

## NATIONAL TRANSPORTATION SAFETY BOARD

### 49 CFR Part 831

[Docket No. NTSB-GC-2012-0002]

RIN 3147-AA01

#### Investigation Procedures

**AGENCY:** National Transportation Safety Board (NTSB).

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The NTSB is proposing to amend its regulations that address the NTSB's investigation procedures. Specifically, the NTSB proposes to organize regulations into distinct mode-specific subparts, where appropriate. While some of these proposed amendments are merely technical in nature, this notice proposes several substantive changes. In addition, in this rulemaking, the NTSB proposes including its party agreement form as an appendix and solicits comment on revisions to the party agreement.

**DATES:** Comments must be received by October 14, 2014. Comments received after the deadline will be considered to the extent possible.

**ADDRESSES:** A copy of this NPRM, published in the **Federal Register** (FR), is available for inspection and copying in the NTSB's public reading room, located at 490 L'Enfant Plaza, SW., Washington, DC 20594-2003. Alternatively, a copy is available on the government-wide Web site on regulations at <http://www.regulations.gov> (Docket ID Number NTSB-GC-2012-0002).

You may send comments identified by Docket ID Number NTSB-GC-2012-0002 using any of the following methods:

**Federal eRulemaking Portal:** Go to <http://www.regulations.gov> and follow the instructions for sending your comments electronically.

**Mail:** Send comments to NTSB Office of General Counsel, 490 L'Enfant Plaza East, SW., Washington, DC 20594-2003.

**Facsimile:** Fax comments to 202-314-6090.

**Hand Delivery:** Bring comments to 490 L'Enfant Plaza East, SW., 6th Floor, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. For more information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

**Privacy:** We will post all comments we receive, without change, to <http://www.regulations.gov>, including any personal information provided.

**FOR FURTHER INFORMATION CONTACT:** David Tochen, General Counsel, (202) 314-6080.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

On June 25, 2012, the NTSB published a notice indicating its intent to undertake a review of all NTSB regulations to ensure they are updated. 77 FR 37865. The NTSB initiated this review in accordance with Executive Order 13579, "Regulation and Independent Regulatory Agencies," issued July 11, 2011. The purpose of Executive Order 13579 is to ensure all agencies adhere to the key principles found in Executive Order 13563, "Improving Regulation and Regulatory Review," issued January 18, 2011, which include promoting public participation in rulemaking, improving integration and innovation, promoting flexibility and freedom of choice, and ensuring scientific integrity during the rulemaking process in order to create a regulatory system that protects public health, welfare, safety, and the environment while promoting economic growth, innovation, competitiveness, and job creation. The NTSB explained in its June 25, 2012, notice that it is committed to ensuring its regulations remain updated and comply with these principles.

As stated in the notice, the NTSB determined a very limited number of the NTSB's rules might be "major rules," because they do not have a "significant economic impact upon a substantial number of small entities." In addition, the NTSB is not primarily a regulatory agency; as a result, its regulations typically address procedures to further the agency's statutory responsibilities to investigate the facts, circumstances, and cause of transportation accidents and incidents, or implement government-wide statutes, such as the Freedom of Information Act and the Privacy Act. The NTSB identified 49 CFR part 831 as the sole regulatory part of the NTSB's regulations that could, when viewed in the broadest sense, have a significant economic impact on small entities. Therefore, the NTSB carefully reviewed all sections within 49 CFR part 831, in the interest of ensuring they accomplish the objectives stated in Executive Order 13563 and Executive Order 13579. The NTSB published an additional notice in the **Federal Register** on January 8, 2013, describing the NTSB's plan for updating all regulations. 78 FR 1193. The NTSB publishes this NPRM in accordance with the NTSB's plan.

##### II. Comments

The NTSB received five comments in response to its June 25, 2012 notice describing its planned review of 49 CFR part 831. Organizations in the transportation industry whose members have previously participated in NTSB investigations as "parties" pursuant to part 831 submitted comments: The Air Line Pilots Association, International; Airlines for America (A4A); the Transportation Trades Department, AFL-CIO; GE Aviation; and six railroad labor organizations, which submitted a joint comment.<sup>1</sup> The comments generally support the NTSB's party process, and made no specific substantive suggestions. The only comment that contained specific suggestions for substantive changes was the comment A4A submitted. We will address A4A's specific suggestions in turn in subsections II. and III.

A4A suggested several changes to various sections within part 831. In particular, A4A suggested the NTSB change § 831.6 to strengthen the protections from disclosure that the NTSB provides to submitters of voluntary safety-related information, such as information gathered through the Federal Aviation Administration (FAA)-NTSB Aviation Safety Information and Analysis Sharing System program.<sup>2</sup> A4A also stated witnesses whom the NTSB interview during investigations often must choose between having an attorney or a union official represent them. Therefore, A4A suggested the NTSB amend § 831.7 to allow a witness to have up to two representatives. In addition, regarding section 831.12 and access to information, the comment contained a lengthy description of how the NTSB might consider gaining access to new cockpit voice recorder (CVR) or Flight Data Recorder (FDR) recordings by remotely downloading the data from the devices, rather than removing the physical devices from each aircraft to read the data on them. A4A also suggested the NTSB establish "a firm deadline" for returning the physical devices to the air carrier. Regarding section 831.13 and dissemination of information concerning investigations, A4A suggested the NTSB clarify the

<sup>1</sup> American Train Dispatchers Association; Brotherhood of Locomotive Engineers and Trainmen; Brotherhood of Maintenance of Way Employees Division; Brotherhood of Railroad Signalmen; Brotherhood Railway Carmen Division; and United Transportation Union.

<sup>2</sup> For further information concerning the FAA-NTSB Aviation Safety Information and Analysis Sharing System program, see the preamble discussion under proposed § 831.6, Request to withhold information, below.

term “information concerning an accident,” and consider implementing exceptions to the prohibition on disseminating information from an investigation by allowing such dissemination when necessary “to locate, review and evaluate information that may be related to the accident or requested by the NTSB,” to “prepare witnesses,” or to “share critical safety information” within the party’s organization. Concerning this issue of sharing information from an NTSB investigation, A4A also stated, “[t]he concept that all such information is restricted to the Party Coordinator and group participants is impractical and can impede the investigative goals of the Board.” Finally, A4A suggested the NTSB provide parties an advance copy of analytical documents, but not proposed probable cause findings, “so that erroneous or incomplete factual conclusions can be pointed out and corrected in advance of the Sunshine Meeting.” A4A included this suggestion under § 831.14, which sets forth requirements for parties’ submission of proposed findings of accident investigations.

The NTSB responds to these suggestions within the discussion section, which explains the NTSB’s proposed changes to 49 CFR part 831.

### III. Changes and Additions

The NTSB proposes to reorganize part 831 because this part currently contains some sections that apply only to aviation accident and incident investigations and other sections that apply to investigations of transportation events that occur in the surface, rail, marine, and pipeline modes or involve the movement of hazardous materials. By including terms such as “crash,” “transportation event,” “collision,” “casualty,” “mishap,” and the like in lieu of the term “accident” in some places in the preamble’s description of this part, and in some proposed sections of regulatory text, the NTSB provides additional descriptive terms of transportation events that it investigates in order to improve transportation safety. The NTSB proposes including other terms in the mode-specific subparts, as appropriate. As discussed below in the summary regarding proposed changes to § 831.1, the NTSB’s inclusion of these terms is not exhaustive and does not serve as an expansion or a limitation on the NTSB’s authority to investigate accidents and incidents.

Proposed subpart A would retain most of the regulations that currently exist in part 831 and would apply to all investigations, regardless of

transportation mode. The following subparts would apply to a specific transportation mode, as follows: Subpart B—aviation investigations; Subpart C—highway investigations; Subpart D—railroad, pipeline, and hazardous materials investigations; and Subpart E—marine investigations.

#### *Subpart A: General*

##### Section 831.1 Applicability of Part

The NTSB proposes amending § 831.1 to include an updated statute citation and to delete the second sentence, which states, “[r]ules applicable to accident hearings and reports are set forth in Part 845.” The NTSB believes this sentence is unnecessary. In addition, the NTSB proposes changing the first sentence, which currently references the “Independent Safety Board Act of 1974” and the “Federal Aviation Act of 1958” to read “49 U.S.C. 1101–1155.” The two Acts referenced in the current version of § 831.1 have been amended several times and codified in various locations in title 49 of the United States Code. In addition, these two Acts, as well as many other transportation-related statutes were repealed and recodified without any substantive changes as part of the recodification of title 49 of the United States Code in 1994. Public Law 103–272, section 7(b). The NTSB has broad authority within 49 U.S.C. 1101–1155 to conduct investigations; therefore, the NTSB believes the citation to 49 U.S.C. 1101–1155 appropriately identifies the source of the NTSB’s authority for part 831.

In § 831.1, the NTSB proposes including a listing of transportation events, the investigation of which the NTSB conducts under the provisions of 49 CFR part 831. The NTSB’s proposal in this regard reflects the NTSB’s effort to incorporate terms commonly used in each modal industry, such as derailment or casualty. The NTSB remains cognizant of its authority as defined in part by the word “accident” in 49 U.S.C. 1101, which states that the term “accident” includes damage to or destruction of vehicles regardless of whether the initiating event is accidental or otherwise. However, various stakeholders describe transportation events with different terminology. Our use of the term “event” in subpart A, and of other terms in subparts B–E, reflects the NTSB’s use of a general descriptor.

##### Section 831.2 Responsibility of NTSB

As described above, the NTSB proposes reorganizing part 831, to include a subpart that pertains to all

modes of transportation subject to NTSB investigative jurisdiction (Subpart A) and mode-specific subparts (Subparts B, C, D, and E). The NTSB proposes moving the aviation-specific portions of part 831 from § 831.2 to subpart B. Therefore, the NTSB proposes non-substantive formatting changes to § 831.2 that are consistent with the proposed reorganization of part 831. For example, proposed §§ 831.30, 831.31, 831.40, 831.41, 831.50, and 831.51 are all derived from the current version of § 831.2.

##### Section 831.3 Authority of Directors

Section 831.3 currently states the NTSB office directors of each mode of transportation have the authority to order an investigation into any accident or incident. The NTSB proposes some minimal changes to this section, as well as the inclusion of the term “event” rather than “accident or incident.” The NTSB proposes changing the office listing to read, “Directors, Office of Aviation Safety, Office of Highway Safety, Office of Railroad, Pipeline and Hazardous Materials Investigations, and Office of Marine Safety,” to reflect the existing NTSB organizational structure.

##### Section 831.4 Nature of Investigation

The NTSB seeks to amend this section to explain in more detail its current practice of investigating transportation events. The NTSB’s procedures concerning investigations have been modified over time, particularly in the commercial airline industry where events commonly require agency staff to make detailed inquiries to obtain information concerning passengers’, crews’, and other individuals’ injuries and/or damage to property to determine whether the event is an accident or incident. The NTSB also engages in a process for determining the appropriate level of investigation of transportation events in other transportation modes. In general, the NTSB first collects preliminary information immediately following an event to determine whether: i. The event meets the criteria of a transportation event; ii. the NTSB will conduct a formal investigation, complete with visit(s) to the site of the event; iii. the NTSB will collect information remotely; or (iv) in some cases, close the inquiry without making a probable cause determination. As a result, the NTSB proposes new paragraph (a), titled “General,” and paragraph (b), titled “Phases of investigation.” The NTSB also proposes dividing paragraph (b) into two paragraphs: (1) Preliminary investigation, and (2) formal investigation.

With regard to paragraph (a), the NTSB proposes text containing some technical edits, as well as the phrase “because investigations to be conducted,” because the NTSB requests the FAA gather information or evidence on its behalf following certain aviation events. Likewise, the NTSB’s relationship with the U.S. Coast Guard in accordance with 49 U.S.C. 1131(a)(1)(E), 49 CFR part 850, and its memorandum of understanding with the Coast Guard regarding investigations, provide that the Coast Guard may conduct certain investigative activities for the NTSB, upon request.

