

PART 831—INVESTIGATION PROCEDURES

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Subpart A—General

§ 831.1 Applicability of this subpart.

(a) Except as provided in Subpart E of this part regarding marine casualties, and unless specified by the National Transportation Safety Board (NTSB), the provisions of this subpart apply to all NTSB investigations conducted under its statutory authority.

(b) Consistent with its statutory authority, the NTSB conducts investigations of transportation accidents that include, but are not limited to: accidents, collisions, crashes, derailments, explosions, incidents, mishaps, ruptures, or other similar accidents. Use of the term “accident” throughout this part includes all such occurrences.

(c) Throughout this part, the term “IIC” means the NTSB investigator-in-charge.

§ 831.2 Responsibility of the NTSB.

The NTSB is required to investigate—

(a) Aviation accidents as described in subpart B of this part;

(b) Highway accidents as described in subpart C of this part;

(c) Railroad, pipeline, and hazardous materials accidents as described in subpart D of this part; and

(d) Any accident that occurs in connection with the transportation of people or property that, in the judgment of the NTSB, is catastrophic, involves problems of a recurring nature or would otherwise carry out the intent of its authorizing statutes. This authority includes selected events involving the transportation of hazardous materials, including their release.

§ 831.3 Authority of Directors.

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

§ 831.4 Nature of investigation.

(a) *General.* The NTSB conducts investigations, or has them conducted, to determine the facts, conditions, and circumstances relating to an accident. The NTSB uses these results to determine one or more probable causes of an accident, and to issue safety recommendations to prevent or mitigate the effects of a similar accident. The NTSB is required to report on the facts and circumstances of accidents it investigates. The NTSB begins an investigation by monitoring the situation and assessing available facts to determine the appropriate investigative response. Following an initial assessment, the NTSB notifies persons and organizations it anticipates will be affected as to the extent of its expected investigative response.

(b) *NTSB products.* An investigation may result in a report or brief of the NTSB's conclusions or other products designed to improve transportation safety. Other products may include factual records, safety recommendations, and other safety information.

(c) NTSB investigations are fact-finding proceedings with no adverse parties. The investigative proceedings are not subject to the Administrative Procedure Act (5 U.S.C. 551 *et seq.*), and are not conducted for the purpose of determining the rights, liabilities, or blame of any person or entity, as they are not adjudicatory proceedings.

§ 831.5 Priority of NTSB investigations.

(a) *Relationships with other agencies.* (1) Except as provided in 49 U.S.C. 1131(a)(2)(B) and (C) regarding suspected criminal actions, an investigation conducted under the authority of the NTSB has priority over any investigation conducted by another Federal agency.

(2) The NTSB will provide for appropriate participation by other Federal agencies in any NTSB investigation. Such agencies may not participate in the NTSB's probable cause determination.

(3) The NTSB has first right to access wreckage, information, and resources, and to interview witnesses the NTSB deems pertinent to its investigation.

(4) As indicated in § 831.9(c) of this part, the NTSB has exclusive authority to decide when and how the testing and examination of evidence will occur.

(5) The NTSB and other Federal agencies will exchange information obtained or developed about the accident in the course of their investigations in a timely manner. Nothing in this section prohibits the NTSB from sharing factual information with other agencies.

(6) *Incident command system.* The NTSB recognizes the role of incident command systems to address emergencies. The NTSB does not assume the role of a first responder agency.

(i) The NTSB IIC or his designee will participate in the incident command system to identify and coordinate investigative needs related to the preservation and collection of information and evidence.

(ii) The NTSB may collect information and evidence from the incident command in a timely and reasonable manner so as not to interfere with its operations.

(b) *Investigations by other Federal agencies.* (1) Nothing in this section limits the authority of any Federal agency to conduct an investigation of an accident or incident under applicable provisions of law or to obtain information directly from parties involved in, and witnesses to, a transportation accident. Other agencies are expected to coordinate with the NTSB IIC to avoid interference with, and duplication of, the NTSB's investigative efforts. These agencies will not participate in the NTSB's probable cause determination.

(2) The NTSB recognizes that state and local agencies may conduct activities related to an accident under investigation by the NTSB. These agencies will not participate in the NTSB's probable cause determination.

(3) Except as described in § 831.30 of this part regarding highway investigations, the NTSB may request that a Federal agency provide to the NTSB the results of that agency's investigation of an accident when such investigation is intended to result in safety improvements or remedial action. The

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NTSB will not routinely request regulatory enforcement records or investigation results.

§ 831.6 Request to withhold information.

(a) *Applicability.* This section applies to information the NTSB receives from any source that may be subject to the Trade Secrets Act (18 U.S.C. 1905) or the Freedom of Information Act (FOIA, 5 U.S.C. 552).

(b) *Disclosure.* The NTSB is authorized by 49 U.S.C. 1114(b) to disclose, under certain circumstances, confidential commercial information that would otherwise be subject to penalties for disclosure under the Trade Secrets Act, or excepted from disclosure under FOIA. The NTSB may exercise this authority when disclosure is necessary to support a key finding, a safety recommendation, or the NTSB's statement of probable cause of an accident.

