

## PART 800—ADMINISTRATIVE RULES

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APPENDIX TO PART 800—REQUEST TO THE SECRETARY OF THE DEPARTMENT OF TRANSPORTATION TO INVESTIGATE CERTAIN AIRCRAFT ACCIDENTS

AUTHORITY: 49 U.S.C. 1101 *et seq.*; 49 U.S.C.40101 *et seq.*

SOURCE: 49 FR 26232, June 27, 1984, unless otherwise noted.

## Subpart A—Organization and Functions

### § 800.1 Purpose.

This subpart describes the organization, functions, and operation of the National Transportation Safety Board (Board).

[49 FR 26232, June 27, 1984, as amended at 81 FR 75730, Nov. 1, 2016]

### § 800.2 Organization.

The Board consists of five Members appointed by the President with the advice and consent of the Senate. One of the Members is designated by the President as Chairman with the advice and consent of the Senate and one as Vice Chairman. The Members exercise various functions, powers, and duties set forth in 49 U.S.C. chapter 11. The Board is an independent agency of the United States. More detailed descriptions of the Board and its work are contained in other parts of this chapter VIII, notably parts 825, 830 through 835, and 840 through 850. Various special delegations of authority from the Board and the Chairman to the staff are set forth in subpart B of this part. The Board's staff is comprised of the following principal components:

(a) The Office of the Managing Director, which assists the Chairman in the discharge of his functions as executive and administrative head of the Board; coordinates and directs the activities of the staff; is responsible for the day-to-day operation of the Board; and recommends and develops plans to achieve the Board's program objectives. The Office of the Managing Director also provides executive secretariat services to the Board.

(b) The Office of Government, Public, and Family Affairs, which supplies the Congress and Federal, State, and local government agencies with information regarding the Safety Board's activities, programs and objectives; supplies the public, the transportation industry and the news media with current, accurate information concerning the work, programs, and objectives of the Board; coordinates public and private responsibilities, including aid to survivors and families of accident victims, in the wake of transportation disasters. This

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Office maintains the 24-hour Communications Center, which assists in coordinating accident notification and launch operations for all modes and provides an off-hour base for family assistance functions during accident investigations.

(c) The Office of the General Counsel, which provides legal advice and assistance to the Board and its staff; prepares Board rules, opinions and/or orders, and advice to all offices on matters of legal significance; and represents the Board in judicial matters to which the Board is a party or in which the Board is interested.

(d) The Office of Administrative Law Judges, which conducts all formal proceedings arising under 49 U.S.C. 1133, including proceedings involving civil penalties and suspension or revocation of certificates, and appeals from actions of the Federal Aviation Administrator in refusing to issue airman certificates.

(e) The Office of Aviation Safety, which conducts investigations of all aviation accidents within the Board's jurisdiction; prepares reports for submission to the Board and release to the public setting forth the facts and circumstances of such accidents, including a recommendation as to the probable cause(s); determines the probable cause(s) of accidents when delegated authority to do so by the Board; initiates safety recommendations to prevent future aviation accidents; participates in the investigation of accidents that occur in foreign countries and involve U.S.-registered and/or U.S.-manufactured aircraft; and conducts special investigations into selected aviation accidents involving safety issues of concern to the Board.

(f) The Office of Railroad Safety, which conducts investigations of railroad accidents within the Board's jurisdiction; prepares reports for submission to the Board and release to the public setting forth the facts and circumstances of such accidents, including a recommendation as to the probable cause(s); determines the probable cause(s) of accidents when delegated authority to do so by the Board; initiates safety recommendations to prevent future railroad accidents; and conducts special investigations into se-

lected rail accidents involving safety issues of concern to the Board.

(g) The Office of Highway Safety, which conducts investigations of highway accidents, including railroad grade-crossing accidents, within the Board's jurisdiction; prepares reports for submission to the Board and release to the public setting forth the facts and circumstances of such accidents, including a recommendation as to the probable cause(s); determines the probable cause(s) of accidents when delegated authority to do so by the Board; initiates safety recommendations to prevent future highway accidents; and conducts special investigations into selected highway accidents involving safety issues of concern to the Board.