In addition, the NTSB proposes including a phrase stating its purpose is not only to ascertain measures that would prevent similar events, but also “mitigate the effects of” similar events in the future. This proposed additional phrase is consistent with Congressional intent in authorizing the NTSB to conduct investigations, and will ensure this section is consistent with the NTSB’s current practices.

The NTSB proposes retaining other text in § 831.4 as part of the new paragraph (b) within § 831.4. This paragraph describes the phases of an NTSB investigation. The NTSB tailors each investigation to accomplish effectively and efficiently the objective of improving transportation safety.

The NTSB proposes changes in paragraph (b), to include some subparagraphs, titled “(1) preliminary investigation,” and “(2) formal investigation.” These subparagraphs describe the standard phases through which the NTSB assesses the initial facts and then initiates a formal investigation.

In a preliminary investigation, the NTSB will gather available facts for the purposes of assessing the appropriate level of investigative action. With regard to events that may involve safety issues limited in scope, the NTSB may begin a preliminary investigation concerning the event, but choose to confine the investigation to certain aspects that may relate to safety trends or safety issues of concern to the NTSB. For such investigations, the NTSB may not issue a report with findings and a probable cause determination, but instead may close the investigation with another type of product such as a safety recommendation letter or a memorandum to the file. Section 831.4(b)(1) describes this type of investigation.

In general, a preliminary investigation may involve certain fact-gathering activities that are similar to those performed for a formal investigation, and as a result of findings, may be

upgraded to a formal investigation or downgraded at any point in time.

In addition, the NTSB proposes clarifying the type of record(s) that may result from an investigation, by including the phrase “or other NTSB product, such as a collection of factual records or safety recommendation(s)” after the initial phrase of the sentence describing the results, which states, “[t]he investigation results in NTSB conclusions issued in the form of a report or brief of the investigation.” The NTSB may conduct some investigations for the purpose of determining trends or identifying problems or issues that may arise at a later date. In the alternative, the NTSB may issue a safety recommendation(s) or other type of document, based on information collected from a particular event, without making a probable cause determination.

As a related matter, the NTSB notes it often releases “preliminary reports” in investigations. These reports provide a concise summary of factual information, such as the date and time of the event, the location, and other basic information. The NTSB’s proposed use of the term “preliminary investigation” in this NPRM does not indicate a change in the NTSB’s practice of releasing preliminary reports, and the release of such reports does not preclude the NTSB from proceeding with a formal investigation, as described below.

In a formal investigation, the NTSB will proceed by gathering the facts to determine the probable cause of the transportation event. Once the NTSB determines a formal investigation is warranted, it will engage in fact-finding as described in the proposed language of § 831.4(b). Most of the language in paragraph (b) originates from the existing version of § 831.4. This paragraph states the NTSB may conduct an on-scene investigation, in which NTSB employee(s) visit the site, interview witnesses, conduct testing, extract data, collect documentation, and engage in any other activities that would assist the NTSB in gathering all discoverable facts relevant to the investigation. The NTSB proposes adding the phrase “extract data” to the sentence describing the NTSB’s field investigation. Data recovery is often a critical component of investigations, and the NTSB frequently expends resources to download or extract data from recorders or devices that provide important information. The NTSB also proposes adding the phrases “interview witnesses” and “gather documentation” to this list, as both activities are often critical to conducting an investigation.

Although the list in this regulatory text is not exhaustive, the NTSB believes these additions would be beneficial.

In addition, the NTSB proposes to retain language for paragraph (3) to note that its investigations are not for the purpose of determining liability. The proposed language is derived from language that currently exists in § 831.4, which states the Administrative Procedure Act does not apply to NTSB investigations, as they are solely fact-finding proceedings with no adverse parties. The NTSB also proposes removing the phrase, “no formal issues” because the meaning of this phrase is unclear; it is not a legal term of art, nor is it used in other regulations or the Administrative Procedure Act. The NTSB understands non-NTSB investigations for purposes of litigation, and litigation itself, often commence soon after the event occurs. The NTSB also remains aware of parties’ and witnesses’ interests, and is cognizant of attorneys’ desire to take part in various aspects of the NTSB investigation. In this regard, the NTSB encourages attorneys to contact the NTSB Office of General Counsel when seeking information about an NTSB investigation. Coordinating with the NTSB Office of General Counsel will ensure agency investigators can remain focused on the agency’s statutory obligation to investigate an event, rather than other interests arising from the transportation event.

#### Section 831.5 Priority of NTSB Investigations

The NTSB proposes amending § 831.5, titled “Priority of NTSB investigations,” by reorganizing the section into two paragraphs and by altering language. The NTSB proposes amendments to the existing text to achieve two objectives. First, the amendments provide a better organizational structure. Second, the amendments specifically address situations in which other regulatory and enforcement agencies seek to interview and gather evidence to take administrative or other action. The amendments balance the need for the NTSB to conduct its investigative activities in a manner that permits other agencies to fulfill their statutory mandates.

The NTSB has carefully considered the existing text, and proposes amendments to ensure other Federal agencies are aware of the NTSB’s role as the Federal agency with priority over other investigations of transportation events. Consequently, the NTSB proposes the language, under the title

“Priority of NTSB investigations” in § 831.5.

As indicated in both the existing and proposed language for § 831.5, the NTSB is fully aware other agencies (both Federal, state, and local) have other statutory responsibilities, such as rulemaking and enforcement. The NTSB does not seek to inhibit enforcement actions; however, the NTSB must be able to direct its investigations. Consistent with the language in the NTSB’s enabling statute<sup>3</sup> concerning other federal agencies, the NTSB must ensure these agencies are aware the NTSB’s investigation has priority. For this reason, the NTSB proposes language in § 831.5 to indicate other Federal agencies must conduct their work in a manner that recognizes the priority of the NTSB investigation. The NTSB believes the best way to accomplish this is for the employees of other Federal agencies who are involved in an investigation to contact the NTSB investigator-in-charge (IIC) prior to questioning a witness, gathering records or documents, or otherwise obtaining any type of information relevant to the non-NTSB investigation.

The NTSB, as discussed in the preamble concerning § 831.13, below, proposes that parties to an NTSB investigation must inform the NTSB of any safety-related actions (either preventative or remedial) they will take as a result of any information that becomes available during an NTSB investigation. The NTSB must remain aware of the actions another agency or organization is taking as a result of the information gathered during the course of the investigation. The NTSB believes such openness will ensure it remains fully informed of corrective actions and how those actions could affect the NTSB’s activities and findings. The NTSB does not wish to impede enforcement or corrective action, but seeks to remain aware of the effects of other organizations’ participation, and to ensure their involvement does not impair the NTSB investigation.

The NTSB also proposes language in § 831.5(a)(3) and (4), to ensure the NTSB is fully cognizant of all information

pertinent to an investigation. Priority over other investigations means the NTSB must obtain evidence (including, but not limited to, records that predate the event, such as equipment maintenance records or operator training records, and statements from witnesses) in a timely manner. This first right of NTSB access to information is the best manner in which to ensure a complete, independent investigation, and applies to all organizations involved in the investigation. In amending this section, the NTSB seeks to ensure other agencies are aware the NTSB may request they delay collecting evidence or information until the NTSB approves of such collection. Similarly, NTSB investigations require party participants to assign relevant experts to NTSB investigations.

The NTSB specifically seeks input from other agencies concerning our prioritization of investigative activities. The NTSB seeks to ensure other agencies can complete time-sensitive tasks as needed, consistent with the NTSB’s ability to obtain needed information on a priority basis and the NTSB’s possession of records does not impair the functions of the other agencies.

#### Section 831.6 Request to Withhold Information

The NTSB proposes to make minor changes to § 831.6, titled “Request to withhold information.” First, the NTSB proposes adding the following two sentences after the “Trade Secrets Act” title in paragraph (a) of § 831.6: “This section applies to domestic matters. Information the NTSB receives concerning international aviation events is addressed in § 821.23 of this part.” The NTSB would not release information from an international investigation that the Trade Secrets Act protects.

The NTSB proposes re-codifying paragraph (a)(3) of § 831.6 as paragraph (b). The language of this paragraph would remain mostly unchanged. Within this paragraph the NTSB proposes slightly changing the description of “voluntarily-provided safety information” so the description will essentially duplicate the language of 49 U.S.C. 1114(b)(3).

The NTSB proposes adding the sentence “[t]he NTSB will de-identify all such safety information to the greatest extent possible” in paragraph (b)(2). The NTSB will de-identify any voluntarily-provided safety information to the greatest extent possible if it makes this information public.

The NTSB proposes codifying current paragraph 831.6(b), entitled “Other,” as

§ 831.6(c). The NTSB does not propose any substantive changes to paragraph (c).

As summarized above, A4A suggested in its comment responding to the NTSB’s retrospective review notice that the NTSB strengthen the protections of § 831.6 “to facilitate future information exchange initiatives,” such as “the expected FAA–NTSB Aviation Safety Information and Analysis Sharing [ASIAS] System program.”<sup>4</sup> The NTSB is uncertain that it could withhold voluntarily provided information in response to a request under the FOIA, unless the NTSB had a statutory exemption permitting it to do so. For example, in protecting data obtained through Flight Operational Quality Assurance (FOQA) programs, the FAA relies on a statutory protection that protects from public disclosure reports data, and other information developed under the Aviation Safety Action Program, the FOQA Program, the Line Operations Safety Audit Program, information produced for purposes of developing and implementing a safety management system, and information prepared under the Aviation Safety Information Analysis and Sharing Program (or any successor program).<sup>5</sup>

The NTSB believes including language in § 831.6 indicating the NTSB will not disclose voluntarily provided safety information *relevant to a particular investigation* would be contrary to the NTSB’s enabling statute, which only prohibits the NTSB from disclosing “voluntarily provided safety-related information if that information is *not* related to the exercise of the Board’s . . . investigation authority.” 49 U.S.C. 1114(b)(3)(emphasis added). Therefore, the NTSB currently does not propose altering § 831.6 to provide protections for voluntarily submitted information related to a specific investigation. The NTSB understands this topic is of keen interest to the transportation industry and other government agencies. As a result, the NTSB specifically invites comments on the issue of how the NTSB should handle the voluntary provision of transportation safety information.

<sup>4</sup> For information concerning ASIAS, please see <http://www.asias.faa.gov>. ASIAS uses aggregate, protected data from industry and government voluntary reporting programs, without identifying the source of the data, to determine safety issues proactively, identify safety enhancements, and measure the effectiveness of solutions.

The NTSB–ASIAS Memorandum of Understanding signed in November 2012 outlines the procedures, guidelines, and roles and responsibilities for the ASIAS Executive Board to address specific written NTSB requests for ASIAS information.

<sup>5</sup> 49 U.S.C. 44735, as added by section 310(a) of the FAA Modernization and Reform Act of 2012, Pub. L. 112–95, 126 Stat. 11, 64 (Feb. 14, 2012).

<sup>3</sup> 49 U.S.C. 1131(a)(2)(A) (stating, “an investigation by the Board under paragraph (1)(A)–(D) or (F) of this subsection has priority over any investigation by another department, agency, or instrumentality of the United States Government. The Board shall provide for appropriate participation by other departments, agencies, or instrumentalities in the investigation. However, those departments, agencies, or instrumentalities may not participate in the decision of the Board about the probable cause of the accident”); *see also* 49 U.S.C. 1135(a) (requiring the Secretary of the Department of Transportation to respond to NTSB safety recommendations within 90 days of the issuance of such recommendations).

### Section 831.7 Witness Interviews

In the interest of clarity and consistency, the NTSB applies § 831.7 to situations in which a witness appears voluntarily for an interview, or in which the NTSB compels a witness to appear by issuing a subpoena. It is not unusual for witnesses to be represented in these situations and the NTSB is cognizant of litigation arising out of transportation events. In the event an attorney or other representative has questions concerning the NTSB's investigation or its pursuit of witness testimony, the attorney/representative should contact the NTSB Office of General Counsel.