(c) *Disclosure procedures.* Information submitted to the NTSB that the submitter believes qualifies as a trade secret or as confidential commercial information subject either to the Trade Secrets Act or Exemption 4 of FOIA must be so identified by the submitter on each page that contains such information. In accordance with 49 U.S.C. 1114(b), the NTSB will provide the submitter of identified information (or information the NTSB has reason to believe qualifies as subject to the Trade Secrets Act or Exemption 4 of FOIA) the opportunity to comment on any disclosure contemplated by the NTSB. In all instances in which the NTSB decides to disclose such information pursuant to 49 U.S.C. 1114(b) or 5 U.S.C. 552, the NTSB will provide at least 10 days' advance notice to the submitter.

(d) *Voluntarily provided safety information.* (1) The NTSB will not disclose safety-related information voluntarily submitted to the NTSB if the information is not related to the exercise of the NTSB's investigation authority, and if the NTSB finds disclosure of the information might inhibit the voluntary provision of that type of information.

(2) The NTSB will review voluntarily provided safety information for confidential content, and will de-identify

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or anonymize any confidential content referenced in its products.

(e) *Other.* Any person may make written objection to the public disclosure of any other information, such as interview summaries or transcripts, contained in any report or document filed, or otherwise obtained by the NTSB, stating the grounds for such objection. The NTSB 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 FOIA (see part 801 of this chapter), and its release is found not to be in the public interest.

§ 831.7 Representation during an interview.

(a) Any person interviewed in any manner by the NTSB has the right to be accompanied during the interview by no more than one representative of the witness's choosing. The representative—

- (1) May be an attorney;
- (2) May provide support and counsel to the witness;
- (3) May not supplement the witness's testimony; and
- (4) May not advocate for the interests of a witness's other affiliations (e.g., the witness's employer).

(b) An investigator conducting the interview may take any necessary action (including removal of the representative from the interview) to ensure a witness's representative acts in accordance with the provisions of paragraph (a) of this section during the interview, and to prevent conduct that may be disruptive to the interview.

§ 831.8 Investigator-in-charge.

In addition to the subpoena and deposition authority delegated to investigative officers under this chapter, a person designated as IIC for an investigation is authorized to—

- (a) Organize, conduct, control, and manage the field phase of an investigation, even when a Board Member is present;
- (b) Coordinate all resources and supervise all persons (including persons not employed by the NTSB) involved in an on-site investigation; and

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(c) Continue his or her organizational and management responsibilities through all phases of the investigation, including consideration and adoption of a report or brief determining one or more probable causes of an accident.

§ 831.9 Authority during investigations.

(a) *General authority of investigators.* To carry out the statutory responsibilities of the agency, an NTSB investigator may—

- (1) Conduct hearings;
- (2) Administer oaths;
- (3) Require, by subpoena or otherwise, the production of evidence and witnesses;
- (4) Enter any property where an accident subject to the NTSB's jurisdiction has occurred, or wreckage from any such accident is located, and take all actions necessary to conduct a complete investigation of the accident;
- (5) Inspect, photograph, or copy any records or information (including medical records pursuant to paragraph (b)(2) of this section), and correspondence regardless of the date of their creation or modification, for the purpose of investigating an accident;
- (6) Take possession of wreckage, records or other information if it determines such possession is necessary for an investigation; and
- (7) Question any person having knowledge relevant to a transportation accident.

(b) *Subpoenas.* The NTSB may issue a subpoena, enforceable in Federal District Court, to obtain testimony or evidence related to an accident, including but not limited to personal electronic devices.

(1) The NTSB's authority to issue subpoenas includes access to medical records and specimens.

(2) For purposes of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), Public Law 104-191, and the regulations promulgated by the DHHS, 45 CFR 164.501 *et seq.*, the NTSB is a "public health authority" to which protected health information may be disclosed by a HIPAA "covered entity" without the prior written authorization of the subject of the records. In addition, the NTSB may

issue a subpoena to gain access to such information.

(c) *Examination of evidence.* In accordance with 49 U.S.C. 1134(d), the NTSB has exclusive authority to decide timing, manner and method of testing and examination of evidence, and extraction of data.

§ 831.10 Autopsies and postmortem testing.

When a person dies as a result of having been involved in a transportation accident within the jurisdiction of the NTSB—

(a) The NTSB is authorized to obtain, with or without reimbursement, a copy of a report of autopsy performed by a State or local authority on such person.

(b) The NTSB may order an autopsy or other postmortem tests of any person as may be related to its investigation of a transportation accident. The IIC may direct that an autopsy or other test be performed if necessary for an investigation. Provisions of local law protecting religious beliefs with respect to autopsies shall be observed to the extent they are consistent with the needs of the investigation.

§ 831.11 Parties to the investigation.

(a) *Participants.* (1) The IIC may designate one or more entities to serve as parties in an investigation. Party status is limited to those persons, Federal, state, or local government agencies and organizations whose employees, functions, activities, or products were involved in the accident and that can provide suitable qualified technical personnel to actively assist in an investigation. To the extent practicable, a representative proposed by party organizations to participate in the investigation may not be a person who had direct involvement in the accident under investigation.

(2) Except for the FAA, no entity has a right to participate in an NTSB investigation as a party.

(3) The participation of the Administrator of the FAA and other Federal entities in aviation accident investigations is addressed in § 831.21 of this part.