(h) The Office of Marine Safety, which conducts investigations of marine accidents within the Board's jurisdiction; prepares reports for submission to the Board and release to the public setting forth the facts and circumstances of such accidents, including a recommendation as to the probable cause(s); determines the probable cause(s) of accidents when delegated authority to do so by the Board; initiates safety recommendations to prevent future marine accidents; participates in the investigation of accidents that occur in foreign countries and that involve U.S.-registered vessels; and conducts special investigations into selected marine accidents involving safety issues of concern to the Board.

(i) The Office of Pipeline and Hazardous Materials Safety, which conducts investigations of pipeline and hazardous materials accidents within the Board's jurisdiction; prepares reports for submission to the Board and release to the public setting forth the facts and circumstances of such accidents, including a recommendation as to the probable cause(s); determines the probable causes of accidents when delegated authority to do so by the Board; initiates safety recommendations to prevent future pipeline and hazardous materials accidents; and conducts special investigations into selected pipeline and hazardous materials accidents involving safety issues of concern to the Board.

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(j) The Office of Research and Engineering, which conducts research and carries out analytical studies and tests involving all modes, including readouts of voice and data recorders, flight path analysis and computer simulation/animation, component examination and material failure analysis; conducts safety studies of specific safety issues; performs statistical analyses of transportation accident and incident data; maintains archival records of the Board's accident investigation and safety promotion activities and supports public access to these records; and administers the Board's information technology infrastructure, including computer systems, networks, databases, and application software.

(k) The Office of Safety Recommendations & Accomplishments, which oversees the Board's safety recommendations program, including the Board's "MOST WANTED" recommendations, and the Board's safety accomplishment program.

[60 FR 61488, Nov. 30, 1996, as amended at 61 FR 14521, Apr. 2, 1995; 63 FR 71605, Dec. 29, 1998; 64 FR 5621, Feb. 4, 1999; 81 FR 75730, Nov. 1, 2016]

### § 800.3 Functions.

(a) The primary function of the Board is to promote safety in transportation. The Board is responsible for the investigation, determination of facts, conditions, and circumstances and the cause or probable cause or causes of:

(1) All accidents involving civil aircraft, and certain public aircraft;

(2) Highway accidents, including railroad grade-crossing accidents, the investigation of which is selected in cooperation with the States;

(3) Railroad accidents in which there is a fatality, substantial property damage, or which involve a passenger train;

(4) Pipeline accidents in which there is a fatality, significant injury to the environment, or substantial property damage; and

(5) Major marine casualties and marine accidents involving a public and a non-public vessel or involving Coast Guard functions.

(b) The Board makes transportation safety recommendations to federal, state, and local agencies and private organizations to reduce the likelihood

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 of other Government agencies, and evaluates the adequacy of safeguards and procedures concerning the transportation of hazardous materials.

(c) Upon application of affected parties, the Board reviews in quasijudicial proceedings, conducted pursuant to the Administrative Procedure Act, 5 U.S.C. 551 *et seq.*, denials by the Administrator of the Federal Aviation Administration of applications for airman certificates and orders of the Administrator modifying, amending, suspending, or revoking certificates or imposing civil penalties. The Board also reviews on appeal the decisions of the head of the agency in which the U.S. Coast Guard is operating, on appeals from orders of administrative law judges suspending, revoking, or denying seamen licenses, certificates, or documents.

(d) The Board, as provided in part 801 of this chapter, issues reports and orders pursuant to its duties to determine the cause or probable cause or causes of transportation accidents and to report the facts, conditions and circumstances relating to such accidents; issues opinions and/or orders in accordance with 49 U.S.C. 1133 after reviewing on appeal the imposition of a civil penalty or the suspension, amendment, modification, revocation, or denial of a certificate or license issued by the Secretary of the Department of Transportation (who acts through the Administrator of the Federal Aviation Administration) or by the Commandant of the United States Coast Guard; and issues and makes available to the public safety recommendations, safety studies, and reports of special investigations.

