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NATIONAL TRANSPORTATION SAFETY BOARD

49 CFR Part 831

Accident/Incident Investigation Procedures

AGENCY: National Transportation Safety Board.

ACTION: Final rule.

SUMMARY: The Board is updating its regulations on accident and incident investigation practices to reflect current operations and organization.

DATES: The new rules are effective February 26, 1997.

FOR FURTHER INFORMATION CONTACT: Jane F. Mackall, (202) 314-6080.

SUPPLEMENTARY INFORMATION: The majority of the current rules at 49 CFR Part 831 have not been updated since 1988. The changes adopted here for the most part reflect current accident and incident investigation practices. Because these rule changes affect only rules of agency organization, procedure, or practice, notice and comment procedures are not required and are not provided here. 5 U.S.C. 553(b)(B). Major changes to the rules include the following: (1) the Board's wreckage release form (6120.15) will be used, when needed, in all accident investigations, not just aviation investigations; (2) participation in accident investigations of individuals in legal positions has been clarified; (3) the requirement that all party representatives in aviation investigations sign the STATEMENT OF PARTY REPRESENTATIVES TO NTSB INVESTIGATION has been codified; (4) the Board member's role at accident sites has been clarified; (5) new sections have been added to address Trade Secrets Act and voluntary data submission issues; and (6) our policy regarding submissions received after a matter has been calendared by the Board for a meeting has been codified.

List of Subjects in 49 CFR Part 831

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

PART 831—ACCIDENT/INCIDENT INVESTIGATION PROCEDURES

1. The Authority citation for Part 831 is revised to read as follows:

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

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

2. Section 831.2 is revised to read as follows:

§ 831.2 Responsibility of Board.

(a) *Aviation.* (1) The Board is responsible for the organization, conduct, and control of all accident and incident investigations (see § 830.2 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 an investigation involving civil or public aircraft (as specified in § 830.5) on the one hand, and an Armed Forces or intelligence agency aircraft on the other hand. It is also responsible for investigating accidents/incidents that occur outside the United States, and which involve civil aircraft and/or certain public aircraft, when the accident/incident is not in the territory of another country (*i.e.*, in international waters).

(2) Certain aviation investigations may be conducted by the Federal Aviation Administration (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 Board determines the probable cause of such accidents or incidents.¹ Under no circumstances are aviation investigations where the portion of the investigation is so delegated to the FAA by the Board considered to be joint investigations in the sense of sharing responsibility. These investigations remain NTSB investigations.

(3) The Board is the agency charged with fulfilling the obligations of the United States under Annex 13 to the Chicago Convention on International Civil Aviation (Eighth Edition, July 1994), and does so consistent with State Department requirements and in coordination with that department. Annex 13 contains specific requirements for the notification, investigation, and reporting of certain incidents and accidents involving international civil aviation. In the case of an accident or incident in a foreign state involving civil aircraft of U.S. registry or manufacture, where the foreign state is a signatory to Annex 13 to the Chicago Convention of the International Civil Aviation Organization, the state of occurrence is

¹ The authority of a representative of the FAA during such investigations is the same as that of a Board investigator under this part.

responsible for the investigation. If the accident or incident occurs in a foreign state not bound by the provisions of Annex 13 to the Chicago Convention, or if the accident or incident involves a public 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.

(b) *Surface.* The Board is responsible for the investigation of: railroad accidents in which there is a fatality, substantial property damage, or which involve a passenger train (see part 840 of this chapter); major marine casualties and marine accidents involving a public and non-public vessel or involving Coast Guard functions (see part 850 of this chapter²); highway accidents, including railroad grade-crossing accidents, the investigation of which is selected in cooperation with the States; and pipeline accidents in which there is a fatality, significant injury to the environment, or substantial property damage.

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

3. Section 831.3 is revised to read as follows:

§ 831.3 Authority of Directors.

The Director, Office of Aviation Safety, or the Director, Office of Surface Transportation Safety, subject to the provisions of § 831.2 and part 800 of this chapter, may order an investigation into any accident or incident.

4. Section 831.4 is revised to read as follows:

§ 831.4 Nature of Investigation.

Accident and incident investigations are conducted by the Board to determine the facts, conditions, and circumstances relating to an accident or incident and the probable cause(s) thereof. These results are then used to ascertain measures that would best tend to prevent similar accidents or incidents

² Part 850 also governs the conduct of certain investigations in which the Board and the Coast Guard participate jointly.

in the future. The investigation includes the field investigation (on-scene at the accident, testing, teardown, etc.), report preparation, and, where ordered, a public hearing. The investigation results in Board conclusions issued in the form of a report or "brief" of the incident or accident. Accident/incident investigations are fact-finding proceedings with no formal issues and no adverse parties. They are not subject to the provisions of the Administrative Procedure Act (5 U.S.C. 504 et seq.), and are not conducted for the purpose of determining the rights or liabilities of any person.