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(4) Participants in an investigation (e.g., party representatives, party coordinators, and/or the larger party organization) must follow all directions and instructions from NTSB representatives. Party status may be revoked or suspended if a party fails to comply with assigned duties and instructions, withholds information, or otherwise acts in a manner prejudicial or disruptive to an investigation.

(b) *Prohibitions on serving as party representatives.* (1) In accordance with § 845.6 of this chapter, no party representative may occupy a legal position or be a person who also represents claimants or insurers.

(2) Failure to comply with these provisions may result in sanctions, including loss of party status.

(c) *Disclosures.* (1) The name of a party and its representative may be disclosed in documents the NTSB places in the public docket for the investigation.

(2) The NTSB may share information considered proprietary or confidential by one party with other parties during the course of an investigation, but will preserve the confidentiality of the information to the greatest extent possible.

(3) Section 831.6(d) of this part describes how the NTSB will handle voluntarily submitted safety information, and the NTSB's determination whether to share any such information. The NTSB will de-identify the source of such information when deciding to share it.

(d) *Party agreement.* Except for representatives of other Federal agencies, all party representatives must sign the "Statement of Party Representatives to NTSB Investigation" (Statement) upon acceptance of party status. Failure to timely sign the statement may result in sanctions, including loss of party status. Representatives of other Federal agencies, while not required to sign the Statement, will be provided notice of and must comply with the responsibilities and limitations set forth in the agreement.

(e) *Internal review by a party.* (1) To assure coordination of concurrent efforts, a party to an investigation that conducts or authorizes a review of its own processes and procedures as a re-

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sult of an accident the NTSB is investigating, by signing the party agreement, agrees to, in a timely manner—

(i) Inform the IIC of the nature of the review; and

(ii) Provide the IIC with the findings from the review.

(2) If the findings from a review contain privileged information—

(i) The submitting party must inform the IIC that the review contains privileged information;

(ii) The submitting party must identify the privileged content at the time of submission to the IIC; and

(iii) The NTSB must, if informed that such information is being submitted, review the information for relevancy to the investigation, and determine whether public disclosure of the information is necessary for the investigation.

(3) The NTSB may use the protections described in § 831.6 of this part, as applicable, to protect certain findings from public disclosure.

(4) Investigations performed by other Federal agencies during an NTSB investigation are addressed in § 831.5 of this part.

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

(a) Only persons authorized by the NTSB IIC may be permitted access to wreckage, records, mail, or cargo.

(b) Wreckage, records, mail, and cargo in the NTSB's custody will be released when the NTSB determines it has no further need for such items. Recipients of released wreckage must sign an acknowledgement of release provided by the NTSB.

§ 831.13 Provision and dissemination of investigative information.

(a) *Applicability.* This section applies to:

(1) Information related to the accident or incident;

(2) Any information collected or compiled by the NTSB as part of its investigation, such as photographs, visual representations of factual data, physical evidence from the scene of the accident, interview statements, wreckage documentation, flight data and cockpit voice recorder information, and surveillance video; and

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(3) Any information regarding the status of an investigation, or activities conducted as part of the investigation.

(b) *Provision of information.* All information described in paragraph (a) of this section and obtained by any person or organization participating in the investigation must be promptly provided to the NTSB, except where the NTSB authorizes the party to retain the information.

(c) *Release of information.* Parties are prohibited from releasing information obtained during an investigation at any time prior to the NTSB's public release of information unless the release is consistent with the following criteria:

(1) Information released at the scene of an accident—

(i) Is limited to factual information concerning the accident and the investigation released in coordination with the IIC; and

(ii) Will be made by the Board Member present at the scene as the official spokesperson for the NTSB. Additionally, the IIC or representatives from the NTSB's Office of Safety Recommendations and Communications may release information to media representatives, family members, and elected officials as deemed appropriate.

(2) The release of information described in paragraph (a)(1) of this section by the NTSB at the scene of an accident does not authorize any party to the investigation to comment publicly on the information during the course of the investigation. Any dissemination of factual information by a party may be made only as provided in this section.

(3) A party may disseminate information related to an investigation to those individuals within its organization who have a need to know for the purpose of addressing a safety issue including preventive or remedial actions. If such internal release of information results in a planned safety improvement, the party must inform the IIC of such planned improvement in a timely manner before it is implemented.

(4) Any other release of factual information related to the investigation must be approved by the IIC prior to release, including:

(i) Dissemination within a party organization, for a purpose not described in paragraph (b)(3) of this section;

(ii) Documents that provide information concerning the investigation, such as written directives or informational updates for release to employees or customers of a party;

(iii) Information related to the investigation released to an organization or person that is not a party to the investigation;

(d) The release of recordings or transcripts from certain recorders may be made only in accordance with the statutory limitations of 49 U.S.C. 1114(c) and (d).

§ 831.14 Proposed findings.

(a) *General.* Any party to the investigation designated under § 831.11 may submit to the NTSB written proposed findings to be drawn from the evidence produced during the course of the investigation, a proposed probable cause, and/or proposed safety recommendation(s) designed to prevent future accidents.

(b) *Timing of submissions.* The IIC will inform parties when submissions are due. All written submissions must be received by the IIC by the due date. If there is a Board meeting, the due date will be set prior to the date the matter is published in the FEDERAL REGISTER.

§ 831.15 Civil penalties.