The NTSB proposes changing the title of § 831.7 to “[w]itness interviews,” to describe this section in a more accurate manner.

The NTSB proposes these amendments for several reasons. First, some witnesses whom the NTSB seeks to interview have expressed their desire to be accompanied by more than one person. A4A recommended the NTSB change § 831.7 to allow more than one representative accompany each witness. In particular, A4A stated:

The designation of one witness representative, attorney or otherwise, does not recognize that witnesses are frequently both union members and employees of a party, with distinctly different duties and interests. This creates unnecessary conflict for a witness, since he or she has to choose between a union representative or an attorney. Increasing the permissible number of representatives to two would better protect a witness in the NTSB process.

The NTSB acknowledges NTSB investigators have indeed conducted interviews in which a witness seeks to have both a union representative and an attorney present during the interview. The NTSB, however, declines to propose changes to § 831.7 to allow for more than one representative per witness, for several reasons. The NTSB believes no more than one representative is reasonably necessary, to advise and provide support to the witness.

Further, if the NTSB allowed two representatives per witness, the possibility could arise the representatives would disagree with how to advise the witness during the interview. This would distract from the purpose of the interview.

In addition, the NTSB notes, the proposal for language describing the representative's role at the interview is “not to supplement the witness's testimony in any way or represent the interests of other affiliations of the witness during the interview.” The NTSB believes this language is necessary, because litigation often has

commenced before the NTSB interviews witnesses; therefore, the NTSB specifically notes it will not allow litigation interests to interfere with the fact-finding purpose of witness interviews the NTSB conducts.

The NTSB also proposes adding a new paragraph (b) to § 831.7, to describe investigators' roles in overseeing interviews. This paragraph would clearly describe the interview as occurring under the supervision of the investigator, and would confirm the investigator has the authority to exclude a representative from the interview if the representative engages in disorderly conduct or is contumacious. The NTSB believes investigators are rarely confronted with such circumstances, but it is appropriate to propose this provision in § 831.7, to ensure representatives are aware NTSB investigators direct the course of interviews.

In addition, the NTSB proposes adding paragraph (c) to § 831.7, to clarify the NTSB will release transcripts or summaries of interviews and witnesses' and their representatives' names in records that appear in the NTSB public docket for an investigation, absent unusual or compelling circumstances. This determination concerning the existence of unusual or compelling circumstances is solely within the discretion of the NTSB. The NTSB believes the language it proposes in paragraph (c), therefore, confirms the NTSB has the discretion to withhold witnesses' names if circumstances merit such protection.

### Section 831.8 Investigator-in-Charge

The NTSB proposes minimal changes to the text of § 831.8, which describes the duties of NTSB investigators-in-charge (IICs). However, the NTSB proposes organizing § 831.8 into paragraphs, and removing the parentheses from the sentence stating the role of a Board Member at the site of an investigation is as the official spokesperson for the NTSB. The NTSB believes these changes will allow for quick reference to specific provisions of the section, and will assist in the public's understanding of IICs' duties.

The NTSB also proposes including a reference to § 800.27 of the NTSB's rules, which provides IICs the authority to sign and issue subpoenas, administer oaths and affirmations, and take depositions (or cause them to be taken) in furtherance of an investigation. The NTSB believes referencing § 800.27 ensures the public and participants in NTSB investigations are aware of IICs' authority. In addition, the NTSB proposes removing the word

“considerable” from the final sentence in § 831.8, which currently provides the IIC “continues to have considerable organizational and management responsibilities throughout later phases of the investigation, up to and including consideration and adoption of a report or brief of probable cause(s).” The NTSB does not believe the adjective “considerable” is necessary in this paragraph, and the inclusion of that term may imply the IIC does not have considerable responsibilities from the time the NTSB commences the investigation.

### Section 831.9 Authority of NTSB Representatives

Section 831.9, currently titled “Authority of Board representatives,” discusses the NTSB's authority to enter property or wreckage and inspect, photograph, or copy any records or wreckage. Section 831.9 also discusses the NTSB's authority to issue subpoenas and conduct testing. The NTSB proposes changes to § 831.9, in the interest of making the section easier to understand. In general, the proposed revisions strive to convey clearly the following: (1) NTSB representatives have the authority to enter property and inspect, download, photograph, or retain items as necessary to the investigation; (2) the NTSB is authorized to obtain evidence, such as medical records or testimony, by issuing a subpoena; and (3) the NTSB has the authority to conduct and supervise testing of evidence, which includes tearing down tangible components and extracting data from equipment, and taking any further action necessary to obtain and preserve evidence.

The NTSB's authority to obtain information during the course of an investigation is broad. Title 49 U.S.C. 1134 authorizes any NTSB “officer or employee” to obtain information in furtherance of the investigation. In addition, 49 U.S.C. 1114(e) authorizes the NTSB to obtain drug test information, such as split samples. In this regard, the NTSB will work with manufacturers of devices to extract data to the extent obtaining such data is beneficial to the NTSB's investigation. For example, for many investigations, the NTSB now must extract data from wireless devices. The changes the NTSB proposes to § 831.9, therefore, accounts for advances in technology.

In this section, the NTSB proposes using the term *authorized representative of the NTSB* in lieu of “employee” because, on some occasions, the NTSB requests the assistance of the FAA, local law enforcement, or other party representatives to inspect or photograph

the site of a transportation event, or collect evidence. Similarly, upon the approval of the IIC, the NTSB may utilize the assistance of other Federal agencies, such as the Coast Guard, the Federal Railroad Administration, the Pipeline and Hazardous Materials Safety Administration, or the Federal Motor Carrier Safety Administration, among other agencies. The NTSB maintains, in the initial phases of an investigation, employees of other Federal agencies who have arrived at the site of an event and begin to collect evidence on behalf of the NTSB are “authorized representatives” of the NTSB. Such conduct is consistent with the NTSB’s party process, as more fully described below, in § 831.11.

Regarding the other portions of text in paragraphs (a)(1), (2), and (3), the proposed text is similar to the language in the existing version of § 831.9.

The NTSB proposes including the description of its subpoena authority in paragraph (b). The proposed text for paragraph (b) is identical to the current version of § 831.9, although paragraphs (1), (2), and (3) are new. These new provisions describe (1) the NTSB’s authority to obtain medical records and specimens, and (2) the NTSB’s status under the Health Insurance Portability and Accountability Act of 1996 (HIPAA), Public Law 104–91, as a “public health authority”<sup>6</sup> and (3) the NTSB’s authority to obtain all other records necessary for an investigation, such as records from cell phones or other wireless devices, as well as credit card records. The NTSB often must issue subpoenas to obtain medical records from hospitals and other health care providers, and it relies on its status as a recognized “public health authority” to obtain such records. Including this terminology in § 831.9 will ensure hospitals and other providers who have medical records critical to an NTSB investigation are aware of the NTSB’s status under the HIPAA. With regard to paragraph (3), the NTSB is committed to obtaining all information necessary for its investigations, including records from wireless devices, credit cards, and the like. The NTSB obtains and analyzes such records only when necessary, and conducts such analysis in the least intrusive manner. The NTSB acknowledges the potential confidentiality issues associated with such records and, in general, works with the providers of such records before

contemplating any public release of any portion of such a record.

Finally, the NTSB proposes including paragraph (c) in § 831.9 to describe the NTSB’s authority to conduct tests and examine evidence, which includes the extraction of data from recorders or equipment. Most of the language in the proposed version of § 831.9(c) is similar to the current version of the final two sentences in § 831.9(a), which is based on the NTSB’s statute, at 49 U.S.C. 1134(d). The only term the NTSB added to the proposed version of paragraph (c)(1) is “extraction of data.” With the increasing prevalence of recording devices in daily life, the NTSB often encounters recorders associated with accidents which require downloading to reveal useful data during an investigation. The NTSB proposes the addition of this term because, with recent advances in technology and personal use thereof, the NTSB’s investigations often require the downloading or other retrieval of data from recorders or other equipment.

The NTSB recognizes a party may need access to a recorder or equipment. The NTSB will return such items to their owners, once the NTSB investigation no longer requires the NTSB’s possession of the devices. However, as described above in reference to proposed § 831.5(a)(3) and (4), once an investigation commences, the NTSB maintains priority and will direct how and when the extraction of data should occur. Section 831.9(c), as proposed, articulates this concept.

#### Section 831.10 Autopsies and Postmortem Testing

Section 831.10, titled “Autopsies,” states NTSB investigators are authorized to obtain copies of autopsy reports or order an autopsy, while observing local law protecting religious beliefs. The NTSB proposes amending this section to address postmortem testing results, which the NTSB frequently needs for the purposes of assessing whether a deceased operator consumed drugs or alcohol prior to a transportation event. Specifically, the NTSB proposes changing the title of 831.10 to “Autopsies and postmortem testing,” replacing the word “officials” with the word “authorities” in the first sentence, and referencing postmortem tests alongside autopsies in the text of § 831.10. When sufficient, the NTSB opts to request postmortem testing in lieu of a full autopsy. The NTSB understands autopsies are time-consuming and costly; therefore, the NTSB only requests an autopsy when the information from an autopsy is necessary to the investigation.

#### Section 831.11 Parties to the Investigation

Section 831.11, titled “Parties to the investigation,” details the operation of the NTSB’s process of designating parties when the agency undertakes an investigation. The NTSB proposes keeping the majority of the current text in § 831.11, although reorganizing it to add provisions bringing the description up-to-date and addressing issues that have arisen in certain investigations.

The NTSB invites comments concerning the use of the term “party” and/or “parties” in this section and other sections, as appropriate. For the language proposed in this NPRM, the NTSB continues to use the term “party.” The NTSB has long used this term to describe participants in NTSB investigations who offer necessary information and/or expertise. The NTSB is interested in obtaining feedback concerning whether the term “party” is appropriate, or whether another term, such as “technical advisor” is more suitable.

The NTSB proposes to title paragraph (a) “[p]articipants,” and include in it the existing text of § 831.11.

Concerning paragraph (a)(1), the NTSB notes no organization has a right to party status. The NTSB provides for participation of the FAA, pursuant to 49 U.S.C. 1132(c), when it is “necessary to carry out the duties and powers” of the FAA. As a matter of practice, the NTSB also often designates other Federal agencies to serve as parties. Additionally, in particularly complex investigations involving multiple parties, the NTSB organizes party representatives into groups arrayed by subject matter expertise, each with its own purpose of investigating a specific aspect of the event.<sup>7</sup> When the NTSB designates a particular organization as a party, the organization may ask that several employees of the organization be permitted to participate in each group. The NTSB will designate only qualified individuals who have expertise the NTSB determines is necessary to the investigation to participate in groups. The IIC ultimately has approval authority for each party participant and all group designees, and will assess which individuals should assist with the investigation as parties.

In addition, the NTSB proposes including the sentence, “[t]he party representatives proposed by party organizations to participate in the

<sup>7</sup> The NTSB’s Major Aviation Investigations Manual, available at <http://www.ntsb.gov/doclib/manuals/MajorInvestigationsManual.pdf>, describes the NTSB’s practice of organizing investigations into groups.

<sup>6</sup> 64 FR 59956 (Nov. 3, 1999); see also 45 CFR 164.501 and 164.512(b)(1)(i).

investigation should, to the extent practicable, be personnel who had no direct involvement in the event under investigation.” In some investigations, party participants either had some involvement in an event themselves, or had close ties to frontline employees involved in the event. The NTSB is concerned this could compromise the investigation, particularly in situations in which the NTSB is relying exclusively on that specific party for information. The proposed language clarifies party participants should be as independent as possible from the event. To the extent possible, this independence language would apply to FAA employees and representatives. The NTSB recognizes each investigation is different, and attempting to designate only party participants who have complete independence in some investigations may be an impossible goal. The NTSB proposes including the term “to the extent practicable” to provide adequate flexibility, while informing parties the NTSB expects its participants to act in an objective manner in assisting with the investigation.