[81 FR 75730, Nov. 1, 2016]

### § 800.4 Operation.

In exercising its functions, duties, and responsibilities, the Board utilizes:

(a) The Board's staff, consisting of specialized offices dealing with particular areas of transportation safety and performing administrative and

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technical work for the Board. The staff advises the Board and performs duties for the Board that are inherent in the staff's position in the organizational structure or that the Board has delegated to it. The staff is described more fully in § 800.2.

(b) Rules published in the FEDERAL REGISTER and codified in this Title 49 of the Code of Federal Regulations. These rules may be inspected in the Board's public reference room, or purchased from the Superintendent of Documents, Government Publishing Office.

(c) Procedures and policies set forth in the agency's internal directives system which govern the activities of employees and organizational components of the Board. The internal directives system is designated as the NTSB Manual and consists of instructions which are called NTSB Orders and NTSB Notices.

(d) Meetings of the Board Members conducted pursuant to the Government in the Sunshine Act.

(e) Public hearings in connection with transportation accident investigations and public hearings and oral arguments in proceedings concerned with certificates or licenses issued by the Secretary or an Administrator of the Department of Transportation or the Commandant of the United States Coast Guard. They are held at the time and place announced in the notices thereof which are served on the parties to the proceedings or published in the FEDERAL REGISTER.

[49 FR 26232, June 27, 1984, as amended at 60 FR 61489, Nov. 30, 1995; 81 FR 75730, Nov. 1, 2016]

### § 800.5 Office locations.

The principal offices of the National Transportation Safety Board are located at 490 L'Enfant Plaza East, SW., Washington, DC 20594-003. The Board maintains field offices in selected cities throughout the United States.

[60 FR 61489, Nov. 30, 1995, as amended at 81 FR 75731, Nov. 1, 2016]

### § 800.6 Availability of information and materials.

Part 801 of this chapter provides detailed information concerning the availability of Board documents and

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records. That part also provides a fee schedule and information concerning inspection and copying.

### Subpart B—Delegations of Authority to Staff Members

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The purpose of this subpart is to publish special delegations of authority to staff members.

[60 FR 61489, Nov. 30, 1995, as amended at 81 FR 75731, Nov. 1, 2016]

#### § 800.22 Delegation to the Managing Director.

(a) The Board delegates to the Managing Director the authority to:

(1) Make the final determination, on appeal, as to whether to withhold a Board record from inspection or copying, pursuant to Part 801 of this chapter.

(2) Approve for publication in the FEDERAL REGISTER notices concerning issuance of accident reports and safety recommendations and responses to safety recommendations, as required by 49 U.S.C. 1131(e), 1135(c).

(b) The Chairman delegates to the Managing Director the authority to exercise and carry out, subject to the direction and supervision of the Chairman, the following functions vested in the Chairman:

(1) The appointment and supervision of personnel employed by the Board;

(2) The distribution of business among such personnel and among organizational components of the Board; and

(3) The use and expenditure of funds.

[60 FR 61489, Nov. 30, 1995, as amended at 81 FR 75731, Nov. 1, 2016]

#### § 800.23 Delegation to the administrative law judges, Office of Administrative Law Judges.

The Board delegates to the administrative law judges the authority generally detailed in its procedural regulations at Part 821 of this chapter.

[60 FR 61489, Nov. 30, 1995]

#### § 800.24 Delegation to the General Counsel.

The Board delegates to the General Counsel the authority to:

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(a) Approve, disapprove, request more information, or otherwise handle requests for testimony of Board employees with respect to their participation in the investigation of accidents, and, upon receipt of notice that an employee has been subpoenaed, to make arrangements with the court either to have the employee excused from testifying or to give the employee permission to testify in accordance with the provisions of Part 835 of this Chapter.

(b) Approve or disapprove in safety enforcement proceedings, for good cause shown, requests for extensions of time or for other changes in procedural requirements subsequent to the initial decision, grant or deny requests to file additional and/or *amicus* briefs pursuant to §§ 821.9 and 821.48 of this Chapter, and raise on appeal any issue the resolution of which he deems important to the proper disposition of proceedings under § 821.49 of this Chapter.