The NTSB is required by the Federal Civil Penalties Inflation Adjustment Act of 1990, Public Law 101-410, 104 Stat. 890, as amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, Public Law 114-74, sec. 701, 129 Stat. 584 (codified at 28 U.S.C. 2461 note) to adjust the maximum amount of each civil monetary penalty within its jurisdiction by the rate of inflation. Accordingly, for violations of 49 U.S.C. 1132, 1134(b), 1134(f)(1), or 1136(g), the NTSB may assess a civil penalty pursuant to 49 U.S.C. 1155(a) no greater than \$2,058 against any person, except a member of the armed forces of the United States or an employee of the Department of Defense subject to the Uniform Code of

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Military Justice, when the member or employee is performing official duties.

[82 FR 47402, Oct. 12, 2017, as amended at 84 FR 45687, Aug. 30, 2019; 85 FR 2320, Jan. 15, 2020; 86 FR 1810, Jan. 11, 2020; 87 FR 2353, Jan. 14, 2022; 88 FR 2859, Jan. 18, 2023; 89 FR 1036, Jan. 9, 2024]

Subpart B—Aviation Investigations

§ 831.20 Authority of NTSB in aviation accident investigations.

(a) *Scope.* The NTSB is authorized to investigate—

(1) Each accident involving a civil aircraft in the United States, and any civil aircraft registered in the United States when an accident occurs in international waters;

(2) Each accident involving a public aircraft as defined in 49 U.S.C. 40102(a)(41), except for aircraft operated by the U.S. Armed Forces or by an intelligence agency of the United States;

(3) With the participation of appropriate military authorities, each accident involving a military aircraft and—

(i) a civil aircraft; or

(ii) certain public aircraft as described in paragraph (a)(2) of this section.

(b) *Authority to examine or test.* Pursuant to § 831.9 of this part, a credentialed employee of the NTSB is authorized to examine or test any civil or certain public aircraft, aircraft engine, propeller, appliance, or property aboard such aircraft involved in an accident or incident subject to the NTSB's authority.

§ 831.21 Other Government agencies and NTSB aviation investigations.

(a) Pursuant to 49 U.S.C. 1132(c) and 106(g)(1)(A), the NTSB will provide for the participation of the Administrator of the FAA in the investigation of an aircraft accident when participation is necessary to carry out the duties and powers of the FAA Administrator.

(b) Title 49 U.S.C. 1131(a)(2) provides for the appropriate participation by other departments, agencies, or instrumentalities of the United States Government in the investigation of an aircraft accident by the NTSB.

(c) *Rights and duties of other Federal agencies.* (1) The FAA and other Federal

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agencies named as parties to an aircraft accident investigation will be accorded the same rights and privileges, and are subject to the same limitations, as other parties. Participation in an investigation includes the duty to timely share with the NTSB any information that has been developed by the FAA or other Federal agency in the exercise of that agency's investigative authority.

(2) In exercising its authority, the FAA or other Federal agency may obtain information directly from a party to an accident or incident under investigation by the NTSB.

(3) Information obtained by another Federal agency must be timely shared with the NTSB.

(4) Investigative activities by another Federal agency must be coordinated to ensure that they do not interfere with the NTSB's investigation.

(5) Under no circumstances may an NTSB aviation accident investigation for which the FAA or any other Federal agency has conducted fact-finding be considered a joint investigation with shared responsibility. Decisions about what information to include in the public docket will be made by the NTSB.

(6) Notwithstanding the rights and duties described in paragraphs (c)(1) through (5) of this section, determining the probable cause of an accident is exclusively the right and duty of the NTSB.

(d) An FAA employee designated to act by the NTSB IIC has the same authority as an NTSB investigator when conducting activities under this part. The investigation remains that of the NTSB.

(e) Nothing in this section may be construed as inhibiting the FAA from proceeding with activities intended to fulfill a statutory requirement or objective, including the collection of data for safety management or enforcement purposes. Section 831.5 of this part also applies to the investigation of aviation accidents.

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§ 831.22 International aviation investigations.

(a) *General.* (1) Annex 13 to the Convention on International Civil Aviation, *Aircraft Accident and Incident Investigation* (Annex 13) contains standards and recommended practices for the notification, investigation, and reporting of certain accidents involving international civil aviation.

(2) Annex 13 provides that the state of occurrence of an accident or incident is responsible for the investigation when the state is a signatory to the Convention.

(b) The NTSB—

(1) Is the U.S. agency that fulfills the obligations of the United States under Annex 13, in coordination with and consistent with the requirements of the United States Department of State.

(2) Participates in the investigation as the accredited representative to an international investigation when the accident involves a civil aircraft—

(i) of a U.S. operator;

(ii) of U.S. registry;

(iii) of U.S. manufacture; or

(iv) when the U.S. is the state of design or manufacture of the aircraft or parts thereof.

(c) *Technical advisers.* Once designated the accredited representative in an international investigation, the NTSB may elect to receive assistance by appointing one or more advisers to serve under the NTSB's direction. Such technical advisers—

(1) Work at the direction and under the supervision of the NTSB accredited representative.

(2) Are subject to the provisions of § 831.13 of this part while working under the supervision of the NTSB accredited representative.