Concerning paragraphs (a)(3) and (4), this language is from the current version of § 831.11(a)(2). The NTSB believes organizing § 831.11(a)(2) into two distinct paragraphs, as (a)(3) and (4), allows the public to follow paragraph (a) more easily.

With regard to parties in general, the NTSB often requests party participants who may be engaged in enforcement activities to erect a figurative “wall” between their agency’s enforcement and investigative duties. Wherever possible, the NTSB seeks to designate individuals as party representatives only if they are not also engaged in enforcement activities; however, the NTSB acknowledges in some cases, the same individual must serve in both roles. As a result, at this juncture, the NTSB declines to propose a regulatory prohibition stating individuals who are engaged in enforcement duties may not participate in NTSB investigations.

The NTSB proposes paragraph (b) of § 831.11 be titled “Disclosures,” and include text that conveys two concepts: (1) The NTSB maintains discretion to disclose party representatives names, and (2) the NTSB may share information among parties for purposes of the investigation, but will preserve confidentiality to the greatest extent possible, and adhere to the provisions of 49 U.S.C. 1114 and § 831.6(b)(1) of this part.

This new proposed language results from experiences in some investigations. Although the NTSB will

refrain from disclosing certain information that is exempt from disclosure under the Freedom of Information Act (FOIA), parties should expect the names of employees and other individuals associated with their organization will appear in the NTSB’s public docket. The NTSB believes the public has an interest in knowing who participated in an NTSB investigation, and parties do not have a significant privacy interest in their employees’ or members’ names. As a result, the NTSB party participants’ names are not exempt from disclosure.

The NTSB proposes a short statement in paragraph (b)(2) apprising potential parties of the practice of sharing information. An investigation requires the sharing of information among parties. The NTSB attempts to undertake such sharing in a judicious manner, especially when the NTSB must ask a party to share confidential or commercially valuable information with other party participants. In addition, NTSB investigators frequently remind party participants at group meetings that the predominant purpose for their participation is to assist the NTSB in its investigation, rather than to learn investigative information. The NTSB will consider a party’s requests for imposing limits on sharing certain information or other procedural safeguards. In addition, the NTSB, as stated above, generally does not place information into the public docket that is exempt from disclosure under the FOIA.

The NTSB proposes keeping most of the text of § 831.11(b) as § 831.11(c), with the title “Party agreement.” The only significant change the NTSB proposes in this paragraph is the addition of the statement that employees of other Federal agencies will not be required to sign the Statement of Party Representatives. The NTSB’s practice is to refrain from asking representatives of other Federal agencies to sign the Statement. The NTSB does not believe such signatures are necessary, as other Federal agencies understand the NTSB’s party process, NTSB investigative procedures, and their responsibilities as party participants in investigations. As a result, the NTSB believes it is appropriate to indicate in paragraph (c) of § 831.11 that other Federal agencies need not sign the Statement of Party Representatives.

Lastly, in paragraph (d) of § 831.11, the NTSB proposes text concerning party inquiries and/or reviews. In this new proposed paragraph, the NTSB intends to include text acknowledging parties may conduct reviews or audits

into certain aspects of a transportation event, and requiring party participants to inform the IIC in a timely manner of such contemporaneous reviews or audits.

The NTSB’s proposal to add this requirement results from recent issues the NTSB encountered in multiple investigations. The NTSB is aware parties may conduct their own reviews of oversight deficiencies or their processes and procedures following a transportation event. The NTSB does not attempt to limit or discourage such activities; however, the NTSB notes party participants must remain responsive to NTSB requests for information or assistance. In addition, in the event a party participant becomes aware of information relevant to the investigation, the IIC should be made aware of such information. For this reason, the NTSB proposes adding paragraph (d), to require participants to inform the IIC if they are conducting a separate audit, inquiry, or other review while the NTSB’s investigation is ongoing. In addition, to the extent a party conducts a review or engages in a post-event activity that overlaps with the NTSB’s work or anticipated work, the party must advise the IIC and seek his or her approval to conduct these activities. The party must also provide the NTSB with a copy of the results of the separate audit, inquiry, or other review. A party who engages in such activities without the prior approval of the IIC will lose party status. Likewise, any party’s failure to disclose the results of a separate audit, inquiry, or other review to the IIC will result in loss of party status.

**Section 831.12 Access to and release of wreckage, records, mail and cargo**

The NTSB proposes only minimal edits to § 831.12. The NTSB proposes removing the final sentence of paragraph (b) of § 831.12, which refers to a form the NTSB completes upon the return of wreckage to its owner. Currently, this sentence states, “[w]hen such material is released, Form 6120.15, ‘Release of Wreckage,’ will be completed, acknowledging receipt.” The NTSB does not believe a reference to a form is necessary in this section.

The NTSB notes A4A commented on § 831.12, by suggesting the NTSB change § 831.12 to allow remote read-outs of digital flight data recorders and cockpit voice recorders, to preclude the need for transporting the recorders to NTSB Headquarters in Washington, DC. A4A also recommended the NTSB “establish a firm deadline for returning [recorders] to the [air] carrier.” The NTSB appreciates A4A’s comments. The

NTSB is aware of the advances in technology allowing the downloading of data to occur remotely as an aircraft pulls into the gate at its destination or otherwise. However, the NTSB believes this concern, while relevant to its investigations, is not appropriate for inclusion in 831.12 but rather will be considered as the agency reviews its policies and procedures regarding recorder data.

As to A4A's comment concerning deadlines for the return of recorders to air carriers, the NTSB returns recorders to air carriers once it completes the necessary work involving the recorder, and it abides by strict internal protocols to secure the recorder. The NTSB also endeavors to complete data downloading for recorders as quickly as possible. The NTSB declines to propose any changes to § 831.12 concerning the return of recorders because the requirements of each investigation will vary. The NTSB has noted A4A's comment, however, and may update its handbooks concerning recorders if the NTSB determines the establishment of a deadline would be possible.<sup>8</sup>

#### Section 831.13 Flow and Dissemination of Investigative Information

As with several other sections in part 831, the NTSB proposes organizing § 831.13 into more paragraphs, and providing titles to each paragraph, to ensure the public can understand § 831.13 more easily. In paragraph (a), the NTSB proposes removing the reference to a "field investigation," because that term is not defined in the NTSB's regulations, and the NTSB believes the phrase "at the site of the event" adequately conveys the intent.

Also in paragraph (a), the NTSB believes it is prudent to state clearly that § 831.13 applies from the time an investigation commences until the NTSB concludes its investigation. Parties who are uncertain as to whether the NTSB has concluded a particular investigation may inquire of the IIC. This temporal description results from parties' requests in some investigations to release information for purposes of civil litigation. In its responses to such requests, the NTSB notes it interprets this prohibition on disclosing information as only relevant to information obtained during the course of the investigation. In addition, A4A, in its comment, suggested: "[t]he NTSB

should examine whether a definition of 'information concerning an accident' that may not be released by a party would avoid misunderstandings about the scope of that term." The NTSB agrees with this comment in principle, but notes it is difficult to provide an exhaustive list of the type of information that might be pertinent to every investigation. However, the NTSB believes the proposed description in paragraph (a) offers a better definition of the intent of the phrase, "information concerning the investigation."

The NTSB proposes keeping the text in the existing version of § 831.13(b), but codifying the paragraph as § 831.13(c) and adding the title, "[p]rohibition on release of information." The NTSB has referenced this provision in several instances since the promulgation of this regulation, and believes it is critical to NTSB investigations. Preliminary releases of information when an investigation is ongoing could result in the release of incorrect or incomplete information, which would impede the progress of an investigation and erode public confidence in the credibility of the investigation.

The A4A comment also suggested the NTSB allow parties to release information in certain circumstances. In particular, A4A suggested the NTSB provide some flexibility concerning the prohibition on release of information. A4A states as follows:

[T]he NTSB should consider specifically allowing "information concerning an accident" to be shared by a party to the extent reasonably necessary to:

- Locate, review and evaluate information that may be related to the accident or requested by the NTSB (providing the NTSB with information "relevant to an accident" can only be most effectively accomplished if the party can freely search for and evaluate such information within its organization);
- prepare witnesses; or
- share critical safety information within its organization.

In subsequent discussions between NTSB staff and the A4A Safety Committee representatives,<sup>9</sup> some members of the committee expanded on these comments, indicating it would

also be helpful to include language better defining the scope of information that may be shared with frontline employees, such as pilots, during an NTSB investigation.

After careful consideration of these comments as well as other factors, the NTSB proposes text for paragraph (c) that provides for the release of investigative information provided certain conditions are met. The proposed language will allow parties to release information within party organizations as needed to implement prevention, remedial action, or as otherwise noted by the NTSB (e.g., in a safety bulletin to employees), in accordance with certain criteria. As a general matter, in the absence of the IIC's restrictions, the proposed communication may only be provided to those in the organization who have decision-making authority or a need to know the information. However, the NTSB recognizes the decision-makers may believe a need for a wider dissemination within the party organization or to customers exists to implement safety measures. For such dissemination, the proposed document or communication containing the information must be provided to the IIC in a timely manner prior to the planned dissemination. The time should allow the IIC to set forth case-specific conditions or correct inaccuracies. A party should expect the IIC will generally need more time to review if the communication is intended to be distributed throughout a party organization; in all cases, the NTSB will make a concerted effort to review the information and respond to the request to disseminate it as efficiently as possible. The NTSB promotes the timely dissemination of factual information concerning the investigation within party organizations for the limited purposes of assessing the need for corrective actions and developing measures to implement such actions. Such releases function to prevent recurrence of transportation events, and may assist the NTSB in formulating necessary requests for additional information.

Likewise, party participants must inform the NTSB IIC regarding the party organization's findings and planned actions resulting from any dissemination of investigative information within their organization.

In addition, in furtherance of the ultimate goal of making timely safety improvements, the NTSB would permit parties to share information gathered by the NTSB in the course of its investigation outside of their organizations, provided the parties

<sup>8</sup>NTSB Cockpit Voice Recorder Handbook (November 2001), available at [http://www.nts.gov/doclib/manuals/CVR\\_Handbook.pdf](http://www.nts.gov/doclib/manuals/CVR_Handbook.pdf); NTSB Flight Data Recorder Handbook (December 2002), available at [http://www.nts.gov/doclib/manuals/FDR\\_Handbook.pdf](http://www.nts.gov/doclib/manuals/FDR_Handbook.pdf).

<sup>9</sup>The NTSB sought additional information from A4A concerning their August 24, 2012 comment. Representatives from the A4A Safety Committee met with the NTSB Deputy Director of Aviation Safety on December 4, 2012, and discussed the items outlined in their comment. The docket for this rulemaking includes a memorandum containing a detailed description of all items discussed at the December 4 meeting. This memorandum is available as Document Number NTSB-GC-2012-0002-0007 in the docket for this rulemaking on the Regulations.gov Web site at <http://www.regulations.gov/#:documentDetail;D=NTSB-GC-2012-0002-0007>.



fulfill certain criteria. First, the party must share the information with the IIC in a timely manner to receive approval of the IIC before the release is to occur.

In such cases, the IIC would evaluate how the dissemination of the information would improve safety, and would seek to take precautions to ensure the release of information would not impede the investigation. This evaluation process prior to the dissemination of investigative information allows the NTSB to appropriately balance the investigative needs and the potential safety improvements. This process also allows the NTSB and the party to work together to achieve the objective of improving safety in a timely manner. For example, the NTSB understands manufacturers may seek to take immediate action to improve the safety of their vehicles, equipment, or other materials, and the NTSB certainly shares this goal. Such action may include alerting customers of a safety concern with the product. Therefore, the NTSB believes providing additional clarity in § 831.13 will benefit investigative parties in all transportation modes.

The NTSB further notes, however, no investigative information shall be disseminated by party participants to any individual within their party's organization or otherwise for purposes of litigation preparation or media interests without the IIC's advance approval. In this regard, the IIC's litmus test for whether to approve dissemination of any investigative information during the course of an ongoing investigation will be the purpose of the sharing of information. As indicated above, IICs will generally approve sharing of information within a party organization for purposes of making safety improvements.

