should not apply. This result is consistent with our discussion in the NPR to assert jurisdiction in the event that such an aircraft was involved in an accident.³

We received no comment on the other issues we raised. Therefore, we adopt our proposal to consider the National Guard, and the Coast Guard within the definition of Armed Forces and to construe the term "intelligence agency" only to apply to those Federal agencies that are so named or categorized (for example, in their enabling statutes).

We remind all those now required to report accidents and incidents to us immediately that the scope of reportable events is quite broad and that all personnel involved in aviation matters should be familiar with Title 49 of the Code of Federal Regulations, part 800, which identifies all the instances we investigate and sets forth rules (at part 830) for notifying us of what are termed "accidents or incidents."

This amendment of our interpretation does not translate into any change in the rules we proposed. Those rules will be adopted, with one minor editorial change.⁴ Accordingly, 49 CFR parts 800, 830, and 831 are amended as set forth below.⁵

³We are confident that, with experience, we will develop a mutually agreeable understanding with the Armed Forces and Federal intelligence agencies regarding investigatory roles. We note in this context that, in the past, interagency agreements and other more informal processes have led to our participation, despite any argument that we lacked jurisdiction, in Armed Forces aircraft investigations, whether because the Armed Forces sought our assistance in an aspect of the investigation or because we believed our participation would contribute to furthering our statutory role. We expect this spirit of cooperation will continue and that jurisdictional disputes will be rare.

⁴In § 831.2(a)(1), the phrase "where the accident involves civil aircraft and certain public aircraft" is, for clarity, changed to read "where the accident involves any civil aircraft or certain public aircraft."

⁵As we noted in the NPR, various rules in these parts require changes to reflect current organization at the Safety Board or recent legislative change. Other rulemakings will shortly be conducted to update these provisions. This proceeding proposes

List of Subjects

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.

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

1. The authority citation for part 800 is 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 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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only the changes needed to implement Pub. L. No. 103-411.

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

3. The authority citation for part 830 is 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.*).

4. Section 830.1 is revised 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 amended by revising the definition of "public aircraft" to read as follows:

§ 830.2 Definitions.

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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 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 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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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.

§ 830.20 (Subpart E)—[Removed]

8. Subpart E consisting of § 830.20 of Part 830 is removed.

PART 831—ACCIDENT/INCIDENT INVESTIGATION PROCEDURES

9. The Authority citation for part 831 is 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.*)

10. Section 831.2 is 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 any civil aircraft or certain public aircraft (as specified in § 830.5 of this chapter), including an accident 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 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).

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11. Section 831.9 is 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 (as specified in § 830.5), aircraft engine, propeller, appliance, or property aboard such aircraft involved in an accident in air commerce.

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Issued in Washington, DC, on this 1st day of August, 1995.

Jim Hall,
Chairman.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 625

[Docket No. 950522140-5192-02; I.D. 050595E]

RIN 0648-XX22

Summer Flounder Fishery; 1995 Recreational Fishery Measures

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues the final specifications for the 1995 summer flounder recreational fishery, which include no seasonal closure, a possession limit, and a minimum fish size. The intent of this rule is to comply with implementing regulations for the fishery that require NMFS to publish measures for the upcoming fishing year that will prevent overfishing of the resource.

EFFECTIVE DATE: August 2, 1995, except for an amendment to § 625.25(a) which will be effective August 14, 1995.

ADDRESSES: Copies of the Environmental Assessment and supporting documents used by the Monitoring Committee are available from: Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 S. New Street, Dover, DE 19901-6790.

FOR FURTHER INFORMATION CONTACT: Hannah Goodale, 508-281-9101.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan for the Summer Flounder Fishery (FMP) was developed jointly by the Atlantic States Marine Fisheries Commission (ASMFC) and the Mid-Atlantic Fishery Management Council (Council) in consultation with the New England and South Atlantic Fishery Management Councils. The management unit for the FMP is summer flounder (*Paralichthys dentatus*) in U.S. waters of the Atlantic Ocean from the southern border of North Carolina northward to the Canadian border.

Section 625.20 outlines the process for determining annual commercial and recreational catch quotas and other restrictions for the summer flounder fishery. Pursuant to § 625.20, the Director, Northeast Region, NMFS, implements measures for the fishing year to ensure achievement of the fishing mortality rate specified in the FMP. This rule announces the following