(d) If an accident occurs in a foreign state that is not a signatory to the Convention, or if an accident or incident involves an aircraft that is not a civil aircraft, the NTSB will participate in the investigation in accordance with any agreement between the United States and the foreign state that addresses such occurrences.

(e) The NTSB's disclosure of records of a foreign investigation is limited by statute (49 U.S.C 1114(f)) and by § 831.6 of this part.

Subpart C—Highway Investigations

§ 831.30 Authority of NTSB in highway investigations.

(a) *Scope.* The NTSB is responsible for the investigation of selected highway accidents (e.g., collisions, crashes and explosions), including at railroad grade-crossing accidents. Such investigations will be conducted in cooperation with the designated authorities of the state or local jurisdiction in which the accident occurred.

(b) *Authority to examine or test.* Pursuant to § 831.9 of this part, a credentialed employee of the NTSB is authorized to examine or test any item, including any vehicle, part of a vehicle, equipment, or contents of any vehicle or equipment involved in an accident subject to the NTSB's authority. Examination or testing will be conducted—

(1) To the extent practicable, so as to not interfere with or obstruct the transportation services provided by the owner or operator of a vehicle or equipment; and

(2) In a manner that preserves evidence relating to the transportation accident, in cooperation with the owner or operator of the vehicle or equipment, and consistent with the needs of the investigation.

(c) Any Federal, state, or local agency that conducts an investigation of the same highway accident the NTSB is investigating shall provide the results of its investigation to the NTSB.

Subpart D—Railroad, Pipeline, and Hazardous Materials Investigations

§ 831.40 Authority of NTSB in railroad, pipeline, and hazardous materials investigations.

(a) *Scope.* (1) *Railroads.* Consistent with its statutory authority, the NTSB is responsible for the investigation of railroad accidents, collisions, crashes, derailments, explosions, incidents, and releases in which there is a fatality, substantial property damage, or which involve a passenger train, as described in part 840 of this chapter.

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(2) *Pipelines.* The NTSB is responsible for the investigation of pipeline accidents, explosions, incidents, and ruptures in which there is a fatality, significant injury to the environment, or substantial property damage. This excludes accidents involving pipelines only carrying water or sewage.

(3) *Hazardous Materials.* The NTSB is responsible for evaluating the adequacy of safeguards and procedures for the transportation of hazardous materials, and the performance of other entities of the Federal government responsible for the safe transportation of hazardous materials. Such evaluations may take place as part of the investigation of a transportation accident subject to the NTSB's authority and include applicable regulations in other subparts of this part.

(b) *Authority to examine or test.* Pursuant to § 831.9 of this part, during an investigation, a credentialed employee of the NTSB is authorized to examine or test any rolling stock, track, or pipeline component, or any part of any such item (or contents therein) when such examination or testing is determined to be required for purposes of such investigation. Examination or testing will be conducted—

(1) To the extent practicable, so as to not interfere with or obstruct the transportation services provided by the owner or operator of such rolling stock, track, signal, rail shop, property, or pipeline component; and

(2) In a manner that preserves evidence relating to the transportation accident consistent with the needs of the investigation.

Subpart E—Marine Investigations

AUTHORITY: 49 U.S.C. 1113(f), 1116, 1131, 1134, unless otherwise noted.

SOURCE: 82 FR 29694, June 29, 2017, unless otherwise noted.

§ 831.50 Applicability of this subpart.

(a) The regulations in this subpart apply when the NTSB is leading a marine or major marine casualty investigation.

(b) In a marine or major marine casualty investigation led by the United States Coast Guard (USCG), this subpart applies if:

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(1) Upon USCG's request for assistance, the NTSB is leading an associated investigative activity; or

(2) Upon coordination with the USCG, the NTSB elects to collect, test or analyze additional evidence beyond the scope of the USCG's investigation.

§ 831.51 Definitions.

The following definitions apply throughout this subpart.

IIC means the NTSB investigator-in-charge.

Investigative activity means an activity performed by or under the direction of the NTSB during a casualty investigation led by the USCG.

Major marine casualty is defined in joint regulations of the NTSB and USCG at 49 CFR 850.5(e) and 46 CFR 4.40–5(d), respectively.

Marine casualty means—

(1) Any casualty, accident or event described in 46 CFR 4.03–1

(2) An occurrence that results in an abandonment of a vessel

(3) Other marine occurrences that the NTSB or USCG, or both, determine require investigation.

§ 831.52 Responsibility of NTSB in marine investigations.

(a) The NTSB may conduct an investigation of a major marine casualty or a marine casualty of a vessel (including, but not limited to, allisions, abandonments, and accidents) alone or jointly with the USCG pursuant to the joint regulations in part 850 of this chapter.

(b) Nothing in this part may be construed to conflict with the regulations in part 850 of this chapter, which were prescribed jointly by the NTSB and USCG under the authority of 49 U.S.C. 1131(a)(1)(E).

(c) In an investigation led by the USCG, the NTSB may perform separate activities in furtherance of its own analysis or at the request of the USCG. The NTSB and USCG will coordinate to ensure the agencies do not duplicate work or hinder the progress of the investigation.

(d) Pursuant to 49 U.S.C. 1131(a)(1)(F), the NTSB is responsible for the investigation of other accidents that may include marine and boating accidents not covered by part 850 of this chapter,

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and certain accidents involving transportation and/or release of hazardous materials.