5. Section 831.5 is revised to read as follows:

§ 831.5 Priority of Board Investigations.

Any investigation of an accident or incident conducted by the Safety Board directly or pursuant to the appendix to part 800 of this chapter (except major marine investigations conducted under 49 U.S.C. 1131(a)(1)(E)) has priority over all other investigations of such accident or incident conducted by other Federal agencies. The Safety Board shall provide for the appropriate participation by other Federal agencies in any such investigation, except that such agencies may not participate in the Safety Board's determination of the probable cause of the accident or incident. Nothing in this section impairs the authority of other Federal agencies to conduct investigations of an accident or incident under applicable provisions of law or to obtain information directly from parties involved in, and witnesses to, the transportation accident or incident, provided they do so without interfering with the Safety Board's investigation. The Safety Board and other Federal agencies shall assure that appropriate information obtained or developed in the course of their investigations is exchanged in a timely manner.

6. Section 831.6 is revised to read as follows:

§ 831.6 Request to withhold information.

(a) *Trade Secrets Act (18 U.S.C. 1905), Exemption 4 of the Freedom of Information Act (5 U.S.C. 552) (FOIA), and The Independent Safety Board Act of 1974, as amended.*

(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 of such information; however, the Independent Safety Board Act, at 49 U.S.C. 1114(b), provides that the Board may, under

certain circumstances, disclose information related to trade secrets.

(2) *Procedures.* Information submitted to the Board that the submitter believes qualifies as a trade secret or confidential commercial information subject either to the Trade Secrets Act or FOIA Exemption 4 shall be so identified by the submitter on each and every page of such document. The Board shall give the submitter of any information so identified, or information the Board 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 where the Board determines to disclose pursuant to 49 U.S.C. 1114(b) and/or 5 U.S.C. 552, at least 10 days' notice will be provided 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 Board has substantial reason to believe that disclosure would result in competitive harm.

(3) *Voluntarily-provided Safety Information.* It is the policy of the Safety Board that commercial, safety-related information provided to it voluntarily and not in the context of particular accident/incident investigations will not be disclosed. Reference to such information for the purposes of safety recommendations will be undertaken with consideration for the confidential nature of the underlying database(s).

(b) *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 Board, stating the grounds for such objection. The Board, on its own initiative or if such objection is made, may order such information withheld from public disclosure when, in its judgment, the information may be withheld under the provisions of an exemption to the Freedom of Information Act (5 U.S.C. 552, see part 801 of this chapter), and its release is found not to be in the public interest.

7. Section 831.7 is revised to read as follows:

§ 831.7 Right to representation.

Any person interviewed by an authorized representative of the Board during the investigation, regardless of the form of the interview (sworn, unsworn, transcribed, not transcribed,

etc.), has the right to be accompanied, represented, or advised by an attorney or non-attorney representative.

8. Section 831.8 is revised to read as follows:

§ 831.8 Investigator-in-charge.

The designated investigator-in-charge (IIC) organizes, conducts, controls, and manages the field phase of the investigation, regardless of whether a Board Member is also on-scene at the accident or incident site. (The role of the Board member at the scene of an accident investigation is as the official spokesperson for the Safety Board.) The IIC has the responsibility and authority to supervise and coordinate all resources and activities of all personnel, both Board and non-Board, involved in the on-site investigation. The IIC continues to have considerable organizational and management responsibilities throughout later phases of the investigation, up to and including Board consideration and adoption of a report or brief of probable cause(s).

9. Section 831.9 is amended by revising paragraph (a) to read as follows:

§ 831.9 Authority of Board representatives.

(a) *General.* Any employee of the Board, upon presenting appropriate credentials, is authorized to enter any property where an accident/incident subject to the Board's jurisdiction has occurred, or wreckage from any such accident/incident is located, and do all things considered necessary for proper investigation. Further, upon demand of an authorized representative of the Board and presentation of credentials, any Government agency, or person having possession or control of any transportation vehicle or component thereof, any facility, equipment, process or controls relevant to the investigation, or any pertinent records or memoranda, including all files, hospital records, and correspondence then or thereafter existing, and kept or required to be kept, shall forthwith permit inspection, photographing, or copying thereof by such authorized representative for the purpose of investigating an accident or incident, or preparing a study, or related to any special investigation pertaining to safety or the prevention of accidents. The Safety Board may issue a subpoena, enforceable in Federal district court, to obtain testimony or other evidence. Authorized representatives of the Board may question any person having knowledge relevant to an accident/incident, study, or special investigation. Authorized representatives of the Board also have exclusive authority, on behalf of the Board, to decide the way in which any testing will be conducted, including

decisions on the person that will conduct the test, the type of test that will be conducted, and any individual who will witness the test.