With regard to the use of information concerning the investigation for the purposes of preparing witnesses, the NTSB is not in favor of this proposal, as advance access to such information by witnesses may affect their truthful testimony to the NTSB or otherwise compromise the integrity of the investigation. However, the NTSB invites commenters to propose examples and scenarios in which such use of information concerning the investigation could benefit the investigation.

Furthermore, as discussed below, the NTSB recognizes the role of other Federal agencies in conducting investigations for purposes of enforcement of regulations. Such investigations often require obtaining information in an expeditious manner. The NTSB does not prohibit parties

from sharing necessary information with another Federal agency in response to the agency's demand. However, the NTSB IIC should be informed of the provision of records and information, and should not be excluded from communications concerning the existence of records or information relevant to the investigation. To the greatest extent possible, the NTSB will work with other agencies to share information obtained in the course of the NTSB investigation to minimize duplicative requests to NTSB parties for information.

Concerning paragraph (b)(5), the NTSB notes it has chosen to reference specifically the statutory descriptions of cockpit voice recorder and surface vehicle recorder recordings, codified at 49 U.S.C. 1114(c) and (d). The NTSB recognizes § 1114(c) describes "cockpit voice recorder" respectively, as follows: "[t]he Board may not disclose publicly any part of a cockpit voice or video recorder recording or transcript of oral communications by and between flight crew members and ground stations related to an accident or incident investigated by the Board [until the time of the investigative hearing or the time a majority of the other factual reports on the accident or incident are placed in the public docket] <sup>10</sup>"; similarly, § 1114(d) prohibits the NTSB from disclosing publicly "any part of a surface vehicle voice or video recorder recording or transcript of oral communications by or among drivers, train employees, or other operating employees responsible for the movement and direction of the vehicle or vessel, or between such operating employees and company communication centers, related to an accident investigated by the Board [until the time of the investigative hearing or the time a majority of the other factual reports on the accident or incident are placed in the public docket]." The NTSB consistently applies these provisions and exercises care in making any release determinations concerning voice or vehicle recordings.

In addition, the NTSB notes it is attentive to the needs of victims and victims' family members. The NTSB's Transportation Disaster Assistance Division provides information to families in accordance with 49 U.S.C. 1136 and 1138. The NTSB also extends the practice of providing information to family members concerning transportation events not specifically

<sup>10</sup> Sections 1114(c) and (d), however, allow for release of the recording transcript. Section 1114 is available to the public at <http://www.gpo.gov/fdsys/pkg/USCODE-2009-title49/pdf/USCODE-2009-title49-subtitleII-chap11-subchapII-sec1114.pdf>.

covered under 49 U.S.C. 1136 and 1138. During each investigation, the NTSB informs family members and survivors they may contact the Division at any time to inquire about the status of an investigation or other matters regarding the investigation. In responding to such inquiries, the NTSB remains mindful of the provisions and requirements in part 801 of this chapter, concerning the public release of information, as well as § 831.11 of this part, which states the role of party participants is to provide necessary technical expertise, and gather and review factual information. These regulations serve to protect ongoing investigations while allowing family members and survivors direct contact with NTSB employees who will respond to their inquiries and provide them with information in the timeliest manner possible.

#### Section 831.14 Proposed Findings

In § 831.14, titled "[p]roposed findings," the NTSB does not propose any substantive changes, but only proposes changing the word "Board" to "NTSB" in paragraph (a).

As summarized above, A4A submitted a comment requesting the NTSB add to § 831.14 a statement that the NTSB will provide a copy of the NTSB draft final report, including analytical conclusions but not necessarily probable cause and recommendations, to parties for review prior to a Board meeting, when the Board schedules a meeting on an investigation. A4A's comment cites the recommended standards and practices of ICAO, as countries who conduct aviation accident and incident investigations in accordance with these recommended standards and practices release draft reports to accredited representatives (who often seek the input of their technical advisers) in foreign aircraft investigations.

While the NTSB does not propose amending § 831.14 pursuant to A4A's comment concerning the sharing of draft reports, the NTSB is considering adopting a practice of sharing draft reports with parties in some modes. The NTSB plans to address this issue outside the purview of this NPRM. If the NTSB determines to engage in such sharing, it will ensure party representatives receive timely notification of the NTSB's plans.

#### Reorganization of Part 831

As described above, the NTSB has determined organizing part 831 into mode-specific subparts would be helpful to NTSB investigators, party participants, and the public. Therefore, it is proposing new subparts B, C, D and E, respectively. The NTSB proposes

moving the portions referencing mode-specific responsibilities, such as the existing version of § 831.2(a), which is titled “*Aviation*” and contains three lengthy paragraphs, to various sections within the proposed new subpart B. Similarly, the NTSB proposes dividing and relocating portions of the existing version of § 831.2(b), titled “*Surface*,” which currently states the NTSB is responsible for the investigation of railroad and pipeline accidents in which a fatality or in which substantial property damage has occurred, or which involve a passenger train. The regulation includes a reference to 49 CFR part 840. In addition, the regulation states the NTSB is responsible for major marine casualties and marine accidents involving a public and non-public vessel, or involving Coast Guard functions (under 49 CFR part 850). Regarding highway accidents, the regulation states the NTSB is responsible for accidents involving railroad grade-crossing events, the investigation of which is selected in cooperation with the States.

49 CFR 831.2(b) (footnote omitted). The NTSB proposes moving each mode-specific listing in paragraph (b) to its mode-specific subpart.

#### *Subpart B: Aviation Investigations*

The NTSB proposes the addition of a new subpart titled “*Aviation Investigations*,” composed of four sections mostly derived from existing text within part 831.

#### Section 831.20 Responsibility of NTSB in Aviation Investigations

The NTSB proposes adding § 831.20, titled “[r]esponsibility of NTSB in aviation investigations,” to include the same text in the current version of § 831.2(a).

#### Section 831.21 Authority of NTSB Representatives in Aviation Investigations

In addition, the NTSB proposes adding § 831.21 titled, “[a]uthority of NTSB representatives in aviation investigations.” The NTSB proposes including the aviation-specific text in current § 831.9(b) as the text for proposed § 831.21, to state NTSB employees possess the authority to examine and test any civil or public aircraft, as well as aircraft engines, propellers, appliances, equipment or any other property aboard the aircraft involved in an accident or incident.

As noted in the discussion concerning § 831.9, above, this proposed language is from the NTSB’s enabling statute, which specifically provides the NTSB with authority to examine and test evidence

related to an aviation accident.<sup>11</sup> The NTSB believes including this in Subpart B, as an aviation-specific authorization, is the best manner in which to organize part 831. The NTSB has not suggested substantive changes to this language, but only replaces “[t]he Board,” with “[a]ny employee of the NTSB,” to maintain consistent terminology throughout the NTSB’s regulations.

#### Section 831.22 Other Government Agencies and NTSB Aviation Investigations

The NTSB also proposes adding § 831.22, titled “Other Government agencies and NTSB aviation investigations.” The NTSB proposes moving part of the text of § 831.11(a)(4) to § 831.22(a). In addition, the NTSB proposes re-codifying the current version of § 831.2(a)(2) as paragraph (b) in § 831.22, with no substantive changes.

The NTSB continues to utilize the FAA’s assistance in certain investigations, particularly general aviation investigations, in which the FAA arrives at the site of the accident or incident and collects information. The FAA then provides the information to the NTSB, which reviews and analyzes it, and either follows through with the investigation to complete a probable cause finding, or determines the information indicates the event may be closed by placing a memorandum on file. The NTSB plans to continue this procedure; therefore, the NTSB does not suggest substantive edits to this paragraph.

The NTSB proposes codifying the footnote within § 831.2(a)(2) as paragraph (c) in § 831.22, to state FAA representatives have the same authority as NTSB investigators when conducting activities on behalf of the NTSB.

In providing on-scene assistance to the NTSB for certain investigations, the NTSB will consider the FAA an “authorized representative.” Section 831.9, as proposed herein, states that any authorized representative of the NTSB may enter property or wreckage; inspect, photograph, or copy records or information; and question any person who has knowledge of the accident or incident. The NTSB will request the FAA complete such work on the NTSB’s behalf. Therefore, the NTSB believes including this language concerning the authority of FAA employees during investigations as paragraph (c) is appropriate.

The NTSB proposes adding paragraph (d) to § 831.22, to state the NTSB may exercise its discretion to make available

a public docket with information from investigations in which the FAA has conducted the fact-finding, as described in paragraphs (b) and (c) of § 831.22.

The NTSB proposes this paragraph because it may opt to conclude an incident investigation only after reviewing information obtained from the FAA, and, as described above, may determine a probable cause finding is not necessary in some cases. Nevertheless, the NTSB may, in the interest of transparency, place the records from such investigations in a public docket.

The NTSB values the FAA’s assistance with NTSB investigations. Representatives of the NTSB met with FAA personnel on January 6, 2014, to discuss the sharing of information during accident and incident investigations, as well as the overall oversight and conduct of investigations. This meeting helped the NTSB to better understand the FAA’s concerns. The NTSB and FAA reached a consensus that the NTSB will be aware of all FAA requests for information made to other parties. The FAA should ensure the NTSB receives information the FAA has requested from a party, for any purpose. This expectation is consistent with Congress’s direction for the NTSB to maintain priority over each investigation. 49 U.S.C. 1131(a)(2)(A).

#### Section 831.23 International Aviation Investigations

The NTSB proposes adding § 831.23, titled “International Aviation Investigations,” to include most of the language from § 831.2(a)(2), which describes the NTSB’s role in international aviation investigations. In particular, the NTSB proposes text for § 831.23 directly derived from § 831.2(a)(2); however, the NTSB proposes breaking the text into three distinct paragraphs. The NTSB believes such organization will aid in the ability to read and easily reference the description of the NTSB’s role in foreign investigations.

In proposing to keep the reference to Annex 13 to the Convention on International Civil Aviation (the Chicago Convention) in the text of the regulation, the NTSB notes it will observe the recommended standards and practices ICAO issues, to the extent practicable. Such recommendations include releasing draft reports concerning accidents and incidents to accredited representatives, and permitting the representatives’ subsequent sharing of these reports with their technical advisers. As noted above within the discussion concerning § 831.14 of this part, this practice differs

<sup>11</sup> 49 U.S.C. 1134.

from domestic investigations. However, in the interest of ensuring consistency with other countries' investigative practices in international investigations, and in observation of ICAO's recommended standards and practices, NTSB investigators-in-charge will release draft reports to accredited representatives.

Also, the NTSB proposes adding a new provision concerning advisers (also "technical advisers") in foreign investigations. When an NTSB investigator is designated as an *accredited representative* (the "U.S. accredited representative") under Annex 13, the U.S. accredited representative may appoint *technical advisers* to provide information and assist with the investigation. Similar to "parties" in domestic investigations, these technical advisers work under the supervision of the U.S. accredited representative. The NTSB believes it is beneficial to include a paragraph in § 831.23 describing this relationship.

The NTSB has encountered situations concerning foreign investigations in which technical advisers have not communicated with the U.S. accredited representative or the foreign investigator-in-charge, as per Annex 13. The NTSB believes including language these in § 831.23(c) will clearly describe the relationships Annex 13 contemplates between technical advisers, NTSB-designated U.S. accredited representatives, and foreign IICs. As a result, the NTSB anticipates technical advisers will exercise care in fulfilling their duties in assisting with the investigation, and in communicating about the investigation.

In addition, concerning the release of information in international investigations, the NTSB remains mindful of 49 U.S.C. 1114(f), which provides the NTSB will not release information concerning an international investigation until either the investigating country releases its report on the investigation, or two years have passed since the occurrence of the accident or incident. Based on this statutory requirement, technical advisers, who work at the direction of the NTSB, should not release information about the investigation unless the foreign IIC approves such release, the investigating country has made the investigation report publicly available, or two years have passed since the event. Based on this proscription, the NTSB believes a reference to § 831.13 in this section is beneficial.