§ 831.53 Authority of Director, Office of Marine Safety.

The Director, Office of Marine Safety, subject to the provisions of § 831.52 of this part and part 800 of this chapter, may order an investigation into any major marine casualty or marine casualty.

§ 831.54 Nature of investigation.

(a) *General.* The NTSB conducts investigations, or has them conducted, to determine the facts, conditions, and circumstances relating to a major marine casualty or a marine casualty. The NTSB uses these results to determine one or more probable causes of a major marine casualty or a marine casualty, and to issue safety recommendations to prevent or mitigate the effects of a similar major marine casualty or a marine casualty. The NTSB is required to report on the facts and circumstances of major marine casualties or marine casualties it investigates. The NTSB begins an investigation by monitoring casualty situations and assessing available facts to determine the appropriate investigative response. Following an initial assessment, the NTSB notifies persons and organizations it anticipates will be affected as to the extent of its expected investigative response.

(b) *NTSB products.* An investigation may result in a report or brief of the NTSB's conclusions and other products designed to improve transportation safety. Other products may include factual records, safety recommendations, and other safety information.

(c) NTSB investigations are fact-finding proceedings with no adverse parties. The investigative proceedings are not subject to the Administrative Procedure Act (5 U.S.C. 551 *et seq.*), and are not conducted for the purpose of determining the rights, liabilities, or blame of any person or entity, as they are not adjudicatory proceedings.

§ 831.55 Relationships with other agencies.

(a) *Relationship with the USCG.* (1) The NTSB conducts marine casualty and major marine casualty investiga-

tions, in accordance with 49 U.S.C. 1131(a)(1)(E) and (F), and part 850 of this chapter. The NTSB and USCG work together to collect evidence related to marine casualties and major marine casualties.

(2) The NTSB and USCG coordinate to avoid duplicative efforts to the maximum extent practicable.

(3) The NTSB independently analyzes the evidence and determines the probable cause of marine casualties and major marine casualties.

(b) *Relationships with other Federal agencies.* (1) Except as provided in 49 U.S.C. 1131(a)(2)(B) and (C) regarding suspected criminal actions, an investigation conducted under the authority of the NTSB has priority over any investigation conducted by another Federal agency.

(2) The NTSB will provide for appropriate participation by other Federal agencies in any NTSB investigation. Such agencies may not participate in the NTSB's probable cause determination.

(3) The NTSB has first right to access wreckage, information, and resources, and to interview witnesses the NTSB deems pertinent to its investigation.

(4) The NTSB and other Federal agencies will exchange information obtained or developed in the course of their investigations in a timely manner. Nothing in this section prohibits the NTSB from sharing factual information with other agencies.

(c) As indicated in § 831.59(c) of this part, the NTSB has exclusive authority to determine when and how the testing and examination of evidence will occur.

(d) The NTSB may take possession of records, wreckage, or information if it determines such possession is necessary for an investigation.

(e) *Investigations by Federal agencies.* (1) Nothing in this section impairs the authority of any other Federal agency to conduct an investigation of a marine casualty or major marine casualty.

(f) *Incident command system.* (1) The NTSB recognizes the role of incident command systems to address emergencies. The NTSB does not assume the role of a first responder agency.

(2) The NTSB IIC or his designee will participate in the incident command

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system to identify and coordinate investigative needs as it relates to the preservation and collection of information and evidence.

(3) The NTSB IIC or his designee will coordinate with the Coast Guard Investigation Officer to identify and coordinate investigative needs as it relates to the preservation and collection of information and evidence.

(4) The NTSB may collect information and evidence from an incident command in a timely and reasonable manner so as not to interfere with its operations.

§ 831.56 Request to withhold information.

(a) *Applicability.* This section applies to information the NTSB receives from any source that may be subject to the Trade Secrets Act (18 U.S.C. 1905) or the Freedom of Information Act (FOIA, 5 U.S.C. 552).

(b) *Disclosure.* The NTSB is authorized by 49 U.S.C. 1114(b) to disclose, under certain circumstances, confidential commercial information that would otherwise be subject to penalties for disclosure under the Trade Secrets Act, or excepted from disclosure under FOIA. The NTSB may exercise this authority when disclosure is necessary to support a key finding, a safety recommendation, or the NTSB's statement of probable cause of a major marine casualty or a marine casualty.

(c) *Disclosure procedures.* Information submitted to the NTSB that the submitter believes qualifies as a trade secret or as confidential commercial information subject either to the Trade Secrets Act or Exemption 4 of FOIA must be so identified by the submitter on each page that contains such information. In accordance with 48 U.S.C. 1114(b), the NTSB will provide the submitter of identified information (or information the NTSB has reason to believe qualifies as subject to the Trade Secrets Act or Exemption 4 of FOIA) the opportunity to comment on any disclosure contemplated by the NTSB. In all instances in which the NTSB decides to disclose such information pursuant to 49 U.S.C. 1114(b) or 5 U.S.C. 552, the NTSB will provide at least 10 days' notice to the submitter.

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(d) *Voluntarily provided safety information.* (1) The NTSB will not disclose safety-related information voluntarily submitted to the NTSB if the information is not related to the exercise of the NTSB's investigation authority, and if the NTSB finds disclosure of the information might inhibit the voluntary provision of that type of information.