(c) Approve or disapprove, for good cause shown, requests to extend the time for filing comments on proposed new or amended regulations.

(d) Issue regulations for the purpose of making editorial changes or corrections in the Board's rules and regulations.

(e) Issue orders staying or declining to stay, pending judicial review, orders of the Board suspending or revoking certificates, and consent to the entry of judicial stays with respect to such orders.

(f) Compromise civil penalties in the case of violations arising under 49 U.S.C. chapter 11, subchapter IV, or any rule, regulation, or order issued thereunder.

(g) Issue orders dismissing appeals from initial decisions of Board administrative law judges pursuant to the request of the appellant or, where the request is consensual, at the request of any party.

(h) Correct Board orders by eliminating typographical, grammatical, and similar errors, and make editorial changes therein not involving matters of substance.

(i) Take such action as appropriate or necessary adequately to compromise, settle, or otherwise represent the Board's interest in judicial or administrative actions to which the Board is a

party or in which the Board is interested.

(j) Dismiss late filed notices of appeal and appeal briefs for lack of good cause.

[60 FR 61489, Nov. 30, 1995, as amended at 63 FR 71606, Dec. 29, 1998; 81 FR 75731, Nov. 1, 2016]

### **§ 800.25 Delegation to the Directors of Office of Aviation Safety, Office of Railroad Safety, Office of Highway Safety, Office of Marine Safety, and Office of Pipeline and Hazardous Materials Safety.**

The Board delegates to the Directors of the Offices of Aviation, Railroad, Highway, Marine, and Pipeline and Hazardous Materials Safety, the authority to:

(a) Order an investigation into the facts, conditions, and circumstances of accidents that the Board has authority to investigate.

(b) Disclose factual information pertinent to all accidents or incidents as provided for in Part 801 of this chapter.

(c) Determine the probable cause(s) of accidents in which the determination is issued in the "Brief of Accident" format, except that the Office Director will submit the findings of the accident investigation to the Board for determination of the probable cause(s) when (1) any Board Member so requests, (2) it appears to the Office Director that, because of significant public interest, a policy issue, or a safety issue of other matter, the determination of the probable cause(s) should be made by the Board, or (3) the accident investigation will be used to support findings in a special investigation or study. Provided, that a petition for reconsideration or modification of a determination of the probable cause(s) made under § 845.31 of this chapter shall be acted on by the Board.

(d) Consistent with Board resources, investigate accidents as provided under 49 U.S.C. 1131 and the appendix to this part.

[60 FR 61489, Nov. 30, 1995, as amended at 63 FR 71606, Dec. 29, 1998; 81 FR 75731, Nov. 1, 2016]

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### § 800.26 Delegation to the Chief, Public Inquiries Branch.

The Board delegates to the Chief, Public Inquiries Branch, the authority to determine, initially, the withholding of a Board record from inspection or copying, pursuant to part 801 of this chapter.

[63 FR 71606, Dec. 29, 1998, as amended at 81 FR 75731, Nov. 1, 2016]

### § 800.27 Delegation to investigative officers and employees of the Board.

The Board delegates to any officer or employee of the Board designated by the Chairman the authority to sign and issue subpoenas, and administer oaths and affirmations, and to take depositions or cause them to be taken in connection with the investigation of transportation accidents or incidents.

[60 FR 61490, Nov. 30, 1995, as amended at 81 FR 75731, Nov. 1, 2016]

### § 800.28 Delegation to the Chief Financial Officer.

The Board delegates to the Chief Financial Officer the authority to settle claims for money damages of \$2,500 or less against the United States arising under Section 2672 of 28 United States Code (the Federal Tort Claims Act) because of acts or omissions of Board employees.

[63 FR 71606, Dec. 29, 1998]

## Subpart C—Procedures for Adoption of Rules

SOURCE: 80 FR 57309, Sept. 23, 2015, unless otherwise noted.

### § 800.30 Applicability.

This subpart prescribes rulemaking procedures that apply to the issuance, amendment, and revocation of rules pursuant to 49 U.S.C. 1113(f).