The NTSB proposes including paragraph (d) in § 831.23, to include the

text of the final sentence in the current version of § 831.2(a)(3).

The only change the NTSB proposes in this text is to shorten the reference to *Aircraft Accident and Incident Investigation*, Annex 13 to the Convention on International Civil Aviation, to "Annex 13."

The NTSB also proposes adding a new paragraph (e), to § 831.23, to clarify the NTSB has the authority to subpoena records or other evidence in furtherance of a foreign investigation. In this regard, the NTSB interprets the provisions of § 831.9, discussed above, to apply to foreign investigations. Paragraph (e) would consist of the following text: "The NTSB may issue a subpoena for records or other necessary evidence during the course of a foreign investigation, in accordance with the provisions of § 831.9 of this part."

#### *Subpart C: Highway Investigations*

The NTSB proposes adding subpart C, titled "Highway Investigations," to part 831. Within this new subpart, the NTSB proposes two sections, titled "[r]esponsibility of NTSB in highway investigations," and "[a]uthority of NTSB representatives in highway investigations." Neither of these sections consist of new text, but are derivations of the current language in §§ 831.2 and 831.9, respectively.

#### Section 831.30 Responsibility of NTSB in Highway Investigations

Regarding proposed § 831.30 describing the responsibility of the NTSB in highway investigations, the NTSB would retain portions of the text in the current version of § 831.2(b).

#### Section 831.31 Authority of NTSB Representatives in Highway Investigations

The NTSB proposes adding § 831.31 to describe the authority of NTSB representatives, some of which is set forth in the current version of § 831.9.

As proposed, § 831.9 includes several provisions concerning the NTSB's authority. However, the NTSB believes it would be helpful to include the statements of authority proposed in § 831.31, to ensure the highway-specific authorities are easy to locate.

This description of the NTSB's responsibility, from § 831.2, is derived from the NTSB's enabling statute, at 49 U.S.C. 1131(a)(1)(B).

#### *Subpart D: Railroad, Pipeline, and Hazardous Materials Investigations*

The NTSB proposes adding subpart D, titled "Railroad, Pipeline, and Hazardous Materials Investigations," to part 831. Within this new subpart, the

NTSB proposes two sections, which are derivations of the current language in §§ 831.2 and 831.9, respectively.

#### Section 831.40 Responsibility of NTSB in Railroad, Pipeline, and Hazardous Materials Investigations

Regarding the section describing the responsibility of the NTSB in highway investigations, the NTSB proposes retaining some text specific to railroad and pipeline events from § 831.2, under the heading, "[r]esponsibility of NTSB in railroad, pipeline, and hazardous materials investigations. This description of the NTSB's responsibility, from § 831.2(b), is derived from the NTSB's enabling statute, at 49 U.S.C. 1131(a)(1)(C) and (D).

The NTSB also proposes adding paragraph (c) to § 831.40, to describe the NTSB's responsibility to investigate certain hazardous materials events. Such a description is derived from portions of the current version of § 831.2(c). The NTSB proposes the following text for § 831.40(c): "(c) The NTSB is responsible for the investigation of accidents, collisions, crashes, derailments, explosions, incidents, and ruptures it selects that involve the transportation and/or release of hazardous materials."

The NTSB believes it will be helpful to distinguish between railroad, pipeline, and hazardous materials investigations. Although such investigations often have similarities and may possibly involve more than one mode of transportation, the NTSB's responsibilities in these investigations are distinct.

#### Section 831.41 Authority of NTSB Representatives in Railroad, Pipeline, and Hazardous Materials Investigations

The NTSB proposes text for new § 831.41, to describe the NTSB's authority in railroad, pipeline, and hazardous materials investigations; this text is derived from the existing version of § 831.9.

Although slightly duplicative of the language in §§ 831.21 and 831.31, the NTSB believes including this section in each subpart will be helpful to the public, NTSB investigators, and other parties.

#### *Subpart E: Marine Investigations*

The NTSB proposes adding subpart E, entitled "Marine Investigations," to part 831. Within this new subpart, the NTSB proposes two sections, entitled "[r]esponsibility of NTSB in marine investigations," and "[a]uthority of NTSB representatives in marine investigations." Neither of these

sections consists of new text, but are derivations of current language in §§ 831.2 and 831.9, respectively.

#### Section 831.50 Responsibility of NTSB in Marine Investigations

The NTSB proposes text in § 831.50 stating the NTSB is responsible for investigating major marine accidents, allisions, casualties, collisions, crashes, and incidents involving a public and non-public vessel or involving functions of the United States Coast Guard. The proposed text of paragraph (a) within § 831.50 also includes a reference to part 850 of this chapter, which addresses marine investigations and the relationship the NTSB has with the Coast Guard.

The NTSB also proposes paragraphs (b) and (c) within § 831.50, which are derived from the existing version of § 831.2. The NTSB proposes organizing these provisions as three distinct paragraphs, set forth above, without footnotes. The existing version of § 831.2(b) included in a footnote the language about the NTSB's and Coast Guard's joint participation in certain marine investigations. The NTSB believes this principle is important, and, although described more fully in part 850, the NTSB believes it will be helpful to reference part 850 in paragraph (c) of proposed new § 831.50, and state the NTSB and the Coast Guard will jointly conduct some marine investigations.

#### Section 831.51 Authority of NTSB Representatives in Marine Investigations

Similar to §§ 831.21, 831.31, and 831.41, the NTSB also proposes text within § 831.51, concerning the authority of NTSB representatives in marine investigations.

The NTSB believes its proposed language, regarding marine investigations in which the NTSB is the lead investigative agency, will provide clarity to the Coast Guard and other investigative parties. This language currently exists in § 831.9; the NTSB only proposes moving some of the mode-specific text of § 831.9 to the mode-specific subparts.

In this NPRM, the NTSB does not propose changes or additions to part 850 of this chapter. However, in retrospectively reviewing all NTSB regulations, the NTSB has noted certain updates to part 850 might be appropriate. The NTSB will work with the Coast Guard to publish an NPRM in the future.

#### Appendix: Statement of Party Representatives to NTSB Investigation

Consistent with the existing and proposed text of § 831.11, regarding

parties to NTSB investigations, the NTSB requires participants to sign the Statement of Party Representatives upon conferring party status. As described above, the NTSB does not ask representatives of Federal agencies to sign the Statement. In this NPRM, the NTSB does not propose any substantive changes to the Statement, but includes some minor, technical amendments for clarity. Concerning other potential changes, the agency is evaluating the need for substantive amendments to the Statement. Therefore, the NTSB solicits feedback on the Statement. For example, should the statement remain general, and incorporate by reference the regulations within part 831? Or would including a summary of the regulations of part 831 within the Statement be helpful? In addition, would expressly summarizing the provisions of § 831.13, which prohibits parties from disseminating investigative information without IIC approval, be helpful? In addition to these considerations, the NTSB welcomes comments on all aspects of the current version of the Statement.

#### IV. Regulatory Analysis

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of the potential costs and benefits under section 6(a)(3) of that Order. As such, the Office of Management and Budget has not reviewed this rule under Executive Order 12866. Likewise, this rule does not require an analysis under the Unfunded Mandates Reform Act, 2 U.S.C. 1501–1571, or the National Environmental Policy Act, 42 U.S.C. 4321–4347.

In addition, the NTSB has considered whether this rule would have a significant economic impact on a substantial number of small entities, under the Regulatory Flexibility Act (5 U.S.C. 601–612). The NTSB certifies under 5 U.S.C. 605(b) that this rule would not have a significant economic impact on a substantial number of small entities. Moreover, in accordance with 5 U.S.C. 605(b), the NTSB will submit this certification to the Chief Counsel for Advocacy at the Small Business Administration.

Moreover, the NTSB does not anticipate this rule will have a substantial, direct effect on state or local governments or will preempt state law; as such, this rule does not have implications for federalism under Executive Order 13132, Federalism. This rule also complies with all applicable standards in sections 3(a)

and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden. In addition, the NTSB has evaluated this rule under: Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights; Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks; Executive Order 13175, Consultation and Coordination with Indian Tribal Governments; Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use; and the National Technology Transfer and Advancement Act, 15 U.S.C. 272 note. The NTSB has concluded that this rule does not contravene any of the requirements set forth in these Executive Orders or statutes, nor does this rule prompt further consideration with regard to such requirements.

The NTSB invites comments relating to any of the foregoing determinations and notes the most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data.

#### List of Subjects in 49 CFR part 831

Aircraft accidents, Aircraft incidents, Aviation safety, Hazardous materials transportation, Highway safety, Investigations, Marine safety, Pipeline safety, Railroad safety.

For the reasons discussed in the preamble, the NTSB proposes to revise 49 CFR part 831 to read as follows:

#### PART 831—INVESTIGATION PROCEDURES

##### Subpart A—General

- Sec.
- 831.1 Applicability of this part.
  - 831.2 Responsibility of NTSB.
  - 831.3 Authority of Directors.
  - 831.4 Nature of investigation.
  - 831.5 Priority of NTSB investigations.
  - 831.6 Request to withhold information.
  - 831.7 Witness interviews.
  - 831.8 Investigator-in-charge.
  - 831.9 Authority of NTSB representatives.
  - 831.10 Autopsies and postmortem testing.
  - 831.11 Parties to the investigation.
  - 831.12 Access to and release of wreckage, records, mail, and cargo.
  - 831.13 Flow and dissemination of investigative information.
  - 831.14 Proposed findings.

##### Subpart B—Aviation Investigations

- 831.20 Responsibility of NTSB in aviation investigations.
- 831.21 Authority of NTSB representatives in aviation investigations.
- 831.22 Other Government agencies and NTSB aviation investigations.

831.23 International aviation investigations.

#### Subpart C—Highway Investigations

831.30 Responsibility of NTSB in highway investigations.

831.31 Authority of NTSB representatives in highway investigations.

#### Subpart D—Railroad, Pipeline, and Hazardous Materials Investigations

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

831.41 Authority of NTSB representatives in railroad, pipeline, and hazardous materials investigations.

#### Subpart E—Marine Investigations

831.50 Responsibility of NTSB in marine investigations.

831.51 Authority of NTSB representatives in marine investigations.

Appendix to Part 831—Statement of Party Representatives to NTSB Investigation.

**Authority:** 49 U.S.C. 1113(f).

#### Subpart A—General

##### § 831.1 Applicability of this part.

(a) Unless otherwise specifically ordered by the National Transportation Safety Board (NTSB), the provisions of this part shall govern all NTSB investigations conducted under the authority of 49 U.S.C. 1101–1155.

(b) The NTSB will conduct investigations of transportation events which include, but are not limited to: Accidents, allisions, casualties, collisions, crashes, derailments, explosions, incidents, mishaps, ruptures, and other similar events. The provisions of this part apply to all NTSB investigations of such events.

##### § 831.2 Responsibility of the NTSB.

(a) The provisions of §§ 831.20, 831.30, 831.40, and 831.50 describe the NTSB's responsibility to conduct investigations in each mode of transportation.

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

##### § 831.3 Authority of Directors.

The Directors, Office of Aviation Safety, Office of Highway Safety, Office of Railroad, Pipeline and Hazardous Materials Investigations, and Office of

Marine Safety, subject to the provisions of § 831.2 and part 800 of this chapter, may order an investigation into any transportation event.

##### § 831.4 Nature of investigation.

(a) *General.* The NTSB conducts investigations, or causes such investigations to be conducted, to determine the facts, conditions, and circumstances relating to an event. The NTSB then uses these results to determine probable cause and/or ascertain measures that would best tend to prevent (or mitigate the effects of) similar events in the future.

(b) *Phases of investigation—(1) Preliminary Investigation.* Immediately upon learning of an event, the NTSB undertakes a preliminary investigation in which it gathers available facts for the purposes of assessing the appropriate level of investigative action. If the NTSB determines it will not proceed with a formal investigation into the event, the appropriate office director may close the preliminary investigation and not proceed with a formal investigation.