(2) The NTSB will review voluntarily provided safety information for confidential content, and will de-identify or anonymize any confidential content referenced in its products.

(e) *Other.* Any person may make written objection to the public disclosure of any other information, such as interview summaries or transcripts, 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.

§ 831.57 Representation during an interview.

(a) Any person interviewed in any manner by the NTSB has the right to be accompanied during the interview by no more than one representative of the witness's choosing. The representative—

- (1) May be an attorney;
- (2) May provide support and counsel to the witness;
- (3) May not supplement the witness's testimony; and
- (4) May not advocate for the interests of a witness's other affiliations.

(b) An investigator conducting the interview may take any necessary action (including removal of the representative from the interview) to ensure a witness's representative acts in accordance with the provisions of paragraph (a) of this section during the interview, and to prevent conduct that may be disruptive to the interview.

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§ 831.58 Investigator-in-charge.

(a) In addition to the subpoena and deposition authority delegated to investigative officers under this chapter, a person designated as IIC for an investigation is authorized to—

(1) Organize, conduct, control, and manage the field phase of an investigation, even when a Board Member is present.

(2) Coordinate all resources and provide direction to all persons (including persons not employed by the NTSB) involved in an on-site investigation.

(3) Work with other Federal agencies in the investigation of a marine casualty or major marine casualty when other agencies are participating, to ensure all agencies will obtain the information, evidence, and resources needed for the investigation(s) or investigative activities.

(4) Work with the USCG to ensure the agencies do not duplicate work to the maximum extent practicable.

(5) Continue his or her organizational and management responsibilities through all phases of the investigation, including consideration and adoption of a report or brief determining one or more probable causes of a marine casualty or major marine casualty.

§ 831.59 Authority during investigations.

(a) *General authority of investigators.* To carry out the statutory responsibilities of the agency, an NTSB investigator may—

(1) Conduct hearings;

(2) Administer oaths;

(3) Require, by subpoena or other means, the production of evidence and witnesses;

(4) Enter any property where a major marine casualty or marine casualty subject to the NTSB's jurisdiction has occurred, or wreckage from any such major marine casualty or marine casualty is located, and take all actions necessary to conduct a complete investigation;

(5) Inspect, photograph, or copy any records or information (including medical records pursuant to paragraph (b)(2) of this section), and correspondence regardless of the date of its creation or modification, for the purpose of investigating an accident;

(6) Question any person having knowledge relevant to a marine casualty or major marine casualty.

(b) *Subpoenas.* The NTSB may issue a subpoena, enforceable in Federal District Court, to obtain testimony or evidence related to its investigation of a marine casualty or major marine casualty, including but not limited to personal electronic devices.

(1) The NTSB's authority to issue subpoenas includes access to medical records and specimens.

(2) For purposes of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), Public Law 104-191, and the regulations promulgated by the Department of Health and Human Services, 45 CFR 164.501 *et seq.*, the NTSB is a "public health authority" to which protected health information may be disclosed by a HIPAA "covered entity" without the prior written authorization of the subject of the records. In addition, the NTSB may issue a subpoena to gain access to such information.

(c) *Examination of evidence.* In accordance with 49 U.S.C. 1134(d), the NTSB has exclusive authority to decide when, and in what manner, testing, extraction of data, and examination of evidence will occur.

§ 831.60 Autopsies and postmortem testing.

When a person dies as a result of having been involved in a marine casualty or major marine casualty within the jurisdiction of the NTSB—

(a) The NTSB is authorized to obtain, with or without reimbursement, a copy of a report of autopsy performed by a State or local authority on such person.

(b) The NTSB may order an autopsy or other postmortem tests of any person as may be related to its investigation of a marine casualty or major marine casualty. The IIC may direct that an autopsy or other test be performed if necessary for an investigation. Provisions of local law protecting religious beliefs with respect to autopsies shall be observed to the extent they are consistent with the needs of the investigation.

§ 831.61 Parties to the investigation.

(a) *Participants.* (1) The IIC may designate one or more entities to serve as parties in an investigation. The NTSB will provide to the USCG the opportunity to participate in all NTSB investigations and investigative activities the NTSB conducts under this subpart. For all other organizations, party status is limited to those persons, government agencies (Federal, state, or local), companies, and organizations whose employees, functions, activities, or products were involved in the marine casualty or major marine casualty and that can provide suitable qualified technical personnel actively to assist in an investigation. To the extent practicable, a representative proposed by party organizations to participate in the investigation may not be a person who had direct involvement in the major marine casualty or marine casualty under investigation.

(2) Except the USCG, no entity has a right to participate in an NTSB marine investigation as a party.

(3) Participants in an investigation (e.g., party representatives, party coordinators, and the larger party organization) must respond to direction from NTSB representatives.

(4) No party representative may—

- (i) Occupy a legal position; or
- (ii) Be a person who also represents claimants or insurers.

(5) Party status may be revoked or suspended if a party fails to comply with either paragraph (a)(3) or (a)(4) of this section. Sanctions may also be imposed if a party withholds information or acts in a manner prejudicial or disruptive to an investigation.

(b) *Disclosures.* (1) The name of a party or its representative may be disclosed in documents the NTSB places in the public docket for the investigation.