[80 FR 57309, Sept. 23, 2015, as amended at 81 FR 75731, Nov. 1, 2016]

### § 800.31 Public reading room.

Information and data relevant to NTSB rulemaking actions, including notices of proposed rulemaking; comments received in response to notices; petitions for rulemaking and reconsideration; denials of petitions for rule-

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making; and final rules are maintained in the NTSB's public reading room, located at 490 L'Enfant Plaza SW., Washington, DC 20594-2003.

[80 FR 57309, Sept. 23, 2015, as amended at 81 FR 75731, Nov. 1, 2016]

### § 800.32 Initiation of rulemaking.

The NTSB may initiate rulemaking either on its own motion or on petition by any interested person after a determination that grant of the petition is advisable. The NTSB may also consider the recommendations of other agencies of the United States.

### § 800.33 Notice of proposed rulemaking.

Unless the NTSB, for good cause, finds notice is impracticable, unnecessary, or contrary to the public interest, and incorporates that finding and a brief statement of the reasons for it in the rule, a notice of proposed rulemaking is issued and interested persons are invited to participate in the rulemaking proceedings under applicable provisions of 5 U.S.C. 553.

[80 FR 57309, Sept. 23, 2015, as amended at 81 FR 75731, Nov. 1, 2016]

### § 800.34 Contents of notices of proposed rulemaking.

(a) Each notice of proposed rulemaking is published in the FEDERAL REGISTER.

(b) Each notice includes:

(1) A statement of the time, place, and nature of the proposed rulemaking proceeding;

(2) A reference to the authority under which it is issued;

(3) A description of the subjects and issues involved or the substance and terms of the proposed rule;

(4) A statement of the time within which written comments must be submitted; and

(5) A statement of how and to what extent interested persons may participate in the proceedings.

### § 800.35 Participation of interested persons.

(a) Any interested person may participate in a rulemaking proceeding by submitting written comments, information, views or arguments.

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(b) In its discretion, the agency may invite any interested person to participate in the rulemaking procedures described in this subpart.

[80 FR 57309, Sept. 23, 2015, as amended at 81 FR 75731, Nov. 1, 2016]

### § 800.36 Petitions for extension of time to comment.

A petition for extension of the time to submit comments must be received not later than 10 days before the end of the comment period stated in the notice. The petition must be submitted to: General Counsel, National Transportation Safety Board, 490 L'Enfant Plaza SW., Washington, DC 20594-2003. The filing of the petition does not automatically extend the time for petitioner's comments. Such a petition is granted only if the petitioner shows good cause for the extension, and if the extension is consistent with the public interest. If an extension is granted, it is granted to all persons, and the NTSB will publish a notice of the extension of the comment period in the FEDERAL REGISTER.

### § 800.37 Contents of written comments.

All written comments shall be in English. Unless otherwise specified in a notice requesting comments, comments may not exceed 15 pages in length, but necessary attachments may be appended to the submission without regard to the 15-page limit. Any commenter shall submit as a part of his or her written comments all material he or she considers relevant to any statement of fact made in the comment. Commenters should avoid incorporation by reference. However, if incorporation by reference is necessary, the incorporated material shall be identified with respect to document and page. The NTSB may reject comments if they are frivolous, abusive, or repetitious. The NTSB may also reject comments filed electronically if the commenter does not adhere to the electronic filing instructions at the Federal Docket Management System Web site.

### § 800.38 Consideration of comments received.

All timely comments are considered before final action is taken on a rule-

making proposal. Late filed comments may be considered to the extent practicable.

### § 800.39 Additional rulemaking proceedings.

The NTSB may initiate any further rulemaking proceedings it finds necessary or desirable. For example, interested persons may be invited to make oral arguments, to participate in conferences between the Board or a representative of the Board and interested persons at which minutes of the conference are kept, to appear at informal hearings presided over by officials designated by the Board, at which a transcript or minutes are kept, or participate in any other proceeding to assure informed administrative action and to protect the public interest.