* * * * *

10. Section 831.11 is revised to read as follows:

§ 831.11 Parties to the investigation.

(a) *All Investigations, regardless of mode.* (1) The investigator-in-charge designates parties to participate in the investigation. Parties shall be limited to those persons, government agencies, companies, and associations whose employees, functions, activities, or products were involved in the accident or incident and who can provide suitable qualified technical personnel actively to assist in the investigation. Other than the FAA in aviation cases, no other entity is afforded the right to participate in Board investigations.

(2) Participants in the investigation (*i.e.*, party representatives, party coordinators, and/or the larger party organization) shall be responsive to the direction of Board representatives and may lose party status if they do not comply with their assigned duties, actively proscriptions or instructions, or if they conduct themselves in a manner prejudicial to the investigation.

(3) 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.

(4) Title 49, United States Code § 1132 provides for the appropriate participation of the FAA in Board investigations, and § 1131(a)(2) provides for such participation by other departments, agencies, or instrumentalities. The FAA and those other entities that meet the requirements of paragraph (a)(1) of this section will be parties to the investigation with the same rights and privileges and subject to the same limitations as other parties, provided however that representatives of the FAA need not sign the "Statement of Party Representatives to NTSB Investigation" (see paragraph (b) of this section).

(b) *Aviation investigations.* In addition to compliance with the provisions of paragraph (a) of this section, and to assist in ensuring complete understanding of the requirements and limitations of party status, all party representatives in aviation investigations shall sign "Statement of Party Representatives to NTSB Investigation" immediately upon

attaining party representative status. Failure timely to sign that statement may result in sanctions, including loss of status as a party.

11. Section 831.12 is revised to read as follows:

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

(a) Only the Board's accident 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 Board's custody.

(b) Wreckage, records, mail, and cargo in the Board's custody shall be released by an authorized representative of the Board when it is determined that the Board has no further need of such wreckage, mail, cargo, or records. When such material is released, Form 6120.15, "Release of Wreckage," will be completed, acknowledging receipt.

12. Section 831.13 is amended by revising the heading and paragraph (b) to read as follows:

§ 831.13 Flow and dissemination of accident or incident information.

* * * * *

(b) All information concerning the accident or incident obtained by any person or organization participating in the investigation shall be passed to the IIC through appropriate channels before being provided to any individual outside the investigation. Parties to the investigation may relay to their respective organizations information necessary for purposes of prevention or remedial action. However, no information concerning the accident or incident may be released to any person not a party representative to the investigation (including non-party representative employees of the party organization) before initial release by the Safety Board without prior consultation and approval of the IIC.

13. Section 831.14 is revised to read as follows:

§ 831.14 Proposed findings.

(a) *General.* Any person, government agency, company, or association whose employees, functions, activities, or products were involved in an accident or incident under investigation may submit to the Board written proposed findings to be drawn from the evidence produced during the course of the investigation, a proposed probable cause, and/or proposed safety recommendations designed to prevent future accidents.

(b) *Timing of submissions.* To be considered, these submissions must be

received before the matter is calendared for consideration at a Board meeting. All written submissions are expected to have been 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 by the Board pursuant to part 821 of this chapter. Separate *ex parte* rules, at part 821, subpart J, apply to those proceedings.

Issued in Washington, DC this 21st day of January, 1997.

Jim Hall,

Chairman.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 940553-4223; I.D. 012197A]

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic; Closure

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

ACTION: Closure.

SUMMARY: NMFS closes the commercial hook-and-line fishery for king mackerel in the exclusive economic zone (EEZ) in the Florida west coast subzone. This closure is necessary to protect the overfished Gulf king mackerel resource.

EFFECTIVE DATE: The closure is effective 12:01 a.m., local time, January 22, 1997, through June 30, 1997.

FOR FURTHER INFORMATION CONTACT: Mark F. Godcharles, 813-570-5305.

SUPPLEMENTARY INFORMATION: The fishery for coastal migratory pelagic fish (king mackerel, Spanish mackerel, cero, cobia, little tunny, dolphin, and, in the Gulf of Mexico only, bluefish) is managed under the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic (FMP). The FMP was prepared by the Gulf of Mexico and South Atlantic Fishery Management Councils (Councils) and is implemented by regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act.