(2) *Formal Investigation.* The NTSB proceeds with a formal investigation by gathering facts to determine the probable cause of a transportation event.

(3)(i) The manner in which the NTSB gathers facts for an investigation may include an on-scene investigation, where NTSB employee(s) visit the site of the event, interview witnesses, conduct testing, extract data, gather documentation, or engage in any other activities that would assist the NTSB in obtaining all discoverable facts relevant to the investigation. The investigation may result in a number of products designed to improve transportation safety including NTSB conclusions issued in the form of a report or brief of the investigation, or other NTSB product, such as a collection of factual records, safety recommendation(s), or other safety information.

(ii) Such investigations are fact-finding proceedings with no adverse parties. These proceedings are not subject to the Administrative Procedure Act (5 U.S.C. 504 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) Any investigation the NTSB conducts directly (except major marine investigations conducted under 49 U.S.C. 1131(a)(1)(E)) or pursuant to the appendix to part 800 of this chapter has priority over all other investigations conducted by other Federal agencies.

However, this section does not apply to the role of the United States Attorney General when circumstances reasonably indicate that the event may have been caused by an intentional criminal act, as described in 49 U.S.C. 1131(a)(2)(B) and 1131(a)(2)(C).

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

(3) The NTSB investigation has first right to access wreckage, information, and resources it deems pertinent to its investigation. As described in § 831.9(c) of this part, the NTSB has exclusive authority to decide when, and the manner in which, testing, extraction of data, and examination of evidence will occur.

(4) The NTSB may take possession of records or information (including data) related to determining the probable cause, if the NTSB determines such possession is necessary to its investigation.

(5) The NTSB and Federal, state, and local agencies shall assure that appropriate information obtained or developed in the course of their investigations is exchanged in a timely manner.

(i) Nothing in this section prohibits the NTSB from sharing information with other agencies.

(ii) The NTSB is not a first responder agency, but recognizes the role of incident management systems and the role of unified command systems.

(b) *Enforcement investigations by other agencies.* (1) While an NTSB investigation is underway, other Federal agencies may conduct activities under applicable provisions of law related to their enforcement responsibilities. In conducting such activities, other agencies may obtain information directly from parties involved in, and witnesses to, the transportation event, provided they do so after coordinating with the NTSB investigator-in-charge (IIC) and without interfering with the NTSB's investigation. Such Federal activities will not influence the NTSB's investigations.

(2) The NTSB cooperates with state and/or local agencies that conduct activities for the purposes of enforcement of a state statute or regulation. Such state activities shall not influence the NTSB's investigations.

(3) Except as described in § 831.31 of this chapter, which applies to highway investigations, Federal agencies shall provide the results of their investigations to the NTSB when such investigations are for purposes of

remedial action or safety improvement. In general, this requirement will not apply to enforcement records or enforcement investigation results.

#### § 831.6 Request to withhold information.

(a) *Trade Secrets Act.* This section applies to domestic matters. Information the NTSB receives concerning international aviation events is addressed in § 821.23 of this part.

(1) *General.* The Trade Secrets Act provides criminal penalties for unauthorized government disclosure of trade secrets and other specified confidential commercial information. The Freedom of Information Act authorizes withholding such information; however, the Independent Safety Board Act, at 49 U.S.C. 1114(b), states the NTSB may, under certain circumstances, disclose information related to trade secrets.

(2) *Procedures.* Information submitted to the NTSB that the submitter believes qualifies as a trade secret or confidential commercial information subject either to the Trade Secrets Act (codified at 18 U.S.C. 1905) or FOIA Exemption 4 (codified at 5 U.S.C. 552(b)(4)) shall be so identified by the submitter on each and every page that contains such information. The NTSB shall give the submitter of any information so identified, or information the NTSB has substantial reason to believe qualifies as a trade secret or confidential commercial information subject either to the Trade Secrets Act or FOIA Exemption 4, the opportunity to comment on any contemplated disclosure, pursuant to 49 U.S.C. 1114(b). In all instances in which the NTSB decides to disclose such information pursuant to 49 U.S.C. 1114(b) and/or 5 U.S.C. 552, the NTSB will provide at least 10 days' notice to the submitter. Notice may not be provided the submitter when disclosure is required by a law other than FOIA if the information is not identified by the submitter as qualifying for withholding, as is required by this paragraph, unless the NTSB has substantial reason to believe disclosure would result in competitive harm.

(b) *Voluntarily-provided safety information.* (1) In general, the NTSB will not disclose commercial, safety-related information provided voluntarily and not related to exercise of the NTSB's investigation authority, if the NTSB determines disclosure of the information would inhibit the voluntary provision of that type of information.

(2) Reference to voluntarily-provided safety information for the purposes of safety recommendations will be undertaken with consideration for its

confidential nature. The NTSB will de-identify all such safety information to the greatest extent possible.

(c) *Other.* Any person may make written objection to the public disclosure of any other information contained in any report or document filed, or otherwise obtained by the 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 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.

#### § 831.7 Witness interviews.

(a) Any person interviewed by an NTSB employee or investigator who is working on behalf of the NTSB during the investigation (hereinafter, "investigator"), regardless of the form of the interview (sworn, unsworn, transcribed, not transcribed, etc.), has the right to be accompanied by no more than one attorney or non-attorney representative of his or her choosing. The role of this representative is to provide support and counsel as requested by the witness and not to supplement the witness's testimony or represent the interests of other affiliations of the witness during the interview.

(b)(1) The investigator conducting the interview shall take all necessary action to ensure the witness's representative acts in accordance with the role described in paragraph (a) of this section during the interview, to prevent conduct that may be disruptive to the interview.

(2) If the witness's representative engages in disruptive conduct, the investigator conducting the interview may take action, as the circumstances warrant, including exclusion of the witness's representative from the interview.

(c) The NTSB will release transcripts or summaries of witness interviews in the NTSB public docket for the investigation, as defined at § 801.3(c) of this chapter. The NTSB will release names of witnesses and their representatives in investigative documents or other records in the NTSB public docket, unless the NTSB determines unusual or compelling circumstances exist to preclude disclosure.

#### § 831.8 Investigator-in-charge.

(a) In addition to the authority stated in § 800.27 of this chapter, the

investigator-in-charge (IIC) designated for an investigation has the responsibilities listed below.

(1) The IIC organizes, conducts, controls, and manages the field phase of the investigation, regardless of whether a Board Member is also on-scene.

(2) The IIC has the responsibility and authority to supervise and coordinate all resources and activities of all personnel, both NTSB and non-NTSB, involved in the on-site investigation.

(3) The IIC continues to have organizational and management responsibilities throughout later phases of the investigation, up to and including consideration and adoption of a report or brief of probable cause(s).

(b) The role of a Board Member at the scene of an investigation is as the official spokesperson for the NTSB.

#### § 831.9 Authority of NTSB representatives.

(a) *General authority.* To carry out its statutory responsibilities, the NTSB is authorized to conduct hearings, administer oaths, and require, by subpoena or otherwise, necessary witnesses and evidence.

(1) Any authorized representative of the NTSB may enter any property where an event subject to the NTSB's jurisdiction has occurred, or wreckage from any such event is located, and do all things considered necessary for proper investigation.

(2) Any authorized representative of the NTSB may inspect, photograph, or copy any records or information (including files, medical records pursuant to paragraph (b)(2) of this section, and correspondence then or thereafter existing) for the purpose of conducting an investigation.

(3) Authorized representatives of the NTSB may question any person having knowledge relevant to a transportation event.

(b) *Subpoenas.* The NTSB may issue a subpoena, enforceable in Federal district court, to obtain necessary testimony or evidence.

(1) Pursuant to its authority to issue subpoenas, the NTSB shall have access to medical records and specimens.

(2) For purposes of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), Public Law 104-191, the NTSB is a "public health authority" as that term is used in the regulations promulgated by the Department of Health and Human Services (see 45 CFR 164.501 or any successor regulation). Consistent with 49 U.S.C. 1101-1155 and HIPAA, a "covered entity" may disclose protected health information to the NTSB pursuant to subpoena.

(3) The NTSB may issue subpoenas for all other records, data and information necessary for an investigation, including but not limited to, credit card records and records from portable electronic devices.

(c) *Examination of evidence.* (1) Only the NTSB will decide when, and in what manner, testing, extraction of data, and examination of evidence will occur.

(2) Authorized representatives acting on behalf of the NTSB have authority to decide the means in which any testing or extraction of data will be conducted, pursuant to the specific direction of the NTSB. The NTSB has exclusive authority to make all pertinent decisions related to the testing or extraction of data.

#### **§ 831.10 Autopsies and postmortem testing.**

The NTSB is authorized to obtain, with or without reimbursement, a copy of the report of autopsy performed by State or local authorities on any person who dies as a result of having been involved in a transportation event within the jurisdiction of the NTSB. The investigator-in-charge (IIC), on behalf of the NTSB, may order an autopsy or other postmortem tests of such persons as may be necessary for the investigation. The IIC will direct that an autopsy be performed only to the extent it will be consistent with the needs of the investigation and with provisions of local law protecting religious beliefs with respect to autopsies.

#### **§ 831.11 Parties to the investigation.**

(a) *Participants.* (1) The investigator-in-charge designates parties to participate in the investigation. Parties shall be limited to those persons, government agencies (Federal, state, or local), companies, and organizations whose employees, functions, activities, or products were involved in the event and who can provide suitable qualified technical personnel actively to assist in the investigation. The representatives proposed by party organizations to participate in the investigation should, to the extent practicable, be personnel who had no direct involvement in the event under investigation.

(2) No entity shall automatically have the right to participate in an NTSB investigation as a party. However, the NTSB will provide for the participation of the Federal Aviation Administration (FAA) in the investigation of an aircraft accident when participation is necessary to carry out the duties and powers of the FAA.

(3) Participants in the investigation (i.e., party representatives, party coordinators, and/or the larger party

organization) shall be responsive to the direction of NTSB representatives and may have their party status revoked or suspended if they do not comply with their assigned duties and instructions, withhold information, or conduct themselves in a manner prejudicial to the investigation.

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

(b) *Disclosures.* (1) Party representatives' names may be disclosed in documents the NTSB places in the public docket for the investigation, as defined in § 801.3(c) of this chapter.

(2) The NTSB may share parties' information considered proprietary or confidential with other parties during the course of an investigation, but will preserve the confidentiality of the information to the greatest extent possible. The NTSB will adhere to the provisions of 49 U.S.C. 1114, as described in § 831.6(b)(1) of this part, in determining whether to share any such information in order to preserve the confidentiality of the information to the greatest extent possible.

(c) *Party agreement.* All party representatives shall sign the "Statement of Party Representatives to NTSB Investigation" immediately upon accepting party representative status. Failure to sign that statement in a timely manner may result in sanctions, including loss of party status. Representatives of other Federal agencies are not required to sign the Statement, but must adhere to the responsibilities and limitations set forth in the agreement. This Statement is set forth in the Appendix of this part.

(d) *Party inquiries or reviews.* Any party conducting or authorizing an inquiry or review of its own processes and procedures as a result of a transportation event the NTSB is investigating shall inform the investigator-in-charge in a timely manner of the nature of its inquiry or review to coordinate such efforts with the NTSB's investigation. Further, a party performing such an inquiry or review shall provide the IIC with details of findings from this work.

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

(b) Wreckage, records, mail, and cargo in the NTSB's custody shall be released by an authorized representative of the NTSB when it is determined that the NTSB has no further need for such items.

#### **§ 831.13 Flow and dissemination of investigative information.**

(a) *Information concerning the investigation.* (1) This section applies to factual information collected or compiled by the NTSB as part of its investigation, such as photographs, visual representations of factual data, physical evidence at the scene of the event, interview statements, wreckage documentation, flight data and cockpit voice recorder information, surveillance video, etc., and information pertaining to the status or activities conducted as part of the investigation, from the time the NTSB commences its investigation until the time the NTSB concludes its investigation.