### § 800.40 Hearings.

(a) Sections 556 and 557 of title 5, United States Code, do not apply to hearings held under this part. Unless otherwise specified, hearings held under this part are informal, fact-finding proceedings, at which there are no formal pleadings or adverse parties. Any rule issued in a case in which an informal hearing is held is not necessarily based exclusively on the record of the hearing.

(b) The NTSB designates a representative to conduct any hearing held under this part. The General Counsel or a designated member of his or her staff may serve as legal officer at the hearing.

### § 800.41 Adoption of final rules.

Final rules are prepared by representatives of the office concerned and the Office of the General Counsel. The rule is then submitted to the Board for its consideration. If the Board adopts the rule, it is published in the FEDERAL REGISTER.

### § 800.42 Petitions for rulemaking.

(a) Any interested person may petition the Chairman to establish, amend, or repeal a rule.

(b) Each petition filed under this section must:

(1) Be submitted in duplicate to the Chairman, National Transportation

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Safety Board, 490 L'Enfant Plaza SW., Washington, DC 20594-0003;

(2) Set forth the text or substance of the rule or amendment proposed, or specify the rule the petitioner seeks to have repealed, as the case may be;

(3) Explain the interest of the petitioner in the action requested; and

(4) Contain any information and arguments available to the petitioner to support the action sought.

#### § 800.43 Processing of petition.

(a) Unless the NTSB otherwise specifies, no public hearing, argument, or other proceeding is held directly on a petition before its disposition under this section.

(b) *Grants.* If the agency determines the petition contains adequate justification, it initiates rule making action this subpart.

(c) *Denials.* If the agency determines the petition does not justify rule-making, it denies the petition.

(d) *Notification.* Whenever the agency determines a petition should be granted or denied, the Office of the General Counsel prepares a notice of the grant or denial for issuance to the petitioner, and the agency issues it to the petitioner.

#### § 800.44 Direct final rulemaking procedures.

A direct final rule makes regulatory changes and states those changes will take effect on a specified date unless the NTSB receives an adverse comment or notice of intent to file an adverse comment by the date specified in the direct final rule published in the FEDERAL REGISTER.

(a) *Types of actions appropriate for direct final rulemaking.* Rules the Board determines to be non-controversial and unlikely to result in adverse public comments may be published in the final rule section of the FEDERAL REGISTER as direct final rules. These include non-controversial rules that:

(1) Make non-substantive clarifications or corrections to existing rules;

(2) Incorporate by reference the latest or otherwise updated versions of technical or industry standards;

(3) Affect internal NTSB procedures;

(4) Update existing forms; and

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(5) Make minor changes to rules regarding statistics and reporting requirements, such as a change in reporting period (for example, from quarterly to annually) or eliminating a type of data collection no longer necessary.

(b) *Adverse comment.* An adverse comment is a comment the NTSB judges to be critical of the rule, to suggest the rule should not be adopted, or to suggest a change should be made to the rule. Under the direct final rule process, the NTSB does not consider the following types of comments to be adverse:

(1) Comments recommending another rule change, unless the commenter states the direct final rule will be ineffective without the change;

(2) Comments outside the scope of the rule and comments suggesting the rule's policy or requirements should or should not be extended to other topics outside the scope of the rule;

(3) Comments in support of the rule; or

(4) Comments requesting clarification.

(c) *Confirmation of effective date.* The NTSB will publish a confirmation rule document in the FEDERAL REGISTER if it has not received an adverse comment or notice of intent to file an adverse comment by the date specified in the direct final rule. The confirmation rule document informs the public of the effective date of the rule.

(d) *Withdrawal of a direct final rule.* (1) If the NTSB receives an adverse comment or a notice of intent to file an adverse comment within the comment period, it will publish a rule document in the FEDERAL REGISTER, before the effective date of the direct final rule, advising the public and withdrawing the direct final rule.

(2) If the NTSB withdraws a direct final rule because of an adverse comment, the NTSB may issue a notice of proposed rulemaking if it decides to pursue the rulemaking.