(2) The NTSB may share information considered proprietary or confidential by one party with other parties during the course of an investigation, but will preserve the confidentiality of the information to the greatest extent possible.

(3) Section 831.6(c) of this part describes how the NTSB will handle voluntarily submitted safety information, and the NTSB's determination whether

to share any such information. The NTSB will de-identify the source of such information when deciding to share it.

(c) *Party agreement.* All party representatives must sign the "Statement of Party Representatives to NTSB Investigation" (Statement) upon acceptance of party status. Failure to timely sign the Statement may result in sanctions, including loss of party status. Representatives of Federal agencies are not required to sign the Statement, but must comply with the responsibilities and limitations set forth in the agreement.

(d) *Internal review by a party.* (1) To assure coordination of concurrent efforts, a party to an investigation that conducts or authorizes a review of its own processes and procedures as a result of a major marine casualty or a marine casualty the NTSB is investigating must inform the IIC in a timely manner of the nature of its review. A party performing such review must provide the IIC with the findings from this review.

(2) If the findings from a review contain privileged information—

- (i) The submitting party must inform the IIC that the review contains privileged information;
- (ii) The submitting party must identify the privileged content at the time of submission to the IIC;
- (iii) The NTSB must, when informed that such information is being submitted, review the information for relevancy to the investigation, and determine whether the information is needed for the investigation or may be excluded from the party's response.

(3) The NTSB may use the protections described in § 831.56 of this part, as applicable, to protect certain findings from public disclosure.

(4) Investigations performed by other Federal agencies during an NTSB investigation are addressed in § 831.55 of this part.

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

(a) Only persons authorized by the NTSB to participate in any particular investigation, examination or testing may be permitted access to wreckage, records, mail, or cargo.

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(b) Wreckage, records, mail, and cargo in the NTSB's custody will be released when the NTSB determines it has no further need for such items. Prior to release, the NTSB will inform the USCG of the upcoming release of wreckage or evidence. Recipients of released wreckage must sign an acknowledgement of release provided by the NTSB.

§ 831.63 Provision and dissemination of investigative information.

(a) *Applicability.* This section applies to:

(1) Any information related to a marine casualty or major marine casualty;

(2) Any information collected or compiled by the NTSB as part of its investigation, such as photographs, visual representations of factual data, physical evidence from the scene of the major marine casualty or the marine casualty, interview statements, wreckage documentation, voyage data recorder information, and surveillance video;

(3) Any information regarding the status of an investigation, or activities conducted as part of the investigation.

(b) *Provision of information.* All information described in paragraph (a) of this section and obtained by any person or organization participating in the investigation must be provided to the NTSB, except for information the NTSB authorizes the party to retain.

(c) *Release of information.* Parties are prohibited from releasing information obtained during an investigation at any time prior to the NTSB's public release of information unless the release is consistent with the following criteria:

(1) Information released at the scene of a marine casualty or major marine casualty:

(i) Is limited to factual developments concerning the accident and the investigation released in coordination with the IIC; and

(ii) Will be made by the Board Member present at the scene as the official spokesperson for the NTSB. If no Board Member is present, information will be released by a representative of the NTSB's Office of Media Relations or the IIC. To the maximum extent prac-

ticable, the NTSB will inform the USCG of its planned releases of information before the release occurs.

(2) The release of information described in paragraph (a)(1) of this section by the NTSB at the scene of a marine casualty or major marine casualty does not authorize any party to the investigation to comment publicly on the information during the course of the investigation. Any dissemination of factual information by a party may be made only as provided in this section.

(3) A party may disseminate information related to an investigation to those individuals within its organization who have a need to know for the purpose of addressing a safety issue, including preventive or remedial actions. If such internal release of information results in a planned safety improvement, the party must inform the IIC of such planned improvement in a timely manner before it is implemented.

(4) Any other release of factual information related to the investigation must be approved by the IIC prior to release, including:

(i) Dissemination within a party organization, for a purpose not described in paragraph (b)(3) of this section;

(ii) Documents that provide information concerning the investigation, such as written directives or informational updates for release to employees or customers of a party; and

(iii) Information related to the investigation released to an organization or person that is not a party to the investigation.

(d) The release of recordings or transcripts from certain recorders may be made only in accordance with the statutory limitations of 49 U.S.C. 1114(c), 1114(d), and 1154(a).

§ 831.64 Proposed findings.

(a) *General.* Any party to an investigation designated under § 831.61 may submit to the NTSB written proposed findings to be drawn from the evidence produced during the course of the investigation, a proposed probable cause, and/or proposed safety recommendation(s) designed to prevent future major marine casualties and marine casualties.

(b) *Timing of submissions.* The IIC will inform parties when submissions are

due. All written submissions must be received by the due date. If there is a Board meeting, the due date will be set prior to the date the matter is published in the FEDERAL REGISTER.

PART 835—TESTIMONY OF BOARD EMPLOYEES

Sec.

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- 835.10 Testimony in Federal, State, or local criminal investigations and other proceedings.
- 835.11 Obtaining Board accident reports, factual accident reports, and supporting information.

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 determina-

tions, 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.

(b) For the reasons stated in paragraph (a) of this section and § 835.1, Board employees may only testify as to the factual information they obtained during the course of an investigation, including factual evaluations embodied