(2) Release of information at the scene of the event shall be limited to factual developments, and shall be made through the Board Member present at the scene, the representative of the NTSB's Office of Public Affairs, or the investigator-in-charge.

(3) The NTSB's release of the information described in paragraph (a)(1) of this section does not authorize parties to comment publicly on the information during the course of the investigation. Any disseminations of factual information a party seeks to make must occur in accordance with paragraph (c) of this section.

(b) *Provision of information.* All information obtained by any person or organization during the investigation, as described in paragraph (a) of this section, must be provided to the NTSB.

(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 the information unless the release is consistent with all of the following criteria:

(1) All information shall be provided to the IIC (directly or through an NTSB employee) before being provided to any person or organization. Consistent with paragraph (c)(2) of this section, parties must notify the IIC in a timely manner

of any intent to disseminate information within their organizations.

(2) Unless otherwise restricted by the IIC, parties to the investigation may release information to officers and other key personnel who exercise decision-making authority within their respective organizations as necessary for the purposes of prevention or remedial action.

(3)(i) The IIC may choose to approve, in advance, any release of information within a party organization for purposes other than prevention or remedial action.

(ii) The IIC may approve any release of information concerning the investigation to an organization or person who is not a party to the investigation, with the approval of the Chairman, who may delegate this authority to the director of the office overseeing the investigation.

(iii) Documents that provide information concerning the investigation, such as written directives or informational updates for release to party employees or customers, shall be approved by the IIC prior to release.

(4) Parties shall timely inform the IIC of any planned safety improvements that will occur as a result of sharing information from the investigation within their organization.

(5) The release of information pertaining to recordings or transcripts from cockpit voice recorder (CVR) or surface vehicle recorders, as described in 49 U.S.C. 1114(c)(1) and (d)(1), respectively, shall be handled in accordance with 49 U.S.C. 1114(c) and (d). Any release of such information prior to the NTSB's release of it shall be approved in advance by the IIC, who must coordinate with the Chairman and director of the office in which the IIC works.

#### **§ 831.14 Proposed findings.**

(a) *General.* Any person or organization whose employees, functions, activities, or products were involved in an event under investigation 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 events.

(b) *Timing of submissions.* To be considered, these submissions must be received before the matter is announced in the **Federal Register** for consideration at a Board meeting. All written submissions shall be presented to staff in advance of the formal scheduling of the meeting. This procedure ensures

orderly and thorough consideration of all views.

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

### **Subpart B—Aviation Investigations**

#### **§ 831.20 Responsibility of NTSB in aviation investigations.**

The NTSB is responsible for the organization, conduct, and control of all aviation accident investigations, and those incidents subject to NTSB investigation (see §§ 830.2 and 830.5 of this chapter) within the United States, its territories and possessions, where the accident or incident involves any civil aircraft or certain public aircraft (as specified in § 830.5 of this chapter), including a collision involving civil or public aircraft (as specified in § 830.5) and an aircraft operated by the Armed Forces or an intelligence agency. It is also responsible for supporting the investigations of certain accidents and incidents that occur outside the United States, and which involve civil aircraft and/or certain public aircraft, when the accident or incident is not in the territory of another country (*i.e.*, in international waters).

#### **§ 831.21 Authority of NTSB representatives in aviation investigations.**

Any employee of the NTSB, upon presenting appropriate credentials, is authorized to examine and test to the extent necessary any civil or public aircraft (as specified in § 830.5 of this chapter), aircraft engine, propeller, appliance, or property aboard such aircraft involved in an accident or incident.

#### **§ 831.22 Other Government agencies and NTSB aviation investigations.**

(a) Title 49 U.S.C. 1132(c) provides for the participation of the Federal Aviation Administration (FAA) in NTSB aviation investigations, and section 1131(a)(2) provides for the appropriate participation by other departments, agencies, or instrumentalities of the United States Government.

(1) The FAA and those other Federal entities named as parties to the investigation are accorded the same rights and privileges, and are subject to the same limitations, as other parties. This includes a responsibility to timely share information concerning the NTSB investigation that has been developed by the FAA and other Federal entities in the exercise of their investigation authority.

(2) In exercising their authority, the FAA and other Federal entities may obtain information directly from parties involved in, and witnesses to, the accident or incident, provided they do so after coordinating with the NTSB IIC and without interfering with the NTSB's investigation.

(b) Certain investigative activities may be conducted by the FAA, pursuant to a "Request to the Secretary of the Department of Transportation to Investigate Certain Aircraft Accidents," effective February 10, 1977 (the text of the request is contained in the appendix to part 800 of this chapter), but the NTSB determines the probable cause of such accidents or incidents. Under no circumstances are aviation investigations where the FAA has conducted fact-finding on the NTSB's behalf to be considered to be joint investigations in the sense of sharing responsibility. These investigations remain NTSB investigations.

(c) The authority of a representative of the FAA conducting investigative activities on behalf of the NTSB is the same as that of an NTSB investigator under this part.

(d) The NTSB maintains its discretion to open a public docket, as defined in § 801.3 of this chapter, with information from investigations in which the FAA has conducted the fact-finding, as described in paragraph (b) of this section.

#### **§ 831.23 International aviation investigations.**

(a) The NTSB is the agency charged with fulfilling the obligations of the United States under Annex 13 to the Convention on International Civil Aviation, *Aircraft Accident and Incident Investigation* (hereinafter, "Annex 13"), and does so consistent with State Department requirements and in coordination with that department. Annex 13 contains standards and recommended practices for the notification, investigation, and reporting of certain accidents and incidents involving international civil aviation.

(b) Pursuant to Annex 13:

(1) The state of occurrence of the accident or incident is responsible for the investigation, when the state is a signatory to Annex 13; and

(2) The NTSB participates in the investigation when the accident or incident involves a civil aircraft of a U.S. operator, registry, or manufacture, or when the U.S. is the state that designed the civil aircraft or parts thereon.

(c) *Technical advisers.* When the NTSB has designated an investigator to participate in an international



investigation as an “accredited representative” under Annex 13, the accredited representative may elect to receive assistance from “advisers,” as defined in Annex 13, ¶¶ 5.24 and 5.24.1.

(1) Such technical advisers shall work at the direction and under the supervision of the NTSB accredited representative.

(2) The NTSB considers the provisions of § 831.13 of this part to apply to U.S. advisers working under the supervision of the U.S. accredited representative in international aviation investigations.

(d) If the accident or incident occurs in a foreign state not bound by the provisions of Annex 13, or if the accident or incident involves a state aircraft (Annex 13 applies only to civil aircraft), the conduct of the investigation shall be in consonance with any agreement entered into between the United States and the foreign state.

### Subpart C—Highway Investigations

#### § 831.30 Responsibility of NTSB in highway investigations.

The NTSB is responsible for the investigation of highway accidents, collisions, crashes and explosions, including railroad grade-crossing events, the investigation of which is conducted in cooperation with the States.

#### § 831.31 Authority of NTSB representatives in highway investigations.

(a) Any employee of the NTSB, upon presenting appropriate credentials, is authorized to test or examine any item, including, but not limited to, any vehicle, any part of a vehicle, or the equipment and contents therein, when such examination or testing is determined to be required for purposes of such investigation.

(b) Any examination or testing shall be conducted in such a manner so as not to interfere with or obstruct to the extent practicable the transportation services provided by the owner or operator of such vehicle, and shall be conducted in such a manner so as to preserve, to the maximum extent feasible, any evidence relating to the transportation event, consistent with the needs of the investigation and with the cooperation of such owner or operator.

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

### Subpart D—Railroad, Pipeline, and Hazardous Materials Investigations

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

(a) 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.

(b) 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.

#### § 831.41 Authority of NTSB representatives in railroad, pipeline, and hazardous materials investigations.

(a) Any employee of the NTSB, upon presenting appropriate credentials, is authorized to test or examine 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.

(b) Any examination or testing shall be conducted in such a manner so as not to obstruct to the extent practicable the transportation services provided by the owner or operator of such rolling stock, track, signal, rail shop, property, or pipeline component, and shall be conducted in such a manner so as to preserve, to the maximum extent feasible, any evidence relating to the event, consistent with the needs of the investigation and with the cooperation of such owner or operator.

### Subpart E—Marine Investigations

#### § 831.50 Responsibility of NTSB in marine investigations.

(a) The NTSB is responsible for the investigation of major marine casualties and marine events (including, but not limited to, collisions, abandonments, and accidents) involving a public and non-public vessel or involving Coast Guard functions, in accordance with part 850 of this chapter.

(b) The NTSB’s responsibility in conducting or participating in marine investigations is consistent with investigative procedures mutually agreed to by the NTSB Chairman and the Commandant of the Coast Guard.

(c) Part 850 of this chapter governs the conduct of certain investigations in which the NTSB and the Coast Guard participate jointly.

#### § 831.51 Authority of NTSB representatives in marine investigations.

(a) Any employee of the NTSB, upon presenting appropriate credentials, is authorized to test or examine any vessel or any part of any such vessel (or equipment and contents therein), including, but not limited to, port facilities, navigational aids, and related records, when such examination or testing is determined to be required for purposes of such investigation.

(b) Any examination or testing shall be conducted in such a manner so as not to obstruct to the extent practicable the transportation services provided by the owner or operator of such vessel, and shall be conducted in such a manner so as to preserve, to the maximum extent feasible, any evidence relating to the event, consistent with the needs of the investigation and with the cooperation of such owner or operator.

#### Appendix to Part 831—Statement of Party Representatives to NTSB Investigation.

##### CERTIFICATION OF PARTY REPRESENTATIVE<sup>1</sup>

I acknowledge I am participating in the above-referenced accident or incident investigation, on behalf of my employer who has been named a party to the National Transportation Safety Board (NTSB) safety investigation, for the purpose of providing technical assistance to the NTSB’s evidence documentation and fact-finding activities. I understand as a party participant, I and my organization shall be responsive to the direction of NTSB personnel and may lose party status for conduct that is prejudicial to the investigation or inconsistent with NTSB policies or instructions. No information pertaining to the accident, or in any manner relevant to the investigation, may be withheld from the NTSB by any party or party participant.

I further acknowledge I have familiarized myself with the attached copies of the NTSB Investigation Procedures (49 C.F.R. Part 831) and “Information and Guidance for Parties to NTSB Accident and Incident Investigations,” and will comply with all procedures in Part 831. If I am the party coordinator for my party, I agree to take all reasonable steps to ensure the employees and participants of my organization comply with these requirements. This includes, but is not limited to, the provisions of 49 C.F.R. §§ 831.11 and 831.13, which, respectively, specify certain criteria for

<sup>1</sup> In aviation investigations this form may also be referred to as “Statement of Party Representatives to NTSB Investigation.”

participation in NTSB investigations and limitations on the dissemination of investigation information.

No party coordinator or representative may occupy a legal position or be a person who also represents claimants or insurers. I certify my participation is not on behalf of either claimants or insurers, and, although factual information obtained as a result of participating in the NTSB investigation may ultimately be used in litigation (at the appropriate time, and in a manner that is not inconsistent with the provisions of 49 C.F.R. § 831.13 and 49 U.S.C. § 1154),

my participation is to assist the NTSB safety investigation and not for the purposes of preparing for litigation. I also certify, after the NTSB Investigator-in-Charge (IIC) releases the parties and party participants from the restrictions on dissemination of investigative information specified in 49 C.F.R. § 831.13, neither I nor my party's organization will in any way assert in civil litigation arising out of the accident any claim of privilege for information or records received as a result of my participation in the NTSB investigation.

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Signature

Date

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Name & Title

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Party Organization/Employer<sup>1</sup>

**Christopher A. Hart,**  
*Acting Chairman.*

[FR Doc. 2014-18921 Filed 8-11-14; 8:45 am]

**BILLING CODE 7533-01-P**

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<sup>1</sup> In aviation investigations this form may also be referred to as "Statement of Party Representatives to NTSB Investigation."