#### § 800.45 Interim rulemaking procedures.

(a) An interim rule may be issued when it is in the public interest to promulgate an effective rule while keeping the rulemaking open for further refinement. For example, an interim rule

may be issued in instances when normal procedures for notice and comment prior to issuing an effective rule are not required, minor changes to the final rule may be necessary after the interim rule has been in place for some time, or the interim rule only implements portions of a proposed rule, while other portions of the proposed rule are still under development.

(b) An interim rule will be published in the FEDERAL REGISTER with an effective date on or after the date of publication. After the effective date, an interim rule is enforceable and is codified in the next annual revision of the Code of Federal Regulations.

APPENDIX TO PART 800—REQUEST TO THE SECRETARY OF THE DEPARTMENT OF TRANSPORTATION TO INVESTIGATE CERTAIN AIRCRAFT ACCIDENTS

(a) Acting pursuant to the authority vested in it by Title VII of the Federal Aviation Act of 1958 (49 U.S.C. 1441) and section 304(a)(1) of the Independent Safety Board Act of 1974, the National Transportation Safety Board (Board) hereby requests the Secretary of the Department of Transportation (Secretary) to exercise his authority subject to the terms, conditions, and limitations of Title VII and section 304(a)(1) of the Independent Safety Board Act of 1974, and as set forth below to investigate the facts, conditions, and circumstances surrounding certain fixed-wing and rotorcraft aircraft accidents and to submit a report to the Board from which the Board may make a determination of the probable cause.

(b) The authority to be exercised hereunder shall include the investigation of all civil aircraft accidents involving rotorcraft, aerial application, amateur-built aircraft, restricted category aircraft, and all fixed-wing aircraft which have a certificated maximum gross takeoff weight of 12,500 pounds or less except:

(1) Accidents in which fatal injuries have occurred to an occupant of such aircraft, but shall include accidents involving fatalities incurred as a result of aerial application operations, amateur-built aircraft operations, or restricted category aircraft operations.

(2) Accidents involving aircraft operated in accordance with the provisions of Part 135 of the Federal Air Regulations entitled "Air Taxi Operators and Commercial Operators of Small Aircraft."

(3) Accidents involving aircraft operated by an air carrier authorized by certificate of public convenience and necessity to engage in air transportation.

(4) Accidents involving midair collisions.

(c) *Provided*, That the Board may, through the chiefs of its field offices, or their designees who receive the initial notifications, advise the Secretary, through his appropriate designee, that the Board will assume the full responsibility for the investigation of an accident included in this request in the same manner as an accident not so included; and *Provided further*, That the Board, through the chiefs of its field offices, or their designees who receive initial notifications may request the Secretary, through his appropriate designee, to investigate an accident not included in this request, which would normally be investigated by the Board under section (b) (1) through (4) above, and in the same manner as an accident so included.

(d) *Provided*, That this authority shall not be construed to authorize the Secretary to hold public hearings or to determine the probable cause of the accident; and *Provided further*, That the Secretary will report to the Board in a form acceptable to the Board the facts, conditions, and circumstances surrounding each accident from which the Board may determine the probable cause.

(e) *And provided further*, That this request includes authority to conduct autopsies and such other tests of the remains of deceased persons aboard the aircraft at the time of the accident, who die as a result of the accident, necessary to the investigations requested hereunder and such authority may be delegated and redelegated to any official or employee of the Federal Aviation Administration (FAA). For the purpose of this provision, designated aviation examiners are not deemed to be officials or employees of the FAA.

(f) Invoking the provisions of section 701(f) of the Federal Aviation Act of 1958, and section 304(a)(1) of the Independent Safety Board Act of 1974, is necessary inasmuch as sufficient funds have not been made available to the Board to provide adequate facilities and personnel to investigate all accidents involving civil aircraft. This request, therefore, is considered to be temporary in nature and may be modified or terminated by written notice to the Secretary.

[49 FR 26232, June 27, 1984, as amended at 63 FR 71606, Dec. 29, 1998]

## PART 801—PUBLIC AVAILABILITY OF INFORMATION

### Subpart A—Applicability and Policy

Sec.

801.1 Applicability.

801.2 Presumption of openness.

801.3 Definitions.

### Subpart B—Administration

801.10 General.